LEGAL SERVICES BOARD

Legal services market study: reserved activities

LSB supplementary submission to the Competition and Market Authority's Interim Findings Report

September 2016

Contents

Summary

1. The reserved activities are a fundamental pillar of the regulatory framework. However, we consider that the reserved activities as currently formulated have a deleterious effect on competition. In particular:
   - they are not based on any recent assessment of risk to consumers and the public interest meaning there may be too much regulation in some areas and too little in other areas
   - definitional issues create confusion for consumers and uncertainty for providers, which may impact upon market entry
   - the interaction of reserved activities and other aspects of the legislative framework, including award of professional titles, the scope of legal professional privilege and the complex framework of multiple regulators, is also problematic.

2. There is some scope to address these issues through the current framework and some positive progress has already been made and is continuing. The LSB also has both specific responsibilities and opportunities here, in particular by making recommendations to the Lord Chancellor to amend the list of reserved activities. However, the effect of Act is that the list of reserved legal activities can only be amended in a piecemeal way, and would be for Government to develop a more holistic approach which it then delivered with primary legislation. Current reforms being led by the approved regulators are creating a more flexible regulatory system, but these do not alter the reserved activities. Competition will continue to be distorted as long as the list of reserved activities is not founded on a risk-based consumer and public interest rationale for regulation.

3. Our evidence is that unregulated providers have so far gained little market share. Further, in the regulated sector, licensed conveyancers have made limited inroads into the conveyancing market when it is considered that this market was liberalised thirty years ago. While quite large numbers of solicitors have taken opportunities to obtain rights of audience, as yet few barristers have obtained rights to conduct litigation. Looking across the market as a whole, overall our impression is that regulated providers have not taken opportunity of the new freedoms afforded to them as a result of approved regulators widening the scope of the activities they regulate. This is indicative of the slow pace of change in the market more generally, as evidenced in our recent Market Evaluation Report[1].

4. We have published a vision for legislative reform of the regulatory framework for legal services in England and Wales[2]. We wish to see an independent review to determine where regulation is necessary on the grounds of risk to an overarching regulatory objective of safeguarding the public interest by protecting consumers and ensuring the delivery of outcomes in the interests of society as a whole.

[1] LSB, Evaluation: Changes in the legal services market 2006/07-2014/15 – Main report, July 2016.
[2] LSB, A vision for legislative reform of the regulatory framework for legal services in England and Wales, September 2016.

About the supplementary submission

5. In July 2016 the CMA published an Interim Findings Report for its legal services market study[3]. In parallel, it is (amongst other things) conducting further work in relation to the scope of the reserved activities. The CMA has said that the purpose of this work is to build on the initial findings (as set out in paragraphs 6.11 to 6.16 of the Interim Findings Report) and to understand what framework could usefully be applied by policymakers in order to assess, in advance, the impact of any possible regulatory changes (such as changes to the reserved activities).

6. In connection with this work, on 15 August the CMA asked for our views on a series of questions designed to explore issues surrounding the present scope of the reserved activities.

7. On 12 September, we published a vision for legislative reform of the regulatory framework for legal services in England and Wales (the legislative reform paper)[4]. This supplementary submission on the reserved activities from the LSB should be read alongside the legislative reform paper.

Opening comments

8. Our submission to the CMA in response to its Interim Findings Report[5] welcomed the CMA's diagnosis of the issues. It also emphasised that well-designed transparency measures should be progressed in tandem with regulatory reform (both short and long-term), given the other features of the legal services market, in addition to lack of transparency, that appear to be limiting competition. In this context, the CMA's interim finding that '*there may be merit in conducting a systematic review of which legal services or activities should be regulated and how*' was very welcome. We are pleased to contribute our views and evidence to support the CMA's further work on the reserved activities at this stage.

