

To:	Legal Services Board	
Date of Meeting:	22 October 2015	Item: Paper (15) 53

Title:	Background to the market evaluation work stream	
Work stream(s):	Performance, evaluation and oversight	
Author / Introduced by:	Robert Cross, Project Manager – Research 020 7271 0091 Robert.cross@legaservicesboard.org.uk	
Status:	Official	

Summary:
This paper provides the Board with background and context for the LSB's 2015/16 evaluation of how the legal services market is changing following the introduction of the Legal Services Act 2007.

Recommendation(s):
The Board is asked to: <ul style="list-style-type: none"> Note the background and history of the evaluation work stream, and progress in delivering the 2016 edition of the market evaluation;

Risks and mitigations	
Financial:	N/a
Legal:	N/a
Reputational:	Risk that our assessment of market change isn't seen as credible being mitigated by use of a wide range of sources, stakeholder engagement, and input from the Research Strategy Group.
Resource:	Resource implications of the planned approach are in line with our business plan commitments.

Consultation	Yes	No	Who / why?
Board Members:		X	In due course Terry Babbs will be directly engaged in his role as board representative on the Research Strategy Group.
Consumer Panel:		X	

Freedom of Information Act 2000 (Fol)		
Para ref	Fol exemption and summary	Expires
Para 9(c), last sentence	Section 44: restricted information under s167 LSA which was obtained by the Board in the exercise of its functions and therefore must not be disclosed	N/a

Para 10, third and fourth sentence		
--	--	--

LEGAL SERVICES BOARD

To:	Legal Services Board	
Date of Meeting:	22 October 2015	Item: Paper (15) 53

Background to the market evaluation work stream

Recommendation

1. The Board is asked to:
 - i. Note the background and history of the evaluation work stream, and progress in delivering the 2016 edition of the market evaluation.
2. At an informal pre board session on 21st January the Board will be presented with an overview of findings to date and be asked to put forward any views. The Board will receive a draft report for sign off and publication at the Board meeting on 23rd March 2016.

Background

3. The LSB has a long standing commitment to evaluate the delivery of the market outcomes associated with the Legal Services Act (LSA) 2007. In 2012 the LSB published a baseline analysis of the legal services market against a series of outcomes within a structured evaluation framework.¹ The 2015/16 business plan contains a commitment to update this analysis.² This note sets out the context of the market evaluation work so far. In the past this work has been very well received by a wide range of stakeholders, (set out below at 9c)), and valued as an accessible source of information on all aspects of the legal services market.
4. While activity such as regulatory standards looks at the capacity and capability of the approved regulators, the evaluation work stream seeks to assess how the legal services market is changing following on from the introduction of the LSA reforms. This seeks to assess whether the market outcomes associated with the LSA regulatory objectives have been achieved over the longer term, where progress is limited, and what the issues might be.
5. The evaluation framework is shown below. This was developed in conjunction with the Board in 2010/11 and originally published shortly after.³ Clearly it is

¹ Market impacts of the Legal Services Act – 2012 final baseline <https://research.legalservicesboard.org.uk/wp-content/media/Impacts-of-the-LSA-2012-Final-baseline-report.pdf>

² See page 16,

http://www.legalservicesboard.org.uk/news_publications/LSB_news/PDF/2015/LSB_Business_Plan_2015_16.pdf

³ First set out in 2011, Evaluation framework,

http://www.legalservicesboard.org.uk/news_publications/publications/pdf/evaluation_framework_april_2011.pdf revised internally June 2015.

desirable to maintain a high degree of consistency between the 2015 and 2012 exercises, so only a small number of changes have been made, mainly reflecting data availability.

Figure 1. Evaluation Framework.

Perspective	No	Outcomes
A. The provider	1	Diversity of the legal sector shows greater similarity to the client population.
	2	Quality of legal services is improved overall compared to 2009.
	3	The profession, judiciary and public maintain confidence in the independence and reputation of the legal sector.
B. The consumer	4	A higher proportion of the public are able to access justice.
	5	Consumers have confidence in the regulation of legal services.
	6	Consumers are confident and empowered in their dealings with legal services.
C. The public	7	Wide confidence in the law and the legal sector.
	8	An efficient legal system delivering quality legal services at a reasonable cost.
	9	Wide confidence in the standards and ethics of the legal profession.
D. The market	10	The market for legal services is more competitive.
	11	More consumers are able to get legal services at an affordable cost.
	12	There is a greater plurality of, and innovation in legal services offered.
E. The investor	13	A legal market which is attractive to all sources of finance including external investors.
	14	Proportionate regulation allowing an in-flow of capital.

6. This work considers questions such as has competition increased? Do consumers have confidence in the regulation of legal services? Does the diversity of the professions match the diversity of society? What impacts has the LSA had on access to justice? The set of questions is broad which necessitates the use of wide range of measures.
7. The evaluation programme consists of a periodic overarching 'state of the nation' analysis of the reforms and series of reports focusing on key areas

such as access to justice and competition.⁴ The overarching report being developed now will present a distillation of a very wide range of information, research findings, and in house data analysis, which will be considered against each outcome, alongside our interpretation of what that means in the context of the framework. Based on this – the best information available – we interpret the evidence in the context of the wider reforms. This approach is designed to give the evaluation work stream a level of credibility, providing the best available version of market change within the resources available.

