

**Meeting:** Legal Services Board

**Date:** 26 November 2019

**Item:** Paper (19) 55

**Title:** Professor Stephen Mayson – findings of the interim report into reform of the legal services regulatory framework

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**Status:** Official

### **Introduction: Purpose of the paper/ Issue**

1. At the invitation of the Board, Professor Mayson is attending to discuss the interim report of his review of the legal services regulatory framework. This paper highlights a series of key issues that the Board may wish to discuss with him. Further, the paper identifies some strategic implications for the LSB.

### **Recommendation(s)**

2. The Board is invited to discuss i) the key issues identified in the paper with Professor Mayson; and ii) strategic implications for the LSB.

### **Timing**

3. Professor Mayson anticipates publishing his final report in February 2020.

### **Background**

4. Professor Stephen Mayson is leading an independent fundamental review of the regulation of legal services in England and Wales. He is doing this on behalf of the Centre for Ethics and Law at University College London where he is an Honorary Professor. Professor Mayson has played a significant role in helping us to develop our own vision for legislative reform, most recently facilitating the Board-led process that led to the LSB's 'vision' document in 2016.
5. The Board discussed how and at what level to engage with the Mayson Review in November 2018. Given the political climate it supported a fairly limited

engagement approach, but agreed that we should proactively engage with Professor Mayson at key milestones in his review through a mixture of bilateral meetings and by inviting him to attend a future board meeting. The Board felt that following publication of Professor Mayson's report it would be important for the LSB to set out any changes to its policy position since 2016, and to consider where the market had moved on. The Board also agreed to appoint a board lead to attend meetings and maintain oversight of this work (Jemima Coleman).

6. Professor Mayson attended the Board's June 2019 meeting following publication of a series of his working papers. The Board then invited him to attend a future meeting once his interim report was available; this was published in September. As well as engagement at Board level, the executive team has met Professor Mayson and provided assistance, e.g. by signposting to our research. Board and executive colleagues have also attended stakeholder events.
7. As part of the technology project, Professor Noel Semple (University of Windsor, Ontario) has written a paper on the implications of technology developments for the sustainability of the legislative framework. This was published in September and it should prove a useful input to Professor Mayson's review.

### **The interim report**

8. The interim report does not present a draft blueprint for reform, but rather a series of findings, propositions and consequential questions. Some key issues are left for a future time, including the institutional landscape. Professor Mayson is keen to emphasise that he is open minded on the final shape his proposals will take, although his thinking appears fairly settled in some areas.
9. As noted by the Board in June, there is significant commonality between the emerging proposals in Professor Mayson's interim report and the LSB's vision. Nevertheless, we have identified a series of issues that the Board might wish to probe further with Professor Mayson and/or reflect on, either because the market may have moved on since 2016, the issues were outside the scope of our vision document, or due to some variance with our existing policy position. These are:
  - **The timing of reform** – Professor Mayson has so far been silent on when reform should take place. However, following challenge at the stakeholder event he indicated that he may reconsider this position.
  - **The scope of regulation** – it is suggested that all 'providers' of legal services could be within the scope of regulation to varying degrees with differential application of before, during and after-the-event regulation to reflect the importance or risk of any particular activity or circumstance. Further, an algorithm could be deemed a 'provider' of legal services and thus fall within the scope of regulation, enabling types of legal technology that substitute for a lawyer's input to be accommodated.

- **Title** – he suggests that regulators are the natural (and arguably better) guardians of consumers’ interests, by determining and enforcing the minimum or basic requirements for legal services. However, he suggests that equally, the professional bodies are the natural (and arguably better) custodians of the higher standards and aspirations associated with a professional calling and vocation. While he has yet to resolve the question of who should award (and remove) title, one option is that regulators set the minimum standards and professional bodies ‘own’ titles. In addition, it is suggested that professional title should no longer be the only route to personal authorisation even for higher risk activities.
- **Not-for-profits, in-house lawyers and large corporates** – Professor Mayson’s current thinking is that these types of organisation should fall within the scope of regulation, but that the different tiers of regulation (see scope above) should ensure a risk-based and proportionate approach.
- **An expanded role for the Legal Ombudsman** – this includes an expanded jurisdiction potentially covering all providers of legal services, but also additional functions, such as starting own-initiative investigations. The report also contains a novel suggestion that the Legal Ombudsman could address concerns about consumers raised by providers.
- **Independence and accountability channels for the regulator(s)** – to ensure regulators and practitioners are manifestly free from political influence or interference it is suggested that the future regulator(s) lay an annual report before Parliament, reporting to the Justice Select Committee or being scrutinised by the National Audit Office.
- **Single or multiple regulators** – the interim report covers this very briefly, indicating an opportunity for rationalisation in the number and functions of current regulators.

10. The interim report and the LSB’s vision are both available in Virtual Board Room.

### **Strategic implications for LSB**

11. Looking ahead, the Mayson Review raises some strategic questions for the LSB which the Board might wish to begin to reflect on, as follows:

- Appetite for LSB to proactively push for reform, and, more generally, the extent to which we take a public stance on these issues
- Appetite for LSB using its existing powers to review the reserved activities either with or without the prospect of major legislative reform
- Appetite for Professor Mayson’s short-term reform proposals, which would require smaller scale legislative change:
  - Repeal s63(2) and (3) to allow LSB to directly authorise unregulated providers, such as will-writers, paralegals and McKenzie Friends. Under the existing LSA, s163 in theory allows the LSB to enter into voluntary arrangements, which has parallels to the Professional Standards Authority’s accredited registers system. Of course, under

- such a system providers would choose to join whereas legislative change could make regulation compulsory for these providers
- Expand the Legal Ombudsman’s jurisdiction to cover all legal services providers – similarly, s163 of the LSA includes provision for a voluntary scheme, but again primary legislation could lead to compulsory coverage across the sector.

12. Government appetite for reform will, of course, be shaped by political events. However, there is a series of other events which could act as possible triggers for reform. These include: the CMA’s progress review (anticipated in late 2020); a possible tailored review of the LSB and/or OLC; and the findings of, and government response to, the report of the Commission on Justice in Wales. The Scottish Government’s response to the Robertson report and CMA research on the Scottish legal services market may also be factors.

### Next steps

13. The executive team will continue to engage with the Mayson Review in line with the Board’s view on the right ongoing level and nature of this engagement. We will continue to develop our thinking so that we are well placed to review our existing policy positions following publication of Professor Mayson’s final report.

### Annexes

None

<b>Risks and mitigations</b>	
<b>Financial:</b>	N/A
<b>Legal:</b>	Oral update at the meeting
<b>Reputational:</b>	There is a significant degree of commonality between the interim report and the LSB’s 2016 vision document. Professor Mayson’s views on a preferred institutional landscape, once known, could have reputational consequences for LSB. His work to date has contained some implied criticism of LSB in a couple of areas. More generally, his assessment of the current framework may impact on the reputation of the sector and LSB internationally.
<b>Resource:</b>	No resource has been allocated within the current Business Plan. Any significant work would require redeployment of resource.

<b>Freedom of Information Act 2000 (Fol)</b>		
<b>Para ref</b>	<b>Fol exemption and summary</b>	<b>Expires</b>
None		