

## **CLC Response to LSB Consultation**

### ***Draft strategy for legal services regulation and draft business plan 2021-22***

***February 2021***

#### **INTRODUCTION**

The CLC is grateful for the opportunity to comment on the Legal Services Board's (LSB) draft strategy and business plan and for the discussions that we have been able to have with LSB colleagues about them since the consultation was published.

Our responses to the consultation questions reflect our concerns as a specialist regulator of the mass-market, commoditised legal services of conveyancing and probate. Where we comment based on our insight into the wider legal services sector, we make that clear.

#### **RESPONSES TO CONSULTATION QUESTIONS**

##### **Q1–Do you have any comments on the three strategic themes that we have identified?**

The three themes of *Fairer Outcomes*, *Stronger Confidence* and *Better Services* work well as headlines to summarise the work of the LSB and provide a clear statement of intent against which progress can be evaluated in qualitative and quantitative way alongside assessment of the regulatory objectives which must remain paramount as we consider regulatory performance.

##### **Q2–Do you have any comments on the nine challenges that we have identified for the sector?**

The challenges set out a useful agenda for the entire sector. Some are less relevant to the CLC because of the nature of the services that we regulate, but we are very supportive of the concept of collaboration and coproduction across the sector while at the same time recognising the very different approaches, requirements and challenges facing the front-line regulators.

We hope that the LSB will accept that engagement by each of the front-line regulators will vary according to their relevant to our work and that any evaluation of our performance is tailored to take account of that.

On 'unmet legal need', for example, our contribution might be limited to public legal education to encourage citizens to make wills. While we have little insight into reform of the justice system, our experience as a specialist regulator and the past involvement of our Chair and Chief Executive in reform of regulation of legal services means that we have much to contribute there.

We are especially committed to addressing the all of challenges under the *Better Services* theme, as demonstrated by our own work programme over several years and by our Chief Executive's leadership on sector-wide implantation of the CMA's remedies programme.

Under *Fairer Outcomes*, the diversity and inclusion challenge is the one that is most relevant to the CLC and we are less affected by the issues of unmet legal need and the challenge of access to legal services for disadvantaged people. The *Stronger Confidence* theme contains generally universally applicable issues although, as noted above, our work does not provide insight into the operation of the justice system.

### ***Evaluation and Accountability***

The Legal Services Board has itself stressed of late the need to a greater focus across the sector on evaluation of the impacts of policies and processes. It will be important to define more closely the outcomes the LSB wishes to see and to develop metrics. The agreed outcomes will also help to identify the approach the LSB and front-line regulators should take to delivering them and which regulators are involved.

It would be useful to understand how the LSB and front-line regulators will be held to account for progress towards meeting the challenges. The Regulatory Performance Assessment is a key part of that of course. We have seen examples outside that framework though, of regulators not meeting LSB's expectations in relation to particular activities without, it would seem, there being any way for the LSB to require them to reconsider or change their approach.

There is very uneven engagement and progress on the LSB's agenda by the different regulators and a continuing pressure on the more advanced to do more with little obvious pressure on those further behind to catch up to meet a defined minimum requirement. This risks undermining the LSB's authority and the ability of the sector to move forward together to the benefit of consumers of legal services.

### **Q3—How can you/ your organisation contribute to overcoming the sector-wide challenges we have identified?**

#### *Dismantling barriers to a diverse and inclusive profession at all levels*

As a non-graduate profession, the diversity profile of the CLC-regulated community reflects closely the make-up of society. The challenge is to ensure that the progression of people through their careers is equitable and fair. We already work with the other regulators to identify and implement steps to address that challenge and will continue to do so.

#### *Ensuring high quality legal services and strong professional ethics*

This is core to the work of all regulators and the diversity of approaches informs innovation and best practice. We collaborate and share insight with others through the Regulators Forum and we are always keen to engage with LSB initiatives.

