

# **Strategy for legal services regulation and business plan for 2021/22**

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**Consultation response document**

March 2021

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## Acronyms

AI – Artificial intelligence

ACSO – Association of Consumer Support Organisations

BSB – Bar Standards Board

CILEx – Chartered Institute of Legal Executives

CIPA – Chartered Institute of Patent Attorneys

CITMA – Chartered Institute of Trade Mark Attorneys

CLC – Council for Licensed Conveyancers

CMA – Competition and Markets Authority

CRL – CILEx Regulation

ICAEW – Institute of Chartered Accountants in England and Wales

IPReg – Intellectual Property Regulation Board

JLD – Junior Lawyers Division of the Law Society

LEI – Legal expenses insurance

LSA – Legal Services Act 2007

LSB – Legal Services Board

LSCP – Legal Services Consumer Panel

OLC – Office for Legal Complaints

PCF – Practising certificate fee

PII – Professional indemnity insurance

PLE – Public legal education

SDT – Solicitors Disciplinary Tribunal

SRA – Solicitors Regulation Authority

TLS – The Law Society

## Introduction

1. On 9 December 2020, we published a consultation on our draft strategy for the legal services sector in England and Wales (strategy) and our draft business plan and budget 2021/22 (business plan). A press release accompanied these publications, and the documents were sent by e-mail to regulators and representative bodies, consumer and citizen groups, professional groups, other regulators, parliamentarians, the judiciary and other interested parties. The consultation closed on 5 February 2021.
2. An extensive programme of stakeholder engagement informed the development of the draft strategy and business plan. During the consultation period we held a webinar and a roundtable with stakeholders. Similar themes emerged in the consultation responses and during the events. As well as considering written responses, we have considered the views of those who attended our consultation events but did not submit a written response. We are grateful for the contributions received.
3. This paper summarises key points from the responses received to the consultation, the LSB's consideration of those points and the material changes made to the strategy and business plan since consultation. We have responded to each consultation question in turn, but there were overlapping comments across different questions, especially on the challenges, strategic priorities and proposed work packages. Therefore, to aid readability, where appropriate, we have grouped points together.

## The responses

4. There were 28 responses to our consultation. Where stakeholders consented to their responses being made public, these have been published on our website alongside this consultation response document. Annex A lists the stakeholders represented at the webinar and roundtable consultation events held in January 2021.
5. We are grateful to each organisation and individual that took time to consider our proposals and to respond or to attend our consultation events. All the points made have been considered carefully as we have finalised the strategy and business plan. The finalised strategy and business plan documents are available on our website.
6. Some responses included specific suggestions for areas of collaboration and other offers of support were made outside of the formal consultation process. These were very gratefully received, and we will engage with the individuals and organisations concerned as we scope out and deliver these work streams.

## Overview

7. Stakeholders generally welcomed the concept of a strategy for the sector and praised our evidence-based and collaborative approach to developing this.
8. There was widespread support for 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, and the nine challenges that underpin these. Therefore, we will not make any changes to these core elements of the strategy.

9. Some respondents observed that our business plan was ambitious and could stretch our resources. On this theme, others asked for us to prioritise the various challenges. Oversight of the OLC, the regulatory bodies and the SDT will remain central to our activities. However, the challenges identified in the strategy will require us and others to foster change. The final business plan focuses on areas where regulatory activity can have greatest impact, and which build on existing momentum for change. These areas include equality, diversity and inclusion, consumer engagement and facilitating innovation. Our commitment to other priorities in the strategy, such as a statutory review of the reserved legal activities and professional indemnity insurance, remains strong. Planned work in 2021/22 should leave us well placed to address these areas in future.
10. There was a real sense that more joint working and collaboration is needed to overcome the challenges facing the sector. Responses identified a range of models for collaborative working and suggested areas where this would be beneficial. Some responses asked us to indicate who is best placed to effect change in different areas. Effective collaboration, in its various forms, will be key to successful delivery of the strategy and we were delighted by the positive nature of the responses we received. The best form of joint working and collaboration, and the actors involved, will vary on an issue-by-issue basis. We are working through different options to best mobilise the shared appetite for collaboration, both on individual work streams and across the strategy as a whole. Further announcements on this will follow.
11. 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 we consider should stop us doing this work in principle. There were also some interesting suggestions for additional areas of work. However, on balance 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.
12. Most respondents who commented opposed our proposed budget increase of 4.4%. All those who opposed the budget were either from 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 EU exit. There were also several requests to provide greater transparency on our plans.
13. Since consulting on our proposals, the CMA has asked the LSB to take on a coordination and leadership role that requires a higher level of resources than we had anticipated prior to the consultation. We are keen to exercise leadership in these areas, working with regulatory bodies and others to use our limited resources in the most efficient way. However, to avoid a further increase to the budget in the current environment, we have reprioritised and rescoped some activities. Specifically, we are deferring work on simple legal products until resources permit. Further, the convening role activities we proposed are more flexible in nature and we will adjust our approach to these work streams in-year.

