

Research Specification: Unregulated legal services providers (for profit)

Purpose

1. The Legal Services Board (LSB) is seeking to update and improve its understanding of unregulated legal services providers in four key areas:
 - (i) Will Writing and Estate Administration
 - (ii) Family
 - (iii) Intellectual Property
 - (iv) Employment
2. The overarching objective from our Business Plan is “to understand the full range of choices available to consumers.” Key components will be improving our understanding of the supply-side characteristics of unregulated legal services providers within these areas and the benefits and risks that they present to consumers.

Background

3. The LSB has been set up to reform and modernise the legal services market in the interests of consumers by enhancing quality, ensuring value for money and improving access to justice across England and Wales. The LSB seeks to achieve this through pursuing the regulatory objectives set out in the Legal Services Act 2007¹ and by providing regulatory oversight for the eleven approved regulators². All approved regulators share these regulatory objectives.

Unmet legal need

4. LSB research has identified high levels of potential unmet legal need. For example, the [Legal Needs Survey](#) of 2012 found that less than half of individual consumers with a legal problem sought professional advice or assistance. We have a strategic objective for 2015-18 of enabling the need for legal services to be met more effectively.

Unregulated providers

5. We estimate that 20-30% of turnover in the legal sector can be attributed to unregulated providers. Unregulated providers are not prohibited under the Legal Services Act 2007, which provides that individuals or firms must only be authorised and regulated if they wish to provide one of the six “[reserved legal activities](#)”.

¹ http://www.opsi.gov.uk/acts/acts2007/ukpga_20070029_en_2#pt1

² The approved regulators are: 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, Association of Certified and Chartered Accountants, Institute of Chartered Accountants of Scotland, Institute of Chartered Accountants in England and Wales.

6. Our estimates concerning the scale of unregulated provision suggest that unregulated providers already make a significant contribution to meeting legal need and we expect this market share to be maintained or even grow over the coming years.
7. However, the existence of both regulated and unregulated providers creates the potential for uncertainty amongst consumers over the level of protection they will receive when using an unregulated provider; in fact, research has previously found that consumers expect all legal services to be regulated³. It also results in uneven burdens on regulated and unregulated providers offering similar services.
8. We currently have a good evidence base in relation to the supply side for regulated providers of legal services but limited reliable evidence on unregulated providers. We have therefore launched a project to improve our understanding of the supply side for unregulated providers.
9. Our knowledge of unregulated providers to date has largely been drawn from surveys into how individuals and small businesses respond to legal problems. As part of this project we have used this survey evidence to undertake in house mapping of unregulated legal services providers across the market.
10. From our mapping, we believe that unregulated providers appear more frequently in markets such as will writing and estate administration, family, intellectual property and employment. We are now seeking to commission research to undertake a more in depth analysis of the supply side characteristics of unregulated legal services providers within these areas and the benefits and risks that they present to consumers.

Consumer Principles

11. The LSB has an independent arm, the Legal Services Consumer Panel (**LSCP**), which was created to provide high quality, evidenced-based advice to the LSB and others on the consumer interest in the regulation of legal services. The LSCP has produced a [Consumer Principles Framework](#) for assessing impact on the consumer interest. We would like to be able to assess the impact of unregulated providers by reference to the seven consumer principles set out in this framework.

Market segmentation

12. The LSB utilises a model to segment the legal services market which was developed by Oxera. Our in house mapping of the market was based around the “type of consumer problem” segmentation that the model utilises.
13. The four areas identified for this research all correlate to a “type of consumer problem” within the Oxera model. Research should be undertaken by reference to this segmentation model. See [Oxera Segmentation Summary](#) for further details.

Aims and objectives

14. The main aim of this research is to improve our understanding of the supply side characteristics of profit making unregulated legal services providers in the four areas set out in this paper. The research should also provide analysis of the benefits and risks posed by them. We may need to prioritise between these areas depending on the proposed cost and tenders should present costings in a way that facilitates this decision.

³http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/documents/VanillaResearch_ConsumerResearch_QualityinLegalServices.pdf (page 23).