### *Closing gaps in consumer protection*

We provided a great deal of input on the application to bring will-writing into the system of reserved legal services. This is something we have also addressed by pioneering the secure badge scheme now adopted across the sector. Now, our work with others to improve the security of transactions with better ID checking and more easily accessible and trusted information are also meeting this challenge.

The aim of extending consumer redress arrangements to customers of **unregulated** legal services providers is noted and is a worthy ambition. The provision of appropriate redress could be a useful 'floor' of standards within the legal services market as a whole without imposing (or having the power to impose) market entry and conduct rules for the 'unregulated' providers. Such a 'floor' could help to build consumer confidence. Providing LEO with the means to offer 'voluntary jurisdiction' (as the FOS has) could be a way forward and in principle a single ombudsman/redress scheme for all things legal services could simplify the market.

However, the proposition does present several challenges and we will need to be clear what is meant here by 'unregulated providers' and whether that covers unregulated people/firms or unregulated activity or both. Moreover, CLC's successful experience as a specialist regulator - gaining insight into a particular tranche of legal service - leads us to caution against any 'top-down' adoption of a single mode of control (and redress) for the potentially vast array of activities which engage legal rights.

From the CLC's perspective of funding the LEO costs we would wish to be satisfied that the CLC and its regulated community would not inadvertently be expected to meet the costs of developing any new potentially speculative services designed to appeal to unregulated providers (or providers of unregulated services). The OLC levy is already expected to equal one quarter of the CLC's operational budget in 2021 and it only represents a proportion of the redress arrangements in place for the community we regulate as it only deals with customer service complaints.

The LSB has noted there are issues relating to the performance and costs of the Legal Ombudsman scheme which would need to be addressed to make the proposition attractive – and affordable - to unregulated legal service providers, and trade bodies. The LEO scheme currently only deals with customer service issues when consumers of unregulated services will want and expect to be able to seek redress on wider matters.

For regulated providers, the LEO role is significantly complemented by the presence of not only Professional Indemnity Insurance for instances of negligence, but supervision and potential intervention by regulatory bodies who also run, and are obliged to run, compensation schemes to deal with matters not covered by insurance. Even if a new, broader scheme were able to deal with consumer complaints relating to unregulated providers there could still be a significant difference in the redress arrangements available to customers of regulated versus unregulated firms.

Given the challenges LEO presents in terms of its performance and costs if the LSB wished to make progress quickly to get a solution/redress offer in place for the unregulated providers/services it might consider exploring with the Chartered Trading Standards Institute (CTSI) how more unregulated providers in the legal services market could be encouraged to comply with the Alternative Dispute Resolution (ADR) legislation and subscribe to an appropriate ADR provider.



There are now a significant number of ADR bodies approved by CTSI under the ADR directive including providers of professional and legal services e.g. the Institute of Professional Willwriters, RICS and also a variety of ombudsman schemes and mediators in different markets from gambling to energy. There is therefore significant learning about what is expected of redress schemes in areas where there is no, or limited, market regulation. <https://www.tradingstandards.uk/commercial-services/adr-approved-bodies>

### *Redrawing the regulatory landscape*

We engaged with the Mayson review extensively. The experience in this area of our Chair and Chief Executive as well as the CLC's history as a specialist and independent regulator established to deliver an agenda of change in the consumer interest mean that we have unique insight and understanding to bring to bear on these discussions.

### *Empowering consumers to obtain high quality and affordable services*

The CLC, through the role of its Chief Executive as the Chair of the Remedies Programme Implementation Group, took a leadership role on the CMA agenda. More recently, even before the CMA's report on progress, it was the CLC that pushed for action on quality indicators that has now resulted in a joint pilot project with the SRA and CILEx Regulation. We will continue to contribute to meeting this challenge.

We expect that this is a dimension that will be included in future regulatory performance assessments.

