

Research Specification: Understanding the supply of legal services by “special bodies”¹

Purpose

The Legal Services Board (LSB) would like to explore the role that special bodies play in the delivery of legal services and the risks this may pose to effective regulation. This project is an initial exploratory study of the risks through a series of case study interviews with a sample of special bodies providing legal services and a review of the available literature. Further quantitative research may be required at a later date as part of a separate project if significant risks are identified.

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 objectives² and providing regulatory oversight for the eight approved frontline regulators³.

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 maintaining the rule of law, access to justice and the other Regulatory 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.

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

¹ Special bodies are defined within the Legal Services Act 2007, C. 27, Part 5, Sections 106-107 see Annex A

² <http://www.legislation.gov.uk/ukpga/2007/29/section/1>

³ 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.

While these changes are significant, the reserved activities and requirements that only regulated individuals can carry out reserved activities are not changing. All that is changing are the rules that currently impose restrictions on the ownership and management of law firms. The impact of these changes will not be limited to those firms operating as an Alternative Business Structure but will also affect those firms competing with Alternative Business Structures. At the same time the legal services market is subject to a variety of other business pressures which are likely to change the market. The changes we see in the market may therefore not be as a result of our reforms at all, but could be caused by other factors, such as:

- A reduction in government spending on legal aid
- Changing technology altering the provision of legal services
- Changing consumer demands
- Economic downturn reducing demand
- Closing down of traditional channels for work e.g. smaller bank panels

Since May 2010 we have been engaged in a review of the available evidence to support the evaluation of our effectiveness as part of a process we call our Regulatory Information Review. This review, while not yet complete, has identified a significant evidence gap about the supply of legal services. We have good knowledge of the location of solicitors and barristers, but know little else about the supply of legal services, including services provided by special bodies.

Special bodies are defined within the Legal Services Act 2007 to allow them special treatment for a transitional period after the introduction of Alternative Business Structures. Their importance to the provision of legal services is significant as they provide a first port of call for many consumers seeking legal support. Commonly special bodies - whether Law Centres, Citizen's Advice Bureaux, Charities, Community Interest Companies, Unions or other bodies provide free legal services (at the point of delivery), often funded through legal aid. Staff are a mixture of paid employees and volunteers; some legally qualified, some not.

We are particularly concerned about the provision of legal services by special bodies for a number of reasons:

- Changes in the legal market may lead to more people seeking or receiving advice from special bodies
- We currently have little knowledge of the nature of the legal services provided by special bodies and the risks to the regulatory objectives posed
- Currently special bodies are permitted to conduct reserved legal activities without authorisation, though this may change following the introduction of ABS, with special bodies potentially having to be authorised in future to conduct reserved activities.

There have been relatively few studies looking at legal service provision by special bodies and those reports that are available are limited in their scope^{4,5}. The studies that have been published provide largely superficial information about the organisations and their conduct of legal advice. While the information collected is valuable it fails to provide the level of detail required for the LSB to assess the risks posed to our regulatory objectives and assess the appropriate level of regulation.

Aims and Objectives

This research should provide the LSB with a clear understanding of the risks to its regulatory objectives that are posed by the legal activities of special bodies. To do this it will have to build a clear picture through case studies of the types of activities undertaken by special bodies, the staff they employ and their skills, and the types of customers and the services they receive. We are interested in understanding the risks posed to the regulatory objectives so that we are able to ensure that regulation is proportionate to the risks involved. It is equally important to us to ensure that special bodies are not over-regulated as they are not under-regulated. In particular we would like to understand whether the activities of special bodies pose risks to either the public or consumer interest, whether through concerns about the quality of advice, conflicts of interest or any other feature of the service provided. In particular we would like to concentrate on those special bodies offering reserved legal services.

The research should describe the activities of the special bodies, the risks they pose and suggest where further quantitative research is required to explore in greater detail specific risks to the LSB's regulatory objectives. We would expect the report to draw on a review of existing literature (we will be able to supply links to the main studies) as well as reviewing information available from other published sources (e.g. providers websites).

Issues and scope

The LSB knows little about the legal services given by special bodies, the sector has a few large groups of key providers – Citizen's Advice Bureaux (CABx), Law Centres, Charities, Community Interest Companies and unions – but otherwise is highly fragmented with a long tail of smaller individual specialist providers. The smaller special bodies are believed to provide legal services to particular groups with specific legal problems or characteristics e.g. groups of a particular nationality. Understanding the types of legal needs covered and services offered are a specific challenge of this project, though it is believed that many of the special bodies provide more holistic legal solutions not limited to the traditional areas of law. Equally the types of services provided is likely to vary from information only, guidance on general circumstances, specific legal advice to ongoing active legal support. We would like to understand all of the services offered, but use those organisations offering reserved legal services as a starting point for this study, then expanding to consider all of the legal services they offer.

There is no directory of special bodies providing legal advice, though a number of representation bodies e.g. Advice Services Alliance⁶, do cover a range of individual providers. Some represent a

⁴ "Estimating the size and nature of the civil legal advice sector in England and Wales", Department for Constitutional Affairs, March 2006

⁵ "Findings from the Legal Advice Sector Workforce Surveys", Legal Services Research Centre, September 2007

⁶ http://www.asauk.org.uk/go/Section_1.html

variety of different types of special body, others one specific type e.g. Law Centres Federation⁷. As there is no single directory of organisations we do not expect to be able to carry out a quantitative survey of special bodies at this stage and instead believe a case study approach would be more effective at gathering the detailed information required. Even this approach is likely to have significant challenges such as gaining access to the organisations and time with the appropriate people at an operational and management level.

