

Meeting: Legal Services Board

Date: 7 June 2022

Item: Paper (22) 31

Title: Mapping unregulated legal services – policy implications

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Status: Official

Introduction

1. This paper outlines our work to-date to build a better understanding of the unregulated legal services sector. This includes:
 - research to map the size of the sector and its characteristics, as well as identify benefits and detriments to consumers using unregulated legal services; and
 - work to consider the breadth of our powers to enter voluntary regulatory arrangements under section 163 of the Legal Services Act 2007 (the Act)¹ to raise standards.

Recommendation(s)

2. The Board is invited to:
 - **note** the findings of the draft research report at Annex A;
 - **agree** the recommendation that the evidence obtained through our research does not necessitate a full review of the reserved legal activities at this time, however, we should explore whether other policy drivers and considerations warrant giving priority to a review in the future; and
 - **discuss** the proposed next steps, including considering the policy implications of the research and use of our section 163 powers.

Background

3. Our 2021/22 Business Plan² confirmed we would carry out work to build a better understanding of the unregulated sector, as discussed by the Board in

¹ <https://www.legislation.gov.uk/ukpga/2007/29/section/163>

² https://legalservicesboard.org.uk/wp-content/uploads/2021/03/Final-Business-Plan-2021-2022_FINAL-For-web2.pdf

December 2020.³ The intention was to ensure our knowledge is up to date and to inform our policy thinking, including any consideration as to whether changes to the scope of regulation are warranted in the future.

4. Our work in this area promotes the regulatory objectives; in particular, the objectives to improve access to justice, protect and promote the interests of consumers, and to promote competition in the provision of legal services. It is underpinned by the LSB's sector-wide strategy to reshape legal services⁴, which identified a challenge to close gaps in consumer protection to build stronger confidence in regulation.
5. The strategy set out that there was evidence of public confusion around the boundaries of regulation and concerns about the lack of redress available to consumers dissatisfied with the service provided by unregulated providers. It also highlighted that there was evidence that unregulated providers tend to be more innovative and cheaper than other firms, and regulation could potentially take away these benefits, so any changes should be carefully weighed. We confirmed our intention to consider the merits of undertaking a statutory review of the reserved legal activities in 2021-24, which could be timely to ensure regulation is targeted in areas where there is greatest risk of harm to consumers and the public interest.
6. Wider policy developments also support our work in this area, including the Ministry of Justice's consideration of the need for a mandatory public register for unregulated providers; the Solicitor Regulation Authority's work to understand the size of the unregulated sector; and the potential growth of unregulated providers due to the acceleration of technological innovations as a result of Covid-19. We also note that the Competition and Markets Authority recommended that there be consideration given to reforming the market to be more risk-based.⁵ On this basis, if we were to conduct a statutory review, it would be appropriate to consider whether there are any reserved activities that should be removed from the list to ensure regulation is targeted and aligned to risks to consumers and the public interest.

Research to map the unregulated sector

7. The draft *Mapping unregulated legal services* report can be found for information at Annex A and will be published soon. The primary scope of the research was legal services providers not subject to legal services or other statutory, mandatory regulation that offer for-profit unregulated legal services. Not-for-profit providers of these services were excluded.
8. The following are the key findings:
 - The unregulated legal services sector is large and diverse, covering family to intellectual property to employment issues that consumers face every day.

³ <https://www.legalservicesboard.org.uk/wp-content/uploads/2020/11/5.-Paper-20-57-Scope-of-Regulation.pdf>

⁴ https://legalservicesboard.org.uk/wp-content/uploads/2021/03/Strategy_FINAL-For-Web2.pdf

⁵ https://assets.publishing.service.gov.uk/media/5fd9e53cd3bf7f40ccb335e1/Legal_Services_Review_-_Final_report.pdfv

