



Draft Business Plan 2016/17

ICAEW welcomes the opportunity to comment on the *Draft Business Plan 2016/17* published by Legal Services Board (LSB) on 20 January 2016, a copy of which is available from this [link](#)

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MAJOR POINTS

1. We welcome the chance to comments on the Legal Services Board's (LSB) *draft Business Plan 2016/17*. We are responding on behalf of our members not just where they provide reserved or unreserved legal activities regulated by ourselves or other regulators, but also as consumers of legal services.
2. We welcome the fact that the LSB is continuing with the three work streams identified in the strategic plan and note that these have been reviewed to take into account of developments since the plan was devised.
3. We agree that, as stated in paragraph 15, that the LSB's statutory obligation to review and as necessary approve new regulators and proposed changes to the regulatory arrangement of existing regulators is an essential 'public interest' function. Acting in the 'public interest' should always be a guiding factor for any regulator but we would see considerable benefit in more clarification of how the LSB interprets this concept, in particular in relation to the other regulatory objectives and how this is reflected in the *draft Business Plan 2016/17*. The term 'public interest' is open to a very wide range of interpretation, which is why we think it would be helpful for the LSB to include its understanding of the term and how this is reflected in the work programme. We refer you to ICAEW's discussion of the issue, available [here](#).
4. As we noticed in our response to last year's consultation (*Draft: Strategic Plan 2015-18 and Business Plan 2015/16*, available [here](#)), the LSB continues to make a distinction between 'regulated' and 'unregulated' legal services, but without any recognition of the fact that many activities which come within the Legal Services Act's (the 'Act') definition of unreserved legal activities are in fact subject to adequate and effective regulation outside the structure put in place by the Act. We are uncomfortable with the use of the term 'unregulated' when used to describe practitioners who are regulated but not for the reserved legal activities as defined in the Act. We would once again point out that that regulation under the Act is not the only way to protect consumers and the public interest. We would suggest, for example, that it would be a quite unnecessary distortion of the market if consumers were, for example, dissuaded from seeking will writing services from a member of a reputable will writing professional body, or advice on company law or tax requirements from a chartered accountant. These two provide only the most obvious of many similar areas of legal service provision, which are adequately regulated outside the limits of regulation under the Act.
5. We understand that the LSB does not intend to use the term 'unregulated' in a pejorative way, and is serious in its efforts to widen the market in legal services, while promoting appropriate levels of protection for consumers. However, to use the term in such a wide and undifferentiated way to include many highly regulated unreserved legal services (without differentiation from those with no externally imposed requirements for ethical conduct or competence) suggests that the LSB may not have taken on board the nature of the market in unreserved legal services, and may target its efforts inappropriately. We would draw attention in particular to the results of your own research into the legal needs of small businesses, many of whom obtain legal advice and assistance from their accountants. Where those accountants are members of the main chartered professional bodies for accountants their services are not only subject to their own professional regulation, but also under the oversight of the Financial Reporting Council.
6. If only for reasons of public perception of its role, and its intentions for the widening of the market in legal services, we would urge the LSB to review all its publications for the appropriateness of its language, and remove all instances where the term 'unregulated' is used to include services already adequately and appropriately regulated. We also suggest a similar review to remove any implications that the (only) appropriate way to address an unmet legal need is through the use of a lawyer.

7. We note that the Competition and Markets Authority (CMA) has begun a study into the legal services market in England and Wales. We refer you to our response to their consultation *The Supply of Legal Services in England and Wales* available [here](#). We would highlight our comment that we anticipate that the outcome of this study will help to dispel the misapprehensions in the minds of consumers, regulators and other decision makers with regard to the wider legal market and will ultimately enable the market to develop and be regulated in a way that is both more competitive and safer for consumers. We would suggest that the LSB works closely with the CMA to avoid duplication of effort but also to ensure that the findings of and any gaps in the CMA's study are reflected in any future research of the LSB.

RESPONSES TO SPECIFIC QUESTIONS

Q1: Do you have any comments on our proposed work plan?

