

To:	Legal Services Board	
Date of Meeting:	26 October 2016	Item: Paper (16) 58

Title:	LSB vision for legislative reform <i>Reactions to the publication of the LSB's vision for legislative reform</i>
Work stream(s):	Developing options for legislative change
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Status:	Official

Summary:

Since October 2015, the LSB, assisted by Professor Stephen Mayson, has been developing its vision for a future legislative framework, addressing the issues raised in the 'July 2015 options paper' submitted to Ministers by all the regulators.

As agreed by the Board at its July meeting, a paper setting out the LSB's vision was published on 12 September 2016 to coincide with a speech by the Chairman on this topic at the Westminster Legal Policy Forum.

This paper summarises the reactions to the publication of the paper and the next steps in promoting the Board's vision, both of which the Board is asked to note.

Overall, reactions were mixed, as anticipated. There was support from the Consumer Panel, some regulators and in some areas of the trade press, qualified support from other regulators and some professional bodies and criticism from the major professional bodies and other areas of the trade press.

The main issues raised were:

- Whether the focus of attention should be unmet need rather than regulatory reform;
- The timing of reform; and
- The impact of the proposals on the profession and professionalism.

Recommendation(s):

The Board is invited to note:

1. Reactions to the publication of its vision for legislative reform;
2. The LSB response as set out in paragraphs 22 and 23; and
3. The next steps in promoting the Board's vision.

Risks and mitigations

Financial: N/A

Legal: No legal risks have been identified. The Legal Director has been kept informed of developments via Senior Leadership Team discussions and advised on relevant issues.

Reputational:

[REDACTED]

Resource:

This workstream is included in the LSB's 2016/17 Business Plan. The level of ongoing resource will depend on the appetite for reform prompted by changes in the external environment, and how the work may evolve in the 2017/18 Business Plan in light of Ministerial priorities.

Consultation	Yes	No	Who / why?
Board Members:	X		Three informal Board sessions and one formal session have been held. The Chairman has been involved in all internal discussions on the future direction of the LSB's legislative reform work.
Consumer Panel:	X		Professor Stephen Mayson and the Head of Research and Development attended two LSCP meetings to elicit its views. The Panel Chair participated in the first informal Board session and was invited to the second one. LSCP has also sent in two papers, which the Board considered at its meetings on 27 April and on 14 July.

			Communications around publication of the vision paper were discussed with the LSCP secretariat.
Others:	Cross-regulator discussions led to the July 2015 legislative options paper. In developing the LSB's response to the July 2015 paper, the project team sought the views of a group of external commentators and an infrastructure regulator (via the UK Regulators' Network) on how any new regulatory framework could allow for future developments and build in regulatory agility.		

Freedom of Information Act 2000 (Fol)		
Para ref	Fol exemption and summary	Expires
Risks and Mitigations: Reputational; Para 18; Para 22, all bullet points; Para 27; Para 29 – third sentence including bullet points; Annex A	Section 36(2)(b)(ii): information likely to inhibit exchange of views for purposes of deliberation	

LEGAL SERVICES BOARD

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LSB vision for legislative reform

Reactions to the publication of the LSB's vision for legislative reform

RECOMMENDATION

1. The Board is invited to note:
 - (i) Reactions to the publication of its vision for legislative reform;
 - (ii) The LSB response as set out paragraphs 22 and 23; and
 - (iii) The next steps in promoting the Board's vision.

Background

2. The Board is by now very familiar with the background to this work. Briefly, following a ministerial summit in 2014 designed to find opportunities for further deregulation, in July 2015 the LSB submitted a paper to Ministers (the July 2015 paper) that was the product of cross-regulator discussions facilitated by Professor Mayson. The paper explored the key issues for consideration in any comprehensive reform of the Legal Services Act 2007 (the Act). At its October 2015 meeting, the Board agreed that Professor Mayson be asked to work with the LSB to develop an LSB response to the six questions posed in the July 2015 paper – effectively the LSB's position on a future legislative framework. The Board agreed the scope of this work at its November 2015 meeting. The Board then reviewed several drafts of the resulting position paper over the following months and agreed to its publication at its July 2016 meeting.
3. The LSB published its 'Vision for Legislative Reform' on 12 September. The Chairman gave a speech focused on this vision at the Westminster Legal Policy Forum on the same day.

