

Research Specification: Developing measures of consumer outcomes for legal services

Purpose

The purpose of this research is to develop a set of statements that reflect the desirable outcomes for consumers when dealing with legal services.

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 and providing regulatory oversight for the ten approved frontline regulators¹.

Existing regulation of legal services consists of a number of branches of the profession, some with reserved titles. Other branches do not have reserved titles but statute allows them to practice one or more of the six *reserved legal activities* set out in the Legal Services Act 2007² or other reserved activities such as immigration work (Immigration Act 1999) and claims management services (Compensation Act 2006). The reserved legal activities have roots that are more than a hundred years old. They developed over time in a piecemeal way with little structured analysis as to their purpose or consistency between them.

Key features of activities that are reserved are: they are exceptional or very irregular, often involuntary and for high personal civil or criminal stakes, often under time or other pressure. However, there has been no attempt to understand what consumers want when using legal services and the role of regulation, reserved titles or activities in achieving these outcomes.

There have been a number of studies talking to consumers of legal services about their experiences of using legal services (e.g. Ministry of Justice³, LSB⁴, Legal Services Research Centre⁵). These have generally focused on consumers' perceptions of the challenges finding legal services and the service they receive. Studies have not attempted to take a holistic look at the experience of legal services from a consumer perspective and the types of outcomes that consumers would like to see at each stage.

A similar set of concerns led to the Financial Services Authority developing a series of principles entitled Treating Customers Fairly⁶.

More recently changes in the regulatory framework for legal services, the introduction of the LSB and desire from regulators to move to a more outcomes focused regulation have led to the need for

¹ 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 Chartered and Certified Accountants, Institute of Chartered Accountants in Scotland.

² http://www.opsi.gov.uk/acts/acts2007/ukpga_20070029_en_3#pt3-pb1-l1g12

³ <http://www.justice.gov.uk/publications/docs/legal-services-reform-survey.pdf>

⁴ http://www.legalservicesboard.org.uk/what_we_do/Research/Publications/consumer_research.htm,
http://www.legalservicesboard.org.uk/what_we_do/Research/Publications/pdf/final_small_firms_report.pdf

⁵ <http://lsrc.org.uk/publications/2007CSJS.pdf>

⁶ <http://www.fsa.gov.uk/pages/doing/regulated/tcf/>

a rethink about the goals of regulation in legal services. The Solicitors Regulatory Authority are currently consulting on a new outcomes focused regulatory framework⁷. Currently we have a clear understanding of what we are doing to regulate – most obviously through the reserved titles and activities. But with a changing focus to look more at consumer needs and outcomes from regulation it is essential that we look again at why we are regulating. We would like to develop a clearer idea of the types of outcomes that we would like to achieve in order that we can focus regulation effectively and minimise unnecessary regulatory burdens.

Alongside this project the LSB is also commissioning economic research that will consider the externalities and market failures that may justify intervention in the legal services market. Together these projects will help the LSB to develop a framework for considering the boundaries of necessary regulatory intervention and the consumer outcomes that regulation should seek to protect.

Aims and Objectives

The LSB would like to develop a proportionate approach to the regulation of legal services, ensuring that regulatory burdens are appropriate and unnecessary costs for consumers minimised. We hope that this project can support the development of a better regulatory framework for legal services where regulation is targeted at the outcomes we wish to protect. These consumer outcomes should be the written expression of the types of behaviour we would expect from legal services providers, based on the feedback from consumers.

The research should include three phases (with a potential breakpoint in the research between the second and third phases). The project consists of:

1. Development of a straw-man set of outcomes developed from original consumer research and an analysis of existing literature
2. Testing of straw-man consumer outcomes with LSB/LSB Board/Consumer Panel and redrafting based on feedback
3. Development of a final set of consumer outcomes through a Delphi study – or other method of consulting with a wide selection of stakeholders including consumer groups, the legal profession and potentially directly with consumers.

At the end of the study we hope to have developed a robust set of consumer outcomes which are credible with stakeholders. Following this research the LSB will be consulting with government stakeholders to consider which outcomes should be explicitly protected by regulation in the light of the economic research. This area of work is outside the scope of this research project.

Issues and scope

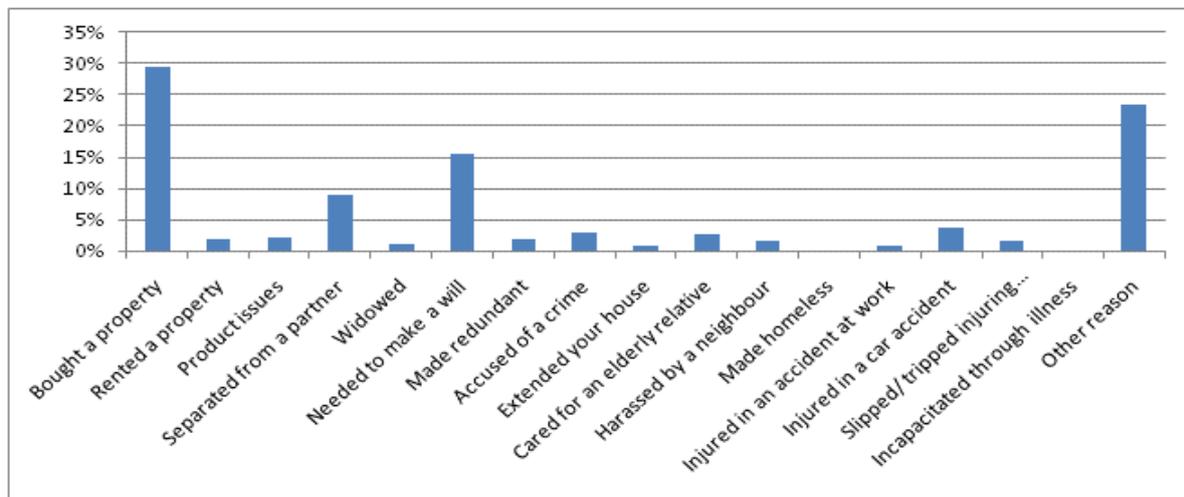
The challenge in looking at any market as broad as legal services is trying to draw meaningful conclusions without limiting their applicability to a subset of the market. It is possible that the outcomes could be different for different parts of the market. Alternatively, the outcomes could be given scores to reflect their priorities in different parts of the market. In either case the research

