



Policy Team
Legal Services Board
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Sent by email only to consultations@legalservicesboard.org.uk

4 February 2022

Dear Policy Team,

Consultation: Draft Business Plan 2022/23

The Legal Services Consumer Panel (the Panel) welcomes the opportunity to respond to the Legal Services Board's (LSB) draft Business Plan for 2022/23.

The Panel's response is confined to the questions asked in the document. We hope you find our comments useful, but more importantly, we hope that they influence the final draft.

Reflections on the consultation questions

Q1 - Do you agree with our proposed workstreams for the 2022/23 business plan?

Yes, the Panel is of the view that the LSB has struck the right balance between continuation of previous work strands and new workstreams. We have highlighted areas we are particularly keen to see progress in, with some suggestions for ensuring that these areas deliver good consumer outcomes.

Financial protection arrangements: This workstream proposes to focus on ensuring that the right level of consumer protection exists, and that costs to professionals are at an affordable and sustainable level. The Panel is supportive of this work, in so far as this review is grounded in the harm Professional Indemnity Insurance is designed to prevent and/or mitigate. The LSB should ensure that any proposed changes do not reduce consumer protection without any corresponding benefits, and perhaps more importantly, unintended consequences are guarded against.

It is important to reiterate what PII requirements seek to address: that appropriate insurance and compensation arrangements exist to protect consumers from identifiable financial loss due to dishonesty, fraud, negligence, or failure to account. This need for consumer protection, for what are mostly wrongdoings by providers,

must remain a priority as the LSB considers the cost of PII arrangements. It is also important to stress that the cost of protection must be considered alongside the wider sectoral benefits, chiefly, confidence in the rule of law.

Although the Panel fully supports the LSB's plans to review the cost of PII, we believe it would be a lost opportunity if this work fails to consider some of the problems the Panel has highlighted over the years.

As far back as 2013, the Panel highlighted gaps and inconsistencies in financial arrangements across the regulatory landscape (both PII and Compensation Fund arrangements). This led to a recommendation which asked the Legal Services Board (LSB) and others to work towards a centralised protection arrangement for all regulated legal advice providers. This recommendation still stands. We continue to observe each regulator assessing their PII arrangements in silos, without any overarching framework or principles set by the oversight regulator. Consumer protection in this most important area is therefore fragmented and inconsistent. Incremental changes over time, by different Approved Regulators, compounded by the ease with which providers can now switch between regulators, has arguably exacerbated the situation we highlighted years ago.

It is the responsibility of the LSB and the Approved Regulators to ensure that consumer protection does not fall between the gaps of regulatory boundaries. The risk of financial loss to consumers is simply too high not to safeguard against it collectively. And the manifestation of this risk is likely to weaken consumer trust and have harmful impacts on the credibility of the legal profession. Therefore, it is right that the LSB is taking the lead as the oversight regulator. We encourage the LSB to ensure that this work is sufficiently consumer focused. The time is right for the sector to revisit our call for a single scheme for improved consumer protection and outcomes. We accept that this may take some time. However, in the interim the LSB should establish or broker a set of principles that bind the regulators together, with a duty to avoid consumer confusion and minimise fragmentation and gaps in protection.

Consumer redress: The Panel fully supports the strands of work around consumer redress. The monitoring of the Legal Ombudsman's performance will continue to be crucially important, as well as the consideration of options for reforms.

The Panel also supports the work to explore opportunities to expand consumer redress for those who use unregulated legal services. The Panel has long advocated for this, and we believe the LSB's starting point of understanding the unregulated landscape, in depth, is precisely what is needed.

We support the proposed work strand around first-tier complaint handling. We have previously said that the signposting of consumers may not be working effectively. We have raised questions about the appropriateness of embedding the information requirement on how consumers should make a complaint in the Client Care Letter, given evidence¹ that consumers do not recall seeing it.

