



The Law Society

LSB consultation on draft 2018-2021 strategic plan and 2018/19 business plan

Law Society response

February 2018



Introduction

1. The Law Society welcomes the opportunity to respond to the Legal Services Board (LSB) consultation on the strategic and business plans. The LSB is responsible for a crucial oversight role in holding frontline regulators to account and ensuring that high standards of regulation, education and training are maintained.
2. While we are broadly supportive of the proposed strategic aims, as part of the overall plan, in our view they need to reflect more closely all of the regulatory objectives prescribed in the Legal Services Act (LSA). We are concerned the strategic aims do not apply sufficient weight to promoting the welfare of consumers, public interest, rule of law, access to justice, and strong independent diverse legal profession. A broader consideration of the regulatory objectives should lead to a greater focus on quality of legal services in the strategy.
3. In addition, we suggest the LSB focuses more on instilling greater stability and confidence in the legal sector during a time of change and uncertainty.
4. As the strategy acknowledges, the legal sector is going through a period of unprecedented change driven by market and technological development, changes in consumer expectations and behaviour, Brexit, and other regulatory reforms such as changes to Anti-Money Laundering rules and the General Data Protection Regulations.
5. The uncertainty is compounded by significant changes driven by frontline regulators themselves. On top of which, the LSB in its draft strategy proposes to *'act as an agent for change'*.
6. We are concerned about the cumulative impact of these changes on the profession and clients, and in particular the disproportionate impact on small firms and sole practitioners. There is a risk that constant regulatory change has an economic impact, as firms and solicitors adjust to and implement the requirements. This in turn can have knock-on effects on clients who are likely to bear the cost of regulatory compliance.
7. Given the pace of change and uncertainty within the profession and wider economy, it is crucial that the LSB focuses the strategy on its core oversight functions - holding the frontline regulators to account, as well as providing challenge and support to the Legal Ombudsman. It is ever more crucial that decisions that the LSB and frontline regulators take are robust, well-evidenced, and take account of the cumulative impact of all the challenges on the profession and clients.
8. The LSB has the opportunity to ensure evidence-based regulation of legal services, which we believe is currently a significant weakness. If a frontline regulator puts forward a proposal for a regulatory change without providing evidence or even projections of its likely impacts, then the LSB must ensure that the changes are not approved. Otherwise there is no incentive for frontline regulators to assess likely impacts or produce risk assessments. More importantly, without requiring evidence (or at least estimates) of costs, benefits, risks and opportunities, it is impossible for the LSB to have any confidence that a proposed rule change will promote the regulatory objectives.

9. We set out below detailed comments under each of the questions.

Q1 – Are there any additional significant market trends or drivers for change that you are aware of that we should also take into account?

10. We broadly agree with the four trends which the LSB identified and considers significant to its ongoing work over the forthcoming three years. The profession and the legal sector are going through a period of unprecedented change. Therefore, it is important for the LSB to provide reassurance and stability.

11. One significant source of uncertainty and risk for the profession, which the LSB can control, relates to regulatory changes proposed by frontline regulators. It is important that the LSB factors in the regulatory uncertainty driven by frontline regulators into its strategy. The solicitors' profession is already facing the prospect of a revised Handbook, new qualification requirements, new price publication requirements, and potentially changing indemnity insurance requirements.

Q2 – Do you have any comments on our proposed strategic objectives?

12. As mentioned earlier, we believe the LSB needs to widen its horizon and reflect in its strategy all the regulatory objectives set out in the Legal Services Act. We are concerned that the proposed strategy does not sufficiently promote regulatory objectives such as access to justice, consumer protection, public interest, the rule of law, and a strong, independent and diverse legal profession.

13. For example, as far as 'access to justice' is concerned the LSB promotes innovation, technology and more flexible regulation as means to solve the problem of unmet legal demand. However, there are clearly parts of legal work which will always require a safety net of government funding to help people who cannot obtain legal advice at any cost point. Therefore, any consideration of helping consumers to access legal services must consider the negative impact that legal aid cuts have had on access to justice. The Law Society continues to campaign on this vital issue, and we call on the LSB to support this.

14. In addition, under strategic objective 1 – *'Promoting the public interest through ensuring independent, effective and proportionate regulation'* – the LSB proposes to carry on work to *'ensure that regulation remains proportionate and does not impose unnecessary burdens (for example when considering rule change applications)'* but does not mention appropriate levels of consumer protection. The LSB needs to send a clear message to frontline regulators that consumer welfare is paramount to its regulatory oversight work. This can be achieved by giving more prominence to consumer protection in the proposed strategic objective 1.

