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24 November 2016

Dear Sir/Madam

## **Tailored Review of the Legal Services Board and the Office for Legal Complaints**

The Legal Services Consumer Panel welcomes the opportunity to respond to the Ministry of Justice's Tailored Reviews of the Legal Services Board (LSB) and the Office for Legal Complaints (OLC).

The Review asks a number of questions in relation to the Panel's independence (question 5) which we would particularly like to address. We have also included our brief response to questions in relation to the function and form of both the LSB and the OLC.

### **How the Panel works**

- The role of the Panel is to provide independent advice to the LSB about the interests of consumers of legal services in England and Wales. We investigate issues that affect consumers and use this information to influence decisions about the regulation of legal services. We represent all consumers who lack buying power in their dealings with lawyers, including small business and small charities as well as individuals.
- Part of our work programme consists of providing advice to the LSB about their developing policies. The LSB may make a formal request for our advice as it has on referral fees, quality assurance, will-writing, and open data. On an ongoing basis we offer informal advice, working closely with a number of LSB staff to appropriately influence their projects from the outset. The Panel also provides advice to the Legal Ombudsman and may respond to consultations by the approved regulators. In addition, we initiate our own projects based on evidence of consumer detriment.

### **1. Our independence**

1.1. There are clear benefits to retaining the Consumer Panel as an embedded Panel under the current regulatory framework. Nonetheless, this approach should be evaluated and reviewed alongside any future assessment of the wider legislative and regulatory framework.

1.2. Our statutory basis within the LSB allows us to input at the earliest stages of policy formulation, frequently before the LSB is ready to test its thinking in public. This is the stage at which project leads are most receptive to new ideas and change of direction, whereas external bodies normally provide input during the

public consultation stage when there may already be a preferred approach. Such early engagement is only made possible by the confidentiality of the process, our statutory basis, and ultimately the trust developed through working relationships with colleagues.

- 1.3. Our role as a permanent and discrete Panel ultimately allows the LSB and the Approved Regulators to access expert consumer insight on tap. The Panel does not face competing demands on its time to the extent inevitably confronted by organisations that must respond to an economy-wide policy agenda with finite resources. Indeed our operational budget for the year ending March 2015 was less than £40,000. It is doubtful whether such value could be achieved for a body that sits outside the LSB.
- 1.4. Being embedded within the LSB does not weaken the Panel's independence. Our statutory footing preserves our independence and gives us added confidence and protection in terms of voicing our dissent. It means that we can represent the interests of consumers without fear or favour. The value of our statutory independence is often hidden as we influence the LSB's thinking before it is ready to test this with stakeholders. Nonetheless, there have been differences of views, most recently in relation to the detail and respective approaches towards enhancing transparency in relation to price and quality in the sector.
- 1.5. In considering whether the Panel should be wholly independent of the LSB, we would suggest there are some key criteria that should be met:
  - Consumer engagement, as with regulation, should be outcome-based.
  - The consumer representation body should be independent of the regulator, and/or safeguards must be put in place to protect this.
  - The consumer representation body should be independent of providers.
  - Consumer engagement requires budget and resources; the consumer representation body should have a dedicated budget and be sufficiently funded to deliver its outcomes. The legal sector is well-resourced and strongly positioned to put its case to the regulator, so a dedicated consumer voice is needed to provide the consumer counterweight.
  - The consumer representation body should be sector specific although with a clear mandate to collaborate as required to ensure a more whole person-centred approach.
  - The consumer representation body must have the opportunity to input at the earliest stages of policy formation.
  - The consumer representation body should support the regulator to build consulting, involving and informing consumers into its own working practices. Its role is not to carry out consumer engagement on behalf of the regulator; the regulatory responsibility to engage consumers cannot be outsourced or delegated to the consumer representation body.

## **2. The Legal Services Board – Form and function**

- 2.1. The Consumer Panel is of the firm opinion that the Legal Services Board should continue to carry out the statutory functions outlined in the Legal Services Act

2007 (LSA 2007). The LSB's functions should be retained until such a time that the legislative framework is reviewed, and potentially a single regulator is established to oversee the regulated sector. At this juncture, we would recognise that the LSB's role as the oversight regulator would no longer be needed.

