

# **Access to Justice**

Draft LSB Strategy for Discussion

28 January 2010

# What we mean by A2J and PLE

***“Access to justice is the acting out of the rule of law in particular or individual circumstances. The tools to achieve that outcome range from informing the public about their rights, through legal services, to tribunals and courts. The agents of delivery are wide and ...legal professionals are at the heart of this along with many other actors in legal services and the wider justice sector.”*** LSB DRAFT BUSINESS PLAN 2010/11

REGULATORY OBJECTIVE –  
IMPROVING ACCESS TO  
JUSTICE

REGULATORY OBJECTIVE –  
SUPPORTING THE  
CONSTITUTIONAL PRINCIPLE OF  
THE RULE OF LAW

REGULATORY OBJECTIVE –  
INCREASING PUBLIC  
UNDERSTANDING OF THE  
CITIZEN’S LEGAL RIGHTS AND  
DUTIES

# Why is Access to Justice and PLE important?



- Empowered consumers can make markets work better
  - Innovation, increasing standards and better value
- Collective knowledge plays a key role in shaping the market
- Civil Society needs to have confidence in the justice system in its broadest sense
  - Equal application of the law
  - Financial constraints
  - Addressing both rights and responsibilities of all participants in the legal services market
- Poor justice covers the spectrum from mild financial detriment to devastating personal loss
- 36% of respondents to the Civil Justice survey in 2007 had reported having one or more civil justice problems
  - Almost 15m of the adult population have a civil justice problems or issues each year
  - Almost 41,000 civil justice problems each day
  - Problems are distributed unevenly
    - By problem type
    - By consumer type
    - By region
- Many of these issues could be solved simply if capacity and knowledge were available

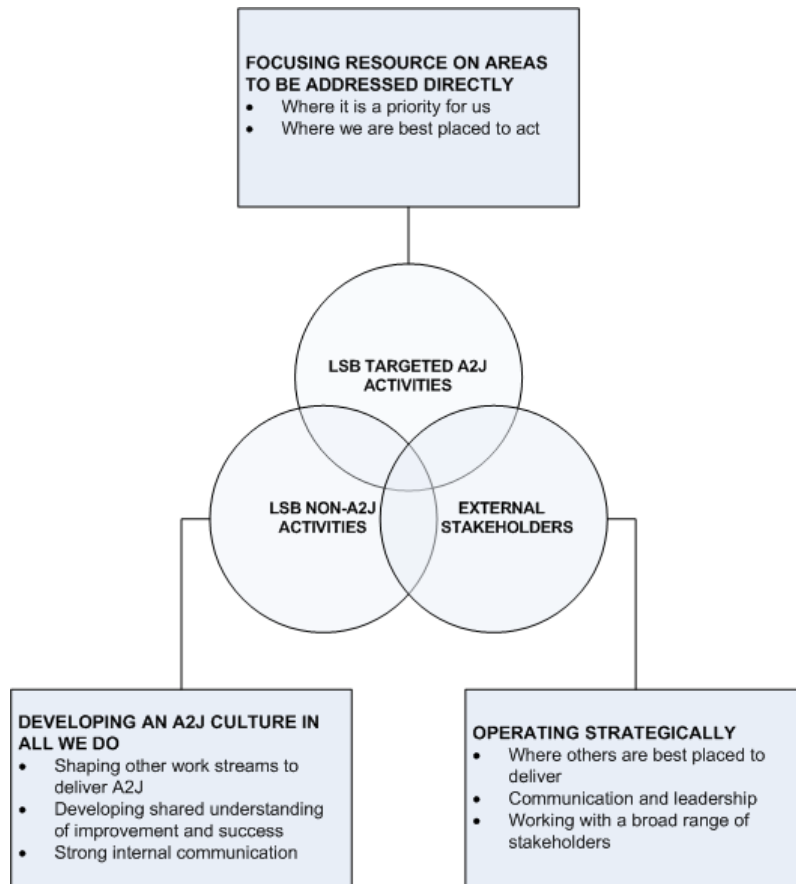
# The LSB Business Plan commitments



ACCESS TO JUSTICE	PUBLIC LEGAL EDUCATION
<b>2009/10</b>	<b>2009/10</b>
<p>LSB goal to improve A2J                      Empowered consumers receiving right quality at right price                      Improving accessibility especially for those not eligible for state support and who find legal services confusing                      Making links to other objectives</p>	<p>A difficult challenge not to be avoided                      Making the demand side more demanding                      Mapping and understanding the world of PLE and others to identify where action should be taken and by whom</p>
<p><b>Deliverable – clearly communicated PLE priorities going forward</b></p>	

