

## **Research Specification: Developing a framework to benchmark small business consumer use of legal services**

### **Purpose**

The LSB would like to develop a benchmark to enable the LSB to track small businesses experiences of finding and using legal services. In the first instance we would like to commission research that would develop a framework which could be rolled out to a full quantitative study of small business use of legal services in 2012/13. We will commission this mainstage research after the completion of this framework study.

### **Background**

The LSB has been set up to reform and modernise the legal services market in the interests of consumers, enhancing quality, ensuring value for money and improving access to justice across England and Wales. The LSB will achieve this pursuing its regulatory objectives<sup>1</sup> and providing regulatory oversight for the eight approved frontline regulators<sup>2</sup>.

We have been set up to improve outcomes for consumers dealing with legal services. But, it is also important for us to understand our impact on the market more generally. This was recognised in the Legal Services Act, which gave equal focus to a range of objectives. Understanding whether access to particular services from legal providers changes, and if so how it changes, will be an important part of our overall evaluation strategy. This project will help us benchmark the market and monitor changes that have resulted from changes to regulation.

In our early years, we are focusing our efforts on the delivery of three particular reforms to the legal services market:

- Ensuring regulation is independent of legal services professional bodies and vested interests
- The introduction of Alternative Business Structures (ABS) to open up legal services firms to investment and ideas from non-lawyers
- Improving consumer redress when things go wrong by improving first tier complaints handling and introducing a new independent legal complaints ombudsman

Reforms such as these will have a number of complex impacts on the market that are difficult to predict at the outset of the reforms with any certainty. In evaluating the impact of reforms we will therefore need to obtain a significant amount of data about the way legal businesses provide legal services in order to understand how the market changes over time. The majority of this data is not easily available at present, and will require significant activity to gather. For example Alternative Business Structures could result in more legal services being provided:

- by stockmarket listed companies
- online

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<sup>1</sup> [http://www.opsi.gov.uk/acts/acts2007/ukpga\\_20070029\\_en\\_2#pt1](http://www.opsi.gov.uk/acts/acts2007/ukpga_20070029_en_2#pt1)

<sup>2</sup> The Law Society, General Council of the Bar, Council for Licensed Conveyancers, The Institute of Legal Executives, The Chartered Institute of Patent Attorneys, The Institute of Trade Mark Attorneys, Association of Law Costs Draftsmen, Master of the Faculties, Association of Certified and Chartered Accountants, Institute of Chartered Accountants of Scotland.

- by non-lawyers with fewer lawyers in support
- with new charging structures at lower costs.

The LSB is committed to evaluating the impact of the Legal Services Act 2007 on the market and in particular understanding the extent to which we have met our regulatory objectives. We set out our expectations of a market post reforms in our evaluation framework<sup>3</sup>. Our particular concerns are around the ability of consumers to access legal services where there are clear information asymmetries. Most obviously this will occur for domestic customers and small businesses where there is an absence of in-house legal expertise available.

Understanding of domestic customers engagement with legal services is the best established of these two categories, most obviously in the panel survey carried out by the Legal Services Research Centre. This survey details people's experiences of civil justice and the strategies they use to resolve the issues they encounter<sup>4</sup>. This study builds from 18 identified categories of legal problem to understand the mix of problems facing individuals, how they tackle these problems and their experiences of legal services.

Little is known about the interaction of small business with legal services. The LSB carried out a pilot qualitative study in 2010 which provided an initial benchmark of the problems faced by small firms<sup>5</sup> but would now like to extend this with a wider quantitative study. We would like to produce similar evidence to that contained in the Legal Services Research Centre study of domestic consumers for small business customers. A similar small scale study was carried out for small businesses in Hong Kong<sup>6</sup>, but as far as we are aware has not been repeated elsewhere.

Our initial study found a number of problems that potentially firms could face as a consequence of failing to find adequate legal advice. Most notably was the impact the fear of legal problems had on the willingness of firms to grow and recruit staff with the accompanying employment issues. As shown for individuals, a failure to seek legal advice early was often accompanied by a worsening of the problem and resulting consequences. We would like to understand the extent to which such problems occur and be able to track over time whether market reforms reduce the prevalence of such problems.

### **Aims and Objectives**

This project is only concerned with the development of a model study which could be rolled out at a future time. We would expect this study to develop a detailed study methodology including:

- sample size and structure
- proposed sampling source
- interview approach
- agreed categories of legal problems captured

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<sup>3</sup>[http://www.legalservicesboard.org.uk/news\\_publications/publications/pdf/evaluation\\_framework\\_april\\_2011.pdf](http://www.legalservicesboard.org.uk/news_publications/publications/pdf/evaluation_framework_april_2011.pdf)

<sup>4</sup><http://www.justice.gov.uk/downloads/publications/research-and-analysis/lsrc/2010CSJSAnnualReport.pdf>

<sup>5</sup>[http://www.legalservicesboard.org.uk/what\\_we\\_do/Research/Publications/pdf/final\\_small\\_firms\\_report.pdf](http://www.legalservicesboard.org.uk/what_we_do/Research/Publications/pdf/final_small_firms_report.pdf)

<sup>6</sup><http://www.doi.gov.hk/eng/public/pdf/2008/reports/esdemandsme.pdf>

- questionnaire

We would also expect this study to have piloted the proposed survey with a small sample of businesses to ensure its effectiveness and practicability.

