

To:	Board
Date of Meeting:	24 March 2010
Item:	Paper (10) 19

Title:	LSB response to the Jackson Review of Civil Litigation Costs
Workstream(s):	Access to justice
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Status:	Protect

Summary:
<p>The attached paper and appendices set out the key recommendations from Jackson LJ's The Review of Civil Litigation Costs: Final Report, which was published in January. It provides background and some commentary on the report. It suggests where and how LSB should consider taking action. It asks for guidance from the Board and proposes bringing a fuller version of the paper to the Board on 29 June.</p>

Risks and mitigations	
Financial:	N/A.
FoIA:	Policy protected.
Legal:	We need to ensure that our involvement in this activity sits comfortably with our vires, so we have indicated in the paper where and how Jackson's recommendations impact upon the regulatory objectives.
Reputational:	This work will involve close involvement with the current and any new Government.
Resource:	At this point, it is difficult to assess the amount of resource needed. This will be addressed in the paper to the Board on 29 June.

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

Recommendations:

The Board is invited to determine:

- a) whether the recommendations highlighted in this paper are the key ones for the LSB; and
- b) in responding to the recommendations, whether we should:
 - take a **neutral** view;
 - **contribute** to the wider debate where decision-making is outside LSB ambit though linked to the regulatory objectives;
 - argue that **regulation** rather than legislation is the appropriate means of achieving outcomes (for example because the legislative framework already exists to address the matter) (**regulation appropriate**); or
 - argue that the matter is solely one for regulators, rather than the Government or judiciary, to determine (**only regulation**).

LEGAL SERVICES BOARD

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LSB response to the Jackson Review of Civil Litigation Costs

Introduction

1. The Jackson report and the implementation of its recommendations have important implications for the LSB. They are likely to bring into sharp focus what some consider regulatory activity, but which others see as political activity. They are also likely to be material in the commercial decision-making of both new entrants and existing firms in considering the scope of opportunities to invest in currently highly profitable areas of law.
2. The **purpose of this paper** is to prompt discussion about the recommendations of Jackson LJ's report into civil litigation costs and the extent to which there is a role or need for action by the LSB. The Board is invited to determine:
 - a) whether the recommendations highlighted in this paper are the key ones for the LSB; and
 - b) in responding to the recommendations, whether we should:
 - take a **neutral** view;
 - **contribute** to the wider debate where decision-making is outside LSB ambit though linked to the regulatory objectives;
 - argue that **regulation** rather than legislation is the appropriate means of achieving outcomes (for example because the legislative framework already exists to address the matter) (**regulation appropriate**); or
 - argue that the matter is solely one for regulators, rather than the Government or judiciary, to determine (**only regulation**).
3. It is important also to consider separately the outcomes that the Jackson report aims to deliver from the method of delivery. Once it is clear what outcomes Government wants to achieve, then it will be appropriate to question whether or not the means offered by the Jackson report are the only or most appropriate means of achieving those outcomes. This will influence the approach we take to addressing the key recommendations.
4. The final report published in January is 557 pages long and contains 109 recommendations. It also helpfully provides an indication of where primary legislation is likely to be required, although we have not yet analysed in detail whether some of these areas might more appropriately fall to regulators to consider.

5. The table in paragraph 19 sets out the key recommendations from the report. **Appendix 1** provides a full list of the recommendations. **Appendix 2** provides a list of primary legislation that would be required by the implementation of the recommendations. **Appendix 3** provides a glossary of the terms used in this paper.

Background

6. The terms of reference for Jackson's report were that he should 'review the rules and principles governing the costs of civil litigation and to make recommendations in order to promote access to justice at proportionate cost'. He was appointed to undertake the work by the then Master of the Rolls, Sir Anthony Clarke, in November 2008. He published his preliminary report in May 2009 and his final report in January 2010.
7. Jackson LJ met the Board on 28 September. We subsequently wrote to him emphasising that we had yet to reach a decision about the issue of referral fees. We made the more general point that it would be important for his final recommendations to bring out the implications separately for procedural rules, government and regulators to ensure that 'the interactions between them are properly understood' because of concerns regarding the Government's proposals to introduce legislation to address Damages Based Agreements, despite both our and the SRA's clear view that the issue was one for regulators to address.
8. The Lord Chancellor and Secretary of State for Justice has commented in parliament that the report 'is remarkable for its thoroughness and imagination. It makes recommendations for fundamental reforms to reduce costs in the civil justice system. We are now actively assessing the implications of Sir Rupert's proposals, including-crucially-their economic impact.' In parliamentary questions, Henry Bellingham MP (Shadow Minister for Justice) has said that there should be 'no cosy deals for trade unions' on referral fees and claims management matters. Our understanding is that the Conservatives have said that they expect to implement a significant proportion of the recommendations and will do so quickly, should they come to power.
9. We have met Ministry of Justice (**MoJ**) officials to discuss their approach to this assessment and to bring them up to date on our and the Consumer Panel's work on referral fees. The MoJ work is due to be completed by the end of March, but the election is likely to prevent a clear steer on the recommendations being available until May or June. We took the MoJ through the activity we are undertaking (described below) and have said that we will share our findings at the earliest possible time. MoJ officials attended the presentation of the draft of the Consumer Panel's research.

10.





Current LSB activity

11. The main focus of LSB activity currently is around the issue of referral fees. We have asked for advice from the Consumer Panel on the impact of referral fees on consumers. The Consumer Panel is due to report back to the LSB with its advice at the end of May. We have also commissioned Charles Rivers Associates (CRA) to provide us with an economic assessment of the costs and benefits of a series of policy scenarios. This work is due at the end of April. We are coordinating with the Consumer Panel so that it is able to take the CRA work into account in its report to us and CRA is able to use the emerging findings from the Consumer Panel research. We will publish the research and evidence in May, subject to any 'purdah' restrictions.
12. We currently expect to bring our initial policy proposals to the Board on 29 June and a draft consultation document to the Board on 27 July. The consultation would close towards the end of October or early November with a decision document being presented at the turn of the year.

General commentary on the report

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14. 

[Redacted text block]

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[Redacted text block]

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[Redacted text block]

17.

[Redacted text block]

18.

[Redacted text block]



Key Recommendations from the report

19. Table 1 below sets out:

- what we believe are the key recommendations from the Jackson report;
- the problems they are designed to address;
- how they may be implemented¹;
- some comment¹
- the nature of evidence provided within the report;
- a brief examination of the impact on regulatory objectives; and
- proposed action by the LSB.

¹ NB: We have not attempted to separate the appropriate vehicle for regulatory delivery (as opposed to legislation or other Government action). But we are clear that regulation may be delivered through a variety of mechanisms such as civil procedure rules, costs councils, court rules or, of course, Approved Regulators (**AR**) and the LSB. Our approach is to suggest that this sort of decision should be taken based on where the most effective compliance may be achieved.

Table 1

Recommendation	Problem addressed	Parameter of the problem	Comment	Nature of evidence provided in the report	Impact on regulatory objective(s)/professional principles and proposed	Proposed action by LSB
[REDACTED]						

Next steps

20. Subject to comments and suggestions from the Board, we will continue to develop our views on the Jackson report. We will share relevant information with MoJ officials (findings of CRA research on referral fees before publication) and we will meet them post-election when we know the political environment within which Jackson will sit. **The intention is to bring more detailed proposals to the Board on 29 June.**