<b>2010/11</b>	<b>2010/11</b>
<p>Take a broad view of A2J                      Gain a sophisticated understanding of the market                      Consider impact of commercial mechanisms on A2J                      Consider scope of regulation and protection of title</p>	<p>Develop a more sophisticated and co-ordinated approach                      Explore the potential for help-lines and comparison services                      A robust understanding of consumer behaviour and factors influencing choice is essential</p>
<p><b>Deliverables: Publish a review of demand and supply side research on legal market</b>  <b>Publish a consultation document on the decision framework for making a legal activity reserved</b>  <b>Publish initial views on the impact of referral arrangements on the delivery of the regulatory objectives</b></p>	

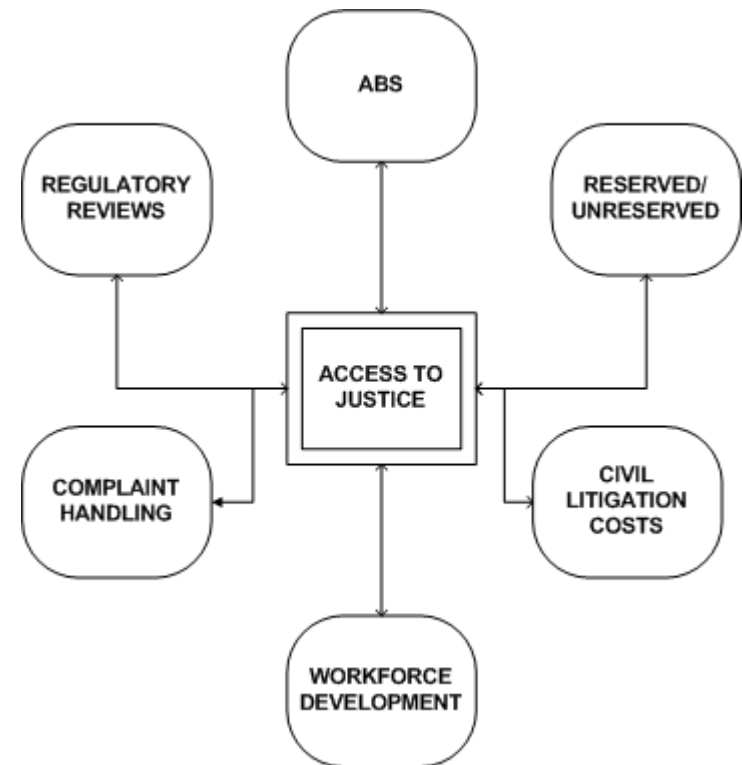
# The LSB approach to delivering A2J



*A big ambition – to facilitate a market that improves access to justice – but we cannot and should not deliver it alone.*

# Developing an A2J culture

- The LSB objective is to facilitate a market that improves access to justice
- Making the consideration and understanding of A2J part of all that the LSB undertakes
- Embedding A2J
  - Project management methodology
  - The Consumer Panel
- Should the Board look for an A2J impact analysis as part of assessing key policy issues?



