

Draft:

Business Plan 2014/15

For consultation

This consultation will close on 30 January 2014

5 December 2013

This consultation paper will be of interest to:

Legal regulators

Providers of legal services

Representative bodies

Legal advice organisations

Third sector organisations

Relevant NDPB's

Consumer organisations

Law schools/universities

Legal academics

Members of the legal professions

Accountancy bodies

Potential new entrants to the legal market

Think-tanks

Political parties

Government departments

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Our regulatory objectives and the professional principles

Section 1 of the Legal Services Act 2007 sets out a challenging set of regulatory objectives for the Legal Services Board, approved regulators and Office for Legal Complaints. These are to:

- protect and promote the public interest
- support the constitutional principle of the rule of law
- improve access to justice
- protect and promote the interests of consumers
- promote competition in the provision of legal services
- encourage an independent, strong, diverse and effective legal profession
- increase public understanding of the citizen's legal rights and duties
- promote and maintain adherence to the professional principles.

Section 1 of the Act further defines the professional principles as:

- acting with independence and integrity
- maintaining proper standards of work
- acting in the best interests of clients
- complying with practitioners' duty to the Court to act with independence in the interests of justice and
- keeping clients' affairs confidential.

Section 4 of the Act also gives the Board a duty to assist in the maintenance and development of standards of regulatory practice and the education and training of lawyers.

Approved regulators

We are responsible for overseeing eight approved regulators (two of which are also licensing authorities), which between them regulate directly approximately 163,000 lawyers¹ and 248 alternative business structures² operating throughout the jurisdiction. The approved regulators are:

- The Law Society, which through the Solicitors' Regulation Authority, regulate around 134,400 practicing solicitors and 210 alternative business structures
- The General Council of the Bar, which through the Bar Standards Board, regulate around 15,300 practicing barristers
- The Chartered Institute of Legal Executives, which through ILEX Professional Standards Limited, regulate around 7,900 practicing fellows
- The Council for Licensed Conveyancers, the regulator of over 1,170 practicing licensed conveyancers and 38 alternative business structures
- The Chartered Institute of Patent Attorneys, which through the Intellectual Property Regulation Board, regulate around 1,980 practicing chartered patent attorneys
- The Institute of Trade Mark Attorneys, which through the Intellectual Property Regulation Board, regulate around 820 practicing trade mark attorneys
- The Association of Costs Lawyers, which through the Costs Lawyer Standards Board, regulate over 560 practising costs lawyers
- The Master of the Faculties who regulates over 800 notaries.

In addition, two further bodies from outside the traditional legal services sector are formally designated as approved regulators for probate activities, though neither has any members offering these services at present. They are:

- The Institute of Chartered Accountants of Scotland (ICAS)
- The Association of Chartered Certified Accountants (ACCA).

¹ Figures are based on number provided to the LSB by the approved regulators on 1 April 2013

² Figures for alternative business structures correct as at 19 November 2013

Introduction

This consultation outlines the work the Legal Services Board (LSB) proposes to carry out in 2014/15 – the final year of our three-year strategic plan.

Prevailing economic conditions mean that this will be yet another a challenging year for legal services consumers and providers alike. Market conditions are tough for many businesses and continue to have a detrimental impact on the financial stability of firms. It is vitally important those of us responsible for the regulatory framework recognise it can be a force for good for the economy. We know that the ability of some service providers to react quickly and innovatively when facing challenges is hampered by the regulatory framework. Ensuring action in this area is just as important as properly protecting the consumers of those businesses that do fail.

For the remainder of 2013/14 and throughout 2014/15, alongside our core statutory responsibilities, the LSB will be continuing its attack on burdensome, disproportionate and growth-restricting regulation. The regulators we oversee are, in the main, making fair progress towards modernising their frameworks. But the degree of residual cultural resistance to radical change of the kind the legal economy needs if businesses are to be allowed to innovate and thrive remains a block on progress. Moreover, the benefits of shorter and less prescriptive rulebooks need to be matched by fewer and more effective regulatory processes if they are really going to deliver benefits to business and consumers alike.

This is not an accusation of blind self-interest on the part of the regulatory bodies, all of whom would refute strongly any allegation of a protectionist agenda. But they, like we, are constrained in their approach by the legacy of years of self-regulation, over complex primary legislation and a conservative constituency, which, in some quarters still expects regulation to serves its interests, conflating what is good for the profession with the public interest.

In September 2013, we set out a radical blueprint for deregulation to the Ministry of Justice. If implemented, it would re-set the clock for legal services regulation and deliver a simple, growth-promoting framework that ensures essential protections for consumers. We are passionate about the imperative for such a change and confident in the benefits it would deliver to the citizens and shareholders of UK plc alike. Not all of our blueprint requires wholesale legislative change and, where we can deliver 'quick wins' within the current framework, we will.

This draft Business Plan for 2014/15 explains what we plan to do and why in the coming 12 months. We are again proposing to reduce our budget – this time by £150,000 - with most of that reduction coming from accommodation costs as we move to new premises in January 2014, as well as OLC Board costs. This means that we have reduced our annual budget by £633,000 since our first full year of running in 2010/11 – almost 13% in cash terms before taking account of inflation.

We had the opportunity to discuss the proposals contained in this draft plan at a pre-consultation event held at the beginning of November 2013. Representatives from regulators, consumer groups, representative bodies and the research community were invited to hear about our plans for 2014/15 and contribute any other issues that they felt were posing risk. The group were supportive of the proposals contained in this draft plan around regulatory reform and improving the consumer experience and overall there was agreement that whatever could be done to ensure that regulation provided the right protections in the most proportionate and targeted way, without waiting for the outcomes of the MoJ review should be done. One area that the group were almost unanimous in raising, was a need to investigate the impact of the regulatory framework and the cost of intervention on the ability of firms to react quickly when facing financial challenges and also how regulators identify and deal with firms in financial difficulty. A thematic review around this issue has been proposed as part of our work on regulatory reform.

