



## **LEGAL SERVICES BOARD CONSULTATION DRAFT: STRATEGIC PLAN 2015-18 AND BUSINESS PLAN 2015/16**

ICAEW welcomes the opportunity to comment on the *Draft: Strategic Plan 2015-18 and Business Plan 2015/16* published by the Legal Services Board on 10 December 2014, a copy of which is available from this [link](#)

This response of 18 February 2015 has been prepared on behalf of ICAEW by the Business Law Committee which includes representatives from public practice and the business community. The Committee is responsible for ICAEW policy on business law issues and related submissions to legislators, regulators and other external bodies.

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## Introduction

1. We welcome the chance to comment on the Legal Services Board's (LSB) *Draft: Strategic Plan 2015-2018 and Business Plan 2015/16*. We are responding on behalf of our members not just where they provide reserved or unreserved legal activities regulated by ourselves or other regulators, but also as consumers of legal services.
2. We agree with the proposed structure of the LSB's *Strategic Plan*, with its two themes of breaking down regulatory barriers (Theme A) and enabling the need for legal services to be met more effectively (Theme B). We also welcome the LSB's intention to drive up regulatory performance, evaluate the market and make statutory decisions, as well as continue with a research programme to enable it to fully appreciate the challenges faced by all providers, regulators and consumers of legal services. However, we are concerned that this does not adequately address some very apparent concerns over consumer detriment in some sectors of the market.

## Prioritisation of Resources

3. We are concerned that this ambitious programme has not been matched by adequate consideration of the need for prioritisation, particularly in the absence of an increase in resources. We note that a number of projects are being carried forward from previous years (see paragraph 85) and are in addition to the work the LSB is required to do by statute and in accordance with its role as an oversight regulator.
4. In these circumstances, it will be necessary for the LSB to make careful judgements on its priorities, in its work in promoting the regulatory objectives. We are unclear how the draft plan makes allowance for prioritisation in these circumstances. In particular, we note that:
  - The draft plan makes a distinction between "regulated" and "unregulated" legal services, but without any recognition of the fact that many activities which come within the Legal Services Act's (the 'Act') definition of legal activities are in fact subject to adequate and effective regulation outside the structure put in place by the Act.
  - Although it is correct to say that the LSB cannot require regulations or rules to be imposed on the provision of unregulated legal activities, we suggest that it would be well within their powers to enforce the civil and criminal law against legal services providers who cause real detriment to their clients and other consumers, and have no regulatory authority willing and/or able to take action against them.

We suggest that it is a questionable use of the LSB's resources to spend more than the minimum necessary on the first of these two categories, or to spend too little on the second.

5. The plan notes that the LSB's activities in undertaking Theme B will include helping consumers to make informed decisions as well as protecting consumers and the public interest. We would, however, caution against the LSB concluding that the only 'informed' decision a consumer could make was to use those providers of legal services regulated under the Act or that regulation under the Act was the only way to protect consumers and the public interest. We would suggest, for example, that it would be a quite unnecessary distortion of the market if consumers were, for example, dissuaded from seeking will writing services from a member of a reputable will writing professional body, or advice on company law or tax requirements from a chartered accountant. These two provide only the most obvious of many similar areas of legal service provision, which are adequately regulated outside the limits of regulation under the Act.

## **Addressing Otherwise Unaddressed Consumer Detriment**

6. Rather we suggest that the LSB should provide a clear focus in addressing those providers of legal services who are not covered by any reputable regulatory provision and where real consumer prejudice has resulted from very poor service. Such action could be taken by:
  - Ensuring that criminal action is seriously considered by the Crown Prosecution Service, and taken where it comes within their Code of Practice, in those cases where reserved legal activities have been undertaken by those who are not authorised to provide them, and serious detriment has resulted to clients, third parties and the administration of justice; and
  - Promoting and encouraging civil action against unregulated legal service providers, by individual consumers or their representatives, where these are not compliant with trading standards requirements.

## **The Review of Regulatory Standards**

7. The plan includes a proposal for a complete review of the regulatory standards of the eleven approved regulators but does not say why such a comprehensive review is necessary. In many cases the regulatory standards of the approved regulators have only been approved by the LSB within the last few years (or in the case of ICAEW within the last few months). The LSB must, of course, review regulatory standards as necessary, but this should be measured and targeted at need.
8. The plan also notes that the LSB may consider developing an 'ideal' set of regulatory arrangements (paragraph 79) but does not specify what such an ideal will be based upon. We are concerned that 'a one size fits all' approach is not appropriate, nor would it comply with the LSB's obligation to have regard to the need for a proportionate and targeted approach.