

Meeting: Legal Services Board

Date: 18 March 2021

Item: Paper (21) 11

Title: Final strategy for the sector, business plan and budget

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Status: Official

Purpose of the paper

1. The paper summarises responses to LSB's consultation on the draft strategy, business plan and budget and seeks approval for the final suite of documents ahead of publication by the end of March 2021.

Recommendation:

2. The Board is invited to:
 - **agree** the budget for 2021/22 of £4.098m, as considered by ARAC at its meeting on 3 March 2021;
 - **discuss and agree** the proposed strategy for the sector and the Business Plan for 2021/22;
 - If any drafting changes are necessary as a result of the Board's discussions, **delegate authority** to the Chair and Chief Executive to approve the documents to be published before 31 March 2021.

Background

3. At its December 2020 meeting, the Board agreed to consult on a draft strategy for the sector and a Business Plan for 2021/22. The Plan included an indicative budget for 2021/22 of £4,098m (£3,923m 2020/21). The draft strategy for the sector and business plan were the subject of an 8-week consultation from December to February.

4. The final proposals are the culmination of a year-long process to develop an ambitious strategy for the sector, not just another corporate strategy for the LSB. The strategy sets out a ten-year strategic direction for the sector and priorities for the first three years, while the business plan outlines LSB priorities for 2021/22. To reach this stage we have implemented a programme of evidence-based strategy and policy development informed by extensive stakeholder and citizen engagement. The key components of this programme were as follows:
- The production of a well-received State of Legal Services 2020 report, comprising an evidence compendium and narrative overlay
 - Citizen engagement through the LSB's Public Panel
 - Stakeholder engagement including
 - The formal consultation on the strategy and business plan, which received 28 written responses
 - Several set-piece events, including a summit in September 2020 attended by 45 sector leaders and influencers, a webinar in January 2021 attended by 135 stakeholders and a consultation event in January 2021 attended by 30 stakeholders
 - Four evidence sessions led by Board members covering diversity, technology, grassroots legal support and consumer advice
 - Discussions with the chairs and CEOs of the regulatory bodies individually throughout the year and collectively in February 2021
 - Bilateral meetings with 72 individuals and organisations
 - Presentations to groups of stakeholders facilitated by external organisations, in particular several Law Society groups
 - Colleague engagement through away days and workshops

Summary of consultation responses and key changes proposed

5. At **Annex A**, the Board will find a draft consultation response document summarising stakeholder feedback on our plans and our proposed response. **Annex B** contains the proposed final strategy for the sector. **Annex C** contains the proposed final business plan for 2021/22.
6. As in previous years, the final business plan incorporates a quarterly activity schedule, which we will publish online and update quarterly. In the context of Covid-19 and the political environment, our plans will necessarily need to remain flexible so that we can respond in an agile way to the external environment.
7. There were 28 responses to the consultation. This is a record number of responses to an LSB strategy and business plan consultation, which reflects our investment in stakeholder engagement throughout the process. The consultation responses are available in VBR if Board members wish to review them. They will be published on our website alongside the final suite of LSB documents.
8. The key themes of responses were as follows:
- Stakeholders generally welcomed concept of a strategy for the sector and praised our evidence-based and collaborative approach to developing

this. However, the Bar Council questioned our vires and some other responses stressed the need for LSB to focus on its oversight role

- There was widespread support for the three strategic themes and nine challenges. Some respondents observed that our business plan was ambitious and could stretch the LSB's resources. Others asked for us to prioritise the various challenges and give an indication on who was best placed to effect change on each of the challenges and areas of priority
- There was a real sense that more joint working and collaboration was needed to overcome the challenges facing the sector
- Some respondents suggested that there should be more recognition of the impacts of Covid-19 and the UK's exit from the EU in the strategy
- Respondents were broadly supportive of the proposed workstreams in our business plan. There were competing views on legal expenses insurance and simple legal products, but no objections that should stop this work
- Most respondents who commented opposed the proposed budget – see paragraphs 18 to 22 below.

9. In response to this feedback, we do not propose making the any changes to the golden thread of the strategy of reshaping legal services to better meet society's needs, the three strategic aims of fairer outcomes, stronger confidence and better services, or the nine challenges that underpin these.

