

# Consultation on the separate business rule and on activities within recognised bodies and RSPs

## Annex 1

### Market Analysis

#### 1. Features of the alternative legal services market

##### *Definition*

1.1 In the context of this paper, any reference to ‘alternative’ providers refers to providers of legal services that are not authorised by an approved regulator under the Legal Services Act 2007 (LSA). By definition, this is those businesses that provide only unreserved legal services and do not employ practising solicitors to provide services to the public<sup>1</sup>. Some of these providers will be unregulated. Others may be subject to regulation elsewhere as discussed later in this paper, but they are not regulated by an approved regulator as defined by the LSA. In its report *Redress for “Legal Services”*, prepared for the Legal Ombudsman, Northumbria University Law School termed this the “Alternative Legal Services Market”<sup>2</sup> and we have adopted this term for the purposes of this paper.

##### *Size of the market*

1.2 The available evidence suggests that the legal sector as a whole is growing, with the LSB estimating that between 20 to 30% of the turnover of the legal services market in the UK (£29 billion total turnover according to 2013 ONS figures<sup>3</sup>) is generated by alternative legal services providers. The same report puts solicitors firms as responsible for generating 60% of turnover.<sup>4</sup> SRA data shows there were 10,593 solicitor firms and 130,846 practising solicitors as of August 2014.

1.3 According to the Law Society Market Assessment Report 2012-13<sup>5</sup>, the size of the alternative market is substantial but not accurately known. ONS data indicates 6,000 plus “other” providers (although this figure also includes “other” regulated providers), which are likely to range from small micro business through to large branded organisations such as banks.

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<sup>1</sup> SRA Practice Framework Rules 2011 provide that where a solicitor is employed to provide services to the public, the employing organisation must also be authorised

<sup>2</sup> <http://www.legalombudsman.org.uk/downloads/documents/publications/Redress-for-Legal-Services-FINAL-11072013.pdf>

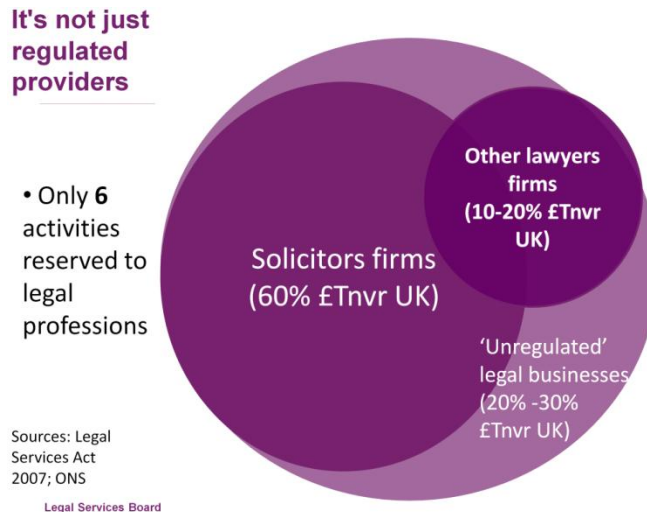
<sup>3</sup> <http://www.ons.gov.uk/ons/search/index.html?pageSize=50&sortBy=none&sortDirection=none&newquery=solicitors+turnover>

<sup>4</sup> <https://research.legalservicesboard.org.uk/wp-content/media/UCL-AtoJ-Conference-presentation-20-June-2014.pdf>

<sup>5</sup> <https://www.lawsociety.org.uk/representation/research-trends/market-assessment-2012-13/>

1.4 The LSB map of the legal services industry, based on data from 2010, estimated the number of individuals providing unreserved legal services as unauthorised persons to be in excess of 130,000<sup>6</sup> - the equivalent size of the current population of practising solicitors. There are, however, larger estimates of paralegals. The National Association of Licensed Paralegals estimates there were 200,000 paralegals in 2010, whilst in the same year the Institute of Paralegals estimated that there were 250,000 paralegals and an estimated 4000 to 6000 paralegal law firms (PLFs) in the UK.<sup>7</sup>

1.5 The diagram below taken from a published presentation by the LSB<sup>8</sup>, demonstrates the estimated split.



### **Types of advice**

1.6 Alternative legal services providers deliver a range of services, many of which could be termed as “legal” by consumers. In a report prepared for the Legal Ombudsman, Northumbria Law School looked at the opportunities for redress available to consumers of services delivered by these providers.<sup>9</sup> The report reveals a varied market of alternative providers and finds protections for consumers to be mixed, with a wide range in the opportunities for redress available.