## Summary of responses

### Do you have any comments on the three strategic themes that we have identified?

#### (Question 1)

##### General comments

14. There was widespread support for the LSB developing a strategy for the sector, and for the three strategic themes of fairer outcomes, stronger confidence, and better services. Joint working and collaboration between regulators, representative bodies and other stakeholders was singled out by many as key to the success of the strategy. There was a general sense that continued flexibility and agility would be important so that future challenges and opportunities could be identified and responded to.
15. The Bar Council took an opposing stance. It disagreed with the LSB putting forward a strategy for the sector and set out its view that this was not within the remit of the LSB. It suggested that if the LSB were to use its powers under the Legal Services Act 2007 (LSA) to achieve a strategy for the legal services sector it would not be a proper and lawful exercise of the LSB's powers.
16. Some stakeholders emphasised the need for LSB not to lose sight of its core oversight role. For example, ICAEW set out its view that regulatory compliance is still the core function of the LSB and there should be caution in not straying too far from this responsibility.
17. Some professional bodies considered that the strategy did not focus sufficiently on supporting the sector to recover from Covid-19. The Bar Council suggested an additional theme of 'recovery' or 'support for existing legal services'. The Law Society (TLS) stressed the importance of regulatory stability to aid Covid-19 recovery.
18. Stakeholders emphasised the importance of being able to measure progress and demonstrate impact. TLS called for more detail on how impact would be measured and the inclusion of key performance indicators (KPIs) and impact measures. CLC noted the importance of assessing progress against the regulatory objectives.
19. There was some concern that a single strategy for the legal services sector could mask important differences between segments of the market. Transform Justice commented on how the criminal defence sector is not a consumer-driven market in the same way as other segments of the market. IPReg expressed concern at the notion of applying a single strategy to the entire sector. Similarly, CIPA noted that patent attorneys operate almost exclusively in a business-to-business environment.
20. There were a few suggested amendments to the strategic themes. For example, CILEx Regulation suggested an addition of 'changing needs' to the 'golden thread'. Hook Tangaza suggested the addition of an overarching theme of transparency.

##### Response

21. We are pleased by the widespread support for the strategy and the three overarching strategic themes of fairer outcomes, stronger confidence, and better services. The

extensive recognition and support for collaboration and joint working was also very pleasing. We look forward to using our convening role to facilitate joint working and collaboration. This does not always have to be led by us, nor can we lead in all areas. Offers by stakeholders to step forward in this respect were very welcome.

22. Our [State of Legal Services 2020 report](#) considered the impacts of Covid-19 in detail. This built on the public statement we made at the very earliest stages of the pandemic that set out our focus on the recovery of the sector's ability to serve the public and consumers. We consider that all three strategic themes are relevant to supporting the sector to recover from the effects of the pandemic. As such, we think it is best to make this a cross-cutting feature of the strategy rather than a strand on its own. We fully agree that a strong and resilient sector will best serve society's needs both during and after the health crisis. Of course, regulators cannot control underlying factors, such as demand for different legal services, that are causing difficulty. Regulators can perhaps best help providers to meet society's needs by identifying and removing any unnecessary barriers to new ways of working. LSB will not pursue regulatory change unless this is necessary, proportionate to the risks and the benefits outweigh the costs. At the same time, our analysis clearly shows that change is needed so that the sector can better meet society's needs and we will pursue reforms where this is justified.
23. The ability to be flexible to the needs of the legal services sector is important. In our 2020/21 business plan we explicitly acknowledged the need for our work plans to remain flexible and this will continue to be a feature of our approach in 2021/22 and beyond. To assist stakeholders, as part of the final business plan, we have published an outline activity schedule for the year, which we will update on our website quarterly.
24. We recognise that the challenges identified in the strategy are experienced in different ways and at varying levels of intensity across the sector, and that the solutions may differ. As we set out in the draft strategy, we recognise that we cannot commit others to specific aims or actions but seek to persuade stakeholders of a common agenda based on our analysis of the available evidence and our extensive stakeholder engagement. For the avoidance of doubt, we respect the autonomy of each of the regulatory bodies to set their own strategies consistent with the regulatory objectives in the LSA. We are grateful to those who have taken the time to engage positively with the substance of the strategy and suggested how they can make a difference.
25. We plan to strengthen our approaches to demonstrating progress, impact and value for money. 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 decisions 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 by making use of the interactive dashboards on our website. We are actively considering how best to monitor activities across the sector that aim to address the strategic priorities, so there is visibility for stakeholders on the progress being made. For many of our policy projects, it can be challenging to assess outcomes in the short-to-medium term. Nevertheless, we plan to strengthen our approach to evaluation and sharpen our focus on measuring outcomes in our project close-down processes.
26. The suggested revisions to the strategic themes and golden thread were helpful but after careful reflection we have decided not to change the phrasing. In response to

CILEx Regulation, the State of Legal Services 2020 report highlighted that many of the challenges facing the sector today also existed ten years ago, so we do not consider it would be right to limit the golden thread to society's 'changing' needs. Although we agree with Hook Tangaza that transparency should be a principle that extends across our work, we consider this is already designed-in to our existing approach since 'transparent' is one of the better regulation principles enshrined in the LSA.

27. The Bar Council expressed its view that in drawing up a strategy for the legal sector we are behaving as the regulator we think we ought to be rather than acting within the remit given to us by the LSA. In fact, we have referred to the statutory framework we operate under throughout the Strategy, and we have identified where our statutory activities sit within the wider picture. As the Bar Council points out, in discharging our functions, we must act in the way which we consider most appropriate for the purpose of meeting the eight regulatory objectives.<sup>1</sup> We have concluded that the most appropriate way is to consider our functions strategically, and to do so within the context of developing a collaborative strategy for the sector. The Bar Council has its own role to play in representing the legitimate interests of barristers. Our consultation on the draft Strategy was designed to ensure that we hear representations made on behalf of authorised persons, and we are grateful for their engagement. Nevertheless, we do not accept their representation that we are not empowered to engage in strategy formulation that recognises the complex nature of the sector and the role that many in it will need to play in order to meet the challenges we have described (and that appear to generate broad consensus).

## **Do you have any comments on the nine challenges that we have identified for the sector?**

### **(Question 2)**

#### **General comments**

28. There was widespread support for the nine challenges identified in the strategy, with many noting these aligned with their own priorities and programmes of work. Some stakeholders suggested additional areas of focus.
29. Many suggested that prioritising the challenges would be helpful. SRA, for example, said that segmenting who is best placed to progress specific priorities is important if the LSB planned to align the regulatory performance framework to the challenges. Some asked for more detail on which challenges were best solved through regulation, and those which were dependent on government action. CITMA asked us to indicate what challenges can be driven by regulators, and which required legislation.
30. The level of detail from stakeholders varied, with some offering general comments and others offering more detailed comments on each challenge. There was overlap in comments made in response to question 4 on the priorities. For convenience, we have

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<sup>1</sup> The eight regulatory objectives are: protecting and promoting the public interest; supporting the constitutional principle of the rule of law; improving access to justice; protecting and promoting the interests of consumers; promoting competition in the provision of services; encouraging an independent, strong, diverse and effective legal profession; increasing public understanding of the citizen's legal rights and duties; and promoting and maintaining adherence to the professional principles.



amalgamated these comments where appropriate. Below, we summarise the challenges receiving the most comments, and suggested additions and amendments.

