

**Meeting:** Legal Services Board

**Date:** 19 January 2021

**Item:** Paper (21) 03

**Title:** CMA progress review: initial analysis

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**Status:** Official

### **Purpose of the paper**

1. The paper invites the Board to offer its first reflections on the CMA's progress review recommendations ahead of a full discussion at the 18 March meeting.
2. The paper should be read in conjunction with the separate paper on quality indicators elsewhere on the agenda (see Paper (21) 04).

### **Recommendation:**

3. The Board is invited to:
  - **Discuss** the executive's initial analysis of the CMA's recommendations

### **Background**

4. In 2016, the CMA carried out a market study into the legal services sector in England and Wales. The LSB accepted a recommendation, which it has since implemented, to monitor progress made by regulatory bodies on steps designed to improve transparency for consumers on price, service, redress and regulation.
5. In December 2020, the CMA published an assessment of the implementation and impact of the recommendations of its 2016 market study. The LSB has maintained a close working relationship with the CMA since the 2016 study, which last year included jointly funded research on the prices of legal services. We made a substantial submission to the CMA's call for evidence supporting its progress review and have engaged continuously with the CMA on its emerging thinking. The CMA attended the LSB Board meeting on 15 September 2020.

6. The Board considered market transparency issues at various of its meetings in 2020 and this has been a key focus of strategy development. Of note, the Board agreed in April 2020 that, using powers under section 49 of the Act, we should publish a statutory policy statement that would set out our expectations of what the regulators should be doing to improve consumer engagement in the market.

### The CMA's analysis and recommendations

7. The CMA focuses on two broad areas: market transparency and regulation.
8. The CMA identified some positive developments on market transparency but concluded that further progress is needed. While noting a “very substantial increase” in information available to consumers, it found “there has been a limited impact on the intensity of competition between providers and on sector outcomes”. The CMA notes the changes were introduced by regulatory bodies relatively recently and expects these measures to have greater impact over time. Even so, it recommends that LSB, working with other regulators in the sector, continues to build on existing reforms and make progress on quality indicators.
9. The CMA concluded that government has made little progress to date with the recommendations made in 2016 on regulatory reform. Its assessment is that, if anything, the case for wholesale reform is stronger now than at the time of the market study. The CMA repeated its call for the Ministry of Justice to undertake a review of the Legal Services Act 2007 (‘the Act’). In the meantime, the CMA is advocating that the Ministry of Justice and the LSB take some shorter-term steps which will deliver regulatory reform in stages:
  - Ministry of Justice to establish a mandatory public register of unregulated providers for certain legal services (potentially to be operated by LSB) and mandating that these providers offer redress options for consumers
  - LSB to conduct a review of the reserved legal activities
  - LSB to evaluate the impact of the Internal Governance Rules (IGRs)
10. The CMA's recommendations are listed in **Annex A** and its full report is available online<sup>1</sup> and in VBR.

### Initial analysis

11. Given the recency of the CMA's report and the range of issues it covers, we are not able to make firm recommendations to the Board now. Instead, we invite the Board to have an initial discussion ahead of fuller consideration in March. However, **Annex A** includes early thinking on how we might take this forward.

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<sup>1</sup> <https://www.gov.uk/cma-cases/review-of-the-legal-services-market-study-in-england-and-wales>

