LEGAL SERVICES BOARD

Meeting: Legal Services Board

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Item: Paper (21) 29

Title: Digital Registers

Author: Steve Brooker, Head, Policy Development and Research

Status: Official

Purpose of the paper

1. The paper provides information about three separate but linked proposals under active discussion relating to digital registers of legal professionals and businesses. The paper also sets out the executive's plans in relation to each. The proposals, and our proposed next steps in relation to each, are:

    - **A single digital register of authorised persons** – we consider this has significant potential benefits and plan to actively pursue this in conjunction with the regulatory bodies. Our initial focus will be on policy options and assessing feasibility and cost; we will return to Board after this first phase.
    - **A mandatory register of unregulated businesses** – we will engage with Ministry of Justice officials as they develop their thinking, but there is no action for the Board unless and until the Department makes proposals.
    - **The LSB's statutory powers to establish voluntary arrangements** – we have no plans to make any such arrangements at present but will explore this through the scope of regulation project.

Recommendation:

2. The Board is invited to:

    - **note** the developments set out in the paper; and
    - **agree** the proposed next steps in paragraph 1 above.

Description and status of proposals

3. Various proposals have been made for the development of public digital registers of different groups of legal professionals and businesses, as follows:

- **A single digital register of authorised persons** – in its 2020 report, the CMA noted that there is no single source of information on regulated entities and professionals and recommended the development of a single digital register led by the LSB. This built on its 2016 market study, which recommended that the regulatory bodies explore the feasibility of creating such a register. In 2017 a data mapping exercise was undertaken across all the regulatory bodies and a joint technical piece of work was proposed to build on that. However, the regulators decided that the time was not right to undertake that work.

  The regulatory bodies have since developed a ‘help me trust my lawyer’ product, accessible via Legal Choices in beta form, which scans the registers of the participating regulators and provides disciplinary data to the enquirer. The participating regulatory bodies plan to scope work required to expand the range of data covered by the product to include non-disciplinary data, offering single-register type functionality.

  Regulatory bodies have created or enhanced digital registers on their own websites and content on the Legal Choices platform signposts to these.

- **A mandatory register of unregulated businesses** – the CMA’s 2020 report recommended to the Ministry of Justice that it create or empower the creation of a mandatory public register of unregulated providers. This built on a recommendation in Professor Stephen Mayson’s Independent Review of Legal Services Regulation in June 2020. Professor Mayson suggested that the LSB might operate such a register and that registrants would be brought within the Legal Ombudsman’s jurisdiction. However, the CMA did not specify the scope of the register or who might operate it, plus it set out various options to enable consumers to access redress. The Ministry of Justice has yet to respond to the CMA’s recommendation.

- **LSB’s statutory powers to establish voluntary arrangements** – under section 163 of the Legal Services Act 2007, LSB has powers to improve standards of service and promote best practice in connection with legal services through ‘voluntary arrangements’. These arrangements could take various forms but might include something like the accredited registers programme operated by the Professional Standards Authority (PSA) in the health and social care professions.

4. The various proposals serve different purposes. One focus of the single digital register proposal is helping consumers to check if a provider is regulated sitting alongside other tools which do this. Another benefit is to provide the raw material for use by digital comparison tools and innovators developing other products. By contrast, the focus of the two proposals relating to unregulated businesses is on enhancing consumer protection in this part of the market in a proportionate way.

5. There are interdependencies between the proposals. Ultimately, a combined register of regulated and unregulated providers would be the simplest solution for consumers. Should the single digital register proceed, it could be built in a way that enables unregulated providers to easily be added at a later stage.

Separately, should it become mandatory for unregulated businesses to be on a register this could make voluntary arrangements established by LSB redundant. Alternatively, credible self-regulation could be incentivised if membership of a voluntary register established by LSB or another trusted scheme acted as a gateway to businesses appearing on the single digital register.

Proposed work

6. Below we set out our emerging plans in relation to each of the proposals.

A single digital register of authorised persons

7. The first question to address is whether a single digital register should be pursued. LSB has historically supported the idea and the concept was popular with LSB's Public Panel in the research on quality indicators. However, there were mixed views in responses to the discussion paper on quality indicators and it is possible that widening the disciplinary records initiative (see paragraph 3) and/or better signposting of existing registers would be satisfactory alternatives. Subject to establishing feasibility and cost, our view remains that a Single Digital Register could deliver significant benefits. The principal benefit is likely to be providing the raw materials that will enable digital comparison tools to grow (see also paper on Quality Indicators). In addition, such 'open data' initiatives can often lead to unforeseen benefits and innovations.