9. The reserved activities are a 'fundamental pillar'[6] of the regulatory framework and thus play a key role in shaping the structure of the market. This is because:
   - only authorised persons may carry out reserved activities (subject to the exempt persons regime in Schedule 5 to the Act)
   - only approved regulators can authorise providers to carry out reserved legal activities
   - licences to form alternative business structures (ABS) can only be granted to providers that are entitled to offer one or more of the reserved activities[7]

[3] CMA, Legal Services Market Study: Interim Report, July 2016.
[4] LSB, A vision for legislative reform of the regulatory framework for legal services in England and Wales, September 2016.
[5] LSB, Legal services market study: interim findings. LSB submission to the Competition and Market Authority's Interim Findings Report, 19 August 2016.
[6] See Professor Stephen Mayson and Dr Olivia Marley, The regulation of legal services: reserved legal activities – history and rationale, Legal Services Institute, 2010.
[7] The Act permits authorisation on the basis of entitlement to offer reserved legal activities, rather than to entities which intend to, or actually, offer these services. Following a recent rule change the SRA

- the reserved activities interact with other elements of the legal framework, in particular the award of title, legal professional privilege and the complex framework of multiple regulators.

10. The Legal Services Act 2007 ('The Act') carried across the structure and scope of the reserved activities that preceded it. Since research has shown that the reserved activities are largely an 'accident of history' or the result of political bargaining the proper scope of regulated activities has not recently been considered in the round and on the basis of the evidence of risk. The Act gives the LSB both specific responsibilities and opportunities to improve the present framework, in particular by recommending to the Lord Chancellor that the list of reserved activities should be amended (either by adding or removing activities)[8]. However, the effect of Act is that the list of reserved legal activities can only be amended in a piecemeal way, and would be for Government to develop a more holistic approach which it then delivered with primary legislation.

11. Before addressing the CMA's specific questions, it may be helpful to set out in one place what we see as the key problems with the existing reserved activities:
    - they are not the result of any recent, evidence-based assessment of the benefits or risks created by those activities. Rather, as noted above, they were largely an 'accident of history' or the outcome of political bargaining. This has an adverse effect on competition and the public interest as there may be too much regulation in some areas (leading to 'gold-plated' protections and quality, and higher prices, for lower risk services) and gaps in regulation in other areas (leading to lower quality and/or greater risk of consumer harm).
    - the definition of the reserved activities is sometimes very narrow[9], leaves scope for interpretation[10] or is not very meaningful[11]. This causes confusion for consumers and uncertainty for providers. If the boundaries of regulation are unclear this could deter market entry, especially as it is a criminal offence to conduct reserved activities unless authorised under the Act
    - the ability to provide consumers with the benefit of professional privilege – this attaches to the titles of solicitor and barrister and under Section 190 of the Act to authorised persons when undertaking certain legal services[12]. This arrangement provides competitive benefits to regulated providers

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now licenses those entitled to carry on reserved work, whereas previously licenses were only granted to entities offering one or more of the reserved activities.

[8] Section 24 of the Act gives the LSB the duty to consider whether new legal activities should become reserved and section 26 gives an analogous duty to remove reservation where it is found to be unnecessary. The detailed process for both is specified in Schedule 6 to the Act.

[9] For example, probate activities are narrowly defined as 'preparing any probate papers for the purposes of the law of England and Wales or in relation to any proceedings in England and Wales'.

[10] Issues with the definition of litigation were raised in LSCP's report on fee-charging McKenzie Friends and the LSB and Bar Standards Board's joint research on public access barristers.

[11] Notarial activities are not defined in terms of specific activities, but rather as 'any activities which, immediately before the appointed day, were customarily carried on by virtue of enrolment as a notary in accordance with Section 1 of the Public Notaries Act 1801 (c.79)'.

[12] Advocacy, litigation, probate and conveyancing services.

- separate regulatory regimes for claims management companies and immigration advisers in effect create a further tier of reserved activities[13].

