



## **Bar Council response to the Ministry of Justice's Legal Services Board Public Bodies Review: Call for Evidence**

1. This is the response of the General Council of the Bar of England and Wales (“the Bar Council”) to the Ministry of Justice’s Legal Services Board Public Bodies Review: Call for Evidence.<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
- 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.

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<sup>1</sup> <https://consult.justice.gov.uk/digital-communications/legal-services-board-public-bodies-review/>

3. As the General Council of the Bar, we are the approved regulator (AR) 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. The primary role of the LSB is set out in s. 4 of the Legal Services Act 2007 (“the Act”) to:

*“... assist in the maintenance and development of standards in relation to—*

*(a) the regulation by approved regulators of persons authorised by them to carry on activities which are reserved legal activities, and*

*(b) the education and training of persons so authorised.”*

5. Part 4 of the Act (“Regulation of approved regulators”) then gives further detail of the LSB’s powers, available to be used to assist in carrying out the identified function, but all designed to with that role. We can describe it as an assistance and oversight role.

6. The regulatory objectives set out in s. 1(1) of the Legal Services Act 2007 (“the Act”) must be understood and interpreted in that context. (An abiding concern of the Bar Council has been that the LSB has come to understand its role simply in terms of the promotion and achievement of those regulatory objectives, therefore justifying a wide programme of work.) Under s. 4 of the Act the LSB’s role is the more limited assistance and oversight role. True it is that in accordance with s. 3 of the Act it must discharge that role in a manner which is, **so far as reasonably practicable**, compatible with and appropriate for the purpose of meeting the regulatory objectives (emphasis added). But the approved regulators are themselves bound to discharge *their* regulatory functions in the same way and by reference to the same objectives: see s. 28 of the Act. Provided they are doing so (which it is the LSB’s oversight function to ensure), relatively little assistance in the maintenance and development of standards should be required.

7. We have therefore regularly asked the Legal Services Board (LSB) to give greater focus to its own key assistance and oversight activities, and to spend less time on activities that are better taken forward by others, or which are less relevant to its statutory role. (For example, we do not consider it should be undertaking work in relation to the unregulated sector. This plainly falls outside its remit.)

8. At times the LSB has promoted too broad a programme of work. For example, it has made wide use of its power under s. 49(2) LSA 2007, to issue statements of policy “*with respect to any ... matter*”. Reacting to these statements of policy has generated huge amounts of work for the

front-line regulators and the professional bodies. In the case of the BSB, we think the distraction created by these statements of policy has diminished its own focus on its main work and may have contributed to delays in performing some regulatory functions, for example in investigations and authorisations.

9. The Bar Council particularly objects to the LSB's current Internal Governance Rules (IGRs). In 2018, the LSB (supposedly acting under s. 30 of the LSA 2007) undertook revision of the previous IGRs, resulting in the 2019 IGRs whose effect has been completely to disempower the Bar Council and disconnect it from its regulatory function as an approved regulator. Under the 2019 IGRs the Bar Council is described as having merely a residual regulatory role "*to the extent ... reasonably necessary to be assured that [its] regulatory functions are being discharged*" (by others). Consequentially, the Bar Council has lost all power to scrutinise or engage with the regulatory functions carried out in its name by the BSB. Communication between the Bar Council and the BSB on regulatory matters is subject to a formal protocol that precludes effective discussion of or conversation on those matters. The result has been a distortion of the role and responsibility of the Bar Council, mandated by s. 28 of the Act.

10. The LSB cannot itself not step in to fill this "scrutiny gap": it completely lacks "on the ground" experience of the particular requirements of barristers' conduct. The BSB (and other bodies discharging the regulatory functions of approved regulators) are left to its own devices, without effective engagement with the profession for whom they perform regulatory functions.

11. Furthermore, having (by the 2019 IGRs) deprived the Bar Council of any ability to influence regulatory budget planning, the LSB has not made sufficient use of its own powers to scrutinise the BSB's budget plans; allowing, rather, significant year on year increases to the BSB's budget without regard to concerns and objections voiced to it by the Bar Council (which represents those who must pay the cost). We would, at the very least, like to see the LSB exercise those powers with much greater rigour and anxiety on behalf of the paying parties.

12. As noted above, in our view the LSB has issued an excessive number of policy statements in recent years. These statements are frequently overly prescriptive in their requirements and fail to acknowledge the diversity of tasks, roles and relationships that exists across the legal sector. We have also had concerns about the evidence base for some of these regulatory instruments.