# Stakeholder Activity



PLE NET is a network of organisations working in the field of PLE which develops and shares examples of good practice [www.plenet.org.uk](http://www.plenet.org.uk)

# Areas of activity

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- **Making the decision to regulate**
  - Reserved/unreserved
    - Claims Management
    - OISC
    - General legal advice (inc. will writing)
  - Protection of title
- **Understanding how and when consumers use the legal services market**
  - Consumer research
  - Market study
  - Investigation of
    - Price comparison and brokerage services
    - “Legal Direct”
- **Costs of legal infrastructure**
  - Referral fees
  - Understanding the impact of civil litigation costs on A2J



# ***Making the decision to regulate***

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- Context
  - Our role is as an oversight regulator
  - The Act requires that we act in a way compatible with the regulatory objectives
- What does it mean?
  - The Act allows that the content of reserved activities can be amended by the Lord Chancellor on the recommendation of the LSB
  - A wide spectrum of potential from whether or not to extend or remove regulation from a particular area (e.g. Claims Management, Immigration) through to re-writing the regulatory structure of the legal services market
- An enormous piece of work bringing in other areas of LSB activity
- Key issue for engagement with new Government – end 2010/11

**Outcome – a market where regulation is structured efficiently to support a market which promotes competition, encourages innovation and protects consumers**

# Making the decision to regulate

## *Reserved/unreserved*

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- Expect to receive first application for LSB to make a new reserved activity (will writing) in January 2010
- An over-arching approach is needed rather than making policy on basis of individual applications
  - Category based?
  - Activity based?
  - Consumer group based?
- Understanding
  - the costs and benefits of regulating currently unreserved legal activities
  - The relationship between regulation and risk
- Identifying criteria for determining whether an area of advice should be regulated or not regulated
  - Risk of detriment
  - Level of detriment
- Informing our approach by reviewing the existing regulatory frameworks for claims management, immigration and asylum
- Thinking about protection of title

# Understanding how and when consumers use the legal services market



- Substantial research exists already about the experiences of consumers in their endeavours to access justice
  - But not necessarily about what they want from the market
    - Nor about their experience of the market as opposed to the service
      - Search costs
      - Switching costs
    - Or about all consumers
      - SMEs
      - Large businesses
  - Limited information about the structure of the legal services market
    - Market definitions
    - Substitutability
    - Barriers to entry/exit
- Legal services market is characterised by information asymmetry
  - More information doesn't necessarily equal better
  - Focus on the supply side
  - Making the market less fragmented for consumers

# Using the legal services market

## *Creating an evidence base*

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- Developing and delivering a co-ordinated programme of research
  - Encouraging and influencing ARs to undertake their own research
  - Getting the most out of existing research
  - Identifying and filling gaps
- Using research to identify policy issues
  - Demand side
    - What consumers want and how do they want it? Who do they need it from?
      - Individuals
      - SMEs
      - Corporate
    - What consumers are not getting?
    - What is stopping consumers from getting what they want?
    - Which consumers need more assistance?
    - Who do they need it from?
  - Supply side issues
    - Market definition
    - Barriers to entry
    - Market financials
- Developing a policy approach to improving access to justice
  - Using the output of research to continue and refresh the development of evidence based policy activity

# Using the legal services market

## *Price comparison and brokerage services - models*

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- Different forms of price comparison and brokerage services
- Generic price comparison services
- [www.uswitch.com](http://www.uswitch.com), [www.gocompare.co.uk](http://www.gocompare.co.uk), [www.comparethemarket.com](http://www.comparethemarket.com)
  - Insurance, money, travel, motoring, utilities, business, mobile, broadband, television
  - Television advertising
- Existing legal price comparison and brokerage services –  
[www.lawyersupermarket.com](http://www.lawyersupermarket.com), [www.legalsupermarket.com](http://www.legalsupermarket.com),  
[www.takelegaladvice.com](http://www.takelegaladvice.com), [www.qualitysolicitors.com](http://www.qualitysolicitors.com)
- Different structures
  - Different forms of price calculators
    - Unit charge
    - Fixed fee
  - Providing a referral service
  - Online document creation

