



Legal Services Board (LSB) Draft Business Plan 2019-20

**A response by
The Chartered Institute of Legal Executives**

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1. Introduction

- 1.1. The Chartered Institute of Legal Executives (CILEx) is the professional association for Chartered Legal Executive lawyers, other legal practitioners and paralegals.
- 1.2. CILEx is the Approved Regulator under the Legal Services Act 2007. These regulatory powers are delegated to the independent regulator CILEx Regulation Ltd.
- 1.3. As it contributes to policy and law reform, CILEx endeavours to ensure relevant regard is given to equality and human rights, and the need to ensure justice is accessible for those who seek it.

2. Question 1 – Have we identified the most relevant developments in our external operating environment?

- 2.1. We agree that all of the drivers identified in the draft strategy should be considered in developing the business plan.
- 2.2. We would also welcome recognition of changes in the field of anti-money laundering (AML), and the creation of the Office for Professional Body Anti-Money Laundering Supervisions (OPBAS). This is creating additional requirements for Approved Regulations and Regulatory Bodies, as well as additional costs, all of which ultimately increase the regulatory burden on legal service providers.
- 2.3. However, while the considerations CILEx raised in 2018 were acknowledged in the response to that consultation¹, they remain absent from this updated assessment of developments in the external operating environment. This is despite them becoming in many cases more prevalent and necessary for consideration. Those being;
 - 2.3.1. Legal aid
 - 2.3.1.1. We welcome the acknowledgment of the impact of financial pressures on the criminal justice system, and the scrutiny of the civil legal aid reforms.
 - 2.3.1.2. The outcome of the post-implementation review into the Legal Aid Sentencing and Punishment of Offenders (LASPO) Act was due for publication at the time this consultation was launched, and it has since been published. We hope the LSB will consider the outcome of the review in light of the submission made by the LSB², and make appropriate representations to HM Treasury to inform their spending

1

https://www.legalservicesboard.org.uk/what_we_do/consultations/closed/pdf/2018/Consultation_response_document.pdf

2

[https://www.legalservicesboard.org.uk/what_we_do/responses_to_consultations/pdf/2018/LSB_response_to_MoJ_LASPO_review_\(final\).pdf](https://www.legalservicesboard.org.uk/what_we_do/responses_to_consultations/pdf/2018/LSB_response_to_MoJ_LASPO_review_(final).pdf)

review to protect the public interest, improve access to justice, the support the rule of law.

2.3.2. Small claims limit

2.3.2.1. Proposals to reform the small claims limit (particularly in personal injury), are imminent. Removing the ability for large numbers of innocent injured persons to have their legal expenses covered by the negligent party will have a substantial impact on the market, and on the public's ability to secure meaningful justice outcomes. The ability for providers to effectively remedy the worst aspects of some of these reforms will be limited, because the reforms inhibit, rather than enable providers in the market.

2.3.2.2. These are material matters that fall within the objectives laid down in the Legal Services Act, and we hope the LSB will engage in these matters in the same evidence-based manner that they did with the LASPO review.

2.3.3. Legal expenses insurance

2.3.3.1. Insurance that includes cover for some legal costs is becoming more and more prevalent and will be increasingly relied on by the public when the small claims limit is increased.

2.3.3.2. The Civil Justice Council led a review of before-the-event (BTE) insurance that published in November 2017. Whilst the review did not produce recommendations, it did identify several issues that would benefit from the consideration of the LSB in its role as the oversight legal regulator. These include differences in the scope of coverage, availability to those on low incomes, and issues posed by how it is normally a 'secondary purchase' and so consumers have reduced purchasing power.³

2.3.3.3. Besides the CJC's report however there has been limited engagement on the matter of legal expenses insurance from the perspective of legal services policy or regulation. Whereas the predecessor to the Financial Conduct Authority conducted a review into Motor legal expenses insurance in 2013⁴ and the Financial Ombudsman carries information for consumers and businesses about the issue⁵. There is space for a corresponding view from the legal regulator(s)/ombudsman.

³ Civil Justice Council report 'The Law and practicalities of before-the-event (BTE) insurance': <https://www.judiciary.uk/wp-content/uploads/2017/11/cjc-bte-report.pdf>.

⁴ <https://www.fca.org.uk/publication/thematic-reviews/tr13-01.pdf> (along with consumer research: <https://www.fca.org.uk/publication/research/fsa-mlei-consumer-research.pdf>)

⁵ https://www.financial-ombudsman.org.uk/publications/technical_notes/legal-expenses.html

2.3.3.4. CILEx particularly is mindful of the criteria insurance companies use when appointing lawyers to their panel of firms they refer such work to. Our experience with panels used by mortgage lenders has shown that some have arbitrary restrictions on using firms with Chartered Legal Executive leadership, and we are keen that such poor practice is not replicated in other areas. Maintaining fair competition is something we would like to see the LSB and FCA work on jointly, as well as more generally considering what regulatory or consumer/public issues may need to be addressed in regard to the role before the event (BTE) and after the event (ATE) legal expenses insurance can play.

