

Research Specification: Unbundled legal services

Purpose

The Legal Services Board (LSB) and the Legal Services Consumer Panel (LSCP) wish jointly to commission qualitative research to explore the consumer experience of unbundled services focusing on civil/family litigation and immigration cases. We wish to find out people's motivation for using these services, their purchasing behaviour, if they work well, what benefits and risks might be involved, and what safeguards should ideally be in place. Depending on budget, we may also wish to conduct research with:

- Legal services providers – both those offering unbundled services and those that have considered offering unbundled services but have decided not to do so
- Members of the judiciary who preside over hearings

All research and underlying data will be published externally and made freely available to academics, frontline regulators and others.

About the LSB and LSCP

The LSB has been set up to reform and modernise the legal services market place 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 nine approved frontline regulators.¹

The LSCP is an independent arm of the LSB, created to provide high quality, evidenced-based advice to the LSB and others on the consumer interest in the regulation of legal services.

¹ The Law Society, General Council of the Bar, Council for Licensed Conveyancers, The Chartered 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, Institute of Chartered Accountants in England and Wales

Background

In its simplest terms, 'unbundling' separates a package of legal services into parts, and the client and legal services provider agree to what parts of the package the provider will provide.

Unbundling is nothing new. Conveyancers, probate practitioners and others have for years invited cost-conscious clients to carry out the administrative heavy lifting on legal tasks. However, there is particular interest now in the potential of unbundling to make legal services more accessible for people who cannot afford full service representation by a legal services provider, but who could afford to purchase some help and are able to carry out the other tasks by themselves. There is also a consumer empowerment impetus, which reflects a greater willingness and confidence among clients to pay for only the services they need and exert closer control over how their legal matter is handled. Moreover, it can be argued that the greater involvement people have in resolving legal issues the more likely they are to accept the outcome and thus increase public confidence in the rule of law.

Policymakers have particularly seized on unbundling as part of an effective response to the increase in litigants in person following cuts in legal aid. Three-quarters of all civil and family cases involve at least one litigant in person. Unbundling started in the US in this context and is spreading to other jurisdictions. In the US the work is often divided between the law firm and another actor, such as an advice centre. However, we are particularly interested in scenarios in England and Wales where the work is divided between legal services providers and the client acting alone or with minimal external support. The idea is that the main elements of litigation, such as advice, research, drafting documents, negotiation and representation in court, are divided between the legal services provider and client depending on what the client can afford and what they feel confident doing alone. To get a feel for this market, some examples of law firm websites identified through an internet search are listed below:

<http://www.isolicitor.co.uk/index.php?page=HOME>

<http://www.barcanwoodward.co.uk/a-la-carte-law-the-unbundling-of-legal-services/>

<http://www.simpsonmillar.co.uk/services/familylaw/pay-as-you-go-family-law-advice.aspx>

<http://nicolawilliams.co.uk/InformationPages/PayAsYouGo.html>

<http://www.familyfirstsolicitors.co.uk/tag/pay-as-you-go-law/>

We have reviewed the literature for an overview of the benefits and risks of unbundling. Note the bullets below summarise the literature, not the views of the LSB or LSCP.

The literature suggests the following broad benefits of unbundling:

- Increases access to justice in the context of scarce public funding by enabling consumers to obtain targeted assistance in the areas where they most need expert help
- Improves the administration of justice since some input from a legal services provider helps the client to organise and represent their matter more effectively than if no assistance was provided, thus improving speed, efficiency and facilitating fairer outcomes for all parties
- Consumers achieve greater value for money by buying only the legal help they need, while the cost of legal work becomes more predictable, and comparisons between offers easier, because unbundling lends itself to fixed fee billing
- Offers clients more flexibility and convenience in service delivery and more control over the process and strategy decisions, safe in the knowledge that they could call on a legal services provider to do extra if this became necessary
- Expands the market by enabling law firms to serve a previously untapped client base who in the past were faced with an 'all or nothing' choice, and by affording opportunities to develop specialised practice areas that focus on providing unbundled services

However, a series of risks have also been identified:

- Consumers may be tempted to carry out work which they are not capable of
- Legal services providers may act for clients based on inadequate information, which may lead to worse results for the client and complaints or negligence claims against the provider
- A lack of clarity about the agreement between the legal services provider and client
- The on-again, off-again nature of the representation could lead to inconsistencies and oversights and decrease consideration of a legal problem as a whole
- Legal services providers will be more likely to engage in unethical practices or offer poor service because many of the professional duties are applied in less rigorous ways in an unbundling context

Aims and Objectives

Broadly speaking the wider aims of the research project are:

- Raising consciousness among providers and policymakers about the potential of unbundling as part of the solution to improving access to justice

- To understand the consumer experience of using unbundled services
- To inform an appropriate regulatory framework which gives legal services providers the confidence to unbundle their services whilst meeting their professional obligations
- To enable consumers to make sensible and informed decisions when deciding whether to use an unbundled service and to use these services effectively

The purpose of the research is to ensure that the regulatory framework addresses the key risks and is informed by evidence of real consumer experience of using these services and real experience of providers offering them.