13. We also think there has been mixed messaging in connection with the LSB's oversight of the Legal Ombudsman (LeO). The LSB is understandably anxious to ensure that the backlog of cases awaiting investigation by LeO is reduced; yet at the same time it has encouraged or

permitted LeO to do more educational and transparency-related work, which absorbs valuable staff resource and budget, detracting from the work of reducing the backlog.

14. The LSB is funded by the legal profession, so it must be careful with its spending. We have expressed concerns about years of successive above-inflation increases to its budget, since the 2022/23 budget year. We have gratefully noted that this year a budget increase is not proposed; but this is owing in large part to office cost related savings. We would like to see financial prudence to continue in future years.

15. We do not have any concerns over the LSB's independence from government or the bodies it regulates but we would like statutory reviews to be conducted more regularly.

16. In terms of positive impacts, the increase in the number of clients shopping around for legal services may well be due to the LSB's encouragement of price transparency and other work of consumer empowerment. The LSB has also played a useful convening role amongst regulators and professional bodies in the wake of the first-instance decision in the *Mazur* case.<sup>2</sup> We were glad to see, in the most recent LSB business plan consultation, that it is proposing to concentrate on its key oversight activities. The LSB's recently intensified oversight of the BSB's performance is also welcomed.

## Questions

**Question 4- To what extent do you think the LSB's statutory objectives reflect the current needs and priorities of the public and the legal services sector? Please provide example of where the LSB's strategy or activities have supported/or could better support its aims.**

17. We have described above the LSB's primary statutory function and objective, namely to assist in the maintenance and development of standards by approved regulators in relation to the regulation, education and training of those authorised to carry on reserved legal activities: s. 4 of the Act. We think that continues to be a function and objective which meets the current needs and priorities of the public and of the legal services sector.

18. The LSB should however be aware that the front line regulators fully share with it responsibility for the maintenance and development of those standards; and must equally act in a manner that is, so far as is reasonably practicable, compatible with the regulatory objectives. The LSB should recognise that it is not itself always best placed to take forward a project to develop those standards, and that views can legitimately differ as to what it is

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<sup>2</sup> <https://www.bailii.org/ew/cases/EWHC/KB/2025/2341.html>

reasonably practicable to do, compatibly with a regulatory objective. For example, the regulatory objective set out in s.1(1)(f) of the LSA07 – “*encouraging an independent, strong, diverse and effective legal profession*” – is often most effectively pursued by frontline regulators acting in discussion with their professional bodies. Similarly, how professional standards should be developed compatibly with “*improving access to justice*” (s.1(1)(c) of the Act) is a highly debateable matter in an area where measures taken by government and the third sector are much more influential than the regulation of legal professionals.

19. The LSB should, we think, pay close regard to the observations of Kathryn Stone OBE on her leaving the role of the Chair of the BSB<sup>3</sup>:

“... the difficulty which an oversight regulator necessarily has in exercising its functions at one remove from the front-line. The board and executive of the oversight regulator are no more experienced than the boards and executives they are overseeing. Oversight gives responsibility, but it does not, in itself, give sharper insight into, or greater care for, the public interest. Still less does it give a better understanding of the challenges of front-line regulation.”

20. A pragmatic approach by the LSB to the performance of its statutory function would also include the LSB considering what other stakeholders in the area are already doing, and who is best placed to have impact.

**Question 5. To what extent do you agree with this statement ‘the LSB is sufficiently focussed on its statutory obligations as set out under the LSA 2007’?**

Strongly agree Agree  Neither agree or disagree Disagree Strong disagree

**Please give a reason for your answer.**

Too broad a programme of work

21. We have had concerns for a number of years about the LSB having undertaken too broad a programme of work. It has also sought, quite inappropriately, to lobby for legislative change to the regulatory framework<sup>4</sup>, and has involved itself in work on unregulated providers of legal services, both of which fall outside the scope of its remit as defined by the LSA 2007. In our response to its recent business plan consultation we said,

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<sup>3</sup> <https://www.barstandardsboard.org.uk/resources/press-releases/kathryn-stone-obe-chair-of-the-bar-standards-board-delivers-farewell-speech.html>

<sup>4</sup> <https://www.legalservicesboard.org.uk/wp-content/uploads/2020/09/LSB-response-to-CMA-CFI.pdf>, page 15

“We are not persuaded that the LSB should be expending any resource on the unregulated sector, i.e. those providers of legal services who are not authorised or regulated by any of the regulators that the LSB has oversight of. Such work falls outside the remit of the LSB. Nor is it the most appropriate body to be undertaking such work. Other public bodies have responsibility in this area, and have been active in it. For example, the Competition and Markets Authority undertook in 2023 an investigation into potential consumer law breaches in will writing, online divorce provision, and pre-paid probate plans; culminating in guidance to unregulated providers of legal services which reminded them of their duties to comply with consumer legislation.... For the LSB to expend effort on work in this area would be duplicative, and must impact the LSB’s other work. It is also unfair and unjustifiable that resources provided by the regulated sector should fund work in relation to those who don’t contribute to regulatory costs.”<sup>5</sup>

22. The ambition and prescriptive detail of its policy statements have generated a huge amount of additional work for regulators and professional bodies. Meanwhile the BSB built up backlogs in its investigations into barrister misconduct and delays to its authorisations processes. There have also been some high profile and damaging issues in other parts of the legal sector over the last five years. This indicates that the LSB’s limited resources may have been better concentrated on its statutory function of assisting and overseeing the performance of the regulators.