¹Research into Client Care Letters 2016

Equally concerning are the number of 'silent sufferers' in the legal services market. We define silent sufferers as those who received legal services, were dissatisfied, but did not complain. Over the last three years the figures from our Tracker Survey consistently show this to be in the region of 35%, higher than other sectors (around 25%). The Panel is keen to see the LSB explore this issue further as part of this project. The LSB could use the public panel to gain better insight into why dissatisfied consumers do not complain.

Disciplinary and enforcement processes: This is an important area that would benefit from clear and consistent principles across all the regulators.

Q2 – Are there any areas missing from our proposed business plan 2022/23 that you believe should be included?

No. We accept that the LSB must prioritise its resources and pace its projects. We believe the work-strands chosen can have a positive impact, if they are sufficiently focused on delivering good consumer outcomes.

Q3 – Do you agree with our view that 2022/23 is not the right time to undertake a statutory review of the reserved legal activities?

Reluctantly, yes. We believe that pressing matters such as PII and Consumer Redress should take precedence over reserved legal activities at this time. More importantly, it is perfectly understandable that the LSB wants to review the unregulated market first, so that this work informs the work around reserved legal activities. That said, we do believe that the work on reserved legal activities is crucially important and should be prioritised in the life cycle of this current strategy.

Q4 – Do you have any views on developments in litigation funding?

The Panel supports group or third-party litigation funding in principle because it can address gaps in access to justice. It can be particularly useful in areas where consumers have suffered harm but have little or no incentive to bring individual claims because the financial loss is low, amongst other reasons. We also support such funding in jurisdictions where the framework for bringing actions can be cumbersome. That said, there should be checks and balances and caps on fees from damages if necessary. We look forward to the LSB's future exploration of this area.

Q5 – Do you have any comments on our proposed market intelligence work? Is there anything missing that you think we should focus on?

Although the LSB notes the importance of gathering market intelligence from far and wide, touching on consumer research and diversity embedded in current data. We remain concerned, as noted in previous years, that there is not enough engagement and activities done directly to collect more information regarding those who may be suffering from the impact of unmet legal needs, Covid-19, or indeed those who are generally marginalised, which is a subset of the public who may be more difficult to engage. One important way to do this may be to open lines of communication with their representatives who deal with large groups of these people. The Panel would

like to see increased pro-activeness around consulting and engaging with free advice groups, charities, local authorities, community groups and others in order to collect more information about these hard-to-reach groups. We are not convinced that enough is currently being done to understand and reflect the disparate needs of these groups.

With regards to diversity, there is evidently more work to be done. We would like to see a clearer and tighter focus on the solutions and if possible, a revaluation of the current diversity outcomes to assess whether they are robust enough or continue to be fit for purpose. We are simply not convinced that the current outcomes the regulators are measured against is fit for purpose.

Equally important, since 2016, the Consumer Panel has highlighted disparities between how ethnic minorities are experiencing the legal services market, for example ethnic minority consumers report more dissatisfaction with their service than people from White backgrounds. And yet to date none of the regulators have done further work to explore our findings or the root causes of the disparities.

Q6 – Do you have any comments on our proposed budget for 2022/23?

The Panel considers the LSB's budget to be reasonable. The Panel welcomes the proposals to focus more funding on consumer research and we will particularly suggest more collaboration with regulators to grow the evidence base.

Q7 – Do you have any comments on equality issues which, in your view/experience, may arise from our proposed business plan for 2022/23?

The Panel will be in a better position to feed in comments on equality as the LSB develops each work-strand in more detail. We look forward to closer engagement in the areas of work noted above.

Q8 – Are there any wider equality issues and interventions that you wish to make us aware of?

Please see our response to question 5 above.

The Panel looks forward to engaging in all the work-stream outlined in this consultation document, please contact Lola Bello, Consumer Panel Manager, (Lola.bello@legalservicesconsumerpanel.org.uk) with any questions pertaining to this response.

Yours sincerely,



Sarah Chambers
Chair, Legal Services Consumer Panel