



## **Bar Council response to the Legal Services Board's (LSB) consultation on its draft business plan for 2025-26**

1. This is the response of the General Council of the Bar of England and Wales (the Bar Council) to the LSB's consultation on its draft business plan for 2025-26.<sup>1</sup>
  
2. The Bar Council is the voice of the barrister profession in England and Wales. Our nearly 18,000 members – self-employed and employed barristers – make up a united Bar that aims to be strong, inclusive, independent and influential. As well as championing the rule of law and access to justice, we lead, represent and support the Bar in the public interest through:
  - Providing advice, guidance, services, training and events for our members to support career development and help maintain the highest standards of ethics and conduct
  - Inspiring and supporting the next generation of barristers from all backgrounds
  - Working to enhance diversity and inclusion at the Bar
  - Encouraging a positive culture where wellbeing is prioritised and people can thrive in their careers
  - Drawing on our members' expertise to influence policy and legislation that relates to the justice system and the rule of law
  - Sharing barristers' vital contributions to society with the public, media and policymakers
  - Developing career and business opportunities for barristers at home and abroad through promoting the Bar of England and Wales

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<sup>1</sup> <https://legalservicesboard.org.uk/wp-content/uploads/2024/12/Draft-Business-Plan-and-Consultation-Document-2025-26.pdf>

- Engaging with national Bars and international Bar associations to facilitate the exchange of knowledge and the development of legal links and legal business overseas

To ensure joined-up support, we work within the wider ecosystem of the Bar alongside the Inns, circuits and specialist Bar associations, as well as with the Institute of Barristers' Clerks and the Legal Practice Management Association.

3. As the General Council of the Bar, we are the approved regulator for all practising barristers in England and Wales. We delegate our statutory regulatory functions to the operationally independent Bar Standards Board (BSB) as required by the Legal Services Act 2007.

### **Overview**

4. We support the LSB's proposed regulatory oversight work in the 2025-26 business year. This includes things such as regulatory performance assessment, Office for Legal Complaints (OLC) oversight and statutory decision making. We think this is squarely within their role as the oversight regulator. We share the LSB's aim of ensuring that the regulators are performing efficiently and effectively. We also share their aim of ensuring that barristers maintain the highest ethical standards.

5. What we are not always supportive of is work that we consider to be non-essential, such as work on the unregulated sector and the legal sector strategy microsite, work that is duplicative (which can happen in the crowded space of equality, diversity and inclusion) and work that strays outside the LSB's remit. The LSB is funded via a levy on the profession and must keep its budget to acceptable levels and avoid incurring unnecessary costs that will be borne by the profession.

6. It is important that the LSB implements its work in a way that recognises the difference between the branches of the legal profession, the ways they operate and their risk profiles. In addition to this, there are differences within the professions. Barristers, for example can be employed, self-employed, or both. Some will do public access work whilst some will not, and a very small number will do work that falls within the money laundering regulations, whereas the majority do not. Regulation developed by the LSB, for example by way of policy statements, must therefore be flexible enough to allow the frontline regulators, in our case, the BSB, to

accommodate these differences within their rules. It has been helpful to see this approach employed in some of the recent policy statements. However, it is important for the LSB to maintain this approach in future work example, the professional ethics and rule of law (PERL) workstream.

## Questions

### **Q1 – Do you agree that our proposed workstreams for the 2025/26 business plan reflect the biggest challenges affecting the sector?**

7. We support the LSB's intention to focus on fewer areas in more depth. In past business plans, the LSB has been overly ambitious in the scope of its work. We support the renewed focus on the key regulatory oversight activities. For example, we are keen that they continue to monitor the BSB's progress in implementing the recommendations of the FieldFisher report.<sup>2</sup>

8. Also related to the LSB's regulatory oversight work is their role in assessing practising certificate fee (PCF) and budget applications. We would like to see them be more robust in their scrutiny of these applications. We have had serious concerns in recent years about year on year above inflation increases to the BSB's budget. As the LSB is aware, the BSB's budget is primarily funded through the PCF paid by practising barristers. BSB budget increases thereby have a direct impact on barristers and may also have an impact on consumers though an increase in barristers' fees. We strongly support the LSB's ambition of increasing transparency in regulatory costs with the aim of improving the regulators' accountability for costs. However, we would also like the LSB to exercise its role as arbiter of the PCF and budget application process more effectively. Since the implementation of the revised internal governance rules in 2019, our ability to influence the regulator's budget has been severely constrained. This makes it all the more important that the LSB fulfils this role.