15. This is particularly important in the light of the SRA's Handbook reform which in our view is likely to weaken consumer protections and lead to client confusion. For example, consumer research commissioned by the Law Society found that clients do not have a sophisticated understanding or awareness of the nuances of regulation. Many participants assumed all legal service providers were regulated

in the same way, and when informed this was not the case they were shocked, upset or dissatisfied.¹

16. Our research demonstrates that educating clients on the differences in protection between different types of providers will be challenging.² That is why the LSB needs to be confident that regulatory changes proposed by frontline regulators are in the public interest and satisfy the consumer protection objective.
17. Furthermore, we recommend that strategic objective 1 puts more weight on the needs of vulnerable consumer groups. Our research found that consumers in vulnerable circumstances face difficulties accessing, or assessing, the information needed to make a decision in relation to the purchase of legal services.³ We note that the LSB proposes in its business plan to carry out work on consumer segmentation to help to measure and understand risks for different consumer groups. We would expect the LSB to evaluate impact of regulatory changes on the most vulnerable in our society, as part of its work under the new strategy, and in particular people who are affected by cuts to legal aid.
18. Similarly, strategic objective 2 '*Making it easier for all consumers to access the services they need and get redress*' makes a specific reference to redress but does not fully indicate what work the LSB proposes to do to achieve this and what constitutes success in this area.
19. For example, our consumer research found that consumers do not necessarily understand the implications of their choice of legal advisor on the consumer protections available to them, including the redress provisions, should there be a problem with the service they receive.⁴ In the light of the above, we suggest that the LSB includes improved levels of consumer awareness of their redress rights as one of its success indicators.
20. We also recommend that the LSB closely examines the SRA's Handbook change proposals through the prism of their impact on redress protections. For example, we are concerned that proposals to allow solicitors to practice outside regulated firms or to operate on a freelance basis risk removing vital redress protections for clients such as mandatory professional indemnity insurance (PII), access to the Compensation Fund, and access to the Legal Ombudsman - a complaints scheme that can order solicitors to pay compensation of up to £50,000.
21. Any consideration of helping consumers access legal services must consider the negative impact that legal aid cuts have had on access to justice. The Law Society continues to campaign on this vital issue, and we call on the LSB to support this.
22. Linked to this, we feel that the proposed strategic objectives place too much emphasis on driving change instead of reflecting on the current needs of the profession, consumers and the society for stability, certainty and confidence in the rule of law. The LSB rightly identifies trends and factors which are likely to increase

¹ Consumer behaviour research: A report by London Economics and YouGov for the Law Society 2017.

² Ibid.

³ Ibid.

⁴ Ibid.

uncertainty in the legal services market, of which Brexit is a particularly significant example.

23. Yet, the strategic objectives do not factor in how the LSB intends to mitigate against uncertainty, and what indicators of success it will be looking for when evaluating regulators' effectiveness in dealing with change and managing imminent risks.
24. Furthermore, we are concerned that the strategic objectives appear to strive for even more change which risks exacerbating uncertainty for the entire legal sector. For example, under strategic objective 1 the LSB proposes to '*advocate for reform in line with our 2016 vision for legislative reform*'. Given the current period of uncertainty, the Law Society believes that now is not the time to advocate further reforms of the legislative system. Stability of the legal framework is key to ensuring public confidence in the rule of law, to providing certainty for the profession, and to helping to maintain the international competitiveness of the legal sector.
25. In response to the CMA Legal Services Market study recommendations, the Ministry of Justice concluded that the Government cannot commit to a formal review of the regulatory framework at this time.⁵ We share the Government's view, and believe it is not an efficient use of the LSB's resources to focus its work on projects which are beyond the lifespan of the three-year agenda. Instead, we recommend that the LSB focuses its strategic objectives on more immediate projects to instil more confidence, certainty and stability in the sector.

Q3 – Do you have any comments on our proposed equality objectives?

26. We support the LSB's decision to revise its equality objectives to align them more closely with the diverse workforce guidance set out for frontline regulators published in 2017.⁶
27. The Law Society is committed to the principles of the Equality Act and we consider equality as an integral part of the profession and the legal sector. To assist the profession, we developed an Equality, Diversity and Inclusion Framework 2016-19.⁷ We are willing to share our experience in this area with the LSB.
28. In addition, we expect the strategy to ensure that any regulatory change proposed by frontline regulators has a positive impact on the equality and diversity of the profession. For example, we have highlighted the importance of understanding the diversity implications associated with the proposed introduction of the Solicitors' Qualifying Exam (SQE).

⁵ <https://www.gov.uk/government/publications/the-competition-and-markets-authoritys-legal-services-market-study-government-response>

⁶ LSB Guidance for regulators on encouraging a diverse workforce, 2017; http://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/2017/S162_Guidance_For_Regulators_On_Encouraging_A_Diverse_Profession.pdf

⁷ The Law Society Equality, Diversity and Inclusion Framework 2016-19; <http://www.lawsociety.org.uk/about-us/corporate-responsibility/equality-diversity/equality-diversity-and-inclusion-framework-2016-19/>

Q4 – Do you have any comments on our proposed approach to market intelligence within our strategy?

