



Legal Services Board (LSB) Draft Business Plan 2020-21

A Response by

The Chartered Institute of Legal Executives (CILEX)

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1. Introduction

- 1.1. The Chartered Institute of Legal Executives (CILEx) is the professional association and governing body for Chartered Legal Executive lawyers, other legal practitioners and paralegals.
- 1.2. As the Approved Regulator under the Legal Services Act 2007, CILEx has delegated these regulatory powers 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. Responses to Specific Questions

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

- 2.1. CILEx agrees that the drivers identified in the draft strategy should be considered within the business plan.
- 2.2. Education and Training across Legal Services
 - 2.2.1. We welcome references to a growing focus on the education and training of legal professionals within the Business Plan's Foreword and recognise this as a key development within the external operating environment.
 - 2.2.2. As the landscape of legal services continues to change (instigated in part by the inclusion of new technologies) education standards and accompanying competency frameworks shall need to evolve and adapt to ensure they remain fit for purpose in upholding regulatory standards.
 - 2.2.3. In acknowledgement of this, CILEx is undertaking a review of its own professional qualifications, consistent with CILEx Regulation's newly proposed education standards, so that the level of training and education received by CILEx practitioners continues to provide the necessary assurances to consumers.
- 2.3. Access to justice
 - 2.3.1. The LSB rightly recognises the impacts of cuts to legal aid within the current operating environment. However, this is not the sole factor impacting the quality of access to justice within England and Wales; with implementation issues around HMCTS' drive for court modernisation contributing to delays, hindering the ability for consumers to promptly obtain expert judgements and creating barriers for litigants when attempting to secure enforcement of justice outcomes.
 - 2.3.2. The importance of digital transformation within wider economic policy has been noted in the government white paper "*Regulation for the Fourth Industrial Revolution*". However, CILEx is cautious that overreliance on technological solutions could result in digital exclusion at the expense of access to justice, with an acute risk posed on more vulnerable consumers including the elderly¹ and those for whom English is a second language. As the oversight regulator, the LSB may wish to pay close attention to the impact of these developments on vulnerable consumers, especially when safeguarding their ability in accessing justice.
- 2.4. Anti-money Laundering
 - 2.4.1. As stated previously, CILEx would 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 Regulators and Regulatory Bodies, as well as additional costs, all of which ultimately increase the regulatory burden on legal service providers.
- 2.5. Post Brexit Negotiations

¹ HM Government, White Paper, *Regulation for the Fourth Industrial Revolution* (June 2019): The government has placed an emphasis on solutions for the elderly (ageing population) as a key driver in supporting innovation.

- 2.5.1. CILEx welcomes the LSB's acknowledgement of the fact of ongoing negotiations following the UK's exit from the European Union and would hope that the LSB would lend its input to those negotiations where linked to issues of competition and consumer choice. One such example is in relation to recognition of CILEx Lawyers: Chartered Legal Executives are currently unrecognised under the definition of European Lawyer Condition within EU Directive 98/5/EC enabling the recognition of professionals. As a result, Chartered Legal Executives are restricted in their ability to offer their services to other EU countries. This omission is outdated, considering that Chartered Legal Executive lawyers carry out the same work and carry the same responsibilities as solicitors, and that parity has been endorsed by the UK Parliament who approved the expansion of practice rights for Chartered Legal Executives in 2014.
- 2.5.2. Exiting the EU requires a new agreement to mutually recognise the status of lawyers from the relevant jurisdictions. CILEx practitioners have the capacity to improve competition in a post Brexit market by enhancing both consumer choice and access to justice. Reports from independent bodies such as the Competition and Markets Authority have highlighted that the legal services market must continue to change and adapt to ensure it can continue to grow to meet the needs of consumers and the UK economy. Brexit only heightens this importance, and LSB support in removing this key barrier that prevents Chartered Legal Executives from competing on a level playing field in this market would be welcome, just as it would in relation to a number of domestic legislative and rule-based anomalies which illogically discriminate against CILEx lawyers preventing them delivering services other lawyers can.

Question 2 – What do you see as the key priorities/issues to be addressed by legal services regulation?

- 2.6. CILEx considers the development of LawTech, and its likely impact upon legal services delivery, to be a key priority. The current regulatory model risks omitting future digital solution providers from the fold of legal services regulation as non-lawyers, in the form of third-party technology experts, become increasingly involved in driving the development of LawTech solutions whilst existing outside the remit of legal sector regulation.
- 2.7. CILEx recognises the LSB's strategic objective for "increasing innovation, growth and the diversity of services and providers," and its role in promoting greater flexibility within the regulatory framework to accommodate alternative methods of delivery. However, greater awareness of alternative arrangements shall be necessary in securing consumer choice within this wider array of legal service providers.
 - 2.7.1. Greater flexibility is currently achieved within the regulatory model of Chartered Legal Executives; enabling higher standards through voluntary regulation for all members, with further assessment for obtaining practice rights to ensure competency standards when conducting reserved legal activities. However, a lack of awareness around this alternative model has created unnecessary barriers to service provision in situations where a blanket approach has been taken to regulation and authorisation. As a result, there is a restrictive impact on consumer choice of legal service providers. There is therefore no doubt that the current regulatory framework could do with amendment and CILEx has been engaging with Professor Mayson's review in proposing alternatives.

Question 3 – What are your views on our current approach to market intelligence and evidence more widely, and how would you like us to develop this function going forward?

- 2.8. The LSB's role as an evidence-based regulator in establishing market intelligence and promoting information sharing through initiatives such as the Legal Needs Survey and series of podcasts and papers on technological developments are valuable resources for stakeholders.
- 2.9. CILEx believes strongly that, because regulation does not happen in a vacuum, to be effective it has to be anchored in a recognition and understanding of the operating reality. We therefore hope to see this market intelligence used as the basis for driving future policy decisions as the LSB continues to assume a collaborative approach in data collection, including proposals to include direct contributions from members of the public.

