

<b>To:</b>	Legal Services Board	
<b>Date of Meeting:</b>	26 November 2014	<b>Item:</b> Paper (14) 61

<b>Title:</b>	<b>Commentary on Consumer Panel Report '2020 Legal Services: how regulators should prepare for the future'</b>	
<b>Workstream(s):</b>	Future strategy and business planning	
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<b>Status:</b>	Official	

**Summary:**

The Consumer Panel has published its final report in response to the LSB's '2020 commission<sup>1</sup>' (see **Annex A**). This cover paper compares the Panel's recommendations to the LSB and its 'guiding points' for the regulatory response to changes in the sector with the proposals in the latest version of the LSB's strategic plan (see **Annex B**).

**Recommendation(s):**

The Board is invited to:

- discuss the analysis of the Panel's report set out in this paper; and
- agree that the Panel's report should be further considered (alongside anything else the Panel – and other parties - submit during the consultation on the strategic and business plan) as the final version of the strategic and business plan is developed.

Any ideas for changes to the plan as a consequence will be brought to the Board at the end of the consultation period (March 2015).

**Risks and mitigations**

**Financial:** N/A

<sup>1</sup> The LSB asked the Panel to consider the following question: "In the light of developments in the legal services market in particular, but also in the wider economy and society, what risks to consumers of legal services might arise in the period to 2020 and how might the LSB and approved regulators react appropriately to them?"

<b>Legal:</b>	See separate Board paper covering the draft strategic and business plan.
<b>Reputational:</b>	See separate Board paper covering the draft strategic and business plan.
<b>Resource:</b>	See separate Board paper covering the draft strategic and business plan.

<b>Consultation</b>	<b>Yes</b>	<b>No</b>	<b>Who / why?</b>
<b>Board Members:</b>			N/A. Board members are being consulted via this paper.
<b>Consumer Panel:</b>	<b>X</b>		This paper responds to the Consumer Panel's final 2020 report.
<b>Others:</b>	N/A		

<b>Freedom of Information Act 2000 (Fol)</b>		
<b>Para ref</b>	<b>Fol exemption and summary</b>	<b>Expires</b>
N/A		N/A

## LEGAL SERVICES BOARD

<b>To:</b>	Legal Services Board	
<b>Date of Meeting:</b>	26 November 2014	<b>Item:</b> Paper (14) 61

### **Commentary on Consumer Panel Report '2020 Legal Services: how regulators should prepare for the future'**

#### **Background / context**

1. The Consumer Panel provided its 'Draft Emerging Thinking' on the LSB's 2020 commission in September, and this was discussed at the joint session with the Panel at the September Board meeting.
2. The Consumer Panel has now published its final report on the 2020 commission (attached at Annex A), having launched the report at the Legal Futures conference on 18 November. A verbal update on any issues raised at the conference in relation to the report will be given at the Board meeting.
3. Annex B to this paper:
  - compares the Panel's sixteen specific recommendations to the LSB with the proposals in the latest version of the LSB's strategic plan; and
  - considers how well the strategic plan reflects the Panel's five 'guiding points' for the regulatory response to the changes in the sector.

#### **Summary of analysis**

4. Overall, the latest draft of the LSB's plan appears to respond well to the Panel's recommendations. This is no great surprise as the Panel's final report mirrors its draft report fairly closely, and the draft report was factored into the earlier development of the plan.
5. The Panel seems to have moved away somewhat from its previous call for facilitation of self-regulation specifically and instead positioned this as one of a range of options for responding to issues with unregulated services. The recommendation in the Panel's draft report that focussed narrowly on levels of indemnity cover has been removed. There is still an emphasis in the Panel's report on digital delivery as a special area of risk and opportunity and on 'big data'. Our plan does not focus explicitly on these two areas, rather we have work packages around consumer and public interest protection, informed choices and mapping of the legal ecosystem which will encompass - but not be limited to - these topics.

#### **Recommendation**

6. The Board is invited to:
  - discuss the analysis of the Panel's report set out in this paper; and

- agree that the Panel's report should be further considered (alongside anything else the Panel – and other parties - submit during the consultation on the strategic and business plan) as the final version of the strategic and business plan is developed.
7. Any ideas for changes to the plan as a consequence will be brought to the Board at the end of the consultation period (March 2015).

