

<b>To:</b>	Legal Services Board	<b>Agenda Item:</b> 10
<b>Date of Meeting:</b>	23 March 2017	<b>Item:</b> Paper (17) 16

<b>Title:</b>	<b>Formal response to CMA market study</b>
<b>Work stream(s):</b>	CMA market study
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<b>Status:</b>	Official

<b>Summary:</b>
<p>The paper asks the Board to formally support the CMA recommendation in its recent legal services market study directed to the LSB that it:</p> <ul style="list-style-type: none"> <li>• Monitors and engages with the frontline regulators on their progress in implementing the CMA's recommendations directed to them</li> <li>• Reports publicly, at appropriate intervals, on the sufficiency of action plans published by regulators individually and collectively and the progress in delivering those action plans</li> <li>• Takes appropriate action where regulators fail to address information gaps.</li> </ul> <p>Following the steer provided at the January meeting, the Board is also asked to confirm its regulatory approach to delivering this recommendation, as follows:</p> <ul style="list-style-type: none"> <li>• Publish a document that describes how we will deliver the recommendation above with reference to four high-level outcomes in relation to market transparency which we expect the regulators to focus on</li> <li>• [REDACTED]</li> <li>• [REDACTED]</li> </ul> <p>The paper considers the first two elements of the CMA's recommendation only. Should further action be necessary, we will act consistent with our emerging work on a corporate-wide regulatory approach and revised enforcement policy.</p> <p>The paper also provides an update on latest developments.</p>

**Recommendation(s):**

The Board is invited to:

- Formally support the CMA recommendation directed to it;
- Agree an approach to deliver the recommendation directed to it and publish a document setting this out; and
- Note the latest developments.

**Risks and mitigations**

**Financial:** N/A

**Legal:**

The LSB must act independently of the CMA and can only give effect to these recommendations to the extent that they will, in the Board's view, promote the regulatory objectives. The Board must also ensure that the LSB's facilitating of actions by the approved regulators does not pre-judge the LSB's consideration of any subsequent applications for approval of rule changes.

**Reputational:**

Reputational risks may materialise should we reject the CMA's recommendation to us. The main reputational risks are faced by the regulators and relate to whether they are willing to act on the recommendations directed at them and do so effectively. As oversight regulator we may be judged on whether the sector delivers real change.

**Resource:**

This work stream is included in the LSB's 2016/17 Business Plan. The draft 2017/18 Business Plan reflects the high priority given to these issues by the Board but the resources required will need to be balanced with the Board's other priorities. We are alive to the need to give the regulators sufficient headroom in relation to other demands we might make of them to make progress on this agenda, but without compromising on regulatory performance.

<b>Consultation</b>	<b>Yes</b>	<b>No</b>	<b>Who / why?</b>
<b>Board Members:</b>	<b>X</b>		The Board had a 'first look' at the CMA's final report at its January 2017 meeting. During the lifetime of the CMA's market study it received an oral update at its meeting on 14 July 2016,

			considered a paper at its October 2016 meeting (where it also met the CMA senior team) and had regular updates via the CEO's reports. The Chairman met Lord Currie before the CMA published its interim report and again at the beginning of November 2016. Another meeting is scheduled in April.
<b>Consumer Panel:</b>	<b>X</b>		The LSCP is an active participant in the CMA's work and has published position papers. The Head of Research and Development presented the Board's latest thinking to the LSCP meeting on 25 January. This led to a follow up letter included in the papers. The LSB has recently received advice on information remedies from the LSCP which will inform future work on these issues.
<b>Others:</b>			LSB is a member of the implementation group established to support and assist the regulators. The CEOs of the regulators discussed the CMA's final report collectively at a routine LSB convened meeting on 25 January.

