

To:	Board		
Date of Meeting:	25 April 2012	Item:	Paper (12) 31

Title:	Response to Consumer Panel report on comparison websites		
Workstream(s):	Access to Justice		
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Status:	Unclassified		

Summary:

The Legal Services Consumer Panel undertook an investigation into the role of comparison websites. Its report was published in January 2012 and made four key recommendations. These are replicated at paragraph 1 of the main paper below. The report is attached at **Annex A**.

The executive proposes that the recommendations are accepted to the extent they apply to the LSB and that they are broadly supported where they do not apply directly. It is likely that the issue of comparison sites will need revisiting as the impact of liberalisation drives further innovation in consumer choice tools.

If the proposed approach is agreed, the executive will write to the Consumer Panel recording its appreciation of the report, explaining its approach and next steps. The executive will also write to the regulators and professional bodies proposing that they take steps to deliver the Panel's recommendations.

Recommendation(s):

The Board is invited:

1. To write to the Consumer Panel setting out its response, based upon the proposals in this paper and supporting the recommendations made in the panel's report.
2. To regulators and professional bodies:
 - Encouraging them to make available (for profit or otherwise) their professional registers to facilitate the development of an innovative market in choice tools for consumers.
 - Encouraging regulators to think about the role of comparison sites in their own consumer education strategies;
 - Asking them to consider how best they can work with comparison sites to maintain good adherence to the standards set out in the Consumer Panel report.
3. LSB should reconsider the issue of comparison sites in 2013/14, when further information is available about the changing nature of the legal services market. At that stage the Board may again consider it is too early to take a view, but it must be alive to potential detriments in order to ensure that the legal market works more effectively for consumers.

Risks and mitigations	
Financial:	No costs to proposed approach
Legal:	
Reputational:	Risk limited to accusation of little action in response to report. Countered with clear statement that it is too early for LSB to be prescriptive and that we should give regulators opportunity to consider and progress any issues/solutions first and foremost in line with being oversight regulator.
Resource:	Negligible in 2012/13

Consultation	Yes	No	Who / why?
Board Members:	X		Barbara Saunders
Consumer Panel:	X		Steve Brooker
Others:	Who / why?		

Freedom of Information Act 2000 (Fol)		
Para ref	Fol exemption and summary	Expires
	No exemption sought	N/A

LEGAL SERVICES BOARD

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Board response to Legal Services Consumer Panel report and recommendations on comparison websites

Background / context

1. The Consumer Panel report on comparison websites attached at **Annex A** made the following recommendations:
 - The LSB should work with the panel to facilitate discussion between consumers, comparison sites, providers and front line regulators aiming to secure the voluntary adoption of good practice standards based on those in this report;
 - In the longer term, and depending upon the progress of a self-regulatory solution, the LSB should consider the role of accreditation of comparison sites;
 - Comparison sites should self-assess against the twenty standards and make remedial changes as necessary; and,
 - Regulators should open up their professional registers so that comparison sites and others can use this data to provide innovative services to consumers
2. The Board is obliged under section 10 LSA 2007 to respond to the Consumer Panel setting out where it is in disagreement, the reasons and its proposed actions.
3. This paper analyses the Board's possible responses and proposes the most appropriate way forward.

Proposal

The Board is invited:

4. To write to the Consumer Panel setting out its response, based upon the proposals in this paper and supporting the recommendations made in the Consumer Panel's report.
5. To regulators and professional bodies:
 - Encouraging them to make available (for profit or otherwise) their professional registers to facilitate the development of an innovative market in choice tools for consumers.
 - Encouraging regulators to think about the role of comparison sites in their own consumer education strategies;
 - Asking them to consider how best they can work with comparison sites to maintain good adherence to the standards set out in the Consumer Panel report.

6. LSB should reconsider the issue of comparison sites in 2013/14, when further information is available about the changing nature of the legal services market. At that stage the Board may again consider it is too early to take a view, but it must be alive to potential detriments in order to ensure that the legal market works more effectively for consumers.

Analysis

7. Comparison sites are a contested subject. In theory they provide an important space for consumers and providers to meet with rational choices encouraged and good providers rewarded. However, the evidence on their effectiveness is more nuanced. The Consumer Panel concluded that:

“A key potential benefit of comparison websites, and one which addresses a real challenge in this sector, is enhancing access to legal services. People have little knowledge of the law and are not shopping around. Comparison websites can help to more easily connect consumers to suitable providers and provide helpful guides on choosing lawyers and areas of law.”