15. More specifically, the research should provide information on the following “core issues” in relation to all four identified areas:

- **Unregulated services offered.**
- **Main provider types and business models used.**
- **The range of qualifications and experience of those providing the relevant legal services** – this should focus on indicative levels of legal training (e.g. no training, degree, degree plus vocational training), work experience (e.g. previous practice as regulated lawyer, paralegal, trainee or no formal experience) and ensuring ongoing competence (e.g. CPD).
- **Client bases** – this analysis should be by reference to “type of consumer” from the Oxera market segmentation model. The Level 1 categories here are (i) Legal aid consumers, (ii) Private consumers, (iii) SMEs and charities, (iv) Large business and (v) government sole purchaser. We would also expect some analysis by the level 2 and 3 factors (see Figure 3 on p.4 of the [Oxera Segmentation Summary](#) for further details).
- **Client acquisition and broader marketing strategies.**
- **Fees and charging structures used.**
- **Benefits to consumers** (by reference to [LSCP Consumer Principles Framework](#)).
- **An analysis of the risks to consumers** (by reference to the [LSCP Consumer Principles Framework](#)).
- **Existing (voluntary) protections and quality control.**
- **Existence and nature of any interest groups or trade bodies.**
- **Levels of interest amongst providers in voluntary regulation.**

Issues and scope

Legal services

16. The research will need to use the same definition of “legal services” that is being used for our overall project. This has been developed from the Legal Services Act definition of legal activity and is as follows:

Legal services includes:

- *Research, advice on transactional matters and document preparation;*
 - *Advice on (potentially) litigious matters and work required to prepare such advice;*
 - *Representation; and*
 - *Notarial activities,*
- in connection with the application of the law or with any form of resolution of legal disputes.*

17. This is a broad definition that will involve a wide range of activities and services.

Unregulated providers (for profit)

18. There is a table at Annex A which explains the different categories of providers that were used for mapping the market. This in depth research should focus on “Unregulated providers (for profit)”. These are providers that are not subject to statutory legal sector specific regulation but for whom the provision of legal services is a significant focus of

their work (i.e. they are not ancillary providers of legal services whose primary service is not legal in nature and may be regulated by a non-legal regulator). Not for profit providers are out of scope for this research.

Structure and focus

19. From our in house mapping of the market we have identified four “types of consumer problem” that we would like to investigate further through this research. Two of these (Will Writing and Estate Administration and Family) concern services that will usually be delivered to individual consumers, whilst the other two (Intellectual Property and Employment) relate to services that would usually be delivered to small business consumers.
20. An explanation of what should be considered within each “type of consumer problem” is included below. Further detail on each area is provided at Annex B, where the summary on each area from our draft in house mapping process has been included.

(i) Individual consumers

- *Will Writing and Estate Administration*
21. Unregulated providers in this area include both specialist will writers as well as those offering DIY will kits and products. Unregulated providers are also active in estate administration.
 22. The LSB investigated unregulated will writing and estate administration services in some detail in 2010/11. The materials and final output from this investigation can be found [here](#).
 23. Through this research we want to update our evidence base on the supply side characteristics of the unregulated will writing and estate administration markets.
- *Family*
24. Family has three main aspects – care, adoption and matrimonial. Unregulated provision appears to centre mainly around matrimonial issues, which includes divorce and related financial arrangements (ancillary relief) and arrangements for contact with children.
 25. Our mapping has identified two distinct types of unregulated provider within the matrimonial sector:
 - Online providers of divorce services – the LSB and LSCP jointly commissioned research into online divorce service which reported in March 2015 ([Comparing methods of services delivery: A case study on divorce](#)). This research was primarily a demand side analysis and did not differentiate between regulated and unregulated online providers, but provides useful context for this study.
 - Fee charging McKenzie Friends – these are unregulated non-lawyers who attend court with Litigants in Person to provide moral support, advice or in some cases (with the court’s permission) exercise rights of audience on behalf of the litigant. The LSCP undertook some supply side research in 2014 into this market ([Fee-charging McKenzie Friends](#)). In the light of this recently gained knowledge we do not wish to conduct any specific further research into McKenzie Friends in this

study, although any relevant information that the research uncovers concerning the extent of their participation in the market should be included in the output from the project.