Reactions

Westminster Legal Policy Forum

4. The Chairman's speech at Westminster Legal Policy Forum was welcomed by some members of the audience in particular the Chair of CLC. Other stakeholders sought clarification on matters such as the extent of future regulation of City law firms and how our vision might interact with the SRA's current proposals to simplify its handbook. Lord Falconer chaired this session and summed up by querying whether it might be better for the sector to focus on

unmet demand rather than reform of the regulatory framework. He did not see the link between the two.

5. As part of the event's programme, the CEO of the SRA and the President of TLS also gave speeches, both suggesting that now would not be a good time for reform due (in the SRA's view) to the risk of 'blighting' more reform under the existing framework and (in TLS's view) to Brexit. See more discussion of the SRA and TLS positions below.
6. The seminar did however, end on a reasonably positive note when a group of ABS/investment panellists were asked about the relative importance of the reform of the regulatory regime. The investor panellist was clear that investors would expect consolidation of regulators, thereby reducing costs. The ABS panellists were keen on simpler and more proportionate regulation.

Supportive reactions

7. The **Consumer Panel** issued a press release in support of the LSB vision, noting how the current framework 'conspires against the interests of consumers'.
8. **CLC** and **CILEx Regulation** both issued press releases broadly welcoming the paper. They picked out risk-based and activity-based regulation and the proposed over-arching objective as particularly good suggestions. The CLC was keen for the LSB to use its existing powers to deliver independence of regulation from representation.
9. Neil Rose (editor of Legal Futures) published a very supportive blog on the Legal Futures website, in which he noted the illogicality of current system and said that the 'LSB's plan is the logical conclusion of the journey started by Sir David Clementi'. He considered that, while a single regulator was the most eye-catching recommendation, it was not the most important and that other key issues included the need to review the reserved activities and the shift to activity regulation. Neil Rose said that it is no longer good enough to muddle on and that "it is time to bring order to regulatory chaos".

Mixed/qualified reactions

10. The **SRA** said the paper 'contains some useful thinking' and supported full regulatory independence. While noting that some consolidation of the regulators seemed inevitable in the longer term, the SRA also highlighted the dangers of being distracted by legislative reform from freeing up the market under the current framework as a result of its own reforms.
11. **CILEx** felt that the current specialism and diversity of the regulators should be retained.
12. It was reported in a Legal Futures article¹ that the **Bar Standards Board** was studying LSB's proposals with interest. The BSB was reported as believing that the public was best served by a specialist regulator which was fully independent of both the profession and the government, given that the Bar is a specialist profession which requires particular training and skills.

¹ *Mixed response to LSB's plan for regulatory overhaul* – Dan Bindman, Legal Futures, 14 September

Disagreement/opposition

13. **TLS** considered that the proposals were interesting, but that it was not in the public interest to make such changes now. They said this was a period of unprecedented change and there was 'broad recognition' that the current framework was working.
14. The **Bar Council** was reported in the Bindman article as objecting to the removal of the regulatory objective to encourage an independent, strong, diverse and effective legal profession. The Bar Council said that changes would not be in the public interest, and that there was a need to address unmet demand rather than change a regulatory system that was not broken. The Bar Council felt that the focus should be on challenges posed by Brexit and on properly funding the justice system.
15. Other press articles and Twitter comments have commented on the proposals:
 - Joshua Rozenberg published a blog on the Law Gazette's website under the headline *Uber-regulator's blurred vision*. However, the negative headline did not accurately reflect the more balanced assessment of the LSB proposals in the blog. The blog noted that solicitors lost the self-regulation argument in 2003, with the Clementi report, and that the problem that defeated Clementi was fitting his reforms into long-established legal structures. It further noted that it was difficult to justify compulsory membership fee for TLS if it was left with only representative and membership functions. It claimed that, although the LSB said that award of title should remain with the regulator, the LSB did not understand that it was only because bodies such as TLS maintained high standards that professional titles such as 'solicitor' commanded such public confidence.
 - Key themes from Twitter comments were that the LSB is proposing that titles be abolished, and that the changes will cause 'de-professionalisation' and deskilling ('dumbing down'), which will harm rather than improve access to justice and the rule of law.