9. In a similar vein, we also think there needs to be increased scrutiny of the OLC budget. Yet again, this year, a disproportionately large budget increase, of 10.2%, was proposed. We expressed our concern about this in our response to their

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<sup>2</sup> <https://www.barstandardsboard.org.uk/static/6845a7e5-3188-4c21-821fbb75d841e33c/Final-Report-publication-format-April-2024-11559042415-2.pdf>

recent budget and business plan consultation.<sup>3</sup> We noted the annual cost increase for them has generally been higher than UK CPI inflation rates in the period from 2019/2020 to 2023/2024 (with the exception of the 2021/2022 financial year).

10. When assessing the OLC's proposed budget, the LSB should be mindful of its impact on the PCF for authorised persons and assess whether the work being proposed is necessary and proportionate. In our response to the consultation exercise we raised concerns about the OLC publishing decisions in full. This is because it is resource intensive and of questionable utility for service users and providers.

11. We comment on the LSB's main areas of focus below:

#### Professional ethics

12. We note the LSB's plans to issue a consultation on this topic in coming weeks and we will respond to this in due course. We also look forward to continuing to engage with the Professional Ethics and Rule of Law (PERL) reference group.

13. We do not consider that direct or specific regulation is the most suitable tool for addressing all of the ethical concerns that have arisen in recent years. For example we consider that strategic litigation against public participation (SLAPPs) and Non-Disclosure Agreements (NDAs) are best addressed by Parliament through legislation. Of course, compliance with such legislation would thereafter form part of barristers' ongoing professional duties, hence the reference to 'direct or specific regulation'. However, those duties are already well provided for in the current regulatory structure.

14. On the issue of public confidence in lawyers' professional ethics, we are aware that some recent high profile cases where lawyers' compliance with their ethical codes have been called into question has the potential to damage public confidence. However, we have not seen evidence that public confidence has in fact been damaged. There is a risk that an unbalanced discourse on this issue will itself damage public confidence in legal professionals. To prevent this from happening, we

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<sup>3</sup> <https://www.barcouncil.org.uk/static/225e26e8-00e0-482f-b1b74de63d7294b1/Bar-Council-response-to-the-Legal-Ombudsman-business-plan-and-budget-consultation-202526.pdf>

think it is important to be specific about current ethical challenges and which professions they apply to, and to avoid the overstatement which was present in some of the public discussions in 2024.<sup>4</sup>

15. The Post Office Inquiry is still ongoing and the regulators will play their role in investigating and prosecuting any misconduct that comes to light as part of this process. This will also present an opportunity for learning, that should be capitalised on.

16. The Bar Council sees ethics as central to barristers' work and professional identity. We do a lot of work to support barristers to understand and comply with their ethical obligations. This includes the production and maintenance of an ethics guidance resource, the running of an enquiries service and delivery of training and education, such as by way of articles, guidance and regular seminars on ethics. Our impression, gained through the levels of engagement of barristers with our guidance and education resources and the enquiries services, is that the vast majority of barristers seek to uphold the highest ethical standards. That said, we acknowledge that there will be some who unintentionally, or exceptionally otherwise, fall below the standards required of them. Where this happens, the regulator will investigate and if necessary, initiate disciplinary proceedings.

17. More generally, the Bar Council always welcomes the ongoing development of the education of the Bar, including in particular pre-qualification and early years post-qualification training. The Bar Council looks forward to working closely with the BSB and other education stakeholders in continuing to emphasise not only the rules and regulations, but also the appropriate cultural approach to professional conduct.

### Equality, Diversity and Inclusion

18. The Bar Council is committed to supporting and improving Equality, Diversity and Inclusion (EDI) at the Bar and undertakes a wide range of initiatives<sup>5</sup>

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<sup>4</sup> <https://www.lawgazette.co.uk/news-focus/in-focus-mildly-ridiculous-lsb-chiefs-candid-verdict-on-the-state-of-legal-regulation/5118770.article>

<sup>5</sup> For a list of recent initiatives please see paragraphs 4 and 5 of the Bar Council's response to the BSB's consultation on the proposed amendments to the equality rules- <https://www.barcouncil.org.uk/static/6bd9c3b2-7f74-469a-95368aaf612db9c1/Bar-Council-proposed-response-to-BSB-equality-rules-consultation-November-2024.pdf>

in this area. We and the Bar groups and networks that we work alongside, have an in depth understanding of the challenges associated with delivering EDI and of effective strategies and we are best placed to implement EDI initiatives.

