

**Meeting:** Legal Services Board

**Date:** 18 March 2021

**Item:** Paper (21) 10

**Title:** Response to CMA recommendations

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**Status:** Official

### **Purpose of the paper**

1. The paper invites the Board to accept the recommendations in the CMA's progress review and discuss options for undertaking them.
2. The paper should be read alongside the separate item on the agenda on the strategy, business plan and budget. This includes issues of prioritisation and collaboration generally, as well as sequencing of specific work packages on the scope of regulation and the professional indemnity insurance market.

### **Recommendation:**

3. The Board is invited to:
  - **Accept** the CMA's recommendations in its progress review
  - **Discuss** options for undertaking the recommendations

### **Background**

4. In 2016, the CMA carried out a market study into the legal services sector in England and Wales. The LSB has since implemented a recommendation to monitor progress made by regulatory bodies on activities 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. In January 2021, the Board discussed the findings of the CMA's progress review and the executive's initial analysis of the recommendations. It strongly endorsed the leadership role for the LSB that the CMA recommended. However, in advance of

formally considering the recommendations, the Board asked the executive to demonstrate the linkages between these, the regulatory objectives and the draft strategy for the sector. The Board also asked the executive to develop plans for operationalising the recommendations and consider stakeholder management.

6. Also at the January meeting, the Board approved the publication of a discussion paper on quality indicators. This paper was published on 23 February.

### Consideration of the CMA's recommendations

7. It is important that the Board takes an independent view of the CMA's analysis and does not simply adopt the CMA's conclusions as its own without further consideration (while of course recognising the expertise and resources the CMA has invested in its review and its status as the UK's national consumer and competition authority). We must judge for ourselves the proportionality of implementing the recommendations, and how the proposals stack up in terms of priority against our other areas of work. Likewise, we should respect the autonomy of each of the regulatory bodies to exercise independent judgement on the recommendations given the circumstances in their parts of the market.
8. The CMA's report makes high-level recommendations on market transparency and regulatory reform, supported by a list of suggested actions. The executive has considered further the high-level recommendations made by the CMA and proposes that the Board accept them.
9. We will consider the suggested actions as we develop the statement of policy and in discussion with the regulatory bodies. In particular, we note the CMA's suggestion that the LSB and regulatory bodies should focus their efforts on increasing transparency in the most suitable practice areas, and where this will have the greatest impact on competition and sector outcomes.
10. As set out at the January 2021 meeting, the CMA's analysis is consistent with the LSB's submission to the progress review and was informed by our research evidence. The CMA's proposal that the LSB coordinate activity across the regulators and broker collaboration is a good fit with our role as oversight regulator. We are confident that we have a range of regulatory levers at our disposal to improve outcomes for consumers.
11. In **Annex A**, we set out how the regulatory objectives, our draft strategy for the sector and the CMA's recommendations are aligned. In brief:
  - Regulatory objectives: in particular, this work supports the objectives of 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.
  - Strategy for the sector:
    - work on enhancing market transparency most clearly addresses challenge 7: 'empowering consumers to obtain high quality and

affordable services'. Further, stronger competition should stimulate innovation leading to better services and promote fairer outcomes by reducing barriers to citizens accessing legal services.

Transparency of price, quality, regulation and redress will support stronger confidence that the market is working well for consumers.

- work on regulation primarily addresses the theme of stronger confidence, including the challenges of closing gaps in consumer protection and ensuring high quality and ethical legal services. Further, our planned work on the scope of regulation also supports challenges in relation to access, technology and innovation.

12. In relation to the market transparency recommendations, we remain of the view that a statutory statement of policy is the best vehicle for setting clear expectations of the regulatory bodies. We see development of the single digital register as a priority and are actively considering options for how best to initiate this in conjunction with the regulatory bodies.

13. The recommendations around regulatory reform are largely directed at the Ministry of Justice. Its response to the report will have implications for some recommendations directed at the LSB, including the scope of a single digital register. We have been liaising with officials at the department and will update the Board on latest developments at the meeting.

14. As set out elsewhere on the agenda (Paper (21) 11), we propose not to carry out a statutory review of the reserved legal activities in 2021/22. Instead, we intend to proceed with planned work to build a better understanding of the unregulated market, consider the implications of developments in technology and explore voluntary registers. These strands of work should be a useful precursor to a statutory review of the reserved legal activities at an appropriate time in future.

15. Similarly, we consider a review of the professional indemnity insurance market is worthwhile but will not have the resources to do this ourselves in 2021/22.

16. On the IGRs, we will consider the appropriate method and timings for evaluating the impact of the new rules.

### **Options for undertaking the CMA's recommendations**

17. The executive is considering options for how to practically implement the CMA's recommendations and would welcome the Board's views. The recommendations involve a shift from our previous role of simply monitoring progress by the regulatory bodies to one of coordination and leadership, including in some specific areas, and there are various factors we must take into account.

18. One is to strike the right balance between leading work ourselves and maintaining our oversight role of holding the regulators to account for delivery. Another is to mobilise the appetite for collaboration among the regulatory bodies garnered through the strategy development process. A related factor is to make the best use of the LSB's finite resources.

19. It is also important to capitalise on the momentum from the CMA's latest publication, but at the same time recognise the imperative to prioritise given the breadth of the agenda, the differing and finite resources of the regulatory bodies, and need for each body to reflect properly on the best course of action in their parts of the market. Prioritisation also needs to take account of other issues that the LSB and the regulatory bodies are pursuing, including Covid-19.
20. At the Board meeting we will provide an oral update on governance options, informed by our ongoing discussions with the CMA and the regulatory bodies. We see this as involving a broad choice between creating new arrangements or building on existing structures, or a hybrid of these two approaches.
21. We are also considering how to best ensure accountability, and what would be the best mechanism(s) for the regulatory bodies to set out their plans for implementation of the recommendations and evaluation of new measures.

### Next steps

22. We will formally communicate the Board's decision on the recommendations to the CMA.
23. We will continue discussions with regulators, the Ministry of Justice and other relevant stakeholders on implementation of the CMA's recommendations. Over the coming months, we will report to Board through the CEO's report and the Board leads on progress in this area.
24. We are receiving responses to the discussion paper on quality indicators until April. We will take account of these responses and continue our own policy development in formulating proposals for the draft policy statement. We will return to Board in the summer to approve the draft statement for publication.

### Annexes

Annex A – Mapping of the CMA's recommendations to the regulatory objectives and the LSB's strategy for the sector

<b>Risks and mitigations</b>	
<b>Financial:</b>	The proposed activities are accounted for in the proposed budget for 2021/22 (see related paper).
<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>	The CMA's recommendations, depending on implementation approach, require a wider larger resourcing commitment than was envisaged prior to LSB consulting on its draft business plan for 2021/22 (see related paper).

<b>Freedom of Information Act 2000 (Fol)</b>		
<b>Para ref</b>	<b>Fol exemption and summary</b>	<b>Expires</b>
N/A	N/A	N/A