

**Meeting:** Legal Services Board

**Date:** 22 January 2020

**Item:** Paper (20) 06

**Title:** CMA recommendations – progress

**Authors:** Steve Brooker, Head, Policy Development and Research

**Status:** Official

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

1. Ahead of the CMA's expected review of progress on its market transparency remedies in the second half of 2020, the paper provides a high-level assessment of the current situation and recommends a way forward on quality indicators.

### **Recommendation(s)**

2. The Board is invited to discuss the high-level assessment of current progress and agree the proposed approach to quality indicators, as follows:
  - a. Explore mandating use by providers of a public facility for customers to leave feedback on the quality of service they received, or as a variant of this, introducing a requirement to signpost to one; and
  - b. Consider introducing a requirement on regulatory bodies to publish aggregated anonymised trend data on first-tier complaints.

### **Timing**

3. There is an early opportunity to test the ideas in this paper with regulatory bodies later this month and we will pursue follow up work during the first half of 2020.
4. The CMA is expected to complete its progress review at the end of 2020.

### **Background**

5. In December 2020 the CMA is expected to complete a review of progress of the recommendations in its 2016 legal services market study. While the review will

consider all the recommendations, this paper focuses on the recommendation directed to the LSB concerning improving market transparency for consumers.

6. The CMA's final report made a specific recommendation 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
  
7. The CMA asked the regulatory bodies to increase market transparency in the following four areas:
  - 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
  - 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
  - Making better information available to assist consumers when they are identifying their legal needs and the types of legal services providers (both regulated and unregulated) who can help them
  
8. In April 2017 the LSB accepted the recommendation and published a document setting out how it would be implemented. In October 2017 we published an assessment of the regulatory bodies' action plans, and in October 2018 a progress update. Since then monitoring has been undertaken by relationship managers and progress assessed within the regulatory performance framework. We have continued to attend the Remedies Programme Implementation Group (RPIG), which coordinates implementation of the remedies directed to the regulatory bodies. A strong relationship with the CMA has also been maintained.

### **Assessment of progress**

9. Annex A contains a high-level assessment of progress by the regulators against the four elements of market transparency, as set out in paragraph 7 above. Overall, we consider that good progress has been made in the areas of price transparency and making basic data available to third party intermediaries.

There has also been good progress in revamping the Legal Choices website, although this must be tempered by the BSB's recent withdrawal of funding. There has been limited progress on promotion of feedback platforms and on quality indicators, which is the focus of the remainder of this paper.

10. Since the new transparency requirements only came into force at the start of 2019 (and, in some parts of the market, later) it is too early to know the impact of these on actual market outcomes. The LSB/CMA/MOJ prices research will provide the first hard evidence of the impact of the new requirements on pricing. Therefore, the assessment below focuses on change at a policy level.
11. Based on this assessment we suggest the following three priority areas for focus over the next twelve months:
  - Ensuring regulators follow through on commitments to evaluate the impact of measures to improve market transparency. This includes a focus on regulators which introduced guidance rather than rules;
  - Legal Choices – ensuring a sufficient agreed funded plan is in place for the next phase of the website's development, from November 2020; and
  - Quality indicators (see paragraphs 13 to 25 below).

### *Recommendations to government*

12. The CMA's review will also consider the response to its recommendations directed to government, which could have implications for the LSB. One area is reviewing the case for extending access to redress for consumers using unregulated businesses. We understand a light-touch review was conducted (unpublished) and no further action has been taken. A variable here is a possible consumer command paper in Spring 2020, which may consider widening the scope of ADR. The other key recommendations were to conduct reviews of the independence of regulators and, longer term, the current regulatory framework. In its response document the government indicated that it was not right the time to conduct these reviews, but it would continue to reflect on the need to act.

### **Quality indicators**

13. The CMA's report made generalised recommendations to the regulators around quality indicators but did not make specific proposals. It identified two main ways for firms to signal quality to consumers: reviews and personal recommendations aggregated by third parties; and adoption of quality marks.
14. The LSCP published a paper on quality indicators in December 2019, which followed a roundtable earlier in the year. This included a recommendation that regulatory bodies harness consumer power to exert reputational pressure on lawyers to maintain quality standards. The Panel also plans to commission moderated online focus groups to understand consumer views on this issue.