*Challenge 1 – Lowering unmet legal need across large parts of society*

31. The general sense from stakeholders was that this is one of the biggest challenges facing the legal services sector. Some suggested that regulators have a role to play in reducing unmet legal need, while others emphasised government action. Birmingham Law Society said it was not the role of the LSB to remedy historical underinvestment in legal aid, and the Bar Council was critical of any attempt by regulation to compensate for legal aid cuts. In contrast, Transform Justice called on regulators to make necessary changes and to help defence practitioners sustain their practices.

*Challenge 3 – Dismantling barriers to a diverse and inclusive profession at all levels*

32. Diversity and inclusion were widely acknowledged by stakeholders as a key challenge for the legal services sector and an area where real progress, and change, was needed. There was general support for this being an area that would benefit from joint working and collaboration. CILEx and CRL emphasised the need to focus on social mobility as a dimension of diversity and inclusion, with CRL describing the legal profession as one of the “last bastions of out-dated social hierarchy”. The Bar Council highlighted that Covid-19 has likely impacted on diversity and inclusion. LSCP and LawNet emphasised the importance of considering diversity and inclusion from a consumer perspective, i.e. the diversity of consumer needs and experience. JLD suggested this area should include a focus on well-being and resilience.

*Challenge 5 – Closing gaps in consumer protection*

33. The comments on this challenge largely focused on whether, and how, to extend redress for those that use unregulated services. While there was general agreement that the current gaps for users of unregulated services is not ideal, there were differing opinions on how to address this. Some stakeholders supported the expansion of the Legal Ombudsman’s remit to include consumers of unregulated providers while others suggested a need to explore alternative options. One confidential response said that expanding the Legal Ombudsman’s remit would boost consumer confidence and reduce confusion about the consumer protections available. LawNet expressed concern that expanding the Legal Ombudsman’s remit could give an impression of equivalence between regulated and unregulated providers. Several responses suggested a priority could be to make consumers more aware of the differences between regulated and unregulated services. In this vein CIPA noted that much of the work of patent attorneys falls outside the scope of regulated activities. Professional Paralegal Register noted that the term ‘paralegal’ is unprotected.

*Challenge 6 – Reforming the justice system and redrawing the regulatory landscape*

34. There was support for improving complaints handling, with many stakeholders noting the important statutory role that the LSB has in overseeing the OLC. There were some criticisms of the inclusion of this challenge. TLS recommended that this challenge be incorporated into others and that a priority relating to the achievement of a strong,

resilient, internationally respected and independent profession be included. The Bar Council commented that now is not the right time to make changes to the regulatory landscape, and that any changes were not for the LSB to instigate.

*Challenge 8 – Fostering innovation that designs services around consumer needs;*

*Challenge 9 – Supporting responsible use of technology that commands public trust*

35. Many stakeholders recognised that technology is playing an increasingly important role in the sector, with many referencing the pace and scale of change driven by Covid-19. They cited benefits of technology including consumers being able to engage with legal professionals more easily, greater efficiencies, reduced costs and increased competition. Some stakeholders welcomed this shift, with one confidential response emphasising that more legal services should be delivered online. Others were more cautious in their support and identified risks including the limited ability of technology to cater to the needs of consumers in vulnerable circumstances, its potentially negative impacts on diversity in the profession and how an increase in online, unregulated services could further increase consumer confusion on what is, and is not, regulated.
36. Technology and innovation were described as areas that would really benefit from joint working and collaboration. There was support for regular reviews of technological developments within the sector. Some stakeholders emphasised the limited role that legal services regulators could have in fostering technology and innovation, while others called for more action. For example, ACSO suggested that regulators take a more proactive and coordinated approach to legal technology issues. Amanda Finlay CBE suggested they consider partnership working with third sector and not-for-profit organisations to develop online resources for consumers in vulnerable circumstances.

#### *Additional areas of focus*

37. Some stakeholders suggested stronger or additional areas of focus:
- Public legal education (PLE): Some stakeholders suggested PLE should be a distinct area of focus. LawWorks wanted to see a clearer focus or message on PLE and the inclusion of a specific PLE workstream in the business plan. TLS suggested the inclusion of a commitment to promoting a broad, cross-sectoral strategy for PLE and suggested that the LSB could play an important role in promoting the adoption of any such strategy.
  - More recognition of external factors: There were some suggestions that the strategy could more explicitly acknowledge wider economic, political, environmental, and societal factors, including Covid-19 and EU exit.
  - Legal profession: TLS and the Bar Council wanted to see a more explicit focus on the regulatory objective of encouraging an independent, strong, diverse and effective legal profession.

#### **Response**

38. We are pleased that stakeholders generally considered the nine challenges represent the most pressing issues facing the sector. The State of Legal Services 2020 report includes a section on external drivers of change, which featured many of the issues

described by stakeholders. This includes a strong emphasis on Covid-19 and on EU exit. Globalisation and climate change are key factors but more so for corporate firms, whereas our strategy principally focuses on the public and small businesses.