29. We encourage the LSB to use available market intelligence tools, such as market surveys, consumer research and economic reports, to fulfil its primary function and hold frontline regulators to account. This should include use of robust intelligence to assess whether regulation and rule changes proposed by front line regulators are transparent, proportionate, accountable and supported by economic evidence.
30. This would entail requiring frontline regulators to carry out robust and rigorous impact assessments as to the effect of proposed regulatory changes on regulated communities and clients.
31. We also support the LSB in seeking opportunities to work in partnership with other organisations when conducting market research. This can prevent work duplication and lead to reduction in operational cost. For example, we believe that the LSB should look to scrutinise and review, rather than duplicate, work carried out by frontline regulators.

Q5 – Do you have any other comments about the presentation or content of our strategy?

32. Please see response to Q2.

Q6 – Do you have any comments on our proposed business plan and work for 2018/19? Are there any workstreams that you disagree with? Is there any work that you think we should pursue that is not currently included?

33. We look forward to seeing the outcome of the new regulatory performance assessment framework in practice.
34. We note that the business plan includes work on the implementation of the CMA's legal services market study recommendations. We expect the LSB to ensure that implementing the CMA action plan will be risk-based, targeted and proportionate. We would be concerned if measures proposed by frontline regulators led to either increased red tape and cost for regulated communities, and consequently for consumers; or a reduction in competition and market diversity. As such, we suggest that the LSB sets additional criteria which would allow them to monitor and assess the impact on regulated communities in terms of compliance costs, and safeguards for open competition.
35. As for the plans to explore development of a consumer segmentation model, we suggest that the LSB builds on research already undertaken in other sectors which was featured in the Legal Services Consumer Panel (LSCP) work to prevent duplication.⁸
36. We also share the LSCP's view that any segmentation exercise should be proportionate and practical. Given the diversity of the legal services market we

⁸ Segmenting consumers: understanding the needs of legal services consumers, Legal Services Consumer Panel, March 2017.

believe it may be difficult to design a segmentation template that can be of practical use to a wide range of services with specific characteristics. For example, the socio-demographic composition of clients varies substantially across different legal sectors. Therefore, case studies of specific sectors may be more useful in providing in-depth and contextual information about client needs and designing practical solutions.

Q7 – Please identify any elements of our strategy or business plan that you think present an opportunity for more detailed dialogue and/or joint working between your organisation and the LSB.

37. We are keen on working in partnership with the LSB to support the delivery of its strategy and business plan in the areas set out below.

Promotion of England and Wales legal services with national and international stakeholders

38. In the light of the EU exit, the Law Society has been actively engaged in seeking to maintain the international competitiveness of the English and Welsh jurisdiction. For example, last year the Law Society ran the Global Legal Centre campaign, which gathered support from key global business figures.⁹ We are keen to work with the LSB on these types of initiatives and support its work in this area.

Technology and innovation

39. The Law Society has a keen interest in technological innovation in the legal sector, and the opportunities it can offer to enhance the way solicitors work and the service they provide to clients. For example, over the past year we published a major piece of research which highlighted examples of innovation from across the legal sector and emerging trends and opportunities in legal technology.¹⁰ The work included our estimates of the potential effects on employment in the sector and attracted interest from both the profession and policy makers. In September this year we also held a conference entitled *Legal services in a data driven world*.¹¹

40. In addition, cybersecurity presents a continuing risk to legal service providers. For example, the Law Society and Gazette website statistics for January 2018 indicates Anti-Money Laundering and cryptocurrencies content attracted many viewers. We are open to sharing our expertise and working closely with the LSB in this area.

Legal needs survey

41. In 2015 we jointly commissioned the Legal Needs Survey, employing Ipsos MORI. We are open to exchanging expertise and willing to provide feedback on the design of related research and are keen to start discussions about a further formal collaboration with the LSB on an update of the Legal Needs Survey.

⁹ <http://www.lawsociety.org.uk/news/press-releases/global-legal-centre-campaign-shows-why-business-chooses-england-and-wales/>

¹⁰ Capturing technological innovation in legal services, The Law Society, January 2017; <http://www.lawsociety.org.uk/Support-services/Research-trends/capturing-technological-innovation-report/>

¹¹ <https://events.lawsociety.org.uk/uploads/files/4a9047fd-6969-4965-8217-8436ea94c62b.pdf>

Market intelligence

42. The Law Society carries out regular surveys of its members and other pieces of research, and we are willing to share our research to avoid duplication, reduce cost and inform the LSB's policy making. Examples of our research not cited above include regular surveys of firms monitoring a range of issues including the uptake for automated systems, reports on the economic value of legal services, and forecasts for the sector.