This is the final draft Business Plan that I will introduce as Chairman of the LSB. There will be more suitable opportunities for lengthy personal reflections before I hand over to my successor in May 2014 but I would be remiss if I did not at least remark on my firm belief that the LSB has been a force for good for consumers of legal services in England and Wales since its inception. Personalities may change, the offices may be different – but the genie is out of the bottle. The unwavering leadership shown by the LSB to reforming and modernising the legal services market in the interests of consumers, enhancing quality, ensuring value for money and improving access to justice across England and Wales will continue. I want to thank my Board colleagues, especially Barbara Saunders and Andrew Whittaker who step down at the end of March 2014 for their part in achieving that and the Executive team for its role in devising and executing this challenging vision.

Please tell us your thoughts.

David Edmonds
Chairman

Our role

Overview

1. The Legal Services Board (LSB) is the independent body responsible for overseeing the regulation of legal services in England and Wales.
2. We have a very simple goal – to reform and modernise the legal services marketplace in the interests of consumers, enhancing quality, ensuring value for money and improving access to justice across England and Wales.
3. We are funded by, but wholly independent of, the legal profession. Our proposed annual budget equates to a little over £26 per year for each lawyer³.

The LSB's 2014/15 work programme

4. As the final year of a three-year strategic plan, much of our work continues that already underway.
5. Improving the standard of regulation remains central to our programme and this year we expect to see further improvements in regulators' performance. We will continue to hold each to account for the delivery of the commitments they made in their 2012/13 regulatory standards self-assessments. In 2014/15, building on that work, we will conduct a series of in-depth reviews looking at how the current regulatory framework can better promote competition and the consumer interest. The outputs of this work will inform both our strategic thinking around options for deregulation and our statutory decision making responsibilities.
6. We will also continue our work to liberalise the legal workforce, working with regulators on how best to deliver the improvements to the system signalled by the Legal Education and Training Review (LETR) as well as maintaining pressure on regulators to ensure effective diversity monitoring as the base for further action. We believe that this work is vital to increase the flexibility and diversity of the legal profession and to create a sector that is responsive to the needs of all of its users.
7. A flexible and diverse legal profession alone will not improve the consumer experience. Research has shown that consumers feel empowered when they have clear information, a choice of services and confidence that if things go wrong there is a clear right of redress. This year we will review regulators' progress in meeting the success criteria set out in our September 2012 document, "[Approaches to quality](#)" as well as considering other ways to make sure consumers can choose and use services with confidence.

³ Based on the number of authorised person declared by each of the frontline regulators as at 1 April 2013

8. At this stage in the development of our plan we have not commissioned any specific advice from the Legal Services Consumer Panel for 2014/15. Once we firm up our programme of work, in light of this consultation, we will identify at least one area for Panel investigation and would welcome stakeholders' thoughts on this.
9. Our regulatory work programme will continue to be delivered through three strands – regulator performance and oversight; strategy development and research; and statutory decision-making. As with previous years, the specific activities have all been assessed to make sure that they are targeted at addressing the most significant risks to regulators delivering the regulatory objectives and better regulation principles, our equality objectives, and our three strategic priorities for 2012-15:
 - assuring and improving the performance of approved regulators
 - helping consumers to choose and use legal services
 - helping the changing legal sector to flourish by delivering proportionate regulation to address risks.
10. All of the regulatory objectives underpin all of our work. Our understanding of them remains unchanged from that we set out in our July 2010 document "[The Regulatory Objectives](#)". In practice, we balance objectives appropriately according to the particular circumstances of the issue being addressed. We think that is the right way to approach them - they are never ranked or in any sort of hierarchy.
11. Underpinning our approach is a belief that regulators must understand the negative impact of regulation for consumers (in terms of loss of competition and innovation that drives value for money for consumers) as much as they focus on using regulation to tackle the risks to consumers from using legal services.

Our equality objectives

12. Equality and diversity continues to be at the heart of our work and we are maintaining our equality objectives broadly as they are into 2014/15.

Objective 1: Through our regulatory oversight role, encourage and work with the approved regulators to promote equality and diversity, including developing a diverse workforce across the legal sector at all levels by:

- assessing regulators' implementation plans to gather and evaluate diversity data

- reviewing and monitoring the progress made by regulators in delivering their implementation plans
- continuing to engage with approved regulators and others on how best to enhance a more diverse workforce across the legal sector⁴.

Objective 2: Ensure our decisions take account of all relevant equality and diversity information by:

- factoring equalities and diversity elements into our research, whether on workforce or consumer issues
- undertaking equality analysis where appropriate when developing our programme and policies for consultation⁵
- engaging with diversity groups and organisations
- continuing to encourage the Legal Services Consumer Panel to develop a wide range of contacts and to incorporate diversity and equality into its consideration of consumer issues.

Objective 3: To ensure that the LSB's own practices and policies, including its internal staff and external stakeholder engagement focus on equality and diversity issues, and are examples of the approach we promote to others. We will do this by:

- ensuring that our publications are available in a variety of formats on request
- monitoring and publishing the diversity profile of our staff and responding to the results (bearing in mind the size of the organisation)
- when tendering for services, work with firms who can demonstrate that they have a commitment to equality and diversity
- applying recruitment processes that are in line with our Equality Duty.

⁴ <https://research.legalservicesboard.org.uk/wp-content/media/A-framework-to-monitor-the-legal-services-sector.pdf>

⁵ <https://research.legalservicesboard.org.uk/wp-content/media/Review-of-published-evidence-on-the-equality-of-pay-in-legal-services-Final.pdf>

A: Regulator performance and oversight

Regulatory standards and performance

Overview

13. Legal services regulation must be simple and effective and carried out in accordance with better regulation principles and best regulatory practice. The LSB considers that best regulatory practice for legal services regulation consists of four regulatory standards:
- an outcomes-driven approach that gives the correct incentives for ethical behaviour and has effect right across the increasingly diverse market
 - a robust understanding of the risks associated with legal practice and the ability to profile those regulated according to the level of risk they pose
 - supervision of the regulated community at entity and individual level according to the risk presented
 - a compliance and enforcement approach that deters and punishes appropriately.
14. Regulators must also have appropriate overall capacity and capability - without this, they will struggle to deliver the regulatory standards and, therefore, all the requirements of the Act.
15. During 2012/13, we published reports on how far each of the regulators was delivering the regulatory standards. These reports were based on assessments produced by the regulators themselves. The picture was mixed and all the regulators recognised there were actions they could undertake to improve their regulatory capacity.
16. During 2013/14, we have been monitoring the delivery of the actions the regulators identified to improve their regulatory frameworks. We have also looked at the extent to which the observations we made about their performance have influenced what they have been doing.
17. We are also using the regulatory standards to assist the LSB when reviewing applications for new designations or the extension of responsibilities. We have required all new applications to show competence on all issues (or to have rigorous plans to be competent) by the date of designation.

