**Meeting:** Legal Services Board

**Date:** 18 October 2022

**Item:** Paper (22) 54

**Title:** Mapping unregulated legal services – further actions

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**Status:** Official

## Introduction

1. This paper outlines proposed next steps following detailed analysis of the findings from our *Mapping the unregulated sector* research published in June 2022, including our plans to undertake a first-principles analysis of the existing reserved legal activities in the Legal Services Act 2007 (the Act).

## Recommendation(s)

2. The Board is invited to:

    a. **note** the lack of evidence from our research that there is the scale of consumer detriment that would warrant immediate changes to the reserved legal activities in the Act;

    b. **note** that further research into unregulated legal services has been commissioned by the SRA and we are planning our next wave of the Individual Legal Needs Survey, which will contribute to the evidence base;

    c. **agree** that the LSB now proceeds to undertake a first-principles analysis of the existing reserved legal activities in the Act to understand whether they are sufficiently aligned with risks in the legal services market;

    d. **agree** that this further work is undertaken to inform any future Board decision to propose, and seek funding, to carry out a comprehensive review of the reserved legal activities i.e. considering the case for adding or removing activities on the basis of risk.

## Background

3. At its meeting on 7 June 2022 the Board reviewed a paper setting out key findings from the research undertaken to map the unregulated legal services sector, including our efforts to identify benefits and detriments to consumers using unregulated legal services.[1]

4. The Board requested the Executive undertake further analysis of the findings and return to the Board with a tested hypothesis and recommendations to align with the LSB's business planning cycle for 2023/24.

5. Further background to this work is set out below:

    a. 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.

    b. It is underpinned by the LSB's sector-wide strategy to reshape legal services[2], which identified a challenge to close gaps in consumer protection to build stronger confidence in regulation. Our strategy 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. This referenced the CMA recommendation that a review of reserved legal activities was necessary.[3]

    c. To support this consideration, our 2021/22 Business Plan[4] confirmed we would carry out work to build a better understanding of the unregulated sector to ensure our knowledge is up to date and to inform our policy thinking; as a result, we commissioned the *Mapping the unregulated sector* work.

    d. We also sought stakeholders' views on whether a review should be considered in our 2022/23 Business Plan consultation. In our consultation response we set out that, while there was some support for a review, it would be a significant resource undertaking (see Annex A) and that given our current policy commitments and wider developments in the market, it was appropriate to focus our immediate resources on where we can have the most impact.

## Policy lens

6. Board will recall that we initially presented the key findings to the Board in June 2022 with a recommendation that a comprehensive review of the reserved legal activities was unwarranted, because its likely policy traction (or lack thereof) was outweighed by the scale and opportunity cost of the exercise. While Board

[1] https://legalservicesboard.org.uk/07-paper-22-31-mapping-unregulated-legal-services-policy-implications
[2] https://legalservicesboard.org.uk/wp-content/uploads/2021/03/Strategy_FINAL-For-Web2.pdf
[3] https://assets.publishing.service.gov.uk/media/5fd9e53cd3bf7f40ccb335e1/Legal_Services_Review_-_Final_report.pdf
[4] https://legalservicesboard.org.uk/wp-content/uploads/2021/03/Final-Business-Plan-2021-2022_FINAL-For-web2.pdf

accepted that argument, it invited the Executive to apply a policy lens to the matter.

7. We have therefore further analysed the data in the *Mapping the unregulated sector* report against the policy question of actual or potential consumer detriment, which we considered would provide the clearest policy imperative.

**Evidence of consumer detriment**

8. The report sets out that consumers of unregulated services do not typically[5] enjoy the benefits associated with using regulated legal services such as access to redress schemes, mandatory professional indemnity insurance (PII), access to compensation funds and access to authorised persons who must meet minimum initial and ongoing training requirements. These benefits are all built into the system of regulation and their absence increases the potential for consumer detriment in the unregulated legal services market.