8. In markets such as financial services they have substantially increased consumer power because of their links to best buy tables for a range of products such as savings accounts and products, mortgages, and annuities. Some have argued however, that for products which are less suitable for commoditisation such as energy (where it is continuous purchase rather than repeat purchase), comparison websites have led to inaccurate incentives to switch and even some misleading data supporting that, such as estimates of annual energy consumption. What is clear is that where consumers do use comparison sites, they should be encouraged to remember that they must use a range of information to support their choices and not rely solely on the results on comparison websites.
9. In the legal market such sites have yet to really take off. The Consumer Panel explored this with a range of stakeholders. Some argued that legal services were unsuitable for such sites because consumers would choose the wrong provider because of a lack of understanding. It is difficult to understand how depriving consumers of additional information sources will solve that particular problem. Similarly it is relatively simple to argue that additional information is a good thing where information asymmetry is so significant. There may be a risk of information overload for consumers: few would argue that this point is close and even if were so, comparison websites may provide one route to managing that information systematically for consumers.
10. The Panel also considered arguments about the structure of the legal market. Could the fragmented nature of provision and emotional nature of much demand continue to prevent the development of comparison websites? The Panel took the view that while there may be much in the arguments (and it is hard to argue otherwise given the weak role of such sites at present) the reform of the legal market and the liberalisation of which ABS is first step, is:

“...likely to erode these away. This includes more legal services being delivered in standardised packages which facilitate easy online comparisons. The emergence of familiar legal brands taking a growing market share, each offering fixed fee services for a wide range of legal services, will enable and stimulate demand for tools enabling comparison of these.”

11. It is difficult to be against the furtherance of data transparency, especially in the legal market where individual consumers often struggle to choose when making one off purchases. The challenge is to make the provision of data proportionate so that the search costs do not of themselves make legal services less affordable. Furthermore, comparison sites are a fact of many markets and all current signs are that they are growing and developing in the legal market. The Board does not have an option of stopping their march. The Consumer Panel identified 16 such sites in operation and while their performance was hugely variable there can be no doubt that they are growing in influence albeit from 'no influence' to 'marginal significance'.
12. The Board can choose its engagement and strategy. It can choose to watch passively or, alternatively, actively seek to promote and regulate sites. Regulators in other markets have taken such contrasting approaches (again we can reference energy and financial services).
13. With the legal market facing changes in its competitive context it is perhaps too early to reach a settled view on comparison sites. The absence of strong brands plays a significant part in the relative obscurity in legal comparison sites – both at the level of the sites themselves and the legal businesses within the sites. Similarly the relatively low numbers of consumers shopping around is a probable barrier to the growth of such sites. However, the Board can take some action that is likely to support the development of consumer choice generally and may be of benefit to the development of comparison sites.
14. At least one comparison site has requested access to an approved regulator's professional register and been refused. We understand that the approved regulator may have taken a commercial view in reaching its decision. The LSB will invite the regulators and professional bodies to consider whether the professional registers may be of wider economic interest because they can support innovation and in turn the furtherance of the regulatory objectives (particularly supporting access to justice, furthering public legal education and promoting competition). It is likely that the availability of the professional registers would facilitate more choice tools for consumers, although that does depend upon other aspects of the market.
15. It is worth considering what is included in the professional registers. Of themselves there is little of direct use to consumers in helping them differentiate between law firms. At present they are little more than searchable directories and this indeed how the Law Society for example uses the register. However, any more consumer orientated comparison site or 'choice tool' will need to base itself on such a directory. What the comparison sites could potentially offer is added value analysis that saves the consumer search costs. For consumers to explore the market at present, comparing say prices, complaints levels, panel membership and customer satisfaction between five providers, they would need patience, drive and a significant research and analysis budget. Even if firms made more of that data available it will take some time to search and compare. The development of comparison websites is as likely to drive the better supply of such data as it is to help consumers interpret and navigate the results. But the added value that is likely to be built by such sites needs (though it is not essential) to be based upon the professional registers.
16. As noted by the Consumer Panel, it is likely that choice tools and comparison sites are more likely to develop where quality and price are easily comparable. Quality marks (voluntary as much as regulatory), fixed fees and complaints data can be important. In fact the Board's recently published quality discussion paper makes these points in encouraging regulators to use data transparency more to support consumer choice tools and engagement.

