



2. seek agreement on the proposed **type and timing of outputs** for inclusion in a communications plan. [REDACTED]

This paper follows on from a number of previous Board papers<sup>1</sup> and the informal sessions of the Board in January and March 2016 facilitated by Professor Stephen Mayson<sup>2</sup> at which options for a future legislative framework were explored.

The overall objective of this work is to develop a corporate position on what a 'fit for purpose' future legislative framework for the regulation of legal services looks like, to secure an effective legal services market for consumers and the wider public. The aim (amongst other things) is to inform the review of the LSA promised by the Lord Chancellor. The draft position paper aims to answer the questions posed in the July 2015 legislative options paper, which was produced following cross-regulator discussions facilitated by Professor Mayson and then submitted to Ministers and published on the LSB website.

#### **Recommendation(s):**

The Board is invited to:

1. Discuss and, if possible, agree the LSB's position on the four issues outlined in paragraph 13 (i.e. independence, award of title, consumer voice, regulatory architecture);
2. [REDACTED]
3. Indicate which issues it would like to focus on at its May meeting; and
4. Indicate whether it would be helpful to hold a standalone meeting, teleconference, one-to-one discussions or similar to discuss outstanding difficult issues in advance of its May meeting.

#### **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.

<sup>1</sup> The July 2015 Board Paper (15) 37, the September 2015 strategy session and update in the CEO's report, the October 2015 Board Paper (15) 49 and the November 2015 Board Paper (15) 57.

<sup>2</sup> Centre for Ethics and Law, Faculty of Laws, University College London; independent non-executive director and adviser to a number of law firms and law-related organisations.

<b>Reputational:</b>	<p>There are considerable reputational risks and opportunities associated with this work. The LSB has taken a leadership role and doing this work should maximise its influence over the direction of any future legislative reform. [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED] The work takes place in a dynamic external environment, including political developments and the CMA market study.</p>
<b>Resource:</b>	<p>This workstream is included in the LSB's 2016/17 Business Plan. The level of ongoing resource will depend on decisions about the type of output and the need for further work prompted by changes in the external environment.</p>

Consultation	Yes	No	Who / why?
<b>Board Members:</b>	<b>X</b>		Two informal Board sessions have been held. The Chairman 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>		Professor Stephen Mayson and the Head of Research and Development attended an LSCP meeting 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 a paper – see Annex C.
<b>Others:</b>			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
Summary box: 1(a)-1(d), and 2, second and third sentence; Risks and mitigations: Reputational – third sentence; Recommendation box: no. 2, and	Exemption (s36) –intended to promote a free and frank exchange of views for the purposes of deliberation by the Board.	N/A

Main text: 1(ii); Footnote 6; Para's 12 – 13; Para's 16 – 19; Annex A; Annex C		
Annex B	Exemption (s22). An agreed version of this document will be published in due course.	N/A

## LEGAL SERVICES BOARD

<b>To:</b>	Legal Services Board	
<b>Date of Meeting:</b>	27 April 2016	<b>Item:</b> Paper (16) 27

### Draft LSB position on a future legislative framework

#### RECOMMENDATION

1. The Board is invited to:

- (i) Discuss and, if possible, agree the LSB's position on the four issues outlined in paragraph 13 (i.e. independence, award of title, consumer voice, regulatory architecture);
- (ii) [REDACTED]
- (iii) Indicate which issues it would like to focus on at its May meeting; and
- (iv) Indicate whether it would be helpful to hold a standalone meeting, teleconference, one-to-one discussions or similar to discuss outstanding difficult issues in advance of its May meeting.

#### Background

2. The LSB submitted a paper to Ministers in July 2015 (the July 2015 paper) 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). The July 2015 paper was part of the regulators' response to the deregulatory challenge laid down by Ministers at the July 2014 Ministerial summit of legal services regulators.
3. 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.
4. Over recent months, several external developments have put even greater focus on legislative reform, including the Lord Chancellor's commitment to a review of

the Act in the lifetime of this Parliament, and the launch by the CMA of a market study into the supply of legal services<sup>3</sup>.