<b>Freedom of Information Act 2000 (Fol)</b>		
<b>Para ref</b>	<b>Fol exemption and summary</b>	<b>Expires</b>
Summary box: Second set of bullet points - points 2 and 3 10-11, 14-20, 26	S36 – Intended to promote a free and frank exchange of views for the purposes of deliberation by the Board	N/A
Annex C	Section 22 - information intended for future publication	N/A
Annex D	S36 – Intended to promote a free and frank exchange of views for the purposes of deliberation by the Board	N/A

## LEGAL SERVICES BOARD

<b>To:</b>	Legal Services Board	<b>Agenda Item:</b> 10
<b>Date of Meeting:</b>	23 March 2017	<b>Item:</b> Paper (17) 16

### Formal response to CMA market study

#### RECOMMENDATION

1. The Board is invited to:
  - (i) Formally support the CMA recommendation directed to it;
  - (ii) Agree an approach to deliver the recommendation directed to it and publish a document setting this out; and
  - (iii) Note the latest developments.

#### Background

2. The Board is by now very familiar with the background to these issues so the history will not be repeated here. The CMA's final report concluded that competition in the legal services sector for individual consumers and small businesses was not working well. Its main concern was that a lack of information weakens the ability of consumers to drive competition through making informed purchasing decisions. The CMA also concluded that the current regulatory framework is unlikely to be sustainable in the longer term.
3. Increasing market transparency is the main focus of the CMA recommendations directed to the frontline regulators, specifically:
  - Action to deliver a step change in standards of transparency to help consumers (i) to understand the price and service they will receive, what redress is available and the regulatory status of their provider and (ii) to compare providers. In particular, it wishes the regulators to establish new minimum standards of provider transparency
  - Promotion of the use of independent feedback platforms to help consumers to understand the quality of service offered by competing providers
  - Facilitation of the development of a dynamic intermediary market through making data more accessible to comparison tools and other intermediaries
  - Development of a consumer education hub.
4. The CMA recommended to the LSB that it:
  - Monitors and engages with the frontline regulators on their progress in implementing the CMA's recommendations directed to them

- Reports publicly, at appropriate intervals, on the sufficiency of action plans published by regulators individually and collectively and the progress in delivering those action plans
  - Takes appropriate action where regulators fail to address information gaps.
5. The Board took a ‘first look’ at the CMA’s report at its January 2017 meeting. The Board was supportive of the CMA’s conclusions overall and indicated that it was minded to support the recommendation directed to it. The Board gave the executive the following steer to help develop its preferred approach:
- Set out a preferred approach and apply this to the CMA’s recommendations, do not let the recommendations dictate our approach
  - While activity on market transparency should dovetail with our work on a corporate-wide regulatory approach, it was acknowledged that we need to decide our strategy on the former before it will be possible to finalise the latter
  - Use our s55 information gathering powers to obtain action plans from the start
  - Pursue an approach that allows us to respond flexibly as events unfold, but define what we want to achieve and identify triggers for using formal powers
  - Develop a document setting out our expectations of the regulators as the basis for assessing the sufficiency of action plans. The Board asked the executive to work up a draft document for it to consider at the March meeting.
6. This paper deals with the first two elements of the CMA’s recommendation only. Should we consider further action is necessary because regulators have failed to close information gaps, our starting point in determining an appropriate course of action will be our corporate-wide regulatory approach document and revised enforcement policy (see Paper 017/15). Based on the current timetable for this wider work, we expect to have published finalised documents before we are due to complete our assessment of the regulators’ market transparency action plans.

### **Latest developments**

7. The main development since the last Board discussion is the establishment and inaugural meeting of the implementation group which has been convened to support and assist cooperation between regulators to implement CMA recommendations relating to market transparency. The meeting was chaired by the CMA and mainly attended at CEO level. It was a very positive meeting in terms of the commitment to collaborative working and determination of the regulators to make progress on these issues, which we very much hope will be sustained in future. The LSB’s status as a full member of the implementation group was confirmed and terms of reference were agreed. The frontline regulators collectively nominated Sheila Kumar, Chief Executive of the CLC, to chair the implementation group from the next meeting, scheduled for 12 May. We supported this suggestion given the Board had decided we should not seek this role for ourselves and the CLC was also seen as a good candidate.
8. Other notable developments are listed in **Annex A**. This includes a letter from the LSCP – reproduced in **Annex B**. In addition, the Ministry of Justice is due to

respond to the CMA's recommendations on 15 March – we will update on any developments at the meeting.

