

To:	Legal Services Board	Agenda Item:	7
Date of Meeting:	28 April 2017	Item:	Paper (17) 25

Title:	Response to Legal Services Consumer Panel report on 'The development of information remedies in legal services'
Work stream(s):	Tackling unmet legal need
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Status:	Unclassified

Summary:

In August 2016, the LSB asked for the Legal Services Consumer Panel's (the Panel) advice on the effectiveness of current information remedies in legal services regulation and how these could be improved.

In its report, the Panel found that, even with the best of intentions, information remedies can be ineffective if not designed, implemented and evaluated properly. It has therefore drawn together nine key criteria for success, when thinking about information remedies, which it hopes will form the foundation of any disclosure regime designed for the legal services market.

We consider the report is a useful resource which we hope will be of benefit to regulators who are considering information remedies, as well as helping us when we assess rule change applications of this type. It will also help us to consider the regulators' response to the recommendations on information remedies in the Competition and Markets Authority's report on its Legal Services Market Study.

The LSB's first-tier complaint handling requirements are one of the rare areas where the LSB has deployed information remedies. After reviewing commentary on the possible effects of this rule in the Panel's report and the underlying research, we are satisfied that the rule and associated guidance remain appropriate.

Recommendation(s):

The Board is invited to agree the policy response and delegate to the Chief Executive approval of the drafting of the letter responding to the Panel's advice.

Risks and mitigations	
Financial:	N/A
Legal:	N/A
Reputational:	It is important we respond to recognise the Panel's work, and it is anticipated that this approach will be well received by the Panel and maintain our cooperative working.
Resource:	N/A

Consultation	Yes	No	Who / why?
Board Members:		X	
Consumer Panel:		X	
Others:	N/A		

Freedom of Information Act 2000 (Fol)		
Para ref	Fol exemption and summary	Expires
Annex A	Section 21: Information accessible by other means: Link to letter	
Annex B	Section 21: Information accessible by other means: Link to report	On publication
Annex C	Section 22: information intended for future publication	

LEGAL SERVICES BOARD

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Response to Legal Services Consumer Panel report on 'The development of information remedies in legal services'

Recommendation

1. The Board is invited to agree the policy response and delegate to the Chief Executive approval of the drafting of the letter responding to the Panel's advice.

Background / context

2. In our 2016/17 Business plan, we said that we would request advice from the Panel on the effectiveness of current information remedies in legal services regulation and how these could be improved. The letter we sent to the Panel on 16 August 2016 requesting this advice is attached as **Annex A**.¹
3. When we refer to 'information remedies' in the context of legal services regulation, we mean information which an approved regulator requires authorised persons to provide to consumers at any stage – this could be when purchasing a legal service, during service delivery or dealing with a complaint.
4. The Panel provided its advice on 15 March 2017, attached as **Annex B**.² Due to resource constraints the Panel was not able to complete as extensive an analysis as was initially hoped. However, the Panel's report provides a helpful summary of the use of information remedies, both in and outside of the legal sector. It also includes examples of what has and has not worked, and the lessons that legal services' regulators could learn from this. The Panel has also set out 'criteria for success' when thinking about information remedies.
5. A draft letter responding to the Panel's advice is attached as **Annex C**.

The Panel's findings and our analysis

6. The report strongly stressed the need for regulators to consider carefully the effectiveness of information remedies by investing in consumer research, testing, post-implementation evaluation, monitoring and learning from other sectors. The Panel highlighted that, the work it did with the regulators last year on Client Care Letters (CCLs), is the only example it found of the evaluation of an information remedy in the legal sector.³ The Panel suggested

¹ See our letter to the Panel dated 16 August 2016
http://www.legalservicesboard.org.uk/news_publications/LSB_News/PDF/2016/20160816_NB_to_ED_letter_commissioning_IR_advice_FINAL.PDF

² See the Panel's March 2017 report on the development of information remedies in legal services
http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/documents/20170322_Information_Remedies.pdf

³ See Optimisa's October 2016 report on the research into Client Care Letters commissioned by the legal services regulators
http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/documents/Client%20Care%20Letters%20Research%20Report%20-%20FINAL%20201016.pdf

that this raised ‘...substantial concerns about the lack of consumer testing and evaluation in the sector’.

We share the Panel’s view about the importance of consumer testing and evaluation of information remedies, although we recognise there are resource constraints facing smaller regulators in particular. The final report of the CMA’s market study suggested that regulators consider conducting consumer research and testing when considering proposed changes.⁴ The LSB will look for evidence of such activity when we assess regulators’ action plans to improve market transparency, as part of our response to the CMA’s report.

7. The report lists a number of techniques to test or evaluate the effectiveness of information remedies. Particular attention has been drawn to the benefits of Randomised Control Trials before the implementation of an information remedy.

We support the use of Randomised Control Trials by regulators, although as above, recognise that not all regulators will have the resources available to conduct these. Where field trials are not possible, other forms of consumer research may be useful alternatives.