9. Our desk research identified the following general features that might indicate benefits and detriments associated with unregulated providers generally:

| Benefits | Detriments |
|---|---|
| Low-cost services, sometimes explained by reference to lack of regulatory overheads | Lack of external avenues for service complaints |
| Availability of free legal information | Possibly inaccurate legal information |
| Fixed price services | Hidden charges for additional, non-core services |
| Multidisciplinary service offering | Unclear on regulatory oversight of legal aspect of service offering |
| | Missing terms and conditions on websites |
| | Contractual attempts to eliminate, or unreasonably minimise liability, for defective services / advice |

10. A detailed study of consumer benefit and detriment was beyond the scope of the mapping research we undertook. The evidence provided was limited to inferences we were able to draw from desk research surveying provider websites (see table above), complaints made to Citizens Advice and case study material (see an example at Annex B). This, however, was sufficient to give an indication

[5] We found evidence of voluntary, self-regulation in the unregulated sector, including membership bodies requiring minimum PII cover and setting our clear ongoing training expectations of their members.

of potential risks and some detriment in some areas, including will-writing[6] and trusts, and employment.

11. The research sets out that in complaints about unregulated providers to Citizens Advice, consumers cited higher than expected costs, unreasonable delays, and poor advice most frequently as causes for their complaints. For wills, trusts and probate, the total number of records identified was 359. While wills attracted most complaints, these were often offered alongside at least one other service. For employment law services we identified 68 records, with fewer about more than one service.

12. In terms of impact of these complaints on consumers, loss of money was cited as the most common impact. It was not always possible to clearly identify actual impacts on consumers from the data, but the report identified the following causes for concern within the complaints data: upselling, mis-selling, consumer vulnerability, coercion, lack of pre-contractual information being provided and waived cancellation rights.

**CMA recommendations and next steps**

13. From the mapping research alone, and noting evidence of good levels of consumer satisfaction and other consumer benefits, we do not consider that we have evidence of the scale of detriment that indicates immediate changes to the reserved legal activities in the Act are warranted.

14. Further evidence may be available in the near-term; for example, the SRA has commissioned independent research to identify potential risks and opportunities that the unregulated sector may present for consumers. The SRA's research is due by the end of 2022 and we will carefully consider the findings of its work when it is published. We also expect the next iteration of the Individual Legal Needs Survey in 2023 to provide us with relevant evidence on consumers' experience of unregulated legal services.

15. Having answered what we considered to be the key policy question arising from our research relating to detriment, we returned to the CMA's 2020 recommendation that there was a need to ensure that regulation of legal services is more aligned to risk. The CMA said its preference would be for the MoJ to undertake a wholesale review to reform the Act, but there was merit in taking three shorter-term steps:

    a. MoJ should create a mandatory register of unregulated providers;

    b. LSB should carry out a comprehensive review of the reserved legal activities to better align them to risk; and

    c. LSB should carry out an evaluation of the revised IGRs.[7]

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[6] We also note the data gathered during our Ongoing Competence work provided us with anecdotal evidence indicating concerns about the quality of will-writing services, including of the nature set out above e.g. poor advice and mis-selling.
[7] We committed to an evaluation when implementing the revised Internal Governance Rules and Guidance in 2019.

16. Specifically on a review of the reserved legal activities, the CMA recommendation stated:

> *'This could reduce the restrictions and unnecessary costs on lower-risk activities, by allowing certain activities to be removed from reservation or for their scope to be redefined to better align with risk. If this review were carried out alongside the introduction of a register, activities removed from reservation could be added to that register in order to safeguard a continued degree of redress for such activities. This review would also help in clarifying what a more risk-based system focused on activities might look like'.*[8]

17. We note that the MoJ has not proposed any wholesale reform or progressed the introduction of a register. However, we consider there are steps we should take to progress the recommendations directed at the LSB, which are set out below.

