



LEGAL SERVICES BOARD'S DRAFT BUSINESS PLAN 2019/20

Issued 27 February 2019

ICAEW welcomes the opportunity to respond to the Legal Services Board's consultation on its *Draft Business Plan 2019/20* published on 5 December 2018, a copy of which is available from this [link](#).

ICAEW is a world-leading professional body established under a Royal Charter to serve the public interest. In pursuit of its vision of a world of strong economies, ICAEW works with governments, regulators and businesses and it leads, connects, supports and regulates more than 152,000 chartered accountant members in over 160 countries. ICAEW members work in all types of private and public organisations, including public practice firms, and are trained to provide clarity and rigour and apply the highest professional, technical and ethical standards.

This response dated 21 January 2019 reflects the views of ICAEW as a regulator. ICAEW Professional Standards is the regulatory arm of ICAEW. Over the past 25 years, ICAEW has undertaken responsibilities as a regulator under statute in the areas of audit, insolvency, investment business and most recently Legal Services. In discharging our regulatory duties it is subject to oversight by the FRC's Conduct Committee, the Irish Auditing and Accounting Supervisory Authority (IAASA), the Insolvency Service, the FCA and the Legal Services Board.

Amongst ICAEW's regulatory responsibilities;

- It is the largest Recognised Supervisory Body (RSB) and Recognised Qualifying Body (RQB) for statutory audit in the UK, registering approximately 2,800 firms and 7,500 responsible individuals under the Companies Act 2006.
- It is the largest Prescribed Accountancy Body (PAB) and Recognised Accountancy Body (RAB) for statutory audit in Ireland, registering approximately 2,800 firms and 7,500 responsible individuals under the Republic of Ireland's Companies Act 2014.
- It is the largest single insolvency regulator in the UK licensing some 800 of the UK's 1,700 insolvency practitioners as a Recognised Professional Body (RPB).
- It is a Designated Professional Body (DPB) under the Financial Services and Markets Act 2000 (and previously a Recognised Professional Body under the Financial Services Act 1986) currently licensing approximately 2,200 firms to undertake exempt regulated activities under that Act.
- [It is a Supervisory Body recognised by OPBAS for the purposes of the Money Laundering Regulations 2007 dealing with approximately 13,000 member firms.]

It is designated an Approved Regulator and Licensing Authority for probate under the Legal Services Act 2007 (the Act) currently accrediting approximately 300 firms to undertake this reserved legal activity.

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INTRODUCTION

1. ICAEW welcomes the opportunity to respond to the Legal Services Board (LSB) consultation on its draft Business Plan 2019/20 and to work with it and other legal regulators to promote the public interest and increase access to legal services.
2. Whilst we are broadly supportive of the proposed policy objectives, in our opinion they need to reflect more closely all of the regulatory objectives prescribed in the Legal Services Act 2007 (the Act) such as, protection of the consumers and ensuring a strong independent diverse legal profession. They also need to be consistent with other LSB publications that relate specifically to the regulatory objectives.
3. In the framing of the plan and objectives we are sure that, as required under section 28 of the Act, the LSB have taken account of the eight statutory objectives. However the reference points and weighting of these objectives in setting the LSB's agenda is not manifestly clear, the main objectives cited being those of public and consumer interest and diversity.
4. Furthermore, whilst the LSB published a paper in June 2017 which explained the LSB's view of what each regulatory objective means for the LSB and how it will interpret them when exercising its regulatory functions, the explanation in this 2017 paper does not appear to be entirely consistent with the draft Business Plan 2019/20.
5. For example, the 2017 paper stated:

"The regulatory objectives can overlap and conflict with each other and they are not set out in any hierarchy in the Act. Whilst this paper considers each objective in its own right, what will be required in practice is for the impact of a particular issue on each objective to be assessed and then balanced against the impact on other objectives."
6. When formulating the draft Business Plan 2019/20 the LSB does not appear to have done this.
7. A further example is the five-year policy objective for the LSB to be perceived as being at the forefront of enhancing public legal education which clearly promotes the regulatory objective to *"increase public understanding of the citizen's legal rights and duties."* Again, however, this 5-year objectives does not take account of the LSB's view in 2017 of what this regulatory objective means and how it should be interpreted when the LSB exercises its regulatory functions. The 2017 paper stated:
8. *"The duty is to "increase" understanding, which suggests the need for positive, ongoing action. We recognise that there are many other players who have more resources and are perhaps better placed than the LSB to directly increase public understanding of legal rights and duties. However, the LSB can contribute to increased consumer understanding less directly. An example is through research activity (eg, examining the existing levels of consumer knowledge and empowerment and measuring progress) and through taking part in wider discussions on how public legal education and information can be used to encourage approved regulators and legal services providers to make information available to consumers in clear and accessible formats. Beyond this, the scope of our statutory powers limit our practical ability to pursue this objective."*
9. Yet, this 5-year objective states: *"We know that there are a considerable number of organisations that have been active for many years in promoting PLE. We want to work in partnership with others on PLE to help improve access to justice"* Therefore again this does not appear to be consistent with the 2017 paper as the LSB is now intending to take more direct action by working in partnership with organisations that promote public legal education.