3. Question 2 – What are your views on our proposed five-year policy objectives?

- 3.1. As with previous business plan consultations, we support a strong focus on the LSB's 'core business', i.e. that which only the LSB can do; discharging statutory duties and performing regulatory oversight.
 - 3.1.1. In particular, we recognise that the coming period will require attention to the application of the revised Internal Governance Rules (IGRs). This is work that only the LSB can undertake and should be the main priority.
- 3.2. CILEx has no explicit objection against the five-year policy objectives identified in the draft business plan but would welcome greater detail and clarification.
- 3.3. Continuing assurance of professional competence
 - 3.3.1. Maintaining competence is essential for the sustainable delivery of trusted services to the public. The LSB may well be right to sense-check this and ensure an appropriate level of consistency between the regulators, but there was insufficient reasoning and no evidence based contained within the consultation document that would justify this programme of work. It is not clear at this point what specific problem the LSB is seeking to resolve, or whether there is an intended outcome.
 - 3.3.2. Any such programme should have due regard for the benefits that different approaches and models can bring provided they deliver good outcomes and should be incorporated within existing mechanisms such as continuous professional development (CPD) so as not to create additional compliance streams that will put a strain on providers.
- 3.4. Public Legal Education
 - 3.4.1. This is an area where we feel the LSB can make a valuable contribution.
 - 3.4.2. We are mindful though that most PLE initiatives are voluntary in nature, and so rely on professionals to work pro bono to develop guidance or information the public will find beneficial. Whilst regulators undoubtedly

have a role to play in this field, and the LegalChoices website is an excellent example of a successful joint regulator PLE initiative, we hope that the outcome will be one that enables PLE to thrive without placing additional burdens on busy practitioners.

3.4.3. We refer the LSB to the work of the Solicitor General's Public Legal Education Panel, of which CILEx is a member, and the vision of public legal education launched in October that could provide a framework for this programme of work.⁶

3.5. Technological innovation

3.5.1. CILEx supports this programme of work and welcomes the potential for developing a degree of consistent outcomes when it comes to the impact technology can have in the delivery of legal services.

3.5.2. We also welcome the focus on ethics. New and emerging technologies are likely to change the delivery of legal services substantially, and so a first-principles and outcomes-focused approach is an appropriate way to approach this.

4. 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?

4.1. CILEx at this time would limit its comments to the following areas;

4.2. Internal Governance Rules

4.2.1. As stated above, we feel this should be a priority for the LSB. We believe our recent governance reforms have already put us in alignment with the IGRs and therefore can say that we are not just committed to achieving compliance with the new rules; we are also committed to achieving the greatest possible level of regulatory independence permissible under the current legislative framework.

4.3. Review of Practising Certificate Fee (PCF) approval process.

4.3.1. We understand that this work stream emerges from concerns over the perception that Practice Certificate Fees only fund regulation, and that spending on non-regulatory permitted purposes could be more transparent, particularly where they may lead to increased costs.

4.3.2. In light of the above, we would welcome discussion about how this can be achieved in a manageable and practical way that accommodates respective different arrangements. CILEx as the Approved Regulator has in membership a mixture of authorised and non-authorised persons (as defined under the Legal Services Act) and is an Ofqual regulated Awarding Organisation (AO). How further transparency would be reflected in this arrangement will be different than for other ARs.

4.4. Brexit

⁶ <https://www.gov.uk/government/news/our-vision-for-legal-education>

- 4.4.1. Brexit shall mandate a great number of changes, but the reputation, position and quality of the UK's legal services industry, the importance of access to justice, and upholding the rule of law, are factors that should be safeguarded to the greatest possible degree. Herein the need for legal certainty is paramount, as is consistency in the continued recognition of laws, regulations, judgments, and legal practitioners.
- 4.4.2. The LSB will undoubtedly have an important role to play in maintaining a level playing field as the rules around access to various markets change over time. To this end we would welcome the LSB's support to ensure that Chartered Legal Executives are properly recognised as lawyers alongside their solicitor and barrister counterparts in any future trade agreements with the EU and other countries, mirroring domestic parity.
 - 4.4.2.1. Unlike other lawyers Chartered Legal Executives are unrecognised in the EU Lawyer Recognition Directive despite significant lobbying of successive governments. This unreasonably restricted their ability to offer services to other EU countries. It has prevented solicitor firms, the largest employers of Chartered Legal Executives, from deploying their staff efficiently, as well as denying consumers a full choice of providers.
 - 4.4.2.2. This is outdated and CILEx has formally asked the Government to ensure any new agreement on lawyer recognition pays proper consideration to Chartered Legal Executive lawyers as on par with their counterparts in the legal profession, and that our members' services and expertise be borne in mind in future negotiations in recognition of what they may offer to new markets.
 - 4.4.2.3. The LSB, as the oversight regulator, has an important responsibility in this regard, in ensuring no one group of legal practitioners has an unfair advantage over another, and that consumers (whether at home or abroad) have the full choice of who they secure their legal services from.

5. 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.

- 5.1. CILEx enjoys a positive engagement with the LSB, and we wish to work collaboratively to ensure the best outcomes for the profession and the public.
- 5.2. In previous submissions, CILEx has offered the services of our virtual Specialist Reference Groups (SRGs) of members. These are predominantly focused around areas of practice specialism (conveyancing, private client, personal injury, court users, etc), but also include other specialist interests such as member characteristics (disabled, LGBT, BAME, etc).

5.3. Thus far the LSB has not taken up this offer, but we remain happy to liaise with our SRGs to provide current practitioner thinking through surveys, promote research activity, or identify relevant practitioners for direct engagement.

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

6.1. We have no further comments at this time.

For further details

Should you
require any
further
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please contact;

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