23. The LSB’s most recent draft business plan and budget consultation<sup>6</sup> signals a welcome shift towards a focus on its key oversight activities, for example, regulatory performance assessment, Office for Legal Complaints (OLC) oversight and statutory decision making. We are strongly supportive of this change in approach.

24. One area where we are not convinced the LSB has a role is in the judicial diversity forum. The LSB has an assistance and oversight function in relation over the approved regulators, but not in relation to the judiciary. Given that it has limited time and resources (all paid for by regulated legal professionals) we would prefer to see it focus on its primary partners in legal regulation.

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<sup>5</sup> <https://www.barcouncil.org.uk/static/43a0174d-19ce-4df8-97b53b83f485047d/Bar-Council-response-to-LSB-Business-plan-and-budget-consultation-2026-27.pdf>

<sup>6</sup> <https://legalservicesboard.org.uk/wp-content/uploads/2025/12/LSB-business-plan-2026-27-consultation.pdf>

### Insufficient scrutiny of BSB's budget increases and cost-effectiveness

25. We also have serious concerns about the LSB not ensuring the cost-effectiveness of the BSB's budget, which it is responsible for approving each year before the Authorisation to Practice process can begin. Following the amendment of the Internal Governance Rules in 2019, the Bar Council has lost its ability to influence the BSB's budget. Yet the LSB has not exercised its own powers to scrutinise and challenge the proposed budget. This has allowed significant and sustained increases to the BSB budget each year, a cost borne by all practising barristers. Each year the Chief Executive of the Bar Council implored the LSB to scrutinise the cost-effectiveness of the proposed budget; but no adjustment was made. This lack of budget accountability carries a cost to the profession. This year the Bar Council, as approved regulator, issued a consultation on the proposed budget. After it had done so, the BSB announced it was planning a further increase to its the budget, by another £1.5M. This undermined the consultation process. Yet we have little power to prevent that happening again. This is a matter where the LSB could helpfully intervene.

### Excessive use of policy statements

26. The power to issue policy statements has been exercised frequently in recent years. Reviewing and updating existing policy statements may be good practice, but there has also been development of policy statements in new areas, sometimes with little evidence of a problem that needs to be addressed. The policy statements often impose closely-defined requirements that all the frontline regulators have to follow. For example, since 2022 there were new policy statements<sup>7</sup> on 'Empowering Consumers', 'Ongoing Competence' and 'Technology and Innovation'. Another is expected to be published imminently on ethics. That is all in addition to the revision of existing policy statements, for example on First Tier Complaints Handling. Whilst the LSB does run consultations on these proposals, it takes a huge amount of work on the part of all the approved regulators and professional bodies to engage with these consultations and then to implement the eventual policy statements.

27. The policy statement on 'Empowering Consumers' encourages regulators to require legal service providers to provide information on the quality of legal services. The suggested quality information to be provided includes success data and customer feedback as potential sources of data. We have expressed concerns that barristers' "wins" records are not indicative of good service, but rather can be driven by the strength of the evidence, the way a witness performs, or the views of a jury. We also stated our concerns that barristers practising in certain areas, and with certain characteristics, would be particularly vulnerable to negative

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<sup>7</sup> <https://legalservicesboard.org.uk/our-work/lsb-rules-and-guidance>

feedback. Some clients (e.g. convicted criminals) will be predisposed to give negative feedback. The publication of client feedback will create additional stress for the barristers concerned. Client confidentiality and considerations of legal professional privilege will usually prevent them from responding. It would have been better to have left the BSB to determine the appropriate indicators of quality of service. It is much closer to the realities of practice of its regulated professionals, and are better placed to find a useful and viable solution in consultation with the profession.

