

To:	Legal Services Board	
Date of Meeting:	23 March 2016	Item: Paper (16) 16

Title:	Open data review - responding to the Consumer Panel report and recommendations on open data in legal services
Workstream(s):	Unmet legal need
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Status:	Unclassified
Recommendations:	<p><i>The Consumer Panel's report</i></p> <p>After considering this report, the Board is invited:</p> <ul style="list-style-type: none"> to agree to the proposed response to the Panel (at Annex B) to delegate the sign-off process for the Panel response to the Chief Executive. <p><i>Wider LSB project work on comparison websites</i></p> <p>The Board is invited to consider the findings of the report and potential future project work on open data.</p>

Background

The LSB's open data project has reviewed how increased regulatory information about legal services providers in the public domain (open data) could inform consumer choice. Compared with some other regulated markets, there is very little such data available. This project sought to understand:

- where increased levels of open data in the legal services market could help consumers to choose the service that best meets their needs
- the barriers that are preventing intermediaries from developing comprehensive choice tools, and how (if at all) these can be addressed
- the effect of regulatory interventions in other markets to increase open data.

This paper details our findings for these three areas. The Board is asked to:

- Review the report and recommendations from the Consumer Panel (the "Panel") on open data in legal services, and consider the proposed response to the Panel
- Consider the findings of the review more broadly.

What regulators could and should be publishing

In 2015, the LSB asked the Panel to review what kind of information regulators could collect and publish to aid consumers. The majority of recommendations in the report, *Opening up data in legal services (Annex A)*, were directed at the approved regulators and the Legal Ombudsman. This paper provides some analysis of these recommendations and seeks the Board's guidance on the extent to which LSB should comment publicly on them.

Three recommendations were specifically directed at the LSB. These were:

- The LSB and Approved Regulators need to be more vocal about price disclosure and transparency.
- If there are contractual provisions or gag clauses which create a barrier to the release of price information the LSB and the Approved Regulators should explore how this could be changed.
- The LSB should provide guidance on how the smaller Approved Regulators might gather and publish information on quality.

Where the Board disagrees with recommendations made by the Panel, section 10 of the Legal Services Act (the "**Act**") requires the LSB to publish its reasons. For all previously commissioned reports, the Board has published a response whether or not it agrees with the recommendations

Barriers to intermediaries

In 2012, a report by the Panel examined barriers to the growth of intermediaries in the legal services market. Since then the LSB and the Panel have worked together effectively to help ensure basic registration data about providers is in the public domain. The LSB has engaged with the "big four" economy-wide comparison websites to gather their views on the commercial attractiveness of the legal services market. Their responses suggest barriers are likely to deter entry on a significant scale in the near term. However, market conditions may evolve to become more suitable in some market segments, such as conveyancing. While the big four comparison websites have been cautious, we are aware that there has been external investment to support entry by a range of niche market entrants.

Regulatory interventions in other markets

During the life of this project, the LSB has carried out an ongoing review of proposed interventions into regulated markets to understand how they might apply to legal services. In its status as an observer member, the LSB has also participated in a UKRN analysis of price comparison websites to understand in more depth the issues that affect comparison websites and how they compare across regulated sectors, with the intention of addressing future potential challenges.

Proposed project work in 2016/17

Future work for the open data project will include:

- implementing a response to the Panel's recommendations as necessary

- ongoing engagement with the UKRN
- ongoing engagement with comparison websites (as necessary)
- submitting relevant information to the CMA market study.

Risks and mitigations			
Financial:	N/A		
Legal:	N/A		
Reputational:	N/A		
Resource:	N/A		
Consultation	Yes	No	Who / why?
Board Members:		X	
Consumer Panel:	X		The Panel was commissioned to provide a report on open data in the legal services market
Others:			

Freedom of Information Act 2000 (Fol)		
Para ref	Fol exemption and summary	Expires
29-39	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	
Annex B	Section 22: information intended for future publication	

LEGAL SERVICES BOARD

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Recommendations

The Consumer Panel's report

After considering this report, the Board is invited:

- to agree to the proposed response to the Panel (at **Annex B**)
- to delegate the sign-off process for the Panel response to the Chief Executive.