1.7 The following types of advice are identified in the report.

- Housing; may be provided by charities such as Shelter or Local Authority housing departments;

<sup>6</sup> LSB, Supply, 2011: 18, <https://research.legalservicesboard.org.uk/wp-content/media/RIR-Map-of-Legal-Services-Supply-October-2011v2.pdf>

<sup>7</sup> Institute of Paralegals, 2010. There are three main types of paralegal firm at present: (1) paralegal firms registered with the Office of the Immigration Commissioner; (2) paralegal firms registered with the Ministry of Justice in connection with legal claims case management, and (3) unregistered paralegal firms which include all other firms focusing on non-reserved work (e.g. will writing)

<sup>8</sup> <https://research.legalservicesboard.org.uk/wp-content/media/UCL-AtoJ-Conference-presentation-20-June-2014.pdf>

<sup>9</sup> <http://www.legalombudsman.org.uk/downloads/documents/publications/Redress-for-Legal-Services-FINAL-11072013.pdf>

- Immigration; it is a criminal offence for anyone to provide immigration advice in the UK unless they are a Solicitor, Barrister, Chartered Legal Executive or registered with the Office of Immigration Services Commissioner (OISC)<sup>10</sup>;
- Employment advice may be provided by an HR company, Trade Union, insurance company or Claims Management Company (CMC)
- Advice on planning disputes may be provided by architects or surveyors;
- Advice in relation to house sales/purchasing may be provided by estate agents;
- Financial, estate planning and tax planning advice is very likely to be provided by financial advisors (who may or may not be registered with the FCA) or accountants;
- Insolvency advice from Insolvency Practitioners;
- Debt management and/or debtors rights: discussions may emerge between debtors and debt managers or bailiffs;
- Funeral planning, issues including contractual arrangements and potentially home ownership, title problems or probate matters may arise in discussions with funeral planners; and
- Mediation services.

1.8 The LSB estimated in 2013 that around 14% of paid for estate administration services were provided for by non LSA authorised companies. This includes accountants and banks that are regulated elsewhere and around 5% supplied by companies that are not regulated in any sector. They also estimated that around 12% of will writing services were supplied by small independent will-writing companies that are mainly unregulated.

1.9 We are seeing a growth in the number of online and 'retail' providers in the legal services market, both regulated and not, increasingly providing services together. US based Legal Zoom pairs online document preparation services with links to UK solicitors firms. Their UK website claims to have helped over 2 million clients on matters like business formation and wills and adds: 'we offer access to independent solicitors through our business and legal plans. We will take care of all the details through our website and even create the paperwork.'<sup>11</sup> Another US brand, Rocket Law provides UK consumers with a similar offer of online assistance with legal document preparation and access to advice from solicitors firms under monthly subscription arrangements.<sup>12</sup> Both are aimed at the individual consumer and small business market.

1.10 At the corporate end of the alternative market, Axiom Law provides seconded lawyers to in-house legal teams as well as outsourcing options for complex legal processes and support with managing complex legal projects by multidisciplinary teams. Axiom claims to serve nearly half of all FTSE100 companies.<sup>13</sup>

1.11 There is a growing trend of using legal process outsourcing. It was estimated in 2012 that the global market was worth \$ 2.4 bn<sup>14</sup> with very high continuing growth rates.<sup>15</sup>

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<sup>10</sup> The LSCP reported there are around 1300 SRA regulated firms delivering immigration advice and 1930 OISC authorised firms

<sup>11</sup> <http://www.legalzoom.co.uk/about-legalzoom>

<sup>12</sup> <https://www.rocketlawyer.co.uk/>

<sup>13</sup> <http://www.axiomlaw.com/what-we-do>

<sup>14</sup> Wood, L., (2011), "Research and Markets: The Global LPO Market is Expected to be Worth \$2.4 billion

Whilst much of this work in the UK will be commissioned by regulated providers on the client's behalf, these services are also increasingly used by in-house legal teams.<sup>16</sup> Leading providers include CPA Global who provide support services in areas such as transactions, litigation support, contract management, anti-bribery and compliance, and legal research, and have 1800 employees in 11 countries<sup>17</sup>.

- 1.12 Another model is the provision of legal services alongside another primary service, for example legal expenses insurance where a consumer could take out insurance for a particular item they are purchasing and as a consequence be eligible for related legal advice at no additional cost. The AA provides access to their online legal documentation service to all home insurance customers offering consumers the opportunity to write their own will with the assistance of online drafting software.<sup>18</sup> Such services are also offered alongside LSA regulated services such as conveyancing provided by a panel of providers regulated by either the SRA or CLC.
- 1.13 Overall innovation in the legal services market is now taking place at a rapid pace. The recent Financial Times 2014 report on innovative lawyers provides a number of examples.<sup>19</sup>

## 2. Statutory and other protections for consumers of alternative legal services

2.1 The range in both the type of advice and the providers of alternative legal services raises the issue of availability of statutory or other consumer protections. There is a general consensus that the protections afforded by consumer law are complex and confusing for consumers. This is an issue the Government is seeking to address through the Consumer Rights Bill, introduced to Parliament to simplify and strengthen consumer law.

