



LEGAL SERVICES BOARD DRAFT STRATEGY FOR LEGAL SERVICES REGULATION AND DRAFT BUSINESS PLAN 2021-22

Issued 05 February 2021

ICAEW welcomes the opportunity to respond to the Legal Services Board's consultation on its draft strategy for legal services regulation and draft business plan 2021-22 issued on 12 December 2020.

ICAEW is a world-leading professional body established under a Royal Charter to serve the public interest. In pursuit of its vision of a world of strong economies, ICAEW works with governments, regulators and businesses and it leads, connects, supports and regulates more than 156,000 chartered accountant members in over 160 countries.

ICAEW's regulatory and disciplinary roles are separated from ICAEW's other activities so that it can monitor, support or take steps to ensure change if standards are not met. These roles are carried out by the Professional Standards Department (PSD) and overseen by the independent ICAEW Regulatory Board (IRB). This response dated 5 February 2021 reflects the views of ICAEW as an Approved Regulator for the reserved legal service of probate. ICAEW Professional Standards is the regulatory arm of ICAEW. Over the past 30 years, ICAEW has undertaken responsibilities as a regulator under statute in the areas of audit, insolvency, investment business and most recently legal services. In discharging its regulatory duties, it is subject to oversight by the FRC's Conduct Committee, the Irish Auditing and Accounting Supervisory Authority (IAASA), the Insolvency Service (IS), the Financial Conduct Authority (FCA), the Legal Services Board (LSB) and the Office for Professional Body Anti-Money Laundering (OPBAS).

Amongst ICAEW's regulatory responsibilities it is;

- the largest Recognised Supervisory Body (RSB) and Recognised Qualifying Body (RQB) for statutory audit in the UK, registering approximately 2,600 firms and 7,000 responsible individuals under the Companies Act 2006.
- a Prescribed Accountancy Body (PAB) and Recognised Accountancy Body (RAB) for statutory audit in Ireland, registering approximately 40 firms and 250 responsible individuals under the Republic of Ireland's Companies Act 2014.
- the largest RSB for local audit in England. It has eight firms and over 90 key audit partners registered under the Local Audit and Accountability Act 2014.
- the largest single insolvency regulator in the UK, licensing some 800 of the UK's 1,600 insolvency practitioners as a Recognised Professional Body (RPB) under the Insolvency Act 1986.
- a Designated Professional Body (DPB) under the Financial Services and Markets Act 2000, currently licensing approximately 2,000 firms to undertake exempt regulated activities under that Act.
- a Supervisory Body recognised by HM Treasury for the purposes of the Money Laundering Regulations 2007, dealing with approximately 11,000 member firms.
- designated an Approved Regulator and Licensing Authority for probate under the Legal Services Act 2007 (the Act) currently accrediting approximately 340 firms to undertake this reserved legal activity.

INTRODUCTION

General approach

1. ICAEW welcomes the opportunity to comment upon the draft strategy and business plan for the legal services sector in 2021-2. We applaud the work that has been undertaken to understand the state of the market. The budget and plan are a coherent development of that work.
2. The documents produced are an assessment of the state of the profession and how law is being provided as a service. It sets out a series of aspirations to which we relate as a body. However, it is important to understand the respective, different roles of the oversight body, the professional bodies and the regulators in moving towards the achievement of some of those outcomes. The regulators are required to ensure firms and individuals meet the obligations set out in the Act and the LSB is required to supervise how the regulators achieve that. There is a risk that, in developing new laws, and requiring the regulators to contribute to that development, is outside the terms of reference of the Act.
3. The opening section setting out the LSB's role is well expressed. We applaud the recognition of the obligation to firms and partners, as well as to consumers. However, no mention is made in this resume of the Hampton principles which are highly important to us as regulators under the Regulatory and Legislative Reform Act 2006, as well as the LSB itself under section 28 of the Legal Services Act 2007. Targeting and proportionality are critical here and the 'one size fits all' approach is not appropriate given the differing focus of each of the regulators.
4. It is important to bear in mind the administrative burden that already falls on firms and individuals that come within regulation. A large part of the sector is not regulated. Those who find the red tape too excessive will simply move out of supervision and offer services without necessarily the protections afforded by registration with one of the bodies. It also leads to reduced competition and increased costs in the reserved areas. These are all to the detriment of access to justice and consumer interest.
5. Whilst we support the continued address of the needs of the consumer, we consider that there is an over-focus on areas of marginal improvement to the detriment of other areas that could have a significant impact. For example, comparison websites and publication of pricing may make legal services more affordable, this will not address the more important issue of access to justice for those who cannot afford legal services even where greater competition has been injected to reduce prices.. We believe that there is a big role here for the LSB leadership where it could make a big difference.
6. The steps needed around technology and artificial intelligence are well set out in the plan. They are important and recognise that regulation around these could be complex. An area that we believe is important is the continuing integrity of the systems that are used, and ICAEW's own experience in the area of accounting with these tools, including the assurance mechanisms, may be an area where we could usefully contribute to the debate.
7. We are also concerned at the timing of the proposed 4.4% increase in the LSB's budget during a pandemic which has damaged the finances of many businesses and individuals and where most other regulatory bodies have sought to reflect this in holding regulatory fees at pre-pandemic levels. We are also disappointed that the proposed increase does not include funding for a statutory review of reserved services to ensure that the riskiest legal services are those which are caught by regulation. We consider this to be the most pressing issue for public protection.