8. The 2011 Regulatory Information Review (RIR) provided a comprehensive picture of the known and unknown areas of interest for the LSB. This has allowed us to prioritise areas in which to invest in primary research to close these gaps in knowledge systematically. The most recent example of such activity was the joint SRA and LSB funded research into levels of innovation in the legal sector. New research projects which will inform the 2016 market evaluation exercise include collecting information on the prices of common legal services and major legal need surveys focusing on individual and small business consumers. Our medium term objective is that as time progresses more approved regulator led research and data will become available, reducing the gaps in knowledge, reducing the scope for variability in interpretation, and driving greater consensus on key issues.
9. Broadly the business case for the LSB evaluating market outcomes associated with the LSA, runs as follows:
 - a) **The LSA reforms are complex, and the market is dynamic** - The LSA 2007 introduced a set of reforms aimed at transforming the regulation of legal services. The reforms aim, by delivering the regulatory objectives, to change the market for legal services. Such a programme of reform is not without costs or risks making it essential that the impact of reform is fully evaluated. The Evaluation work looks across all regulatory objectives, while providing an evidence base to support policy work, and provide an assessment of the market outcomes. The evaluation work draws heavily on the framework for understanding market changes developed in 2011.⁵
 - b) **Evaluation of outcomes is best practice** - Evaluation is an essential tool if we are to understand the overall impact of the changes to regulation made since implementation of the LSA 2007. For those operating in the regulatory sphere, evaluation is key to understanding whether regulatory policy is achieving the right balance of providing a baseline of protection for consumers, promoting competition and wider economic growth. This also supports ongoing debates around what the future regulatory structure should be.

⁴ A guide is set out in the Annex with links to the LSB research web pages, for further reading as required.

⁵ A framework to monitor the legal services sector, Oxera, 2011 <https://research.legalservicesboard.org.uk/wp-content/media/A-framework-to-monitor-the-legal-services-sector.pdf>

c) **The LSB is uniquely placed to undertake this work** - There are a number of other organisations that publish frequent reports reflecting their specific areas of interest, for example the City UKs bi-annual 'UK Legal Services', the Law Society annual 'Trends in the solicitors profession' or the Legal Services Consumer Panel's 'Consumer Impact Report'. While each report is of significant interest, none of them cover the whole market nor consider aspects of both supply and demand. The LSB has a remit across the whole of the market and to look at both consumers and suppliers of legal services. There is a general demand for a better understanding of how the market is changing both from government officials, the academic community, and wider groups⁶, and a previous report has been held up as best practice and a '*great source of information and inspiration*'.⁷ Previous evaluation reports have reinforced the LSB's credibility with key stakeholders, for example the significant use of the 2012 baseline report in the OFT's 2013 investigation into competition and regulation in the legal sector.⁸ It also provides an evidence platform for our policy making generally. For example the 2011 RIR provided information on consumers to support application of the Consumer Toolkit⁹, and the 2013 report supported the development of elements of the Blueprint for legal services regulation.¹⁰ It has also provided the material for a range of speeches and presentations over the last few years. This activity will update these sources and provide an up to date evidence base for the years ahead.

[REDACTED]

[REDACTED]

[REDACTED]

d) **Evaluation supports a challenge to potential regulatory capture** - The key aim of this work is to provide an objective credible assessment of the legal services market, tracking change over time against the context of the LSA reforms. This minimises the scope for reform to be driven by specific interest groups, and holds regulators to account for the wider outcomes of their activity. Further in the absence of a legal power to bind approved regulators to commitments made in a decision notice, publically evaluating market changes keeps pressure on the approved regulators to take responsibility for evaluating the impacts of their regulatory interventions in a systematic way. The Regulatory Standards work stream seeks to assess how regulators are progressing towards better regulation in the context of the LSA.¹¹ Further individual projects such as the Diversity of the Legal Workforce¹² include action plans for the approved

¹¹ See http://www.legalservicesboard.org.uk/Projects/developing_regulatory_standards/index.htm#next_round

¹² For details see http://www.legalservicesboard.org.uk/Projects/workforce_development/index.htm#diversity

regulators. The Evaluation project looks at the market outcomes of all this activity, highlighting potential issues using a wide range of evidence, as opposed to relying simply on general assertions or media trends alone.

- e) **The approach is sufficiently flexible to cope with poor data.** The approach to evaluation is to group the agreed set of outcomes by the different perspectives, and then use a range of indicators to assess how far progress towards each outcome has been achieved. As the Regulatory Information Review¹³ demonstrated the ongoing challenge remains a lack of information on what authorised persons actually do, who their customers are, the impact of technology, supply networks, and demand side substitution on authorised persons. By looking at market outcomes through a range of indicators, we avoid the significant data requirements that are associated with seeking to establish causal relationships between changes to regulation and changes in the market.

