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Dear Elisabeth

### **Open data in legal services**

The Board was grateful to receive the Legal Services Consumer Panel's (the "Panel") report on opening up data in legal services at its 23 March meeting. This report builds on the work carried out by the Panel and the Legal Services Board (the "LSB") to increase the amount of data available for the benefit of consumers following the Panel's 2012 report on comparison websites.

As you will be aware, the Panel's assessment of information provision in the legal services market forms an important part of the LSB's current open data project. Alongside the Panel's report, we have also been assessing barriers to the development of comparison websites in this market, as well as reviewing the sorts of regulatory interventions that have been made in other markets in relation to open data.

The Panel's report covers a lot of ground and provides useful information on developments in other sectors. As such, it will provide a valuable shared resource for the LSB, the approved regulators, the Legal Ombudsman and others on a range of issues.

The report makes three recommendations for the LSB. The majority, though, are directed to the approved regulators. This letter sets out the LSB's response to the recommendations directed to us but also includes our views (annexed to this letter) on the recommendations made to the approved regulators and the Legal Ombudsman. Some recommendations have been grouped together, for ease of reference, where we see the issues are linked. As the Panel pursues the delivery of its recommendations, we would welcome updates on your progress.

## The Panel's recommendations for the LSB

Recommendation 8 - The LSB and approved regulators need to be more vocal about price disclosure and transparency.

We accept and support this recommendation. The LSB will continue to make public comments on the need for greater price transparency, as we did in our baseline market evaluation study. The Panel will also be aware that our new research on the prices of common individual legal services provides fresh evidence about the need to improve price transparency in the legal services market.<sup>1</sup> The research shows that only 17% of providers display prices on their websites. Crucially, providers that do publish their prices are, on average, cheaper than those that do not.

This evidence of weak transparency has been a key feature of our communications around the prices research; we have highlighted this in a supplementary submission to the Competition and Markets Authority's (the "CMA") market study.<sup>2</sup> We will continue to use every suitable opportunity to reiterate the importance of price transparency and will encourage approved regulators to do the same.

Recommendation 11 – If there are contractual provisions or gag clauses which create a barrier to the release of price information the LSB and approved regulators should explore how this could be changed.

We accept and support this recommendation, understanding that gag clauses are seen as a theoretical risk, rather than one based on evidence of them operating in practice. Should this become a live issue, we will consider how these barriers could be addressed.

Recommendation 14 –The LSB should provide guidance on how the smaller approved regulators might gather and publish information on quality.

Previous work by the LSB on quality risks highlighted to approved regulators how they might wish to address these issues.<sup>3</sup> We recognise the resource constraints faced by smaller approved regulators and the need for them to take a proportionate approach. We do not consider there is a need to update this work at the present time.

In 2012, the LSB carried out a consultation to generate a discussion around regulatory interventions that approved regulators could make to address quality risks. While entry controls to the profession and education training requirements are important tools in mitigating technical quality risks, the LSB identified three main themes<sup>4</sup> in relation to the management of service quality risks. Based on these, we set out success criteria for the

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<sup>1</sup> Legal Services Board / OMB Research (April 2016), Prices of individual consumer legal services research report, <https://research.legalservicesboard.org.uk/wp-content/media/Prices-of-Individual-Consumer-Legal-Services.pdf>

<sup>2</sup> LSB <https://research.legalservicesboard.org.uk/news/latest-research-10/>

<sup>3</sup> Legal Services Board (September 2012), Approaches to quality, [http://www.legalservicesboard.org.uk/Projects/developing\\_regulatory\\_standards/pdf/20120913\\_summary\\_responses\\_recd\\_lsb\\_response\\_approaches\\_quality\\_final.pdf](http://www.legalservicesboard.org.uk/Projects/developing_regulatory_standards/pdf/20120913_summary_responses_recd_lsb_response_approaches_quality_final.pdf)

<sup>4</sup> These are (i) provision and transparency of performance information to allow a greater understanding of where issues in relation to quality exist; (ii) development of improved assessment and segmentation of risks to quality in legal services through greater evidence based analysis; and (iii) using an outcomes focused approach to ensure regulatory interventions drive an improvement in quality standards without hindering innovation.

approved regulators to demonstrate to us that they are addressing risks to quality. In 2016/17, we will review how we assess the performance of the approved regulators, including their approaches to quality.

In addition to addressing these three recommendations, we will continue to take a close interest in your engagement with the approved regulators and the Legal Ombudsman.

These issues are highly relevant to the CMA's market study into legal services, with one of its core themes being the ability of consumers to drive effective competition by making informed purchasing decisions. We will revisit whether there is a need for us to take further action in this area once the CMA has published its findings and possible next steps in the summer.

We will also continue to support increased open data by participating in the UK Regulators Network, particularly through our involvement with the Network's comparison websites project. Furthermore, we will engage as appropriate on wider initiatives, such as the CMA's study into comparison websites, announced in the Government's "Better Deal" competition plan.

I thank you again for your report. I look forward to further progress being made on this important issue.

Yours sincerely,

Sir Michael Pitt  
**Chairman**

## The Panel's recommendations for the approved regulators

The Panel directed ten recommendations to the approved regulators.