RESPONSES TO SPECIFIC QUESTIONS

QUESTION 1: DO YOU HAVE ANY COMMENTS ON THE THREE STRATEGIC THEMES THAT WE HAVE IDENTIFIED?

8. We have no specific comments on the identified strategic themes.

QUESTION 2: DO YOU HAVE ANY COMMENTS ON THE NINE CHALLENGES THAT WE HAVE IDENTIFIED FOR THE SECTOR?

9. The nine challenges are characterised by proactive moves to improve the overarching consumer experience. That may be laudable in its own right, the primary role of an oversight body is to ensure the appropriate adherence to the regulatory standards applied under the Legal Services Act.
10. Some of the proposed steps are best served through working with the professional bodies. The duty of a regulator is to ensure compliance, not invent new rules or extend regulation, which is in any case counter intuitive to government policy on red tape. There could also be a risk of a lack of independence, or a perceived lack of independence, between the oversight body and those it regulates if it were to partner with regulators on an innovation which is subsequently proved to be unsound.
11. We welcome the inclusion of quality within the challenges. The moves being made on continuous education and quality assurance are areas we readily support through our own initiatives in the area of accountancy.

QUESTION 3: HOW CAN YOU/ YOUR ORGANISATION CONTRIBUTE TO OVERCOMING THE SECTOR-WIDE CHALLENGES WE HAVE IDENTIFIED?

12. We believe that many of the aspirations in the plan should be developed in conjunction with the professional bodies as these are developments of the professional standards and ethics of the legal profession. ICAEW can assist in developing some of the ideas given many of the themes are common to the accountancy profession .
13. As the plan itself has identified, a number of barriers to overcoming the challenges are statutory in nature and need reform through the parliamentary process. Contributions should therefore be measured in the context of what can, and should be, achieved through natural development of existing rules and then, separately, a cohesive package put together on specific areas where the law can and should be changed.

QUESTION 4: DO YOU HAVE ANY COMMENTS ON THE SUGGESTED AREAS OF PRIORITY FOR THE SECTOR 2021-24?

14. We would only note here that regulatory compliance is still the core function of the LSB and there should be caution in not straying too far from this responsibility.

QUESTION 5: DO YOU AGREE WITH OUR PROPOSAL TO PURSUE THESE WORKSTREAMS? IS THERE ANYTHING MISSING THAT YOU THINK WE SHOULD FOCUS ON IN 2021-22??

15. While the objectives are all laudable, we would advise caution in embarking on an overly-ambitious plan during a period when the country will be recovering from the impact of the Covid pandemic. The additional costs created by a 4.4% increase in budget will have to be passed through by regulators to licensed firms and, given that many firms have fared badly during the pandemic, they will have no option but to pass on this additional cost in fees charged to the consumer. This will make access to legal services even less affordable for vulnerable clients.

16. We believe that the two most important priorities for the legal sector are a review of reserved activities, and access to legal services given reductions in legal aid. As the consultation addresses the former in question 7, our comments on this are given in that section.
17. While the recommendations around transparency and price comparison tools may make the sector more competitive, the cost of legal services may still be well out of the reach of those less fortunate and with limited resources. Services available to the less well off and vulnerable were seriously curtailed with the reform of legal aid in 2013. The reforms were perhaps necessary then because of the poor focus of the relief and the misuse of the funding. However, it has not been replaced by the government with something that approached the outcomes more effectively.
18. Given this, we would support a lot more focus on the area of “citizens in vulnerable circumstances” to obtain irrefutable evidence that change must be made by the government to ensure access to justice for all. We believe that the LSB taking a strong leadership role in this area would have a far greater impact than the other new workstreams at a time of public hardship.
19. Finally, we would caution that the LSB should retain some flexibility in its strategy (and in its resources and budget) so that it is able to respond effectively and with agility to any new major issues which arise around legal services regulation over the next few years.