Why this work matters

18. We consider that effective delivery of the four regulatory standards should contribute to growth in the sector and more widely across the economy and, in particular:

- lead to higher standards of professional conduct and competence and greater levels of innovation in practice and management
- encourage innovative practitioners and firms who, if posing few risks, are not subject to intrusive or inflexible regulation and supervision
- introduce a level of consistency in the approach to the regulation of legal services
- help to develop a consistent and transparent approach to the oversight of the legal sector
- result in legal services regulation that meets the needs of consumers (particularly individuals and small business consumers) but does so in the most efficient way for practitioners.

As such, the work is fundamental to how both the LSB and regulators operate in our complementary roles and meet our mutual regulatory objectives.

What we will do

19. During 2014/15 we will:

- require regulators to account for the progress they have made on their action plans, explain what they have done in response to the observations made in our reports, what they have learned about their organisations and what actions they have planned to improve their performance over the next few years
- review the regulatory standards against best regulatory practice, including the new regulators' compliance code, the forthcoming requirement to promote growth, and other approaches to regulatory assessment in other sectors
- conduct thematic reviews into areas of specific interest and concern - this may include some or all aspects of the work of specific regulators or specific regulatory areas across all organisations
- plan for full reviews of all regulators to take place in 2015/16

- require all new applications to show competence on all of the regulatory standards (or to have rigorous plans to be competent) by the date of designation.

Thematic reviews

Overview

20. There are a number of areas where the information we have gathered from prior regulatory reviews, wider research and stakeholder discussion highlights that more in-depth exploration would be beneficial. Such reviews will enable us to understand the positive and negative impact that certain aspects of the regulatory framework have on consumers, the public, competition and innovation as well as on the regulatory objectives. The reviews may lead to proposals for reform or specific action to bring about change.

Why this work matters

21. A liberalised market is the best means of bringing benefits to consumers. However such a market cannot operate effectively without regulatory boundaries to ensure that the inequalities within it are managed and both value for money and the consumer experience more widely are enhanced.

22. Ensuring that the regulators are operating within an appropriate regulatory framework and that this framework is delivering the necessary benefits remains central to our plan of work. By prioritising specific areas, we can ensure that intervention is targeted where there is greatest need.

What we will do

23. This work links directly to our regulatory reform work in section B and a full list of our initial proposals is provided in that section.

Regulatory performance and oversight milestones by quarter

| Activity | Milestone / Output |
|---|---|
| Developing standards and performance | |
| Progress report and future plans assessment | Q1 - require regulators to complete assessment exercise of progress on action plans Q2 – receive assessments from regulators of progress on action plans Q3 – produce final report on assessments of progress on action plans Q4 – finalise plans for 2015/16 self-assessments |

B: Strategy development and research

Regulatory reform

Overview

24. One of the Board's strategic priorities for 2012-15 is helping the legal sector flourish by delivering proportionate regulation to address risks. In our 2013/14 business plan, we outlined work to address some of the concerns around the cost of regulation that were raised in our Triennial Review. Our [blueprint for regulatory reform](#) has accelerated this process by outlining a set of proposals for the future of legal services regulation. Although some of these matters depend on primary legislation, there are a number of areas where we can and will make progress to address concerns about cost and complexity of regulation ahead of wider decisions on the way ahead.
25. Our work on regulators' performance, together with feedback from market participants, has identified a number of areas where it appears that regulation is neither targeted nor proportionate and may not be supporting the regulatory objective to promote competition in legal services.
26. We have also been given numerous examples (by both regulators and businesses) of how the requirements in the tests for whether someone is fit and proper to own an alternative business structures (ABS) (in Schedule 13 to the Act) are imposing disproportionate cost and complexity and may not be effective in practice.
27. In 2014/15 our work on regulatory reform will therefore take forward specific proposals to simplify the framework for legal services regulation

Why this work matters

28. Overly complex, costly and restrictive regulation which limits competition and places burdens on business, increases the prices faced by consumers. We need a liberalised legal sector creating the right incentives to offer greater innovation, choice and affordable services. This will support growth by improving access to advice and dispute resolution for consumers and business alike.
29. There is a role for professional bodies, as well as regulators, in ensuring that legal businesses understand and utilise the greater flexibility increasingly available to them as regulators move away from prescription, rather than relapsing into risk averse patterns of behaviour which lead to self-inflicted complex compliance systems, not demanded by regulation.

30. All legal providers, and those considering entering the market, need assurance that they can work without unnecessary barriers to entry or how they operate in practice. Understanding the costs and benefits of legal services regulation for different legal activities and different types of consumer as well as the drivers and barriers to effective competition is essential to targeting reform to meet these aims effectively.

What we will do

31. In 2013/14, we have started to identify and analyse specific existing regulation which imposes unnecessary burdens. This includes looking at Schedule 13 of the Act which deals with ownership of ABS to assess what changes could be made to it and starting to consider whether the Solicitors Regulation Authority's (SRA) Practice Framework Rules are unnecessarily restrictive or cause regulatory conflict. This work will continue into 2014/15 and will include working with a wide range of other parties to achieve practical solutions. .

32. In addition, we will continue work looking at current regulatory costs. This will focus on the following areas and will culminate in an initial assessment that we will publish in the second quarter of 2014/15:

- costs imposed on the legal market by the LSB and regulators, both directly and indirectly
- costs imposed by the Legal Ombudsman, both directly and indirectly
- the cost imposed on the market by practising fees spent by approved regulators on permitted purposes
- the costs and benefits of specific regulations and how effectively regulators assess these
- barriers to de-regulation and proper targeting of regulation at risk and options for improvement
- the impact of the broader better regulation agenda, developing consumer rights policy and implementation of the European ADR directive in the context of existing legal services regulation
- market analysis for smaller regulated professions eg notary and intellectual property markets.

