

Increasing market transparency: how LSB will  
implement the recommendation directed to it in the  
Competition and Market Authority's market study

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**April 2017**

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## Executive Summary

1. On 13 January 2016 the Competition and Markets Authority (CMA) launched a market study into legal services to see if they are working well for individual consumers and small businesses.
2. The purpose of this document is to explain our response to the CMA's recommendation directed to us and, as the Board has agreed the recommendation, to describe how we will deliver it.

## Introduction

3. The CMA published the final report of its market study on 15 December 2016.<sup>1</sup> The report concluded that competition in the legal services sector for individual consumers and small businesses was not working well. The CMA's main concern was that a lack of information weakens the ability of consumers to drive competition through making informed purchasing decisions. It has suggested that consumers currently experience 'substantial detriment' and that its remedies could lead to significant long-term benefits for consumers, including improving access to legal services for less well-off consumers.
4. The CMA recommended to the frontline regulators that they develop action plans designed to help consumers by increasing transparency in the market. In addition, the CMA has made a specific recommendation to the LSB that it:
  - Monitors and engages with the frontline regulators on their progress in implementing the CMA's recommendations directed to them
  - Reports publicly, at appropriate intervals, on the sufficiency of action plans published by regulators individually and collectively and the progress in delivering those action plans
  - Takes appropriate action where regulators fail to address information gaps.

## Our independent consideration of the CMA's report

5. We have made an independent assessment of the proportionality of exercising the oversight role proposed for us in the CMA recommendation. We have made this assessment in the context of our regulatory objectives, the tools at our disposal, weighing up the value of activity by us in this area against our other priorities, and in light of our available resources.

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<sup>1</sup> <https://assets.publishing.service.gov.uk/media/5887374d40f0b6593700001a/legal-services-market-study-final-report.pdf>

6. Our assessment of proportionality has inevitably been qualitative, given the forward-looking nature of the proposed action and its potential impact on the market. We have considered the benefits from undertaking this work in terms of its potential impact on the regulatory objectives (see paragraph 8) and its contribution to increased consumer engagement and competition in the market, with scope for better services for consumers in terms of price, quality, variety and innovation. We have also considered the costs of the LSB undertaking this work, for us and for the frontline regulators who will be affected by our work.<sup>2</sup> We think these costs will not be excessive, given the early progress being made by the frontline regulators in response to the CMA's report, our intention ultimately to integrate this work into our pre-existing regulatory performance activity (see paragraph 29), our close liaison with the Remedies Programme Implementation Group in the interests of coordination and efficiency (see paragraph 16) and the flexibility for each regulator to respond based on its own assessment of what is proportionate in its part of the market (see paragraph 7). We therefore consider that it is proportionate for us to undertake this work.
7. We respect the autonomy of each of the frontline regulators to exercise independent judgement on the recommendations directed to them in light of the circumstances in their parts of the market. In particular, we note that while the CMA's focus was on individual and small business consumers, this is not the primary focus of regulation for some of the frontline regulators. Further, we appreciate the limited resources available to the smaller frontline regulators in particular, and the ongoing need for all frontline regulators to meet the minimum standards necessary for a legal services regulator.
8. Under the Act, both LSB and the frontline regulators have a duty to promote the regulatory objectives and must also have regard to "the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed".<sup>3</sup> We think LSB oversight of activities by frontline regulators which aim to increase market transparency would promote the regulatory objectives, in particular by:
  - **Improving access to justice** – a lack of transparency means some consumers either do not obtain legal services which they would benefit from, pay too much for the services they do get, or seek to resolve the issue themselves which may not be the best option
  - **Increasing competition in the provision of services in the legal sector** – greater transparency about price, service and quality, should

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<sup>2</sup> The costs for providers of legal services resulting from the frontline regulators work to implement the CMA recommendations are a matter for the frontline regulators to consider – see the following paragraph.

<sup>3</sup> Section 3 of the Act.

create stronger incentives for legal services providers to compete on offering value for money and to innovate

- **Promoting and protecting the interests of consumers** – greater transparency should help consumers to make more informed choices in the market and avoid unnecessary disputes with providers
- **Increasing public understanding of citizens’ legal rights and duties** – increased engagement should make it easier for people to identify when legal services could help them to tackle the issues they face.

