

<b>To:</b>	Legal Services Board	
<b>Date of Meeting:</b>	29 August 2013	<b>Item:</b> Paper (13) 55

<b>Title:</b>	Cost and complexity of regulation	
<b>Workstream(s):</b>	Workstream B (see Business Plan 2013/124)	
<b>Project manager:</b>	Chris Handford Chris.handford@legalservicesboard.org.uk / 020 7271 7004	
<b>Introduced by:</b>	Crispin Passmore	
<b>Status:</b>	Restricted	

#### Summary:

The Ministry of Justice has initiated a call for evidence asking for proposals to simplify the regulatory framework and reduce unnecessary burdens on the legal sector while retaining appropriate regulatory oversight.

This paper sets out the proposed response, which consists of chairman's statement supported by the Executive's underpinning analysis

In summary, it is proposed that:

- Government commits to a medium-term goal of more limited, better targeted and proportional regulation – structurally, legally and culturally independent of professions and Government
- This regulatory approach is most likely to be delivered through a single legal services regulator unrelated to any existing regulator, including the LSB – with professional bodies playing a standard setting role rather than controlling the right to offer services
- Government should instigate an independent review to develop timetabled and costed proposals to develop the new framework.
- In the meantime, the government should commit to significantly simplify the legislative framework for legal services over the next 2-3 years to reduce the cost and complexity of regulation.

**Recommendation(s):**

The Board is invited:

1. Discuss the proposed draft response to the MOJ's call for evidence on the future of legal regulation at Annex A;
2. Delegate sign-off of the final document to the Chairman and CEO in light of the discussion.

**Risks and mitigations**

**Financial:** N/A

**Legal:** N/A

**Reputational:** Significant – external peer review has been sought (see paragraph 6)

**Resource:** N/A

Consultation	Yes	No	Who / why?
<b>Board Members:</b>	X		All
<b>Consumer Panel:</b>	X		Chris Handford and Olivia Marley discussed LSB's approach with Panel at their 15 August meeting
<b>Others:</b>			

**Freedom of Information Act 2000 (Fol)**

Para ref	Fol exemption and summary	Expires
Cover paper: Para 2, bullet point 1	Section 36(2)(b)(ii) - Likely to inhibit the exchange of views for the purposes of deliberation	
Annex A	Section 22 – information intended for future publication	

## LEGAL SERVICES BOARD

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### Cost and complexity of regulation

#### Context

1. The announcement setting out the MOJ's call for evidence is attached at Annex B.
2. We believe that the genesis of this exercise lies in:
  - [REDACTED]
  - A sense among the new ministerial team that the Triennial Review had been too limited in scope by looking only at the need for functions to continue and the quality of governance;
  - A political response to lobbying from stakeholders in the legal aid context that regulation was adding further complexity to market conditions that were already proving challenging in the extreme.
3. The fact of the exercise therefore is an odd mixture: it both reflects the LSB's success in putting the need for further change and improvement and a more permissive approach to regulation, whilst also constituting a threat, were the outcome to be a return to older models of regulation skilfully rebadged by others as being in line with Government's thinking about less statutory intrusion.

#### Objectives

4. Against that background, we consider that the LSB's intervention has to be forward-looking to seek to set the agenda, rather than being defensive either in terms of our past achievements or in trying to guarantee our own future in perpetuity. The document therefore seeks to set out:
  - a. An agenda for action which, while for the most part dependent on primary legislation, need not necessarily lead to an unpicking of the entire 2007 settlement ;
  - b. Broader considerations and structural change to regulators in the medium-term, emphasising the scope for accommodation either within a single professional services regulatory framework or separately;

- c. Making clear that the foundation for both of these sets of changes has to be fully independent regulation, focused directly on risk, with a significantly greater shift to less prescription and blanket rules than is currently the case despite the progress made in recent years.
5. The Chairman's statement and the draft document develop the case at far greater length. But the Board may like to particularly focus their attention on the proposals set out at the beginning of the Chairman's statement and the cover sheet of this paper:
  - a. Government commits to a medium-term goal of more limited, better targeted and proportional regulation – structurally, legally and culturally independent of professions and Government;
  - b. This is most likely to be delivered through a single legal services regulator unrelated to any existing regulator, including the LSB – with professional bodies playing a standard setting role rather than controlling the right to offer services;
  - c. Government should instigate an independent review to develop timetabled and costed proposals to develop the new framework;
  - d. In the meantime, the legislative framework for legal services should be significantly simplified over the next 2-3 years to reduce the cost and complexity of regulation.
6. As well as sharing drafts with the Board, we have also sought to check our thinking externally as the work has progressed. The current draft is simultaneously being reviewed by Tony Williams, ex Managing Partner of Clifford Chance and now Director of International Legal Consultancy Firm Jomati and Professor Julia Black of the LSE, who will be joining the SRA Board at the turn of the year. We will let the Board know if we have received their comments by the time of the meeting.

### **Handling**

7. We have sought to widen the number of participants in the review by encouraging individual firms, interested academics and international commentators to submit their views. It remains to be seen how many will do so and the impact this will have, they should at least ensure that the debate is not dominated by the 'usual suspects'.
8. We intend to press release the final document, but the precise profile we give will need consideration. The Board's views will be welcome on whether we positively want to project this as our blueprint for the future or to be slightly more low key and give ourselves rather more room for manoeuvre in the light of how Government thinking develops.

9. The Executive's initial view is that we should be assertive: although Ministers have indicated that they would like to indicate next steps by the end of the year, there are other irons in the fire for them and the relevant officials, so that timetable could be challenging. It is important that we do not allow other narratives to be seen to be setting the agenda or shifting the debate to be solely about the architecture of regulation, rather than its substance and social and economic impact.
10. Choosing and implementing options is outside of the scope of this work-stream and may ultimately be a decision for Government (if a radical option is favoured).

### **Timing**

11. The official deadline for submitting responses is 2 September, however we are aware that MoJ have allowed extensions of two weeks (16 September) for other bodies.