2.2 The Northumbria Law School research looked at the rights of common law arising from the contract between provider and consumer for the provision of rights and services, highlighting the differentiation between statutory protections for the "provision of goods" and "contracts for the provision of services" which are each governed by different legislation. It found that while most legal services would be defined as "pure" service contracts and therefore covered by the Supply of Goods and Services Act 1982, the issue is complicated by the fact that goods and services are provided together (such as the provision of legal advice alongside the provision of legal documents) and therefore may also be covered by the Sale of Goods Act 1979 (insofar that the tangible goods, i.e. the legal documents, are the substance of the contract). Notably, the paper concluded that *"it is well recognised that the remedies are confusing and in fact lead some consumers to believe they actually have better remedies than those that the law actually provides."*<sup>20</sup> Moreover, the remedies afforded by consumer law tend to be inaccessible to

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in 2012," Business Wire, March 11;

<sup>15</sup> "Research and Markets: The LPO Market in India to Grow at a CAGR of 27.5%," Business Wire, March 08, 2012.

<sup>16</sup> See e.g. <http://www.axiomlaw.com/Docs/Axiom - Legal Week - 7th Feb 2014.pdf>

<sup>17</sup> <https://www.cpaglobal.com/AboutUs/>

<sup>18</sup> <http://www.theaa.com/legal-services/legal-documents.html>

<sup>19</sup> <http://www.ft.com/reports/innovative-lawyers>

<sup>20</sup> Page 38, <http://www.legalombudsman.org.uk/downloads/documents/publications/Redress-for-Legal-Services-FINAL-11072013.pdf>

consumers. Recourse to trading standards is now accessible through Citizens Advice, which decides which complaints to refer on.<sup>21</sup>

- 2.3 For consumers of online services, some protections are afforded by the Consumer Contract (Information, Cancellation and Additional Charges) Regulations 2013 which replaced the Consumer Protection (Distance Selling) Regulations 2000 and Cancellation of Contracts made in a Consumer's Home or Place of Work etc. Regulations 2008. The regulations require traders to provide certain information to consumers, including the identity and geographical address of any third-party trader, information on who to complain to, and information on the right of cancellation or refund. This extends to traders providing services "off premises" (including online).<sup>22</sup>
- 2.4 In some cases, providers of alternative legal services may come within another regulatory regime either through the regulation of their professional title or through the type of service they provide. For example, all architects are required to register with the Architects Registration Board in order to use the title 'Architect'. Banks will be regulated by the Prudential Regulation Authority and the Financial Conduct Authority (FCA). There are a number of examples where the activity concerned (and therefore any provider involved in that activity) requires regulation. For instance, providers of immigration advice are required by law to be authorised by OISC if they are not already authorised by a designated professional body. The Ministry of Justice (through the Claims Management Regulator) regulates CMCs. A useful analysis of the reach of other regulatory regimes is provided in the Northumbria research<sup>23</sup> and the LSB has completed a similar review of protections relating to charities and other Special Bodies<sup>24</sup>.
- 2.5 While this is the case for many of the providers of the services outlined in Section 1 of this paper, the Northumbria research found that the extent to which this offers consumer protection in the form of access to redress varies significantly between types of provider.<sup>25</sup> For example, a consumer seeking housing advice from a local authority housing department would have the ability to complain and for redress to be awarded under the auspices of the Local Government Ombudsman, whereas a consumer seeking advice on the same issue from a charity<sup>26</sup> may not (as there is no standard redress mechanism for charities). This is also the case in relation to immigration advice where clients of solicitors, barristers and legal executives have access to the Legal Ombudsman while clients of OISC regulated firms do not.
- 2.6 Unregulated providers may voluntarily opt to come within some form of regulation in their own industry, for example, that provided through membership of trade associations such as those associated with will writing<sup>27</sup> or paralegals<sup>28</sup>. The power of bulk purchasers such as the Legal Aid Agency (LAA) also provides some protection for consumers of those

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<sup>21</sup> [http://www.adviceguide.org.uk/england/consumer\\_e/consumer\\_protection\\_for\\_the\\_consumer\\_e/protectio\\_n\\_trading\\_standards\\_e/reporting\\_a\\_problem\\_to\\_trading\\_standards.htm](http://www.adviceguide.org.uk/england/consumer_e/consumer_protection_for_the_consumer_e/protectio_n_trading_standards_e/reporting_a_problem_to_trading_standards.htm)

<sup>22</sup> For more information see Law Society Practice Note, last updated on 18 September 2014  
<http://www.lawsociety.org.uk/advice/practice-notes/consumer-contracts-regulations-2013/>

<sup>23</sup> See Table 2 <http://www.legalombudsman.org.uk/downloads/documents/publications/Redress-for-Legal-Services-FINAL-11072013.pdf>

<sup>24</sup> See Annex A of LSB consultation on 'Regulation of Special/Non-commercial Bodies'  
[http://www.legalservicesboard.org.uk/what\\_we\\_do/consultations/open/pdf/3.pdf](http://www.legalservicesboard.org.uk/what_we_do/consultations/open/pdf/3.pdf)

<sup>25</sup> See Table 2 <http://www.legalombudsman.org.uk/downloads/documents/publications/Redress-for-Legal-Services-FINAL-11072013.pdf>

<sup>26</sup> Defined as a "Special Body" in LSA2007 and therefore exempt from the requirement to become authorised for a transitional period. The end of the transitional period is a matter for the LSB

<sup>27</sup> For example the Institute of Professional Will Writers has around 200 members <http://www.ipw.org.uk>; and the Society of Will Writers has around 2000 <http://www.willwriters.com>

<sup>28</sup> For example the Institute of Paralegals <http://www.theiop.org> and National Association of Licensed Paralegals <http://www.nationalparalegals.co.uk>

services through contracting criteria such as insurance or supervision requirements. While the majority of legal aid providers are likely to be authorised under the LSA, not all are, and the same argument can be made of other bulk purchasers such as local authorities.

