

<b>To:</b>	Legal Services Board	
<b>Date of Meeting:</b>	26 November 2015	<b>Item:</b> Paper (15) 57

<b>Title:</b>	<b>Scope of work on the LSB's vision for the future legislative framework</b>
<b>Work stream(s):</b>	Developing options for legislative change
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<b>Status:</b>	Official

<b>Summary:</b>
<p>The purpose of this paper is to:</p> <ul style="list-style-type: none"> <li>seek Board endorsement for the proposed scope of work with Professor Stephen Mayson on the LSB's vision for the future legislative framework for the regulation of legal services.</li> </ul> <p>This paper follows on from July's Board Paper (15) 37, September's strategy session and update in the CEO's report, and October's Board Paper (15) 49.</p> <p>The overall objective of this work is to develop a corporate view on what a 'fit for purpose' future legislative framework for the regulation of legal services looks like. The paper sets out the proposed scope of the project (see <b>Annex A</b>), which in broad terms is to answer the questions in the July 2015 legislative options paper, which was produced following cross-regulator discussions facilitated by Professor Mayson and published on the LSB website. The paper also sets out a proposed process for Board involvement, stakeholder engagement and the type and timing of outputs.</p>

<b>Recommendation(s):</b>
<p>The Board is invited to:</p> <ul style="list-style-type: none"> <li>endorse the proposed scope of work with Professor Stephen Mayson on the LSB's vision for the future legislative framework.</li> </ul>

<b>Risks and mitigations</b>	
<b>Financial:</b>	N/A
<b>Legal:</b>	No legal risks have been identified. The Legal Director has been kept informed of developments via Senior Leadership Team discussions.
<b>Reputational:</b>	There are considerable reputational risks and opportunities associated with this work. On one hand, the LSB has taken a leadership role and doing this work should maximise its influence over the direction of any future legislative reform. On the other hand, this work is likely to expose disagreement between the LSB and approved regulators on the future direction of travel, and possibly cause tensions between LSB and the regulators which could have knock on effects for other projects.
<b>Resource:</b>	This work has been formally factored into the 2015/16 Business Plan, and provision is being made in the draft 2016/17 Plan for continuation into the next business year.

<b>Consultation</b>	<b>Yes</b>	<b>No</b>	<b>Who / why?</b>
<b>Board Members:</b>	<b>X</b>		The Chairman has hosted all regulator chairs' meetings to date and has been involved in all internal discussions on the future direction of the LSB's legislative reform work.
<b>Consumer Panel:</b>		<b>X</b>	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. The LSCP will be specifically engaged as part of this project (see paragraph 10).
<b>Others:</b>			

<b>Freedom of Information Act 2000 (Fol)</b>		
<b>Para ref</b>	<b>Fol exemption and summary</b>	<b>Expires</b>
Para 12, second and third sentence Annex A	Section 36(2)(b)(ii): information intended to promote free and frank exchange of views for the purposes of deliberation.	N/A

## LEGAL SERVICES BOARD

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### Scope of work on the LSB's vision for the future legislative framework

#### RECOMMENDATION

1. The Board is invited to:
  - Endorse the proposed scope of work with Professor Stephen Mayson on the LSB's vision for the future legislative framework.

#### Background

2. As reported to the Board in September, the LSB submitted a paper to Ministers in July that was the product of cross-regulator discussions facilitated by Professor Mayson, exploring the key issues for consideration in any comprehensive reform of the Legal Services Act 2007 (the Act).
3. At its October meeting, the Board agreed that Professor Mayson be asked to work with the LSB to develop an LSB response to the questions posed in the July paper – effectively the LSB's vision for an effective legislative framework. The suggested scope for this work has since been developed with Professor Mayson's input and has his support (see **Annex A**).