19. The LSB's plans with respect to EDI within the business plan are quite high level, so it is difficult to comment on them in much detail. We would like the LSB to use its regulatory performance assessment framework to ensure that the BSB enforces its current EDI rules.<sup>6</sup> We think this would go some way to improving diversity at the Bar.

20. We are not at all convinced that we need a whole new framework, including a new core duty, for EDI at this time, as was recently proposed by the BSB in their consultation (which ran from September to November 2024). At the time the proposals were published, our then Chair, Sam Townend KC, made the point that radical change is disruptive and may have unintended detrimental consequences.<sup>7</sup>

21. The same principle applies to the LSB's intention to consult on and then implement a new policy on EDI. We ask the LSB to present evidence to firstly justify any change to the regulatory framework and secondly to demonstrate what benefit any new intervention or initiative would deliver based on success elsewhere.

22. We are not sure what the anticipated benefit is of the LSB's plans to engage with stakeholders beyond the sector. We would like to see more information on who these stakeholders would be and the purpose of the engagement.

### Access to justice

23. Improving access to justice is one of the regulatory objectives. The Legal Services Act<sup>8</sup> provides that the LSB must, so far as is reasonably practicable, act in a way that is compatible with the regulatory objectives. It does not state that all the regulatory objectives must be promoted at all times. This raises the question what is the LSB's proper role in attempting to address access to justice. Improving access to justice is a complex and multifaceted issue more appropriately and effectively

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<sup>6</sup> BSB Handbook rules CD8; rC12 and rC110-112

<sup>7</sup> <https://www.barcouncil.org.uk/resource/bar-council-responds-to-bsb-proposals-on-equality-rules.html>

<sup>8</sup> <https://www.legislation.gov.uk/ukpga/2007/29/section/3>

addressed by government and the third sector as well as professional bodies. The Bar Council supports access to justice through its support of Advocate,<sup>9</sup> the official pro bono charity of the Bar, as well as through its policy and influencing work on funding of the justice system.

### Disciplinary and enforcement

24. We support some aspects of this work, for example, that which aims to implement a set of principles to underpin disciplinary processes with respect to timeliness, consistency and proportionality. Timeliness in handling investigations is critical to maintaining confidence in the system. For complainants, timeliness of investigation promotes their participation as witnesses in the process and minimises their experience of stress. It is also important to the barrister being investigated, to minimise the stress to them caused by uncertainty and the threat to their livelihood. Consistency and proportionality underpin fairness and confidence in the system.

25. We are unsure what is being proposed with respect to transparency. Here, it is important to maintain a balance between openness and avoiding the risk of reputational damage to those investigated but ultimately not found to have engaged in the misconduct they are accused of. We are unclear what evidence there is that transparency is lacking in the BSB's (or others') processes, or of any other detriment, nor what is being proposed in this area; but will consider LSB proposals once published.

### Consumer Protection

26. Barristers are not commonly involved in bulk litigation claims so we will leave it to others to comment on this topic.

27. In its response<sup>10</sup> to the 2023 LSB consultation on technology and innovation, we said:

“like many other bodies (including, it would appear from recent public statements, the major tech companies themselves) recognises that the advent

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<sup>9</sup> <https://weareadvocate.org.uk/>

<sup>10</sup> <https://www.barcouncil.org.uk/static/69f9d766-8a45-4821-bd22dc7d93bd063e/Bar-Council-response-to-LSB-consultation-on-promoting-technology-and-innovation.pdf>

of AI creates potential risks to the public of a new magnitude. The need properly to assess these risks and to create appropriate legal and regulatory responses is now widely appreciated. The Bar Council also recognises that these issues are particularly pressing because most, if not all, new technologies developed for use in the legal sector (or indeed any sector) will use AI to some extent.”

28. Therefore, we think there is a role for the LSB to monitor the use of AI in legal services to ensure the interests of consumers are protected. Last year, we issued guidance<sup>11</sup> to barristers on considerations when using generative AI, highlighting its limitations and challenges and the importance of protecting client data; and also of checking and taking responsibility for any work that has relied on AI. We have however previously emphasised that the LSB has no role in promoting the use of technology, including AI. We said, “While technology and innovation should help address unmet needs, regulators should address risks rather than being required to actively promote uptake.”<sup>12</sup> There is some overlap here with what has been set out at paragraph 15, above. What happened in the Post Office cases illustrates the potential risks associated with the use of technology in connection with litigation. Those risks are potentially greater in the case of AI even than they were with the accounting-type software (Horizon and its predecessors) in issue in the Post Office cases. A high proportion of AI systems make ‘decisions’ in a way that is not capable of easy external explanation or interrogation.