2.7 We have also seen developments in financial services, with the designation of four organisations (including both consumer and business representatives) as “super-complainants”. The four bodies will have the power to present complaints to the FCA if they believe there are features of a financial services market that are, or could be, significantly damaging the interests of consumers.<sup>29</sup>

2.8 What emerges therefore is a picture of the complexity of current consumer protection arrangements in the alternative sector. In some circumstances, providers are subject to double regulation while others are subject to none. Further, ‘regulation’ does not necessarily afford the same protections across similar types of work with many of the protections still provided on the basis of who is providing the advice. The Government’s decision following its consultation on implementing the Alternative Dispute Resolution Directive and Online Dispute Resolution Regulation may assist in providing greater access to effective remedies.<sup>30</sup>

### 3. Areas of work

3.1 The solicitor market is dominated by small firms, many of which are sole practitioners. The most recent SRA data puts the percentage of sole practitioner firms at 27%<sup>31</sup> although this has been declining over time. It should however be noted that sole practitioner relates to a sole owner, who may or may not employ other staff (including other solicitors).

3.2 The LSB’s Regulatory Information Review (RIR) completed in 2010 found there to be very limited information on the amount of reserved/unreserved legal activity. This gap in information has to some extent been filled by research completed over the past four years although the preferred approach has been to focus on consumer problem by type or area of work rather than whether it is reserved or unreserved.

3.3 Law Society estimates suggest that around 40% of turnover generated by solicitors firms in 2011/12 was generated from reserved legal activity.<sup>32</sup> An LSB commissioned survey of individual consumers conducted by BDRC found that regulated providers were involved in 47% of legal needs that required advice but that reserved legal activities made up less than 20% of all legal needs. Regulated providers were found to be delivering the majority of advice in areas such as conveyancing, probate, divorce and will writing, while alternative legal service providers were more likely to help with money and benefit problems, neighbour and property disputes as well as will writing.<sup>33</sup>

3.4 LSB research on resolving legal problems stated that:

*“While the public facing practice of traditional legal professionals extends to a largely unchanged (over the past half-century) and relatively narrow range of legal problems, the public’s experience is centred on a far broader range of welfare and consumer related issues that have become fundamental to civil justice with the establishment*

<sup>29</sup> <https://www.gov.uk/government/news/financial-services-super-complainants-confirmed-by-government>

<sup>30</sup> <https://www.gov.uk/government/consultations/alternative-dispute-resolution-for-consumers>

<sup>31</sup> [http://www.sra.org.uk/sra/how-we-work/reports/data/solicitor\\_firms.page](http://www.sra.org.uk/sra/how-we-work/reports/data/solicitor_firms.page)

<sup>32</sup> The Law Society Market Assessment, Part 3, 2013

<sup>33</sup> Legal Services Benchmarking Report, BDRC International June 2012

<https://research.legalservicesboard.org.uk/wp-content/media/2012-Individual-consumers-legal-needs-report.pdf>



*(over the past half-century) of an extensive range of legal rights and obligations relating to benefits, debt, education, health, housing and consumer transactions.”*<sup>34</sup>

- 3.5 Findings from the 2012 survey of solicitors commissioned by the Legal Services Board, the Law Society, and Ministry of Justice found that the most common area of work undertaken by solicitors was residential property, with 48% of firms generating at least 10% of their gross fee income from that work. This was followed by probate and estate administration, family/matrimonial, commercial property, wills, trusts and tax planning, crime and commercial/corporate)<sup>35</sup>. The survey also found that 27% of firms reported to conduct at least 90% of their work in a single category ('narrow practice firms').
- 3.6 The LSCP annual tracker survey has also looked at the type of work undertaken, from the perspective of consumer problem type. Conveyancing and will writing have been the named as the most commonly sought areas of advice by consumers, with the majority of consumers consistently seeking advice from solicitors in these areas<sup>36</sup>. The LSB has estimated that solicitors provide around 86% of paid for estate administration services.<sup>37</sup>
- 3.7 Looking at the top 200 firms, the Law Society Market Assessment Report 2012-13 found that "business and commercial" work describes almost half of fee-income generated by these firms (47%) through their work for listed and non-listed companies. These firms are often thought of to be mainly "corporate" firms, i.e. working for corporate clients, but the report found that there is in fact a greater variety of in-firm speciality. For instance, while many of the top 200 firms do not conduct private client work, others offer separate private client departments or provide "a broad range of private client services spanning "retail" and high net worth private individuals needs including wills, probate, tax and trusts."<sup>38</sup> Nevertheless, the largest firms were found to have "a strong emphasis on corporate merger and acquisition work, corporate governance and compliance, international issues and/or strong litigation expertise, reaping the benefits of international regulatory disputes".
- 3.8 The Law Society report also stated that solicitor fee income in corporate and commercial work in offices in England & Wales in 2010/11 was £4,472m, accounting for 25% of total turnover. At the level of individual solicitors, much corporate and commercial work can be described as general business or financial issues. The most common categories of work described by individual PC holders relating to firm wide activity in corporate/commercial were: corporate finance, mergers and acquisitions, banking law, finance and investment services and insurance.
- 3.9 The available evidence set out above suggests that private client work tends to be clustered around the reserved and closely related activities (conveyancing, probate and estate administration, family), whereas the larger firms and those with corporate clients may be more likely to include more unreserved work. Where these larger firms are conducting private client work, it can be surmised that are more likely to be advising individuals that are perhaps better equipped for financial reasons to choose between providers.

