

To:	Board	
Date of Meeting:	13 June 2011	Item: Paper (11) 46

Title:	The CLC and the Smaller Approved Regulators research	
Workstream(s):	Developing regulatory excellence	
Introduced by:	Crispin Passmore, Director of Strategy crispin.passmore@legalservicesboard.org.uk / 020 7271 0086	
Author:	James Meyrick, Regulatory Project Manager james.meyrick@legalservicesboard.org.uk / 020 7271 0083	
Status:	Protect	

Summary:
<p>The board has already committed to publishing the research report looking at the capacity and capability of the smaller approved regulators. Subsequent to this the Council for Licensed Conveyancers (CLC) has put in a formal request (annex A1 and A2) to the LSB that this decision is reconsidered.</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>If published, the LSB intend to make it clear that this is an independent report, we are not advocating any of the options nor necessarily agreeing with the opinions and views expressed within it and that our views on each of the Approved Regulators (AR) are elucidated in our remarks and decisions on major rules change applications, applications to regulate reserved activities or applications to become a Licensing Authority (LA).</p> <p>The LSB executive recommends inviting Nick Smedley to make amendments to any agreed factual inaccuracies in the report. The research should then be published in full.</p>

Risks and mitigations
<p>Financial: Publication could lead to expenditure on any ensuing legal challenges for damages. However a failure to publish could lead to expenditure to defend any FOI requests and/or requirements to extend or substantially amend the project.</p>

FoIA:	Exempt – s22
Legal:	If published, for any legal action for damages to be successful the claimant would have to prove that the research directly led to loss of profit; this is likely to be difficult to prove. If we did not publish it is not clear that the Information Commissioner would uphold any decision by us to resist such an FOI claim.
Reputational:	Failure to publish is likely to damage our reputation for independent research and transparency.
Resource:	If we decide to extend the project or amend the report substantially resource will be required to manage the extra work.

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

Recommendation(s):
<ol style="list-style-type: none"> 1. The Board is invited to reconsider whether to: <ol style="list-style-type: none"> a. Publish the Nick Smedley research report with minor factual corrections, and at the same time make clear that we will review all of the ARs through our regulatory standards work. b. Request a substantial edit of the Smedley research report before publication c. Postpone publication of the research report until a wider project on all ARs is complete d. Postpone publication indefinitely. 2. The executive recommend option (a).

LEGAL SERVICES BOARD

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The CLC and the Smaller Approved Regulators research

Recommendation





1. The Board is invited to reconsider whether to:
 - a. Publish the Nick Smedley research report with minor factual corrections; and at the same time make clear that we will review all of the ARs through the regulatory standards work.
 - b. Request a substantial edit of the Smedley research report before publication
 - c. Postpone publication of the research report until a wider project on all ARs is complete
 - d. Postpone publication indefinitely.
2. The executive recommend option (a).

Background

3. At the April board meeting the board agreed to publish the research commissioned by the LSB into the capacity and capability of the smaller approved regulators. The report, by Nick Smedley, covered the following approved regulators and their regulatory arms (where relevant); the Association of Costs Lawyers (**ACL**), Chartered Institute of Patent Attorneys (**CIPA**), CLC, the Faculty Office, Institute of Legal Executives (**ILEX**) and Institute of Trade Mark Attorneys (**ITMA**).
4. The board agreed to provide copies to the ARs within the scope of the research prior to publication and hold events to discuss the research and the LSB's reaction to it.
5. The research found that there are issues and challenges for many, if not all, of the smaller approved regulators in the area of resources, skills and experience. There are many gaps in the data held by the smaller approved regulators and few have made an attempt to assess and quantify the risks in the markets they regulate. There is also little to no consumer engagement undertaken; indeed, the CLC can be seen as the only regulator within scope that attempts to address these areas. These findings are all factually verifiable. The researcher concluded that there were two possible options for the smaller AR market; one of continuous improvement within the existing structures, the second was the merger of some or all of the ARs within scope.
6. The LSB position is that we are not endorsing any of the opinions or options set out in the report. Instead we will focus on delivering an outcome in which all authorised persons are regulated in an efficient manner which reflects best regulatory practice; that all consumers are protected from unacceptable risks; and, that the approved regulators promote the regulatory objectives. This will be

done through our developing regulatory standards; to which our consideration of the Smedley research will be one small contribution along with stakeholder and other inputs and our research and analysis. If ARs do decide to explore merger options we will offer support if requested.

CLC view

- 7. 
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LSB Commentary

- 11. The LSB has reviewed the information provided by the CLC, the conclusion in the research and the information used by Nick Smedley to reach his conclusions in the report. Following this review we are confident that:
 - The research output is not materially different from the original specification and the CLC's assertions are based on a misunderstanding of the original specification.
 - The research findings on risk assessment are factual accurate as they are sourced from the regulators themselves, however, we accept that the language could be refined or defined more as some of the expressions used by the author distract from the factual content that is also present.
 - We are confident that the research methodology and quality were appropriate for the scale of the project. The researcher conducted a review of existing literature and was provided with all relevant information in the LSB's possession at the start of this project.

12.



13. This research paper does not consider the SRA or Bar Standards Board (**BSB**) as they were not in scope for the research. This is recognised as a limiting factor of the research. However the LSB's information needs and the nature and objectives of the project necessitated research into only the smaller ARs.

14. The LSB intend to make it clear that, if published, this is an independent report and that our views on each of the ARs are elucidated in our remarks and decisions on major rules change applications, applications to regulate reserved activities or applications to become a LA. In this respect the LSB's most recent view of the CLC is our recommendation that the CLC should be approved to become a LA; this was done in the face of opposition from the Lord Chief Justice and others.

15. The LSB, recognising concerns about factual accuracy, have approached all the ARs within scope and asked them to provide details of any inaccuracies they perceive. The researcher has committed to making changes where he recognises there a clear inaccuracy.

Next steps

16. If the board agree with the executive and we decide to publish with minor factual corrections, it is our intention to put out the work in the next few weeks. The research will be accompanied with a press release that emphasises that the research is independent and that it is only one contribution to our thinking and knowledge of the markets. We will not be taking a view on the options in the paper; however, we will note that we will be working to improve the standard of regulation across all ARs through our developing regulatory standards work. We will also emphasise that we do not believe that 'big is beautiful' and that smaller organisations can regulate effectively – as evidenced by our approval of the CLC's LA application.

Annex A1: Letter to David Edmonds from Anna Bradley, CLC

Annex A2: Enclosure to the letter to David Edmonds from Anna Bradley, CLC