33. We will also identify a select number of issues either across regulators or for specific regulators, and conduct an in-depth review of them. This work also links

to our work on regulatory performance in that we will be considering what implications the issues have for regulators' performance and what it indicates about their overall capacity and competence, both in the current market and for the future. Once the scope of these reviews is agreed, we will engage a wide range of stakeholders and produce a published report on each issue, which will consider the most appropriate way for bringing about change where we conclude that this is necessary.

34. Our initial proposals are to review some or all of the following:

- the extent to which restrictions on forms of practice are consistent with section 15 of the Act about when an entity needs to be authorised to provide reserved legal services to members of the public
- the extent to which regulation (for example the SRA's Separate Business Rule) unnecessarily prevents legal services providers from structuring their businesses, offering different types of legal and non-legal services and rewarding their employees in ways that they want to commercially
- the extent to which it may be possible to revise Schedule 13 to the Act to make the ownership tests for ABS more targeted and proportionate
- the extent to which regulation is consistent with the requirements in section 52 of the Act to prevent regulatory conflicts and section 54 of the Act to prevent unnecessary duplication of regulatory provisions made by an external body
- regulators' approaches to data gathering and analysis
- regulators' approaches to consumer engagement
- how regulators identify and deal with firms in financial difficulty, including alternatives to intervention and issues concerning regulatory barriers to exit.

We would welcome views on our proposals to conduct reviews in these areas, ideas on relative prioritisation and other areas for possible review.

Liberalising the legal workforce

Overview

35. This area encompasses work on education and training and diversity. The overall focus is on removing regulatory restrictions to create a more flexible workforce that better reflects the users of legal services and better meets their needs.
36. To help regulators understand our expectations for the role of regulators in setting educational standards, we set out our thoughts for how their role in education and training needs should change in the form of [draft guidance](#). We have been consulting on this in the last quarter of 2013. Subject to the outcome of this consultation, we will be working with regulators to agree an approach to support and monitor delivery of their action plans submitted in response to the guidance. We believe that reform to education and training can both increase the flexibility of the legal profession to respond to consumer needs and maintain the high standards of legal services.
37. A diverse population using legal services benefits from a diverse legal profession. The regulators share an objective to encourage a diverse workforce and we will continue to work with them to ensure that their diversity monitoring is effective and takes account of the findings that we made about their data collection following the first review of their diversity data collection. We will continue to work with regulators to support improvements to the data collection and ensure its use within the work of the regulators.

Why this work matters

38. The way that legal businesses recruit and train their workforce is fundamental to the delivery of the regulatory objectives. In our view, a liberalised legal services market can only function effectively for consumers if there is a significantly more flexible labour market than exists now. We believe this can happen without compromising professional standards. In any market, it is also essential that consumers have access to the information they need to make decisions regarding the services they are buying; be that the cost or quality of legal services and who is providing them (including the diversity of the workforce). Regulators should therefore play a more active role to ensure transparency of information in all of these areas.

What we will do

39. In 2014/15, we will continue to work with regulators to ensure that their actions in this area support the regulatory objectives, identify and remove unnecessary regulation and facilitate greater transparency. We will achieve this by:

- subject to the outcomes of the current consultation on LSB guidance on education and training, agreeing an approach with the regulators to monitor delivery of their action plans submitted in response
- continuing to monitor regulators' progress against LSB guidance on diversity data and transparency
- considering the implications for regulation of our research into understanding differing views of talent between firms and clients and any impact on diversity this may have.

Improving the consumer experience

Overview

40. Our research has found a myriad of reasons why consumers avoid seeking help to resolve legal problems. These include:

- fears that lawyers will be too expensive
- lack of confidence around their ability to negotiate about costs
- lack of costs' transparency
- lawyers' estimates frequently being misleading, with costs often exceeding expectations.

The evolving experience of the Legal Ombudsman is highlighting similar issues, both generally and specifically.

41. Regulators need to be alert both to these kind of issues and specific risks, including those arising from changes in trading practices. They may well need to act as a result, but rule making should not be the default response in most cases. Unforeseen consequences could arise and new regulatory costs may worsen consumer welfare overall even if a specific problem is cured.

42. The range of wider interventions include:

- increasing market pressure by the removal of obstacles to innovation by both new and existing players

- ensuring that consumers have access (whether from providers or third parties) to the right sort of information at the right time to help make effective choices
- effective supervision of firms where complaints and other data highlights specific consumer risk
- action to make individual redress faster and more effective
- broader work on quality issues to support a well functioning market and well informed consumers.

43. However, in a market characterised by significant information asymmetries, competition must work within constraints to protect the consumer and public interest. Existing or proposed consumer law should not usually be duplicated, but for some risks, sector specific regulation will be required. For example if client money is potentially at risk, compensation arrangements may be needed. And clear rights of complaint and redress – backed up by clear information about how consumers can enforce those rights – are essential.

44. Focusing on consumer outcomes and value may also call for less regulation in some areas and more in others. For example, some consumers will want to see legal services bundled into packages of wider advice and support. Others will want to be able to buy only discrete elements of them. We expect regulation to facilitate both outcomes and for there to be clarity of communication about the full range of options available.

45. We will work with regulators, but also hold them to account through the regulatory standards programme, to help ensure that they remain close to market and consumer experience and respond to both with the flexibility and imagination likely to be needed to protect the consumer interest in the long run.

Why this work matters

46. Markets are not perfect: information asymmetries and unequal power in market relationships mean that proportionate and targeted requirements are still necessary to protect and promote the interests of consumers. But the combination of a highly regulated market and poor access to justice shows clearly that rebalancing is needed.

47. Innovative providers, who invest in understanding how consumers need and use legal services, must not be hampered by unnecessary regulation when designing their business to meet those needs. We also need to find ways to generate better

information for consumers to enable them to better use the new services available to them.

48. At its most basic, it is about helping consumers to choose and use legal services with confidence.

What we will do

49. In 2014/15, we will continue to work with the regulators to monitor their progress in relation to the success criteria set out in our 2012 document, "[Approaches to quality](#)". In addition, we will be considering how the opportunities offered by 'open data' can have an impact on the approach that regulators take to the transparency of their regulatory data. Research looking at evidence from behavioural economics and psychology which we are conducting in the final quarter of 2013/14 will support this work. We will increasingly expect to see evidence of regulators' focusing on gathering evidence of customer experience and value for money in deciding whether and if so how and where to make interventions in the market, rather than relying on generalised assertions of potential risk.