Wider context

16. There have also been references to the LSB's vision for legislative reform in the wider recent debate about the independence of the profession and the possible impact of changes to the SRA's handbook².
17. The International Bar Association (IBA) has published a draft taskforce report on the independence of the legal profession. As covered elsewhere in this month's Board papers, this report claimed that "the LSB is funded by the Ministry of Justice, and all its members are appointed by the Lord Chancellor, which demonstrates that there is a degree of governmental control"³. In a speech to the IBA entitled *Barbarians at the gate: the attack on professionalism*, the Chair of the Bar Council used the IBA report as a springboard from which to criticise the LSB's vision, in particular (i) the comments in the vision that the element of one

² In particular, the suggestion in the SRA's recent consultation that solicitors might be able to undertake non-reserved activities (and offer services to the public based on those activities) from within non-authorised firms.

³ The IBA has subsequently agreed to remove this reference in the final version of its report.

of the regulatory objectives (that of encouraging an independent, strong, diverse and effective legal profession) that relates to the strength of the profession is problematic; (ii) that in the LSB's vision "regulation of [the] profession is compared to the task of sewage regulation"; and (iii) that the comments in the LSB's vision about professional titles acting as barriers to entry feels like "an attack on professionalism and professionals".

MoJ

18. [REDACTED]
19. Early indications are that other Ministerial priorities are prisons, court reform and diversity of the senior judiciary.
20. We will meet with Lord Keen of Elie and discuss (amongst other things) the vision paper and his views, if any, on future regulatory approach.

Responding to key issues raised

21. The key concerns raised seem to fall under the following headings:
- The focus of the LSB's work (and of the sector more generally) should be on unmet need instead of regulatory reform.
 - The timing is bad for legislative reform because:
 - (i) following the referendum result, it would generate additional uncertainty for the sector and undermine the international standing of the profession at a time of crucial trade negotiations; and
 - (ii) it would 'blight' much-needed reforms that can be made under the current framework.
 - The proposed reforms (including the alleged proposals to abolish professional titles) would 'dumb down' or even destroy the profession, weakening its independence and undermining the rule of law.
22. **Annex A** sets out some key points that can be made in response to each of these concerns. In particular:

- [REDACTED]
- [REDACTED]

- [REDACTED]

23. The LSB has written a blog for the Legal Futures website to respond to the main criticisms of the legislative vision. The blog will be annexed to this paper if it is published prior to the distribution of the papers for the Board’s meeting.

Next steps and future work

24. We will continue to use a range of public fora to explain and promote our position on legislative reform. The LSB is helping to organise a ‘Question Time’-style panel discussion on this subject, to be hosted by UCL on the evening of Monday 14 November. The panel will include the LSB Chairman, and a balance of speakers in support of and opposed to our ideas. Professor Richard Moorhead of UCL has offered to chair the discussion.

25. At the time of writing, a meeting with Lord Keen of Elie was scheduled to take place on 25 October and it is planned to raise the topic of the LSB’s vision for reform with him. Consideration will be given to how the benefits of legislative reform fits with what we know about new Ministerial priorities (see paragraphs 18 and 19).

26. It is also worth noting that, since the LSB published its vision paper, several other reports have been published which reinforce the point that the principles of full regulatory independence and risk-based regulation are mainstream concepts across the economy. These include:

- The Committee on Standards in Public Life’s report *Upholding the Seven Principles of Public Life in Regulation*, which strongly supports regulatory independence;
- The Professional Standards Authority’s *Regulation rethought – proposals for reform* document, which seeks legislative reform of the regulation of health and care professionals. Key proposals include risk-based assessment of what should be regulated and a new ‘shared purpose’ for regulators focussed on protecting patients, promoting professional standards and securing public trust in professionals; and
- A government consultation on the future of pharmacy regulation in Northern Ireland, which sets out options for ‘transparent and complete’ separation of the regulatory and representative functions of the Pharmaceutical Society of Northern Ireland.

27. [REDACTED]

[REDACTED]

28. We are currently undertaking work that aligns with the ideas in the paper. For example, we are reviewing the LSB statement of policy on compliance and enforcement with a view to updating it in due course. We are also seeking to assess the cumulative impact of statutory decisions taken by the LSB to date on the regulatory landscape. We will return to the Board on these issues over the next few months.

29. We have also started to think about what the LSB might be able to do under the current legislative framework to progress some of the ideas in the vision document and help the legal services sector move rapidly towards better outcomes for consumers and the public more broadly. At the November Board, the Executive will set out its proposals for next year's business plan. [REDACTED]

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]

17 October 2016