*Recommendations on market transparency*

12. The CMA's diagnosis of competition in the sector is closely aligned to the LSB's view, as set out in our submission to its call for the evidence and the State of Legal Services 2020 report. We note the CMA's diagnosis draws extensively on research undertaken by the LSB and LSCP since its 2016 market study.
13. The CMA identifies a high-level framework of five areas where further progress needs to be made on market transparency alongside a series of specific actions. The executive's initial assessment is that carrying out the recommendations would advance the regulatory objectives, in particular: improving access to justice; protecting and promoting the interests of consumers; promoting competition; and increasing public understanding of the citizen's legal rights and duties. At a high level, we consider that work in all five areas is justified and that the Board should be able to support most of the specific actions. Some specific actions, such as the transparency quality mark and prompts to shop around, are less immediately convincing, and we will consider these further.
14. The LSB is envisaged to have a more central role during the next phase of market transparency reform than following the market study in 2016. Since 2016, the LSB's role has been focused on monitoring progress made by the regulatory bodies in implementing recommendations targeted directly at them. Now, the CMA has provided "a high-level framework to be overseen and developed further by the LSB and implemented by the regulatory bodies". We are asked to lead on some specific actions, including quality indicators and a single digital register.
15. Our early view is that a statutory statement of policy remains the best vehicle to set expectations for the regulatory bodies. Its flexibility means we can set its scope to encompass several areas identified in the CMA's recommendations. These include transparency on price, quality, redress and regulation, plus public legal education initiatives linked to consumer engagement (including Legal Choices). Further consideration is needed on the best approach to coordinating activity, including the role of the Remedies Programme Implementation Group (RPIG). Also, we will need to strike the right balance between working collaboratively with the regulatory bodies and exercising our statutory functions of holding them to account through the Regulatory Performance Framework and considering applications to make changes to their regulatory arrangements.
16. The scale of activity proposed for LSB is larger than anticipated when we consulted on a draft business plan and budget for 2021-22. This will have resource implications that we will consider further ahead of the March meeting.

*Recommendations on regulation*

17. The Ministry of Justice is asked to consider recommendations on regulatory reform. However, these recommendations have implications for the LSB, so we will continue to engage closely with officials on these issues.
18. The Board has yet to consider Professor Stephen Mayson's proposal, favoured by the CMA, that LSB might operate a mandatory public register of unregulated

providers. If implemented, this would represent a significant change of focus and role for the LSB, which the Board would wish to consider carefully.

19. The Board will note the CMA's preference for the LSB to carry out a review of the reserved legal activities. We do not comment further now given that the Board is currently inviting views as part of its consultation on the draft strategy for the sector and 2021-22 business plan. However, we are pleased to note the CMA's call for the Ministry of Justice to put the necessary funding in place.
20. The CMA's position on the IGRs reflects our submission to the call for evidence. Implementation of the revised IGRs is at an early stage and we will consider further when it would be appropriate to evaluate the impact of these changes.

### Next steps

21. We propose that the Board decides its response to the CMA's recommendations at its meeting on 18 March. The Board is also due to finalise the strategy for the sector, and the 2021-22 business plan and budget, at this meeting.
22. Should these steps and progress on the quality indicators discussion paper go as planned, we should be able to bring a draft statutory statement of policy and associated consultation paper to the Board meeting on 8 June.

### Annexes

Annex A – Early thinking on LSB response to the CMA's recommendations

<b>Risks and mitigations</b>	
<b>Financial:</b>	The scale of activity proposed for LSB has implications for our level of budget in 2021-22. This will be considered further ahead of the 18 March meeting in the context of our live consultation on the LSB's draft business plan and budget.
<b>Legal:</b>	N/A
<b>Comms and engagement:</b>	The CMA's report positions LSB as having a leadership role in the sector and is a good fit with our role as oversight regulator. There will be keen interest in our response to recommendations on transparency and the Ministry of Justice appetite for major and short-term regulatory reforms. We will continue to engage closely with the CMA, regulatory bodies and government officials and maintain a high level of transparency about our plans.
<b>Equality and diversity:</b>	The State of Legal Services 2020 report highlighted worse outcomes in relation to consumer engagement for some groups, which can expect to benefit from interventions by LSB. Specific interventions may need to be adapted with these groups in mind.

<b>Resource:</b>	Our response to the CMA’s report is factored into resourcing plans for 2020-21. As noted above, resource implications for 2021-22 need to be considered further.
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<b>Freedom of Information Act 2000 (Fol)</b>		
<b>Para ref</b>	<b>Fol exemption and summary</b>	<b>Expires</b>
None	N/A	N/A