50. We will also continue to work with regulators to improve their arrangements for improving the consumer experience in so far as they relate to resolution of complaints by providers, quality of service and transparency of information. We will achieve this by:

- identifying whether regulators are having regard to our guidance on quality
- reviewing whether there is information that would enable us to identify indicators of informed consumer decision making to inform regulatory reform
- developing further analysis, that builds on our forthcoming research about effective methods to support consumers in identifying and responding to legal problems, on ways in which regulators might improve effective transparency for consumers
- building on the analysis of legal activities and consumer research in the last quarter of 2013/14 to consider the case for further reaccreditation schemes to support legal services quality
- continuing to monitor how regulators are using complaints data to identify whether any patterns of provider behaviour are emerging and how they consider whether a regulatory response is appropriate. We will work with them and the Legal Ombudsman to improve matters where this is not happening

- considering the implications of the forthcoming research on consumer information for regulation of complaints handling
- focusing on developing regulators' own understanding of and response to consumer experience as part of the regulatory standards work
- considering the implications of our research on understanding the consumer experience of on-line divorce on regulation.

51. During 2014, we will also receive the OLC's interim response to our request under section 120 of the Act for a report into the circumstances around complaints where there has been a perceived lack of transparency in the cost of legal services including funding arrangements (including damages-based agreements), business models, area of law, consumers and legal professionals involved.

Research and evaluation

Overview

52. Research and evidence gathering remains central to our work, whether developing policy, challenging regulators or making regulatory decisions. Where gaps in evidence are identified, we consider, with the support of our Research Strategy Group, whether new research is necessary to fill these gaps. The amount we are able to carry out is always dependent on the available budget and so this year we will again be seeking joint funding to deliver some aspects of our research plan, which will be published at the beginning of 2014/15.

53. Alongside primary research, we will continue to monitor the impacts of regulation on the legal services market. This allows us to identify areas where existing regulation is having adverse effect, and where risks to the consumer and public interest are not being addressed.

54. We do not intend to update our full market evaluation in 2014/15. Instead we will undertake analysis and research to support a full update in 2015/16. Pushing this back a further year will give the regulatory reforms more time to bed into the market and us greater scope to improve our evidence base for the essential analysis needed to support the evaluation. In 2014/15, this analysis will focus on access to justice.

Why this work matters

55. We need a comprehensive evidence base to ensure that we develop effective regulatory policy that meets the regulatory objectives in a way that is consistent with the principles of better regulation.
56. Evaluation is also an essential tool if we are to understand the overall impact of the changes to regulation made since implementation of the Legal Services Act 2007. For those operating in the regulatory sphere, evaluation is key to understanding whether regulatory policy is achieving the right balance of providing a baseline of protection for consumers and promoting competition and wider economic growth.
57. Improving access to justice is a crucial measure of our success. Our research has identified that large numbers of individual consumers and small businesses when faced with legal problems do not find legal services that meet their needs and either handle their problems alone or ignore the problems altogether. Understanding the extent of this 'justice gap', and how it changes over time, is an essential part of our overall evaluation.

What we will do

58. We will continue to discuss with regulators our expectations with regard to their data collection and publication and support greater transparency of market analysis. Over time, we expect to see regulators undertaking greater evaluation of the impact of their own work.
59. Alongside this we will carry out analysis internally, with support from externally commissioned research, on the size of the access to justice gap. This will require analysis of both existing LSB datasets and externally held datasets such as the Civil and Social Justice Survey. This analysis will be brought together into a detailed assessment of the current challenges of those seeking access to justice.

60. Our initial research proposals for 2014/15 are:

| Title | Description | Work supported |
|--|--|--|
| Entities regulated by smaller approved regulators | Survey of non-SRA regulated entities focusing on business aspects, services provided, and perspectives on regulation | Regulatory reform |
| Innovation: capabilities and barriers in legal services | Comparative study of the development of innovation and the barriers regulation presents – whether in reality or perception - to adoption of innovation in legal services | Regulatory standards and performance Liberalising the legal workforce |
| Legal services benchmarking survey | Individual consumer legal needs survey (Updating the 2012 benchmarking survey) | Improving the consumer experience Evaluation |
| Views of professional talent and its impact on diversity | Understanding differing views of talent between firms and clients and the impact they have on diversity (delayed from 2013/14) | Liberalising the legal workforce |
| The impact of 'unbundled' services on consumers | Understanding consumer experiences of providing and receiving discrete elements of legal services in relation to one case | Improving the consumer experience Consumer Panel |
| Consumer experience of on-line divorce | Understanding the consumer experience of online divorce services | Improving the consumer experience Consumer Panel |

Strategy development and research milestones by quarter

| Activity | Milestone / Output |
|--|--|
| Regulatory reform | |
| Costs of regulation | Q2 - Publish initial assessment for consultation Q4 - Update and finalise assessment |
| Thematic reviews | Q1- Q4 - Conduct thematic reviews and publish reports |
| Liberalising the legal workforce | |
| Subject to outcome of consultation, work with regulators to ensure that the principles in our guidance are embedded | Q1 - Agree an approach to monitoring delivery of action plans submitted in response to LSB guidance Q2 - Review internal LSB processes to ensure we have an appropriate understanding on whether regulators are having regard to our guidance |
| Continue monitoring progress against LSB guidance on diversity data and transparency | Q1 - 2 - Complete second review of annual data collection process |
| Improving the consumer experience | |
| Follow up on our success criteria for quality, including a particular focus on greater transparency of regulatory data | Q1 - Review regulators progress against our success criteria and reprioritise where action is needed Q1 - Consider impact of wider government initiatives in relation to 'open data' Q2 - 4 - Engage with regulators to agree high level action plans and appropriate monitoring |
| Research | |
| Research and evidence | Q1- Publish research plan |
| Evaluation of impacts of the Act: Access to justice | Q2 - Draft report completed Q3 - Publication of final report |

C: Statutory decision making

Overview

61. The Act places a range of decision making powers on LSB – some are ad hoc and some are recurring; we want to ensure that this work is consistent with and supports all our other activities.