2015/16 Market Evaluation Activity

- 10. Building on the previous work in this area, the 2015/16 Market Evaluation will provide a comprehensive assessment of changes in the legal service market since 2007. Figure 2 below shows the main areas of activity for the evaluation work stream and the timescales involved. [REDACTED]

- 11. At this stage it is recognised that there will be continued significant gaps in our understanding on changes relating to outcomes 13 and 14, and research into investment activity will remain on the list as a future gap in knowledge to close, among others.

- 12. While it is recognised that consensus on what the range of indicators mean is unlikely to be fully achieved, in a departure from previous approaches, we are seeking to get stakeholder reaction to an initial assessment of the available evidence before we publish the final report. At this stage this is likely to be a series of workshops, though we may revert to other methods of getting stakeholder views – e.g. a survey on key areas – depending on available resources and or timings.

¹³ For details see <https://research.legalservicesboard.org.uk/wp-content/media/The-RIR-process.pdf>

Figure 2. Current timetable

	Activity	Date
1	Agreement of approach and revision to evaluation framework, including presentation to the Research Strategy Group.	July (completed)
2	Literature Review of relevant research reports and articles (in - house) published between 2012-2015.	August – November
3	Data collation and analysis to update 2012 and 2013 analysis.	
4	Undertake initial assessment based on the results of the new data analysis and literature review.	October-December
5	Primary research conducted. Research projects primarily for the market evaluation work are: <ul style="list-style-type: none"> - A survey of prices for key individual consumer legal services; - Direct Access Barristers; - Economic analysis of cumulative impact of individual changes to regulation 2010-2015. 	August – March
6	Stakeholder engagement activity – to test our initial conclusions and invite debate – including presentation of findings to the Board on 21 st January.	January
7	Finalise draft report following outputs from stakeholder engagement activity, new data realises from other research projects, and findings from primary research.	February – March
8	Report sent to Board for approval	March
9	Report published – assuming Board approval granted	March
10	Presentation of findings at series of events, conferences, speeches	April onwards

13. The nominated Board Member for Research (Terry Babbs) will be invited to any workshops, and asked to review earlier drafts of the market evaluation report, before presentation to the full Board in March. The Research Strategy Group will initially consider our approach on 21 October and then review findings at a meeting in early 2016.

Next steps

14. Work will continue on the development of the Market Evaluation, and the Board will have an opportunity to comment on draft findings at an informal session on 21st January and will then receive a draft report for comment and review on 23rd March.

14.10.15

Annex

Guide to the series of evaluation reports and publications, by date of publication, most recent first.

1. **March 2016 (Planned)** - In our 2011/12 Business Plan we committed to carrying out a triennial evaluation of the delivery of the market reforms, and the 2015/16 Business plan renews that commitment. The 2015/16 evaluation report which will look across all perspectives, updating the baseline.
2. **April 2014 – April 2015** - Series of summary presentations at research conferences to raise awareness of our conclusions from aspects of the evaluation work stream and invite discussion and debate. These include the:
 - [Socio Legal Studies Association Conference](#) in April 2014,
 - [UCL Access to Justice Conference](#) in June 2014,
 - [International Conference of Legal Regulators](#) in July 2014,
 - [Georgetown University Regulating Legal Services in the 21st Century](#) conference in April 2015.
3. **October 2013** - [Evaluation: Changes in competition in different legal markets](#). Using our [market segmentation framework](#), and competition commission guidelines, we conducted an analysis to look at how competition has changed in the different market segments. This included the first ever survey of ABS organisations.
4. **October 2012** [Market impacts of the Legal Services Act – 2012 final baseline](#) This presented a final analysis across the evaluation framework, reflecting the feedback from stakeholders on the interim report. We received an unsolicited [highly positive academic review](#) of this report, singling out the LSB for best regulatory practice, providing examples of how teachers can use the report to enhance their courses, and promoting readership of our report internationally.
5. **September 2012** - [Evaluation: How can we measure changes in access to justice?](#) A discussion paper focussing on how we might measure access to justice. We presented the proposals to the [international Legal Services Research Centre conference](#), and shared the findings with stakeholders to initiate a debate. The most significant response to this came from [Professor Mayson](#) challenging our definition of access to justice but broadly supporting the range of proposed indicators.
6. **April 2012** - [Market impacts of the Legal Services Act – 2012 interim report](#) - This presented an analysis across the evaluation framework, highlighting gaps in evidence and baselining the legal services market against each outcome. We shared the findings with a range of stakeholders, presented summaries, and invited debate.
7. **October 2011** – Publication of our Regulatory Information Review - a comprehensive scan of available information on the legal services market, classified against our key knowledge needs – now presented online in the [analysis section](#) of our research web pages.
8. **April 2011** - Publication of our outcomes based [evaluation framework](#).
9. **July 2010** – Publication of LSB definition of the [regulatory objectives](#).