17. The Law Society are currently exploring the possibility of developing a comparison website and have commissioned IFF Research to carry out research into the feasibility of a Law Society site.
18. While the changing picture may make it too early for LSB to fix a view on comparison sites, it is an opportune moment to start a discussion about agreed standards and common approaches. The Consumer Panel report does this and has 20 draft standards. OFT are currently considering the development of standards for comparison websites that would apply across the whole economy. It is unclear on the timescale for this and while there are advantages to a single set of standards, those of the Consumer Panel have been seen by the OFT and welcomed.
19. LSB could write to the sites owners to encourage adoption. It may be more effective to ask approved regulators to work with the sites: the regulators and professional bodies have the lever of data to encourage adoption of good practice. The Consumer Panel has proposed 20 standards against which comparison sites should assess themselves. The regulators and professional bodies could tie the provision of their registers to comparison sites to the adoption and public monitoring of these standards. However, it is arguable that the data in the registers should be widely available (not necessarily free – FSA do charge) without restrictions on use that could of themselves hinder new ideas and further innovation.
20. There is a risk that leaving action to the regulators may lead to a plethora of standards and perhaps even a ‘title’ based approach that serves consumer poorly. The LSB work on scope does start to break the automatic nature of the link between professional title and authorisation for reserved activity, and some regulators have shown an appetite for regulating ‘authorised persons’ beyond the limits of their titled origins. The requirement under the LSA for regulators to seek to resolve regulatory conflicts further mitigates this risk.
21. Even if it were not the case that regulators and professional bodies are likely to have more levers over comparison websites, the LSB should be wary of directly intervening in regulation that is more appropriately the responsibility of the legal regulators. LSB remit is limited to ‘legal activities’ and it is hard to see how the provision of choice tools and legal information falls squarely within our remit. Even if it does, direct intervention should be approached warily, and only if there is evidence of failure should the LSB consider more direct intervention, with reference of course to its policy statement on enforcement.
22. In writing to the regulators, the comparison sites should be placed into the context of their wider consumer engagement and public legal education strategies. This will ensure that they remain one part of the toolkit for consumers to choose and use legal services rather than become an isolated or disconnected issue.

Summary of response to Consumer Panel recommendations

Consumer Panel recommendation	LSB accept or reject	LSB response
<p>The LSB should work with the panel to facilitate discussion between consumers, comparison sites, providers and front line regulators aiming to secure the voluntary adoption of good practice standards based on those in this report;</p>	ACCEPT	<p>The LSB will take the initial step of asking regulators to take this forward, working with professional bodies, consumer groups and comparison sites.</p>
<p>In the longer term, and depending upon the progress of a self-regulatory solution, the LSB should consider the role of accreditation of comparison sites;</p>	ACCEPT	<p>At this stage the LSB does not consider there to be a made out case for regulation of comparison sites but will consider the matter afresh in 2013/14. This however may still prove to be too early to reach an informed view of their likely role in the market and the potential benefits and detriments that they are linked to.</p>
<p>Comparison sites should self-assess against the twenty standards and make remedial changes as necessary;</p>	Not directly for LSB	<p>LSB considers that the twenty standards identified by the Consumer Panel offer a solid basis for comparison sites to self-assess and, similarly, for others to judge them.</p>
<p>Regulators should open up their professional registers so that comparison sites and others can use this data to provide innovative services to consumers.</p>	Not directly for LSB	<p>The LSB will ask regulators and professional bodies to consider how best they can support the regulatory objectives through making this data available.</p>

Next steps

23. For these reasons the recommendations set out at paragraphs 4-6 are proposed. Such an approach would require a letter to the Consumer Panel setting out our plan, with letters to regulators and professional bodies alike.
24. The executive will also timetable a review of its approach to comparison sites during the year 2013/14.

Risks

25. There are no substantial risks to the LSB at this stage arising from the report, its analysis or the proposed response.
26. It is arguable that a more interventionist response may lead to accusations of overstepping our powers or acting without evidence of substantial detriment. However, the recommendations are facilitative and aimed at encouraging the regulators to consider the relevance of the Panel's report to their operations, rather than directive and absolute and as such, are unlikely to create significant legal, financial or reputational risk.
27. There is some risk that LSB is seen not to be intervening early enough. Action now could ensure that future problems are avoided. The approach of leaving regulators to tackle the development of comparison websites may be seen by some as abdication, a view furthered by the absence of any real levers to drive change. This analysis of our position should be resisted: in line with our overall regulatory approach we are allowing the market to operate within parameters, identifying market solutions to the information asymmetry that already exists while being mindful of potential new detriments. It would simply be disproportionate to intervene now to restrict comparison websites when the case against them is at best unproven and the potential for addressing at least some of the information asymmetry for some consumers is real.

Resources

28. The proposed approach can be absorbed within current resources. Any decision now or at a later stage to undertake a more detailed review of comparison sites or investigate the feasibility of LSB regulating these sites would involve substantial resource. This would require reprioritisation of existing activities or projects.
29. The Consumer Panel notes the very low current usage of comparison websites among retail consumers. Given that less than 1% of consumers use such sites it would be difficult to justify a decision to devote substantial resources to them at this stage.