

To:	Legal Services Board	
Date of Meeting:	27 April 2016	Item: Paper (16) 23

Title:	Final report on affordability project	
Workstream(s):	Understanding and helping to improve affordability (see Business Plan 2015/16)	
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Status:	Unclassified	

Summary:

In the 2015/16 business plan the Board agreed to a project aimed at developing an understanding of what 'affordable' legal services means for different types of consumer and different legal activities.

The key points in this paper, are:

- Perceptions of the cost of legal services is one of the factors contributing to unmet legal need among both individuals and small businesses
- Definitions of affordability used by government and regulators in other sectors have limited applicability in legal services due to major differences between the markets. LSB has developed a framework centred around the risks that an individual consumer faces which could make legal services unaffordable, focusing on four areas: type of legal service; situation of consumer; funding options; and ease of shopping around
- The framework is presented in a report which is intended for publication. This will be embedded within the LSB's policy work and inform future planned research on vulnerability.
- We expect regulators to draw on the framework to inform policymaking where this has an affordability dimension. Our current thinking is to promote the report by running a workshop aimed at policy managers.

Recommendation(s):

The Board is invited:

- (1) to endorse the report.
- (2) to delegate final sign off of the report to the Chief Executive and Chair.
- (3) to note the proposed follow up on this work.

Risks and mitigations	
Financial:	N/A
Legal:	N/A
Reputational:	Appropriate positioning of this report alongside the LSB's other work and existing requirements on approved regulators is important to prevent reputational damage.
Resource:	N/A

Consultation	Yes	No	Who / why?
Board Members:		X	
Consumer Panel:	X		A paper was presented to LSCP and Secretariat staff have participated in colleague workshops.
Others:	The paper draws on a UKRN paper looking at how government and economic regulators have addressed this issue.		

Freedom of Information Act 2000 (Fol)		
Para ref	Fol exemption and summary	Expires
Table 1	Section 22: information intended for future publication	N/A
Annex A	Section 22: information intended for future publication	N/A

LEGAL SERVICES BOARD

To:	Legal Services Board	
Date of Meeting:	27 April 2016	Item: Paper (16) 23

Final report on affordability project

Recommendations

1. This paper summarises the analysis from the affordability project and presents a draft report which is intended for publication.
2. The Board is invited:
 - (1) to endorse the report.
 - (2) to delegate final sign off of the report to the Chief Executive and Chair.
 - (3) to note the proposed follow up actions.

Background

3. The affordability project is one of a number of projects in the 2015/16 business plan which contribute to the strategic theme of tackling unmet legal need. It contributes to the regulatory objectives of improving access to justice and promoting and protecting the interests of consumers.
4. The business plan provided that the project, “*develop an understanding of what ‘affordable’ legal services means for different types of consumer and different legal activities (whether regulated or unregulated). We will aim to identify what barriers (eg, regulatory, cultural and behavioural) exist to making legal services more affordable. If necessary we will make recommendations for change.*”
5. In October the scope of the project was narrowed to just focus on developing an understanding of affordability with a view to an exploration of barriers in 2016/17, although the 2016/17 business plan ultimately did not include such a project. Therefore, publication of the report and associated follow up activity (see paragraphs 13 and 14 below) will conclude the project.
6. Other related projects include the accessibility and open data projects, which target other significant barriers that prevent consumers from accessing legal services. The Board received these other outputs at its 23 March meeting.
7. It is evident from previous research, both commissioned by the LSB and by other bodies, that perceptions of the cost of legal services is one of the factors contributing to unmet legal need among both individuals and small businesses. However, there is currently no definition of what affordability means in the context of legal services. It hinders effective policymaking when people mean different things when they use this term, in particular it makes identifying and

overcoming barriers to affordability more difficult. The affordability project was designed to contribute by learning from how other sectors have addressed this and suggesting a framework that the legal services regulators might use.

Project phases

8. The project delivers a framework for use by us and other regulators that contributes to the LSB's 2015-18 Strategy goal of helping tackle unmet legal needs. The process of developing our thinking included the following phases:
 - a) Learning from other sectors by reviewing how government and economic regulators have addressed this issue – in particular, the UK Regulators Network (UKRN – where the LSB has observer status) has published a report on affordability in the water, energy and communications sectors.
 - b) Developing the framework and refining it following testing – this included a mixture of colleague workshops and presenting to a meeting of the Legal Services Consumer Panel.
 - c) Reviewing available datasets to review the evidence base on affordability and using this to create illustrative examples of consumers who may find legal services affordable or unaffordable. The report makes extensive use of the individual legal needs survey (due for publication shortly) and the LSB's new research on the prices of common legal services for individual consumers.
9. Having reviewed frameworks used in other sectors our assessment is that these have limited application to legal services. This is due to differences such as the diversity of legal needs (needs are more uniform in utilities markets), the transactional or distress nature of many legal needs (utilities markets comprise everyday essentials), the often one-off nature of legal needs (there is ongoing consumption in utilities markets) and differences in the number and types of suppliers (the provider base is far more numerous and diverse in legal services).
10. Therefore it was determined that a different approach to understanding affordability in the legal services market is required. The proposed approach is centred around the risks that an individual consumer faces which could make legal services unaffordable. The framework focuses on four areas:
 - a) Type of legal service
 - b) Situation of consumer
 - c) Funding options
 - d) Ease of shopping around.
11. The framework is summarised in the table below. In our view the strength of a risk based approach is that it takes into account the large variety of legal

services, individual circumstances and market conditions which all combine to influence the relative affordability of a legal service to a particular consumer.

Table 1 – The proposed framework

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[REDACTED]	[REDACTED]

Proposed output

12. The project has delivered against its objectives of improving understanding of the affordability of legal services. In order to share this understanding within the legal services market the next step is to publish a report summarising the findings. A draft report is included at **Annex A**.
13. The report will first be used as an internal tool to inform LSB's policy development. We will deliver this by including the framework within our internal policy toolkit and by running a colleague workshop. This mirrors the successful processes used to embed the LSCP's consumer principles and consumer vulnerability frameworks. In addition, the 2016/17 business plan includes research aimed at improving understanding of how vulnerable consumers access legal services. This research is currently being scoped and one dimension of this could include affordability considerations.
14. Clearly, we will also wish to promote the report to approved regulators as a useful resource they might draw on. As the report makes clear, the contribution that regulators can make to improving affordability is largely indirect. Therefore, our expectation is that regulators will use the report to inform policy development on a wide range of matters that relate to the regulatory objectives of improving access to justice and promoting and protecting the interests of consumers, rather than trigger specific initiatives on affordability. Our current thinking is to run a workshop aimed at policy managers in the early summer. However, whilst the LSB can encourage the approved regulators to have regard to this report, it does not have legal powers to set requirements (although we are not suggesting this would be a desirable step in any event).

Next steps

15. If the Board is in agreement with the proposed approach, the next step would be to publish the report. Our plan is for publication during May subject to Purdah restrictions and coordination with other LSB work ready for publication around the same time. This is subject to publication of the individual legal needs survey commissioned jointly with the Law Society and Legal Education Foundation (at the time of writing we expect the research to be finalised by the end of April and published in May).

19.04.16

ANNEX A – DRAFT REPORT