39. We see all nine challenges as important areas that require attention and we do not think it is appropriate, or necessarily helpful, to prioritise within them. Clearly, it is important that consideration be given to the sequencing and order of any work plans. Our work activities, as detailed in the draft business plan 2021/22, are the result of a careful prioritisation exercise, and as detailed below, we have reprioritised some of our work. Further, especially in relation to our convening role, there is scope for us to adjust our plans in-year in response to changing demands on the organisation.
40. Of course, these plans only remain relevant if they are realistic, and flexibility will continue to be an important part of our approach. In April 2020, at the beginning of the Covid-19 pandemic, we laid out [the priorities that will inform the delivery of our work plans](#). These priorities will continue to inform our flexible approach in 2021-22.
41. We are engaging with stakeholders on areas for collaboration and joint working, and we look forward to sharing more detail in the coming months. There is strong appetite for collaboration both generally and in a range of specific areas, including: equality, diversity and inclusion, consumer engagement, technology, and research.
42. Oversight of the OLC, the regulatory bodies and the SDT will remain our core focus. Performance issues at the Legal Ombudsman is a shared problem that the sector needs to own collectively, including reducing volumes of complaints at the first-tier. Decisions on the future of consumer redress are ultimately for government to make, but we are grateful for the points made by stakeholders which will inform our own thinking on these issues. The best outcome is that the Legal Ombudsman recovers its performance and we have agreed an increased investment in its financial resources to support this. However, we have also made it clear that should the expected benefits not materialise, then we would be justified in calling on the government to pursue alternative arrangements to deliver effective consumer redress in the sector.
43. As set out in the draft strategy, we will play a more active role in discussions on relevant wider public policy issues than previously. Our [submission to the Justice Committee Inquiry on the Future of Legal Aid](#) is an example of how we can contribute evidence-based views on the issues that bear on our statutory objectives.
44. We explain our approach to external factors like Covid-19 in paragraph 22.
45. PLE features in several areas of the strategy and we remain strongly committed to making progress in this vital area. We consider that we will achieve greater impact by pursuing PLE as a cross-cutting theme rather than as an individual workstream. For example, our consumer engagement work, includes a focus on the role of Legal Choices and transparency by providers on price and quality. These are examples of how consumers can be supported to understand legal issues, their rights and how to access legal support when they need it. Our work on technology and innovation, and on consumer vulnerability, also has PLE dimensions, including how technological solutions can help consumers if they have a legal need and how legal providers can take account of individual consumer needs. Some stakeholders emphasised the importance of initiatives directed at young people, including study in the school

curriculum. We are supportive of more teaching on citizen's legal rights and duties in schools, but we believe that regulatory bodies can achieve the most impact by focusing on supporting citizens to deal more effectively with legal issues at the point of need. During the last year we have published research on legal capability and a literature review on evaluation of PLE initiatives. We will discuss further with stakeholders specific suggestions for work on PLE that have been made.

46. The widespread recognition that equality, diversity, and inclusion is an area where action is needed is welcome. We also welcome the common recognition that change in this area can only be achieved through effective joint working and collaboration. In 2020, we set out our commitment to using our oversight role to deliver greater progress on diversity and inclusion and stated how we will assess the performance of regulators against three characteristics.<sup>2</sup> We will also continue to engage with groups, such as the Judicial Diversity Forum, to effect meaningful progress on this challenge.
47. Similarly, the breadth and depth of recognition that technology and innovation are increasingly important is heartening. At its core, and when deployed in the right way and at the right time, technology can unlock access to legal services, both for the public and for professionals. We agree that there are several issues that must be considered, and that many go beyond the legal services sector, such as the ethical and regulatory challenges of AI. As we progress our work on technology and innovation, we will be mindful of the issues raised. We agree that it is important that regulators remain agile to emerging issues and that collaboration and joint working are especially important in fostering responsible technological innovation.

## **How can you/ your organisation contribute to overcoming the sector-wide challenges we have identified?**

### **(Question 3)**

#### **General comments**

48. There were overlaps between responses to this question and question 6 on collaboration, so we cover this only briefly here.
49. Some stakeholders noted how their strategic priorities and work programmes were well placed to help overcome the sector-wide challenges identified. TLS, for example, noted how many of the challenges reflect their own strategic priorities and pointed to their ongoing work programmes on access to justice, diversity and inclusion, professional standards, regulatory compliance, and Lawtech as areas where they are already making a difference. BSB said it would have regard to strategy in its next strategic plan/business plan cycle and highlighted relevant current priorities including targeted and effective regulation, encouraging an independent, strong, diverse and effective legal profession, and advancing access to justice. LSCP said that it would align its strategic priorities to the LSB's over the next three-year period.

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<sup>2</sup> These are: (1) an understanding of the composition of their regulated community; (2) an understanding of the barriers to entry and progression within the regulated community, and a programme of activity to mitigate those barriers with measures in place to evaluate effectiveness; and (3) measures in place to understand any differential impact on protected characteristics within their disciplinary/enforcement procedures.

## Response

50. We were pleased to note examples of past, current and future initiatives that are closely aligned to the sector-wide challenges identified in the strategy. This includes valuable work by professional bodies in areas like access to justice, technology and diversity. We look forward to engaging and collaborating with interested parties on future work – see paragraphs 38 to 41 and 77 to 79 on our approach to collaboration.

## Do you have any comments on the suggested areas of priority for the sector 2021-24?

### (Question 4)

#### General comments

51. Many themes raised in the responses echoed those to questions 1 and 2. This included comments on the LSB's convening role, a desire for a clearer indication of which priorities to focus on first and being clearer on who should do what.
52. Responses to this question ranged from general support statements about the suggested areas of priority, to detailed comments on specific issues. Some stakeholders questioned the number of priorities and their relevance to all segments of the market. For example, the Bar Council suggested that there were too many priorities, and IPReg commented that the priorities were too general in nature.
53. Some stakeholders commented on proposals for a single digital register and whether the scope should include unregulated as well as regulated providers. There were mixed views on the benefits of such an initiative. TLS and Bar Council suggested there would be more benefit in raising awareness of existing registers, while in respect of unregulated providers Bar Council, CRL and LawNet cautioned against misleading people about the level of consumer protection. As well as objecting to a mandatory register of unregulated providers for reasons of principle, the Bar Council raised unresolved practical questions of who would set up and maintain such a register.
54. Some stakeholders suggested additional priority areas of focus. These included how fitness to practice rules could deal with well-being and mental health outside of disciplinary process. Further, linked to this, the appropriate role of regulators in matters concerning personal conduct and the personal lives of lawyers.