12. The interaction of the current reserved activities, with their origins in part in the traditional boundaries between professional groups, alongside nine different approved regulators has additional adverse effects on competition. For example, none of the approved regulators currently authorise all the reserved activities, which means that individuals who wish to practise all the activities have to be regulated by more than one organisation. Extensions to the regulatory scope of the approved regulators are addressing this issue, but have not done so fully. Further, since the approved regulators operate different regulatory arrangements the level of consumer protection (and associated burdens on providers) attached to the reserved activities may vary significantly depending on the type of provider delivering the service. This creates a confusing picture for consumers and an unlevel playing field for providers.

13. The interaction of the Legal Services Act with other legislation also complicates matters. For instance, while the Legal Services Act focuses on the reserved activities, s31 of the Solicitors Act 1974 gives the SRA the power to regulate 'in *respect of any matter* the professional practice, conduct and discipline of solicitors'. This contributes to the current blanket approach that once a provider is authorised for one or more of the reserved activities, all non-reserved legal activities of that provider are then also regulated as a consequence. Our work on section 15(4) of the Legal Services Act found existing regulatory arrangements were in some cases more restrictive than anticipated by section 15(4)[14].

14. There is further scope within the Act to address these issues. For example, the Solicitors Regulation Authority (SRA) has reformed the Separate Business Rule and is currently consulting on removing the existing restrictions on most solicitors, so that they can deliver non-reserved legal services to the public through an unregulated legal services provider and still use the title solicitor[15]. It is now also possible for providers to be authorised by the SRA without having to carry out any reserved activities. Crucially, however, these reforms would not, of course, alter the list of reserved activities. Competition will continue to be distorted as long as the list of reserved activities is not founded on a risk-based consumer and public interest rationale for regulation.

[13] Claims management regulation is currently operated through the Ministry of Justice but is expected to transfer to the Financial Conduct Authority. Immigration advisers are regulated by the Office of the Immigration Services Commissioner (a Home Office agency).
[14] LSB, Statement of policy on section 15(4) of the Legal Services Act 2007: regulatory arrangements for in-house lawyers, February 2016.
[15] See http://www.sra.org.uk/sra/consultations/code-conduct-consultation.page

The CMA's specific questions on the reserved activities

Question 1: On the basis of your knowledge and experience, to what extent are providers able to work around reserved activities? For instance:

a. ***How common are business models where a provider undertakes the non-reserved aspects of the service and then outsources the reserved activity to the authorised person/entity?***

b. ***How common are business models where a provider undertakes the non-reserved aspects of the service and then has the client undertake the reserved activity on their own behalf?***

c. ***Are you aware of any other techniques for circumventing the current reserved activities?***

15. The LSB oversees the approved regulators and does not directly regulate providers of legal services, so other organisations will have direct experience of current market practices.

16. In relation to **scenario (a)** our research into unregulated providers[16] found some evidence of this happening but it does not appear to be widespread. Research[17] conducted to support our 2011 statutory investigation into will-writing, probate and estate administration found that only a minority of non-solicitor organisations conducted their full probate and/ or estate administration services in house without outsourcing any element to a third party. The most common task to be outsourced was the application for grants of representation and probate. Roughly two-fifths of organisations had no involvement in the preparation of grants of representation or grants of probate (and other associated legal documentation that forms part of the probate process). These organisations tended not to employ any trained solicitors and used the services of a third party firm of solicitors for delivering this aspect of probate and/ or estate administration.

17. In other areas, unregulated providers sometimes offer a "lawyer managed" or "solicitor managed" package where they will outsource certain elements of service provision to authorised persons. This is particularly prominent in relation to divorce, which is the area where unregulated providers have the highest market share. However, this is often not related to the need to undertake reserved work and appears to be more about offering an additional service for those who have more complex issues or want the security of using a solicitor.