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<sup>34</sup> <https://research.legalservicesboard.org.uk/wp-content/media/How-People-Resolve-Legal-Problems.pdf>

<sup>35</sup> *A Time of Change: Solicitors Firms in England and Wales* Pleasence, Balmer and Moorhead, July 2012  
<https://research.legalservicesboard.org.uk/wp-content/media/time-of-change-report.pdf>

<sup>36</sup> For the last four years, the Legal Services Consumer Panel has commissioned YouGov to conduct an annual tracker survey in two parts: a nationally representative sample and a sample of people who have used legal services in the past two years. For more information see the LSCP website

[http://www.legalservicesconsumerpanel.org.uk/publications/research\\_and\\_reports/index.html](http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/index.html)

<sup>37</sup> Paragraph 83 [http://www.legalservicesboard.org.uk/projects/pdf/20130211\\_final\\_reports.pdf](http://www.legalservicesboard.org.uk/projects/pdf/20130211_final_reports.pdf)

<sup>38</sup> <http://www.lawsociety.org.uk/representation/research-trends/market-assessment-2012-13/>

## 4. How do clients choose legal providers?

- 4.1 Research suggests that consumers rely heavily on recommendations from people they trust when choosing a legal provider. Those that have used a provider before are likely to return to them for advice without comparing costs with other legal providers. Nor are consumers found to be doing much research in order to make a decision about who to choose.<sup>39</sup> The recent LSCP tracker survey has identified an increase in the number of people that are happy in the choice of providers available to them but also a rise in the number of people that feel ambivalent about comparing providers. It is likely that this is due to the difficulties in comparing providers and the lack of information available to consumers.
- 4.2 Significantly, SRA commissioned research found that people do not tend to find it easy to decide when a legal services provider has the right qualifications and experience for their case, although professional qualifications “seemed to be perpetually linked with regulation, insofar as participants expected that if a provider has given the impression that they are well qualified, then it is assumed that they will also be regulated.” However, having a name with ‘solicitor’ in the title was seen as one indication of a reliable provider, and consumers had confidence in the ability of solicitors to provide legal services.<sup>40</sup>
- 4.3 In a report on ‘risk and regulation’ (commissioned by the LSB), Vanilla Research<sup>41</sup> found that consumers feel vulnerable when using legal services and have little knowledge of the various protections provided by the regulation of authorised persons. Nearly everyone assumed that *something* must be in place by way of regulatory protection but would not take this into account when choosing a provider. This supports one of the key findings in the SRA research that people are generally surprised and concerned to find out that not all legal services provided need to be regulated (such as will writing).
- 4.4 Other research has pointed that consumers make decisions through or using a range of behavioural tools that are well recognised in other fields, and that we need to recognise this when thinking about how they choose their lawyer.<sup>42</sup> The fact that consumers do not understand regulation or protection does not necessarily mean they make bad decisions as they rely on other signals.
- 4.5 In fact, despite a lack of knowledge among consumers as to whether or not a legal services provider is regulated the evidence suggests that clients with the most serious cases tend to find their way to regulated lawyers. For example, research by BDRC found that a consumer problem may be ignored, whereas a divorce would require more “positive action”. In 56% of cases, advice was taken in relation to divorce (and related issues) and in these cases 80% consulted a solicitor. Another example is probate, where advice was taken in around 66% of cases with the majority again choosing to consult a solicitor.<sup>43</sup>

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<sup>39</sup> SRA commissioned research from GfK NoP on consumer attitudes to legal services, February 2011 <http://www.sra.org.uk/sra/how-we-work/consumer-research/summaries/purchase-of-legal-services.page> and LSB commissioned Benchmarking Report, June 2012 <https://research.legalservicesboard.org.uk/wp-content/media/2012-Individual-consumers-legal-needs-report.pdf>

<sup>40</sup> <http://www.sra.org.uk/sra/how-we-work/consumer-research/summaries/purchase-of-legal-services.page>

<sup>41</sup> *Risk and the Role of Regulation*, Report prepared for the Legal Services Consumer Panel by Vanilla Research, January 2013 [http://www.legalservicesconsumerpanel.org.uk/publications/research\\_and\\_reports/documents/Vanilla%20Research%20Risk%20and%20Regulation%20final.pdf](http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/documents/Vanilla%20Research%20Risk%20and%20Regulation%20final.pdf)

