

Legal Services Board  
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Sent by email only to consultations@legalservicesboard.org.uk

8 December 2021

Dear Sir/Madam,

The Legal Services Consumer panel (Panel) welcomes the Legal Services Board's (LSB) draft statement of policy on empowering consumers. We support the LSB's approach and believe that this policy statement is precisely what the sector needs for improved focus on consumers' needs.

The Panel has made suggestions to strengthen the final document in parts, specifically, we would like to see an emphasis on the need for comparable information in some areas eg pricing and quality information.

We would like the LSB to give more consideration to the expectations around Public Legal Education, with a clear obligation on regulators to collaborate.

We have also made the case for there to be a thematic review focused on the CMA's core transparency recommendation two years post the publication of the final policy statement.

### **Reflection on the consultation questions**

**Do you agree with our approach of using expectations, outcomes and principles? Do you agree that the expectations and outcomes we have identified are the right ones?**

The Panel agrees with the approach of using expectations, outcomes, and principles. We are of the strong opinion that this is precisely the right approach within a mature regulatory landscape. This approach puts the onus on Approved Regulators to proactively develop the right solutions for their regulated communities, as well as to monitor compliance with policy or regulatory rule changes. As such, it is an approach that respects the autonomy of individual regulators, with inbuilt flexibility, while clarifying the minimum standards and obligations which regulators will be judged against.

The Panel welcomes the LSB's clarification on when a prescriptive (rule-based) approach would be more appropriate than regulatory guidance. We welcome this steer because the Panel has previously argued against the propensity to use guidance, instead of rules, on occasions. The LSB's clarification is a timely acknowledgement that certain market development or changes will not be achieved with regulatory guidance or a voluntary approach. That said, we are also supportive of the use of regulatory guidance where appropriate and consider that the LSB has struck the right balance.

The Panel is also pleased that the LSB has set out a general need for appropriate consumer testing and research. However, there are areas where this expectation needs to be more robust. For example, it should be a minimum requirement that the outputs of further work around pricing and quality indicators should be consumer tested.

For too long the Panel has raised concerns about insufficient consumer research, including the absence of consumer testing to inform seismic changes to regulatory policy, especially where such regulatory changes or policies result in reduced consumer protection. The emphasis on the need for consumer research and testing is overdue. However, given the history of inaction and the lack of creativity in pulling regulatory resources to achieve this aim, the Panel is of the view that the LSB must be clearer on the areas where it expects to see consumer research and/or testing.

We welcome that there is clarity on the standards and expectations regulators will be judged against. We believe that in so far as the LSB performance assessment framework is robust and effective this approach can work. Furthermore, we are reassured that where outcomes are not being met, the oversight regulator has signaled its intention to intervene.

### **Do you agree with the proposed principles to be adopted?**

The Panel agrees with the proposed principles to be adopted in this policy statement. The LSB has rightly taken into consideration the diversity amongst the regulators which necessitates flexibility.

We agree that the focus of this policy statement should be individual consumers and small businesses. We also agree that different areas of law may need varying levels of interventions. However, we are concerned that regulators may limit their interventions to areas that may be considered easier to intervene in. We note that the prescriptive rules on price transparency were generally implemented by all the regulators in areas like conveyancing first. While the Panel has no objection to the approach of dealing with "low hanging fruit" first in principle, there are also some complex areas of law, with high levels of consumer vulnerability or potential detriment that should be prioritised in certain circumstances.

In particular, regulators tend to shy away from areas such as family and asylum law, areas which tend to be more challenging, often with highly vulnerable consumers. It is therefore our strong opinion that the LSB should set expectations around what it considers to be priority areas of law and compel regulators to act in those areas or justify their lack of intervention.

The metrics for identifying priority areas of law need not be cumbersome. For many years now the Panel has identified family law as an area that needs regulatory attention beyond price transparency. Metrics such as complaints data and/or higher levels of unmet legal needs are precisely the type of information we expect to be used to identify these areas. The LSB's Legal Needs Survey would be appropriate for such an exercise.

We also agree with the principle that regulators should work together where possible and where necessary for the effectiveness of certain objectives. Indeed in some areas there should be an obligation on regulators to work together.

### **Do you agree with the proposed expectation around public legal education?**

This is one area where we believe there should be a sector wide strategy or approach and clearer goals.

We consider that there should be an obligation on all Approved Regulators to collaborate in this area. This is likely to be the only way to achieve anything meaningful and tangible in such a complex and fragmented area.

For PLE to be effective there needs to be a coherent national strategy involving regulators and other stakeholders. While the LSB may not have the power to drive such a national strategy, it can do more to compel the Approved Regulators to work together on this issue.

We urge the LSB to revisit this expectation and place an obligation on the regulators to work together. It would also be helpful if clearer deliverables and indicative timelines are outlined.