Recommendation 1 - Approved regulators should do more to bring together regulatory information in a meaningful way. A starting point would be to link basic and conduct information.

We expect approved regulators to bring disconnected regulatory information together, to make finding relevant information easier for consumers. Bringing disciplinary findings and basic practitioner/entity registers together is a good example of how regulatory information can be made more meaningful for consumers. We are pleased to note that the Bar Standards Board (BSB) already publishes its register and disciplinary findings in one document.

Recommendation 2 - The SRA should remove the restrictions it has placed on sharing basic data. At present, comparison websites need to sign up to the Consumer Panel's self-assessment standard before applying to the SRA for access. The Panel's standard was not intended for this.

Since the publication of the Panel's report, the Solicitors Regulation Authority (SRA) has removed access restrictions to its roll of solicitors. We welcome this development, alongside the SRA's continued commitment to effective data sharing and transparency.

Recommendation 3 - Approved regulators should make the collation and publication of first-tier complaints a regulatory requirement and mandate for its publication.

*Linked to...*

Recommendation 12 - Approved regulators should consult on how they might present and contextualise complaint data prior to its publication.

Greater transparency of first-tier complaints data has the potential to inform consumer choice and deter poor practices by practitioners. Other regulators, notably the Financial Conduct Authority, publish first-tier complaints data at firm level. However, it is unclear whether the reputational effects of publishing this data would be as powerful in the legal services market due to the absence of brand names. Approved regulators would need to consider the risk of unintended consequences, for example, practitioners discouraging consumers from complaining and the potential burdens that such data requirements may create.

The LSB is currently carrying out a consultation into its requirements for approved regulators for first-tier complaints handling. We will be particularly interested to see whether stakeholders have views on what information should be published by approved regulators and what thresholds would be used to require publication.

Recommendation 4 - Approved regulators should publish the full details of enforcement sanctions, including the names and location of firms or individuals reprimanded.

The LSB expects all disciplinary findings to be reported in full.

In March 2014, we published an assessment of regulatory sanctions and appeals processes. Transparency was one of four features of best practice identified in the report. Our analysis identified that the approved regulators differ in their levels of transparency and the clarity of information they make available, including a tendency not to disclose lesser administrative penalties.

At the time, the Board decided that the LSB would use its regulatory standards work programme to ensure that the approved regulators are delivering the required level of transparency for their sanctions and appeals arrangements.

Recommendation 6 - Approved regulators should commission research on quality of advice and publish this research in full. Lessons should be learnt from how other sectors have tackled comparable gaps in knowledge.

*Linked to...*

Recommendation 7 - The SRA and BSB should carry out mystery or shadow shopping exercises on quality of advice in high risk areas and publish their research findings in full. This type of research has the potential to offer meaningful insight into quality of advice.

*Linked to...*

Recommendation 13 - The quality of legal advice needs to be better understood and actively monitored. This should involve academic research and build on existing good practice techniques such as file review and peer review.

In considering these recommendations, we feel there is an important point of principle to consider, namely that approved regulators cannot (and should not) directly oversee practitioners when they serve their clients. It is the role of approved regulators to address risks of technical quality, (for example) through setting minimum standards as entry requirements for practitioners, supported by continuing professional development and professional indemnity insurance requirements.

While we are supportive of the approved regulators better understanding the quality of advice clients receive (both in technical and service terms), research in this area is likely to be expensive and only provide a snapshot in time for a small sample of practitioners. While they might gather evidence through mystery shopping and peer reviews in high-risk areas where it is cost-effective to do so, it is important to be realistic about the viability of such research as a routine tool for delivering consumer protection.

Recommendation 9 - Approved regulators should require the publication of the average cost of legal services on the websites of approved firms and individuals, and mandate that they provide this information on request. This should also include the average cost of disbursements.

We expect approved regulators to promote price transparency in their respective markets, to improve competition and meet consumer demand for legal services. We are aware that several approved regulators are currently reviewing how this could be achieved.

However, despite evidence of weak price transparency, any regulatory intervention to require publication of average prices would need to be subject to careful cost-benefit analysis. It is not clear at this stage whether publication of average prices for particular legal services would be more helpful than misleading for consumers. Agreeing a methodology for these calculations could be challenging, while the collection of data and the actual publication of auditable/justifiable averages would create a burden for practitioners. Further discussion and evidence, including an assessment of the burdens on business and the practicalities of enforcing rules would be needed before the LSB could reach a firm view on this recommendation.

Recommendation 10 - Approved regulators should understand and research barriers to price transparency in their respective areas and publish the research/study in full.

The LSB's new research on the prices of common legal services shows the value of such exercises. We support research on barriers to price transparency.

### Recommendations to the Legal Ombudsman

The Panel directed two, linked recommendations to the Legal Ombudsman.

Recommendation 5 - The Legal Ombudsman should publish all ombudsman decisions in full.

*Linked to...*

Recommendation 15 - The Legal Ombudsman should publish a contextualised summary and analysis of cases decided informally.

We support the Panel's recommendations for the Legal Ombudsman to be as transparent as possible with its decisions, and that they are published in a way that is most accessible to consumers. The Office for Legal Complaints has said it plans to review its publication scheme, which provides it with an opportunity to consider the Panel's recommendations.