<sup>42</sup> See e.g. <https://research.legalservicesboard.org.uk/wp-content/media/PLE-assessment-final.pdf>

<sup>43</sup> See pages 92-118, Legal Services Benchmarking Report, BDRC International June 2012 <https://research.legalservicesboard.org.uk/wp-content/media/2012-Individual-consumers-legal-needs-report.pdf>



## 5 Analysis of consumer detriment

### *Alternative supply of legal services and LSA regulated supply*

5.1 The LSB produced the results of an investigation into will writing, estate administration and probate activities in February 2013.<sup>44</sup> In relation to wills the investigation, which relied in part on SRA research<sup>45</sup>, found that widespread consumer detriment had arisen as a result of:

- inappropriate sales practices by unregulated providers leading to the sale of products which are not needed, are unsuitable, or offer poor value for money
- poor quality advice and drafting leading to invalid and ineffective wills by unregulated and regulated providers
- inadequate arrangements for the safe keeping of wills among unregulated providers leading to wills being unavailable when required
- absence of effective redress mechanisms leaving consumers of unregulated providers unable to put things right or obtain compensation where/when things go wrong
- dampening of competition because of lack of trust in the unregulated sector, which restricts its growth
- false consumer confidence with consumers mistakenly believing that all providers are regulated.

5.2 One way of summarising these findings is that a key difference between regulated and unregulated providers was that the former did better at the service related aspects of their cases, but that quality was equally poor across groups. The report also added “A majority of wills are written by solicitors. Solicitor regulation includes a range of obligations to safeguard against risks across the full range of legal activity that a solicitor is theoretically authorised to undertake rather than just the risks in the work that they actually undertake. This has not been effective at consistently achieving good outcomes for consumers of will-writing services. Our research has shown issues with the quality of wills and customer service being provided by solicitors as well as unregulated will-writing companies.”<sup>46</sup>

5.3 As a result of these findings the SRA issued guidance to solicitors on will writing in May 2014 stating ‘The SRA has produced the guidance in response to evidence that nearly 25 per cent of wills drafted by solicitors failed to achieve the desired quality. A "shadow shopper" exercise carried out in partnership with the Legal Services Board, Legal Services Consumer Panel and the Office of Fair Trading found that, of the 41 wills drafted by solicitors during the survey, nine did not meet the needs and circumstances of the client.’<sup>47</sup>

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<sup>44</sup> [http://www.legalservicesboard.org.uk/projects/pdf/20130211\\_final\\_reports.pdf](http://www.legalservicesboard.org.uk/projects/pdf/20130211_final_reports.pdf)

<sup>45</sup> <http://www.sra.org.uk/sra/how-we-work/consumer-research/summaries/the-consumers-experience-of-will-writing.page>

<sup>46</sup> Paragraph 26 [http://www.legalservicesboard.org.uk/projects/pdf/20130211\\_final\\_reports.pdf](http://www.legalservicesboard.org.uk/projects/pdf/20130211_final_reports.pdf)

<sup>47</sup> <http://www.sra.org.uk/sra/news/press/will-writing-guidance.page>

5.4 The same LSB report<sup>48</sup> concluded that it was not appropriate to make a recommendation to the Lord Chancellor to make estate administration a reserved legal activity. The reasons given included:

- The evidence did not compellingly demonstrate systemic fraudulent or dishonest practices or other problems causing significant consumer detriment within the unregulated sector
- Whilst providing some deterrent to dishonest entrants to the market and some consumer protection benefits, regulation is unlikely to be effective at managing vulnerability to fraud.
- The market share held by unregulated estate administration providers appeared to be small, particularly in relation to the core legal activities of estate administration specified in the provisional report - “collecting, realising and distributing estate assets”.

#### *Reserved and unreserved legal activities*

5.5 The Legal Ombudsman’s published complaints data does not separate complaints into reserved and unreserved legal activities but breaks them down by categories of law. Taking those categories that are likely to involve some reserved legal activity<sup>49</sup> gives an estimate of around 65% of the complaints involving reserved legal services in 2013-4, not including a proportion of the nearly 13% of complaints which involved either wills or probate (these two categories are not separated out in the published data).<sup>50</sup> Complaints about immigration services comprised another 4%.

#### *Breakdown of SRA regulatory reports between reserved and unreserved activities*

5.6 The SRA received 12,455 regulatory reports between 1 September 2013 and 31 August 2014. When we receive a regulatory report, we record the related law type if applicable. Some regulatory reports do not have a related law type and others are recorded with more than one related law type.<sup>51</sup>

5.7 Chart 1 presents the percentage of all law types across all regulatory reports during this period.

5.8 As the chart shows, 27% of regulatory reports did not have a related law type. This was largely due to reports of failure to file an accountants report on time, failure to co-operate, financial difficulty, and firm abandonment, none of which directly relate to a particular law type.

5.9 The most prevalent related law types recorded were residential conveyancing (13%), general civil litigation (10%), probate (7%), personal injury (5%) and criminal law (4%), all of which are reserved legal activities.