## Response

55. We welcome the widespread support for the suggested areas of priority and look forward to working with interested parties in progressing them. As noted above, we recognise that the priorities will vary in relevance for regulatory bodies. In the draft strategy we also distinguish between areas of priority for the sector, and the areas where we believe the LSB can make the most difference. We accept the strategy includes many priorities, but this reflects the scale and nature of the challenges facing the sector, and we are not suggesting that they should all be tackled at once.

56. Paragraphs 38 to 41 cover our response to stakeholder feedback on prioritisation and areas for potential collaboration.
57. There are proposals for two different types of register, although these are linked. In its [2020 assessment report](#), the CMA noted that there is no single source of information on regulated entities and professionals and recommended the development of a single digital register of authorised persons led by the LSB. Separately, the CMA recommended to the Ministry of Justice that it create, or empower the creation of a mandatory public register for unregulated providers. It has been suggested that the LSB might operate this second register. These proposals, and the interrelationship between them, raise important issues that the sector needs to explore carefully. On the first proposal – for a single digital register of authorised persons – we will consider how best to take this forward working alongside the regulatory bodies. We have yet to take a view on the merits of a mandatory register of unregulated providers, what form this might take and whether the LSB or another party should operate this. Such a register would require primary legislation and we will continue to liaise with the Ministry of Justice as it considers the government’s response to the CMA’s recommendations.
58. The role of fitness to practise mechanisms is being considered as part of our work packages on enforcement and ongoing competence. We agree that recent disciplinary cases involving the personal conduct of lawyers inside and outside the workplace have important implications for regulators. We will continue to monitor developments and note existing and planned work by some regulatory bodies on these issues. We will consider the implications as part of our oversight of the regulatory bodies and the SDT.

**Do you agree with our proposal to pursue these workstreams? Is there anything missing that you think we should focus on in 2021/22?**

**(Question 5)**

**General comments**

59. Stakeholders were broadly supportive of our proposed workstreams.
60. Some stakeholders observed that it was an ambitious set of workstreams that could stretch the LSB’s resources and that we should prioritise. For example, the BSB suggested that it would be more effective to commit to measurable progress in small number of priority areas rather than diffuse commitments. TLS stressed we should prioritise our oversight function. ICAEW agreed with the objectives but cautioned against an “overly-ambitious” plan considering Covid-19 and suggested that we retain some flexibility in our plans to remain responsive to issues. CILEx was in broad agreement and only differed in its view on the timing of some workstreams considering the current climate. CITMA and CIPA wondered if any of the six proposed new workstreams could be delayed considering challenges and uncertainties in the sector posed by Covid-19 and EU exit.
61. The SRA welcomed further research into small business legal needs, particularly in the context of Covid-19. IPReg requested that this research consider the extent to which small businesses need intellectual property advice. LawNet felt that it needed to

focus on unearthing preconceptions about the cost of legal services, check understanding of the actual cost of legal services, and establish whether small business owners can understand how the costs of legal services compare to their own prices and margins. LawWorks felt a legal support strategy for small businesses is important but that it should not be undertaken to the detriment of wider unmet legal need. The Bar Council felt the research could be deferred until a later time.

62. ACSO and ARAG welcomed work on legal expenses insurance (LEI). ARAG thought that to help improve access to justice LEI needs to be distributed through more channels than the present add-ons to primary insurance. The Bar Council agreed that LEI is worth considering as a means to addressing unmet legal need but cautioned that it is “no panacea” and questioned whether our work might duplicate that of the Civil Justice Council. A confidential response commented that LEI will not provide a resolution for those most in need of help who cannot afford the premiums. TLS and LSCP were unconvinced that LEI would help consumers access justice and highlighted concerns about the scope and effectiveness of these products.
63. There was interest and support for the idea of simple legal products but also concerns and questions seeking more detail. BSB saw merit in the idea if it focused on services that could easily be standardised. TLS supported the idea in principle but stressed the importance of safeguards. ARAG agreed with the concept of simple legal products but was concerned that it might not reflect specific demands and needs of individual consumers, could impede innovation in the LEI industry and put a greater emphasis on price as a differential as opposed to quality, service and appropriateness of cover. Amanda Finlay CBE worried that LEI would not benefit those who needed it most. A confidential response commented that it is difficult to label any legal product or service as ‘simple’ and that low-cost solutions do not equate to simple.
64. The Bar Council suggested greater consideration should be given to the impact of Covid-19 in our workstreams. CLC commented on the importance of evaluation, particularly in relation to diversity and inclusion, and suggested the LSB could use its convening role in this regard. CRL suggested that more prominence be given to authorisation barriers and social mobility. ICAEW suggested more focus on citizens in vulnerable circumstances to obtain evidence that change is needed. Hook Tangaza suggested a workstream on transparency, consumer comparison and the barriers created by professional indemnity insurance (PII). The Sole Practitioners Group called for the balance between regulation and regulatory burden for sole practitioners to be considered, citing concern about the restrictive conditions on PII. LawWorks suggested we look at the regulatory landscape for pro bono work. A confidential response suggested we focus on “low cost solutions for the financially deprived and minority groups” and undertake mystery shopping. TLS commented that we had a role in ensuring professional standards and proportionate regulation are maintained in light of new UK and EU agreements, and that we could add value by working with stakeholders to identify gaps in funding and frontline service delivery in practice areas, such as legal aid related work, and in particular regions.
65. CRL commented that it would be useful to have indicative timelines for activities to help regulators plan their work. Similarly, the SRA commented that some of the new workstreams did not feature in regulators’ plans and it would like to better understand our expectations and intended pace of change.

