

To:	Legal Services Board	
Date of Meeting:	7 July 2015	Item: Paper (15) 37

Title:	Post-Ministerial summit work streams: Ministerial submission(s) and next steps
Work stream(s):	Developing options for legislative change
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Status:	Official

Summary:
<p>This paper updates the Board on progress and seeks endorsement for two ministerial submissions. It also sets out our initial thinking on the parameters for a subsequent phase of collaboration.</p>

Recommendation(s):
<p>The Board is invited to:</p> <ul style="list-style-type: none"> • <u>Note</u> progress and next steps on the post-summit work streams; • <u>Agree to delegate to the chairman</u> final sign-off of the covering letter for a joint submission to Ministers at Annex A; • <u>Endorse</u> the cross-regulator ‘thought leadership’ paper on alternatives to handling client money (Annex B); • <u>Note and agree to the publication of</u> the legislative options paper (Annex C); and • <u>Discuss</u> the options and process for future collaborative working with the other legal services regulators (as set out in paragraph 17).

Risks and mitigations

Financial:	N/A
Legal:	No legal risks have been identified. The Legal Director has been kept informed of developments via Gateway discussions.
Reputational:	There are considerable reputational risks and opportunities associated with this work. On one hand, the LSB has taken a leadership role and may be perceived as being responsible for delivering a consensus, or encroaching on the regulators' independence. On the other hand, these work streams are an opportunity for the LSB to act as a champion of cross-regulator working, to build its credibility in this role with the MoJ and Ministers, and to maximise the impact of key post-election submissions to Ministers through joint working with the other legal services regulators.
Resource:	These work streams have required significant 'off-plan' LSB resources during 2014/15, and have been formally factored into the 2015/16 Business Plan. There remain however some resource risks depending on the scope and scale of future collaborative working.

Consultation	Yes	No	Who / why?
Board Members:	X		The Chairman has hosted all regulator chairs' meetings to date.
Consumer Panel:		X	Although the Panel has not been formally engaged, the LSB Chairman has briefed the LSCP Chair and Stephen Mayson interviewed the LSCP Chair for the work stream on legislative options beyond the LSA.
Others:			Professor Stephen Mayson is acting as the independent chair of the meetings of the regulator chairs, and is leading the cross-regulator work stream on legislative options beyond the LSA.

Freedom of Information Act 2000 (Fol)		
Para ref	Fol exemption and summary	Expires
Paragraph 5 after 'regulators' to end of sentence Paragraph 10: second sentence to end of paragraph Paragraph 13	Section 36(2)(b)(i)and(ii): information likely to inhibit the free and frank provision of advice and the exchange of views for purposes of deliberation	N/A

Annexes A-C	Section 22: information is intended for future publication	N/A
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LEGAL SERVICES BOARD

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Post-Ministerial summit work streams: Ministerial submission(s) and next steps

RECOMMENDATION

1. The Board is invited to:
 - Note progress and next steps on the post-summit work streams;
 - Agree to delegate to the chairman final sign-off of the covering letter for a joint submission to Ministers (**Annex A**);
 - Endorse the cross-regulator ‘thought leadership’ paper on alternatives to handling client money (**Annex B**);
 - Note and agree to the publication of the legislative options paper (**Annex C**); and
 - Discuss the options and process for future collaborative working with the other legal services regulators (as set out in paragraph 17).

BACKGROUND

2. The background to the post-Ministerial summit work streams was set out in paper (15) 12 which was considered by the Board at its March meeting.
3. The Board has already endorsed two outputs from these work streams;
 - a. at its March meeting: the list of agreed proposals for minor changes to the Legal Services Act (the Act); and
 - b. at its April meeting: the report on progress on deregulation.
4. At its April meeting, the Board also discussed a ‘work in progress’ version of the paper on alternatives to handling client money.
5. On 4 June, the LSB Chairman and Chief Executive met Minister Vara to present the LSB’s Annual Report and Accounts. At that meeting, the Minister expressed considerable interest in the post-summit collaborative work between the regulators, [REDACTED]. He agreed to meet us again to discuss this work and his officials said we ought to aim for that meeting to take place before the summer recess to build on the existing momentum.
6. It was always the aim to seek to make a joint submission to Ministers in conjunction with the other legal services regulators on the post-Ministerial summit work streams. It is now also planned to follow that submission up with a meeting with the Minister before Parliament rises on 21 July, to bring to a close the first phase of collaborative working with the other regulators.

MINISTERIAL SUBMISSION(S)

7. A meeting of regulator chairs is scheduled to take place on 30 June. An update on the outcome of the 30 June meeting will be given at the LSB Board meeting on 7 July.