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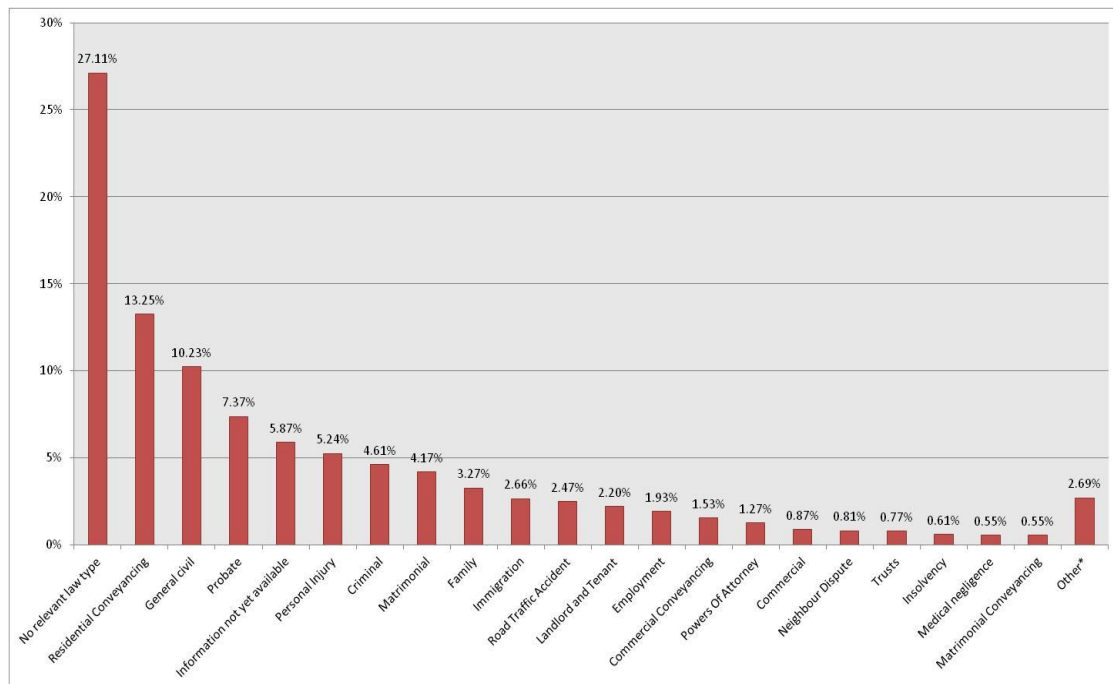
<sup>48</sup> Paragraph 72 [http://www.legalservicesboard.org.uk/projects/pdf/20130211\\_final\\_reports.pdf](http://www.legalservicesboard.org.uk/projects/pdf/20130211_final_reports.pdf)

<sup>49</sup> Commercial and residential conveyancing, criminal law, family law, personal injury and litigation

<sup>50</sup> <http://www.legalombudsman.org.uk/research-decisions/complaints-data.html>

<sup>51</sup> The total number of law types was 13,175 in 12,455 regulatory reports.

**Chart 1: Percentage of law types recorded in all regulatory reports from 1 September 2013 to 31 August 2014**



5.10 87% of regulatory reports where type of law was known related to law types representing reserved activity (or most likely to involve reserved activity) and immigration. We upheld allegations and took some form of regulatory action in response in 180 cases involving these law types during the year to 31 August 2014 including 82 referrals to the SDT. We also closed 1,076 matters due to on-going other action. For example, we may already be taking action against the firm, the reported matter may be less severe than matters we are already aware of or we have decided not to investigate the matter further but to monitor.

5.11 By comparison in the same period 29 matters relating to the remaining categories of law (likely to involve only the provision of an unreserved legal activity) were subject to some kind of regulatory action, including 10 referrals to the SDT. We closed 146 matters due to on-going other action.

5.12 Our analysis based on these categories showed that there appears to be little significance between the regulatory outcome reached and whether the regulatory report related to a 'reserved' or 'unreserved' activity. For example, allegations that related to the provision of a reserved legal activity were not upheld in 73% of matters where further action was taken, and those that related to the provision of an unreserved legal activity were not upheld in 76%. Similarly, referrals to the SDT were made in 2% of matters that related to the provision of a 'reserved' legal activity and 1% of matters that related to the provision of an 'unreserved' activity.

5.13 For reserved legal activities the most common allegations were incompetence, taking unfair advantage of a third party and misleading the court. For unreserved legal activity, these were taking unfair advantage of a third party, incompetence and deception or dishonesty.

### Regulatory reports on separate businesses

5.14 We record reported breaches of the separate business rule as either *improper provision of a service through a separate business* or *insufficient safeguards for a permitted separate business*.

5.15 In the past three years, we have received 21 regulatory reports of *improper provision of a service through a separate business* and 11 regulatory reports of *insufficient safeguards for a permitted separate business*, which is a total of 32 reports.

5.16 Table 1 shows that on two occasions we upheld an allegation of breach of the separate business rule, both in relation to *improper provision of a service through a separate business*. We also see that there are currently six open matters being investigated that relate to an allegation of a breach of the separate business rule.