- Overall, the sector may account for up to 9% of the total market for individuals' legal needs and up to 39% for small businesses. In some areas such as will-writing the market share is likely to be much higher.
 - It is difficult to define the true boundaries of regulation, with some unregulated providers subject to statutory regulation for non-legal services and others voluntarily self-regulated through professional body membership.
 - Previous survey data (2018) shows that unregulated providers are 1.5 times more likely to have undertaken innovative activities than other providers and twice as likely to have successfully introduced new or improved services.⁶
 - Data from Trustpilot indicated that levels of satisfaction are high and similar for both regulated and unregulated providers. Our individual legal needs survey data however shows that those using unregulated providers were more likely to report dissatisfaction.
 - In complaints about unregulated providers to Citizens Advice, consumers cited higher than expected costs, unreasonable delays, and poor advice. Case studies provide evidence of consumer harm in some practice areas.
9. Our research manager will present the key findings of the report in a little more detail at the Board meeting itself.
10. To conduct this research, we engaged widely. This enabled us to gain insights from a range of sources along with access to an extensive database of Citizen's Advice case studies and data from Trustpilot to compare consumer feedback between regulated and unregulated providers.⁷

Policy implications and recommendation

11. While we note the difficulties in calculating the size of the sector with any precision, the research suggests that the unregulated market is sizable and has a significant market share in some practice areas. It indicates there is detriment in some areas; for example, we identified case studies indicating some poor advice and upsold or mis-sold services related to will-writing and trusts. It has also identified some benefits that unregulated providers can offer to the public, including potentially cheaper and more innovative legal services.
12. We consider that the evidence we have obtained does not provide us with a compelling case to justify pursuing a resource-intensive full statutory review of the reserved legal activities at this time. Other policy drivers, however, including those set out in Paragraph 6, indicate that further work in this space is appropriate.

⁶ We will be commissioning another technology and innovation in legal services survey in 2022.

⁷ We note that this report has not been externally peer reviewed. We also do not have a comprehensive picture of consumer detriment and benefit owing to the relatively small scale of our research.

13. As an immediate next step, we may wish to consider whether a targeted review is warranted to seek to reduce the risk of harm to consumers in a specific area where detriment is identified⁸. We propose to carry out work to explore this, keeping in mind the potential negative consequences regulation could have on access to justice, and noting the evidence that unregulated providers tend to be cheaper and more innovative. We also propose to further explore the government appetite for a full statutory review, including understanding the potential funding for and timing of a review of this nature.

Voluntary Arrangements

14. Alongside the research, we have also undertaken some work considering the powers the LSB has pursuant to s163 to enter into voluntary arrangements. The Act empowers the Board to enter into voluntary arrangements with any person to provide assistance for improving standards of service and promoting best practice in connection with any legal activity.
15. Examples of voluntary arrangements would be for the LSB to:
- accredit self-regulatory arrangements run by others/or publish a register of such accredited providers
 - facilitate voluntary arrangements for consumers to access alternative dispute resolution in the unregulated sector.
16. We have been considering the boundaries of the assistance the Board can provide and practical questions the LSB should consider when considering entering any such arrangement.
17. There is merit in further exploring the feasibility of pursuing voluntary arrangements. We propose to engage with other regulators (such as the Professional Standards Authority) to discuss their approaches to similar powers. We also propose to engage further with those in the unregulated sector to test whether there is appetite for the LSB to provide assistance in the development of voluntary arrangements funded by unregulated providers.

Next steps

18. Having completed the mapping research, we will now progress our policy work in relation to both a possible targeted review of the reserved legal activities and potential use of our s163 powers. We will return to the Board for approval of any significant proposals aligned with the next Business Planning cycle.

Risks and mitigations	
Financial:	The research was included in the Budget for 2021-22 and the Pay contingency budget contained a new item to enable us to employ a researcher for a fixed term of 6 months.

⁸ The [supplementary report](#) of Professor Stephen Mayson's Independent Review of Legal Services Regulation notes that the current approach to reserved legal activities is not risk based. The report recommends extending some form of regulation to currently unregulated providers.

Legal:	The legal team have been engaged throughout this process including the research project and access to data. Due consideration has also been given to the powers available under s163 of the Act.
Communications and engagement:	We engaged widely to obtain the information contained in the draft research report and will continue to engage as this work develops.
Equality and diversity:	A strong, diverse, and effective legal profession with competition and innovation in the provision of services is best placed to serve a diverse public. It will be important for any future work to take full account of any risk of adverse equality and diversity outcomes associated with changes to the scope of regulation.
Resource:	See Financial.

Annexes

Annex A – Scope of Regulation research report

Freedom of Information Act 2000 (Fol)		
Para ref	Fol exemption and summary	Expires
Annex A	Exemption s22 Information intended for future publication	30 June 2022