The joint submission (Annexes A, B and previously agreed papers)

8. This paper has been drafted on the assumption that, at the 30 June meeting, the other regulators will agree to endorse a joint submission to Ministers consisting of the cover letter at Annex A, the list of proposals for minor changes to the Act (as previously agreed) and the report on progress on deregulation (as also previously agreed), with a website link to the jointly badged paper on alternatives to handling client money at Annex B. Annexes A and B already incorporate extensive comments from the regulators on earlier drafts.
9. As noted above, the LSB Board discussed an earlier draft of Annex B at its April meeting. Since then, new material has been added to the paper relating to the Financial Conduct Authority's regime for the regulation of payment institutions. This material is based on very helpful discussions we have had at working level with the FCA. It is important to recall that Annex B explores *optional* alternatives to the handling of client money, with the aim of giving practitioners more choice and reducing regulatory burdens and risks to customers. It does not seek to prohibit the handling of client money, nor does it make any specific proposals for changes to the frontline regulators' rules (although several regulators are already working on the latter).

The LSB submission (Annex C)

10. The paper on legislative options beyond the Act (Annex C) has always been the most contentious of the work stream outputs. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].
11. At its March meeting, the Board considered a scoping paper for the legislative options work stream. The final output paper at Annex C has been produced after six meetings of the working group, facilitated by Professor Stephen Mayson. The paper sets out the case for legislative reform and the on-going need for sector-specific regulation of legal services. It then explores the key issues that must be considered in the reform process and maps the options available in response to each issue. It does not express a preference for any particular option but is intended to be a resource available as an input to any future reform process.

OTHER DEVELOPMENTS

12. At the meeting of regulator chairs on 6 May, the LSB was unexpectedly actioned to set up a briefing event for the representative bodies on the post-Ministerial summit work streams. The Law Society (TLS) had originally intended to set up such an event itself, but, following discussions with us, TLS was content for the LSB to take a lead. The event took place on 9 June and included presentations from the LSB, the SRA, the CLC and Stephen Mayson. It was well attended by a wide range of representative bodies, along with the regulators and MoJ officials. There were just under 40 participants in total. The tone was constructive and open, and the representative bodies appeared to welcome the opportunity to find out more about what the regulators had been working on.
13. [REDACTED]
14. An internal 'lessons learnt' exercise took place earlier this month, to discuss what went well and what we might want to do differently next time, as we continue our collaborative working with the regulators.

TIMING, COMMUNICATIONS AND NEXT STEPS

15. The key forthcoming dates are:

8 July	<ul style="list-style-type: none">• Emergency budget, widely expected to significantly increase downward pressure on public spending
[9-13] July	<ul style="list-style-type: none">• Joint submission to Ministers• LSB submission to Ministers
[Following day]	<ul style="list-style-type: none">• Press release• Publication of submissions on LSB website
[tbc] July	<ul style="list-style-type: none">• Meeting with Minister Vara to discuss submissions
21 July	<ul style="list-style-type: none">• Parliament's summer recess begins

16. We continue to plan that, once the submissions are published, the LSB will use all appropriate opportunities to:
- a. Emphasise the progress that has been made to date on deregulation;
 - b. Promote the scope for further deregulation and, ultimately, legislative reform;
 - c. Sell the benefits of cross-regulator collaboration, especially on deregulatory initiatives; and
 - d. Challenge the regulators in the case of client money in particular to make more progress and to champion change in this area.

17. At their 30 June meeting, the regulator chairs will discuss possible topics for future collaboration. An update on the outcome of this discussion will be given at the LSB Board meeting on 7 July. In this context, we should bear the following points in mind:
- a. There was a Ministerial mandate of sorts for the first round of collaborative working, arising from last summer's Ministerial summit. Such a direct mandate may not exist for future collaborative working.
 - b. The LSB is unlikely to be able to 'carry' the collaborative working to the same extent as it has done so far in terms of resources, given the other commitments in our 2015-16 Business Plan. We should therefore look to the other regulators to step forward in terms of providing resources to facilitate work streams. Broadly speaking, we should envisage 2-4 work streams as a maximum, to be completed within a twelve month period.
 - c. We should, in discussion with the other regulators, develop objective criteria for evaluating ideas for future collaboration, to avoid the impression that there is any hidden agenda in the choices that are made. Such criteria could include:
 - i. Is the proposed topic within the (broadly drawn) remit and expertise of the LSB and the regulators?
 - ii. Will the work address a known problem or issue where collaborative working could result in making a material difference to delivering the regulatory objectives?
 - iii. Will collaboration deliver benefits not otherwise achievable ie are the LSB and the regulators uniquely well placed to carry out the work? Can we achieve more together than by acting alone?
 - iv. Is there any narrative to link the proposed topic back to the government's policy priorities (eg deregulation, growth, support for SMEs)?
 - v. How well defined/bounded is the issue identified?
 - vi. What is realistically achievable within the available resources?
 - d. We should be open to the possibility of work streams being taken forward by only a sub-set of regulators, and the possibility that collaboration would not always result in "joint badging" of the output.

30 June 2015