#### The proposed scope

4. It is intended that the work focuses on developing the LSB's response to the six key questions set out in the July paper, as follows:
  - What should be the number, nature and presentation of any regulatory objectives?
  - What should fall within the scope of regulation? How should that be addressed?
  - Should regulation be focused on activities or the providers who carry them out?
  - How can the independence of legal services regulation from both government and representative bodies best be assured?
  - Does the regulatory framework need to give consumers a voice? If so, what is the best way to achieve that?
  - How should the legal services regulator(s) be structured?
5. To start answering these questions, the first stage will be to revisit the LSB's September 2013 'blueprint' for the deregulation of legal services and consider how the LSB's views may (or may not) have moved on since then. In order to

avoid the trap of insular thinking by looking at the subject solely from the LSB's existing position in the landscape, we also plan to consider how legal services fit into the broader 'justice solutions' market (alongside mediation, for example) and what account the legislative framework should take of this. As agreed by the Board at its September meeting, it is not proposed to consider the extent of consumer access to second-tier redress other than at a high level at this stage, given other ongoing work with the OLC.

### **Involvement of the Board**

6. Sessions with the Board will be core to the successful delivery of this work. It is proposed that the Board hold two informal sessions with Professor Mayson in the early part of 2016 to discuss the core issues and provide a steer on direction of travel before being invited to approve a policy document (or similar) at its meeting in April. It is intended that the Board discusses all six questions listed under paragraph 4 above, although to prioritise effectively it is likely that greater time will need to be devoted to some issues over others.
7. Should this approach meet with the Board's approval, it makes sense to utilise the schedule of Board meetings in 2016, making the timetable run as follows:
  - 21 January – 2hr informal session to follow the Board meeting
  - 23 March – 2hr informal session to follow the Board meeting
  - 27 April – the Board will be invited to approve a policy document (or similar) setting out the LSB's vision on a 'fit for purpose' future legislative framework. The Board will also be invited to endorse a communications and publication plan at that meeting.
8. Separate sessions facilitated by Professor Mayson with the Senior Leadership Team are planned to complement this timetable and inform Board discussions.

### **Stakeholder engagement**

9. Careful stakeholder management will be needed. Unlike the July paper which reflected the output of cross-regulator discussions, and while other stakeholders' comments may be sought, the object of this work will be to document the LSB's corporate position. Experience from the earlier blueprint exercise suggests the LSB's eventual position is likely to be at odds with the positions of one or more of the approved regulators, and indeed our view on the preferred institutional architecture might pose an existential challenge to one or more of them.
10. The Legal Services Consumer Panel will have valuable insights to contribute on each of the six questions, while the penultimate question concerns them directly. The executive has discussed with the Panel how it would like to be engaged. Diaries permitting, Stephen Mayson will attend the Panel meeting in January to discuss the work, and the Panel Chair has expressed interest in attending the Board sessions in January and March. The Panel has also told us that it plans to come up with its own answers to the six questions to coincide with our publication timetable. We will be encouraging the Panel to think carefully about the timing of this: if it were in advance of our publication, that would give us the

maximum opportunity to take it into account in finalising the LSB's position, although the final decision is of course very much up to the Panel.

11. In October the Board suggested that, in parallel to this work, the LSB should work up some scenarios for future developments to 2025 or 2030, taking account of social, technology and demographic issues, against which the ideas for the future regulatory framework could be sense-checked. To take this forward our intention is to form a reference group of forward-thinking external legal services and other experts who could offer fresh insight. The group would meet initially in January and then potentially reconvene between the March and April Board sessions, with the primary purpose of testing the LSB's emerging thinking against possible future developments in the sector. The Legal Services Consumer Panel's report '2020 Legal Services: how regulators should prepare for the future' will be a key resource for the group's discussions.

### Outputs and timetable

12. This approach would enable the Board to reach an agreed policy position by the end of April, although we will wish to reflect on the precise timing of publication in light of anticipated external developments in early 2016. [REDACTED]

[REDACTED]

13. Two published outputs are planned:

- a detailed LSB policy paper (or similar) primarily designed to '**inform**' setting out an options appraisal and justification for our recommended position; and
- a shorter, punchy summary document aimed at senior stakeholders and government primarily designed to '**convince**'.

14. The outputs and publication timetable represent current thinking and some flexibility may be needed given the dynamic external environment.

**4 November 2015**