

SRA response

Legal Services Board (LSB) consultation on Draft Business Plan 2019/20

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Introduction

Read the Legal Services Board (LSB) consultation on Draft Business Plan 2019/20 (PDF 17 pages, 354KB)

[https://www.legalservicesboard.org.uk/what_we_do/consultations/2018/Business_plan_2019-20_consultation_document_%28f_ii%29.pdf]

The Solicitors Regulation Authority (SRA) is the regulator of solicitors and law firms in England and Wales. We work to protect members of the public and support the rule of law and the administration of justice. We do this by overseeing all education and training requirements necessary to practise as a solicitor, licensing individuals and firms to practise, setting the standards of the profession and regulating and enforcing compliance against these standards. We are the largest regulator of legal services in England and Wales, covering around 80% of the regulated market. We oversee some 192,000 solicitors and more than 10,400 law firms.

We welcome the opportunity to respond to your consultation on the LSB's draft Business Plan 2019/20. We set out below our response to your questions.

In summary we:

- broadly agree with your analysis of market trends and drivers. We suggest that these should include reference to the recommendations of the recent Financial Action Task Force¹ [1] report and role of the Office for Professional Body Anti-Money Laundering Supervision (OPBAS)² [2] . We note the reference to the Bar Standards Board commitment to changing to the civil standard of proof for its disciplinary proceedings, and consider that acknowledgement of the potential impact that any post consultation changes to the Solicitors Disciplinary Tribunal rules is also important
- welcome, as part of your new five-year policy objectives, your inclusion of the promotion of responsible technological innovation and public legal education, especially the provision of information that can help people to identify and meet a legal need at the point that suits them. We also share the commitment to ensuring ongoing professional competence and look

forward to exploring a proportionate approach. All three objectives are areas where collaboration and dialogue will be particularly valuable

- will work with you to embed your revised regulatory performance framework and internal governance rules (IGRs). We note your proposals to review your Practising Certificate Fee approval process and will provide any relevant information about regulatory costs.

Consultation questions: our response

Question 1: Have we identified the most relevant developments in our external operating environment?

We broadly agree with your analysis of the current market trends and drivers for change that will influence the sector over the next three years. It would be helpful to also include the following in your analysis:

- the potential impact of the international Financial Action Task Force recent assessment of the UK's actions on tackling money laundering and terrorist finance
- the important role of the new Office for Professional Body Anti-Money Laundering Supervision and any impact of the additional layer of regulatory oversight and cost for legal regulators and law firms
- the impact of any changes resulting from the Solicitors Disciplinary Tribunal consultation on a range of changes to its rules, including the potential for consistency on the standard of proof used across all the components of legal regulation.

Question 2: What are your views on our proposed five-year policy objectives?

In our response to your strategic objectives for 2018-21, we said that we felt the overall strategy reflects the areas that are priorities for all the legal regulators, and that continues to be the case.

We make specific comments on the three new five-year policy objectives as follows:

- a. The regulators have appropriate frameworks for continuing assurance of professional competence throughout the careers of the people they regulate.

We are committed to making sure that solicitors stay up to date and meet their clients' needs throughout their careers. We welcome steps to explore a proportionate approach that reflects the working environment for the legal profession. We are currently evaluating the impact of our 2016 move away

from a box-ticking, hours-based approach to Continuing Professional Development to a model that requires the profession to reflect on the quality of their work and undertake meaningful learning and development. We are happy to share that evaluation with the LSB to help inform this five-year objective.

- b. The LSB is perceived as being at the forefront of enhancing public legal education.

We welcome this policy objective. Public legal education that helps people to identify a legal need and find the right legal service as and when required is a key area for us. We are committed to the development of the joint regulator Legal Choices website, as well as supporting the work of the Solicitor General's Public Legal Education Panel. We are also interested in the role that behavioural insights can play in helping people to find the help they need. We look forward to working together on this objective.

- c. Access to legal services is increased through the promotion of responsible technological innovation that carries public trust.

We consider this policy objective, which resonates with our own work on innovation and our Regulators Pioneer Fund project with NESTA, to be timely. We will be using the £700,000 Pioneer Fund award to support business innovations that will use AI to transform the legal services market for small businesses and consumers and would welcome the opportunity to discuss your objective and your thinking.