18. In relation to **scenario (b)** our joint research with the Law Society on individual legal needs suggests that 18% of legal needs where advice is provided involves unbundling of some form[18]. The LSCP's annual tracker survey has produced

[16] See our website for further details.
[17] IFF Research, Probate and estate management services: research report, prepared for LSB, 2011.
[18] Unbundling is where a package of legal services is separated into parts and the work shared between the consumer and lawyer. Ipsos MORI, Online survey of individuals' handling of legal issues in England and Wales 2015, Prepared for LSB and Law Society, May 2016.

similar findings[19]. However, we are not able to quantify how often unregulated providers rely on consumers to undertake the reserved element of the work. Specifically, our research has identified the following types of practices:

- online divorce is an area where unregulated providers have gained market share[20]. Filing for divorce is within the definition of "conducting litigation", which is one of the reserved legal activities. Online providers do not fall foul of this because they will prepare the material for their client to then file for divorce themselves. The definition of conducting litigation is very narrow and therefore unregulated providers can assist with almost all of the process with the exception of formally submitting material to the court
- our mapping report into unregulated providers[21] identified a trend in the provision of DIY templates and documents that provide assistance and guidance to clients with legal problems. In some instances, this could include activities that are reserved. An example of this is DIY conveyancing where a client would gain assistance with the process but undertake the aspects which are reserved instrument activities themselves. We do not believe that DIY conveyancing is very widespread, however
- regulated providers are also engaged in this sort of work. For example, barristers undertaking work under the Public Access Scheme[22] are mostly not authorised to conduct litigation and will therefore not be able to file papers with the court, relying instead on the client to do this. They can assist with preparing the papers and then with representing their client in court but not the step of filing any papers with the court.

19. In relation to **scenario (c)** circumvention can work in the opposite direction as firms do a minimal amount of reserved work each year in order to maintain their license and therefore the benefits of being regulated. The SRA has amended its authorisation rules so as to no longer require firms to carry out the reserved legal activities they are authorised for in order to maintain authorisation[23].

Question 2: In what way do the business models outlined above affect competition between different types of providers in the legal services sector? How successful are the business models outlined above when competing with providers who can directly undertake the required reserved activity? Do these business models possess any particular competitive advantages or disadvantages in comparison to other providers?

20. The reserved activities confer an exclusive right on authorised persons to provide certain types of legal activities, which is a barrier to entry (because time and money must be spent to become and remain authorised) and can therefore act to

[19] See the LSCP's latest briefing note on the 2016 run of the survey.
[20] Economic Insight, Unregulated legal services providers: Understanding supply-side characteristics, prepared for the LSB, April 2016.
[21] LSB, Mapping of for profit unregulated legal services providers, June 2016.
[22] See our joint research with the Bar Standards Board.
[23] See the SRA's rule change application to the LSB made on 16 September 2015..

limit competition in these areas[24]. The granting of exclusive rights to be entitled to offer certain legal services may, of course, be justified on consumer protection and public interest grounds. However, as stated above, the current list of reserved activities is not the result of a recent evidence-based assessment of risk, so it is not clear whether regulation is being targeted in the right areas.

21. While there are only six reserved activities, some of these are in very common areas of legal need (eg conveyancing, probate) or are types of work that may cut across all legal needs (eg litigation, advocacy). Although some of these activities are narrowly defined, we can see that consumer preference for bundled services would (amongst other reasons) make it difficult for unregulated providers to gain market share by only offering the non-reserved part of the service. Also, it is inefficient and disproportionate that unregulated providers should have to 'navigate their way around' the reserved activities if regulation is not justified in these circumstances. Equally, it would be a concern if legislators intended that the entirety of these services should be regulated and the market has exploited loopholes in the Act.

22. Further, the current model raises consumer protection issues of transparency (consumers may not realise who does what and if regulation bites) and quality of service. Our investigation into the will-writing, probate and estate administration markets found that the narrow scope of the existing probate reservation was resulting in fragmentation of service, which in turn caused increased delays and cost[25]. Where providers can avoid regulation by setting up businesses to carry out the unregulated work and then sub-contract the reserved element, the Legal Ombudsman has previously said it may be unable to provide redress to consumers because the poor service occurred outside of its jurisdiction[26].

