CITMA The Chartered Institute of Trade Mark Attorneys

Ministry of Justice: Legal Services Board Public Bodies Review: Call for Evidence

1. **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.**

CITMA is the representative body for UK trade mark attorneys. Most trade mark attorney work is undertaken for businesses and other organisations, helping them obtain, manage and enforce trade mark rights and related brand assets. In keeping with that specialist and largely business-to-business context, complaints about trade mark attorneys are rare and there is limited indication of consumer detriment.

Overall, the statutory objectives make most sense for the larger, consumer-facing parts of the legal services market such as solicitors, barristers and legal executives where individuals are the typical end-users. Applied to smaller specialist professions like trade mark attorneys, with different clients, delivery models and risk profiles, the alignment is weaker.

We agree it is right for the LSB to prioritise professional standards and public confidence. The difficulty is that its approach does not always reflect the practical differences between legal service providers. In consequence, oversight activity can replicate assurance already delivered by well-functioning frontline regulators, without a clear corresponding gain.

To better achieve its aims, the LSB should apply oversight that is explicitly proportionate, risk-based and evidence-driven, recognising the contribution specialist professions make to innovation, investment and wider economic growth.

The Legal Services Act requires the LSB and frontline regulators to work towards multiple objectives and to apply the better regulation principles. In our experience, LSB policy activity can appear to place particular weight on consumer protection and the public interest, but without explaining, clearly and consistently, how it has assessed the tension with other objectives (including competition, the strength and effectiveness of the profession, and growth). Setting out that reasoning in a more transparent way would help show that oversight is evidence-based and proportionate.

We also question whether having so many statutory objectives produces the clearest regulatory outcomes. Even without legislative change, the LSB could improve confidence in its approach by routinely explaining, in each consultation, (i) what evidence underpins the proposal, (ii) which risks it is addressing, and (iii) how it has balanced the implications across the objectives when reaching its preferred option.

The LSB could add more value by using its convening function to support cross-cutting discussions and horizon-scanning across the sector, particularly where smaller regulators do not have the capacity to do this work alone.

2. **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

Strongly disagree

CITMA's experience is that the LSB sometimes goes beyond proportionate oversight of frontline regulators and into more directive activity that looks like policy-setting or operational involvement. For smaller professions, where there is no sign of widespread regulatory failure, this can increase burden, duplication and cost.

This is reflected, for example, in lengthy approval routes for changes to regulatory arrangements, heightened expectations around complaints processes, and interventions in areas where any risk to the public is limited. In the trade mark attorney context, this can feel more intrusive than necessary to meet the LSB's objectives and risks diverting attention from higher-risk parts of the wider sector.

Over time, the LSB has introduced a growing set of policy statements, outcomes, expectations and performance requirements for regulatory bodies. Even where individual measures appear reasonable, the overall effect is an increasingly detailed framework that can constrain regulatory innovation and add material compliance cost. For smaller regulators in low-risk sectors, this level of prescription is difficult to justify and has resulted in increased costs which are passed on to registrants and, in part, passed on to clients.

In our experience, a number of LSB initiatives originate in problems identified in other parts of legal services and are then applied broadly. Where the underlying issues are not present in the trade mark attorney market, this approach introduces requirements that are not properly calibrated to risk, with the main effect being additional cost for members and those who instruct them.

3. 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

At a high level, the objectives are straightforward, but there are too many. The challenge is that, once they are interpreted and applied, their breadth is amplified, particularly when combined with the volume of policy statements, statutory guidance, expectations, standards and "characteristics" that regulators are expected to evidence.

They also give a limited steer on how proportionality should be applied, how different professions should be treated, and how objectives relating to innovation and growth should be weighed. That gap makes it easier for a standardised approach to take hold, despite the very different services and risk levels that exist across the sector.

4. 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

There are established channels for engagement, but collaboration can feel process-led rather than tailored to the realities of different professions. We value regular discussions with LSB representatives, yet the impact can be hard to see, with recurring themes, such as the disproportionate burden on small regulators, returning without clear resolution.

For smaller specialist regulators, the agenda is often set by issues emerging elsewhere in legal services, with too little recognition of the distinct market in which trade mark attorneys operate. This can lead to spill-over effects, where measures intended for other sectors are applied here without a clear, risk-based or evidence-led case.

Engagement can also involve wide-ranging information requests that take significant senior time to interpret, assemble and respond to. For small regulators, this can displace work on supervision and stakeholder engagement without a clear link to improved outcomes. For example, following the *Mazur* decision, the breadth of the request required substantial collation of historic material; a more targeted and proportionate approach would have been to ask for a formal confirmation of whether any substantive advice had been provided on the specific issues arising.

Overall, engagement would be strengthened by a more tailored approach, alongside clearer feedback on how contributions from stakeholders have shaped decisions.

5. How well do you feel the LSB holds frontline regulators to account?

Very well

Well

Neither well or poor

Poor

Very poor

IPReg, the frontline regulator of trade mark attorneys, is independent and operates effectively on a proportionate basis, with minimal consumer risk and low complaint volumes. We have not seen evidence of regulatory shortcomings that would justify intensive oversight. In that context, LSB involvement can feel like additional assurance activity rather than something that materially improves outcomes.

The LSB’s performance assessment framework is one example. It requires detailed self-assessment and mapping against a range of standards and characteristics, supported by extensive evidential prompts. This can take considerable time for regulatory bodies, while the resulting assessment is necessarily high-level and retrospective. For low-risk sectors with effective regulators, a lighter-touch approach, triggered by evidence of concern rather than routine assessments, would better align with proportional oversight.