15. There are two dimensions of quality relevant to this paper, and the policy response may be different in each case. These are:
- The extent to which the public may have reasonable expectations of minimum quality in terms of professional standards; and
  - The extent to which the public can exercise choice about service providers in a way that goes beyond minimum standards, i.e. quality as a driver of competition.
16. Since consumers are often unable to assess the technical quality of work, even after the event, they largely rely on regulators to ensure legal work is competent. Agencies hold some data that could signal technical quality, e.g. HM Land Registry ‘requisitions’ data. However, there is generally little existing data on the technical quality of work that could be made publicly available. LSB’s work on ongoing competence aims at addressing these evidence gaps and is developing an evidence-based and sustainable longer-term policy position on assuring competence.
17. In the shorter-term our focus is on improving signals on service quality. We outline two ideas below to this end. We would initially wish to explore these with the regulatory bodies and the CMA before developing fully worked through proposals and advising the Board on whether to proceed.

Idea 1: Mandating the use of a public facility for customers to leave feedback on the quality of service they received

18. The core outcome we want to achieve is that consumers can easily access information on service quality to help them choose between providers. It is possible to envisage various ways this could be achieved. Customer feedback websites are one example, but the available evidence is that consumer usage remains low and law firms are still not embracing them.
19. In its final market study report the CMA considered, but decided against, mandating use by providers of comparison websites, since it was keen to see how the comparison sector developed. However, it noted that the “apparent lack of willingness [by law firms] to engage with comparison platforms may inhibit their widespread use and subsequent regulatory action may be necessary”.<sup>1</sup> Given the market has not developed as hoped, there may be merit in revisiting this proposal, which could help these services gain a critical mass of users.
20. A variant on this would be to require providers to signpost to a comparison website but without an obligation to be a ‘member’ of one. This reflects that

---

<sup>1</sup> Para 7.95 of the CMA’s final report.

some customer review websites enable consumers to post reviews about providers regardless of whether the business is signed up to the service.

21. We should also consider the future role of the Legal Choices in this area.
22. Should the Board decide to proceed, we would need to consider how best to deploy our regulatory toolkit to achieve this outcome. For example, this might include issuing formal guidance under s162 of the Act.

#### Idea 2: A requirement to publish aggregated trend data on first-tier complaints

23. The LSB's existing statutory guidance<sup>2</sup> sets an expectation that regulatory bodies gather and analyse data from providers on the first-tier complaints they receive. In July 2019 the SRA published aggregated anonymised trend data on first-tier complaints, which identifies the most common causes of complaints and the distribution of complaints across its regulated community.<sup>3</sup> While some complaints data is published by other regulators, to date most have yet to follow the SRA's lead, despite encouragement by LSB. Although publication of this data across the market would not help consumers differentiate between providers, it would alert them to the sorts of issues they should look out for as well as help providers to raise standards.
24. As highlighted in the table in Annex A, the regulators have decided not to publish first-tier complaints data naming providers. The Board may wish to revisit this issue, although in the executive's view the regulators identified some good policy reasons not to pursue this now.<sup>4</sup> More positively, the Legal Ombudsman's current consultation<sup>5</sup> could result in significantly more data on complaints at the second-tier being put into the public domain.
25. Should the Board decide to proceed, the most suitable vehicle is likely to be updating our existing s112 rules and/or s162 guidance. As noted in paragraph 12 above, the new government may publish a consumer command paper in the spring, which might prompt us to review these documents in any case.

---

<sup>2</sup> First-tier complaints handling: section 112 requirements and section 162 guidance for approved regulators. Version 2: 22 July 2016.