29. We would recommend that the LSB considers the scope of its remit before embarking on work to understand the risks of harm to consumers from recent market developments and before exploring the balance between encouraging a thriving market and consumer protection. The LSB must avoid duplication with bodies such as the CMA who, for example, recently published compliance guidance<sup>13</sup> for unregulated businesses that provide legal services.

**Q2 – Are there any areas missing from our proposed business plan 2025/26 that you consider should be included?**

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<sup>11</sup> <https://www.barcouncilethics.co.uk/documents/considerations-when-using-chatgpt-and-generative-ai-software-based-on-large-language-models/>

<sup>12</sup> <https://www.barcouncil.org.uk/static/69f9d766-8a45-4821-bd22dc7d93bd063e/Bar-Council-response-to-LSB-consultation-on-promoting-technology-and-innovation.pdf>

<sup>13</sup> <https://www.gov.uk/government/publications/unregulated-legal-services-consumer-protection-law-guidance>



30. We do not want to propose additional work for the LSB as we consider that a primary focus should be on minimising budget increases. Some work could be deferred to later years, or there could be a reprioritisation of work for the coming business year.

**Q3 – Do you have any comments on our proposed research programme?**

31. We are supportive of the use of existing datasets as this should in theory be a cost-effective way of gathering intelligence. We are less supportive of the recommissioning of the Public Panel. Some previous research conducted by it has used small numbers of participants, who have sometimes been given selected information. That has risked biasing the responses. There has also been research conducted with people who have never used legal services, limiting the utility of the information collected. We think it would be more productive to look for insights from people that have had experience of using legal services. We also question whether there is a cost to the LSB of making the Public Panel available to other stakeholders to use, and whether that cost will be incurred whether or not that facility is used. Neither would be effective use of resources.

**Q4 - Are there any opportunities for us to benefit from other research and/or find ways to collaborate with others in the sector to build on existing research/evidence?**

32. We regularly publish research and reports on topics such as the experiences of pupils, life at the Young Bar, earnings by sex and practise area, and wellbeing. These shine a light on some of the challenges that exist, and they also inform Bar Council policy interventions. Full details are on our website.<sup>14</sup>

33. The LSB is already aware of the Bar Council’s independent review into bullying and harassment at the Bar,<sup>15</sup> led by the Rt Hon Harriet Harman KC. We are grateful for their input into it. The report, due in late May, will be doubtless of interest to the LSB.

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<sup>14</sup> <https://www.barcouncil.org.uk/policy-representation/policy-issues/research.html>

<sup>15</sup> <https://www.barcouncil.org.uk/support-for-barristers/bullying-and-harassment/review.html>

**Q5 – Is there anything missing from our proposed research programme that you think we should focus on?**

34. No. Rather, we are concerned that the research programme is too broad and would benefit from being trimmed.

**Q6 - Do you agree with our proposed budget for 2025/26?**

35. We respectfully but firmly disagree with the proposal to increase the budget by 14%. This comes on the back of successive above-inflation increases since the 2022/23 budget year. As the LSB notes in the consultation paper, inflation for the coming budget period is forecast at 2.4%. This means that they are proposing a huge real term increase to their budget.

36. Although it is said that this will represent a £3.84 increase to the practising fee of each authorised person, this comes on top of the £3.40 increase last year<sup>16</sup> and the £2.11 increase the year before.<sup>17</sup> The cumulative effect is not insignificant, and it represents yet another increased compliance cost borne by barristers. This will impact those barristers whose annual earnings place them in the lower income bands particularly hard. We would therefore ask the LSB to consider rationalising its plans and reducing its budget.

37. The recent and anticipated continued increases in the number of practising legal professionals that the LSB speaks of does not mean that more regulation or more costly regulation is necessary. There are economies of scale that can be achieved. Therefore this should not be used as justification for the LSB's proposed substantial budget increase. If this results in more practicing certificate fees being gathered, it does not mean that the LSB should inflate its activities and budget.

38. We agree with the LSB's aim of cutting its office space. This is an efficiency that should result in future savings.

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<sup>16</sup> <https://legalservicesboard.org.uk/wp-content/uploads/2023/12/LSB-Draft-Business-Plan-2024-2025-Consultation-Document.pdf>

<sup>17</sup> <https://legalservicesboard.org.uk/wp-content/uploads/2022/12/LSB-Draft-Business-Plan-2023-2024-Consultation-Document.pdf>

39. We have concerns about the plans to increase the headcount of staff at a cost of £150,000, representing 3% of the 14% proposed budget increase. This is because it will represent an ongoing financial commitment and “bakes” the cost into future budgets. We wonder whether it is possible to deprioritise or postpone some work in order to free up existing staff resource to focus on the statutory decision-making and Legal Services Consumer Panel work for which this additional staff resource is intended. Is there also scope to seek some of the legal advice from internal counsel, thereby reducing the cost of obtaining external legal opinions?