It also appears to give limited weight to sector-specific context, for instance, whether particular expectations make sense for a regulator overseeing a market that is predominantly business-to-business.

6. 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.

CITMA has not seen evidence, specific to the trade mark attorney profession, that LSB oversight has led to measurable improvements in consumer outcomes, professional standards or confidence in the market.

Because trade mark attorney services are largely delivered in a business-to-business setting, with low complaint levels and limited evidence of consumer detriment, it is hard to identify concrete benefits that can be attributed to LSB intervention. The costs associated with oversight, by contrast, both administrative and financial, are clear and continue to be incurred.

We are not aware of published analysis from the LSB, whether a risk assessment or cost-benefit assessment, that sets out the rationale for intervention in this part of the market.

7. 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.

CITMA does not consider the LSB's oversight of the trade mark attorney profession to represent value for money.

IPReg regulates both patent attorneys and trade mark attorneys. Although the combined registers represent around 1.7% of regulated persons, the oversight levy equates to roughly 7% of the regulator's budget. In our view, that is a disproportionate cost relative to the benefits evidenced and it reduces the resources available for proportionate frontline regulation and support for innovation-focused work. The additional requirements and information requests associated with LSB oversight also impose real operational costs on IPReg, which are then felt by the trade mark attorney profession.

The levy has increased by 47% since 2022, adding avoidable pressure to practising fees. For a specialist regulator in an internationally competitive market, these costs feed through to the profession's cost base and may hinder growth and competitiveness. In our view, the overall financial and administrative burden associated with LSB oversight is not sustainable. The LSB should be looking to reduce its own operating costs and, in turn, the burden placed on the trade mark attorney profession.

The opportunity cost of this burden is significant, particularly given the contribution the profession makes to the UK's innovation landscape and economic growth.

8. 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.

The LSB has an appropriate level of independence from government and frontline regulators for the day-to-day work that it undertakes. The LSB's formal independence from government is an important safeguard and needs to be appropriately maintained. However, CITMA takes the view that the LSB has been allowed to operate with too much independence and freedom and too little oversight. This view is supported by this review being the first such government intervention in nine years.

There also seems to be limited external challenge of the LSB's own expenditure and levy-setting, especially when compared with the level of scrutiny it applies to regulators' practising fee applications. Stronger transparency and oversight of LSB costs would help demonstrate that the levy is proportionate, risk-aligned and represents value for money. At present, that assurance is not evident.

The LSB's independence should sit alongside appropriate restraint, so that effective frontline regulation is not disrupted by unnecessary intervention. Where oversight becomes overly prescriptive or drifts into operational matters, particularly in low-risk sectors, it can weaken, rather than strengthen, the autonomy and effectiveness of frontline regulators.

As the cost of regulation increases, with growing concerns around value for money, there is an increasing risk that a choice is made to operate unregulated, which undermines the entire purpose of the Legal Services Act and the importance and benefits of regulation.

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

Yes

No

It remains unclear in practice where the LSB's oversight role should stop and where the responsibilities of effective frontline regulators should begin. This blurred boundary contributes to duplicated activity, repeated requests for assurance and gradual expansion of oversight expectations.

Drawing that line more sharply would reduce unnecessary burden, improve accountability, and allow the LSB to focus its attention on systemic issues and genuinely higher-risk areas.

When producing policy statements or guidance, the LSB should make clear how what it is asking of regulators follows from an oversight role, rather than moving into the design of frontline regulatory arrangements. CITMA would welcome more explicit justification for the level of prescription adopted, particularly where independently governed regulators are already meeting their statutory duties effectively.

We are concerned that an oversight regulator may, in effect, end up specifying the contents of frontline regulators' arrangements in a way that reduces appropriate discretion. It would assist stakeholders if the LSB explained the rationale for prescribing detailed requirements, why that approach is considered necessary and how it is assessed as proportionate.

10. 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

Strongly disagree

The LSB appears to have the general capability required for an oversight function. However, it does not always show the depth of specialist understanding needed to assess risk and proportionality across very different legal professions.

A genuinely differentiated approach would require the LSB to engage more closely with the business models, markets and risk profiles of specialist professions such as trade mark attorneys.

In our view, the LSB tends towards a precautionary model that seeks to minimise consumer risk by extending requirements widely, rather than concentrating regulatory effort where the evidence shows vulnerability or material harm that can only be addressed through additional regulation. That approach can be particularly burdensome for predominantly business-to-business sectors (including trade mark attorneys), where there is no clear evidence base to support significant additional regulatory intervention.

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

The trade mark attorney profession is a low-risk part of the legal services landscape and is regulated effectively through an independent frontline regulator.

As a specialist profession, we place significant value on regulation that reflects an understanding of our market and applies a proportionate response to the evidence of risk. For these reasons, and those set out above, we consider that the scope and form of LSB oversight, and its relationship with IPReg, should be reconsidered.

We suggest considering the following measures to preserve integrity and independence across the system, without imposing ongoing regulatory burden where it is not supported by risk.

- Alternative approaches to appropriate and proportionate means of addressing identified risk.
- Simplified arrangements (or exemptions where appropriate) for low-risk professions.
- Streamlined structure and staff count, focussed on fewer objectives, reducing cost and burdens to the profession.
- Enhanced transparency in impact assessment, including independent scrutiny of significant new regulatory requirements.
- Prioritise systemic failings, rather than routine regulatory activity.
- Stronger acknowledgement of the contribution legal professionals make to innovation and economic growth.