8. We are concerned that there **does not appear to be any prioritisation of the three work streams**. It seems likely to us that the LSB's statutory responsibilities as an oversight regulator will have to take priority if a conflict regarding the allocation of resources were to occur but the plan does not make clear that this is so nor what it would do if such a conflict were to occur.
9. We note that the 2016/17 is year two of your three-year strategy but the **plan gives no indication of whether the work begun in year one was completed, abandoned or carried forward. It is therefore impossible to judge whether the work plan for year two is achievable.**
10. We agree that 'unmet legal need' should be a pressing concern for the LSB and we would also highlight the LSB's recent research that shows that SMEs continue to see lawyers as not cost-effective and so tend to approach accountants before a lawyer. To this end we would **suggest that the LSB considers the experience of SMEs when accessing legal services in addition to its planned work on how vulnerable customers access legal services.**
11. We are concerned that the emphasis in the plan on **the need to promote market development and encourage innovation may be at the expense of consumer protection**. In particular we would highlight that whilst comparison websites may be a useful way for customers to choose a lawyer, there must be sufficient 'checks and balances' to ensure that consumers are not directed to legal practitioners without adequate understanding of the levels of consumer protection that they can expect. We would also suggest **that further research on the way consumers use comparison websites when choosing, for example, an insurance policy would be a useful means of testing whether comparison websites are the most appropriate way to open up the market and meet unmet legal need without compromising consumer protection.**
12. The LSB's determination to protect consumers from the unscrupulous is entirely laudable, and so we strongly support the work that the LSB is planning on the exploration of the market in legal services which are not regulated under the Act ('Identifying the reach, benefits and risks of unregulated services'). In carrying out this work the LSB will, of course, need to take into account the different regulatory provisions and arrangements which apply to different sectors of providers of unreserved legal services. The LSB will also need to take into account the fact that many consumers will approach an alternate provider for assistance in complying with a legal obligation, or dealing with a legal problem, while not recognising that this service comes within the Act's definition of legal services. Rather, they may well understand help on tax or financial reporting obligations to represent 'accounting services' and on planning obligations as 'professional surveyors' services'. If these categories are inadvertently missed in the LSB's work, this could lead to inappropriate conclusions being formed.

Q2: Do you have any comments on the research we have proposed?

13. We agree that the areas chosen for research – attitudes to digital delivery of legal services and the experience of vulnerable consumers – **are important areas that deserve further**

understanding if the LSB is to achieve its aim of a well-functioning and competitive legal services market.

14. As stated in paragraph 7 above, we note that the Competition and Markets Authority (CMA) has begun a study into the legal services market in England and Wales. We would **suggest that the LSB works closely with the CMA to avoid duplication of effort but also to ensure that the findings of and any gaps in the CMA's study are reflected in any future research of the LSB.**

15. Whilst we acknowledge that research is necessary we would caution that an **over-emphasis on research should not be at the expense of delivering change.**

Q3: Do you have any comments on the commission we propose for the Legal Services Consumer Panel (LSCP)?

16. 'Information remedies' offer one of a number of different tools that can be used to improve the information provided to consumers and therefore we welcome the request of advice from the LSCP on the effectiveness of current information remedies in legal services regulation and how these can be improved. We note, however, that **the evidence suggests that there may be limits to the increased benefits that increased information can bring particularly to vulnerable consumers who may be unable to understand or be overwhelmed by increased information.**

Q4: Do you have any comments on the LSB's budget?

17. We note that the LSB plans to reduce its costs by a further £150,000 (3.6% of the total budget) in the current year and by a further £450,000 before the end of the current Parliament. Although the draft plan acknowledges this will be a challenge and will require some 'refocus of activities in 2017/18 to 2019/20' **we are concerned that it does not outline where any such savings can be made, beyond a commitment to improve efficiency and seek value for money. With fixed costs accounting for 88% of the total there would not appear to be much room for manoeuvre, without cutting staff numbers (staff costs account for 59% of total costs) and thereby reducing the work the LSB can do, beyond its statutory responsibilities.**