62. The range of ad-hoc work includes applications from:

- approved regulators who wish to change the reserved legal activities that they can regulate or who wish to become licensing authorities (new designations)
- new organisations seeking designation so that new types of business and other service providers can deliver reserved legal activities (new entrants)
- approved regulators and licensing authorities who wish to change the regulatory arrangements that they have in place – either because of their own initiative or in response to LSB policy developments (changes to regulatory arrangements).

63. Recurring activity includes:

- approving the practising certificate fees (PCF) set by each approved regulator
- assessing the evidence that the regulatory arms of approved regulators and licensing authorities are acting independently from the representative bodies
- approving the annual budgets of both the OLC and the Solicitors Disciplinary Tribunal (SDT).

Why this work matters

64. Approving new designations and changes to regulatory arrangements is a key part of our oversight role. We need to ensure that in exercising our statutory decision making powers we act in a way that is consistent with our work on regulatory effectiveness; this will support the work that approved regulators are doing to improve the standards of regulation.

65. New entrants and new designations will allow more firms to enter into or expand their services, thus improving choice for consumers.

66. For new entrants and new designations, we will ensure that the regulatory arrangements meet the four standards of regulation – outcomes focused; risk identification; proportionate supervision and effective enforcement; capacity and

capability. Through the rules change approval process we can ensure that all changes to approved regulators handbooks and rules continue to become more outcomes focused.

67. Our work on PCF approval will contribute to a better understanding of the costs of regulation and other statutory burdens on business often conflated with it.

68. The annual review of Internal Governance Rules compliance will aim to give further confidence that the regulatory arms of the approved regulators do in fact act independently of the representative arms and the profession as a whole.

What we will do

69. We expect to have to consider applications:

- from existing approved regulators and licensing authorities to extend the range of reserved legal activities for which they are designated
- for changes to regulatory arrangements.

70. We will work with the MoJ and applicants to ensure that the current (at October 2013) designation applications are completed and designation granted in line with statutory timeframes.

71. We will consider whether we should change our approach to assessing compliance with the Internal Governance Rules and whether “self certification” by the approved regulators should continue as the only form of assurance.

72. We will consider applications from all approved regulators and licensing authorities for approval of practising certificate fees and aim to complete them within the agreed time frame.

73. We will consider and, where necessary, challenge the budgets of the SDT and OLC.

74. We will publish new levy rules, reflecting the experience of our and the OLC’s first years of operation and the availability of better data.

Statutory decision making by quarter

| Activity | Milestone / Output |
|-----------------------------|--|
| Internal Governance Rules | Q1 - Assessment of regulators' compliance with the IGRs |
| Practising certificate fees | Q2 - Q4 - Assess applications for approval of annual PCF |
| SDT budget | Q3 - Assess budget application |
| OLC budget | Q4 - Assess budget application |
| Levy | Q1 - Publish new levy rules |

Timing of decisions relating to the applications made to us is not listed, as work is dependent on timing of submissions.

Relationship with the OLC

75. The LSB has a statutory relationship with the OLC, the Board of the Legal Ombudsman. This includes a responsibility to review its performance in administering the Legal Ombudsman scheme. Members of the two Boards meet on a quarterly basis to review the way in which the OLC is overseeing performance and to look at the Ombudsman scheme's key performance indicators. To date, the LSB has not been required to set or direct performance targets.

76. The LSB may also require the OLC to report to it on any specified matter under S120 of the Act. To date we have made two requests of this type and we expect to receive a report into the circumstances around complaints where there has been a perceived lack of transparency in the cost of legal services including funding arrangements (including damages-based agreements), business models, area of law, consumers and legal professionals involved.

77. In 2014/15, we will:

- continue to review the OLC's performance through discussion of quarterly performance commentaries addressing timeliness, quality and cost of the Legal Ombudsman scheme
- scrutinise and approve the OLC's budget.

78. More generally, we will continue to encourage effective joint working, data sharing and transparency between the Legal Ombudsman and regulators to ensure that both operational work and policy development activities of each organisation are informed by the perspectives and experiences of the other and the information that they hold.

79. We will also offer all support necessary to the new OLC Chair as they seek to identify their priorities.

Delivering our Plan

Budget

80. The table below shows our proposed budget for 2014/15, the final year of our 3-year strategic plan. Based on our planning assumptions we are once again proposing a budget reduction (of £150,000).

LSB budget for 2014/15

| | Operational budget 2014/15 |
|------------------------------------|-----------------------------------|
| Staff | 2,422 |
| Accommodation | 424 |
| Research and professional services | 250 |
| IT/facilities/finance | 245 |
| LSB Board | 200 |
| Consumer Panel | 204 |
| Office costs | 126 |
| Depreciation | 30 |
| Governance and support services | 132 |
| Legal reference/support | 108 |
| TOTAL excl OLC Board | 4,141 |
| OLC Board | 157 |
| Total inc OLC Board | 4,298 |

Budget assumptions

81. Based on the current staffing complement, approximately 88% of the planned running budget of the LSB will be made up of 'fixed' costs (Board, OLC Board, staffing, accommodation, depreciation and outsourced services). The remaining

12% will be accounted for by the research, professional services and office running costs needed to support the LSB's work programme for 2014/15.

82. The bulk of the proposed £150,000 budget reduction comes from reductions in our accommodation costs and OLC Board budgets. On the latter, the time commitment and fee payable for the new appointee has been reduced.
83. The accommodation cost reductions arise as a consequence of our office move in early 2014 to One Kemble Street, when we become tenants of the Office for Rail Regulation (ORR) and take up a smaller space.
84. The planned budget does not take account of any impact that the decision on costs resulting from the QASA judicial review may have and, as in previous years, contains no provision for any future legal action. We will therefore seek to recover costs in all challenges and, where necessary, recoup any unavoidable costs in future levy years. Any such costs of this will be separately identified in levy collection notices.
85. Costs will continue to be recouped through the statutory levy on approved regulators.