## Response

66. We are pleased by the broad support for our workstreams. We accept that our workplan is ambitious, but we believe it is necessarily so and that we can deploy our resources effectively to deliver it. In doing so, we will maintain flexibility in our plans so that we can respond to priority issues as they emerge, just as we did in 2020/21 in response to Covid19. Throughout the year, we will prioritise discharging our statutory functions, including our statutory decisions, regulatory performance and oversight of the OLC and SDT. The new areas of work fall into our convening role; these are less resource intensive and there is flexibility to adjust staffing resource in-year. To assist stakeholders to plan their engagement with us, we have published an activity schedule for the year, which we will update on our website quarterly.
67. The suggestions for additional areas of work all have merit, but we consider that the work packages in our business plan have the strongest connection to the challenges, will deliver the most impact at this time and are the best fit with our role. The strategy identifies PII as an area to look at in the next three years, but we do not have the resources to proceed now. It would be a significant piece of work requiring dedicated staffing commitment and sizeable financial resource to build a strong evidence base. However, we will proactively monitor developments and engage with stakeholders, with a view to taking work forward in 2022/23.
68. Stakeholders made helpful points on simple legal products. We still consider there is merit in exploring this idea further, but this would require more resource compared to the other areas of new work we proposed. To incorporate the expanded role from the CMA review into our work streams, we will not proceed with work on simple legal products immediately since we could not do both within the budget we consulted on. However, we may return to the idea during the year, or in future years, should resources allow.
69. We agree with observations that LEI is not a panacea and there may be issues of value for money to address. There are particular challenges in making this insurance available to those who are in the lower socio-economic demographic, and who may not have access to the usual insurance products through which they could acquire it. However, while unlikely to be a solution for the poorest in society, LEI could open up access to a large number of other people who cannot afford to pay for legal advice and representation. We are currently undertaking research with our Public Panel on LEI, which we hope will provide useful insights for the sector. We will avoid duplicating work by others, including the Civil Justice Council's helpful work on this issue.
70. Small businesses are a historically neglected area of focus given evidence of unmet legal need and their critical importance to the economy. We have completed work in the 2020/21 business plan to review our Small Business Legal Needs Survey making sure this follows best practice and incorporating questions on the impact of Covid-19 and EU exit. We think carefully about the sequencing of our major quantitative surveys taking account of measuring change between waves at appropriate time intervals and spreading the costs. Comments on areas of focus and interest in joint working were gratefully received and we will feed these into our implementation plans.



71. We agree with the CLC on the importance of evaluation, which we see as common across all work areas. Strengthening evaluation is an emerging theme of our ongoing review of regulatory bodies' proposed changes to their regulatory arrangements.

## **Do you see any areas of joint working between the LSB and you/ your organisation?**

### **(Question 6)**

#### **General Comments**

72. The responses to this question ranged from general comments to specific offers. There was widespread support for the importance of collaboration and joint working, wherever appropriate. SRA, for example, welcomed the idea of working closely with the LSB and others to ensure complementary working and avoid duplication. ICAEW, though, suggested that caution should be exercised in drawing regulatory bodies into areas outside their direct regulatory remit and given their limited resources.
73. The SRA 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 highlighted that collaboration takes different forms from, for example, information sharing through to co-creation and partnership working, to programme leadership informed by input from others.
74. Some stakeholders identified specific challenges and workstreams to collaborate on, including unmet legal need, diversity and inclusion, consumer vulnerability, scope of regulation, and technology and innovation. Some stakeholders identified research areas for partnership, including understanding the impacts of Covid-19 on lawyers, fee-paid McKenzie friends and understanding consumer needs.
75. Some expressed a desire for ongoing engagement with the LSB. There were also offers to share expertise and insights, such as from ACSO, the Legal Ombudsman and Hook Tangaza. LawNet noted that its members could offer feedback on specific areas, such as technology and assisting vulnerable consumers. Others welcomed the opportunity to share and promote the experiences of professionals. CIPA, for example, suggested collaborating on work to promote the benefits of regulation to professionals and users of intellectual property services.
76. We also received specific suggestions for collaboration outside the formal consultation process. For example, the Society of Legal Scholars offered to convene an annual meeting between regulators and academics. It highlighted areas where the university sector can contribute, including its wide range of knowledge linked to the various regulatory objectives; research; connection with communities including some of the most disadvantaged; and an ability to work with students and others to facilitate PLE.

#### **Response**

77. We are thankful to those who have offered to collaborate and work together in overcoming the challenges facing the sector. We are keen to build on the collective will which is evident in the responses to tackle these challenges. We agree with the SRA

that collaboration can take different forms, with the most suitable form varying on a case-by-case basis. Where appropriate the LSB will coordinate initiatives, but we will happily engage with initiatives led by others. We look forward to engaging with interested parties on specific projects in our business plan as our work progresses.

78. We are working through different options to best mobilise the shared appetite for collaboration, both on individual work streams and across the strategy as a whole. Further announcements on this will follow.
79. Paragraphs 37 to 40 also cover our response to stakeholder feedback on areas for potential collaboration.

## **Do you agree with our proposals that we should not undertake a statutory review of reserved legal activities in 2021-22?**

### **(Question 7)**

#### **General Comments**

80. Since the consultation was published the CMA has recommended that the LSB should conduct a statutory review of the reserved legal activities. However, it did not put a timetable on this and stressed the need for government to put the funding in place.
81. The large majority of stakeholders who expressed a view supported our proposed approach not to conduct a statutory review of the reserved legal activities in 2021-22.
82. Those agreeing felt a review now would be badly timed either due to disruptive changes in the market because of Covid-19 and EU exit, or what they saw as other more pressing priorities. IPReg considered the cost of a review was not justified and that lack of government appetite meant this work was not worthwhile. Some opposing a review in 2021/22 considered that it should not be postponed indefinitely. CRL suggested that a review would become more urgent should the government decide to introduce a mandatory register for unregulated providers. As well as timing issues, the Bar Council considered there is not a fundamental problem with the reserved legal activities that means a review is merited.
83. Those in favour of carrying out a review in 2021/22 pointed out that there is never a good time to conduct work of this scale and that the current approach is causing harm. CILEx said that the current all or nothing approach means some activities are overregulated and others underregulated. ICAEW considered this is “the most pressing issue for public protection”. A confidential response provided examples of consumer detriment in the areas of estate administration, trusts and will-writing, and suggested that it is easy for businesses to side-step the probate reservation. Similarly, LawNet argued that it is timely for the LSB to look again at will-writing, citing a rise in contested wills and insurance claims as evidence of increased risk to consumers.
84. The OLC was neutral on the timing of a review but suggested this should be viewed as part of a phased approach towards longer-term wider regulatory reform. It pointed out that widening the reserved legal activities would not resolve all challenges, such as the fact that the system of regulation is confusing to those outside of the sector.