23. Our research indicates that the for-profit unregulated sector has a small market share overall, although it has made inroads in some limited market segments[27]. This is not hard to understand when the scope of the reserved activities is viewed alongside (i) the strong brand power of the solicitor and barrister titles that has built up over centuries based in part on enjoying exclusive access to reserved work and (ii) consumer reliance on recommendations and previous experience in choosing a provider which gives existing providers an incumbency advantage. Greater consumer awareness of the full range of providers may help new types of business models to compete more successfully with established providers. However, as the Interim Findings Report acknowledges, the emphasis on titles may contribute to this lack of awareness (paragraph 6.22). We would also put a greater emphasis than the CMA does on the role of trust in selection of provider.

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[24] Despite there being a large number of individuals and entities who are authorised to undertake the reserved activities, we have explained in our submission in response to the CMA's interim findings why this does not necessarily drive competition amongst providers to the extent it might be expected to.

[25] LSB, Executive working paper: Investigations into regulation of will-writing, estate administration, probate, December 2012.

[26] OLC, Annual Report 2011.

[27] In our individual legal needs survey, overall for-profit unregulated providers represented 4.5-5.5% of cases in which consumers paid for advice or representation. Please see our website for a range of data and reports on the unregulated sector.

Research has highlighted issues around trust in unregulated will-writers[28] and that consumers are more risk-averse in legal services than in other markets[29]. Therefore should awareness of options grow, we consider the default position of the large majority of consumers is likely to be prefer to use regulated providers.

Question 3: What has been the effect of previous regulatory reforms that have added to the types of providers that can undertake certain reserved activities in certain instances? For example:

a. The entry of ICAEW-regulated firms and practitioners who may undertake probate activities

b. The entry of CLC-licensed probate practitioners who may undertake probate activities

c. The entry of CLC-licensed conveyancers in the property sector

d. The ability of solicitor advocates to provide advocacy services in the higher courts

e. The ability of non-employed barristers to conduct litigation

How have these (and any other relevant) reforms affected competition, consumer protection and public interest considerations in legal areas relevant to these activities?

24. It is too early definitively to assess the impact on the market of entry by ICAEW-regulated firms or CLC-licensed probate practitioners as these are both recent changes. Early evidence suggests quite strong take up of these opportunities by ICAEW-regulated firms but small take up by CLC-licensed firms so far. This may reflect that ICAEW-regulated firms were already more active in the wider estate administration market but previously had to sub-contract the reserved probate work to solicitors.

25. The impact of entry by licensed conveyancers is more informative because the market was liberalised thirty years ago. Overall we consider the level of market share gained by licensed conveyancers is modest given the time elapsed since these reforms. Data[30] suggests that licensed conveyancers represent less than 4% of all regulated entities who provide conveyancing services and have 5% of the overall conveyancing market. Our prices research[31] provides some indication that licensed conveyancers are cheaper than solicitors. This picture

[28] Our will-writing research, prepared by IFF Research, highlighted issues around trust of unregulated providers, e.g. one-third of respondents who considered but decided against using a will-writing firm cited concerns over their reliability. A further fifth (19%) were unsure as to how qualified they were to write wills and 15% had doubts whether their wills would be legally binding.
[29] Vanilla Research, Risk and the role of regulation, prepared for LSCP, January 2013.
[30] LSB, Evaluation: Changes in the legal services market 2006/07-2014/15 – Main report, July 2016.
[31] Note these findings are not statistically significant. OMB, Prices of Individual Consumer Legal Services: Research Report, prepared for LSB, April 2016.

demonstrates the strong brand power of the solicitor title in shaping consumer choice even where regulated alternatives are available which have protected titles and which have had a long time to establish awareness of an alternative brand.

26. The Jeffrey Review[32] provides the most recent analysis of the advocacy market. This notes a 'marked shift in the distribution of defence advocacy work in the Crown Court between the two sides of the profession. In further detail:

> "*In brief summary, there has been substantial growth in the number and scale of in-house advocacy departments within solicitors' firms, beyond anything experienced in the years immediately after the liberalisation of rights of audience, employing solicitor advocates and in some cases employed barristers. Of around 11,000 solicitors providing criminal advocacy services, the number of solicitor advocates with higher court rights in crime was 4,815 in February 2014, of whom 3,284 worked exclusively in crime. This compares with 1,303 and 913 respectively in 2003[8]. The number of self-employed barristers may have fallen, but not by nearly as much as the increase in solicitor advocates*."