8. At its March 2021 meeting, the Board identified the need to scope out what a single digital register would involve, and the level of resource required; we propose this is the next phase of our work. Policy questions to resolve include: whether the register should include both individual practitioners and entities; whether it should be confined to authorised persons or extend to unregulated providers; what information about providers it should contain, including the possibility of various quality indicators (including disciplinary records); and issues relating to access and reuse of the underlying data by third parties.

9. The LSB is well placed to convene discussions to resolve these policy questions. The new governance arrangements that we are establishing in response to the CMA's recommendations on market transparency will allow us to take them forward with the regulatory bodies in a coordinated and collaborative fashion. Should the work proceed to an implementation phase, it is likely that other organisations are better placed to set up and operate the register.

A mandatory register of unregulated businesses

10. The CMA's recommendation is directed to the Ministry of Justice. Further, since it would require primary legislation, implementation of a mandatory register would be some years away. Even so, we have a strong interest in the proposal and would wish to work closely with and assist the Department as it develops its thinking. While we are collecting evidence on the unregulated market primarily for our own purposes, it ought to assist the Department with its broader policy questions. We are in ongoing discussions with officials and the CMA.

11. There are a series of policy questions that officials will need to work through. As identified by the CMA, these issues include who or what services should fall within scope; whether participation would be mandatory; who would create the register and what conditions would be attached (e.g. access to redress, professional indemnity insurance, adhering to a code of conduct); who would operate the register, and what processes would attach to its day-to-day operations (e.g. in the event of sanctions or removal from the register; how the register would be funded; and how it would be communicated to consumers).

12. Should consumer redress be a condition of registration, this raises a further set of issues around how disputes would be resolved. Options include extending the Legal Ombudsman's jurisdiction, the Legal Ombudsman operating a lower cost dispute resolution model for unregulated providers and using other ADR scheme(s). Clearly, these issues are linked to the performance of the Legal Ombudsman and discussions begun by the Board on contemplating alternatives to the Legal Ombudsman in the long-term should its performance not recover.

13. One of the options identified is for the LSB to operate the register, although the CMA identified other regulatory bodies or delegation to a third party as alternatives. As previously noted by the Board, should LSB operate the register, it would put us in the unusual position of being an oversight regulator in one part of the market and a frontline regulator in another part of the market. This matter is of strategic importance for the LSB creating opportunities and risks.

LSB's statutory powers to establish voluntary arrangements

14. The Board agreed to explore its s163 powers as part of the scope of regulation project in the Business Plan. In carrying out this work we will wish to ascertain whether there is sufficient demand among unregulated businesses for the LSB's support – this was not the case when we last mapped the sector in 2016. This is important not least because any arrangements would need to be self-financing. We will take account of alternatives for unregulated businesses to demonstrate credible self-regulation. For example, there are existing schemes for paralegals in the sector[1] and the Consumer Codes Approval Scheme administered by the Chartered Trading Standards Institute operates across the economy[2].

15. We will wish to learn from the accredited registers programme run by the PSA. The register is designed to provide assurance of the UK health and social care roles which are not required by law to be regulated. The PSA is consulting on the future of the scheme after commissioning a review that identified a series of issues. These issues included: a low proportion of eligible practitioners joining the register; the PSA's decision not to be an arbiter of quality failing to meet consumer expectations; the inclusion of occupations whose practices conflict with NHS guidance or considered unconventional therapies; and making the scheme self-financing rather than government subsidised as now.

[1] For example, the Professional Paralegal Register
[2] The Institute of Professional Willwriters has an approved code under this scheme.

Next steps

16. The Board's discussion on these issues will inform the delivery of projects in the Business Plan and our wider conversations with officials and stakeholders.

17. Subject to the Board's steer, we will pursue a first phase of scoping work on the single digital register focusing on policy options and assessing feasibility and cost. We will do this in conjunction with the regulatory bodies through the new governance arrangements that we are establishing in response to the CMA's recommendations on market transparency.

18. We will report on progress to the Board later in the year.

Annexes

None

Risks and mitigations	
Financial:	N/A
Legal:	N/A
Comms and engagement:	The paper should help to clarify the various proposals and LSB's role in relation to them. Coordination of activity between the LSB, regulatory bodies and Ministry of Justice is important. The governance arrangements for regulatory bodies' work on market transparency will support this.
Equality and diversity:	Our survey evidence suggests that unregulated providers are cheaper, but that consumer satisfaction is lower. Therefore, policy decisions relating to this part of the market are likely to have greatest impact on people with lower incomes.
Resource:	LSB's role on the single digital register proposal relates to policy development, coordination and oversight of progress. This is factored into resourcing for the wider consumer engagement workstream. Should the proposal proceed, it is likely that others will be better placed to have a direct role in setting up or operating the register. The other two proposals require minimal resourcing at this stage.

Freedom of Information Act 2000 (FoI)		
Para ref	**FoI exemption and summary**	**Expires**
None		