



Bar Council response to the Legal Services Board's Draft Business Plan 2019/20 consultation paper

1. This is the response of the General Council of the Bar of England and Wales (the Bar Council) to Legal Services Board's (LSB) consultation paper on their Draft Business Plan 2019/20.¹
2. The Bar Council represents over 16,000 barristers in England and Wales. It promotes the Bar's high-quality specialist advocacy and advisory services; fair access to justice for all; the highest standards of ethics, equality and diversity across the profession; and the development of business opportunities for barristers at home and abroad.
3. A strong and independent Bar exists to serve the public and is crucial to the administration of justice. As specialist, independent advocates, barristers enable people to uphold their legal rights and duties, often acting on behalf of the most vulnerable members of society. The Bar makes a vital contribution to the efficient operation of criminal and civil courts. It provides a pool of talented men and women from increasingly diverse backgrounds from which a significant proportion of the judiciary is drawn, on whose independence the Rule of Law and our democratic way of life depend. The Bar Council is the Approved Regulator for the Bar of England and Wales. It discharges its regulatory functions through the independent Bar Standards Board (BSB.)

Q1 – Have we identified the most relevant developments in our external operating environment?

4. Yes. The political, regulatory and market developments and market context are all currently relevant to the legal services sector. The financial pressures on the criminal justice system and civil legal aid are rightly recognised as factors.
5. We would add the LSB's proposed Internal Governance Rules (IGR) as a regulatory development that has the potential, if implemented in their current form, to consume resources of the Approved Regulators and frontline regulators and impact

¹[LSB draft Business Plan 2019/20](#)

their ability to carry out planned activities. The LSB's recognition of their impact in this regard is important.

Q2 – What are your views on our proposed five-year policy objectives?

Five-year policy objective: The regulators have appropriate frameworks for continuing assurance of professional competence throughout the careers of the people they regulate

6. The Bar Council is committed to ensuring that barristers meet the high standards expected of them by their clients and the courts. This is currently achieved by a combination of regulation and supportive representative activities and is underpinned by the professionalism and commitment to the administration of justice that defines the majority of those practising at the Bar.

7. In terms of regulation, all barristers must comply with the BSB's Handbook which details the code of conduct as well as the qualification, practise and disciplinary rules. The BSB requires new practitioners to complete the New Practitioners' Programme in their first three years of practice and to comply with the Established Practitioners' Programme thereafter. The latter was recently introduced, replacing the previous continuous professional development system which included mandatory accredited training. The Established Practitioners' Programme by contrast allows barristers to determine their own training needs, with spot checks from the BSB to ensure compliance. The BSB has defined the standards expected for new practitioners in their Professional Statement for Barristers. In addition, chambers are supervised by the BSB according to their risk and impact. This ensures that chambers are run competently and in compliance with the BSB Handbook. The BSB's disciplinary system assesses barristers who are accused of misconduct and disciplines them accordingly with disbarment as the ultimate sanction.

8. Barristers wishing to operate at a certain level or to do certain types of work often have to become accredited to do so. For example, to become a Queen's Counsel a barrister must be independently assessed by the independent Queen's Counsel Selection Panel. Similarly, barristers wishing to join specialist panels such as the Treasury Counsel or the Attorney General's civil panel counsel, must meet a certain standard, as do barristers wishing to prosecute on behalf of the Crown Prosecution Service (they have 4 levels of panel). Barristers wanting to practice in the youth courts must register with the BSB during the authorisation to practice process before undertaking such work.

9. The Bar Council runs training courses on a number of practice related matters such as Public Access work, litigation, mediation, Anti-Money Laundering and Terrorist Financing training and quality and diversity. It also delivers an ethical

enquiries service (fielding both telephone and written queries) to assist barristers in their compliance with the BSB's Handbook. The Bar Council is involved in the delivery of the Advocacy and Vulnerable course for all criminal barristers, aimed at improving standards of cross examination of children and vulnerable witnesses. The Family Bar is actively seeking to roll out this training amongst barristers practicing family law. The Bar Council sought to mirror the CPS's panel scheme for criminal defence barristers undertaking legal aid funded work, to certify their competence to do the work. However, the Ministry of Justice has not yet responded to this proposal, hence it has not to date progressed further. These measures help ensure high standards are maintained amongst barristers and demonstrate the Bar Council's commitment to maintaining high standards. The fact that the Advocacy and Vulnerable course has been rolled out nationwide by barrister trainers working on a voluntary basis demonstrates the Bar's commitment to peer to peer development and upholding the high professional standards and reputation of the whole profession.