27. Our response[33] to the Jeffrey Review suggested that the vertically integrated nature of solicitor firms gives them some competitive advantages over other groups in responding to the changing market. These firms have their own clients and/or will obtain clients through the duty solicitor schemes operated by the Legal Aid Agency. The vast majority of legal aid contracts are with solicitors. These contracts anticipate one firm dealing with a case from start to finish. Firms will decide whether or not to outsource advocacy to a barrister (or another firm of solicitors) of their choice. However, we also noted there is nothing in statute or regulation that disallows barristers from directly competing with solicitors for clients. We pointed out reforms by the Bar Standards Board (BSB), including in relation to the public access scheme, litigation and introduction of entity regulation, which should help barristers to compete. We suggested the policy response should be to provide greater freedom for barristers to adapt their business model and compete with solicitor firms for work on a level playing field, rather than to protect one particular business model artificially.

28. Although it is early days, we understand that few self-employed barristers have so far taken advantage of the lifting of restrictions to conduct litigation. Our joint research with the BSB on public access barristers[34] indicated a low level of interest amongst barristers in providing litigation services. The researchers concluded this was a key barrier to the growth of public access especially where the consumer is not able to fill the role normally performed by solicitors. Most of the public access barristers interviewed for the research were unwilling to apply for authorisation to conduct litigation, saying that this is the role of the solicitor, and not something they would wish to do. In our view, this is a further example of

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[32] Independent criminal advocacy in England and Wales. A review by Sir Bill Jeffrey, May 2014.
[33] Review of the profession of independent criminal advocacy – LSB submission, December 2013.
[34] Pye Tait Consulting, Research into the public access scheme, Prepared for LSB and BSB, 2016.

strong professional identities and cultural norms (in this case about the 'proper' role of the barrister) muting competition.

29. Looking across the market as a whole, overall our impression is that regulated providers have not taken a great deal of opportunity of the new freedoms afforded to them as a result of approved regulators widening their scope of regulation. This is indicative of the slow pace of change in the market more generally, as evidenced in our recent Market Evaluation Report[35].

Question 4: How do the current reserved activities affect:

a. The quality of service provided to consumers by authorised persons?

b. The price of services provided to consumers by authorised persons?

30. The current approach by some of the key legal services regulators is that, once a provider is authorised for one or more of the reserved activities, all non-reserved legal activities of that provider are then also regulated as a consequence. This may be viewed, at least in part, as a response to the fixed list of reserved activities that is not risk-based, but also as consequences resulting from other statutes[36]. This may have benefits, in that consumers are given greater protection than the law requires. But the extension of regulation in this way is not necessarily targeted or proportionate to risks to consumers or the public interest. It may result in 'gold-plated' protections and quality guarantees for lower risk services. These services will cost more to provide than they need to and these increased costs will be likely to be passed on, at least in part, in higher prices for consumers, thereby also contributing to unmet need[37]. For example, research[38] carried out on behalf of the LSB found that unregulated providers offered lower prices, on average, than regulated providers for wills and divorce, although this did not explore the impact of service differentiation on price.