The resulting report should take the form of a report outlining the proposed research approach, a draft specification and briefing pack to support a researcher undertaking the future project.

The study of small firms is intended to help the LSB benchmark small businesses experiences of seeking justice allowing us to track whether reforms improve outcomes such as business confidence, cost of access, availability of services etc.

### **Issues and scope**

The LSB would like to develop a baseline for future evaluations to enable us to better understand the way small businesses interact with legal services. We would like to start with a broad picture of individual businesses experiencing key legal needs and evidence how frequently they use regulated legal services. Where they don't use regulated legal services we would like to understand what action they take to address their identified legal need e.g. ignoring problem, doing the legal work themselves. The underlying research will explore with small businesses the types of problems they experience, the impact of these problems, how they resolve them, who they use as advisers, the outcomes and their attitudes to the justice system.

This study should be compatible with the market framework developed for the LSB by OXERA<sup>7</sup>, where businesses are describes as 'legal persons'. For this study we are particularly interested in small businesses as clients of legal service providers. We would welcome the views of the researcher on how best to define small businesses for the purposes of this type of study. Our concern is particularly around the extent to which small businesses are vulnerable as consumers, most obviously as a result of asymmetric information. We suspect that the biggest difference in ability to play an active role in the market will be determined by the presence within a firm of an in-house lawyer. While generally the larger a firm, the more likely they are to have in-house lawyers, there is no hard and fast rule that determines whether a firm employs an in-house lawyer. Depending on perceived legal need some firms will employ an in-house lawyer at a smaller size than others. Given this challenge we would expect the researcher to explore how best both to segment the small business market, but also how best to define it in its totality.

This study would be concerned with ensuring that the LSB have a robust research methodology not with carrying out the full research study itself. It particular we would like the researcher to consider:

- how would the sample of small firms be structured?
- what firm sizes should be included and with what breakdowns?
- what types of legal issue should be covered e.g. civil and criminal?
- what would the questionnaire be?
- what would the key outputs be?

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<sup>7</sup>[http://www.legalservicesboard.org.uk/news\\_publications/latest\\_news/pdf/a\\_framework\\_to\\_monitor\\_the\\_legal\\_services\\_sector.pdf](http://www.legalservicesboard.org.uk/news_publications/latest_news/pdf/a_framework_to_monitor_the_legal_services_sector.pdf)

- how big a sample would be necessary?
- should the survey be constructed as a panel?

We expect that there may be challenges in identifying a sample of small businesses for this research and would therefore expect the successful researcher to engage with business organisations e.g. Department for Business, Innovation and Skills, Federation of Small Businesses etc. in order to ensure widespread engagement and support for the project, in particular in securing an effective sample for the mainstage of the research.

This research should pilot the questionnaire with a sample of small businesses to ensure that the methodology is effective in practice and the areas of legal need are comprehensive. This will need to include small businesses from each of the sub-samples proposed in the survey to ensure robustness of methodology across the potential sample.

### **Tender Evaluation Criteria**

All projects commissioned by the LSB are subject to our **standard terms of contract** which will be sent out with this tender. Tenders will be evaluated on best value for money and will be assessed on the basis of:

1. Cost. Please include applicable daily rates of staff that would be involved in this project and the approximate proportion of individual staff time that would be spent on the project
2. The extent to which tenders are clearly written, highlighting relevant experience – particularly in studies of professional services markets
3. Proposed team composition, expertise and management and the organisation's diversity policy
4. How diversity issues would be addressed in the research.

### **Deliverables**

#### Output

The output will be a short report, research specification, questionnaire and background briefing paper to support an organisation carrying out the main study.

#### Project plan

Tenders should include a project plan and time schedule for the work that identifies the main task and key milestones that will be used to monitor progress. The plan should be accompanied by a resource profile, giving a breakdown of the resources in person days allocated to each task.

### **Duration**

The initial research will commence in December 2011. The draft final report should be completed by the end of March 2012. A final agreed report should be completed by April 2012.

**Legal Services Board Contact Details**

Tenders with any queries about the research specification would be welcome to contact either Alex Roy (020 7271 0060) or Rob Cross (020 7271 0091)

**Tenders must be submitted by 5pm on Thursday 10 November 2011**