10. There were some interesting suggestions for additional areas of work, but we consider that the work packages proposed in our draft business plan remain those with the strongest connection to the nine challenges, will deliver the most impact at this time and are the best fit with our role.

11. Since consulting on our proposals, the CMA has asked the LSB to coordinate activity on improving market transparency and lead on the creation of a single digital register. This requires more resources to deliver than we had foreseen. However, to avoid a further increase to the budget in the current environment, we suggest reprioritising and rescoping some activities to enable us to fully deliver the CMA's recommendations. Specifically, we propose deferring work on simple legal products until resources permit since this would require more investment than other new areas of work in the convening role category. More generally, the large majority of our policy team resource is allocated to our oversight activity and relatively minimal resource to our convening role, but the nature of our convening role means that we can flex this activity during the year.

Collaboration

12. The Board has made collaboration a core theme of the strategy development process. Opportunities for collaboration were discussed in all our stakeholder meetings and events, and there was a specific question to prompt suggestions of collaboration in the consultation – see **Annex D** for a summary of responses.

13. There was widespread support for more joint working and collaboration, with offers ranging from general statements of support to specific areas of joint working. The SRA helpfully drew the distinction between alignment by regulators

across a range of pieces of work and more proactive collaboration on a smaller number of projects; it also described models of collaboration. Stakeholder offers of support and suggestions for collaboration included:

- General support for cross-sector working on equality, diversity and inclusion, with some suggesting a focus on the link between social mobility and diversity and inclusion, and a focus on how service providers can better understand and meet the needs of diverse consumers
- General support for collaboration and joint working on technology and innovation, including collaborations to regularly review technological developments within the sector and joint working on online resources for consumers in vulnerable circumstances
- Suggestions on joint research initiatives, including on understanding the health of the sector, the impacts of Covid-19 on professionals, fee-paid McKenzie friends and understanding consumer needs
- General offers of engagement with members and specialist committees to help generate insights on the challenges facing the sector and how these can be overcome
- Regular meetings with particular interest groups and organisations. For example, the Society of Legal Scholars suggested an annual meeting between regulators and academics to enable information sharing and collaboration. In a similar vein, LawWorks suggested establishing an external research group to help share insights.

14. The annual meeting of the Chairs of regulatory bodies on 9 February 2021 included a discussion on effective collaboration and joint working. There is a shared ambition to build upon existing efforts with many regulatory bodies recognising that the benefits of collaboration can be difficult to quantify in the short-term but that its longer-term benefits are important. There was a good discussion on how flexible collaboration could work in practice, such as by regulators opting-in to certain areas or projects for a defined period.

15. Some specific suggestions of collaboration were made at and following the meeting, which we are actively pursuing. After we have published the final strategy and business plan 2021-22, we will write to regulatory bodies on the points raised at the 9 February meeting, including areas for collaboration.

Reserved legal activities

16. In the consultation we specifically asked for views on whether LSB should carry out a statutory review of the reserved legal activities in 2021/22. The Board's preliminary view was not to conduct a statutory review at this stage, but instead conduct work to build our understanding of the unregulated sector, consider the implications of technology for the scope of regulation and explore voluntary registers using powers under s163 of the Legal Services Act 2007. Since issuing the consultation, the CMA has indicated its preference for LSB to conduct a review but called on the Ministry of Justice to put the necessary funding in place. The executive costed this work at approximately £500k over two years.

17. The large majority of stakeholders who commented agreed with the Board's preliminary view, so we plan to proceed as planned. Pages 17 to 18 of the consultation response document provide further detail. It is important to stress that we consider that a statutory review of the reserved legal activities is needed but that 2021/22 is not the optimal time. We propose keeping the timing of this under active review and pursuing discussions with government about funding.

The proposed budget for 2021/22

18. In line with previous years, the budget proposal is also submitted to Ministers for approval. The Lord Chancellor is required to approve the amount we collect via the levy each year. While the Business Plan is not subject to Lord Chancellor approval, it does provide the basis for his decision-making. The LSB are engaging with the Ministry of Justice's 2021/22 allocation process and a budget submission has been made to the Ministry of Justice for approval through their strategic planning process.