### **Do you agree with the expectation set around the minimum levels of information about price, quality, and service?**

The Panel broadly agrees with the minimum levels of information outlined in the consultation document around pricing, quality, and service level information. However, we do not believe that it goes far enough in emphasising the need for effective comparisons to enhance or promote consumers ability to shop around. Comparability should be part of the minimum standard because the effectiveness of price transparency depends on comparability. For example, in an environment where multiple regulators oversee conveyancing, we expect to see, on the face of the document, a clear obligation on Approved Regulators to work together to standardise pricing information. Although the paper alludes to this, it falls short of placing an obligation on regulators to do so in clearly defined areas.

Evidence to date suggests that regulators will not voluntarily do this, so we think it is now appropriate for the LSB to take a stronger lead on this obligation. Moreover, it strikes at the heart of what the CMA hoped to achieve with its transparency recommendations; a market where consumers are empowered with the right information, on a directly comparable basis, to enable them to shop around and make informed decisions and in turn positively enhance competition. Standardising

information in certain areas is crucial for comparability, and we would like to see a stronger acknowledgement of this.

We are pleased to see the LSB nudge the regulators towards a mix of quality indicators beyond review websites and Digital Comparison Tools. We agree with the LSB's suggestions and believe these are minimum standards for the regulators to build on. It is however disappointing to see little emphasis on the considered work that must be done to ensure that information is presented to consumers in ways that is comprehensible. This consultation paper makes a good case for accessible information, but there needs to be more around assessable information.

### **Do you agree with the expectations around making information available to consumers?**

We agree with the expectations around making information available to consumers. We are especially supportive of the single digital register or a regulatory history report along the lines described in the document.

It is important to note that we expect that such a register will be useful to individual consumers but not exclusively. We expect third parties to be able to pull information from such a portal and that this will indirectly help consumers.

For such a register to work (for consumers) we know that it needs to be standardized and presented in a user-friendly manner. This means consulting and engaging with users of legal services via independent research and then testing the initial proposals with consumers.

This work cannot bypass consumer testing, and regulators must accept that they may not be able to make accurate predictions about how useful the information will be or how it will be used. There is indeed an element of trial and amendment following evaluation that must be accepted. The LSB should learn from other sectors that have embarked on such a register, such as the health and financial services sectors.

The Panel is keen to stress that progress will not be made if regulators demand for proof of use by consumers of such a register before committing to the register. We are emphasising this point because we have heard the argument on more than one occasion. This is an unrealistic ask that will stall progress. The CMA in its thorough assessment of the sector has recommended that such a register be created. The Panel made a similar recommendation prior to the CMA's recommendation. The LSB must work collaboratively with regulators to achieve this objective, but it must also own and lead the vision for a centralised portal that reduces the current fragmentation of information in the sector. The burden on consumers to move from place to place, piecing regulatory information together, then making sense of it has never been acceptable, and it is not in keeping with the principle that regulation that regulation should put consumers at its heart.

The Panel is engaged in the ongoing work on establishing a single digital register and we look forward to its progress over the coming months.

## **Do you agree with our proposed plan for implementation?**

We broadly agree with the LSB's plan for implementation. In the last two years we have seen the LSB's regulatory performance framework improve considerably. The framework now has clearer action plans, better communication of deficiencies, as well as of best practice. As such we have confidence that the performance framework will continue to be an effective way to assess regulators against most of the expectations set out in the consultation document.

However, we believe that the mischief which this policy statement is designed to address is significant enough to warrant a standalone mechanism for assessing progress. The Panel considers that progress against the CMA's core recommendations pertaining to price, quality, and service level information, cannot, at this time be subsumed into the regulatory performance framework. As noted above, this is not because we believe that the framework is ineffective; it has improved. We are proposing that there should be a standalone assessment for price quality and service level information because this needs to continue to be at the forefront of regulators minds, and the issue is significant enough to warrant such a focus. This is still a sector that is not as competitive as it should be, where information provision is substandard by the LSB's own assertion. On pricing, quality, and service level information, the LSB should therefore undertake a special thematic review every two years after the publication of the final statement.

## **Do you have any comments regarding equality impact and issues which, in your view, may arise from our proposed statement of policy? Are there any wider equality issues and interventions that you want to make us aware of?**

We believe the LSB has highlighted the most important issues to consider under this impact assessment.

The Panel remains committed to this important area. Please contact Lola Bello, Consumer Panel Manager, ([Lola.Bello@legalservicesconsumerpanel.org.uk](mailto:Lola.Bello@legalservicesconsumerpanel.org.uk)) with any questions about this response.

Yours sincerely,



Sarah Chambers  
Chair, Legal Services Consumer Panel