The scope of the issues that will need to be discussed with the organisations included in the case studies is being broadly defined in a separate project with OXERA. That project will segment the market and define the issues that need to be captured in each segment. A copy of the most up to date version of the segmentation model will be available for the researchers. But the research will cover:

- Make up of organisation
- Funding/charging
- Nature of problems covered
- Services offered including split between reserved and unreserved
- Types of client
- Competition
- Use of intermediaries (referral arrangements)
- Quality control/governance
- Use of outreach
- Regulation (overlaps?)
- Changes over previous three years
- Expected changes over next three years

As well as reviewing the published literature and provider websites the researchers should carry out a series of case study interviews with a sample of organisations. We would expect this to include a minimum of two law centres, two CABx, four charities and two community interest companies. Law centres should be selected to ensure there is a mix of reliance on legal aid, charities should include RNID, Shelter and Howard League. We believe that information about unions can largely be obtained directly from reviews of their websites. Ideally case studies should be chosen to include some geographical spread across England and Wales, specifically including representation within Wales. Interviews are also likely to be needed with representative organisations e.g. NCVO in addition to the special bodies to explore their perspectives on the key issues.

⁷ <http://www.lawcentres.org.uk/>

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.

Responses to our call for firms to be members of our panel of economics consultancy will be used to choose a company.

Deliverables

Output

The final output for each of our benchmarking studies will be an executive summary together with a report. The report should be suitable for publication, although any decision to publish will remain with the LSB. It is essential that the report and underlying research is sufficiently robust so that the LSB can use this in discussions with external stakeholders and can underpin the work of the LSB.

The LSB will retain ownership of the report and 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 March 2011, with an interim report to the LSB team at the end of March. The draft final report should be completed by the end of April 2011. A final agreed report should be completed by May 2011.

Special kinds of body (Excerpt from Legal Services Act 2007)

106 Power to modify application of licensing rules etc to special bodies

(1) This section applies to a licensed body (or an applicant for a licence) which is—

- (a) an independent trade union,
- (b) a not for profit body,
- (c) a community interest company,
- (d) a low-risk body (see section 108), or
- (e) a body of such other description as may be prescribed by order made by the Lord Chancellor on the recommendation of the Board.

(2) A body to which this section applies may apply to the relevant licensing authority, in accordance with its licensing rules, for the authority to make an order under this section.

(3) The licensing authority may make one or both of the following orders—

- (a) that the authority's licensing rules apply in relation to the body with such modifications as may be specified in the order;
- (b) that Schedule 13 does not apply in relation to the body, or applies in relation to the body with such modifications as may be specified in the order.

(4) On an application under subsection (2), the licensing authority may make any order which the authority—

- (a) has power to make under subsection (3), and
- (b) considers appropriate in all the circumstances of the case,

whether or not it is the order for which the applicant applied.

(5) In deciding what order (if any) is appropriate in all the circumstances of the case, the licensing authority must in particular have regard to—

- (a) the reserved legal activities and non-reserved activities which the body carries on (or proposes to carry on),
- (b) the nature of the persons to whom the body provides (or proposes to provide) services,
- (c) any non-authorized persons who have an interest or an indirect interest in the licensed body or hold a material interest in the licensed body, or are managers of the body, and
- (d) any other matter specified in the authority's licensing rules.

(6) If the licensing authority makes an order under subsection (3), the authority's licensing rules or Schedule 13 or both (as the case may be) have effect in relation to that body in accordance with that order.

(7)The licensing authority may not make an order under subsection (3)(a) in relation to provisions of its licensing rules made in accordance with the following paragraphs of Schedule 11—

- (a)paragraphs 2 and 3 (determination and review of applications for a licence);
- (b)paragraphs 7 and 8 (applications under this section);
- (c)paragraphs 9(3), 18 and 23 (disqualifications);
- (d)paragraph 10(2) (management);
- (e)paragraph 16 (carrying on of licensed activities);
- (f)paragraph 24(1), (2), (3) and (8) (grounds for suspending and revoking licences);
- (g)paragraph 24(10) and (11) (procedure for suspending or revoking licence);
- (h)paragraph 26(2) (review of decision to suspend or revoke licence).

(8)The licensing authority may not make an order under subsection (3)(a) which results in its licensing rules, as they apply in relation to the body to which the order relates, not making the provision required by—

- (a)section 83(5)(a) to (g);
- (b)paragraph 1 of Schedule 11 (applications for licences);
- (c)paragraph 4(3) of that Schedule (renewal of licences);
- (d)paragraph 6 of that Schedule (modification of licence);
- (e)paragraph 20 of that Schedule (accounts).

(9)If the licensing authority's licensing rules, as they apply in relation to a body to which an order under subsection (3)(a) relates, make provision requiring the body to have—

- (a)a Head of Legal Practice approved by the licensing authority, or
- (b)a Head of Finance and Administration approved by the licensing authority, they must also provide for a review by the licensing authority of any decision by it to refuse or withdraw that approval.

107 Modifications under section 106: supplementary

(1)This section applies where a licensing authority has made an order under section 106 in relation to a body to which that section applies.

(2)The licensing authority must revoke the order under section 106 if it becomes aware that the body in respect of which the order was made is no longer a body to which that section applies.

(3)The licensing authority may revoke or otherwise modify an order under section 106—

- (a)on the application of the body in relation to which the order was made, or

(b)of its own motion.

(4)It may do so only if it considers it appropriate to do so in all the circumstances of the case, having regard to the matters mentioned in section 106(5).