26. This research should build upon our previous research into online divorce and provide a more in depth supply side analysis of unregulated online providers involved in this work.

(ii) Small business consumers

- *Intellectual Property*

27. This consumer problem type incorporates registering, defending and prosecuting Trade Marks and Patents.

28. In this area consumers will be able to choose between a range of regulated providers, including Trade Mark and Patent Attorneys. However, our mapping has identified unregulated providers including Trade Mark / Patent filing companies, Invention Promotion Companies and more general business support services that appear to offer intellectual property legal services in some circumstances.

29. We are not aware of any recent research or evidence gathering in this area. We are seeking an in depth analysis of the supply side characteristics in this area.

- *Employment*

30. Employment law services for small business consumers are often provided by unregulated businesses alongside, or as part of, wider HR or general business support services. Our [Small Business Survey 2013](#) demonstrated the prevalence of these providers. For example, it found that retainers with 'HR/employment services' were in place for 5.3% of micro businesses (2 to 10 employees) and 23.4% of small businesses with 11 to 50 employees. In total, HR/employment retainers made up approximately 19% of retainers.

31. We would like this research to focus on more complex legal issues such as contract preparation and negotiation, tribunal preparation and representation and advice on significant employment law matters such as fair dismissal. We do not require analysis of routine HR services such as drafting policies, forms, advice to management on restructuring, pay and conditions etc., except insofar as it is relevant to the overall business model and acquisition of clients.

32. There appear to be many established providers in this area, often offering indemnity and other consumer protections. It would be interesting to better understand the full range of options for consumers, including smaller less established advisers.

33. We would also be interested in understanding how providers in these areas are structured and whether more complicated legal issues are dealt with by lawyers or HR professionals.

Sources of information for analysis

34. We expect the contractor to gather most of the materials they need through new primary research. However, in addition, we will be able to make two significant demand side data sets available for analysis. These are:

(i) Data from Individual Legal Needs Survey 2015. This should be available by the end of December 2015. The data set will be from approximately 12,000 consumers and will relate to responses to multiple choice questions concerning how legal problems were approached and dealt with by consumers, including questions about levels of satisfaction. Questions will cover:

- Type of provider used and how they were found
- Information sought before choosing provider
- Whether consumers checked the regulatory status of their provider
- Channels of communication with provider and satisfaction with these
- How the services were paid for (fixed fee, hourly rates etc.)
- Views on value for money
- Satisfaction with different aspects of services
- Overall satisfaction

The data set will be capable of being sorted by reference to the regulatory status of providers, which will enable statistically valid comparisons to be drawn between the experience of consumers who used regulated and unregulated providers.

(ii) Data and report from the Small Business Legal Needs Survey 2015, which should be available from October 2015. The data set comes from approximately 10,500 interviews with small businesses, which covered a series of multiple choice questions concerning access to legal resources and advice as well as handling of specific legal issues. Most questions include options for “HR/employment services” and “Other business support service” as possible providers. Key questions included:

- Independent professional services used in last 12 months
- Whether have an on-going contract with an HR/Employment service
- Most important factors in choosing a provider
- Modes of service delivery
- Outcomes
- Monetary value of any negative outcomes
- Profiling information

35. Both of these surveys will be repeats of similar surveys previously commissioned by the LSB, which can be found on our website [here](#) (see “2012 Individual consumers’ legal needs” and “2013 Small Business Legal Needs Survey”). The data sets for these surveys are also available on our website.

36. Other existing information such as the LSB’s will writing investigation and the LSB and LSCP joint research into online divorce providers can also be found on our research web pages.

37. Finally, the LSB will be able to make information gathered for the in house mapping exercise available for analysis by the successful contractor.

38. We would also expect the successful contractor to identify other available research and material that would be relevant to their work.