10. Care must be taken in the area of quality assurance as the now defunct Quality Assurance for Advocates (QASA) scheme illustrates. QASA failed because it was top down, bureaucratic, narrow in scope and made judges the gatekeepers of an advocate's accreditation, setting up ethical difficulties for barristers who may have felt constrained in their role before the court if the presiding judge were assessing their performance. Recent reported allegations of judicial bullying by a small number of judges make this concern all the more pertinent.

11. It is clear that any quality assurance measures must be very carefully designed by those who understand what is being measured but only after it has been objectively demonstrated that there is a need for additional assurance. We are in agreement with the BSB that the current systems in place for barristers, summarised above, are sufficient to provide assurance. The BSB's risk-based approach is proportionate and cost effective. We do not see a need for additional assurance mechanisms at this time.

Five-year policy objective: The LSB is perceived as being at the forefront of enhancing public legal education

12. We fully support the rationale that public legal education (PLE) helps citizens better understand when a legal issue arises and to seek legal assistance where required as well as helping them understand their rights and duties. We share the LSB's aim of increasing the public's legal capability and run a number of programmes to achieve this aim. However, the LSB is correct in recognising that a lot of organisations do a lot of work on PLE and we therefore agree with them that they must first understand the context and assess whether there are any gaps or deficiencies before planning any action. There is a risk, in this crowded market, of duplication, that would naturally be inappropriate use of the profession's funds. To avoid this occurring, we would be very happy to explain to the LSB the work that we do in this area.

13. We also believe that the Bar Council and other representative bodies are uniquely placed to deliver PLE given their established links to third sector organisations that work in this area and ready access to legal professionals, who in the case of barristers, mainly deliver the training on a pro bono basis and speak with authority on the subject.

14. We are not clear on what the LSB means when it suggests “there may be a role for the LSB in encouraging the frontline regulators to simplify their public facing processes”.² Clarification on this point would be helpful.

Five-year policy objective: Access to legal services is increased through the promotion of responsible technological innovation that carries public trust

15. New technologies carry with them the possibility of efficiencies and delivery of a better service to clients however they are not a panacea and have a cost in terms of financial investment and human resource commitment. The LSB’s 2018 research into this area is helpful and we would be keen to better understand the nature of the ethical concerns raised by barristers surveyed about using technology in legal services.

16. In areas where regulation is perceived by barristers as inhibiting the use of technology, it would be interesting to explore what action regulators might take to lower any barriers. However, it should be recognised that even in the absence of regulatory barriers (perceived or actual), there may be other factors that prevent barristers from using technology.

17. The follow up work the LSB is conducting with UCL is interesting and we will examine any papers when they are published.

Q3 – 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?

18. We would reiterate that we believe that ensuring independent, effective and proportionate regulation is at the core of what the LSB should be doing as the oversight regulator. Its regulatory performance work is key to this.

19. The LSB’s plans to review the BSB’s market transparency work is uncontentious.

20. In our recent response to the LSB’s consultation on the proposed IGR we made clear we thought the proposed rules were unnecessary, *ultra vires* and fail to cater for

² [LSB draft Business Plan 2019/20](#), p11

the widely differing governance arrangements and structures currently in place across the ten Approved Regulators. Additionally, it could be argued that in implementing such rule changes, the LSB would be interfering with the representative function of the AR, an action which is prohibited by the Legal Services Act 2007. As discussed in our consultation response, we firmly believe the proposed 6-month implementation period in which regulators and Approved Regulators are expected to comply with the new rules to be insufficient. We hope our concerns are taken into consideration and the compliance period extended.

21. If the LSB proceeds with its review of the Practising Certificate Fee approval process and s.51 permitted purpose non-regulatory expenditure, we wish at the outset to emphasise the importance of this funding to the delivery of activities by the Bar Council in the public interest. Examples include its law reform and PLE work as well as its delivery of ethical and practice management guidance to barristers and chambers.

22. We are not convinced, in the context of the work emanating from the Competition and Market Authority's recommendations, that the proposed "single digital register" of providers is necessary. The Bar Council already has its own register of barristers and a single register would to some degree duplicate this. We think the improvements made to the Legal Choices website and measures being undertaken by regulators and representative bodies are sufficient to enable consumers to make an informed choice about legal services. The BSB has already contributed a sizable sum to the reinvigoration of the Legal Choices Website and we would be cautious about drawing on more of the profession's money to fund another joint project, particularly if there is no clear need for it.

23. The proposed individual legal needs survey is helpful in providing an evidence base that can inform policies. The planned market evaluation exercise is similarly helpful.

Q4 – 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.

24. We are open to discussion with the LSB on potential areas for joint working.

Q5: Please provide comments regarding equality issues which, in your view/experience, may arise from our proposed business plan for 2019/20.

25. We are not aware of any equality issues arising from the plans.

Bar Council
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