31. While attempts could be made to address the specific problem identified above (ie the blanket regulation of everything an authorised person does) without changing the current list of reserved activities[39], this would not address the fundamental problem that the current list of reserved activities is not risk based. On a proper assessment of risks to consumers and the public interest, some activities may not need to be reserved, and others may need to be. Therefore, even if the issue of blanket regulation of the activities of authorised persons is

[35] LSB, Evaluation: Changes in the legal services market 2006/07-2014/15 – Main report, July 2016.
[36] See our comments on section 31 of the Solicitors Act in paragraph 13.
[37] Research demonstrates that a high proportion of consumers with a legal problem do not seek legal advice. For example, a large scale consumer survey jointly commissioned by the LSB and the Law Society in 2015 identified that 64% of consumers with a legal problem do not seek independent assistance in dealing with it.
[38] According to this research, the price difference could be of the order of £50 for a simple will, and hundreds of pounds for an uncontested divorce.
[39] For example, by increasing transparency of prices to encourage consumers to 'shop around' and by ensuring that regulation is reformed so that it focuses on the reserved activity. Some examples of the latter are set out earlier in this document.

addressed, the current list of reserved activities has the potential to make the prices of some services higher than they should be (or the quality lower).

Question 5: What harms or risks to clients do the current reserved activities protect against? For instance, how do the reserved activities safeguard (i) consumer protection or (ii) the wider public interest? As presently defined, are the reserved activities effective in safeguarding these concerns?

32. In our view, the public interest in legal services encompasses both consumer protection[40] and the delivery of outcomes in the interests of society as a whole (in particular, the rule of law, access to justice and the effective and efficient administration of justice).

33. The current reserved activities (and the before-, during- and after-the-event regulatory interventions applied to them) have grown up organically. While the current regulatory framework undoubtedly does protect consumers and serve the wider public interest, we consider that there is considerable scope to achieve these objectives in a more targeted, proportionate and effective manner which would in turn increase competition and contribute to addressing unmet demand for legal services. In particular, we do not consider the current reserved activities are as effective as they could be in safeguarding consumer protection or the wider public interest because they are not the result of a recent, evidence-based risk assessment (see our opening comments above).

Question 6: In your view, should the reserved activities be reformed and, if so, in what way(s) could they be changed? Please note how your suggested reform might affect:

a. Competition in the legal services market

b. Consumer protection concerns

c. Public interest considerations

34. Yes. Our document setting out a vision for legislative reform[41] calls for an independent and evidence based review to determine from first principles which activities should attract sector-specific regulation in future. The review should start from the presumption that sector-specific regulation is only required on the grounds of sector-specific risk to the public interest (as defined in our response to Q5 above).

35. As well as ensuring that regulation is targeted to a greater extent on risks to consumer protection and the public interest more broadly, this approach will

[40] There are specific risks to consumer protection in legal services: the inherent information and power imbalance between consumers and providers and the risk of significant and irreversible harm or loss to consumers (eg asylum advice).
[41] LSB, A vision for legislative reform of the regulatory framework for legal services in England and Wales, September 2016..

result in activity becoming the main foundation on which regulatory requirements are built. This should increase competition because regulation should not then have to be linked to title, nor will the reserved activities have their origins in the traditional boundaries between professional groups, both of which should help reduce the cultural barriers to competition identified in the LSB's response to the CMA's interim findings[42].

Criteria for assessing the impact of possible regulatory changes

36. We note the proposed high level criteria for assessing the impact of possible regulatory changes in the Interim Findings Report (Table 1, page 101).

37. It would be helpful to understand whether the CMA is suggesting these could usefully inform assessment of individual changes to regulatory arrangements, structural reform to the regulatory framework, or both. Similarly, it would be helpful to know how the criteria would interact with the Act's regulatory objectives and the better regulation principles, both of which the approved regulators and the LSB must have regard to in carrying out their functions.

38. Further, we have a statutory role under the Act where an approved regulator wishes to make alterations to its regulatory arrangements. In accordance with paragraph 25(3) of Schedule 4 to the Act, we may only refuse such applications on limited grounds. In addition, the LSB does not "call in rules" for review or amendment. Our powers under Schedule 4, Part 3 of the Act only allow us to assess regulatory arrangements following a regulator's application for approval. If it is necessary to use our enforcement powers to direct a regulator to change its rules, this is a lengthy process following the statutory procedures laid out in the Act.

[42] LSB, A vision for legislative reform of the regulatory framework for legal services in England and Wales, September 2016.