

<b>To:</b>	Legal Services Board	
<b>Date of Meeting:</b>	30 April 2013	<b>Item:</b> Paper (13) 24

<b>Title:</b>	Phase 1 of choosing and using legal services	
<b>Workstream(s):</b>	Workstream(s) (see Business Plan 2011/12)	
<b>Author / Introduced by:</b>	Tom Peplow, Regulatory Associate Tom.Peplow@legalservicesboard.org.uk / 020 7271 0072 Alex Roy, Head of regulatory development and research Alex.Roy@legalservicesboard.org.uk / 020 7271 0060	
<b>Status:</b>	Unclassified	

<b>Summary:</b>
<p>The Legal Services Board commissioned the Legal Services Consumer Panel to look at how individual consumers choose and use legal services in September 2012. The first phase of this project consisted of a review of existing literature and completion of a benchmarking exercise establishing levels of consumer power in the UK economy and in legal services.</p> <p>Consumer confidence has been identified as a key element in markets that work for consumers. The report also highlights a need in the legal services market for a consumer protection framework that is fit for purpose and gives consumers justified confidence to act, along with a greater coherence among consumer engagement initiatives in the sector.</p> <p>While much can be done in this area, there are already a number of developments underway in relation to choosing and using legal services, therefore we propose to incorporate the findings from the report into existing activity to ensure progress is maintained before starting any major new projects.</p>

<b>Recommendation(s):</b>
<p>The Board is invited to:</p> <ol style="list-style-type: none"> <li>i. note and comment on the Legal Services Consumer Panel's report at <b>Annex A</b></li> <li>ii. note and comment on the executive's analysis and commentary on the recommendations/next steps suggested by the Panel at paragraphs 17-21</li> <li>iii. agree our response to the Legal Services Consumer Panel report on empowering consumers at <b>Annex B</b></li> <li>iv. agree our letter to the approved regulators in response to the Legal Services Consumer Panel report on empowering consumers at <b>Annex C</b></li> </ol>

Consultation	Yes	No	Who / why?
<b>Board Members:</b>	X		Gateway paper sent to Barbara Saunders for comments which will be incorporated into the final version of this paper.
<b>Consumer Panel:</b>	X		Steve Brooker.

<b>Freedom of Information Act 2000 (Fol)</b>		
<b>Para ref</b>	<b>Fol exemption and summary</b>	<b>Expires</b>
Annex A	Section 21 - Information reasonably accessible by other means: <a href="http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/documents/Choose_Use_Phase1report.pdf">http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/documents/Choose_Use_Phase1report.pdf</a>	
Annexes B and C	Section 22 - Information intended for future publication	

## LEGAL SERVICES BOARD

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### Phase 1 of choosing and using legal services

#### Background

1. In September 2012, the Board commissioned the Legal Services Consumer Panel to look at individual consumer empowerment. While focused predominantly on individual consumers rather than small businesses or corporate consumers, the objective was to take the widest possible view of the scope of approved regulator's activity with consideration of the potential for consumer empowerment from three perspectives: competition; choice tools; and information and education.
2. Empowered consumers who are able to choose a quality service at an affordable price are a key element to a market that is working well for consumers and providers alike. Additionally, our hypothesis is that the more that consumers are able to choose and use legal services with confidence, the less prescriptive and restrictive regulation needs to be and the more effectively the regulatory objectives can be secured. Consumer empowerment is particularly important in improving access to justice, promoting competition in the provision of services and increasing public understanding of the citizen's legal rights and duties.
3. There are a number of links between consumer empowerment and the LSB's wider work. The ability of consumers to choose and use legal services being closely related to the work on quality in legal services<sup>1</sup> which we have undertaken and will be coming back to the board with an update on later in 2013/14. The Board and the Panel's research activities in the last two years, such as the Legal Services Benchmarking report prepared by BDRG Continental and the current work to understand why people do not trust lawyers, are also closely connected.

#### Panel response

4. In response to the proposal, the Panel proposed a two-stage approach with a pause to reflect on the findings of the first phase before deciding on future activity. The first phase of the project has now been completed with the report at **Annex A** published in March 2013.
5. The first phase comprised a review of existing literature and completion of a benchmarking exercise establishing a framework through which to define and understand consumer engagement. Two background papers were produced, the first introducing the theme of consumer empowerment and the second focusing on consumer empowerment initiatives in other sectors including

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<sup>1</sup> Approaches to quality: Summary of responses to consultation and LSB response  
[http://www.legalservicesboard.org.uk/news\\_publications/latest\\_news/pdf/20120913\\_summary\\_respon ses\\_recd\\_lsb\\_response\\_approaches\\_quality\\_final.pdf](http://www.legalservicesboard.org.uk/news_publications/latest_news/pdf/20120913_summary_respon ses_recd_lsb_response_approaches_quality_final.pdf)

good practice examples. A workshop and bilateral discussions with approved regulators and other stakeholders were also held.