5. The six key questions set out in the July 2015 paper, were as follows:
  - (i) What should be the number, nature and presentation of any regulatory objectives?
  - (ii) What should fall within the scope of regulation? How should that be addressed?
  - (iii) Should regulation be focused on activities or the providers who carry them out?
  - (iv) How can the independence of legal services regulation from both government and representative bodies best be assured<sup>4</sup>?
  - (v) Does the regulatory framework need to give consumers a voice? If so, what is the best way to achieve that?
  - (vi) How should the legal services regulator(s) be structured?
6. The first stage of the project was to revisit the LSB's September 2013 'Blueprint' for the deregulation of legal services<sup>5</sup> and consider how the LSB's views may (or may not) have moved on since then<sup>6</sup>.
7. The Board then held two informal sessions with Professor Mayson in the early part of 2016 to discuss the six questions set out in paragraph 5 and to provide a steer on the LSB's emerging response to these questions. The team also met separately with out-going Board member Anneliese Day QC in March 2016.
8. Wider stakeholder engagement activity included:
  - the initial cross-regulator discussions which led to the July 2015 paper
  - participation in a discussion at a meeting of the Legal Services Consumer Panel, which focused on questions ii, iii and v; and

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<sup>3</sup> One of the three core themes of the CMA's study is the impact of regulations and the regulatory framework on competition.

<sup>4</sup> At the time of writing the Ministry of Justice consultation on independence, which we understand will consider this issue, has not yet been published. Clearly there will be a need to ensure consistency between the LSB's response to that consultation and its position on the future legislative framework.

<sup>5</sup> The Blueprint was the LSB's response to the Ministry of Justice's 2013 call for evidence on legal services regulation.

<sup>6</sup> [REDACTED]

- following the suggestion of the Board an external expert group was convened to take account of social, technology and demographic issues, against which the ideas for the future regulatory framework could be sense-checked.
9. With this policy development phase complete the Board is now being invited to discuss a draft paper setting out the LSB's position on a future legislative framework. The current intention is to refine the document in light of the Board's feedback and bring it back to the May Board meeting for endorsement. The Board is also being invited to agree the type and timing of outputs in light of external developments. These outputs will ultimately be included in a wider communications plan for this workstream, which is still under development and which will also be brought back to the Board for consideration in May.
  10. The team is enormously grateful to Professor Stephen Mayson for assisting us in the development of the draft position paper. Professor Mayson has kindly agreed to continue to assist us until the work is finalised.

**Draft position paper**

11. An at-a-glance summary of the draft position paper is provided at **Annex A** and the full draft is provided at **Annex B**. There are some key choices that need to be made in relation to the draft paper. These are set out in the following paragraphs.

12. [Redacted]

13. [Redacted]

- [Redacted]

[Redacted]

- [Redacted]

- [Redacted]

- [Redacted]

**Submission by Legal Services Consumer Panel**

14. Professor Mayson and the Head of Research and Development attended a meeting of the Legal Services Consumer Panel to hear its views. The LSCP has since submitted a note containing some thoughts on the consumer voice aspect



of our work, which the Board may wish to consider. With the LSCP's permission, this submission is attached as **Annex C**.

**Type and timing of outputs**

15. There was an initial discussion of the type and timing of outputs at the November 2015 Board meeting. The need to revisit these issues in light of anticipated external developments was noted.

16. [Redacted]

17. [Redacted]

- [Redacted]

- [Redacted]

- [Redacted]

- [Redacted]

18. [Redacted]

19. [Redacted]

### **Next steps**

20. The position paper will be refined in light of the Board's feedback. The Board will then be invited to endorse a final position paper at its May meeting. It would be helpful if the Board could indicate any issues that it would like to focus on in May.
21. The paper involves a series of quite complex issues and there will be limited time for the Board to discuss them all at the meeting. If the Board would find it helpful, the executive would be happy to arrange a standalone meeting, teleconference, one-to-one discussions or similar to discuss these matters further in advance of the May meeting.
22. More concrete proposals around external communications will also be brought to the Board's May meeting for agreement.

**20 April 2016**