Wider LSB project work on comparison websites

The Board is invited to consider the findings of the report and potential future project work on open data.

Background

1. The LSB's 2015/16 business plan sets out that through the open data project, we will:
2. "further our understanding of open data and markets and how this could develop... and will look at the role of intermediaries and choice tools in helping consumers to solve problems and make choices in both the regulated and unregulated market".
3. To achieve this, the open data project has focused on three main areas:
 - where increased levels of open data in the legal services market could help consumers to choose the service that best meets their needs (the Panel's advice was the principal input to this strand of work)
 - the barriers that are preventing intermediaries from using open data to develop comprehensive choice tools, and how (if at all) these can be addressed (LSB discussions with comparison websites was the principal input to this strand of work)
 - the effect of regulatory interventions in other markets to increase open data (delivered by LSB desk research and participation in a UKRN project).
4. These are explored in turn below.

Where increased levels of open data in the legal services market could help consumers to choose the service that best meets their needs (Responding to the Panel’s advice)

- 5. In July 2015, the Panel was commissioned by the LSB to review what kind of information regulators could collect from practitioners to aid consumers. Specifically the LSB requested that the Panel identify what regulators are already collecting and publishing, and what additional information could be collected and published. The LSB received this report, *Opening up data in legal services* (at **Annex A**) in mid-January, which sets out 15 recommendations. The most significant of the report’s recommendations (in our opinion) – that approved regulators put in place regulatory arrangements requiring providers to publish first-tier complaints data (3) and average costs of legal services (9) – are directed at the approved regulators rather than LSB. Even so, any views the LSB chooses to express about these will be studied closely. This paper includes initial analysis for the Board to consider.

Panel recommendations to the LSB

- 6. Three recommendations are directed at the LSB. These are listed in the tables below together with a proposed response to each recommendation.
- 7. Where the Board disagrees with recommendations made by the Panel, section 10 of the Legal Services Act requires the LSB to publish its reasons. For all previously commissioned reports, the Board has published a response whether or not it agrees with the recommendations.
- 8. A proposed response to the Panel’s report and recommendations is at **Annex B**.

9. Recommendation 8 - The LSB and Approved Regulators need to be more vocal about price disclosure and transparency.

The LSB accepts this recommendation. The LSB has previously made public comments on the need for greater price transparency in the market, in particular, in our baseline market evaluation study. However, our new research on the prices of common individual legal services (to be published in early April 2016) provides fresh evidence about the need to improve price transparency in the market. The research shows that between 10-25% of providers display prices on their websites. Crucially, providers that publish their prices, are on average, cheaper than those that do not.

The evidence of weak transparency has been a key feature of our communications activity around the prices research. The LSB has highlighted this in a supplementary submission to the Competition and Markets Authority (CMA) based on the research. We will continue to use every suitable opportunity to reiterate the importance of price disclosure and transparency.

10. Recommendation 11 - If there are contractual provisions or gag clauses which create a barrier to the release of price information the LSB and the Approved Regulators should explore how this could be changed.

The LSB accepts this recommendation. However, the LSB understands from discussions with the Panel that this is a theoretical risk identified by the Panel rather than one based on evidence of gag clauses operating in practice. Should this become a live issue, the LSB will consider it further.

11. Recommendation 14 - The LSB should provide guidance on how the smaller Approved Regulators might gather and publish information on quality.

The LSB accepts this recommendation, in so far as it takes into account the LSB's previous work on quality risks, which is focussed on approved regulators and already covers these issues. We recognise the resource constraints faced by smaller approved regulators and the need for a proportionate approach. We do not consider there is a need to update this work at the present time.

In 2012, the LSB carried out a consultation to generate a discussion around regulatory interventions approved regulators could make to address quality risks. While entry controls and education training requirements are important tools in mitigating quality risks, the LSB identified three main themes¹ in relation to the management of quality risks. Based on these, we set out success criteria for the approved regulators, to demonstrate to us that they are addressing risks to quality.