Targeted evidence gathering

39. Tenders should also outline what targeted evidence gathering and analysis will be undertaken to support delivery of the required outputs.
40. We would expect this to include a commitment to a minimum number of qualitative interviews or meetings with providers, professional bodies or consumer groups in relation to each area.
41. The LSB will not be able to provide a contact list for this aspect of the research and therefore tenders should specifically address how providers will deal with the practical difficulties in obtaining a reasonable sample of unregulated providers to inform the research.

Tender Evaluation Criteria

42. All projects commissioned by the LSB are subject to our [standard terms of contract](#) and must comply with equality legislation and anti-collusion arrangements⁴. Tenders will be evaluated on best value for money and will be assessed on the basis of:
 - a) Overall cost. Please include appropriate breakdowns.
 - b) Proposed team composition, expertise and management and the organisation's diversity policy.
 - c) The extent to which tenders are clearly written and meet the specified objectives, present a sound methodology, ensure robust research is repeatable, identifying any potential problems, and proposing suitable solutions.
 - d) Address outputs and ensure these are in line with requirements and the required timing of the project.
 - e) Demonstration of understanding of the project.

Deliverables – Outputs and Project Plan

Output

43. As a public body the LSB's policy is to publish research reports and associated datasets in full. The report should be clearly presented in accessible language so that it can be understood by our stakeholders and the general public.
44. The output of this research should be a report, with executive summary, that covers:
 - a. The methodological approach taken;
 - b. A separate analysis in relation to (i) Will Writing and Estate Administration; (ii) Family; (iii) Intellectual Property; and (iv) Employment. This analysis should include, as a minimum, the following:
 - i. Unregulated services offered.
 - ii. Main provider types and business models used.
 - iii. The range of qualifications and experience of those providing the relevant legal services.
 - iv. Client bases (by reference to LSB's Oxera market segmentation model).
 - v. Client acquisition and broader marketing strategies
 - vi. Fees and charging structures used.

⁴ Non-collusive tendering certificate is set out in Annex B and must be submitted alongside any bids for this research contract

- vii. Benefits to consumers (by reference to LSCP Consumer Principles Framework).
- viii. An analysis of the risks to consumers (by reference to the LSCP Consumer Principles Framework).
- ix. Existing (voluntary) protections and quality control.
- x. Existence and nature of any interest groups or trade bodies.
- xi. Levels of interest amongst providers in voluntary regulation.

45. Prior to publication of the final report, we would expect to receive a draft report, with adequate time for iterative reviews and discussion.

Project plan

46. 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.
47. The plan should take account of the fact that data from the Individual Legal Needs Survey 2015 will not be available for analysis until the end of December 2015.
48. We would also expect tenders to include a clear analysis of the potential risks and how these will be mitigated during the project.

Duration

49. The research should commence by the start of November 2015. Ideally, a draft report should be provided by 28th February so that a final report could be approved and ready for publication by 31st March 2016; however, please advise if this timescale is unrealistic.

LSB Contact Details

50. If you have any queries about this research specification please contact Chris Nichols (Regulatory Project Manager) at 020 7271 0083 / chris.nichols@legalservicesboard.org.uk. However, please do not send completed tenders to Chris Nichols.

Tender Closing Date

51. The deadline for receiving tenders will be **Wednesday 14th October 2015**.
52. Completed tenders should be sent to chidinma.alufuo@legalservicesboard.org.uk, or by post to:

Chidi Alufuo
Legal Services Board
One Kemble Street
London
WC2B 4AN

53. Please complete and return the non-collusive tendering certificate located in Annex C at the end of this document along with your proposal.