**Annex A: Consumer Panel Report**

**'2020 Legal Services: how regulators should prepare for the future'**

[see separate document]

## Annex B: Comparison of Panel recommendations and LSB strategic plan

LSCP recommendation	Strategic plan proposals as at 27 November
<b>Self-lawyering</b>	
<p>Pushing for simplification of legal processes, where appropriate, to enable some consumers to complete common legal tasks without the need to engage a lawyer, or with minimal supervision by a lawyer</p> <p><b>(No change from draft LSCP report)</b></p>	<ul style="list-style-type: none"> <li>• We will consider how market regulation can incentivise the provision of simple, less daunting legal services</li> <li>• We will look at innovations within and outside the legal sector that are aimed at making the consumer experience less complex, to determine their impact, spread best practice and facilitate third party action to make the necessary changes in the legal sector.</li> <li>• We will aim to undertake wider thought leadership on consumer and public interest protection issues where the LSB may have no explicit powers, but where change may contribute significantly to the achievement of our regulatory objectives.</li> </ul>
<p>Ensuring that regulation supports innovative developments like unbundling and is capable of managing the different risks which this practice creates.</p> <p><b>(No change from draft LSCP report)</b></p>	<ul style="list-style-type: none"> <li>• We will undertake thematic reviews of requirements that appear to have the potential to restrict competition, growth or innovation. .... Where supported by the evidence, we may direct changes to regulatory arrangements in light of the outcome of these reviews if we consider that regulators are moving so slowly as to jeopardise the regulatory objectives.</li> <li>• Our work may include identifying and evaluating innovative developments in the market to lower costs.</li> <li>• We will build our understanding of trading behaviour risk and how any problems in the legal services market in this area (whether old risks arising from outdated business models and failure to adopt better ways of working and communicating or new risks generated by innovative business models and increased competition) can best be remedied, working with the Legal Services Consumer Panel and building where appropriate on existing solutions in other sectors. We will aim to build closer links with consumer enforcement agencies as necessary, including in light of the proposed Consumer Rights Bill.</li> </ul>
<p>Contributing thought leadership on the regulatory implications of developments such as the rise in litigants in person and online dispute resolution</p> <p><b>(No change from draft LSCP report)</b></p>	<ul style="list-style-type: none"> <li>• Significant research is likely to be required. We will aim to build on and develop what the LSB, the other legal services regulators and other organisations (eg UKRN) have already done in this area. The objective will be to understand how consumers solve their legal problems, the choices and information available to them, recent trends in pricing and affordability and what the key barriers to meeting legal needs are.</li> <li>• We will aim to undertake wider thought leadership on consumer and public interest protection issues where the LSB may have no explicit powers, but</li> </ul>

	where change may contribute significantly to the achievement of our regulatory objectives.
<p>Maximising the evidence base by which performance of all types of legal services can be monitored and judged by regulators and consumers</p> <p><b>(No change from draft LSCP report)</b></p>	<ul style="list-style-type: none"> <li>• Our work in this area will aim to promote better availability of information for consumers (ranging from guidance for consumers to the transparency of specific parameters such as price and quality to inform particular purchasing decisions) so that consumers can more easily navigate and make decisions about legal services, as well as broader work on public legal education.</li> <li>• This work area will include consideration of the roles of legal service providers, regulators and third parties (eg comparison websites) in providing the necessary information, and how to ensure that the provision of information works in the consumer interest.</li> <li>• We will look at other professional and wider service industries to determine what lessons can be learnt.</li> </ul>
<b>Influence of technology</b>	
<p>Informing policy on the opportunities and limitations of digital delivery as a solution to the access to justice challenge given the need to reconcile the affordability benefits with the reality that some of the key groups who are currently excluded from the justice system are not online.</p>	<ul style="list-style-type: none"> <li>• We will consider particular accessibility issues for vulnerable consumers as part of this work area, to ensure that they share in the benefits arising from regulatory reform and increased competition and innovation in the market.</li> <li>• We will build our understanding of trading behaviour risk and how any problems in the legal services market in this area (whether old risks arising from outdated business models and failure to adopt better ways of working and communicating or new risks generated by innovative business models and increased competition) can best be remedied, working with the Legal Services Consumer Panel and building where appropriate on existing solutions in other sectors. We will aim to build closer links with consumer enforcement agencies as necessary, including in light of the proposed Consumer Rights Bill.</li> </ul>
<p>Ensuring the approved regulators are alive to emerging digital detriments and develop the skills to police the digital marketplace effectively and support consumers to use it safely</p> <p><b>(No change from draft LSCP report)</b></p>	<ul style="list-style-type: none"> <li>• our activities [will include those] that are essential in discharging our regulatory oversight function including our regulatory standards work. For example, during this strategic planning period, we see an increased need for regulators to develop their own strategic thinking about the future and to build their capacity to deal with new risks, including those arising from increased competition and new service channels such as digital delivery;</li> </ul>
<p>Assisting with efforts to unlock the potential of Big Data while exploring the ethical and information governance issues it creates</p> <p><b>(Only very slightly reworded)</b></p>	<p><b>Not specifically covered, but likely to be encompassed by:</b></p> <ul style="list-style-type: none"> <li>• our cross-cutting research which is not carried out in the context of a specific project but that helps us to understand change in the sector and our own (and</li> </ul>