10. We believe therefore, that for the LSB to have a strong context for its business programme it needs to be much more consistent in its interpretation and approach to the regulatory objectives and clearer on what its plan and objectives are based.
11. Furthermore, in the light of the current regulatory burdens being placed on frontline regulators and those they regulate which are being exacerbated by the pace of change and current economic uncertainty; we would urge the LSB to ensure that any actions considered following the LSB's review of current continuing professional development (CPD) requirements take account of these matters and are proportionate; risk based; and take account of the regulatory objectives, better regulation principles, best regulatory practice and the diversity of approved regulators.
12. ICAEW is also of the opinion that, in the light of its concerns raised in our response to the LSB's consultation on the proposed new Internal Governance Rules (IGR) (some of which are shared by other approved regulators) more detailed dialogue is needed to discuss these concerns before the LSB finalises and implements the new IGR.
13. Finally, in relation to the regulatory objective of increasing access to justice, in addition to enhancing public legal education, the LSB should consider taking a bigger, more proactive role in scrutinising the current provision and breadth of legal services and consider ways to counteract the growth of 'advice deserts' and the disappearance of lawyers qualified to provide specialist legal support to the most vulnerable. An obvious starting point is the provision and scope of professional legal education.

RESPONSES TO SPECIFIC QUESTIONS

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

14. In our opinion the LSB has identified the most relevant current developments in its external operating environment to enable it to ascertain whether any changes were needed to its three strategic objectives of:
 - Promoting the public interest through ensuring independent, effective and proportionate regulation.
 - Making it easier for all consumers to access the services they need and get redress.
 - Increasing innovation, growth and the diversity of services and providers.
15. We also agree the range of areas in its operating environment identified by the LSB and the scope of relevant research, evidence and issues relating to these areas considered by it appear appropriate and sufficient to ascertain whether the LSB needed to make any changes to its three strategic objectives and we concur with its decision not to make any changes to these objectives.

Question 2: What are your views on our proposed five-year policy objectives? And

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?

16. Whilst we also agree that the LSB's proposed new five-year policy objectives align well to the above strategic objectives and their achievement should articulate key markers of success for delivering them, we have the following comments to make regarding matters such as priorities, regulatory burden and scope:

Strategic Objective 1:

17. We note from the business plan that in order to achieve strategic objective 1 the LSB has set as a priority a review, with presumably the intent for reform, of the current continuing professional development (CPD) requirements of frontline regulators. Whilst we agree it is important for regulators to ensure that the people they regulate remain competent throughout their careers it is unclear on what basis the LSB has set this as a priority.
18. The consultation document does not appear to provide any evidence that current arrangements are inadequate, but merely states that: *"The regulators use a range of approaches to monitor these different aspects of quality. We have noted that, unlike other professional services environments, eg healthcare, there is no regular assessment of practitioners during their careers beyond requirements on continuing professional development. Particularly in the wake of QASA no longer being pursued, we consider the time is right to look again at this issue from first principle."*
19. We understand that often consumers are not able to assess the technical quality of work. However this rather depends on the type of services being provided and the type of consumer using them. Therefore, in the light of the current regulatory burdens being imposed on frontline regulators and those they regulate which are being exacerbated by the pace of change and current economic uncertainty, we urge the LSB to ensure that the requirements of this review take these matters into consideration. Any resulting requirements, if there are any, should be proportionate, risk based, and take account of the regulatory objectives, better regulation principles, best regulatory practice and the diversity of approved regulators.
20. The above comments also echo the comments made by ICAEW in its response to the LSB's consultation on the LSB's proposed new Internal Governance Rules (IGR) (a further work package under this strategic objective). Most particularly the decision taken by the LSB to produce prescriptive rules, and even more prescriptive guidance in the IGR; and the appearance that the rules strive for independence above all else and therefore give insufficient weight to the other regulatory objectives under the Act.
21. As the implementation of the revised IGR is a further work package under this strategic objectives and in light of the concerns ICAEW has expressed about the current proposed rules and guidance (many of which we understand are also shared by other approved regulators) we would also request that, before the IGR are finalised, the LSB engages in further discussions with frontline regulators about their concerns

Strategic objectives 2:

22. We welcome and commend the objective to make it easier for all consumers to access the services they need and agree that a key marker in assessing this is the policy objective that the LSB is perceived as being at the forefront of enhancing public legal education.
23. We also welcome the opportunity to advance this objective by progressing our CMA Action Plan and we are currently consulting on our Draft Guide to Best Practice on transparency of pricing and services, a key part of this action plan.
24. However, as outlined in the introduction, we question whether the intended direct action outlined in the draft Business Plan in relation to the 5-year objective is entirely consistent with the LSB's 2017 Paper on the regulatory objectives.
25. Furthermore, in the light of the reduction to legal aid; the recent regulatory changes made by the SRA relating to the SQE; and a recent publication by the LSCP on the growing problem of "advice deserts" and the lack of lawyers qualified to provide specialist legal support to the most vulnerable¹; we question the scope of this 5-year objective and whether it should be

¹ LSCP Chair's Blog: Disappearing lawyers – Are advice deserts stoppable? 14 February 2019 by Cathy Gallagher

expanded to ensure that the LSB is at the forefront of professional legal education in addition to public legal education in order to ensure greater access to legal services by the consumer.