9. The LSB agrees with the CMA’s analysis of the market, which is consistent with our previous policy work in this area and submissions we made to the CMA during the course of its market study.<sup>4</sup> The CMA’s evidence base also draws heavily on surveys and other data that we have published.<sup>5</sup> Specifically we agree with the CMA that the market cannot be expected to mend itself, rather regulatory intervention is required to sufficiently address the market failures that were identified. We also consider that the broad areas identified for action by the CMA are well-targeted.

10. On this basis, the LSB has decided to support the recommendation made to it by the CMA.

### **How we will deliver the CMA’s recommendation**

11. Delivery of the recommendation made by the CMA, which we have decided to support, requires an initial assessment by LSB of the sufficiency of action plans developed by the frontline regulators, both individually and collectively, as well as periodic assessments of the regulators’ progress at appropriate intervals. The remaining element of the recommendation is to take appropriate action if, in our view, the frontline regulators fail to make sufficient progress.

12. This document only covers the work we will undertake on the first two elements of the recommendation. Should it be necessary for us to take further action, we will do so with reference to our established processes and published enforcement policy.

13. In considering how we could best deliver this recommendation, we have been mindful of the desirability of adopting a flexible regulatory approach given the wide variety of regulatory environments and range of activities the frontline regulators may choose to pursue. Further, we are keen to support timely progress by the frontline regulators, some of whom are already consulting on proposals in this area. In this context, we recognise the CMA’s aspiration that

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<sup>4</sup> Available on our website [here](#).

<sup>5</sup> These surveys include studies on the prices of legal services for individual consumers, the legal needs of small businesses, the legal needs of individuals, and mapping of the unregulated market.

the frontline regulators should, individually and collectively, develop the action plans referred to in the recommendation directed to the LSB by 30 June 2017.

14. The approach we have chosen to deliver this work is summarised below, followed by an explanation of each element.

- We have identified four high-level outcomes relating to market transparency which we wish the frontline regulators to focus on (see the table in **Annex A**). These will act as the basis for our assessment of the sufficiency of action plans. The high-level outcomes deliberately mirror the four broad areas of action identified by the CMA, reflecting our agreement with the CMA's analysis. To help us assess progress in the four outcomes, we have also identified i) types of activities that could indicate frontline regulators are taking appropriate action; and ii) types of evidence of changes in the market we would expect to see appear in the medium to longer-term if interventions by the frontline regulators (and others) to increase market transparency are successful
- Given the early progress being made by the regulators, including through the Remedies Programme Implementation Group (see below), and their discussions with us, we expect the frontline regulators to publish action plans by 30 June 2017. It is important that they meet this deadline so that we can deliver our assessment of sufficiency promptly. We have provided a template action plan for the frontline regulators to use if they wish
- We will assess the sufficiency of the frontline regulators' action plans against the four high-level outcomes using a proportionate assessment mechanism. Over time we expect to assess the regulators' activities on market transparency as part of our established regulatory performance framework, but we will use a tailored process initially.

15. It is possible that regulators may wish to alter their regulatory arrangements in support of activities designed to achieve the high-level outcomes. We will consider any such rule change applications relating to market transparency in the usual way against the refusal criteria in Part 3, Schedule 4 to the Act.

16. In addition, we are a member of the Remedies Programme Implementation Group convened to support and assist cooperation between regulators to implement the CMA's recommendations relating to market transparency. Being a member of the Group will help us to discharge our oversight role more effectively, whilst also enabling us to contribute our expertise and perspective as oversight regulator to the Group's work.

### ***The high-level outcomes***

17. The four high-level outcomes we will focus on are:

- Action to deliver a step change in standards of transparency to help consumers (i) to understand the price and service they will receive, what redress is available and the regulatory status of their provider and (ii) to compare providers
- Promotion of the use of independent feedback platforms to help consumers to understand the quality of service offered by competing providers
- Facilitation of the development of a dynamic intermediary market through making data more accessible to comparison tools and other intermediaries
- Making better information available to assist consumers when they are identifying their legal needs and the types of legal services providers (both regulated and unregulated) who can help them.

18. As stated in paragraph 14 above, the high-level outcomes deliberately mirror the four broad areas of action identified by the CMA, reflecting our agreement with the CMA's analysis.<sup>6</sup> However, we have used alternative wording for the fourth high-level outcome to broaden its scope. While we support activity by the frontline regulators to enhance the existing Legal Choices website, the revised wording gives the frontline regulators flexibility to pursue alternative mechanisms towards helping consumers to identify their legal needs and understand the full range of providers who can help them. This might include, for example, engaging with existing websites, such as that operated by Citizens Advice, which also operate in this area.