Category of Provider	Description
(a) LSA regulated providers	All “authorised persons” under the Legal Services Act 2007 (LSA). These are individuals and entities that are authorised by one of the Approved Regulators .
(b) Non-LSA regulated providers	Individuals and entities that provide legal services as a significant focus of their activity and are authorised and regulated by a regulator that is not an Approved Regulator under the LSA. It includes: <ul style="list-style-type: none"> ○ Authorised Claims Management Companies regulated by the Claims Management Regulator, and ○ Immigration Advisers regulated by the Office of the Immigration Services Commissioner.
(c) Ancillary service providers	Advisers whose function is not primarily as a legal adviser but who may occasionally provide some legal advice or other non-reserved legal services ancillary to their primary business. For example: <ul style="list-style-type: none"> ○ Insolvency Practitioners ○ Insurance companies ○ Accountants ○ Surveyors Most ancillary providers will be regulated by their own sectoral regulator as a result of their primary function.
(d) Unregulated providers (not for profit)	This includes charities, public bodies, membership bodies and trade unions. <p>Some not for profit providers will offer free advice to members of the public whereas others (such as Trade Unions and membership bodies) will provide advice to those who have subscribed as members.</p> <p>It is understood that some not for profit providers are beginning to charge for legal advice. However, this group is still distinct from profit making bodies as the fees charged will be in order to secure ongoing service provision and not with the intention of making a profit.</p>
(e) Unregulated providers (for profit)	Providers that are not authorised and regulated under any legal sector specific legislation, provide legal services as a significant focus of their work and seek to make a profit.

Relevant extracts from in house mapping

(i) Will Writing and Estate Administration

This area covers three distinct sub-categories – will writing, estate administration and probate. The grant of probate is a reserved legal activity which means that unregulated providers should not be involved in this area. However, unregulated providers are prevalent in will writing and, to a lesser extent, are also active in estate administration services.

Law Society research in 2010 found that 10% of consumers used an unregulated will-writing company to write their wills and 13% used a will pack or online service. The LSB's investigations into the area estimated that approximately 20% of firms offering will writing products were not subject to statutory regulation (although most were involved in voluntary regulation schemes).

In relation to Estate Administration, the LSB estimate following its investigation was that less than 5% of consumers use unregulated providers.

The main categories of Unregulated Providers (for profit) are:

- i. **Specialist will writers / Will writing companies:** Companies or individuals who offer a dedicated will writing service. Many offer home visits to consumers to get instructions on what to include in the will whilst others are primarily online. Those undertaking the visits would not necessarily be responsible for writing the will. It is common for larger companies to offer commission to staff for selling products.
- ii. **Model will and DIY kit providers:** Some companies offer fixed fee documents online for consumers to purchase.
- iii. **Estate administration companies / Independent trust firms:** These companies charge a fee for administering an estate in line with the contents of a will, including identifying assets and liabilities, assessing the value of the estate, paying inheritance tax and realising, collecting and distributing estate assets. These firms will often also be involved in will writing as well as estate administration. In fact, will writing is the main gateway for estate administration services.

The LSB's report identified the following risks in relation to will writing:

- i. inappropriate sales practices by unregulated providers leading to the sale of products which are not needed, are unsuitable or offer poor value for money;
- ii. poor quality advice and drafting leading to invalid and ineffective wills by unregulated and regulated providers;
- iii. inadequate arrangements for the safe keeping of wills among unregulated providers leading to wills being unavailable when required;

- iv. absence of effective redress mechanisms leaving consumers of unregulated providers unable to put things right or obtain compensation where/when things go wrong;
- v. dampening of competition because of lack of trust in the unregulated sector, which restricts its growth; and
- vi. false consumer confidence with consumers mistakenly believing that all providers are regulated.

The Society of Will Writers and the Institute of Professional Willwriters (IPW) both operate voluntary self-regulatory regimes for their members. The IPW has obtained Chartered Trading Standards Institute (CTSI) approval for its consumer code.

(ii) Family Law

This area covers adoption, care and matrimonial work. Unregulated provision within the first two areas appears to be limited, with the exception of some charities, community organisations and government supported organisations.

Family or relationship breakdown is the most commonly recognised legal problem by consumers, within this area. There appear to be a number of Unregulated Providers (for profit) involved in this subsection. For example, there are a significant number of online providers of divorce services, offering to initiate divorce petitions or prepare all required forms required to lodge with the courts. Most providers appear to offer either DIY forms and kits or a personalised service involving consultations and advice. There is evidence of some online divorce providers also offering will writing services.