85. LawWorks made a separate point calling for a review of section 15 of the LSA. It was concerned that this section of the Act when read in conjunction with the SRA's rules could impose a blanket ban on delivery of all six reserved legal activities by in-house solicitors for anyone other than their employer, impacting on pro bono work.

## Response

86. While we still consider that a *statutory* review of the reserved legal activities would be beneficial, doing so in 2021/22 is not the best time. This reflects the accelerated state of flux in the market and the focus of stakeholders on Covid-19 and EU exit. Carrying out a review would be a significant undertaking demanding stakeholder attention as well as considerable LSB resources. However, we *will* proceed with our planned work to build a better understanding of the unregulated market, consider the implications of developments in technology and explore voluntary registers (this last element will be influenced by the government's appetite to establish a mandatory register for unregulated providers). This work, which is significant in its own right, will help support a future statutory review of the reserved legal activities. We will keep the timing of this work under active review and pursue discussions with government about funding.
87. The intention of section 15 of the Act was not to prohibit in-house lawyers from providing pro-bono services provided appropriate consumer protections are in place. In 2016 we published a [statement of policy](#) setting out our position.

## Do you have any comments on our proposed market intelligence work? Is there anything missing that you think we should focus on?

### (Question 8)

#### General Comments

88. Most stakeholders were supportive of our approach to market intelligence and its benefits. Many commented that it is important to engage and work with stakeholders to avoid duplication of research and to maximise the benefits of data, insights and shared understanding across the sector. LawWorks suggested an external research and analytics engagement or knowledge sharing group could be useful.
89. TLS and Birmingham Law Society suggested that we should develop more evidence on the health of the sector and wider market trends post Covid-19.
90. CILEx welcomed the direct engagement with consumers via the LSB's Public Panel but felt its relatively small sample size created limitations. CILEx Regulation also welcomed the Public Panel but noted that it needed to be affordable for regulators to be used. The Bar Council questioned the potential overlap between the Public Panel and the LSCP. A confidential response suggested we consider developing a panel of legal services providers as a companion to the Public Panel.
91. CRL considered that cross-sector equality data should be a research priority despite the challenges providing it. It requested data on the cost and accessibility of PII and international research on the growth of legal technology services. It saw an opportunity to develop data sets tracking progress against the three strategic aims and nine

challenges identified in the strategy. ICAEW thought there should be more research on legal education and diversity given its prominence in the strategy. It also suggested that the effectiveness of Legal Choices be measured. Transform Justice thought that we should explore alternative models for state funded criminal defence, believing that the criminal legal aid market is not providing services of acceptable quality.

92. IPReg requested greater clarity on research relating to the CMA's progress review and the research into data trusts.

## Response

93. We are pleased that stakeholders value our work on market intelligence and broadly supported the activities and approach that we consulted on.
94. The points made around collaboration are well made and we are actively discussing vehicles for fostering knowledge sharing and partnership. These vehicles do not need to be led by LSB, but we are keen to play a full role in supporting them.
95. The research we commission needs to support our work priorities and we are satisfied that the projects we consulted on remain the most appropriate use of our resources. Some research being carried out in our current business plan that will be published in 2021/22, for example on diversity, match well against some of the additional ideas for research suggested by stakeholders. Some other ideas suggested, such as a report on international developments in the regulation of technology, already exist.<sup>3</sup>
96. We are actively monitoring the impact of Covid-19 on practising certificate renewals. The professional bodies are best placed to conduct surveys on the impact of Covid-19 on their members, but it is important these are conducted with sample sizes and approaches that deliver robust findings. We will continue to report on Covid-19 impacts through our interactive dashboards. Similarly, we consider the regulatory bodies who participate in Legal Choices are best placed to evaluate its impact.
97. We are pleased with how the Public Panel has developed and will continue to build on this next year. We mostly use the Public Panel for qualitative research studies, which are not intended to deliver statistically robust findings. As such, the Public Panel is designed to complement our periodic large-scale quantitative surveys. The Public Panel and the LSCP serve different but complementary purposes. The LSCP provides expert policy advice and representation on the consumer interest. By contrast, the Public Panel is a research vehicle enabling the LSB, the LSCP and the regulatory bodies to hear directly from citizens. It provides a cost-effective way to obtain insight that can helpfully inform policy development across a wide range of issues.
98. We are not convinced that an equivalent provider panel would deliver sufficient value. As well as engaging with representative bodies, we already engage directly with practitioners and legal businesses across and connected to the whole legal sector. These include regional events that allow us to focus on issues pertinent to specific regions and Wales, and to hear from a broad range of providers. Further, practitioners and legal businesses face fewer barriers to engaging with us in policy development

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<sup>3</sup> <https://www.legalservicesboard.org.uk/wp-content/uploads/2019/07/International-AH-Report-VfP-4-Jul-2019.pdf>

than members of the public. We already carry out quantitative and qualitative research with the sector, which we will continue. We also remain open to proposals for collaboration on research focused on the sector.

99. In response to IPReg, the draft business plan provisionally included research linked to the CMA's progress review in anticipation of its recommendations that were due in December 2020. The CMA's progress review includes recommendations on testing proposals and measuring impact. We will discuss potential research activities on this theme with the regulatory bodies. Further information on other planned research, including data trusts, will be shared as we scope these areas of work in more detail.

