



Legal Services Board (LSB) Draft Strategy 2018-21 and Business Plan 2018-19

**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 – Are there any additional significant market trends or drivers for change that you are aware of that we should also take into account?

- 2.1. We agree that all of the drivers identified in the draft strategy should be considered in developing the strategy and subsequent business plans for the coming years.
- 2.2. We would welcome consideration for some other trends and drivers;
 - 2.2.1. We are glad to see the recognition of the financial pressures faced by legal aid providers, however we would like to see greater focus given to the public who either rely on legal aid, or who are particularly vulnerable and are unable to acquire it to resolve their legal problem. Their absence from the strategy and business plan is conspicuous, especially in light of the post-legislative review of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.
 - 2.2.1.1. Terminology in this context can be important, so restricting the ‘demand’ side of the market for legal services to ‘consumers’ may not sufficiently include those who are not in full command of their purchasing power, either through circumstance, vulnerability, wealth, or that their legal service need is not for commoditised or non-essential legal services.
 - 2.2.2. Proposals to reform the small claims limit (particularly in personal injury), or introduce fixed recoverable costs in complex and unsuited cases (such as clinical negligence), will raise significant barriers to access to justice.

2.2.2.1. 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.

2.2.3. Associated with these reforms in some cases is the expectation that insurance will become more prevalent in covering legal costs. This is a developing practice in this country, though is more widely used in others, and can present issues for the public around the choice of lawyer, what restrictions insurers place on claims, or the criteria used for appointments to panels. We think that the LSB may wish to consider the role before the event (BTE) and after the event (ATE) legal expenses insurance can play, and what regulatory or consumer/public issues may need to be addressed.

3. Question 2 – Do you have any comments on our proposed strategic objectives?

- 3.1. We recognise that with limited resources there will be a focusing of activity around the regulatory objectives with the highest priority. However, without a clearer relationship between the regulatory objectives set out by Parliament in the Legal Services Act 2007 and the strategic objectives chosen for a 3-year cycle, there risks the appearance of the LSB being selective in which objectives to work on, and which to ignore.
- 3.2. We would therefore welcome a more coherent through-line from the regulatory objectives to the strategic objectives, and where regulatory objectives are not being prioritised the reasons for this should be made clear.
- 3.3. In relation to the first strategic objective¹, there is little substance in the business plan in relation to how the LSB will hold frontline regulators to account for both attaining the right regulatory performance standards and ensuring regulatory independence. We recognise that the latter may be informed through the evolving outcomes of the LSB's IGRs Review but would like to see some specific measures as part of the business plan as to the process for controlling and ensuring proportionate regulation from the frontline regulators so that consumers can be confident that this is being monitored

¹ Promoting the public interest through ensuring independent, effective and proportionate regulation.

proactively rather than being left to retrospective remedial action should any damage be done.

4. Question 3 – Do you have any comments on the proposed equality objectives?

- 4.1. Whilst on the face of it the revised objectives largely reflect the previous objectives, the consultation contained no detailed rationale for the changes, or indeed specifics on what changes were made. We are therefore not satisfied that these changes have been sufficiently consulted on.
- 4.2. For example, whilst it can be argued that the process of ‘reviewing and monitoring the progress made by regulators in delivering their implementation plans’² is captured elsewhere in LSB policy, it is unclear why this has been dropped as an explicit objective – substituted instead with the more generic ‘encourage and support’ that comes ‘through our regulatory oversight role.’³
- 4.3. Additionally, it is unclear how the Equality Objectives relate to the strategic objectives, and that they could benefit from having a more prominent place in informing the strategic objectives and subsequent business plans.

5. Question 4 – Do you have any comments on our proposed approach to market intelligence within our strategy?

Question 5 – Do you have any other comments about the presentation or content of our strategy?

- 5.1. CILEx, like other stakeholders, would welcome a commitment in the strategic objectives to conduct robust impact assessments.
- 5.2. Quantifying the impact of the proposed strategy and subsequent business plans, as well as incorporating impact assessments into relevant research activity, would enable a more balanced assessment of what projects should or should not be undertaken at any particular moment. Such explicit reference to

² LSB Equality Objectives and reporting http://www.legalservicesboard.org.uk/about_us/our_staff/equality_and_diversity/index.htm, and Report on Equality Objectives 2013/14 http://www.legalservicesboard.org.uk/about_us/our_staff/equality_and_diversity/pdf/20140408_Equality_Report.pdf

³ Pg 18. Revised LSB Equality Objectives; Objective 2.

a commitment to this good practice would also set a tone and expectation for frontline regulators to emulate.

- 5.3. This is particularly in light of the very welcome recognition the LSB gives in the consultation document⁴ to the pressures on regulators of current and future issues. This, however, does not consider the subsequent impact on providers, and the impact compliance activity can have in times of reduced or strained capacity.

6. Question 6 – Do you have any comments on our proposed business plan and work for 2018/19? Are there any workstreams that you disagree with? Is there any work that you think we should pursue that is not currently included?

- 6.1. 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.
- 6.2. In particular, we recognise that the coming period will require attention on the application of any revised Internal Governance Rules (IGRs). As we specified in our response to the IGRs consultation⁵, we believe that the greater regulatory independence that the proposed changes to the IGRs facilitate needs to be underpinned with explicit links to a robust regulatory performance assessment process, whilst being mindful of the different circumstances and relationships between the respective frontline regulators and professional associations. This is work that only the LSB can undertake, and should be the main priority.

7. Question 7 – Please identify any elements of our strategy or business plan that you think present an opportunity for more detailed dialogue and/or joint working between your organisation and the LSB.

- 7.1. 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.

⁴ Para 25-26.

⁵ CILEx's response:

https://www.cilex.org.uk/~/_media/pdf_documents/main_cilex/policy_and_governance/consultation_responses/cilex_submission_-_lsb_igr_review_-_final.pdf?la=en

- 7.2. In recent years CILEx has begun to establish virtual Specialist Reference Groups (SRGs) of our 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).
- 7.3. In engaging with the LSB, we are happy to liaise with our SRGs to provide current practitioner thinking through surveys, promote research activity, or identify relevant practitioners for direct engagement.

For further details

Should you
require any
further
information,
please
contact;

Richard Doughty
Policy & Public Affairs Manager

richard.doughty@cilex.org.uk
01234 845710