[https://www.legalservicesboard.org.uk/what\\_we\\_do/regulation/pdf/2016/201607\\_Version\\_2\\_Requirements\\_Guidance.pdf](https://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/2016/201607_Version_2_Requirements_Guidance.pdf)

<sup>3</sup> <https://www.sra.org.uk/sra/how-we-work/reports/first-tier-complaints-report/>

<sup>4</sup> SRA said it was finely balanced and noted the clear potential benefits to consumers of publishing this information, if properly contextualised. However, it was concerned this step could change how firms view receiving complaints. Further, its analysis showed most firms are closely concentrated around a similar level of first-tier complaints, so publication would not help consumers to differentiate between providers. Challenges around contextualising the data and verifying its accuracy were also highlighted. The other regulatory bodies cited similar concerns in reaching the same decision.

<sup>5</sup> Legal Ombudsman, Discussion paper: Transparency and Reporting Impact, October 2019.

<https://www.legalombudsman.org.uk/?portfolio=discussion-paper-transparency-and-reporting-impact>

## Next steps

26. At the LSCP's roundtable we committed to convene a meeting of the regulatory bodies to explore options. We have decided to use the RPIG meeting on 24 January as an early opportunity for discussion. Subject to the view of the Board, we plan to use this meeting to review the merits and practicalities of the ideas in this paper. We are, of course, open to considering other options that might be put forward by the regulatory bodies and others.
27. We will also begin gearing up for the anticipated progress review, including increasing the frequency of our engagement with the CMA.

## Annexes

Annex A – High level assessment of progress

<b>Risks and mitigations</b>	
<b>Financial:</b>	N/A
<b>Legal:</b>	N/A
<b>Reputational:</b>	The CMA's review is likely to have reputational consequences for LSB and the regulatory bodies. By summer 2020 we should be in a position where we can say with confidence that the sector has responded positively to the CMA's remedies.
<b>Resource:</b>	Resource has been allocated within the 2020-21 Business Plan to engage with the CMA review. A modest amount of activity on quality indicators can be accommodated within existing resource but significant activity 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		

## Annex A – High-level assessment of progress

Element	Assessment
Standards of transparency for consumers (price, service/quality, redress, regulation)	<p><b>Price:</b> SRA, BSB, CLC, CILEx Regulation and Master of Faculties introduced new rules requiring providers to publish price information on their websites. Mostly these requirements are confined to certain areas of law only, although these cover a large swathe of legal activity. Compliance among solicitors' firms is mixed but improving. ACCA, ICAEW, IPReg and CLSB chose to introduce voluntary guidance, rather than rules. LSB set an expectation that this approach would be reviewed, and rules introduced if necessary.</p> <p><b>Quality:</b> All the regulators decided not to publish data identifying volumes of first-tier complaints received by providers. The SRA published aggregated analysis of first-tier complaint trends, but others have yet to follow suit. The LSCP has published a paper and held a roundtable on quality indicators, but there has been no material progress by regulators on identifying solutions. The Legal Ombudsman is consulting on publishing more second-tier data.</p> <p><b>Redress:</b> All regulators have tightened signposting requirements (or issued guidance) to LeO. The SRA's initial compliance web sweep found only half of solicitors' firms were complying. They are following this up with further web sweeps and signalled this could lead to enforcement action. The SRA and LeO carried out joint research on experiences of first-tier complaints handling.</p> <p><b>Regulation:</b> SRA, CILEx Regulation and CLC (already in place), have introduced digital badges so consumers can verify providers are regulated.</p>
Promotion of feedback platforms	Some regulators have published guidance on, or otherwise promoted, customer feedback websites. The available evidence indicates that consumer usage of such websites remains very low.
Making data available to intermediary markets	Professional registers are available in open data formats across the market, although intermediary markets are making limited use of these. Disciplinary information has been integrated with these registers (except for ICAEW and Master of Faculties). LeO's data is also available in open access format.
Better information to help consumers identify legal needs	It is the final year of a three-year plan to enhance the Legal Choices website. The fruits of this activity will be most visible in 2020 as new products come on stream. This includes the equivalent of a single digital register of providers. There will be significant investment in marketing the website during 2020. The BSB's withdrawal of funding from Legal Choices was very disappointing. Agreement needs to be reached among the remaining regulators on the direction of travel and funding from November 2020 onwards.