**Detailed scrutiny of CMA's report**

9. At the January meeting, we emphasised the importance of the Board taking an independent view of the CMA's analysis and not simply adopting the CMA's conclusions as its own without further consideration (while of course recognising the expertise and resources the CMA has invested in this study and its status as the UK's national consumer and competition authority). The recommendations cannot be considered in isolation: rather, the Board must assess them by reference to the alternative activities it could undertake in pursuance of the regulatory objectives. The CMA, by having previously chosen not to launch a formal market investigation, is unable to use its order-making powers, nor has it undertaken a formal proportionality assessment of its chosen remedies. Therefore, we must judge for ourselves the proportionality of implementing what the CMA has recommended, and how its proposals stack up in terms of priority against our other areas of work. Likewise we should respect the autonomy of each of the frontline regulators to exercise independent judgement on the recommendations in light of the circumstances in their parts of the market.

10. [Redacted]

11. [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

**Preferred option for delivering the CMA’s recommendation**

- 12. In January the Board indicated that in principle it was minded to deliver the oversight role the CMA envisaged for LSB. It was satisfied that this would i) fall within our vires; ii) promote the regulatory objectives and be consistent with our other statutory duties. The Board noted that the executive would go on to analyse whether the recommendations would be proportionate, targeted and the most effective use of our resources in the context of everything else that we do.
- 13. Should the Board decide formally to support the recommendation directed to it at today’s meeting, the next stage is to agree a delivery approach that enables us to fulfil all three separate elements of the CMA’s recommendation: i) monitoring progress; ii) reporting on the sufficiency of action plans; and (iii) taking appropriate remedial action if necessary. As noted in paragraph 6, this paper only deals with the first two elements of the CMA’s recommendation; our starting point for addressing the third element will be our emerging corporate-wide regulatory approach document and revised enforcement policy.

14. [Redacted]

- [Redacted]

- [Redacted]

- [Redacted]

- [Redacted]

- [Redacted]

[Redacted]

[Redacted text block]

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15. [Redacted text block]

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16. [Redacted text block]

17. [Redacted text block]

18. [Redacted text block]

[Redacted text block]

19. [Redacted text block]

20. [Redacted text block]

**Future role of the Board**

- 21. We have mapped our planned activities in the proposed delivery approach against the Schedule of matters reserved to the Board and the Scheme of Delegations. None of the planned activities are reserved to the Board, including issuing of s55 notices. Should it become necessary, the Board would need to approve the instigation of enforcement action under sections 31 to 48 of the Act.
- 22. The Board would also need to approve any refusal in whole or in part of a proposed rule change.
- 23. Should the Board prefer a regulatory approach which uses a statement of policy under s49 of the Act, or statutory guidance under s162 of the Act, the Board would be required to approve these documents (including any variations).
- 24. We will, of course, keep the Board informed of key developments through update papers and CEO's updates. The next significant milestone is our assessment of the sufficiency of action plans, which is due to take place over the summer. Further, the support of the two Board leads outside of scheduled board meetings has proved invaluable and we wish to continue making use of this in future.

**Timetable and resourcing**

- 25. The Board will recall that the CMA has suggested a provisional implementation timetable post publication of its final report, as follows:
  - **by 31 January 2017** an implementation group is established and has met to coordinate and deliver a sector wide response to the recommendations (this took place 19 January)

- **by 30 June 2017** both the implementation group and the individual regulators should publish their respective action plans stating the actions that they are pursuing and anticipated milestones in delivering those actions
- **by 30 September 2017**
  - o the individual regulators commence a public consultation on any proposed amendments to their regulation and guidance; and
  - o the Legal Choices website is relaunched with revised content and expanded scope.

26. [REDACTED]

27. Resources for LSB oversight activity in relation to CMA remedies has been balanced relative to the resource needed to deliver other priorities in the 2017/18 Business Plan. Similarly, in finalising our 2017/18 Business Plan, we have been alive to the need to give the regulators sufficient headroom in relation to other demands we might make of them to make progress on this agenda.