## **Do you have any comments on our proposed budget for 2021/22?**

### **(Question 9)**

#### **General Comments**

100. Three responses explicitly supported the budget increase, 15 were neutral or chose not to comment, and ten were opposed. All ten responses that were opposed were either from regulatory bodies or organisations representing the interests of the legal profession. Those opposing the increase cited financial challenges and uncertainties in the sector posed by Covid-19 and EU exit.
101. Several stakeholders asked us to prioritise our work for 2021/22 to avoid a budget increase and questioned whether detriment would occur should the work either not go ahead or be deferred until future years. Some responses linked their comments on budget to their views on the scale of ambition in the strategy.
102. Some stakeholders asked for greater transparency or further evidence for our proposed budget and drew parallels with the LSB's new requirements for regulators on their PCF applications. IPReg suggested that we allocate costs to each workstream. The SRA similarly suggested we publish a breakdown of spend at programme level, plus assess any downstream costs for the regulatory bodies. CRL asked us to produce a three-year budget.

#### **Response**

103. While we understand and recognise the points that have been made in responses, and mindful of the economic pressures on the sector and the exceptional circumstances resulting from Covid-19, our State of Legal Services 2020 report highlighted that the sector faces considerable challenges and is not meeting society's needs. Meeting these challenges successfully will require the modest additional resources we proposed in our draft budget and business plan.
104. While it is provided through a levy on regulators (as opposed to a direct cost on lawyers) it amounts to the equivalent of around £1 per authorised person, and not felt until March 2022. Further, desirable benefits of our oversight activity could include releasing pent up demand or removing the regulatory burden, which would benefit the sector financially.

105. In addition, since consulting on our proposals, the CMA has asked the LSB to take on a coordination and leadership role that requires a higher level of resources than we had anticipated prior to the consultation. We are keen to exercise leadership in these areas, working with regulatory bodies and others to use our limited resources in the most efficient way. However, mindful of the financial pressures facing the sector, so that we can exercise this leadership and coordination role without further increasing the budget, we have reprioritised and rescoped some activities.
106. Since Covid-19 first emerged we have been actively exploring with the Ministry of Justice the potential to release funding from our reserves. However, the Ministry of Justice has 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.
107. In response to requests for greater transparency, the LSB's website contains further detail on our policy projects and we will again publish an annual activity schedule with key outputs listed by quarter. The large majority of our policy team resource is allocated to our oversight activity and statutory decisions work. The nature of our convening role means that we can flex this activity during the year as our resources allow. We submit quarterly reports to the Ministry of Justice that provide detailed information about our activities and performance. These are published on our website.
108. While pleased to provide more detail on our plans, which we will look to enhance further next year, we firmly reject any suggestion that we hold ourselves to a lower standard on transparency than we expect of regulators in our PCF process. Our approval process is through the Ministry of Justice and we provide the department with the level of detail they require of us. Further, our new PCF rules and guidance do not specify that consultations need to include detailed line by line or project costs.
109. In response to specific queries, we do not think it is realistic or proportionate to estimate downstream costs of our oversight activity at the business planning stage – although this may be appropriate for specific regulatory interventions when we consult on these. We have previously considered the viability of three-year budgets but concluded this was unlikely to provide a sufficiently reliable indication of our plans.

**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?**

#### **(Question 10)**

##### **General Comments**

110. CLC commented that “a shared understanding of and statement of the outcomes we want in this area” would help the sector, which needs to leverage relevant work to promote equality and address disadvantage. LawWorks suggested that we work with the Equality and Human Rights Commission and other stakeholders to develop best practice on reviews in the sector.

111. The SRA asked us to consider digital exclusion of consumers in our technology and innovation workstream and equality impacts in our ongoing competence workstream. CILEx Regulation asked us to consider social mobility and consumer equality. JLD highlighted impacts on junior lawyers.
112. A confidential response commented that consumers without access to technology or who are not technologically savvy should not be excluded from benefits such as online pricing comparisons. The respondent also observed that further market consolidation might reduce the ability of vulnerable clients to access legal support. Another confidential response thought that inequality in the legal sector is predominantly the result of a lack of diversity and inclusion in the education and training process.
113. ICAEW commented that diversity is as much about diversity of type of supply (e.g., alternative business structures and sole practitioners) as it is about the nine protected characteristics and that regulation can act as a deterrent to suppliers.

### **Response**

114. We are grateful for the comments and suggestions, which we will factor into our work. Each of our workstreams will consider any potential equality impacts as they develop.
115. Our diversity and inclusion workstream will include a review of our statutory guidance with a view to developing a revised statement on diversity and shared understanding of the outcomes to achieve. We will consult publicly on this work.



## **Annex A - Consultation responses and workshop attendees**

### **Stakeholders submitting a written response to the consultation**

Association of Consumer Support Organisations

Amanda Finlay CBE

Andrew Kerr

ARAG plc

Bar Council

Bar Standards Board

Birmingham Law Society

Chartered Institute of Legal Executives

CILEx Regulation

Chartered Institute of Patent Attorneys

Chartered Institute of Trade Mark Attorneys

Council for Licensed Conveyancers

Countryside Tax & Trust Corporation Ltd

Hook Tangaza

Institute of Chartered Accountants in England and Wales

Intellectual Property Regulation Board

Junior Lawyers Division of Law Society

LawNet

Law Society

LawWorks

Legal Ombudsman

Legal Services Consumer Panel

Professional Paralegal Register

Solicitors Regulation Authority

Solicitors Sole Practitioners Group

Transform Justice

There were two other fully confidential responses.



## **Organisations represented at our consultation roundtable in January 2021**

Bar Council

Bar Standards Board

CILEx Regulation

Chartered Institute of Trade Mark Attorneys

Competition and Markets Authority

Costs Lawyer Standards Board

Council of the Inns of Court

Council for Licensed Conveyancers

Faculty Office

Farewill

Institute of Chartered Accountants in England and Wales

Intellectual Property Regulation Board

Judicial Appointments Commission

Law Society

Law Superstore/Reallymoving.com

Legal Ombudsman

Legal Services Consumer Panel

Society of Will Writers

Solicitors Disciplinary Tribunal

Solicitors Regulation Authority