Risk and information management

86. We are committed to robust risk management across all of our activities whether regulatory or operational. Risk is managed at all levels in the organisation: within projects; across the work programme; at senior management, Audit and Risk Committee (ARC) and Board level through regular review. Corporate risk management is focused on the actual risks facing the LSB at any one moment that we have the power to influence, whilst ensuring that we understand the general environment of risk in which we operate.
87. One area where we work hard to avoid both regulatory and operational risk arising is information management. As a knowledge driven organisation we rely on good corporate knowledge; all of our work is underpinned by the evidence we gather, the information we hold and the decisions we make. This information must be managed well to ensure we make sound decisions and are able to fulfil our statutory obligations under both freedom of information and data protection legislation.
88. We will continue to comply with our statutory responsibilities under data-protection and freedom of information legislation and ensure that our internal policies accurately reflect any changes in legislation. We will also meet both the letter and the spirit of the transparency agenda, seeking to meet requirement at the lowest cost whilst achieving the maximum impact.

Corporate services

89. Underpinning all of our regulatory activity is a slim corporate services function.

We actively designed our organisation to rely so far as possible on low cost, out-sourced “back-office” support and thus our telephony and facilities will be provided by the ORR. Our human resource advice is provided by a commercial provider. We have two in-house lawyers and access to a panel of general and specialist advisors, appointed through a competitive tender process which was refreshed in 2013/14. By adopting this approach, we have managed to keep in-house staffing requirements to a minimum and have secured appropriate and proportionate commercial services at competitive prices. We keep these arrangements under continuous review to ensure that they remain the most appropriate way of securing value for money and manage individual contracts robustly.

Finance process performance

90. In our annual report and accounts, we report our success at paying all undisputed invoices within 30 days. We have also undertaken to meet the 2008 Cabinet Office Guidance for Departments and we have set a target of paying undisputed invoices within ten days of receipt. We support the Cabinet Office’s aspiration to support businesses through ensuring the public sector pays its bills swiftly.

Freedom of Information and Data Protection Act requests

91. We aim to acknowledge and to respond fully to freedom of information requests within 3 and 15 working days, respectively, on average. The statutory maximum for responding is 20 working days and our current average is 7.5 working days.

92. We aim to acknowledge and to respond fully to subject access requests within respectively 3 and 20 working days on average. The statutory maximum for responding is 40 calendar days.

Regulatory decision performance targets

| | Change to regulatory arrangement | New approved regulator designation or additional reserved legal activities | Licensing authority designation | Cancellation of designation for approved regulators* | Cancellation of designation for licensing authorities* |
|---|--|--|---------------------------------|--|--|
| We will publish applications on our website as long as we consider the applications to be complete | Within 2 days | Within 5 days** | Within 5 days** | Within 5 days** | Within 5 days** |
| We will make a decision or recommendation on the application | Within 28 days for simple applications *** Within 3 months for complex applications *** | Within 130 days^ | Within 130 days^ | Within 65 days | Within 65 days |
| Where appropriate, we will publish advice from mandatory consultees and any representations on that advice | Within 5 days | Within 5 days | Within 5 days | Within 5 days | Within 5 days |
| We will publish recommendations to the Lord Chancellor | Within 5 days | Within 5 days | Within 5 days | Within 5 days | Within 5 days |
| Where appropriate, we will publish our: Decision; Extension; Warning; and Refusal to consider; Notices on our website | Within 2 days | Within 2 days | Within 2 days | Within 2 days | Within 2 days |

Note: All days are working days, except for decisions or recommendations on regulatory arrangements, which are in calendar days.

**This KPI only applies under sections 45(3) and 76(3) of the Legal Services Act 2007 (that is, where the approved regulator applies for cancellation, and therefore, is not as a result of an enforcement process)*

***The applications will be published on our website as long as they are complete. The LSB reserves the right during this period to request further information from the applicant.*

****Paragraph 26 of Part 3 of Schedule 4 to the Legal Services Act 2007 provides for a maximum decision period of 18 months from the date the applicant received a warning notice from the LSB.*

^Paragraph 15 of Part 2 of Schedule 4, and paragraph 13 to part 1 of Schedule 10 of the Legal Services Act 2007 provides for a maximum decision period of 16 months.

How to respond

94. We welcome views and comments on all aspects of our draft Business Plan by 5pm on **30 January 2014**

95. We would prefer to receive responses electronically (in MS Word format), but hard copy responses by post or fax are also welcome.

96. Responses should be sent to:

Email: consultations@legalservicesboard.org.uk

Post:

Michael Mackay
Legal Services Board
One Kemble Street
London
WC2B 4AN

Fax: 020 7271 0051

97. We intend to publish all responses to this consultation on our website unless a respondent explicitly requests that a specific part of the response, or its entirety, should be kept confidential. We will record the identity of the respondent and the fact that they have submitted a confidential response in our summary of responses.

98. If you want to discuss any aspect of this consultation, or need advice on how to respond, please contact the LSB by telephone (020 7271 0050) or by one of the methods described above.

99. We will consider all responses to this consultation and will publish the final Business Plan for 2014/15 in April 2014.

