

Sent by email only to contactus@barstandardsboard.org.uk



17 December 2018

Dear Sir/Madam

Consultation on the Bar Standards Board's strategic programme for 2019-22

The Legal Services Consumer Panel (the Panel) welcomes the opportunity to respond to the Bar Standards Board's (BSB) consultation on its strategic programme for 2019-22. Please find below the Panel's answers to the consultation questions.

Q1: Do you agree that the three proposed risk themes we have identified for the 2019 Risk Outlook are the right areas on which we should focus our regulatory attention over the next three years?

Q2: Do you have any additional information or evidence, which we may have overlooked when identifying the three proposed risk themes, either about the three identified themes or about other risk areas? If so, please indicate what this is so that we can contact you if necessary.

The Panel agrees with the three risk themes identified by the BSB in the consultation document: working cultures and environment, which inhibit an independent, strong, diverse and effective profession, the opportunities and threats of innovation, and affordability and lack of legal knowledge which threatens access to justice.

Regarding question 2, we attach a link [here](#) to our 2018 Tracker Survey that contains some interesting evidence relevant to a number of these issues, including the risk to access to justice arising from the huge drop in the use of legal aid.

Given the overlap between the risk themes and the strategic aims, we will cover in detail the latter. We have tailored our response to mirror the structure of the consultation document and have focused on commenting on each strategic aim.

Q3: Do you agree that the three proposed aims for the 2019-22 BSB Strategic Plan are correct? If not, what do you think our strategic aims should be?

Strategic Aim 1 - Delivering risk-based, targeted and effective regulation.

We welcome the BSB's strategic aim of efficient delivery of its core regulatory activities and of high quality and agile regulation. One of the activities proposed by the BSB under this strategic aim is improving the regulator's communication with the public. We would encourage the BSB to go a step further and consider how barristers could improve their communication with consumers as well.

From previous engagements with regulators and consumer groups, and from the joint regulators and the Panel's research,¹ and the Legal Services Board research (LSB)² we know that legal services professionals need effective and appropriate interpersonal skills when delivering services to consumers, especially vulnerable ones. We would like to encourage the BSB to focus on these skills for barristers during their training for the Bar and the Continuing Professional Development programme. Another aspect for the BSB to consider is how to retain the skills in areas where experience is reportedly reducing significantly, such as social welfare law and crime, due in part to reductions in legal aid.

The BSB identified innovation and disruption in the legal services market as the second risk theme (though also appropriately identifying this as an opportunity). In our 2020 Legal Services report,³ the Panel said that regulators should be aware and equipped to deal with the risks associated with innovation. The Panel would urge regulators to consider whether their regulatory frameworks are fit for purpose when considering emerging innovation and technology. We are keen to see regulation support innovation and protect consumers from harm. As part of this work, we would recommend that the BSB undertakes research to inform its thinking. We support the regulator's aim to be mindful of the "digital inclusion challenge" and consider the needs of vulnerable consumers who may need new ways to access legal services in a way which is affordable for example, but who may not always be able to take advantage of the latest technological developments.

We recognise there is a need for the legal regulators to develop understanding of how technology and innovation are changing the delivery of legal services with the potential to improve access to justice. In our 2020 report, we also said that innovation has the potential to create new markets, cheaper services, increase transparency, empower consumers, and enhance access to justice. The Panel believes that the BSB can facilitate innovation through flexible regulation balanced by appropriate consumer protection. The BSB should consider technology's effects on consumers in general, but also more specifically, on those who are vulnerable due to low income, physical or mental disabilities, or low access or ability to use technology.

Strategic Aim 2 - Encouraging an independent, strong, diverse and effective legal profession.

The Panel is supportive of the risk theme and strategic aim that encourages a diverse and effective profession.

Of particular importance, given the continuing evidence of unequal progression within the profession, are the aspects of discrimination and harassment that limit career progression for Black and Minority Ethnic (BAME) individuals and those from a lower socio-economic background. The BSB should also address the barriers to entry to the profession for students from those communities, identified by its research⁴. We would also encourage the BSB to consider the barriers faced by disabled students and those from the LGBT community from joining and progressing within the profession. We would encourage the BSB to develop clear plans to address the evidence from the research outlined in the consultation document.

¹ Research into Client Care Letters, Qualitative research report for the Legal Services Consumer Panel, 2016.

² Experiences of consumers in vulnerable circumstances (mental health and dementia) with different legal services providers, 2017.

³ 2020 Legal Services, How regulators should prepare for the future, Legal Services Consumer Panel, 2014.

⁴ Barriers to Training for the Bar, Bar Standards Board, 2017.

Strategic Aim 3 - Advancing access to justice in a changing market.

We are pleased to see that the BSB has decided to focus on access to justice as one of its strategic aims over the next three years. Evidence shows that consumers in England and Wales, since the legal aid reductions, rely more on private funding than they did in previous years. Our research⁵ shows that in 2018, 73% of consumers rely on private funding compared to 66% in 2017 and 61% in 2015. Use of legal aid funding has decreased from 5% in 2015 to 2% in 2018.

Nevertheless, access to justice goes beyond accessing (legal aid) funds. Consumers need access to information on prices, services, and quality in order to be confident to use the services of legal professionals and to make the best decisions for their needs. Consumers' perception that legal services are unaffordable is a barrier, and this is reinforced by a lack of access to up-front information on prices. The Panel is disappointed to see that the BSB does not stress the need for greater transparency about information on costs, quality, and services further to the Competition and Markets Authority's findings in their study.⁶

We are aware that the BSB will soon submit new rules around transparency for the LSB's approval. In our response to that consultation, we noted that the proposals to date are unlikely to go far enough. We hope and expect that the BSB will appreciate the links between these issues and its priority theme of access to justice, and demonstrate how it will monitor and supervise this important aspect of pricing information from the perspective of different groups of consumers.

We would be very happy to meet and discuss any aspect of this response in further detail. Please contact Lau Ciocan for further queries at lau.ciocan@legalservicesconsumerpanel.org.uk.

Yours sincerely



Sarah Chambers
Chair
Legal Services Consumer Panel

⁵ Tracker Survey, Legal Services Consumer Panel, 2018.

⁶ Legal services market study, The Competition and Markets Authority, 2016.