⁷ <http://www.sra.org.uk/sra/consultations/OFR-consultation.page#executive-summary>

should evidence how and where differences in the market have been identified and how this impacts on the relevance of the outcomes developed.

Demand for legal services comes from across the economy, both corporate and individual from all social classes and wealth groups. Individuals may seek legal advice on a huge range of issues – though most commonly seek advice on conveyancing and will writing (though will writing is not a reserved legal activity so many will seek advice from unregulated individuals). There are also a wide variety of suppliers of legal services both regulated individuals and unregulated, with consumers who may have very different expectations of the type of service that they would expect to receive (e.g. claims management companies⁸).

Reasons why legal advice sought by individuals in previous five years



Source: LSB Consumer Research, YouGov 2009

The chart above illustrates the variety of reasons given for individuals seeking legal service and the proportions of individuals who have sought legal advice in each area. This doesn't provide any guidance on the value of the legal advice delivered as generally advice is given in high frequency in low value areas and in lower frequency in high value areas. The reasons that the corporate sector seek legal advice are also likely to be significantly different.

The challenge for this research will be to consider at each stage of the interaction, from identifying a need and approaching a provider onwards, what are the outcomes that consumers would like to achieve. The research should consider all of the stages in a consumers' interaction with legal services:

- finding a legal service (channel, brand, bundled services etc.)
- choosing a lawyer (value, quality, access, pricing structure etc.)
- using the lawyer (relationship, standards, service etc.)

⁸

http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/documents/VanillaResearch_ConsumerResearch_ReferralArrangements.pdf

- evaluating their experience (communication, re-use, complaints etc.)

Given the depth and variety of different experiences it is our view that to explore these issues would require a qualitative approach with consumers, potentially through focus groups though we would welcome other suggestions.

Given this complex market picture it may be very challenging to develop a consistent set of outcomes for all consumers of legal services. The researcher would be expected to suggest a sampling approach that, as far as reasonably possible, gathers views on desirable outcomes from a wide selection of potential consumers of legal services. As a minimum we would expect an approach that considered the differences and similarities in desired outcomes between corporate and individual consumers.

Stage 3 of the research will need to look beyond consumers' understanding of their needs and take a more reasoned and informed view of the types of outcomes that consumers should get from legal services. It is inevitable given the nature of legal services that most consumers will have relatively limited experiences of legal services. This, together with the information asymmetries that exist in professional services, will mean that the views of representatives of consumers and other stakeholders will be invaluable in developing outcomes that truly reflect consumer interests.

As the LSB has a limited research budget which is not sufficient to explore in detail the consumer outcomes for all of the individual areas of the market we are proposing a three stage approach. This would allow us to build on existing and original consumer research, then test the results from this first stage with experts from a wide variety of legal and consumer stakeholders to develop the final outcomes. This approach does have risks, for this reason we propose a breakpoint in the project following the stage 2 consultation with the LSB and LSB Board.

All research commissioned by the LSB must consider consumers in England and Wales.

Tender Evaluation Criteria

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

1. Overall cost. Please include appropriate breakdowns
2. The extent to which tenders are clearly written and meet the specified objectives, present a sound methodology, identifying any potential problems, and proposing suitable solutions
3. Address outputs and ensure these are in line with requirements and the required timing of the project
4. Proposed team composition, expertise and management and the organisation's diversity policy
5. How diversity issues would be addressed in the research.

Deliverables

Output

We would like the research to produce a report with executive summary detailing the outcomes developed and the evidence to support these outcomes.

We would also like an interim short paper for discussion at a LSB Board Away Day on 7 September drawing together the key themes emerging from the study – a PowerPoint slide pack would be acceptable. The author would be expected to present the interim report at this session.

The LSB will retain ownership of the report, but has a policy of publishing all research reports.

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. The tender should separate costs clearly between Parts 1 and 2 of the research (consumer research and consultation with LSB/LSB Board) and Part 3 with a clear breakpoint where either side can decide to terminate the research project.

Duration

The research should commence in July 2010. Tenders should set out dates for completing key milestones such as information gathering, analysis, synthesis and report writing. An initial short report must be submitted to the LSB by 30 August 2010. A decision to continue to Part 3 of the research will be taken in September. In the event that the research is terminated a full report on Parts 1 and 2 would be expected by the end of September 2010. If the decision is taken to continue to Part 3, this segment of the research should commence in September 2010. A final agreed report should be completed by end November 2010.

Legal Services Board Contact Details

Tenders with any queries about the research specification should contact:

Policy team: Chris Handford 020 7271 0074

Research: Alex Roy 020 7271 0060

Tenders must be submitted by 5pm on Thursday 22 July 2010