8. Publicity, clarity, timing and the prominence of information have also been identified by the Panel as significant factors in the success of information remedies. In relation to this, the Panel’s report has referenced comments on complaints signposting in the CCL research mentioned above.

We consider this further below (see paragraphs 11 to 15).

9. The Panel has also highlighted segmentation as a key factor in the success of an information remedy.⁵ It suggested that, in order to ensure information remedies are successful, regulators need to identify how consumers can be segmented and the information remedy targeted. Segmentation being important, not just in the identification of a problem but also the identification of a solution. The Panel also concluded that insights from behavioural science have shown that it is difficult to predict how consumers’ may respond to information remedies and that, linked to this, there is a responsibility on regulators to ensure that the needs of specific groups are met. Similarly the Panel concluded that it is difficult to predict how the supply side might react to information remedies and that they fail where suppliers do not comply and monitoring is ineffective.

We agree that it is important for regulators to take account of insights from behavioural science, both in relation to consumers and providers. We have previously commissioned two reports which seek to apply behavioural science to the legal services market. We will shortly publish an infographic which will make this research more accessible for our stakeholders. The Panel’s points on compliance and segmentation are well made.

10. In conclusion, the Panel have suggested that, even with the best of intentions, information remedies can be ineffective if not designed, implemented and

⁴ See the Competition and Markets Authority’s - Legal Services Market Study: Final Report <https://assets.publishing.service.gov.uk/media/5887374d40f0b6593700001a/legal-services-market-study-final-report.pdf>

⁵ The Panel has published a separate short report on consumer segmentation http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/documents/Consumer%20Segmentation%20Final%20Report.pdf

evaluated properly. To assist with this it has developed nine key criteria for success when thinking about information remedies. The Panel hopes that these criteria will form the foundation of any disclosure regime designed for the legal services market.

The 'criteria for success' are useful reference points to help design effective information remedies. We will use them in our work and expect they will be a useful resource for the regulators.

Complaints signposting

11. The LSB's first-tier complaint handling requirements made under section 112 of the Act, and the accompanying guidance issued under Section 162 of the Act, are one area where the LSB has used information remedies.⁶ These requirements were revised in May 2016. They ensure details of the firm's complaints procedure (including the availability of the Legal Ombudsman) are provided to clients in writing, at the time of engagement, or at the next appropriate opportunity.
12. The Panel's report includes commentary on the effectiveness of complaints signposting rules based on market research on CCLs that it commissioned jointly with all of the approved regulators last year. The fairness to the profession of the signposting requirements was also recently raised by a member of the Justice Select Committee.⁷
13. The research found that prioritising generic information provided consumers with an excuse for not reading the CCL more carefully. Including information about complaints procedures early in the letter also led to particularly negative reactions; it was seen as strange to raise the prospect of dissatisfaction before the work had even started. This was not seen by consumers as an encouraging message, and suggested to some consumers that the legal services provider was not confident and expected problems. In some cases, this perceived over-emphasis on potential complaints and the suggestion that something could go wrong created anxiety.
14. To address these concerns the researchers suggested that, while there should be a clear reference to the complaints procedure in the CCL, consideration should be given to delivery of this information. For example, whether more detailed coverage is better delivered in separate leaflets, or whether reminders could be sent later on in the legal process.
15. We have considered the findings of the CCL research and the Panel's report. We note the research findings concluded that client care letters should still contain a clear reference to the complaints procedure. In our view, the issue relates to how some providers have chosen to implement the requirement in practice, rather than the requirement itself. Providers are free to signpost to complaints procedures in alternative ways and still meet the requirements. Therefore, in light of this, and given evidence of ongoing barriers to consumers making complaints found in our review last year, we do not plan to revisit the s112 rule and accompanying guidance at this stage.

⁶ See LSB First-tier complaints handling: section 112 requirements and section 162 guidance for approved regulators
http://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/2016/201607_Version_2_Requirements_Guidance.pdf

⁷ This was during the pre-appointment hearing for the new OLC Chair, on 22 March 2017.

Next steps

16. Our immediate focus will be to highlight the Panel's findings to the regulators in the context of their response to the recommendations in the CMA's market study.⁸ In particular, we will draw to their attention the Panel's nine key criteria for success when thinking about information remedies.

17. The Panel's report will also:

- feed into our work on market transparency including the oversight role proposed by the CMA, which the Board has decided to support
- inform our assessment of rule change applications
- inform our regulatory performance work
- inform the rare occasions when we deploy information remedies ourselves, for example, through the first tier complaint handling requirements (another example is our statutory guidance on referral arrangements).

⁸ See the Competition and Markets Authority's - Legal Services Market Study: Final Report <https://assets.publishing.service.gov.uk/media/5887374d40f0b6593700001a/legal-services-market-study-final-report.pdf>