Panel recommendations to the approved regulators

12. The Panel directed ten recommendations to the approved regulators. There is a choice about the extent to which LSB comments on recommendations aimed at the regulators and it would be helpful to understand the Board's views on this matter. While the LSB can helpfully send some signals to influence the direction of travel on the more controversial recommendations, further discussion and evidence may be needed before the LSB can take a definitive view.
13. We are also alive to the possibility that the CMA may suggest remedies in these areas and sensitive to the need to not impede this work by suggesting action before the CMA has completed the diagnosis phase of the market study.
14. Some recommendations are grouped for ease of analysis.

¹ These are (i) provision and transparency of performance information to allow a greater understanding of where issues in relation to quality exist; (ii) development of improved assessment and segmentation of risks to quality in legal services through greater evidence based analysis; and (iii) using an outcomes focused approach to ensure regulatory interventions drive an improvement in quality standards without hindering innovation.

15. Recommendation 1 - Approved Regulators should do more to bring together regulatory information in a meaningful way. A starting point would be to link basic and conduct information.

The LSB is supportive of approved regulators bringing scattered regulatory information together, to make finding relevant information easier for consumers to use. Bringing enforcement findings and register data together is a good example of how regulatory information can be made more meaningful for consumers. We are pleased to note that the Bar Standards Board already does this.

16. Recommendation 2 - The SRA should remove the restrictions it has placed on sharing basic data. At present, comparison websites need to sign up to the Consumer Panel's self-assessment standard before applying to the SRA for access. The Panel's standard was not intended for this.

We understand that the Solicitors Regulation Authority intends to remove the access restrictions to its roll of solicitors in "the coming months". The LSB welcomes this development.

17. Recommendation 3 - Approved Regulators should make the collation and publication of first-tier complaints a regulatory requirement and mandate for its publication.

Linked to...

Recommendation 12 - Approved Regulators should consult on how they might present and contextualise complaint data prior to its publication.

The LSB is currently carrying out a consultation into its requirements for regulators for first-tier complaints handling. As a part of this, we will be interested to see if stakeholder express views on the Panel's report and recommendations. Of particular interest will be if stakeholders have views on whether practitioners are best placed to publish this information, or whether regulators should collate and publish the information, or a combination of both.

Greater transparency of first tier complaints data has the potential to inform consumer choice and deter poor practices by practitioners. Some other regulators, notably the Financial Conduct Authority, publish first-tier complaints data at firm level. However, it is unclear whether the reputational effects of publishing first-tier complaints data would be as powerful in the legal sector due to the absence of brand names. The risks of unintended consequences, for example, practitioners discouraging consumers from complaining, need to be considered, alongside the additional burdens that such data requirements may create for practitioners and the approved regulators.

18. Recommendation 4 - Approved Regulators should publish the full details of enforcement sanctions, including the names and location of firms or individuals reprimanded.

In March 2014, the LSB published an assessment of regulatory sanctions and appeals processes. Transparency was one of four features of best practice identified in the report. Our analysis identified that the approved regulators differ in their levels of transparency and the clarity of information they make available, including a tendency not to disclose lesser administrative penalties. At the time, the Board decided that the LSB would use the regulatory standards work programme to ensure that the approved regulators are delivering the required level of transparency for their sanctions and appeals arrangements.

The LSB is supportive of the principle of all enforcement findings being reported in full. The Panel's assessment did not consider whether agreements that have been reached between practitioners and approved regulators, based on an admission of guilt, should also be published. Generally the approved regulators approach is not to publish unless there is a strong case of public interest to do so.

19. Recommendation 6 - Approved Regulators should commission research on quality of advice and publish this research in full. Lessons should be learnt from how other sectors have tackled comparable gaps in knowledge.

Linked to...

Recommendation 7 - The SRA and BSB should carry out mystery or shadow shopping exercises on quality of advice in high risk areas and publish their research findings in full. This type of research has the potential to offer meaningful insight into quality of advice.