**Next steps**

18. In the remainder of 2022/23, we propose to undertake a first-principles analysis of the existing reserved legal activities to consider:

    a. whether they are sufficiently aligned to risk; and

    b. potential alternative configurations of the existing list.

19. We expect our analysis to include consideration of existing literature such as the reports published by UCL's Independent Review of Legal Services Regulation[9] and the CMA Report which identified that the justification for maintaining reservation varies among the existing reserved activities[10].

20. Our analysis will inform future Board consideration of whether the LSB should propose, and seek funding, to carry out a comprehensive review of the reserved legal activities.

21. We will also engage with the SRA to ensure we are well placed to understand the outputs from its research and prepare to undertake our next wave of the Individual Legal Needs Survey next year.

22. Board members will further note that the LSB will be undertaking other activities of relevance to the unregulated sector. For example, our work on consumer empowerment and a potential Regulatory Information Service is intended to improve consumers' ability to make informed decisions about the legal professionals they instruct, including understanding their regulatory status and the protections afforded by it. Through this work, there may be opportunities to leverage existing services such as Legal Choices.

**Annex A - Previous review of the Reserved Legal Activities**
**Annex B – Case Study**

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[8] CMA report 2020, pages 12-13.
[9] https://www.ucl.ac.uk/ethics-law/publications/2018/sep/independent-review-legal-services-regulation
[10] CMA report 2020, page 99

| **Risks and mitigations** | |
|---|---|
| **Financial:** | The research undertaken earlier this year was included in the Budget for 2021-22. |
| **Legal:** | The legal team have been engaged throughout this process including the research project and access to data. |
| **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. |

| **Freedom of Information Act 2000 (FoI)** | | |
|---|---|---|
| **Para ref** | **FoI exemption and summary** | **Expires** |
| N/A | N/A | N/A |

**Annex A – Previous review of the Reserved Legal Activities**

1. The Board will be aware that the LSB previously undertook an investigation[11] into possible changes to the reserved legal activities.

2. The review considered Will-writing activities, estate administration activities and probate activities. It made one recommendation, which was to make Will-writing a reserved legal activity.

3. The LSB commissioned the LSCP to obtain evidence in 2010. In July 2011 the LSB formally commenced its review which included two formal consultations and culminated in a recommendation to the Lord Chancellor in February 2013 (which was not accepted[12]). The full timeline is set out in the table below:

| **Date** | **Milestone** |
|---|---|
| September 2010 | Legal Services Consumer Panel (LSCP) commissioned by the LSB to obtain evidence and report back to the LSB with findings |
| July 2011 | LSCP report and research report by IFF Research |
| July 2011 | LSB formally commenced its review with notice sent to mandatory stakeholders[5] |
| January 2012 | LSB Board considers executive recommendations |
| April 2012 | LSB consultation setting out proposals |
| September 2012 | LSB consultation including draft recommendation |
| February 2013 | Recommendation to Lord Chancellor |
| May 2013 | Lord Chancellor's decision not to accept the recommendation |

[11] https://legalservicesboard.org.uk/our-work/work-related-to-previous-years/will-writing-and-estate-administration
[12] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/198838/Will_writing_decision_notice.pdf

**Annex B – Case Study**

| **Will writing offer turns out to be less value for money:** |
| --- |
| Someone from a will writing firm cold called at the client's door and offered to prepare a will for them. The total cost was more than they had expected because of costs of storing the will, updating the will and for probate services. Even at £2,000 this appeared to be good value as they thought they needed all these services and that they were cheaper than if they had paid a regulated legal professional and convenient as the provider came to them. The client later discovered that the will would have only cost around £300 from a solicitor and they would have stored the will at no extra cost. A solicitor looked at this will while helping the client with another matter. They pointed out some errors which would have resulted in an outcome against the client's intentions. As a result the client took additional time and money to get a new will. When they came to use the probate services after their husband died, these services turned out to be a helpline staffed by people who had no qualifications in probate and could only answer basic questions. The client thought that they had paid for a service that would administer their partner's estate. |