- 2.2. It is important to reiterate what the Sir David Clementi review found in the sectoral assessment that led to the LSA 2007: a regulatory maze that was too close to the profession, complaint mechanisms that were not fit for purpose, and restrictions on business models that stifled competition. The LSB continues to work towards the reforms contained within the LSA 2007, reforms designed to address rules to secure regulatory independence and opening up the market through alternative business structures.
- 2.3. The Panel's own longitudinal research<sup>1</sup> which tracks users' experience of legal services shows that the market has improved. Yet much needs to be done to improve diversity, competition, and empower consumers to make informed decisions. As recently as September 2016, the Competition and Markets Authority (CMA) found that competition in legal services for individual and small business consumers is not working as well as it might. Although the CMA noted positive developments – for example the rise in fixed fees and in consumers shopping around – it also found that upfront information on price and quality is often not available to consumers and that this was in turn stifling competition. We await the CMA's final remedies but would suggest the LSB has a potential role to play in overseeing the implementation of some key recommendations.

### **3. The Legal Services Board – Effectiveness**

- 3.1. The LSB has implemented the three major planks of the LSA 2007 – rules on regulatory independence, creating the Legal Ombudsman, and introducing the framework to support alternative business structures. However, work in these areas is far from completed and the LSB continues to make a concerted effort to address shortcomings. As recently as September 2016, the LSB published a report on its vision for a new regulatory framework. In this report, it outlined detailed and compelling evidence for a single regulator. In November 2016, the LSB publicly said it may look for other ways to increase the independence of the frontline regulators from representative bodies, highlighting its understanding of inherent structural weaknesses which hinder competition and the delivery of good consumer outcomes.
- 3.2. The LSB's commitment to evidence-based policy has also been valuable. While this has been necessary to build the case for change in individual areas – for example, price transparency - more generally, this commitment to evidence has also served as a model for the Approved Regulators. Its recent research on the price of legal services provided much needed evidence and a starting point for the CMA's review into how efficiently competition is working in the sector.

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<sup>1</sup> For the last six years the Panel has commissioned YouGov to conduct an annual survey in two parts: a nationally representative sample (1,864 adults); and a sample of people who have used legal services in the last two years (1,523 adults). Booster samples are obtained for Wales and BME groups. The research and analysis are available on our website: [http://www.legalservicesconsumerpanel.org.uk/publications/research\\_and\\_reports/index.html](http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/index.html)

3.3. We would suggest that this approach can be further enhanced. For instance, we would like to see further follow up to its evidence gathering or research through a drive towards policy changes or improved regulation by the approved regulators. Further consideration could also be given to how and when it uses its statutory and soft powers, including holding the approved regulators to more stringent action plans around its regulatory standards work.

#### **4. The Office for Legal Complaints**

4.1. The OLC performs a vital role in overseeing the work of the Legal Ombudsman (LeO) which offers consumers a means of redress when they suffer harm due to the actions of a lawyer. The prospect of redress acts as a deterrent against poor practice and provides a more level playing field in the market as a whole.

4.2. The OLC oversees the administration of LeO's two core functions: to resolve disputes, and help raise standards in the sector by feeding back the intelligence from complaints. Any assessment of the OLC's effectiveness must therefore be based on how well it has carried out these two functions. Raising industry standards is an area the Panel has challenged the OLC on in the past. We have called for improved focus and attention in this area. The OLC continues to work towards this by approving strands of work that places greater focus on its second role. The Panel continues to advocate for these ideas to be brought together into a clearly defined and coherent strategy with timescales.

4.3. The EU Directive on alternative dispute resolution presented an opportunity for the UK to ensure more joined-up consumer redress to reflect the trend towards converged delivery of services across business sectors. Consumers are increasingly purchasing services in one-stop shops, but redress schemes remain delivered in regulatory silos. We have previously highlighted to the OLC that we were disappointed that the OLC withdrew its application to become a certified Alternative Dispute Resolution provider under the EU Directive. The OLC's decision has led to consumers being signposted to multiple providers, leaving room for confusion. Arguably, it has also had an impact on due consideration being given to LeO's role in handling complaints from unregulated legal services providers.

We hope you find this helpful, and we look forward to further engagement on this important topic. If you have any queries please contact Lola Bello, Consumer Panel Manager.

Yours sincerely,



Elisabeth Davies  
Chair, Legal Services Consumer Panel