40. We are not supportive of the proposed £200,000 contingency budget, notwithstanding the intention to return any unspent funds via a levy rebate (which would itself be costly to administer). This budget line accounts for 4% of the proposed 14% total increase to the budget. That is a significant portion of the proposed increase. It would be unusual to seek contingency funding not clearly allocated to a specific project. The proposal requires money to be taken from authorised individuals without a clear purpose, that will potentially go unused. It would appear to us to be better practice and more transparent for the levy to only include funds that are clearly allocated to a project and which have a high likelihood of being spent within the budget cycle.

41. Whilst staff training is of course important, the £73,000 allocated to it seems a particularly generous amount. We would ask the LSB to consider whether any training can be delivered in-house to reduce costs and to reassess what is necessary in this area.

**Q7 – Are there any other factors regarding the proposed budget for 2025/26 that you believe we should consider?**

42. No.

**Q8 – Do you have any comments regarding equality issues which, in your view, may arise from our proposed business plan for 2025/26?**

43. We would like to know whether an equality impact assessment (EIA) has been conducted. The proposed increase to the LSB’s budget would ideally have been considered as part of an EIA. This is because any budget increase will have an impact on the cost of regulation borne by authorised persons (e.g. practising

barristers) through the practicing certificate fee. This may negatively impact diversity.

44. Publicly funded family law barristers' fees have stagnated in recent year. In our response<sup>18</sup> to the Review of Civil Legal Aid call for evidence we said,

“The National Audit Office’s report “Government’s management of legal aid” (09 February 2024) rightly stated that:

“MoJ has not increased fees for civil cases since 1996, and it reduced fees by 10% between October 2011 and February 2012. In real terms, fees are now approximately half what they were 28 years ago. (NAO report, page 48, paragraph 3)”

We went on to explain that,

“Barristers undertaking family law legal aid make up the high majority of those undertaking civil publicly funded work. For instance, in 2022-2023, there were 4,561 barristers who received legal aid payments for civil work. Of that number, 73% (3,321) received legal aid payments solely for family work, 6% (260) received legal aid payments for family work and another area, and 21% (980) received payments only for non-family legal aid work.”

45. Therefore, the publicly funded family Bar is already under financial pressure. This group is also disproportionately represented by women. The Bar Council’s data<sup>19</sup> shows that whilst women represent 40.1% of all practising barristers, they are overrepresented at the family Bar where they constitute 62% of all the practising barristers identifying family as their main area of practice. Though some family law practitioners may do some privately funded work alongside their publicly funded work, this illustrates that women will be disproportionately affected by increased regulatory costs.

46. This is just one instance of an area where a certain group (in this example, women doing publicly funded family law) will be disproportionately impacted by an increase in PCF costs. There are likely to be many instances where individual

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<sup>18</sup> <https://www.barcouncil.org.uk/static/a01e3450-d06a-464a-9bc2eb05e20303cb/Bar-Council-response-on-the-review-of-civil-legal-aid.pdf> paragraphs 17 and 31

<sup>19</sup> Bar Council CRM Membership data. Correct as of 01 January 2025

barristers, and particular groups of barristers identifiable by a thorough EIA, are suffering financial hardship and will be burdened by ever-increasing costs. Those in the very early years of practice, for example, or those returning from a career break, period of ill-health or parental leave, or those in other areas of publicly funded law.

**Q9 – Are there any wider equality issues and interventions that you wish to make us aware of?**

47. There needs to be a recognition of the breadth of work already underway in the EDI space by stakeholders, across all protected characteristics and social mobility – with respect to access, retention, progression and culture. It is important that regulators focus on regulation and policing minimum standards, rather than promoting best practice. Otherwise, we run the risk of EDI initiative fatigue across the profession, confusion over what is mandatory and what is optional as well as insufficient attention being given to enforcement of existing equality rules and regulations.

**Bar Council**

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For further information please contact:

Sarah Richardson, Head of Policy: Ethics, Regulation and Law Reform

The General Council of the Bar of England and Wales

289-293 High Holborn, London WC1V 7HZ

Email: [SRichardson@barcouncil.org.uk](mailto:SRichardson@barcouncil.org.uk)