28. The policy statement on ‘Technology and Innovation’ states, “*The LSB’s aim is for regulators to promote the use of technology and innovation to improve access to legal services*”. We agree that there should not be any regulatory barriers to the adoption of technology, but we strongly disagree that regulators should be active in promoting particular technology to legal professionals, and specifically to the Bar. This is not an appropriate role for any regulator. Recent incidents<sup>8</sup> involving uninformed use of AI have demonstrated that problems can arise where particular technologies are adopted too quickly, without a sufficient understanding of their dangers and limitations. It must be up to barristers to decide what technology works best for them. This particular policy statement is an example of LSB overreach, and a shift away from core oversight activities.

#### Setting a strategy for the sector- a step too far

29. In 2021 the LSB launched a paper, “Reshaping Legal Services Strategy”.<sup>9</sup> This was billed as a strategy for the whole legal sector, not just the regulated professionals. We objected to this at the time, explaining in our response that,<sup>10</sup>

“The Bar is a small profession unified by a focus on the provision of specialist legal services of advocacy and advice, usually in the context of crystallised and specific disputes which require individually tailored services. Under the scheme of regulation created by the Legal Services Act 2007 (“the LSA 2007”) barristers are authorised by the Bar Standards Board.

The role of the LSB is defined by statute and is focussed on standards of Regulation, Education and Training. The LSB has a duty, imposed by section 4 of the LSA 2007, to assist in the maintenance and development of standards in relation to just two

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<sup>8</sup> For example, see the *Ayinde* case

<sup>9</sup> <https://reshapinglegalservices.org.uk/about-the-strategy/>, also <https://legalservicesboard.org.uk/our-work/reshaping-legal-services-a-sector-wide-strategy>

<sup>10</sup> <https://www.barcouncil.org.uk/static/b1033e1b-6542-4c13-958790c8a8a64981/Bar-Council-response-to-the-LSB-draft-strategy-and-business-plan-21-22.pdf>



things: (a) the regulation by approved regulators<sup>2</sup> of persons authorised by them (i.e. barristers) to carry on activities which are reserved legal activities, and (b) the education and training of persons so authorised.

By section 3 of the LSA 2007, *in discharging its functions* the LSB must, so far as is reasonably practicable, act in a way which is compatible with the regulatory objectives, and which the LSB considers most appropriate for the purpose of meeting those objectives. The LSB must also have regard to the principle that regulatory activities should be accountable, proportionate, consistent and targeted only at cases in which action is needed.

Part 4 of the Act deals with the Regulation of approved regulators and gives an important role to the LSB in ensuring that the approved regulators carry out their duties in compliance with the Act, and gives the LSB various powers of intervention including setting of performance targets, the giving of directions, and in extreme cases, censure, the imposition of penalties, and intervention directions.

The LSB is not an economic regulator.

The regulation of competition under the LSA 2007 is entrusted to the CMA which has powers to prepare a report if it considers that the regulatory arrangements of an approved regulator prevent, restrict or distort competition within the market.

The appropriate characterisation of the LSB's role under the LSA 2007 is that it is a regulator of the various regulators, including the BSB. That role is one of an "oversight" regulator, which is required to *oversee* the regulation carried out by the various frontline regulators including the BSB. It also has oversight of the Approved regulators. The LSB is responsible for *overseeing the regulation of* legal services in England and Wales: it is not responsible for regulating legal services in England and Wales.

The LSB therefore has a very important role. But it has not been charged with oversight, still less regulation, of the entire legal services sector. That is firstly because not all legal services are regulated (anyone can give legal advice), and secondly because, insofar as the providers of legal services *are* regulated, they are regulated by the frontline regulators for each profession. Importantly, the regulatory functions of the LSB are confined by the statute that created it to regulatory matters properly so called. It does not have a wider role in the professions or in the administration of justice.

We believe that the structure of the LSA 2007 reflects that there is a wide range of types of legal service, and that there is a wide range of ways in which those services are delivered, and a series of professions by whom they are provided. Parliament decided not to merge the various professions, decided not to create a single regulator for all legal professionals, did not seek to regulate all legal services, and certainly did not create a single regulator for the legal sector. Parliament must be taken to have considered that, ultimately, competition and a diversity of modes of delivery through different professions of providers, and by non-professionals, would be likely best to achieve a vibrant market and the regulatory objectives. We think that that is a good approach.

Regulating to achieve otherwise would, in our view, not only stray beyond the LSB's functions, but would be to act contrary to Parliament's intentions.

We recognise that some people may have different views as to the best way in which to organise and regulate the provision of legal services, and we have noted that in fact the corporate view of the LSB is that it does not approve of the statutory regulatory regime in which it operates:

- The LSB is critical of “difficulties” created by “the focus on title-based regulation as opposed to activity-based regulation” and the “potential for different standards as a result of multiple regulators of the sector.”
- “The LSB’s position remains that ultimately moving to a single regulator for all legal services would have significant public benefits.”
- “The current system of multiple organisations regulating the same activities does not deliver clarity and simplicity for consumers, risks inconsistency of standards and approach and duplicates cost.”