19. The Audit and Risk Assurance Committee met on 3 March 2021 and reviewed the budget proposal considering consultation feedback. The Committee noted that, as at the date of its meeting, approval of the budget was still pending and a risk remained that formal Ministerial approval would not be received by the start of the new financial year. In the absence of Ministerial approval, the Ministry of Justice will not be in a position to formally confirm the LSB's delegation. However, the MoJ intend to issue written authority to incur expenditure from 1 April 2021, following the precedent set during the budget process in previous years to ensure the correct governance is in place pending the issue of formal delegations across the Department. Taking this into account, ARAC endorsed the budget proposal to the Board although raising a concern about the commitment to absorbing workstreams arising from the CMA's report. While the executive will work to the budget figure in the consultation, we will flag at the earliest opportunity if there are budgetary implications for future periods.

20. All those responses opposed to the budget were from either organisations representing the legal profession or regulatory bodies. Concerns focused on the context of the wider financial challenges and pressures on the sector from the Covid-19 pandemic and the UK's withdrawal from the European Union. Several responses requested that the LSB prioritise work to avoid a budget increase. There were also several requests to provide greater transparency by providing detailed cost analysis and by explaining how the levy was spent on programmes and projects to provide evidence of justification for the budget increase.

21. The LSB Reserves are £6.367m as at 31 January 2021. The Board is aware that we have been exploring access to LSB's reserves with the Ministry of Justice. At the January meeting the Head, Finance and IT explained that a proportion of the LSB reserves derived from historical levy surplus. The Ministry of Justice have confirmed that, in line with Note 15 on Contingent Liabilities in the 2019-20 ARA, the legacy PAYE liability will be approved expenditure and can be funded from LSB reserves. However the Ministry of Justice have also confirmed that government accounting rules around the annual allocation of income and expenditure budgets from the Treasury mean that the future funding of LSB

activity from LSB reserves cannot take place without breaching the LSB's financial obligations.

22. We plan to strengthen our approaches to demonstrating progress, impact and value for money as follows:

- In the longer-term, we plan to publish a State of Legal Services style report every five years using a range of indicators. This reflects the typical time lag between policy change and change becoming evident in the market, as well as the frequency of research.
- As an interim step, we will update a selection of metrics from the State of Legal Services 2020 report periodically as new evidence becomes available making use of the well-regarded dashboards on our website.
- For many of our policy projects, it can be particularly challenging to assess outcomes in the short-to-medium term. Nevertheless, we plan to improve focus on close-down reports in relation to three critical areas in: (a) outcomes, (b) lessons learned and (c) the degree to which lessons learned are actively and routinely applied to other projects.

Next steps

23. Our next steps are to finalise and polish the draft documents so that final versions can be published on our website for the start of the new financial year.

Annexes

Annex A – Draft consultation response document

Annex B – Draft final strategy for the sector

Annex C – Draft final business plan plus quarterly activity schedule

Annex D – Collaboration grid

Risks and mitigations	
Financial:	<p>Funding is guaranteed through the levy and the Executive and ARAC members believe that the Business Plan can be delivered within the proposed resources.</p> <p>There is a risk that Ministers will not make a decision on the budget in time for the Board's March meeting. There is also a relatively small risk that Ministers may not approve the current budget proposal and seek reductions. If this risk materialises, it will be addressed through a combination of negotiation and budget rationalisation.</p> <p>The Executive has provided all of the information requested by the MoJ to assist with Minister's decision-making.</p>

Legal:	The documents have been developed with input from our legal team. They are consistent with our powers under the Act.
Comms and engagement:	We have consulted widely with stakeholders and taken their views into account while developing our plans. Proposals for substantive work were broadly supported, but there was criticism of our proposed budget increase in the context of Covid-19.
Equality and diversity:	Several proposed workstreams will advance equality and diversity objectives, as summarised in the consultation document. The consultation included a specific question on equality and diversity impacts, but there were no substantive responses of note.
Resource:	The proposed final business plan has been informed by a resource planning exercise for the proposed packages of work.

Freedom of Information Act 2000 (Fol)		
Para ref	Fol exemption and summary	Expires
Annexes A, B, C	s22 – future publication.	N/A