**Table 1: Number of reports of breaches of the separate business rule with regulatory outcomes**

	Total	Allegation Upheld / Action taken	Ongoing other action	Not upheld	Open matter
Improper provision of services through a separate business	21	2	2	13	4
Insufficient safeguards for permitted business	11	0	2	7	2
<b>Total</b>	<b>32</b>	<b>2</b>	<b>4</b>	<b>20</b>	<b>6</b>

## 6. The consumer benefits of increasing competition

6.1 Consumer research has demonstrated that less than half of individuals with a legal need go on to obtain advice, assistance or professional help.<sup>52</sup> The key reasons for not seeking advice being:

- A belief that nothing could be done
- Waiting to see what happened
- Concerns about the cost of advice

6.2 A similar picture has emerged for small business consumers, many of whom choose to handle problems alone due to the perceived costs of using a lawyer. 87% of SMEs do

<sup>52</sup> Taken from Legal Services Benchmarking Report, BDR International June 2012  
<https://research.legalservicesboard.org.uk/wp-content/media/2012-Individual-consumers-legal-needs-report.pdf>

not think lawyers offer value for money - even though 54% of those SMEs see law as very important for doing business.<sup>53</sup>

- 6.3 One of the core drivers of the changes introduced by the LSA was the need for greater competition in the legal services market to increase choice for consumers and improve access to justice. Competition drives efficiency, innovation and choice leading to real benefits for consumers. The growing body of evidence on the extent of unmet legal need has further reinforced these objectives. In research, many consumers have cited cost concerns as a reason for not seeking professional advice.<sup>54</sup> Greater competition can arise both directly through new entrants to the market and indirectly by existing firms reacting to or gearing up for those new entrants.
- 6.4 Despite some recent evidence that consumers are starting to respond to changes in the market<sup>55</sup>, this is considered to be an early indication and we are still seeing evidence that regulation too often serves as a barrier to entry in the legal services market.<sup>56</sup> Some have highlighted the importance of the alternative legal services market in driving innovation<sup>57</sup>; however the true impact is difficult to determine.
- 6.5 One example of change in the regulated market that will benefit some consumers has been a growth in the use of fixed fees with the latest LSCP tracker survey findings showing 46% of transactions were completed on a fixed fee basis in 2014 compared to 38% in 2012.<sup>58</sup> The biggest change in respect of fixed fees has been the change in private family matters, which have risen from 12% completed on a fixed fee basis to 45% since 2012. Fixed fees are seen as a good option for consumers in that they provide certainty on costs, something we know to be a key deterrent to consumers seeking legal advice in the first place and an ongoing issue of concern once they have retained a lawyer.
- 6.6 The use of limited retainers may often be associated with fixed fees, with clients instructing a solicitor for a limited piece of advice or particular actions according to their means. This may include providing assistance in litigation without the solicitor going on the record. The LSCP tracker survey states that exploratory data suggests that almost one in five transactions involves some degree of unbundling, with the demographic analysis suggesting that unbundling is more common among social groups ABC1 and younger age groups.
- 6.7 The Law Society has provided guidance on 'unbundling family legal services' which can include
- providing clients with self-help packs
  - providing advice about a specific step or steps in a case or issue on one or more occasion
  - checking or drafting documents

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<sup>53</sup> From LSB commissioned *Small Business Legal Needs Benchmarking Survey*, Pleasence and Balmer, April 2013 <https://research.legalservicesboard.org.uk/wp-content/media/In-Need-of-Advice-report.pdf>

<sup>54</sup> <https://research.legalservicesboard.org.uk/wp-content/media/Understanding-Consumers-Final-Report.pdf>

<sup>55</sup> See Legal Services Consumer Panel 2014 Tracker Survey <http://www.legalservicesconsumerpanel.org.uk/ourwork/CWI/documents/2014%20Tracker%20Briefing%201-Changingmarket.pdf>

<sup>56</sup> *Understanding barriers to entry, exit and changes to the structure of regulated legal firms*, Regulatory Policy Institute, December 2013. Commissioned by the Legal Services Board <https://research.legalservicesboard.org.uk/wp-content/media/RPI-Final-Report-for-LSB-and-TLS-15-December-2013.pdf>

<sup>57</sup> Slide 10 <https://research.legalservicesboard.org.uk/wp-content/media/UCL-AtoJ-Conference-presentation-20-June-2014.pdf>

<sup>58</sup> [http://www.legalservicesconsumerpanel.org.uk/publications/research\\_and\\_reports/index.html](http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/index.html)



- advocacy or provision of a Mackenzie friend service in certain circumstances.<sup>59</sup>

6.8 The LSB is continuing to monitor the impact of competition on the market through a series of indicators. Its latest report provides a fuller analysis.<sup>60</sup>

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<sup>59</sup> <http://www.lawsociety.org.uk/advice/practice-notes/unbundling-family-legal-services/>

<sup>60</sup> <https://research.legalservicesboard.org.uk/wp-content/media/Changes-in-competition-in-market-segments-REPORT.pdf>