**Next steps**

28. If the Board agrees with our proposed approach, we will revise and publish the document in Annex C. We are speaking to the regulators about our plans and may wish to make amendments to address legitimate concerns.

29. The next milestone would be to issue s55 notices to the frontline regulators.

**March 2017**

## Annex A – Summary of latest developments

- The frontline regulators have been discussing the CMA's report at board level – again, we can update the board on intelligence at the meeting
- The CEOs collectively discussed the CMA's report at a routine scheduled meeting of CEOs chaired by LSB on 25 January
- The CLC has issued separate surveys, to providers and stakeholders respectively, to seek views on options it is considering to implement the CMA's recommendation on a requirement for providers to display information on price, service, redress and regulatory status to help potential consumers
- The Head of Research and Development gave a presentation on the LSB's initial response to the CMA report to the LSCP meeting on 25 January. The LSCP Chair has written a follow up letter to the LSB Chairman, which urges us to produce an ambitious statement which includes the importance of the consumer voice – the letter is attached as **Annex B**.
- We have added questions relating to market transparency to the small business legal needs and prices of individual legal services surveys. The LSCP has kindly added a couple of questions to its annual tracker survey
- We have added a banner to the homepage of our corporate website signposting consumers to the Legal Choices website
- We have proactively sought opportunities to publicly indicate our support for the CMA's conclusions on market transparency, including:
  - i. The Strategy Director incorporated these issues in a speech on innovation to the Westminster Legal Policy Forum on 25 January
  - ii. Writing an article for the next edition of Modern Law Magazine
  - iii. Accepting invitations to speak at two conferences, in May and October, organised by the Legal Practice Management Association.

## Annex B – Letter from Legal Services Consumer Panel



Sir Mike Pitt  
Chair  
Legal Services Board  
One Kemble Street  
London  
WC2B 4AN

1 February 2017

*Dear Mike,*

I and other Panel members recently met Steve Brooker at my first Panel meeting where we discussed the Competition and Market Authority's report into the legal sector. The Panel found his attendance both insightful and engaging. We were particularly grateful for the opportunity to discuss the LSB's early thinking around how it might work with the approved regulators, as well as meet its responsibility to monitor and assess their progress.

As you know, the Panel is supportive of the CMA's focus on transparency. We engaged extensively with the CMA and provided relevant advice to ensure that remedies around transparency feature prominently in the final report. We are therefore pleased with the transparency recommendations and believe that with concerted effort, these remedies will deliver significant market change and better consumer outcomes. Nevertheless, we recognise that there are challenges ahead. Some of the proposals are rightly ambitious. The reality of dealing with multiple regulators will compound their effective delivery, especially where consistency and standardisation are important components of effectiveness. We also know that the smaller regulators may raise reasonable concerns around resource implications and proportionality. And we do not take for granted the cultural journey or transition regulators have to begin to effect change.

Nonetheless, the LSB has been given an important leadership role, to 'monitor progress and take appropriate action'. We recognise the LSB's statutory limitations but would urge an ambitious statement which includes the importance of the consumer voice to set the right tone and

expectations from the onset. If this included a robust action plan with clear objectives and timescales, the Panel would be in the best position to engage in developments at the appropriate time and monitor success from the consumer perspective.

There is a good body of research on which to draw to ensure that proposed solutions are informed by the realities and limitations of consumer engagement. It will also be important to take account of the complexity inherent in the ways in which different groups of consumers engage differently with transparency measures. These considerations will go a long way to ensure that transparency measures are accessible, assessable and actionable by consumers.

I hope that the LSB will ensure that the consumer voice informs the work of the Programme Board throughout the implementation phase to achieve our shared purposes. As always the Panel is keen to support and act as a sounding board on these issues. I am also writing to the CMA to discuss how best we may engage.

Yours,  
Jane

Dr Jane Martin  
Chair

**Annexes C and D**

**[REDACTED]**