Question 4 – What are your views on our plans to move away from a strategy for the LSB towards a strategy for legal services and their regulation, highlighting gaps and opportunities across the market?

- 2.10. As with previous business plan consultations, CILEx supports 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.
- 2.11. CILEx welcomes the LSB's collaborative approach in developing the next 2021-2024 three-year strategy to take account of wider variables including gaps and opportunities across the changing market. However, the expertise to meet strategic expectations is best delivered at a local level in recognition of the nuances contained within the regulatory market.
 - 2.11.1. These distinctions are likely to become even more nuanced with the predicted gravitation towards activity-based/specialist regulation, as suggested by Professor Mayson². As with paragraph 2.6.1 above, CILEx cautions that within this environment, a blanket approach to strategic decision making will become even less conducive to effective legal services regulation.
 - 2.11.2. In addition, the LSB will have to guard against becoming too prescriptive in its approach: setting out objective and realistic expectations gives substance to sector leadership but the strategies to meet those expectations must be developed by the local regulators whose expertise and knowledge can best arrive at solutions appropriate for their regulated communities.

Question 5 – Do you have any comments on our proposed business plan and work for 2020/21? Are there any workstreams that you disagree with? Is there any work that you think we should pursue that is not currently included?

- 2.12. CILEx regards it as a sensible and positive intention of the LSB to undertake a review of the rule change application with a view to ensuring they are based on evidence and assessment of impact. CILEx believes there is a responsibility on regulatory bodies not to be passive and simply ask for evidence from consultees of any adverse impacts of their proposals but to be positive and set out their own researched evidence and consequential assessment of impact, the rationale and soundness of which can then be properly tested. Legal Services Act

² Professor Stephen Mayson, *Independent Review of Legal Services Regulation: Interim Report*, (2019).

- 2.12.1. CILEx is pleased to see the LSB's risk-based, proportionate and targeted approach to legal services regulation. In the wake of inconsistencies highlighted by the interim report of the Independent Review of Legal Services Regulation, such as the variances in justification for reserved legal activities,³ CILEx would welcome an examination of the current regulatory regime contained within the Legal Services Act (2007).
- 2.13. Regulatory Independence
 - 2.13.1. CILEx continues to support greater independence between the regulatory and representative arms and is committed to achieving this to the greatest extent possible under the current legislation. This includes exceeding mere compliance with the LSB's new Internal Governance Rules.
- 2.14. Brexit
 - 2.14.1. As referred to above, 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.
 - 2.14.2. 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 agreements for lawyer recognition, mirroring domestic parity.
- 2.15. Regulatory Performance
 - 2.15.1. Whilst proposed enhancements of the regulatory performance process are welcome, LSB will have to guard against the machinery of the associated process becoming too onerous and/or leading to any degree of micro-management.
- 2.16. Review of Practising Certificate Fee (PCF) approval process, including targeted review of non-regulatory permitted purposes/ Implementing the revised Internal Governance Rules
 - 2.16.1. CILEx believes that greater clarity in relation to the PCF approval process, including review of 'non-regulatory permitted purposes', will enhance transparency in relation to the costs of practice, be beneficial for the relationships between the Approved Regulators and Regulatory Bodies and support compliance with the new Internal Governance Rules. CILEx and CILEx Regulation are already jointly engaged in joint work on this compliance which is intended to also enable the maximum degree of independence for CILEx Regulation as possible in the absence of any legislative changes.

Question 6 – Do you have any comments on our proposed budget for 2020/21?

- 2.17. CILEx notes that the LSB has modestly increased its budget for 2020/21. Whilst the realism behind the proposed budget is welcome, CILEx hopes that costs will continue to be tightly managed and maintained at a proportionate level to ensure that they are not unduly passed onto practitioners and ultimately to the consumer.

³ See footnote 2, Finding 2: *"The justification for the reservation of the current legal activities is stronger in some cases (such as rights of audience and the conduct of litigation) than it is in others (such as the narrowly defined probate activity or the administration of oaths)."*

Question 7 – 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.

- 2.18. 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.
- 2.19. A particular area of our work with which LSB support is sought is, as referred to above, remedying the legislative and rule-based anomalies which illogically discriminate against CILEx lawyers preventing them delivering services other lawyers can. Achieving the related changes would go a long way to supporting the regulatory objectives and the observations of the likes of the CMA to promote competition in the market and access to legal services for those with unmet legal need.
- 2.20. CILEx is pleased to see that the LSB have joined the Solicitor General’s Public Legal Education (PLE) Committee; a panel on which CILEx is also represented. Through this panel, CILEx hopes to collaborate further with the LSB and other organisations to achieve a common view on what needs to be done to improve public legal education and build on its current PLE initiatives such as Justice Week (organised jointly with the Bar Council and the Law Society) whose theme this year is PLE.
- 2.21. As stated within previous submissions, CILEx has offered the services of its 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 (Technology and Digital) including member characteristics (Disability, LGBTQA+, BAME, etc). We remain happy to liaise with our SRGs to provide current practitioner thinking, promote research activity or identify relevant practitioners for direct engagement.

Question 8 – Please provide comments regarding equality issues which, in your view/experience, may arise from our proposed business plan for 2020/21.

- 2.22. As stated in paragraph 2.3.2 above, CILEx would like to draw the LSB’s attention towards the acute risks that digital solutions for legal services delivery could pose to vulnerable consumers accessing justice.

For further details

Should you
require any
further
information,
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