6. The work on choice tools, such as price comparison sites, which at least initially would be limited to reviewing progress by the approved regulators following the Panel and LSB's previous work in this area and taking account of learning from other sectors brought out by the literature review and benchmarking exercise, has been deferred to a potential second phase. The Panel's 2013/14 work programme includes revisiting progress made by accreditation schemes following its 2011 report. This is consistent with the LSB's 2013/14 Business Plan.
7. The information and tools which approved regulators provide to consumers to help them choose and use has been captured within the first phase. However, the Panel decided that as initiatives around information and education and a failure of approved regulators (except, to a degree, the SRA) to involve consumers in the development and evaluation of regulation were distinct issues that should be taken forward as a separate work stream. As with choice tools, this is a developing area of the approved regulators' current work.

## **Findings**

8. The report has defined an empowered consumer as one who has confidence in the regulatory system, can identify the legal issue they face, find the right help, actively take part in decisions about their case and take action when things go wrong. The following two broad elements need to interact for consumers to thrive:
  - The resources available to consumers to make informed choices (decision making tools and the skills to use them)
  - The institutions and safeguards that support consumers in doing this (competition regime, consumer protections and regulatory bodies)
9. Consumer confidence has been identified as the most important factor when explaining markets that work for consumers, as it encourages people to participate in legal services and to make more varied choices. However, in order for this to happen, the consumer protection framework must first be fit for purpose.
10. Due to the nature of the legal services market, in particular the information and resources currently available to consumers, their low appetite for risk and general attitude towards lawyers, there is an even greater need for effective regulation before it can be expected that consumers can really drive competition. The Panel were clear that, in their view, effective regulatory protection is a precursor for consumer empowerment, but consumer empowerment is not a substitute for effective regulatory protections.
11. In both the regulated and non-regulated markets there is a lack of coherence in initiatives and a need for clear leadership and better coordination of resources. Currently consumers may have to visit a number of different

websites, such as Citizens Advice for basic information, the Legal Ombudsman for a firm's service complaints history and the regulators for consumer protection information. They are unlikely to do all, if any, of these and so may make poorer decisions as a result.

12. In relation to consumer engagement, while still being tested, the SRA's 'Legal Voices' website is an encouraging initiative. In essence, it will be a platform open to all approved regulators where consumers can both obtain information about lawyers and provide input on policy development. The real test with this work being whether such collaborative approaches can deliver information of a type and in a form that is most useful to consumers.
13. The report also cautions against an overreliance on consumer empowerment in delivery of the regulatory objectives. The inherent features of the legal services market, such as wide asymmetries of power and information, and the fact that consumers access services rarely and often in distress, limit what can be achieved by this policy approach alone. However, as every regulatory intervention increases costs and risks dampening innovation, regulators should, where possible, look to achieve as much as they can from consumer participation in the legal services market.

#### **LSB view**

14. The Board requested that the Panel consider the challenge of how best to support consumers in choosing and using legal services, as we believe that the effective empowerment of consumers is vital to a healthy legal market. We believe, and the Panel's report confirms, that the complex nature of legal services puts consumers at particular risk. But the Panel's report has neither uncovered a 'smoking gun' nor 'silver bullet', identifying neither a single cause nor simple solution to the problem. Instead it provides a useful analysis of many of the issues and tools, which can be used to support consumer empowerment.
15. We continue to believe that market liberalisation is an essential part of the process to support consumer empowerment, although we recognise that new services will take time to emerge and consumers will need to develop and respond to these changes to play an active role in the emerging market. But it is also clear, not least in reference to our emerging report on behavioural economics, that consumer empowerment, whether through enhanced information or improved decision making tools, cannot substitute for active regulation in ensuring good consumer outcomes – at least at this stage of market development and, quite possibly, for a very considerable period in the future.
16. The LSB is undertaking a range of work aimed at supporting consumers to take an active role by: liberalising the market e.g. introduction of ABS; empowering consumers e.g. facilitating comparison websites; seeking to support consumers through regulation e.g. our work on quality; and seeking to make regulation less prescriptive e.g. move to outcomes focused regulation. The Panel's report provides a useful summary of the evidence base and reminder of the need to continue to hold the needs of consumers central to

policy both through empowering consumers and ensuring adequate regulatory protection.