<p>from draft LSCP report)</p>	<p>the approved regulators’) impact. We will always remain open to collaboration with the widest range of partners in doing this work</p> <ul style="list-style-type: none"> <li>• Significant research is likely to be required. We will aim to build on and develop what the LSB, the other legal services regulators and other organisations (eg UKRN) have already done in this area. The objective will be to understand how consumers solve their legal problems, the choices and information available to them, recent trends in pricing and affordability and what the key barriers to meeting legal needs are.</li> </ul>
<p>Engaging with national digital markets/exclusion initiatives. As part of planned ongoing thinking on modernisation of the wider regulatory framework, ensuring reform options deal effectively with global digital markets that exist largely outside the boundaries of the Legal Services Act</p>	<p><b>Not specifically covered, but likely to be encompassed by:</b></p> <ul style="list-style-type: none"> <li>• Our work in this area will aim to promote better availability of information for consumers (ranging from guidance for consumers to the transparency of specific parameters such as price and quality to inform particular purchasing decisions) so that consumers can more easily navigate and make decisions about legal services, as well as broader work on public legal education.</li> <li>• We will build our understanding of trading behaviour risk and how any problems in the legal services market in this area (whether old risks arising from outdated business models and failure to adopt better ways of working and communicating or new risks generated by innovative business models and increased competition) can best be remedied, working with the Legal Services Consumer Panel and building where appropriate on existing solutions in other sectors. We will aim to build closer links with consumer enforcement agencies as necessary, including in light of the proposed Consumer Rights Bill.</li> <li>• We will aim to undertake wider thought leadership on consumer and public interest protection issues where the LSB may have no explicit powers, but where change may contribute significantly to the achievement of our regulatory objectives.</li> </ul>
<p><b>Consumer behaviour</b></p>	
<p>Designing policy so that vulnerable consumers share fully in the gains of the market reforms and quantifying and monitoring evidence of exclusion</p> <p><b>(No change from draft LSCP report)</b></p>	<ul style="list-style-type: none"> <li>• We will consider particular accessibility issues for vulnerable consumers as part of this work area, to ensure that they share in the benefits arising from regulatory reform and increased competition and innovation in the market.</li> <li>• Significant research is likely to be required. We will aim to build on and develop what the LSB, the other legal services regulators and other organisations (eg UKRN) have already done in this area. The objective</li> </ul>



	<p>will be to understand how consumers solve their legal problems, the choices and information available to them, recent trends in pricing and affordability and what the key barriers to meeting legal needs are.</p> <ul style="list-style-type: none"> <li>• We will aim to understand variations in how - and the extent to which - legal needs are met across different types of consumer, areas of law and legal activity, enabling us to identify priority areas for further LSB activity.</li> </ul>
<p>Ensuring the collection and opening up of data by regulators about the performance of lawyers</p> <p><b>(No change from draft LSCP report)</b></p>	<ul style="list-style-type: none"> <li>• Our work in this area will aim to promote better availability of information for consumers (ranging from guidance for consumers to the transparency of specific parameters such as price and quality to inform particular purchasing decisions) so that consumers can more easily navigate and make decisions about legal services, as well as broader work on public legal education.</li> </ul>
<p>Facilitating the emergence of a healthy intermediaries market that could help consumers make better choices and ensuring this works in the consumer interest</p> <p><b>(No change from draft LSCP report)</b></p>	<ul style="list-style-type: none"> <li>• This work area will include consideration of the roles of legal service providers, regulators and third parties (eg comparison websites) in providing the necessary information, and how to ensure that the provision of information works in the consumer interest.</li> <li>• We will look at other professional and wider service industries to determine what lessons can be learnt.</li> </ul>
<p>Fostering the development of information and public education to build consumer confidence and enable consumers to use the market effectively</p> <p><b>(No change from draft LSCP report)</b></p>	<ul style="list-style-type: none"> <li>• Our work in this area will aim to promote better availability of information for consumers (ranging from guidance for consumers to the transparency of specific parameters such as price and quality to inform particular purchasing decisions) so that consumers can more easily navigate and make decisions about legal services, as well as broader work on public legal education.</li> </ul>
<p><b>Market changes</b></p>	
<p>Unblocking artificial obstacles to convergence among professional groups, while ensuring competition between those groups for the same work happens on fair terms</p> <p><b>(No change from draft LSCP report)</b></p>	<ul style="list-style-type: none"> <li>• We will undertake thematic reviews of requirements that appear to have the potential to restrict competition, growth or innovation. We may use – amongst other things - ‘challenger’ events (in which potential new entrants are asked what barriers exist) as well as analysis of unjustified inconsistencies in regulation to collect evidence on areas to prioritise for review. Where supported by the evidence, we may direct changes to regulatory arrangements in light of the outcome of these reviews if we consider that regulators are moving so slowly as to jeopardise the regulatory objectives.</li> <li>• In our work over the next three years, we will take into account both regulated and unregulated providers of legal services in order effectively to pursue our regulatory objectives. Understanding how regulated service providers can compete on a level</li> </ul>

