



Draft statement of policy on empowering consumers

Response to LSB consultation

8 December 2021

Introduction

We are very supportive of the LSB's general approach to improving consumer empowerment in the market for legal services.

We appreciate that the LSB notes the differences in the professions that regulators cover by acknowledging that a rules-based approach may not be necessary where providers are less oriented toward individual and small business consumers. We urge the LSB to also acknowledge that there may be very different costs and benefits, and some unintended consequences, of implementing rules or guidance around price, service and quality in different parts of the legal services sector.

The vast majority of Costs Lawyers work upon instructions from solicitors or barristers chambers, rather than providing services to clients directly. There are some exceptions and we are actively looking at those Costs Lawyers who say they offer services directly to individuals or Litigants in Person. This work is ongoing, but it is possible that we might find that while in theory these services are available they are very rarely bought by individual consumers or small businesses. If we were to impose new regulation in the areas of price, service and quality the end result may be that these services are not promoted or even offered to individual consumers and small businesses at all, because the cost of implementing our regulation might outweigh the benefit of offering rarely bought services.

Q1. 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?

We agree with the general approach of expectations, outcomes and principles although not all of the policy statement is drafted in these terms and we suggest it could be improved by making sure that all of the drafting aligns with the stated approach. This applies in particular to the section in the draft policy statement around how information is made available to consumers, in paragraphs 23 and 24, and we set out our views in more detail in our answer to question 5.

Q2. Do you agree with the proposed principles to be adopted?

Yes.

Q3. Do you agree with the proposed expectation around public legal education?

We are very supportive of the ambition to improve public legal education, but we feel that to achieve real change a much broader approach is likely to be warranted, probably with a dedicated consumer education body taking the lead for the sector.

It may be useful, as an example of the scale of effort that might be required to make a real difference, to look at the initiatives that have run over many years aimed at improving financial capability (with a 10 year strategy for the future tailored to different age groups including education in schools). While individual regulators should be expected to support and contribute to a similar effort in legal services,

placing an obligation on front line regulators to improve public legal education in the absence of this whole-sector approach is likely to be insufficient and ineffective, and so may be a waste of regulatory resources.

Q4. Do you agree with the expectations set out in the statement of policy around minimum levels of information about price, service and quality?

We agree, subject to our overall comment about acknowledging that the costs and benefits may vary across different parts of the legal services market.

Q5. Do you agree with the expectations around making information available to consumers?

Paragraph 23 is very specific about the information that regulators should make available, and paragraph 24 states that this information will support the development of tools to help consumers engage effectively with the legal services market. In our view, it would be more effective to state the requirement of paragraph 23 in terms of an outcome or principle. For example, an obligation on regulators to support the provision (or emerging provision) of comparison tools might have several benefits, including that it could:

- oblige regulators to keep up with the development and demands of providers of comparison tools, and provide information that is not listed if there is a need and demand for it;
- avoid duplication (for example, if the Legal Ombudsman satisfied data needs the regulators would have no need to duplicate the provision of this information).

Paragraph 24 would benefit from more clarity about the vision for the development of these tools. We assume the aim here is distinct from the obligation in paragraph 15 to contribute to cross-sector initiatives such as Legal Choices.

If the aim of paragraph 24 is for regulators to support commercial comparison tools then stating that is the case would be helpful and the list of following activities could be better targeted. For example, it is unlikely to be appropriate for a sector specific regulator to promote commercial offerings to ensure that consumers are made aware of such tools (point a). Ensuring such tools are trustworthy is likely to be a more realistic aim than expecting regulators to embed trust among consumers (point b) although in the absence of accreditation schemes this may fall outside of the remit of most legal regulators. Point c is consistent with an aim that regulators support commercial comparison tools.

Q6. Do you agree with our proposed plan for implementation?

Paragraph 90 of the consultation paper acknowledges that it will take time for the regulators to implement changes in line with the policy statement; it states that the LSB would first expect regulators to undertake work to meet the specific expectations, and then continue work to pursue the outcomes and general expectations set out in the statement. Yet the policy statement will take effect immediately upon its adoption and paragraph 92 explains that the regulators' progress will be monitored through the relationship management process, meetings of the MTCOG and the regulatory performance framework.

We would welcome clarification of the timeframe envisaged for carrying out the required work, taking into account that most regulators' workplans are established around 18 months in advance (in order to apply for approval of practising fees for the following year).

Q7. 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?

In line with our earlier comments about costs and benefits in different parts of the legal services market, we do have a concern that some of the proposals might place a disproportionate burden on providers who operate as sole practitioners. We believe that the LSB should, in its equality impact assessment, take into account whether this may mean there is a disproportionate impact on groups with protected characteristics.

While the LSB has said that it considers DCTs can help smaller firms gain visibility and parity with larger firms, a fuller assessment to justify this finding would be welcome. We can envisage that it equally may be the case that DCTs focus on larger firms, and the revenue models of DCTs could heavily influence which providers are included. It may be the case that coverage of smaller firms and sole practitioners is not comparable to larger firms and the impact on parity is in fact adverse.

Q8. Do you have any comments on the potential impact of the draft statement of policy, including the likely costs and anticipated benefits?

The LSB has not set out the likely costs and benefits but has stated that individual regulators are best placed to assess and quantify these impacts. We suggest that the LSB should at least attempt a high level quantification of the costs and benefits of its policy statement, given that it must have had these in mind when developing the expectations to be placed on regulators.

In the absence of the LSB establishing the costs and benefits of the policy, and in line with our earlier comments, we feel that the LSB should acknowledge that if a regulator finds upon analysis that the costs are likely to outweigh the benefits for certain providers, or for certain market segments, that a regulator may validly decide to refrain from making an intervention or implementing any measures.

Q9. Do you have any further comments?

The LSB could consider adjusting paragraph 15 so that it places an obligation on regulators to contribute to cross-sector initiatives that have been demonstrated to be effective, or highly likely to be effective in the future, rather than any initiatives that are subject to mechanisms of review. We feel it would be unreasonable to oblige a regulator to make a meaningful contribution to a likely ineffective or unexamined cross-sector initiative.