19. In considering what activities they might undertake in pursuit of the outcomes, frontline regulators will need to take into account the clear distinction between regulatory and representative functions.<sup>7</sup> Our policy is that frontline regulators should set the minimum standards of behaviour required of providers. 'Accreditation schemes' – involving standards which go above these requirements – are an activity that lawfully rests with representative bodies or other actors, which are likely to develop if there is market demand for them. Therefore, frontline regulators should carefully observe the constraints set by the Act in relation to the development of quality marks and similar such arrangements, although they may take account of such schemes when carrying out regulatory activities.

20. The CMA has made a series of specific recommendations to the frontline regulators. These are reflected as 'indicative evidence of activities by frontline regulators' in the second column of the table in Annex A. We respect the

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<sup>6</sup> See pages 15-16 of the CMA's final report.

<sup>7</sup> Section 27 of the Act.

autonomy of each frontline regulator to exercise independent judgement about these in light of the circumstances in their parts of the market. They may reasonably decide that no action, or an alternative course of action, would be more appropriate given their regulatory contexts. Frontline regulators may also wish to limit any revised regulatory arrangements to certain types of providers. However, we would expect all regulators to explain their reasons for their decisions on what action to take, the scope of action and whether to take no action, and the process followed to make this decision, in each applicable high-level area.

21. Frontline regulators will also need to strike the right balance between outcomes-focused and more prescriptive approaches. While the LSB's default approach is to prefer outcomes-focused approaches, which is consistent with good regulatory practice<sup>8</sup>, a level of prescription may be required for sound regulatory reasons (e.g. to prevent gaming by providers) or to promote consistency of approach between providers both within and across different regulated communities. Again, this issue is most likely to be a consideration in relation to minimum disclosures by providers at the pre-engagement stage. Prescription should be balanced against the desire to promote innovation.
22. The CMA's report contains useful guidance about the matters frontline regulators might consider in designing their own regulatory arrangements. This includes the role of consumer testing, engagement with consumer and other organisations, avoiding problems of information overload and taking account of recognised behavioural biases on behalf of consumers and providers. The Legal Services Consumer Panel (LSCP) has recently provided the LSB with advice on information remedies<sup>9</sup> which the frontline regulators may also wish to consider. Depending on the circumstances frontline regulators may wish to trial measures or implement them in a phased way.
23. In relation to the two types of evidence of change listed in Annex A, there are many challenges relating to measuring the impact of regulatory interventions, including the difficulty of linking cause and effect and allowing sufficient time for measures to have their intended impact. Further, a wide range of actors, as well as factors beyond a regulator's control, can influence the extent or pace of change. However, while proxies may be imperfect or incomplete, it is important to start somewhere. Using a range of indicators can help us to see where outcomes for consumers are improving and where challenges remain.

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<sup>8</sup> See Cabinet Office, [Regulatory Futures Review](#), January 2017.

<sup>9</sup>

[http://legalservicesconsumerpanel.org.uk/publications/consultation\\_responses/documents/Information%20remedies%20Final.pdf](http://legalservicesconsumerpanel.org.uk/publications/consultation_responses/documents/Information%20remedies%20Final.pdf) .



### ***Publication of action plans***

24. The frontline regulators have agreed that it is feasible to work towards publication of action plans by the 30 June deadline stated in the CMA's market study report.<sup>10</sup>
25. We have provided a template action plan for the frontline regulators to use if they wish (see **Annex B**). Use of the template will help us assess the action plans more easily and will promote consistency and transparency in terms of the type of information included in action plans and how it is grouped together. The template has been designed to afford considerable scope for the regulators to tailor approaches. If the frontline regulators choose their own formats for their action plans, we will still need these to contain the sort of information indicated in the template so that we can adequately assess them.
26. As noted in paragraph 20, should some regulators decide not to pursue activities in relation to any of the four high-level outcomes, it is our expectation that they should nonetheless set out the reasons why they consider this would not be proportionate or necessary, and describe the process they followed to reach this decision. The action plan template can be used to do this.
27. The CMA recommendations include provision for the frontline regulators to develop collective action plans as part of a coordinated sector-wide response. A level of coordination and consistency of approach between the regulators is desirable, especially in those parts of the market where services overlap. This is most likely to apply in relation to minimum disclosures by providers, especially at the pre-engagement stage, where services may be offered by different types of provider (e.g. when consumers buying a house wish to compare services offered by solicitors and licensed conveyancers). We will consider coordination and consistency issues as part of our assessment of action plans produced by each regulator individually. We will also consider the sufficiency of any collective plans that are published by the regulators.