	<p>playing field with unregulated service providers will be an important element of our work in this area.</p>
<p>Ensuring the approved regulators are equipped to respond effectively to the new types of consumer detriment that result from law becoming a more business-like environment</p> <p><b>(No change from draft LSCP report)</b></p>	<ul style="list-style-type: none"> <li>• For example, during this strategic planning period, we see an increased need for regulators to develop their own strategic thinking about the future and to build their capacity to deal with new risks, including those arising from increased competition and new service channels such as digital delivery</li> </ul>
<p>Actively encouraging and facilitating initiatives to raise standards and extend access to redress in unregulated markets</p>	<ul style="list-style-type: none"> <li>• We will consider whether and, if so, how section 163 of the Act (voluntary arrangements) might be used to ensure necessary safeguards are in place for consumers and the public interest (for example: ADR for all, accrediting of codes of practice, promoting and/or producing consumer guidance).</li> <li>• We will, as appropriate, support the expansion of redress to cover unregulated legal services (without expanding the scope of regulation by adding to the list of reserved activities).</li> <li>• We will aim to undertake wider thought leadership on consumer and public interest protection issues where the LSB may have no explicit powers, but where change may contribute significantly to the achievement of our regulatory objectives.</li> </ul>
<p>Continuing to press for modernisation of the wider regulatory framework in the longer term. Meanwhile, where possible, move towards harmonising arrangements, such as rulebooks, disciplinary regimes and financial protection schemes, within the existing legislative structures</p> <p><b>(No change from draft LSCP report)</b></p>	<ul style="list-style-type: none"> <li>• We will continue our collaborative work on legislative change with the frontline regulators, which was initiated as a result of the July 2014 Ministerial summit, as well as taking forward our own initiatives in areas where consensus may be harder to achieve. This work encompasses: <ul style="list-style-type: none"> <li>– Communicating and highlighting existing deregulatory achievements, explaining how these have been balanced with ensuring adequate consumer protection and setting out future plans;</li> <li>– Sharing knowledge and learning on specific initiatives to reform regulation and develop common proposals across regulators where possible;</li> <li>– Identifying and pushing for legislatively simple, but high impact changes to the Act to reduce regulatory burdens and streamline regulatory processes; and</li> <li>– Developing, explaining and communicating options for a new legislative framework beyond the 2007 Act.</li> </ul> </li> </ul>
<p><b>Guiding points for regulatory response</b></p>	
<p>Guiding point 1: Act to ensure the</p>	<p>See work packages on 'supporting increased</p>

reforms benefit everyone	accessibility of legal services' and 'informed choices'
Guiding point 2: Adapt to the changing pattern of risks	See work package on regulatory standards as part of core programme: "we see an increased need for regulators to develop their own strategic thinking about the future and to build their capacity to deal with new risks, including those arising from increased competition and new service channels such as digital delivery".
Guiding point 3: Rethink consumer protections	See work packages on 'protecting consumers and the public interest' and text under 'reviewing and removing obligations' about considering the case for the reservation of additional activities.
Guiding point 4: Work in different ways	See work packages on 'informed choices' and 'protecting consumers and the public interest' and references to thought leadership and working beyond on strict statutory functions.  See work package on regulatory standards as part of core programme: "we see an increased need for regulators to develop their own strategic thinking about the future and to build their capacity to deal with new risks, including those arising from increased competition and new service channels such as digital delivery".
Guiding point 5: Maintain pressure for legislative reform	See work package on 'developing options for legislative change'.