

Response to the Legal Services Board Consultation on its 2022 Business Plan

Summary

The Council for Licensed Conveyancers (CLC) welcomes this consultation on the Legal Services Board's business plan for 2022-23. We are grateful to the LSB for allowing the CLC a deadline extension to enable the Council of the CLC to consider the consultation response at its meeting on 10th February 2022.

Our key observations are:

- The LSB seems to be taking an increasingly activist approach to its role as an oversight regulator. There is an increasing focus on an agenda of change that is useful in many ways, but it may be that a sharper focus on addressing failures in the sector rather than driving further improvement where performance is already good, is more in keeping with the approach to regulation set out in the government's recent statements on regulation and on legal services in the [Benefits of Brexit](#) document which places significant emphasis on proportionality.
- While there is recognition of the ongoing need to scrutinise the performance of the OLC and drive improvement, the draft Business Plan does not reflect the urgency and gravity of the situation. The current performance of the OLC and its rising costs represent a threat to the operation and reputation of the legal services sector in England and Wales.

About the CLC

Legal Background

The CLC was established by Parliament under the [Administration of Justice Act 1985](#). We are also bound by statutory regulatory objectives under the Legal Services Act 2007 which describe what we must aspire to achieve for the public, consumers and the regulated community. The CLC also has powers derived from the [Courts and Legal Services Act 1990](#) and the [Deregulation Act 2015](#).

Role

We licence and regulate licensed conveyancers and Practices in the provision of both reserved legal activities - currently conveyancing and probate services - and other non-reserved legal activities, including will writing. As a Licensing Authority we also authorised to license and regulate Alternative Business Structures (ABS). Our remit covers England and Wales.

The CLC has no representative function and has always been an independent regulator since its inception.

The CLC's response to the consultation questions

Q1 – Do you agree with our proposed workstreams for the 2022/23 business plan?

The draft business plan sets out several new areas of work for the year. We will look at each of them in turn.

Financial protection – The CLC welcomes the work on PII, which is a challenging issue in the legal sector as the market has hardened in recent years and insurers have had to improve their profitability. The CLC has undertaken a review of its own PII arrangements, and a consultation is underway. We have been pleased to be able to assist the LSB in its own work and look forward to that continuing and to the further insight and guidance that will provide.

Similarly, the CLC is also reviewing the operation of its Compensation Fund and insight from the LSB's work could be helpful to that process. However, it is not clear that there is a problem across the legal sector in respect of such compensation arrangements.

Discipline and Enforcement – The CLC is anxious to understand the motivation for this workstream. The CLC is not aware of failings in discipline and enforcement in the legal sector that require the attention of the oversight regulator. Studies of best practice and the formulation of guidance could be helpful, but the CLC considers that front line regulators should be able to have their own approaches and frameworks that are appropriate for their areas of regulation and so the aim should not be to drive towards harmonisation. It is notable that all except one of the front-line regulators is assessed as meeting all the criteria across the supervision and enforcement outcomes in the most recent Regulatory Performance assessment. This would seem to indicate that this is not a priority area for the coming year.

Consumer redress – The CLC welcomes the commitment to oversight of the OLC. However, the CLC considers that this should be a much bigger priority for the LSB in 2022 and subsequent years. The rapidly increasing cost and still struggling performance of the OLC is of very great concern to the entire legal sector. The financial and reputational impact of the failures at the OLC threaten the entire sector and while the OLC's Business Plan sets out its improvement plan, there is widespread concern about the organisation's ability to deliver that plan.

The CLC is worried by the LSB's intention to consider at this stage how to extend redress arrangements to the unregulated sector. This could be a diversion of resources and time away from the key issue of improving complaints handling at first and second tier. There is also the question of how such work will be funded – both at the policy development stage and in any eventual implementation. It is not clear to the CLC that this should be funded by the regulated sector.

Following its innovation in the collection of funds to meet the costs of the OLC, which puts complaints handling under the spotlight for CLC-regulated firms, the CLC will be devoting considerable resources in 2022 to analysing complaints handling and supporting improvements in those practices that face challenges. We will be working with OLC colleagues on that and welcome the LSB's planned contribution in this area.

Rule of Law and Regulation

We note this strand of work and consider it a useful contribution to the regulatory objective and the CLC will support that work where we have a part to play.