### ***Assessing action plans***

28. The regulatory performance framework is our established process for providing assurance about the performance of the frontline regulators across all their activities. We are currently reviewing this framework and expect to consult on proposals later in the year.
29. Over time we plan to integrate assessment of regulatory performance on market transparency in response to the CMA's report within our revised regulatory standards framework. However, we do not consider it would be

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<sup>10</sup> See paragraph 8 of the published minutes of the first meeting of the Remedies Programme Implementation Group.  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/596309/rpig-minutes-jan-2017.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/596309/rpig-minutes-jan-2017.pdf)

appropriate to use the current framework for this purpose initially. This is because the existing standards do not align well with the four high-level outcomes we are proposing to consider in relation to market transparency. Further, it could be confusing to assess the regulators against the existing standards at the same time as we are consulting on a revised framework.

30. In light of this we will adopt a tailored approach for our initial assessment of action plans and then migrate to our revised overall regulatory standards process at an appropriate point in future. We will use a simple approach where we will make a qualitative judgement of the sufficiency of action plans based on the published plans and discussions with each regulator. We do not plan to assign a grade or score to each regulator, as we do in our current regulatory standards process, but rather will indicate whether action plans are, in our view, either:

- **Sufficient** – the action plan is sufficient and/or limited areas of improvement could be made
- **Insufficient: limited areas of concern** – the action plan is insufficient as there are limited areas of concern which, in agreement with us, the regulator is working to address
- **Insufficient: significant areas of concern** – the action plan is insufficient as there are significant areas of concern which, after fully considering all circumstances, we will advise our chosen course of action.

31. Our assessment of action plans and subsequent progress will take account of each frontline regulator's size, risk profile and resources, and their views on what would be proportionate action on market transparency in light of the circumstances in their parts of the market.

32. We will take a high-level approach to assessing the sufficiency of action plans, which we see as a stepping stone to improved outcomes in the market, rather than an end in themselves. We will not be seeking to second-guess policy decisions made by individual regulators, but will instead focus on how decisions were arrived at and the reasoning and evidence used. Following this initial assessment our emphasis over the longer term will be on monitoring progress in the implementation of action plans.

33. We propose to publish our assessments after sharing these with the frontline regulators for prior consideration and comment, along with any progress updates in the intervals between assessments.

## **Timetable**

34. On the basis that action plans are published by 30 June, we expect to publish assessments of the sufficiency of action plans over the summer.
35. We will consider the timing of milestones relating to monitoring progress, once we have completed our assessment of the action plans.

## Annex A – High-level outcomes and indicators of change

High-level outcome	Indicative evidence of activities by frontline regulators	Indicative evidence of market change in medium to long-term
<p>Action to deliver a step change in standards of transparency to help consumers (i) to understand the price and service they will receive, what redress is available and the regulatory status of their provider and (ii) to compare providers</p>	<ul style="list-style-type: none"> <li>• Assessment of current situation and identification of workstreams</li> <li>• Action to improve the quality, utility and prominence of disclosures on providers' websites in relation to price, service, redress and regulatory status</li> <li>• Changes in regulatory arrangements to introduce minimum disclosures in relation to price, service, redress and regulatory status, supported by guidance on implementation</li> <li>• Changes in regulatory arrangements or guidance on client care letters</li> <li>• Development of 'badges' to denote regulatory status of providers</li> <li>• Supervision activity and action taken by regulators against providers who fail to comply with disclosure requirements</li> <li>• Coordination among regulators to promote consistency of approach where this would be desirable</li> <li>• Consumer research to assess impact of changes introduced</li> </ul>	<ul style="list-style-type: none"> <li>• Surveys indicate increased levels of shopping around</li> <li>• Surveys indicate consumers report finding it easier to shop around</li> <li>• Surveys indicate more consumers check the regulatory status of their provider</li> <li>• Surveys indicate more providers publish their prices online for key scenarios</li> <li>• Surveys indicate narrower price dispersion for key scenarios</li> <li>• Surveys indicate more small businesses view lawyers as cost-effective</li> <li>• Legal Ombudsman reports higher recall by complainants that their provider signposted them to its service</li> <li>• Legal Ombudsman records fewer complaints about transparency issues (as a proportion of caseload and/or total volume of complaints)</li> </ul>
<p>Promotion of the use of independent feedback platforms to help consumers to</p>	<ul style="list-style-type: none"> <li>• Assessment of current situation and identification of workstreams</li> </ul>	<ul style="list-style-type: none"> <li>• Surveys indicate increased use of feedback platforms by consumers</li> </ul>