## Next steps

17. The Panel's report makes clear the importance of building on the progress previously made by consolidating what has already been achieved before starting any major new projects. As observed by the Panel, there is potentially a very large agenda in this area and while there are lots of new things that could be started, there is much to be said for consolidating existing work. Foremost in this area is the work concerning choice tools, where the outcomes needed have previously been identified by the Panel, and the LSB has provided approved regulators with a set of clear success criteria to measure whether they achieve them. As set out in the LSB's Business Plan for 2013/14, this is an area where progress will continue to be monitored, with particular emphasis needing to be placed on the provision of information supporting greater consumer engagement<sup>2</sup>.
18. Wider consumer engagement is a core component of the regulatory standards framework and an area that will demand significant and sustained commitment in its own right in order to make progress. Activity in this area will therefore continue to be reinforced through our regulatory standards work<sup>3</sup> with approved regulators required to improve the level of consumer engagement and consumer focus in their organisations.
19. Having identified learning from regulatory experience elsewhere and reviewed the activity of legal regulators and others in the sector, the Panel's report concludes by highlighting their key findings and learning's from others, which they have suggested approved regulators consider when developing their own approaches to empowering consumers. The Panel will be encouraged to follow this up with approved regulators, whom we will also ask to consider how the findings of the report are relevant in their consumer engagement work and how they can best take the suggested actions forward.
20. We will also contribute where we can to work led by others in this area. We have, for example, recently taken part in a working group led by the Attorney General's Pro Bono envoy, Mike Napier, on the future of public legal education, which reached broadly similar conclusions to the Panel on both the importance, but also the challenges, of making rapid progress in this area.
21. The following table sets out the five areas that the report suggests there should be particular focus on and the proposed response from the LSB.

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<sup>2</sup> Approaches to quality: Summary of responses to consultation and LSB response  
[http://www.legalservicesboard.org.uk/news\\_publications/latest\\_news/pdf/20120913\\_summary\\_responses\\_recd\\_lsb\\_response\\_approaches\\_quality\\_final.pdf](http://www.legalservicesboard.org.uk/news_publications/latest_news/pdf/20120913_summary_responses_recd_lsb_response_approaches_quality_final.pdf)

<sup>3</sup> Developing regulatory standards: Decision document  
[http://www.legalservicesboard.org.uk/what\\_we\\_do/consultations/closed/pdf/20111214\\_regulatory\\_standard\\_v11.pdf](http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/pdf/20111214_regulatory_standard_v11.pdf)

<b>Consumer Panel recommendation</b>	<b>LSB response</b>
<p>The LSB needs to define a clear strategic approach towards empowering consumers at a market-wide level and ask the regulators to determine how this should apply within their own operating contexts.</p>	<p>One of our three strategic priorities for 2012-15 is helping consumers to choose and use legal services. Our research programme will support us in gaining a better understanding of legal services consumers, their needs and how they can be empowered at a market wide level. Most obviously, current research on behavioural economics and understanding consumer decisions will further add to our evidence base to support this work. Through the regulatory standards work we are also challenging the approved regulators to ensure that there is a consumer focus in their work and to consider how their regulatory activities assist in empowering consumers.</p>
<p>Real headway must be made on the action areas already set in motion by the LSB, such as around choice tools and consumer engagement, using the regulatory standards work as the main lever to ensure delivery.</p>	<p>As set out in our Business Plan for 2013/14, we will be working closely with the regulators to monitor progress in relation to the success criteria set out in our quality consultation response document. The regulatory standards work, where we require approved regulators to fully consider the level of their organisations' consumer engagement and consumer focus, remains the main lever to ensure delivery of this.</p>
<p>Coordinating expanded and more joined-up information provision, and ensuring the quality of information resources.</p>	<p>We agree with the Panel's analysis of the lack of coherence in the provision of information for consumers. The LSB expects regulators to ensure that opportunities for greater information sharing and joint working are utilised more effectively.</p>
<p>Facilitating dialogue between organisations concerned with public legal education, legal regulators and others to agree respective roles, and to explore the desirability and feasibility of an NHS Direct style service for law.</p>	<p>We have previously stated that Public Legal Education should encompass ways to encourage and coordinate the provision of information and affordable services at the point that people experience legal problems and believe that innovation driven by competition will help to address this. We will continue to support developments in the legal services market with this aim and the Panel is right to suggest that this is an area where the professional bodies can add real value.</p>

<p>Reviewing the effectiveness of information remedies, ensuring these work well for consumers without imposing unnecessary burdens on providers.</p>	<p>It is important that approved regulators fully consider the market implications of any actions they take to support the provision of information to consumers and that these actions meet the needs of consumers that the provision of the information is looking to meet clear objectives.</p>
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## Recommendation

22. The Board is asked to:

- i. note and comment on the Legal Services Consumer Panel's report at **Annex A**
- ii. note and comment upon the executive's analysis and commentary on the recommendations/next steps suggested by the Legal Services Consumer Panel at paragraph 17-21.
- iii. agree our response to the Legal Services Consumer Panel report on empowering consumers at **Annex B**
- iv. agree our letter to the approved regulators in response to the Legal Services Consumer Panel report on empowering consumers at **Annex C**