(LSB report on The State of Legal Services, November 2020)

These positions could be the subject of a policy setting debate, though we do not agree with them. But more significantly, they are inconsistent with the regulatory regime in which the LSB in fact operates. We note that the LSB acknowledges that legislative reform would be required to achieve a regulatory system of the type favoured by the LSB.<sup>7</sup>

We believe that the LSB has fallen into the trap of behaving as though it were the regulator that it thinks it ought to be, rather than the regulator which in fact it is.

Those who regulate tend to be enthusiastic about the capacity of regulation to improve services. Those who are regulated, and who pay for the regulation and pass on those costs to their clients, are sometimes more sceptical<sup>8</sup>. Barristers recognise and support the role of regulation in setting and maintaining minimum standards, but regulation must be proportionate and only targeted where needed. The right balance has to be

struck, in the public interest. That balance has been struck by Parliament. It must be respected both by the regulators and those whom they regulate.

In our view the LSB is not respecting the balance struck by Parliament.

The Consultation paper reveals that the LSB is treating its remit as wider than it in fact is:

- The Foreword by the Chair explains that the LSB has decided “not just to create another corporate strategy for the LSB, but rather to develop a strategy for sector”;
- The Executive Summary explains that “Our vision was to develop a strategy for the entire sector and not just for the Legal Services Board.”
- If the LSB has a duty, or even just a power, to produce a “strategy for sector”, it is surprising that it has not done so before. We cannot see that either the role or duties or powers of the LSB have changed in any way, and we do not believe that they extend to producing a strategy for the sector.

In our view the LSB is overreaching its functions. It is trying to fulfil a role which it does not have. This creates the risk of an unwelcome additional costs burden on the professions, risks confusion as to who is responsible for what, and risks diverting the LSB’s attention and resources from the functions which Parliament has entrusted to it.

If the LSB were to attempt to exercise powers under the LSA 2007 in order to achieve its “strategy for sector”, it would be important to determine whether or not that was a proper and lawful exercise of the LSB’s powers. We think the answer would be no.

We therefore have serious misgivings about the LSB’s strategic plan. It is extremely ambitious, and stretches well outside the proper remit of the LSB and into policy questions for government.”

**Question 6. In your opinion, how clear and easy are the LSB’s statutory objectives to understand?**

**Very clear Clear  Neither clear or unclear Unclear Very unclear**

**Please give a reason for your answer.**

30. We think that the prime statutory function and objective of the LSB is easy to understand, namely to assist approved regulators in the maintenance and development of standards in relation to the regulation, education and training of those authorised by them to carry out reserved legal activities: s. 4 of the Act. But, as already outlined, we have long

had concerns that the LSB has mistakenly come to see its function simply in terms of the promotion and achievement of the regulatory objectives. This is used to justify many pieces of work and much regulatory activity which we would consider should properly fall to the approved regulators, subject only to limited oversight by the LSB. The LSB does not have *carte blanche* to embark on any project that links in some way to the regulatory objectives.

**Question 7. How well do you feel the LSB engages and collaborates with key stakeholders e.g. regulators, professional bodies, and consumer representatives?**

Very well  Well  Neither well or poor  Poor  Very poor

**Please give a reason for your answer.**

31. There are regular meetings at Chair and Chief Executive level. More regular contact at staff level would be helpful. The LSB is good at running consultation exercises and its Professional Ethics and Rule of Law working group has provided a useful forum to share views about professional ethics and regulation and for stakeholders to have their say on this policy area.

32. However, we have concerns about whether the LSB, while consulting, is always listening as effectively as it could. On certain topics it sometimes appears that the LSB operates within its own echo chamber. For example, there has been a lot of discussion on some high profile ethical failings within the legal sector over the last couple of years, which were serious but not widespread. We are concerned that the discussions were not as balanced as they should have been and the LSB's narrative for some time was that there were widespread and deep-rooted failings with lawyers' ethics and professional conduct.<sup>11</sup> We maintained throughout that the evidence of unethical behaviour by barristers was limited and nuanced; and that any misconduct was already covered by widely-understood conduct rules and accompanying disciplinary systems. Regulatory intervention must always be based on sound evidence and must be necessary and proportionate. The LSB should note s. 3(3)(a) of the Act: "*The Board must have regard to— (a) the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed.*"

33. We had similar concerns about the lack of any evidence base with regards to the LSB's Ongoing Competence project, which culminated in the publication of a new statement of policy. We thought there was no sound objective evidence to suggest that standards of

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<sup>11</sup> <https://www.lawgazette.co.uk/news/failure-to-stamp-out-rogue-behaviour-starting-to-look-ridiculous-lsb-chief/5118716.article>

competence fell as barristers progressed in their careers from the point of qualification. Yet the LSB insisted there was a problem that needed fixing.