<p>understand the quality of service offered by competing providers</p>	<ul style="list-style-type: none"> <li>• Guidance issued to providers on engaging with online feedback platforms</li> </ul>	
<p>Facilitation of the development of a dynamic intermediary market through making data more accessible to comparison tools and other intermediaries</p>	<ul style="list-style-type: none"> <li>• Assessment of current situation and identification of workstreams</li> <li>• Relevant information on entities and professionals identified and published</li> <li>• Relevant information above made freely available to consumers, digital comparison tools and other third party intermediaries under open data licence</li> <li>• Engagement with digital comparison tools and other third party intermediaries</li> </ul>	<ul style="list-style-type: none"> <li>• Surveys indicate increased use of digital comparison tools by consumers</li> </ul>
<p>Making better information available to assist consumers when they are identifying their legal needs and the types of legal services providers (both regulated and unregulated) who can help them.</p>	<ul style="list-style-type: none"> <li>• Assessment of current situation and identification of workstreams</li> <li>• Enhancements made to Legal Choices website in consultation with relevant consumer and small business groups</li> <li>• Engagement with Gov.uk and other websites/agencies operating in this area</li> <li>• Activity to promote Legal Choices from own websites/published materials, and by encouraging providers to make consumers aware of Legal Choices and/or through other channels</li> <li>• Work together as frontline regulators to explore the feasibility of a single digital register combining relevant regulatory and consumer focused information</li> <li>• Other public legal education and information activities consistent with performance of regulatory functions</li> </ul>	<ul style="list-style-type: none"> <li>• Surveys indicate reduced levels of unmet legal need due to factors related to lack of knowledge of rights/options</li> <li>• Surveys indicate reduced levels of 'no action' taken by individuals and small businesses who face a legal issue</li> <li>• Increased visitor traffic to Legal Choices</li> </ul>

## Annex B – Action plan template

### [Insert name of regulator]’s action plan to increase market transparency

LSB high-level outcome	Current and planned actions by the frontline regulator	Timings for each action with key milestones	Review date
<p>Action to deliver a step change in standards of transparency to help consumers (i) to understand the price and service they will receive, what redress is available and the regulatory status of their provider and (ii) to compare providers</p>	<p>Description of current and planned actions, including scope of action (i.e. types of provider/consumer/services affected)</p> <ul style="list-style-type: none"> <li>•</li> </ul> <p>If no action is planned, please i) give the reasons why taking action in relation to this outcome would not be proportionate or necessary; and ii) describe the process used to reach this decision</p> <ul style="list-style-type: none"> <li>•</li> </ul>		
<p>Promotion of the use of independent feedback platforms to help consumers to understand the quality of service offered by competing providers</p>	<p>Description of current and planned actions, including scope of action (i.e. types of provider/consumer/services affected)</p> <ul style="list-style-type: none"> <li>•</li> </ul> <p>If no action is planned, please i) give the reasons why taking action in relation to this outcome would not be proportionate or necessary; and ii) describe the process used to reach this decision</p> <ul style="list-style-type: none"> <li>•</li> </ul>		

<p>Facilitation of the development of a dynamic intermediary market through making data more accessible to comparison tools and other intermediaries</p>	<p>Description of current and planned actions, including scope of action (i.e. types of provider/consumer/services affected)</p> <ul style="list-style-type: none"> <li>•</li> </ul> <p>If no action is planned, please i) give the reasons why taking action in relation to this outcome would not be proportionate or necessary; and ii) describe the process used to reach this decision</p> <ul style="list-style-type: none"> <li>•</li> </ul>		
<p>Making better information available to assist consumers when they are identifying their legal needs and the types of legal services providers (both regulated and unregulated) who can help them.</p>	<p>Description of current and planned actions, including scope of action (i.e. types of provider/consumer/services affected)</p> <ul style="list-style-type: none"> <li>•</li> </ul> <p>If no action is planned, please i) give the reasons why taking action in relation to this outcome would not be proportionate or necessary; and ii) describe the process used to reach this decision</p> <ul style="list-style-type: none"> <li>•</li> </ul>		