Question 3: Do you have any comments on our proposed business plan and work for 2019/20? Are there any workstreams that you disagree with? Is there any work that you think we should pursue that is not currently included?

We will work to embed your revised regulatory performance framework. As part of that, our established position is that the diversity outcomes should be assessed as part of the overall performance framework, in line with our commitment to mainstreaming equality, diversity and inclusion throughout our work. We welcome your commitment to integrating the diversity outcomes into the wider performance framework, as set out in your 2019 assessment of regulators' progress against the diversity outcomes.



It is helpful to see that you will be considering the LSB's role, as an oversight regulator, in addressing concerns relating to the ongoing debate around the use of non-disclosure agreements in the legal sector. This is a key area for all regulators, and we continue to raise awareness of the issues ahead of anticipated government consultation³ .

We have responded to your consultation on your revised IGRs and will work with you during the transition to the new arrangements. We welcome progress towards maximising the independence of regulation within the current framework, in line with the Ministry of Justice tailored review position that safeguarding independence is one of the LSB's key statutory roles⁴ .

We note your proposals to review your Practising Certificate Fee approval process and will provide any relevant information about regulatory costs.

We welcome the work packages outlined under Strategic Objectives 2 and 3. In particular, we look forward to the publication of your triennial evaluation of whether the market outcomes associated with the regulatory objectives in the Legal Services Act are being achieved over the longer term, and where more

Question 4: Please identify any elements of our business plan that you think present an opportunity for more detailed dialogue and/or joint working between your organisation and the LSB.

We welcome the opportunity to work together with you and other regulators to bring improvements in the legal market.

In particular, we look forward to working together to implement the new IGRs, in line with the shared commitment to ensuring operationally independent regulation.

As set out in paragraphs 3 and 6, the five-year policy objectives are areas where we think collaboration would be particularly helpful.

Question 5: Please provide comments regarding equality issues which, in your view/experience, may arise from our proposed business plan for 2019/20.

On the components of your business plan, equality issues may arise as set out below:

- a. As we say at paragraph 7, we welcome your commitment to integrating the diversity outcomes into the wider performance framework, as set out in your 2019 assessment of regulators' progress against the diversity outcomes.
- b. On the external working environment, it is important to note the additional cost on registrants arising from OPBAS



oversight may impact disproportionately on small firms, which have a higher Black Asian and Minority Ethnic profile.

- c. Consideration of frameworks for continuing assurance of professional competence would again require careful analysis of any potential impact on small firms.
- d. Much of the public policy discussion about the inappropriate use of non-disclosure agreements reflects their use in cases of discrimination and harassment, so this component of the business plan is likely to make a positive contribution to equalities issues.
- e. The business plan content under strategic objective 2 is likely to have a positive equalities impact. For example, working to understand people's needs and providing them with accessible and relevant information at the time that suits them is likely to be of benefit to the many people who do not currently access legal services. This is likely to include people who are marginalised or vulnerable, whether that vulnerability is situational or because of protected characteristics. We also know from joint SRA and Legal Ombudsman research that people with disabilities are less likely to complain about a legal service that they receive. Better public legal education may help to address that.
- f. And we agree that the promotion of responsible technological innovation has the potential to help with access to legal services for the many people who cannot currently navigate the landscape or find affordable services. That group will include people with a range of vulnerabilities.

Footnotes

1. The United Kingdom's measures to combat money laundering and terrorist financing [<http://www.fatf-gafi.org/publications/mutualevaluations/documents/mer-united-kingdom-2018.html>]
2. Office for Professional Body Anti-Money Laundering Supervision (OPBAS) [<https://www.fca.org.uk/opbas>]
3. Government announces new Code of Practice to tackle sexual harassment at work [<https://www.gov.uk/government/news/government-announces-new-code-of-practice-to-tackle-sexual-harassment-at-work>]
4. Ministry of Justice (July 2017) Tailored Reviews of the Legal Services Board and Office for Legal Complaints [https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/630084/lso-olc-tailored-review-2017.pdf]