34. We have limited sight of the LSB's manner of engagement with the those actually discharging regulatory functions (e.g. the BSB) and with consumer representatives. However, it is clear from the increased scrutiny that has accompanied the voluntary undertakings given by the BSB to the LSB, that the LSB are currently closely engaged with the BSB. We are also aware from the number of representatives of consumer bodies attending the LSB's annual conference that it is, though its research work, engaged with consumer representatives.

**Question 8. How well do you feel the LSB holds frontline regulators to account?**

Very well Well **Neither well or poor** Poor Very poor

**Please give a reason for your answer.**

35. The LSB's oversight of the BSB has been somewhat variable. It has appeared to have been more visibly active following the LSB-instigated giving by the BSB of voluntary undertakings. These undertakings intended to allow the LSB better to scrutinise the BSB's achievement of KPIs in relation the timeliness of its granting of authorisations completion of investigations.

36. However, we do not consider that it has been adequate in its oversight of the BSB's budget approval process. It does not appear to have placed any downward pressure on the budget sought. Close scrutiny of the budget is now vital because the Bar council has no power over the BSB's budget setting, since the introduction of the modified IGRs in 2019. The LSB is the only organisation with power to control the BSB's budget.

37. The LSB is also responsible for holding the OLC to account, yet it has approved successively high budget increases in recent years. Budget increases were justified in terms of attempting to reduce the significant backlog of cases waiting to be assessed by the Ombudsman. Yet, despite those increases, the backlog remains stubbornly high. At the same time the LSB stated in its most recent business plan consultation, "*We have encouraged both the SDT and the OLC to improve the transparency of their findings to encourage learning and good practice across the sector.*" Some transparency is welcome and indeed already exists. However, we disagree with the push for even greater transparency, because that carries a significant cost in terms of staff resource and budget. It seems illogical to press for work on this additional and non-essential project whilst LeO is battling a significant and stubborn backlog of complaints.

**Question 9. What evidence is there that the LSB’s oversight has had a positive impact on the sector, or improved outcomes for consumers of legal services? Please give a reason for your answer.**

38. The LSB was helpful in bringing the front-line regulators and professional bodies together, during the period of uncertainty that resulted after the first-instance decision in the Mazur case at the end of 2025. However, we would have preferred the emphasis to have been on forward action and collaboration rather than seeking past information, from the preceding decade, about what the regulators had advised concerning who could conduct litigation, and how. The considerable effort spent servicing the LSB’s information request would have been better spent supporting the profession to understand the impact of Mazur on their practices. We often find that the LSB fails to consider that the smaller approved regulators have limited staff resource.

39. The LSB’s recent report on the State of Legal Services<sup>12</sup> refers to an increase in the proportion of consumers shopping around for legal services: a positive development. The rules introduced by legal regulators to improve transparency, at the behest of the LSB, are likely to have contributed in some degree to this increase. (The BSB has also previously suggested, in its 2022 Transparency Rules Evaluation report,<sup>13</sup> that the implementation of transparency rules had contributed to an increase in the proportion of clients obtaining price information from different service providers, when researching barristers’ services.)

**Question 10. To what extent do you feel the LSB demonstrates that its oversight delivers positive outcomes and provides value for money? Please give a reason for your answer.**

40. We think it helpful that in 2025, the LSB increased its scrutiny of the BSB’s performance, requiring it to enter into voluntary undertakings. It was helpful to require the BSB to focus on delivering reforms recommended to it in the FieldFisher Report<sup>14</sup> concerning its investigations and disciplinary processes. We had been very concerned about the time taken to conduct investigations and to bring cases before the Bar Tribunal Service, as well as delays in the authorisations department, impacting barristers’ ability to gain authorisation to undertake additional activities or practice in different ways.

