

Research Specification: Understanding consumer's expectation and valuation of regulation

Purpose

The LSB would like to commission research to explore consumers' expectations of the protections they do and should enjoy in purchasing different types of legal services, the extent that they expect this protection to arise from the general law or from legal regulation and the value they place on different regulatory options.

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 objectives¹ and providing regulatory oversight for the eight approved frontline regulators².

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

- 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 external ownership and control, thus furthering investment and innovation
- Improving consumer redress when things go wrong by improving first tier complaints handling and introducing a new independent legal complaints ombudsman

Until now legal services regulation has been centred around the six reserved activities contained in the Legal Services Act³. These reserved activities could only be supplied by individuals regulated by an approved regulator – the largest being the Solicitors Regulation Authority (SRA). In practice many regulators, in particular the SRA choose to regulate all of the activities undertaken by the individuals they authorise, regardless of whether the activities were reserved. Until recently, the result was that almost all activities that one might describe as legal services were in practice regulated, even if Parliament did not set out in statute that they should be regulated.

The move to introduce ABS does not in itself change this status quo (and reserved activities can still only be done by authorised persons) , but does represent a broader challenge to the existing legal services model. Increasingly firms are setting up outside of traditional regulation by delivering non-reserved services e.g. employment advice. Elsewhere regulated legal providers are outsourcing the non-reserved parts of their work outside of the traditional firm structures. In some circumstances the Government response has been to develop specific regulatory frameworks e.g. Claims Management Companies, in others activity has been allowed to continue outside regulation e.g. will-writing.

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

² 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.

³ <http://www.legislation.gov.uk/ukpga/2007/29/section/12>

Recently we published a discussion paper⁴ aimed at starting to expose how the LSB will consider the challenges posed by changes within the market. We proposed to use a cost-benefit framework to analyse particular areas of the market to understand whether existing protections were optimal given the need to meet our regulatory objectives, particularly noting public and consumer interest concerns and better regulation principles. In their response to this paper, the Solicitors Regulation Authority built on a suggestion to prioritise general legal advice, by suggesting that all legal advice should be regulated. This is superficially attractive as a means of minimising consumer confusion about what is and what is not covered by regulation, a theme also raised recently in research produced for the Legal Ombudsman. However, there is a significant risk of adding significant additional regulatory burdens through consumer protections untested in different areas of legal services.

Before attempting to construct a cost benefit case for such dramatic changes to the regulatory landscape we must first consider the value that consumers (as the cost of regulatory burdens inevitably falls on consumers) place on the possible regulatory protections. These protections could include, among others, rights to complain to the legal ombudsman, qualifications, ongoing quality assessments, insurance, compensation fund, professional registration etc.

Aims and Objectives

This project should develop the LSBs evidence base to support our assessments of the correct level of protection on a variety of specific legal activities and the extent to which ex ante regulatory requirements should provide this. This should distinguish expectations both by the legal service delivered e.g. litigation, will-writing etc. and the provider of the legal service e.g. solicitor, conveyancer, employment adviser.

Initially we would like to test assumptions about the protections consumers expect when dealing with legal services providers, for example what restrictions on practice are in place to maintain advice quality and what protections they'd expect should anything go wrong e.g. adviser runs away with their money etc. The research should test both the attractiveness of different regulatory protections in principle and how attractive the regulations are in practice given their actual use in legal services.

Following this initial development of ideas, the research should look to test the value that consumers place on the protections described. We would expect a stated preference, contingent valuation methodology to be used for this section to develop monetary values to the regulatory protections offered.

The research should specifically test whether the value and types of regulation suggested vary by the type of legal service offered or the severity of issue that consumer face.

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http://www.legalservicesboard.org.uk/what_we_do/consultations/open/pdf/enhancing_consumer_protection_reducing_restrictions_financial_28072011x.pdf

Issues and scope

The LSB has responsibility for oversight regulation for England and Wales and so all research should include a wide geographical coverage, incorporating both urban and rural locations. Expectations of regulation may vary by gender, age, ethnicity, location or experience of legal services.

For the majority of people who have experience, or knowledge of the legal sector, that experience is likely to be based on solicitors. It is key that the research should provide a clear separation between expectations consumers have of solicitors and other legal service providers, including licensed conveyancers; will-writers; employment advisers and immigration advisers, not all of whom will necessarily be professionally qualified.

Stage 1 of the research would be expected to build an understanding of the expectations that people form about the different protections that are provided to consumers of legal services. Specifically this must get beyond blanket statements that all consumers of legal services should be protected in all circumstances. We would like to test which of the individual protections available to consumers are considered important. Then when exposing what these protections might mean in practice whether they're still considered important.

We would expect to test the values placed by consumers on: qualifications, continuous professional development (CPD), insurance, access to legal ombudsman, compensation fund, ability to refuse entry to the profession or expel from it, the ability to impose specific disciplinary sanctions. An exact list would need to be agreed as part of the project set up. We would expect the research to cover solicitors, conveyancers, will-writers, employment advisers and immigration advisers. Given the challenge this would present for sub-samples within the research we would expect the researcher to advise on the possible range of topics to be included based on a range of potential project costs.

Stage 2 of the research should use stated preference techniques to test the values placed on specific regulatory protections and test whether these values varied depending on the service provided or the type of provider. This should test not only the value placed on the regulations, but the impact their presence/absence has on consumer's decisions over purchases of legal advice.

The proposed timetable for the research is short (completion of fieldwork by end March) and we accept that it may not be possible to complete stages 1 and 2 on this timetable. We would welcome researchers setting out what they believe is an achievable timescale for this project.

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. Cost should be broken down between Stage 1 and Stage 2
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 final output will be a short report and presentation summarising the results.

The LSB will retain ownership of the report and any underlying data which will be delivered in a publishable format.

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 January 2011. The fieldwork should be completed by the end of March 2012. A final agreed report should be completed by mid May 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 Chris Handford (020 7271 0074)

Tenders must be submitted by 5pm on Monday 19 December 2011