We intend to focus on civil/family litigation and immigration as avenues to help us explore these issues. There is evidence from the States that characteristics of cases in these areas are particularly amenable to unbundling. As explained above, there is particular policy interest in unbundling as part of the solution to the rise in litigants in person and civil/family cases are a useful case study given legal aid has recently been withdrawn from this area which could potentially result in higher numbers in litigants in person. Immigration advice is an area of law that has traditionally been delivered face-to-face, but there is a large element of form-filling which makes this area potentially suitable for unbundled provision and our research indicates it is reasonably common place. This is another area where legal aid funding has been significantly reduced and it has been identified as a priority area by a number of regulators.

Research questions

The research should explore the following areas:

- The reasons why people choose to use an unbundled service and alternatives considered
- How confident consumers felt about using these services before they started and whether their experience was easier or more difficult than they had anticipated
- Whether consumers were clear about what services they would and would not receive at the outset and throughout the life of the case
- How consumers chose their provider and how they went about agreeing how the various elements of the work would be divided between them and the law firm
- What the benefits and downsides of unbundling were in practice
- The perceived savings made by dealing with some of the case alone
- The perceived impact, if any, that unbundling had on the outcome of the matter
- What protections consumers expect or want to see in place

- What sorts of information were or would have been useful to consumers in making decisions about whether and how to use unbundled services

Depending on budget, we are interested in conducting interviews with legal services providers (including firms regulated by the Office of the Immigration Services Commissioner) offering unbundled services and those that have considered this but chose not to.

The sorts of issues we would wish to explore with providers that offer unbundled services include:

- The reasons they started to provide unbundled services
- The benefits and difficulties of providing unbundled services
- How they assess the capability of clients to manage elements of the matter themselves
- Whether their regulatory responsibilities are clear
- Whether they find the regulatory framework permissive or restrictive
- How providers have adapted their services to meet regulatory requirements
- The attitude of, and their experience of dealing with, professional indemnity insurers
- What changes, if any, they would like to see made to make it easier for them to offer unbundled services while maintaining adequate consumer protection
- Whether this is a profitable area of business, or if they consider it could become so
- Estimated costs savings for clients

The sorts of issues we would wish to explore with providers that do not offer unbundled services include:

- The reasons why they do not provide unbundled services
- Whether they would reconsider providing and unbundled services in the future, and if so the reasons why
- What they perceive the barriers are to providing unbundled services (if any)
- From their experience of dealing with cases involving a consumer on the other side of the case using unbundled services, what they consider the positives and the negatives of unbundled services to be e.g. with regards to quality and the efficient administration of justice

We would like to explore with the judiciary presiding over hearings their perception of unbundled services e.g. with regards to quality and the efficient administration of justice.

Methodology and sampling considerations

We expect a qualitative methodology will be the most suitable approach. This reflects sample sizes and our desire to explore consumer and (potentially) provider perspectives in depth. However, we would be very happy to receive ideas about how a quantitative element could be usefully and feasibly included within the research. Tenders should include discussion of various research approach options and identify a preferred solution.

Although a qualitative methodology will be used, we anticipate finding a good sample will be a key risk in this project given the relatively small numbers of people who use unbundled legal services. Therefore, we expect tenders to set out in detail how samples will be found.

As a rough guide, during the 2013 calendar year there were [266,793 cases in the civil and family courts](#). The main categories of case were private law (96,504) and divorce (113,601). Overall both parties were represented in 26.5% of the 266,793 cases, which means that there was at least one litigant in person in 196,088 cases. However, we have no way of knowing how many consumers (either those represented or acting as litigants in person) used an unbundled service.

The [LSCP's Tracker Survey](#) suggests that 2% of adults in England and Wales have used immigration services within the last two years. Further, 30% of these transactions involved unbundling (although note this was an exploratory question and this sub-sample size was small).

The number of law firms providing unbundled services in either area is unknown.

Tenders should assume that the LSB/LSCP will not be able to assist in finding samples.

Deliverables

The final output will be a written report suitable for publication, to include an executive summary, which addresses the project aims and research questions in full. It is essential that the report and underlying research is sufficiently robust that we can use it externally. We expect this work will be of considerable interest to our stakeholders, which includes parliamentarians, government, the judiciary, regulators, the legal profession, and the consumer and advice sector.

The LSB/LSCP will retain ownership of the report and underlying data, which must be delivered in a publishable format.

Please also cost for making one presentation of the findings to external stakeholders.

Tenders should include a project plan and time schedule for the work that identifies the main tasks 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.

Tender Evaluation Criteria

All projects commissioned are subject to the LSB's 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, including separate costings for the consumer, provider and judiciary samples;
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.

Duration

Tenders should set out dates for completing all key milestones such as information gathering, analysis, synthesis and report writing. Fieldwork should be completed by the end of February 2015. An initial report should be submitted by the end of March 2015 and a finalised report is due by the middle of May 2015.

Contact

Legal Services Consumer Panel/Legal Services Board Contact Details

For any queries about the research specification contact:

Chris Handford (LSB) 020 7271 0074 Steve Brooker (LSCP) 020 7271 0077

Deadline for submission

Tenders must be submitted by the end of 3 December to Chris Handford (chris.handford@legalservicesboard.org.uk)

Interviews with all shortlisted bidders will take place w/c 8 December.