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<sup>12</sup> <https://legalservicesboard.org.uk/wp-content/uploads/2025/12/State-of-Legal-Services-2025.pdf>

<sup>13</sup> <https://www.barstandardsboard.org.uk/static/49d31ba9-a956-4694-9039e7388dc2e153/Transparency-Rules-Evaluation-Impact-on-Consumers.pdf>

<sup>14</sup> [https://www.barstandardsboard.org.uk/static/6845a7e5-3188-4c21-821fbb75d841e33c/Final-Report-publication-format-April-2024-11559042415-2.pdf?\\_gl=1\\*ejh8le\\*\\_up\\*MQ..\\*\\_ga\\*MTAyNDg5NzE4OC4xNzcyMTA4OTc5\\*\\_ga\\_VW5ZGHKES1\\*czE3NzIxMDg5NzgkbzEkZzAkdDE3NzIxMDg5NzgkajYwJGwwJGgw](https://www.barstandardsboard.org.uk/static/6845a7e5-3188-4c21-821fbb75d841e33c/Final-Report-publication-format-April-2024-11559042415-2.pdf?_gl=1*ejh8le*_up*MQ..*_ga*MTAyNDg5NzE4OC4xNzcyMTA4OTc5*_ga_VW5ZGHKES1*czE3NzIxMDg5NzgkbzEkZzAkdDE3NzIxMDg5NzgkajYwJGwwJGgw)

41. In terms of value for money, we have had concerns about the increases in the LSB's budget for a number of years. We were pleased to see no budget increase for the 2026-27 business year, but this follows years of successive above-inflation increases, since the 2022/23 budget year. For example, a 14% increase to budget was proposed in the 2025-26 business plan, when inflation for the plan period was predicted to be 2.4%. Eventually, an 11% increase was settled upon.<sup>15</sup> Part of this increase was attributable to a plan to recruit three new members of staff. We questioned this: it represented an ongoing financial commitment and "baked-in" that cost into future budgets. We asked whether it was possible to deprioritise or postpone some work to try and reduce the budget. There was only a limited response.

**Question 11. Do you feel the LSB has a suitable level of independence from both government and the organisations it oversees? Please give a reason for your answer.**

42. We don't have sufficient visibility of this relationship to make an accurate assessment, but we have not seen any evidence to suggest that it lacks independence from government.

43. We don't have any concerns about the LSB's independence from the BSB, or ourselves. We have seen no evidence that it has been unduly influenced by either organisation.

44. However, there remains a question about how accountable the LSB is to government, and whether it is sufficiently scrutinised in its activities. This statutory review is important, but we think it should be undertaken more frequently.

**Question 12. Do you feel there is sufficient clarity about how the LSB's role differs from and complements other bodies in the sector?**

Yes  No

**Please give a reason for your answer.**

45. No, we find that the LSB is too prescriptive in some of its policy statements, failing to allow for the different ways and different contexts in which different legal professionals practice and are regulated. This leads to an overlap, and duplication, between the roles of

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<sup>15</sup> <https://legalservicesboard.org.uk/wp-content/uploads/2025/04/LSB-Business-Plan-2025-26.pdf>, see p.16

the frontline regulators and the LSB. The LSB should limit itself to stating broad principles or desired outcomes, which can then be implemented by the frontline regulators in a way that is appropriate to their particular regulated communities. An example of this is described earlier in our response at paragraph 27.

46. Since the 2019 IGRs, there has been an unwelcome shift in the roles performed by the Bar Council, the LSB and the BSB. The revised IGRs have had the effect of removing the Bar Council's powers to engage with, scrutinise and hold to account the BSB, not least in relation to its budgeting and expenditure (as well as in relation to regulatory proposals).

47. Our organisational structure is such that the Bar Council employs all staff across the Bar Council (performing representative functions), the BSB (performing regulatory functions) and our "resources group" (who provide permitted shared services).

48. The Bar Council therefore now lacks:

- Control over its own finances, due to the BSB's prerogative to independently determine its own budget with insufficient accountability;
- Appropriate governance oversight and scrutiny of the management of expenditure and risk for the BSB which is the largest arm of our organisation; and
- Oversight of the pay and conditions of BSB staff who are, legally, nonetheless entirely employed by it.

This is not an acceptable state of affairs.

49. One consequence of the enforced "divorce" between the Bar Council and the BSB is that the LSB has, necessarily, had to take on the role of obtaining assurance of and securing the performance of regulatory functions. (The Bar Council's role in securing that assurance as approved regulator, contemplated by s. 28 of the Act, has been emasculated by the IGRs.) In our response<sup>16</sup> to the LSB's consultation on its proposed regulatory performance assessment framework in 2022, we said,

"... the LSB appears to be taking a quasi-governance role over the frontline regulators, essentially placing it in the role of a non-executive board, rather than its proper role as exercising oversight, at a distance. The Bar Council is concerned that this is part of a drift by the LSB away from its proper statutory functions."

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<sup>16</sup> <https://www.barcouncil.org.uk/static/1c3112ac-2fcb-4057-b00878c4e6bb9d16/Bar-Council-response-to-the-LSB-consultation-on-the-Proposed-regulatory-performance-assessment-framework.pdf>



50. We remain concerned that the LSB lacks sufficient proximity to the BSB to secure timely performance of regulatory functions.