### *Fostering innovation that designs services around consumer needs and Supporting responsible use of technology that commands public trust*

We will continue to play an active role in the work going on across the sector to improve the home buying and selling process. Our *Conveyancing 2030* paper published in 2020 and the resulting increased engagement with innovators has provided a useful focus for development. Our sandbox testing of Third-Party Managed Accounts provided important learning and we continue to promote the alternative to client account. We will continue with this kind of work.

We are part of the Regulatory Response Unit that is advising lawtech developers and are closely engaged in the development of the digital ID trust scheme under the DCMS framework.

We would like the LSB to continue its work exploring the challenges around regulating lawtech as this was a very useful project using the LSB's convening power and the discussion has further to run in developing a clearer idea of what good practice might look like.

This area also highlights the importance of the interplay of so many aspects of the operation of the legal sector and regulation and how they can inhibit or foster innovation. Attitudes towards the risk of failure, the impact of non-legal sector regulators and the quasi-regulatory impact of the sector's

insurers and powerful clients (e.g. lending institutions) can unnecessarily inhibit progress. We urge the LSB to be a champion of the legal sector and help address those challenges.

**Q4–Do you have any comments on the suggested areas of priority for the sector 2021-24?**

No further comments.

**Q5–Do you agree with our proposal to pursue these workstreams? Is there anything missing that**

The strategic themes suggest how we might set about evaluating progress on them by the LSB and regulators. This is perhaps especially important in relation to diversity and inclusion. A lot of the work in this area focuses on culture change in organisations where it can be difficult to discern which interventions are having an impact. More joint working to identify successful steps and to consider objectives could be aided by the LSB using its convening powers to foster a more detailed and richer conversation and help to design evaluation.

We must also note that oversight of the Legal Ombudsman must be a key priority until complaints handling performance is back on track. LSB has stressed the complexity of the redress system, but LeO was established to provide quick and fair consumer redress and not to repeat the errors of the past by developing elaborate and lengthy investigative processes to determine cases where the remedy is generally very modest. The CLC looks forward to working with the new leadership at LeO to support change.

**Q6–Do you see any areas of joint working between the LSB and you/ your organisation?**

There is a particular opportunity for joint working on technology and innovation. We have long identified the need to ensure open and accessible data to facilitate the efficient and good-value delivery of legal services. We have begun discussions with government about how we might develop a framework and trust model for home buying and selling data. This might be a strand that could be broadened out by the LSB.

However, we hope that the LSB will give all regulators the opportunity to engage early in the development of each of the strands set out. As set out above, not all regulators will wish to engage on each strand, but we will make better and faster progress through collaboration even on those issues where decisions are for the LSB rather than regulators as the work set out really is a joint endeavour across the sector.

**Q7–Do you agree with our proposals that we should not undertake a statutory review of reserved legal activities in 2021-22?**

Those legal services that are regulated are managed in a risk-based manner. The gap relates to services outside regulation that pose significant consumer risk, the most obvious example being will-

writing. However, the fundamental question of aligning the system of reserved legal powers to risk is one that should not be delayed any longer than necessary.

**Q8–Do you have any comments on our proposed market intelligence work? Is there anything missing that you think we should focus on?**

Our only observation is that, in common with other areas of work, early engagement with regulators to take part in the scoping of research could help knit together LSB and front-line regulator research to provide even better data and insight that is useful across the sector.

**Q9–Do you have any comments on our proposed budget for 2021/22?**

The CLC is working very hard to reduce its costs to minimise the financial burden of regulation on the sector. This is a medium-term project that is proving effective and allowing us to maintain and even enhance our delivery. Given the uncertain impact of COVID 19 and Brexit on the economy in the short term, it is regrettable that the LSB intends to increase its costs.

**Q10 –Do you have any comments regarding equality issues which, in your view/experience, may arise from our proposed business plan for 2021/22? Are there any wider equality issues and interventions that you want to make us aware of?**

The sector needs to consider how to leverage any relevant strand of work that could be used to promote equality and address disadvantage. This will be aided by a shared understanding of and statement of the outcomes we want in this area.