

LSB consultation: Draft strategy for legal services regulation and draft business plan 2021-22

The Chartered Institute of Trade Mark Attorneys (CITMA) is responding to the consultation by the Legal Services Board (LSB) in its capacity as an Approved Regulator, as defined in the Legal Services Act 2007 (the Act) and as the representative body for Registered Trade Mark Attorneys, Chartered Trade Mark Attorneys and the wider trade mark and design profession.

Draft strategy for legal services regulation

Q1 – Do you have any comments on the three strategic themes that we have identified?

We would broadly support the three strategic themes identified by the LSB which align with the regulatory objectives as set out in the Legal Services Act 2007.

Q2 – Do you have any comments on the nine challenges that we have identified for the sector? Are there any important sector challenges that we have not addressed?

We would broadly support the nine challenges identified for the sector.

The LSB needs to ensure that in promoting and implementing a strategy for the sector, it is not creating a one-size fits all approach and needs to ensure there is recognition of the differing needs of the diverse consumers within the sector, as well as different risks and issues which result in legitimate variations in the approach to regulation.

Whilst a strategy for the sector creates an opportunity for all within the sector to work towards common goals, which is clearly beneficial. Certain challenges and goals will be more meaningful to some parts of the sector than others, so there is a challenge in managing expectations about contributions and delivery by the different parts of the sector.

We would welcome an indication of which challenges the LSB feel can be driven by regulators etc and which need legislative changes as this has a bearing on the cost and complexity in delivering outcomes.

In addition, it would be helpful to understand if the LSB place any priority on certain challenges. Not every challenge requires the same level of change and some areas of the legal services sector may have competing priorities.

Q3 – How can you/ your organisation contribute to overcoming the sectorwide challenges we have identified?

We would encourage IPReg to look at any business plan it is creating or implementing to align, where possible and appropriate to do so, with the challenges identified. However, where there is an identified risk and priority to focus on an area outside of the challenges identified, we would expect IPReg to prioritise these and work to mitigate the risk, supporting and regulating the IP sector appropriately. We would expect this approach to be supported by the LSB.

As a representative body, there are areas where CITMA can further support, for example, in tackling the issues around diversity and inclusion within the sector and we would be happy to open further dialogue once the strategy and business plan are finalised.

Q4– Do you have any comments on the suggested areas of priority for the sector 2021-24?

We would urge for more work to be done in educating consumers about the benefits of using a regulated provider of legal services and conversely the risks of using an unregulated provider. This is important for the consumer to be able to make an educated and reasoned decision when choosing the legal service they require.

At present there is an unlevel playing field and it is too easy for the consumer to inadvertently 'choose' services which operate outside of the regulatory environment. This undermines the entire regulatory regime.

Future disruptors in the marketplace and the speed of change in the way legal services are delivered through new technologies etc, create a greater risk of services being offered by an unregulated provider and therefore consumer education and awareness is even more pressing.

Work in other areas to reduce barriers, lowering unmet legal need, access to justice etc needs to be aligned with greater awareness and education of the differences between unregulated and regulated providers, as well as drivers to promote to service providers the benefits of being regulated.

A liberal and competitive market is welcomed, but there needs to be a level playing field to allow open and fair competition.

The burdens imposed because of regulation need to be balanced with the clear benefits of being regulated.

We are pleased that there is reference to this in the 'Scope of regulation' workstream.

Draft business plan 2021-22

Q5 – Do you agree with our proposal to pursue these workstreams? Is there anything missing that you think we should focus on in 2021-22?

Related to our response to question 9, we would question whether all the six new proposed workstreams are critical at this time and whether, to reduce the proposed budget for 2021-22, some of the new workstreams could be delayed until 2022 or beyond.

Q6 – Do you see any areas of joint working between the LSB and you/ your organisation?

We remain committed to our engagement with the LSB through our arm's length regulator as well as independently as either the Approved Regulator or in our representative capacity. We are keen to work with the LSB where it is considered appropriate to do so and resources allow.

We would be happy to explore opportunities further once the strategic plan and business plan has been finalised.

Q7 – Do you agree with our proposals that we should not undertake a statutory review of reserved legal activities in 2021-22?

At the roundtable event held on 27th January 2021 it was indicated that a full review of the reserved legal activities would not take place in 2021-22 due to the cost and resources required. Instead, a mapping exercise would begin to look at the landscape and the results of this piece of work would provide a good foundation for any subsequent full review later. We would support this approach. There is clearly a need to look at the reserved legal

activities as these underpin the regulatory regime, but many consider the current list of reserved legal activities not to be fit for purpose. They do not recognise the breadth of legal services work and the way services are offered in the current legal services landscape.

Q8 – Do you have any comments on our proposed market intelligence work? Is there anything missing that you think we should focus on?

We have no comments to make on the proposed market intelligence work.

Q9 – Do you have any comments on our proposed budget for 2021/22?

We have some concerns at the proposed increase in budget. We are aware that IPReg have held practice fees for 2021 at the 2020 rate to support the sector and firms who have many financial challenges.

CITMA has also held membership subscriptions at the 2020 rates to support the sector despite a difficult financial year for the organisation.

Whilst we haven't seen an immediate shrinkage of the profession there is still a significant risk that as a result of Brexit and COVID-19 there could be fewer registered trade mark attorneys operating and regardless, the current economic instability is an issue for firms and individuals to navigate their way through. There are many pressures on the sector right now and at this difficult time for everyone support is needed.

We have not heard of other regulators and representative bodies in the legal services sector increasing budget and fees at a similar rate to the 4.4% increased proposed by the LSB. It therefore seems inappropriate for the LSB to increase the budget and to expect the legal services sector to meet this increase through raising of the levy.

We would be interested to know which activities the LSB could potentially remove to reduce the budget. Further evidence of the detriment for not pursuing such activities in 2021-22 would also be helpful. This information would make it easier to understand whether an increase in the budget was fully justified at this difficult time.

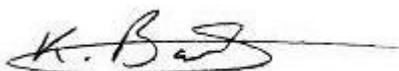
As stated in response to question 5, it may be possible for certain proposed workstreams to be delayed in order that budget increases can be kept to a minimum.

Q10: Do you have any comments regarding equality issues which, in your view/experience, may arise from our proposed business plan for 2021/22? Are there any wider equality issues and interventions that you want to make us aware of?

There are no particular equality issues which we see arising from the proposed business plan.

We are grateful to the LSB for the opportunity to provide a response and would be happy to expand on any of the points raised.

For and on behalf of the Chartered Institute of Trade Mark Attorneys



Keven Bader
Chief Executive

5th February 2021