QUESTION 6: DO YOU SEE ANY AREAS OF JOINT WORKING BETWEEN THE LSB AND YOU/ YOUR ORGANISATION?

20. As noted above, some caution must be exercised in drawing regulatory bodies into exercises that are outside the direct regulatory remit as they may not have the required resources.
21. However, ICAEW does have resource that could assist in two areas. Firstly, to aid on the effectiveness of current regulatory controls, ICAEW, through its IT Faculty, has taken part in discussions with the LSB on the use of innovation and regulatory risk in professional services delivery, and may be able to provide further insight and research in this area.
22. Secondly, the quality assurance regime implemented and operated successfully for many years by ICAEW Professional Standards may be able to support and inform LSB initiatives around ensuring quality within practices.

QUESTION 7: DO YOU AGREE WITH OUR PROPOSALS THAT WE SHOULD NOT UNDERTAKE A STATUTORY REVIEW OF RESERVED LEGAL ACTIVITIES IN 2021-22?

23. We do not agree. In 2012, the LSB made a recommendation on will writing which was rejected by the then Lord Chancellor Chris Grayling. At the time, ICAEW and most of the other regulatory and professional bodies were in agreement with the LSB’s proposal.
24. The work that was done by the regulators in 2014 in their recommendations to Shailesh Vara, the LSB in its Vision Statement in 2016 and, more recently, the recommendations of Profession Stephen Mayson and the Competition and Markets Authority (CMA) all indicate that this is where focus is needed to give balance to a market where there are considerable consumer vulnerabilities outside the sphere and protection of the LSB and the 8 regulators.
25. We were disappointed to see that the current proposal is to carry out only some light touch investigative work. We believe more can be done in this area. Whilst we accept that Covid and Brexit are currently dulling the appetite for engagement in this area by Parliament, the research and consultation work needed before anything can be presented means that any representation to the Lord Chancellor for change would be made in mid-2022, at the earliest, when the agenda for the House should have returned to some sense of normality.

26. Given its importance, we believe that a statutory review of reserved legal services should be carried out in 2021-2022 and should be prioritised at the expense or reduction of some of the other 12 workstreams.

QUESTION 8: DO YOU HAVE ANY COMMENTS ON OUR PROPOSED MARKET INTELLIGENCE WORK? IS THERE ANYTHING MISSING THAT YOU THINK WE SHOULD FOCUS ON?

27. As legal education and diversity are given prominence elsewhere in the plan, we believe that some research should be focused on the general awareness, by both the general public and at schools level, of law as a right and profession. In addition, the effectiveness of Legal Choices could be measured in some way to assess whether the investment by the regulatory bodies in this enterprise is meeting the expectations of the CMA.

QUESTION 9: DO YOU HAVE ANY COMMENTS ON OUR PROPOSED BUDGET FOR 2021/22?

28. We would reiterate our concern that the extra 4.4% being proposed on the LSB budget is poorly timed while the general economic situation in the country is so challenging. We have tried hard not to increase regulatory fees across all of the professional services we regulate, recognising that our regulated firms and persons will have little option but to pass on any additional costs to the consumer. We will have no option but to pass on any such increase to our accredited firms and they will undoubtedly pass them on to their customers. We consider that the LSB's budget should have had a much smaller increase and that its ambitions should have been capped within that budget.

QUESTION 10: DO YOU HAVE ANY COMMENTS REGARDING EQUALITY ISSUES WHICH, IN YOUR VIEW/EXPERIENCE, MAY ARISE FROM OUR PROPOSED BUSINESS PLAN FOR 2021/22? ARE THERE ANY WIDER EQUALITY ISSUES AND INTERVENTIONS THAT YOU WANT TO MAKE US AWARE OF?

29. The richness of the legal services supply market is driven both by supply and demand. The plan pays considerable attention to the demand curve and the protections that go with it, but not as much to the supply side. The diversity requirement of the eight regulatory objectives is as much about diversity of type of supply as it is about the nine protected characteristics. These types include alternative business structures and many sole practitioners. Regulation, whilst improving quality and reducing risk to the consumer, can act as a deterrent to those prepared to supply and can risk having a reverse impact on those outcomes if not carefully managed within the Hampton principles. In addition, the statutory objectives include access to justice and competition driving a wider market supply, and these must be balanced with the LSB's focus on the consumer interest.