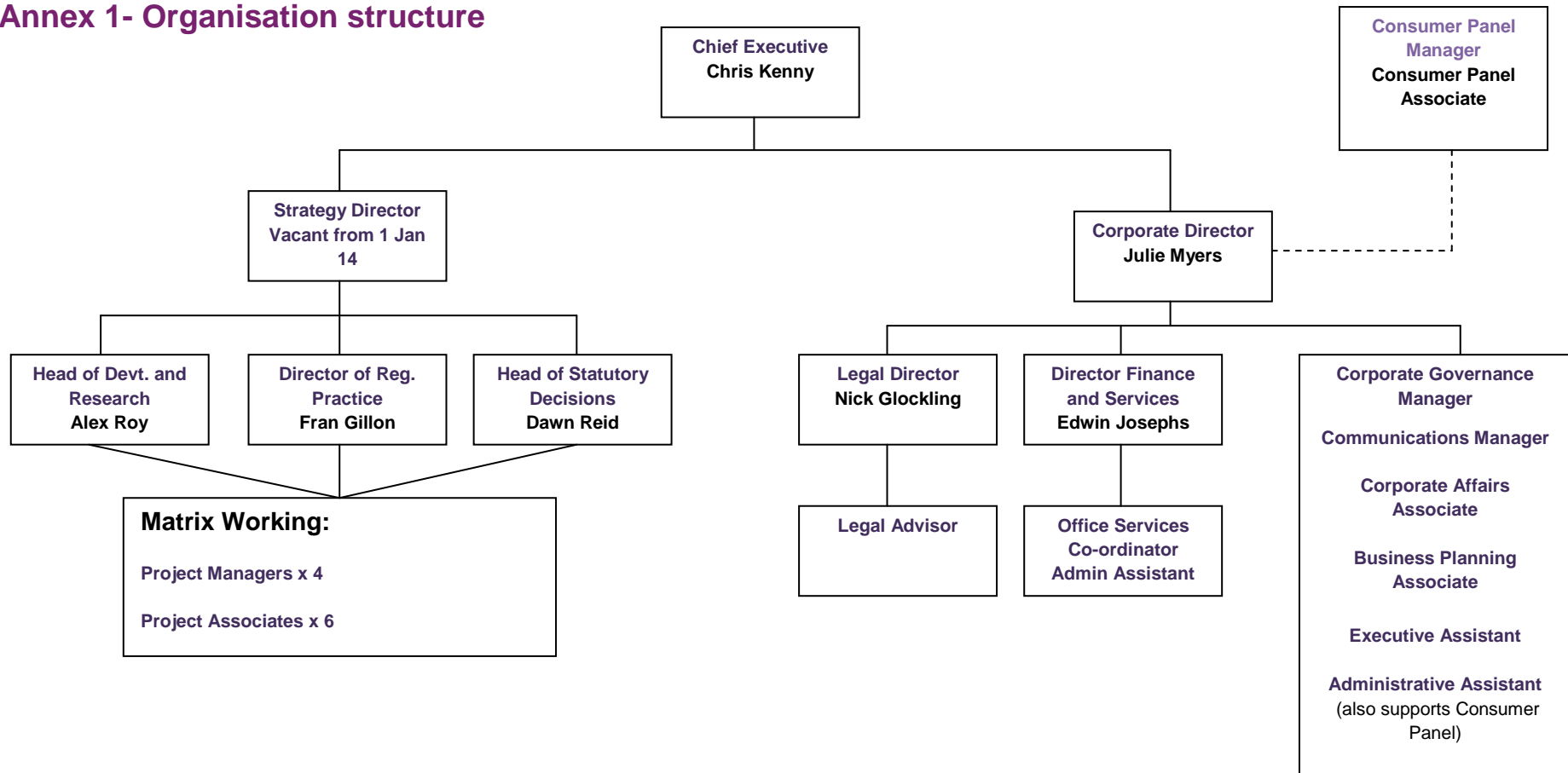
Complaints

100. Complaints or queries about the LSB's consultation process should be directed to Michelle Jacobs, Consultation Co-ordinator, at the following address:

Michelle Jacobs
Legal Services Board
One Kemble Street
London
WC2B 4AN

Or by e-mail to: michelle.jacobs@legalservicesboard.org.uk

Annex 1- Organisation structure



Annex 2 - 2014/15 milestones

| Quarter 1 Workstream April - June | | Quarter 2 Workstream July - September | |
|---|-----|--|-----|
| Issue self-assessment template and require regulators to complete assessment exercise | A | LSB receives assessments from regulators on progress on action plans | A |
| Conduct reviews into specific areas where existing regulation is perceived to impose unnecessary burdens | A/B | Conduct reviews into specific areas where existing regulation is perceived to impose unnecessary burdens | A/B |
| Conduct analysis into the regulatory burdens currently imposed | B | Publish initial assessment of the costs of regulation for consultation | B |
| Agree an approach to monitoring delivery of actions plans submitted in the response to LSB guidance on education and training | B | Review internal LSB processes to ensure we have an appropriate understanding on whether regulators are having regard to the guidance | B |
| Complete second review of regulators progress with annual data collection | B | Complete second review of regulators progress with annual data collection | B |
| Review regulators progress against our success criteria and reprioritise where action is needed | B | Engage with regulators to agree high level actions plans and appropriate monitoring of quality issues | B |
| Consider impact of wider government initiatives in relation to 'open data' | B | Complete draft report for evaluation of impacts of the LSA in terms of access to justice | B |
| Publish research plan | B | Assess application from regulators for approval of annual PCFs | C |
| Assessment of regulators compliance with the IGRs | C | Consider applications from regulators for changes to their regulatory arrangements | C |

| | |
|--|---|
| Consider applications from regulators for changes to their regulatory arrangements | C |
| Publish Levy rules | C |

| Quarter 3 Workstream October - December | | Quarter 4 Workstream January - March | |
|--|-----|--|-----|
| LSB produces final report on self-assessments | A | Finalise plans for 2015/16 self-assessment | A |
| Conduct reviews into specific areas where existing regulation is perceived to impose unnecessary burdens | A/B | Conduct reviews into specific areas where existing regulation is perceived to impose unnecessary burdens | A/B |
| Engage with regulators to agree high level actions plans and appropriate monitoring of quality issues | B | Update and finalise assessment of the costs of regulation for consultation | B |
| Publish evaluation of impacts of the LSA in terms of access to justice | B | Engage with regulators to agree high level actions plans and appropriate monitoring of quality issues | B |
| Assess application from regulators for approval of annual PCFs | C | Assess application from regulators for approval of annual PCFs | C |
| Consider applications from regulators for changes to their regulatory arrangements | C | Consider applications from regulators for changes to their regulatory arrangements | C |
| Assess SDT budget application | C | Assess OLC budget application | C |

Annex 3 - Regulatory objectives matrix

| Regulatory Objectives | A: Regulator performance and oversight | | B: Strategy development and research | | | | C: Statutory decision making |
|--|--|------------------|--------------------------------------|----------------------------------|-----------------------------------|---|------------------------------|
| | Regulatory Standards | Thematic Reviews | Regulatory Reform | Liberalising the legal workforce | Improving the Consumer Experience | Research and Evaluating impact of the LSA | |
| The public interest | X | | X | X | X | X | X |
| The rule of law | X | | X | | | X | X |
| Access to justice | X | X | X | X | X | X | X |
| Consumer interest | X | X | X | X | X | X | X |
| Enhancing competition | X | X | X | | X | X | X |
| Independent, strong and diverse profession | X | | X | X | X | X | X |
| Citizens' rights and duties | X | | | | X | X | X |
| Professional principles | X | X | X | X | X | X | X |