**Question 13. To what extent do you agree with the statement ‘the LSB has the capacity, skills, and technology needed to deliver its role effectively’?**

**Strongly agree Agree  Neither agree or disagree Disagree Strong disagree**

**Please give a reason for your answer.**

51. An important part of the LSB’s role is in policing the boundaries of the work it does. It cannot be an expert in everything and indeed its statutory role does not require that. It would do well to recognise where others, closer to the profession or a particular area of practice, are key stakeholders and should be consulted and listened to. Sometimes they will be better placed to lead on certain initiatives. For example, in the area of equality and diversity, the Bar Council itself has carried out extensive research, has direct experience of delivering training, and has in place systems for assisting barristers experiencing bullying, harassment and discrimination. There are also Bar Council committees, panels and working groups, with particular expertise in this policy area; as well as Specialist Bar Associations, and the Inns of Court. The Bar Council has access to unrivalled expertise and resource.

52. In this vein, we don’t consider that work on the unregulated sector is something that the LSB has expertise in or should be involved in. As already noted, the delivery of legal services by unregulated persons lies outside the LSB’s statutory remit and there are others who have knowledge, expertise, and appropriate agency in this area.

53. We would also invite the LSB to recognise that it is very far removed from the reality of daily legal practice, compared with the frontline regulators and the professional bodies. Each of the legal professions is quite different in terms of characteristics, the markets within which they operate, and the challenges they face. The Bar alone is incredibly diverse in the way it practises: barristers may be self-employed or employed, may be practising from a large commercial set in London or from small generalist set on circuit, may be employed by a multinational corporation or by a local charity or by government.

54. With nine<sup>17</sup> different types of legal professional falling within its remit, the scale of the LSB’s task is quite challenging. It is vital that its policies are based extensive prior consultation with the sector. It should act only where evidence justifies action; and it should always acknowledge the differences between the different legal professions.

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<sup>17</sup> <https://legalservicesboard.org.uk/about-us/approved-regulators>

**Question 14. Are there any improvements or future priorities that you feel the LSB should consider to strengthen its performance and adapt to emerging challenges?**

55. We agree with the LSB's current direction of travel, which is to focus on its oversight activities, and stop doing additional work that could be done, and in many cases is already being done, by other interested bodies. (For example, the Competition and Markets Authority has recently undertaken work on unregulated legal services. The Civil Justice Council is doing work on litigation funding, and on AI.) We would like the LSB to hold back on new policy statements, only creating additional ones where absolutely necessary.

56. We invite an urgent review of the 2019 IGRs, to correct the unnecessary, unjustified and unhelpful divorce of the professions from their regulatory functions which those Rules have imposed. Legal regulation would be immeasurably improved if conversation on proposed regulatory arrangements could resume, between those charged with regulatory functions and those most closely affected by them.

57. We would like to see the LSB scrutinise and challenge the BSB's and the Legal Ombudsman's budgets more rigorously and prevent the significant annual increases seen in recent years. As we said in our response to the recent LSB business plan consultation exercise,

“LeO has sought and been awarded consecutive, significant, and consistently above-inflation budget increases in past years (13% for 2021- 22, 5.8% for 2022-23, 9.6% for 2023-24, 6.95% for 2024-253 and 11.4% for 2025-264). It is plainly unsustainable for its budget to keep going up at these high rates.”<sup>18</sup>

58. The budgets of both the LSB and the Legal Ombudsman are funded by a levy on legal professionals, who face many other regulatory and compliance costs. These costs can influence the price of legal services for clients and/or the financial sustainability of legal businesses. Some barristers – particularly those who undertake publicly funded work – must absorb regulatory and compliance costs themselves. We evidenced in our response<sup>19</sup> to the LSB's 2025-26 business plan consultation that women will be disproportionately affected by increased regulatory costs. This has a knock-on effect on diversity at the Bar, contrary to the LSB's and BSB's aim of promoting a diverse profession. Those costs must therefore be minimised.

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<sup>18</sup> <https://www.barcouncil.org.uk/static/43a0174d-19ce-4df8-97b53b83f485047d/Bar-Council-response-to-LSB-Business-plan-and-budget-consultation-2026-27.pdf>

<sup>19</sup> <https://www.barcouncil.org.uk/static/cef4d7fd-52ee-43a1-ac2209d9481de411/Bar-Council-response-to-LSB-Business-plan-and-budget-consultation-2025-26-final.pdf>

59. We would also like to see the LSB undertake the “assurance role” in connection with LeO more vigorously, given the persistent backlog of second tier complaints and the recent spike in the number of complaints received. We want to see faster complaints handling of such complaints for the benefit of both consumers and legal professionals.

**Bar Council**

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