Linked to...

Recommendation 13 - The quality of legal advice needs to be better understood and actively monitored. This should involve academic research and build on existing good practice techniques such as file review and peer review.

In considering these recommendations, the LSB considers there is an important point of principle to consider, namely that approved regulators cannot (or should not) directly oversee practitioners when they serve their clients. Instead, approved regulators address risks to technical quality (for example) through setting minimum standards as entry requirements for practitioners, supported by continuing professional development requirements and professional indemnity insurance requirements.

While the LSB is supportive of regulators understanding better the quality of advice clients receive (both in technical and service terms), research in this area is likely to be expensive and only provide a snapshot in time for a small sample of practitioners. While approved regulators might gather evidence through mystery shopping and peer reviews in high-risk areas where it is cost-

effective to do so, it is important to be realistic about the viability of such research as a routine tool for delivering consumer protection.

20. Recommendation 9 - Approved Regulators should require the publication of the average cost of legal services on the websites of approved firms and individuals, and mandate that they provide this information on request. This should also include the average cost of disbursements.

Evidence of weak price transparency in the market, its impact on competition and unmet legal need may justify regulatory intervention, subject to careful cost-benefit analysis. Publication of average prices for particular legal services could be helpful but it could also be misleading. The likely outcome for consumers is unclear to the LSB. Agreeing a methodology for these calculations, the collection of data and the actual publication of auditable/justifiable averages would create a burden for practitioners. Further discussion and evidence, including an assessment of the burdens on business and practicalities of enforcing rules here, would be needed before the LSB could reach a firm view on this issue.

21. Recommendation 10 - Approved Regulators should understand and research barriers to price transparency in their respective areas and publish the research/study in full.

The LSB's new research on the price of common legal services shows the value of such exercises. We support research on barriers to price transparency.

Recommendations to the Legal Ombudsman

22. The Panel directed two, linked recommendations to the Legal Ombudsman.

23. Recommendation 5 - The Legal Ombudsman should publish all ombudsman decisions in full.

Linked to...

Recommendation 15 - The Legal Ombudsman should publish a contextualised summary and analysis of cases decided informally.

The Legal Ombudsman has said it plans to review its publication scheme, which provides an opportunity to consider the Panel's recommendations. It would not be appropriate for the Board to comment while this review is planned.

The above views have been set out in a letter to the Chair of the Consumer Panel at **Annex B**. We would welcome your comment on them and the response in general.

The barriers that are preventing intermediaries from using open data to develop comprehensive choice tools, and how (if at all) these can be addressed (LSB project work)

24. Intermediaries, those that take open data from various sources and turn it into a useful product for consumers, currently offer four kinds of online products (known as choice tools) in the legal services market. They are:
- Directories – sites which offer simple registers of practitioners
 - Feedback websites – sites that offer a mechanism for service reviews and feedback from clients that have had work completed by practitioners
 - Referral websites – sites that generate leads based on consumer queries
 - Comparison websites – sites that enable consumers to compare offers based on a range of variables, such as price, quality, location etc.
25. For consumers to make meaningful decisions to resolve their legal problems, they need a variety of up-to-date sources of data from intermediaries. Ideally, choice tools enable consumers to compare a wide variety of service offers on price, quality indicators (including direct consumer feedback) and other measures. Currently, directories, feedback and referral websites do not provide consumers with a complete picture to make informed choices. A full-service comparison website is a much more useful choice tool.
26. A report written by the Panel on intermediaries in 2012 identified a number of barriers for the growth of comparison websites in the legal services market.² These included:
- the fragmented nature of market, i.e. a large number of small providers
 - consumer inertia, i.e. low levels of shopping around
 - practitioners being culturally averse to marketing
 - practitioners considering that comparison websites would be an unhelpful feature of the market due to the special / emotional nature of legal services
 - fees and charging structures not being standardised, making comparison difficult
 - practitioners being averse to embracing client feedback.
27. Despite these barriers, the Panel's report suggested that market conditions might change over time (e.g. legal brands might emerge, growth in fixed fee offers) to allow for comparison websites to develop legal services content.
28. We are aware that there has been external investment to support entry by a range of niche market entrants. It is not yet clear whether this is the right moment for such entry.