Review of LSB education and training guidance

The CLC is currently reviewing its ongoing competency framework and will be responding to the LSB's consultation on that subject too. Further work on education and training by the LSB could provide a useful contribution to the evolution of the CLC's own arrangements as they continue to mature.

This is another area where the CLC considers that harmonisation would not be desirable. It is vital that we retain a range of routes to entering the legal professions aligned to the needs and ambitions of different individuals and legal practices as well as legal specialisations.

Q2 – Are there any areas missing from our proposed business plan 2022/23 that you believe should be included?

OLC Oversight

The current performance of the Office for Legal Complaints/Legal Ombudsman (OLC) represents a significant threat to consumer protection and the reputation of the entire legal sector. This is a situation that we have all observed worsening over recent years. The recent business plan consultation raised concerns for the CLC about the proposed speed of tackling the backlog of complaints, a backlog which has continued to grow in the current year. The CLC hopes that that the LSB will give high priority to oversight of the recovery of the OLC to ensure that targets set in the final version of the business plan are met. This will need to include close ongoing scrutiny of performance throughout the year and of the costs per case, which continue to increase. The situation of the OLC is a major failing which should be a central focus of its oversight bodies, LSB and Ministry of Justice.

At time of the writing the 'agreed data set' has not been shared with the OLC's stakeholders though some has been seen by the Challenge and Advisory Group. We hope that the data when published will provide clear and easily trackable information about performance and the direction of travel to give the sector and consumers confidence in the OLC's ability to deliver the much-needed and radical improvements to the organisation.

Technology and Innovation

We note that the strand of work on technology and innovation will continue into 2022/23. It is not clear to the CLC that the LSB's regulatory levers are needed to support innovation. There is often a misconception that regulation militates against innovation and that is generally wrong in relation to the majority of the legal services front line regulators. Several of the front-line regulators are making very considerable efforts to foster and support innovation – whether that is IT or process innovation. The work LSB undertook in the past to map the innovation landscape was very useful as was the use of convening power to continue to drive discussions and we hope that 2022 will bring more of those contributions.

Q3 – Do you agree with our view that 2022/23 is not the right time to undertake a statutory review of the reserved legal activities?

Yes, however consideration should be given to a timeline for gathering evidence that will identify where harms arise from the current system of reservation of certain legal services and from those services that are unregulated so that the scale of the problem can be assessed, and the importance and urgency of any review can be understood. It would also be helpful to the work on unbundling and more generally to develop understanding of the effective scope of the reserved activities so that we can have a shared understanding of their boundaries.

Q4 – Do you have any views on developments in litigation funding?

This is not an area in which the CLC has insight to offer.

Q5 – Do you have any comments on our proposed market intelligence work? Is there anything missing that you think we should focus on?

The CLC has no comments on the proposed subjects for research, but we do believe that it would be useful, through the Research Forum, to invite input to the specification of research projects to ensure that they deliver maximum value across the sector. Plainly there will be time and funding restraints on each project, but working together could help to identify greater benefits. This is especially true of research with consumers which is expensive and where we can achieve better insight by working together.

Q6 – Do you agree with our proposed budget for 2022/23?

We note that the LSB's budget is less in real terms than budgets for the middle of the last decade. The CLC has also made very significant efforts in recent years to reduce the financial burden it places on the regulated community and in turn on consumers who pay the end cost, clearly focussing on ensuring that the regulatory burden is proportionate to risk. It might be helpful in future business plans to understand better the judgment around the scale of risks the LSB identifies and the proportionality of its response to those, which must drive expenditure, and the value and benefit of work planned against the cost.

Q7 – Do you have any comments regarding equality issues which, in your view/ experience, may arise from our proposed business plan for 2022/23?

The CLC's concern, which has been mentioned above in relation to the work on education, is that a plurality of routes into the legal profession must be retained to ensure that access to it is not restricted further. The profile of CLC's regulated community is diverse at the junior end and we want to safeguard and promote that. Progression towards senior roles is a challenge and will only become more difficult if access is restricted.

Q8 – Are there any wider equality issues and interventions that you wish to make us aware of?

The Council will be responding separately on the Joint Regulator Statement on Disciplinary Sanctions and Equality, Diversity and Inclusion.

The CLC considers that there could be an equality and diversity risk arising from several consultations being issued in succession for comparatively short consultation periods. This might work against securing input from a range of voices across the sector.