# Using the legal services market

## *Price comparison and brokerage services*



- Establishing whether there is a case for price comparison services
  - Identifying the risks and benefits
  - Understanding what consumers want and what will influence their choices
    - Existing legal comparison websites
    - Learning from other sectors
    - Risks and mitigation
  - Providing leadership and communication
    - Consumer demand for price comparison?
    - Private sector business opportunities?
    - AR administration of services?
  - Working with existing and new stakeholders
    - Consumer Panel
    - Price comparison services
    - ARs
    - Consumer organisations
    - Other markets
  - Identifying and determining the role of regulation in the provision of price comparison services
    - Transparency of ownership
    - Independence
    - Accuracy
    - Confidence codes

# Using the legal services market

## *“Legal Direct”*



- **More than information and signposting**
  - Building legal knowledge and expertise into the system
  - Self help – so solutions as well as referrals
- **Brand recognition and consumer confidence**
- **Range of delivery channels**
  - Innovation
  - Reaching diverse client groups
  - Shaping services for consumers, not expecting consumers to become pseudo-lawyers
- **Integration with other MoJ web and telephone portals**
  - Community
- **Likely to address needs of vulnerable end of market, whereas price comparison type tools may be utilised by more confident consumers?**
- **Scope and ambition to be consumer led**
  - LSB consumer research reported that 52% of survey respondents said they would like something like NHS Direct for legal services

# Using the legal services market

## *“Legal Direct”*

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- **Influence, support and encourage**
  - MoJ scoping/feasibility study underway
  - Pre-election momentum
  - LSB/MoJ liaison, ministerial PLE group
- **Knowledge building**
  - Develop understanding of options/models available (NHS Direct, FSA Money Made Clear)
  - Engage with supply side
  - Branding and consumer confidence – regulatory sponsor (Money Made Clear), government (NHS Direct) or independent (AdviceNow, Money Saving Expert)?
- **Leadership and communications**
  - Develop vision for what Legal Direct could mean for consumers and for the market
  - Provide leadership to the profession
  - Link to wider access to justice messages, e.g. broad view of A2J, ABS, innovation, diverse delivery models, consumer focused services



# *Costs of legal infrastructure*

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- **Jackson's review of civil litigation costs provides the focus**
  - Reviewing the rules and principles governing the costs of litigation and making recommendations in order to promote access to justice at proportionate cost
- **General concern about the mounting costs of civil litigation**
  - Access to Justice
  - Different methods of funding action
  - Fixed costs
- **Specific concern about aspects of civil litigation costs**
  - Damages Based Agreements
    - Proportionate regulation
  - Referral Fees
    - Compromising integrity
    - Best interests of the clients

# Costs of legal infrastructure

## *Referral fees*

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- **Establish evidence base**
  - Market study finalised – April/May 2010
  - Delivery of panel advice – May 2010
  - Discuss findings with ARs and others May/June 2010
    - Present findings
    - Unintended consequences
- **Consumer education activity**
  - Factor in outcomes from research into Legal Direct/PC site activity where relevant
- **Consultation on our approach to referral fees – July 2010**
  - Work closely with the consumer panel
- **Decision document – November 2010**
- **Rule compliance? Q4**

# Costs of legal infrastructure

## *Civil litigation costs and A2J*

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- **General concern about the mounting costs of civil litigation**
  - Access to Justice
  - Different methods of funding action
  - Fixed costs
- **Jackson's review of civil litigation costs**
  - Understanding the implications of Jackson's report and recommendations for A2J

# Resources

2010/11

- Market study
- LSB staff resource focused on
  - *making the decision to regulate (reserved/unreserved)*
  - *referral fees*
- SMT and Board resource focused on stimulating activity externally – e.g. “Legal Direct”

2011/12

- LSB staff continue to focus implementing approach to reserved/unreserved and referral fees
- Access to Justice indicators for ABS
- Understanding information asymmetries as market begins to change
- Possible A2J regulatory review?

2012/13

- Further market study to assess early impact of ABS on access to justice?
- Working with licensing authorities to ensure that access to justice provision in licensing rules are met

# A2J strategy in summary



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- Does the strategy present the right LSB A2J philosophy?
  - Are the specifics (evidence base, reserved/unreserved etc) the right ones?
  - Have we got the priorities right?
  - If something is added, what is taken away?

# A2J Strategy in summary...