² Consumer Panel, Comparison Websites, 2012, http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/documents/ConsumerPanel_ComparisonWebsites_FinalReport.pdf

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Analysis

39. [REDACTED]

40. Overall the barriers previously identified by the Panel remain and this is likely to deter entry on a significant scale in the near term by the major intermediaries operating across the economy. However, it is possible that market conditions may evolve to become more suitable over time and some market segments, such as conveyancing, may see growth more quickly. While the economy-wide intermediaries have displayed caution, the press cuttings suggest there has been external investment to support entry by a range of niche market entrants.

The effect of regulatory interventions in other markets to increase open data (LSB project work)

Competition and Markets Authority (CMA)

41. During the life of this project, the CMA has been carrying out two market investigations – into the retail banking market and the energy markets – that propose remedies relating to comparison websites to address detrimental effects on consumers. In addition, the Government’s “better deal” competition plan, announced that the CMA will carry out a study into comparison websites to ensure they are meeting their full potential for consumers to compare and switch products.

Retail banking market investigation

42. Remedy 3 proposes that customer specific transaction data should be made more accessible and more useable to facilitate price comparisons between providers. This would make comparing the various offers on personal current accounts and business current accounts easier.
43. Remedy 4 proposes that providers would be required to set up a retail banking price comparison website to assist small to medium-sized enterprises (SMEs).
44. Responses to the CMA’s possible remedies largely support increasing access to ‘mi-data’ (how banks record transactions) to make comparison easier. They also support the idea of a price comparison website for SMEs; particularly from the big four comparison websites and banks. Other responses are also positive about the creation of an SME price comparison website for banking, though its success would be dependent on having the right information.

Energy market investigation

45. Remedy 6 proposes that Ofgem could provide an independent price comparison service for domestic and micro-business consumers.
46. On 10 March, the CMA released its notice of intention following its investigation into the energy market. While the remedy of Ofgem creating a new comparison website was not selected, the important role played by comparison websites in the markets was highlighted. We will review the findings of this report in detail and monitor stakeholder responses.
47. These proposed remedies assume greater significance in light of the CMA’s market study into legal services. The study’s scope is very relevant to the LSB’s open data project as it includes examining whether consumers can drive

effective competition by making informed purchasing decisions.³ The CMA has shown interest in this project in our ongoing meetings with them. Although the study is in its early stages and we have received no indications on remedies, it is possible that the CMA might suggest remedies similar to those it has proposed for retail banking and energy.

The UK Regulators' Network (UKRN)

48. The UKRN, of which the LSB is an observer member, is currently developing a project to understand in more depth the issues that affect comparison websites and how they compare across regulated sectors, with the intention of addressing future potential challenges.
49. As a part of this, different regulatory approaches to dealing with these issues will be considered. While comparison websites have been in existence for over ten years in some sectors (energy, telecommunications, financial services), regulators in these areas are aware that barriers continue to prevent optimal outcomes from being delivered for customers.
50. The UKRN will produce a report in the spring of 2016 on these issues. To help the LSB to understand the role of intermediaries and choice tools in helping consumers to make choices to solve problems, we will closely observe the project's progress and its findings.

Next steps

51. To complete the 2015/16 project, the LSB must formally respond to the Panel's report, Opening up data in legal services. A draft response is attached at Annex B for the Board to consider. The LSB is currently considering options for its 2016/17 work programme. Suggested activity for a continuation of the open data project include:
 - Responding to the Panel's recommendations
 - ongoing engagement with the UKRN
 - ongoing engagement with comparison websites (as necessary)
 - submitting relevant information to the CMA market study.

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³ Page 2, paragraph 1.6, CMA, Market studies and market investigations, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/462715/CMA3_Markets_Guidance_-_updated_September_2015.pdf