The LSB and the LSCP have considered online divorce services providers before and their findings are outlined in the report entitled [Comparing methods of service delivery: A case study on divorce](#). The report considers uncontentious matters, so the findings may not apply to all online providers encountered in the mapping. On balance, however, this research suggests that these providers present a reasonable alternative for consumers (and do not present undue additional risk).

Family is also the most popular area for paid McKenzie Friends. It is believed that McKenzie Friends will assist either with divorce and ancillary relief proceedings or often with disputes over contact with children. Past research by the LSCP into [McKenzie Friends](#) is available.

(iii) Intellectual Property

Solicitors, registered patent attorneys and registered trade mark attorneys still have a strong presence in this area.

There are considerable international angles to intellectual property work (eg. for the registration of EU Community Trade Marks or registration of trade marks internationally through the Madrid Trademark system) and therefore there are a significant number of international organisations, both regulated and unregulated, that compete for work from UK consumers.

Alongside regulated providers, there are a number of inventor societies, trade bodies and public bodies that offer some advice and assistance with intellectual property matters.

The area also includes a significant presence of Unregulated Providers (for profit). The most prevalent are:

- i. **Online Trade Mark or Patent Registration Companies:** The regulatory status of such bodies is difficult to ascertain and potentially confusing for consumers. Many operating entirely outside the regulatory regime offer full registration services, and use advertising language such as 'expert' or 'specialist' which may imply quality and regulation. Some offer primarily referral services and some will provide some legal advice and services and refer more technical aspects. Some unregulated provider entities employ registered patent or trade mark attorneys alongside other unregulated individuals (in these circumstances it is assumed that regulation and protection will depend upon which individuals are providing the advice and services).
- ii. **Invention Promotion Companies:** These are companies that help inventors and entrepreneurs to design, develop and commercialise products, inventions and ideas. Offering or sourcing legal advice in relation to registering patents and trademarks is often an important part of the services offered.
- iii. **HR/ business support services:** The Individual Legal Needs Survey 2013 identified HR/ Employment services as being a source of intellectual property advice. Internet research suggests that most service offerings would assist with referrals to solicitors or patent and trade mark attorneys for such advice. It is possible that some services will offer some early stage intellectual property advice. However, this is not likely to be a significant area.

(iv) Employment

Regulated providers remain important across the market, including providing services to individual employees (or staff engaged through other arrangements), and to employers or organisations engaging staff.

There is a reasonable presence of not for profit advisers, including traditional community-based advisory organisations.

Other trends in this Consumer Problem Area include claims management providers offering services that could be classified as legal services, and accountants or financial advisers offering services that could be classified as legal services (for example, pensions advice).

Key Unregulated Providers (for profit) to note include:

- i. McKenzie Friends providing assistance in relation to matters in employment tribunals
- ii. HR/ business support services offering legal advice services (and potentially other legal services) to businesses.

Legal Services Board

Contract for the provision of research services to the Legal Services Board

Non-collusive tendering certificate

We certify that this is a bona fide tender, and that we have not fixed or adjusted the amount of the tender by or under or in accordance with any agreement or arrangement with any other person. We also certify that we have not done and we undertake that we will not do at any time before the hour and date specified for the return of this tender any of the following acts:-

- a) communicate to a person other than the person calling for those tenders the amount or approximate amount of the proposed tender, except where the disclosure, in confidence, of the approximate amount of the tender was necessary to obtain insurance premium quotations required for the preparation of the tender;
- b) enter into any agreement or arrangement with any other person that he shall refrain from tendering or as to the amount of any tender to be submitted;
- c) offer or pay or give or agree to pay or give any sum of money or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done in relation to any other tender or proposed tender for the said work any act or thing of the sort described above.

In this certificate, the word "person" includes any persons and any body unincorporate; and "any agreement or arrangement" includes any such transaction, formal or informal, and whether legally binding or not.

Dated this day of 2015

Signature _____

In the capacity of (eg director,
secretary etc)

(capitals) _____

Duly authorised to sign
tenders for and on behalf of

Postal address _____

Telephone no _____

Fax no _____

E-mail address: _____