26. The LSCP points to the publication by the Ministry of Justice of a review of the effect of the major changes to legal aid following the passing of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LAPSO) which shows that the impact of these changes are most noticeable in areas of housing, debt, social security benefits, family, employment and immigration. It is also clear that provision of services in these areas are not only being reduced by lack of public funding but also lack of experienced lawyers.
27. The LSCP is therefore urging the MoJ and regulators to address the risk of developing a shortfall of practitioners qualified in these areas by reviewing the education and training of the upcoming legal generation.
28. The recent approval by the LSB of the SRA's changes to its regulations to facilitate the introduction of the new Solicitors Qualifying Examination (SQE) does not appear to take account of the problems caused by the reduction in legal aid and the likely reduction of lawyers qualified to provide specialist legal support to the most vulnerable, particularly in the areas of welfare law.
29. The Solicitors Legal Practice Course (LPC) which will be replaced in 2021 by the SQE currently requires students to study for and pass assessments in three elective subjects in addition to the compulsory core subjects of business law and practice, property law and practice and litigation. Course providers of the LPC have flexibility in the optional elective subjects that they offer to their students and are therefore able to offer electives suitable to students wishing to work in all types of firms. For example, students that will be working for one of the top city law firms are able to study elective subjects such as debt and equity finance and mergers and acquisitions; and students who wish to practice in 'high street' firms are able to study elective subjects in, for example, housing, family, employment and immigration.
30. The current draft assessment specification for the SQE does not appear to have a requirement to be assessed in elective legal knowledge subjects, only the functioning legal knowledge subjects which do include the above type of 'high street' services.
31. Whilst it has been suggested that course providers may well continue to provide training in additional subjects; as the enrolment on such courses will not be a requirement of qualification as a solicitor, uptake is only likely to be by students whose training is being paid for by large firms and therefore only in subjects relating to the services such firms provide. This is therefore likely to lead to a reduction in solicitors qualified to offer 'high street' services.
32. We understand that other legal regulators, in their response to last year's consultation on the LSB's business plan, requested that you develop a policy view on changes to legal aid and/or have a greater focus on this in your work. We also note and understand your response that "how government chooses to allocate public money is ultimately a question for it and Parliament." However, your response also states that unmet legal need among individuals and small businesses is a key concern for you and that your re-run of the legal needs survey in 2018/19 will allow you to assess changes in the use of legal services including legal aid.
33. However in addition to simply conducting and publishing more research, we would urge the LSB to take a bigger, more proactive role in scrutinising the current provision and breadth of legal services in addition to enhancing public legal education and consider ways to counteract the growth of 'advice deserts' and the disappearance of lawyers qualified to provide specialist legal support to the most vulnerable. An obvious starting point is the provision and scope of professional legal education.

Strategic objectives 3:

34. ICAEW is supportive of the LSB's objective to increase innovation, growth and the diversity of services and providers and agree that this will increase access to legal services. We therefore look forward to reading the collection of papers the LSB is commissioning in this area and taking part in discussions and debates to consider the regulatory implications of developments in technology in legal services.
35. We are also grateful for the close liaison with the LSB and MoJ the UK leaves the European Union, to ensure as smooth a transition as possible for the public, for consumers and for legal services providers.

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

36. In the light of our response to the LSB's consultation on its proposed new IGRs and the concerns that ICAEW has raised (many of which, we understand, are shared by a number of other respondents) we are of the opinion that more detailed dialogue is required to discuss these concerns before the LSB finalises and implements its new IGRs.
37. With regard to joint working, ICAEW is happy to share the knowledge and experience it has gained regarding preparation for Brexit acquired in relation to the other professional services that ICAEW regulates such as audit.

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

38. We find it pertinent that this question has been based around the requirements of the Equalities Act. We have indicated above that the eight statutory objectives require a closer analysis, and we believe in drilling down on the diversity requirement in section 1 of the Legal Services Act the relevance and scope of the diversity objectives (contrary to the view expressed in the Vision paper) would be much wider than the ten protected characteristics within the Equalities Act.
39. We believe for example the diversity objective extends to the type of legal service provider in the market place, be they sole practitioner, small or large firm, and provider only of legal services versus a multi-disciplinary practice. The initiatives set out in the Business Plan on the face of it do address the Equalities Act issues, but we are not so clear as to how they play into the different type of legal service provider. Regulation and guidance if not thought through in terms of ripple effect into other industries characterised by the multi-disciplinary practice, and potentially excessively burdensome on the sole practitioner are all part of the proportionality the board needs to exercise in its deliberations and directions as part of encouraging rather than suffocating an emerging mix of market.