

To:	Legal Services Board		
Date of Meeting:	26 November 2015	Item:	Paper (15) 58

Title:	Unregulated Project Update		
Workstream(s):	Understanding consumer choices and decisions across the regulated and unregulated sector (See LSB Business Plan 2015/16)		
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Status:	Official		

Summary:	Update on the Unregulated Project after the completion of the first two quarters of work.		
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Recommendation(s):	<p>The Board is invited to:</p> <ol style="list-style-type: none"> (1) Note the progress made so far on this project and the next steps; (2) Note that a paper will be presented to the April Board for discussion and a decision on whether, in principle, we should seek to extend consumer protection to any unregulated providers; (3) Raise any pertinent issues that should be considered through the next stages of the project. 		
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Risks and mitigations			
Financial:	The project involves commissioning research. The fees that have been agreed with the successful contractor are within budget and there should not be any other notable expenditure for the project.		
Legal:	Initial legal advice was obtained on the scope of s.163 of the Legal Services Act 2007 (The Act) concerning Voluntary Arrangements. Further advice on funding of a Voluntary Arrangement could be required in due course if the Board decides to pursue this.		
Reputational:	Significant time and resources have been devoted to engaging with approved regulators and representative bodies. There is a risk of criticism from some quarters, dependent upon the course that the Board decides to take in April 2016. The project team will monitor and mitigate the risk through communications and robust quality assurance of the in depth research.		
Resource:	The project is adequately resourced internally and the contractor for the in depth research has assigned sufficient resources to ensure timely delivery. There should not be any need to assign further resources to this project.		

Consultation	Yes	No	Who / why?
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Board Members:	X		Helen Phillips as the nominated Board lead on this project.
Consumer Panel:	X		A paper was presented to the Panel meeting on 30 September. Feedback from Panel members has been fed into the project and future planning.
Others:			Meetings with approved regulators and representative bodies to explain the project and seek evidence on unregulated providers.

Freedom of Information Act 2000 (Fol)		
Para ref	Fol exemption and summary	Expires
Para 21	s. 42 on the basis of Legal Professional Privilege.	N/A

LEGAL SERVICES BOARD

To:	Legal Services Board	
Date of Meeting:	19 November 2015	Item: Paper (15) 58

Unregulated Project Update

The Board is invited to:

- (1) Note the progress made so far on this project and the next steps;
- (2) Note that a paper will be presented to the April Board for discussion and a decision on whether, in principle, we should seek to extend consumer protection to any unregulated providers;
- (3) Raise any pertinent issues that should be considered through the next stages of the project.

Background

1. The LSB's Business Plan for 2015/16 contained the following package of work:

We will develop our understanding of different types of providers (regulated and unregulated). For unregulated providers this will involve initial research into, eg the services on offer, the benefits and risks that go with them. Our objective is to understand the full range of choices available to consumers.

2. This package of work was scoped in Q1 and the Project Initiation Document was approved by the Senior Leadership Team (SLT) on 9 June¹.

3. The project has the following objectives:

- Advancing our understanding of the choices and decisions that consumers make when they have a legal problem;
- Analysing the benefits and risks presented by profit making unregulated providers;
- Providing an evidence base that helps to improve our effectiveness in promoting the regulatory objectives; and
- Informing an in-principle decision on whether we should seek to extend consumer protection to any unregulated providers.

4. To achieve these objectives, there are three main aspects to the project:

- i. **In house mapping** of the unregulated legal services sector to identify how prevalent unregulated providers are in different areas.

¹ For further detail, the Project Initiation Document can be viewed [here](#).

- ii. **Commissioning in depth research and analysis** of for profit unregulated legal services providers in a limited number of key areas, identified from the in house mapping.
 - iii. **Analysis** of section 163 of the Legal Services Act (Voluntary Arrangements) to establish what scope it gives the Board to extend its remit to cover those using unregulated providers.
5. These three strands of the project will be pulled together and presented to the Board in April 2016. At this meeting, the Board will be asked to:
- Review the in house mapping report and the externally commissioned in depth research, prior to publication;
 - Decide whether there is, in principle, a compelling case for extending consumer protection to any segments of the unregulated legal services market; and
 - Decide whether the use of voluntary arrangements under s.163 should be considered further.
6. Following the Board's in principle decision and publication of the reports, this project will close. The outputs will feed into the Options for Legislative Change workstream.
7. If it is decided that the LSB should further consider the use of voluntary arrangements under s.163, this could be pursued through a separate project during 2016/17.

Scope of project

8. A key challenge for this project has been to limit its scope in order to allow for meaningful consideration of relevant segments of the unregulated market.
9. For the purposes of this project, providers are being grouped into five categories, as follows²:
 - (i) **LSA regulated** – authorised persons.
 - (ii) **Non-LSA regulated** – Claims Management Companies and Immigration Advisers regulated by the Office of the Immigration Services Commissioner.

² For further detail see Annex A

- (iii) **Ancillary** – those 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 e.g. doctors, accountants.
- (iv) **Unregulated (not for profit)** – charities, trade unions, membership bodies.
- (v) **Unregulated (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.

10. The main focus of the project is on “unregulated (for profit)” providers and whilst the mapping touches on all areas, the in depth research will only cover providers within this category.

11. Not for profit providers are not a focus of the project as the LSB already has an evidence base in relation to this category of provider from research in 2011³. Consideration is being given as to whether to revisit and update this evidence base in its own right during 2016/17.

In house mapping

12. The in house mapping provides basic analysis of unregulated provision across the market by reference to the ‘type of consumer problem’ from the LSB’s Oxera Market Segmentation Framework.

13. A first draft of the report has been prepared and this will be updated as the project develops. For example, the Individual Legal Needs Survey should provide some quantitative data for inclusion. The report will be published at the conclusion of the project when all available evidence and data has been analysed and included.

Areas for in depth research

14. In September the SLT was presented with the first draft of the in house mapping report and asked to decide which areas should be focussed on through the in depth research. The intention was to prioritise areas in order to achieve the best value for money from the research and to ensure adequate coverage of a range of themes and issues. To inform a decision, potential areas were assessed against the following criteria:

- The LSB’s existing knowledge
- Market share of unregulated providers
- Risk

³ This largely comes from research in 2011 into Special Bodies under the Legal Services Act: <https://research.legalservicesboard.org.uk/wp-content/media/Investigation-into-Special-Bodies-2011.pdf>

- Scope for a voluntary arrangement

15. Assessment against these criteria resulted in will writing and estate administration, family, intellectual property and employment being selected as the areas for the in depth research to focus on. However, it was acknowledged in the resulting research specification that it might not be possible to cover all four areas in sufficient detail and that it may be necessary to prioritise once bids had been received.

16. When bids were received, it became apparent that it would not be possible to cover all four areas within budget and in sufficient detail to enable robust analysis. It was therefore decided that the in depth research would cover the following three areas:

- (i) Will Writing and Estate Administration
- (ii) Family
- (iii) Intellectual Property

17. On 2 November, Economic Insight were appointed to undertake the research on this basis.

18. Focussing on these three consumer problem types will mean that the report will cover a breadth of areas, providers servicing both individual and small business consumers and a range of different types of unregulated providers.

In depth research

19. Economic Insight will provide a supply side analysis across all of the core issues set out in the LSB's [research specification](#). The core areas for analysis are:

- Unregulated services offered.
- Main provider types and business models used.
- The range of qualifications and experience of those providing the relevant legal services.
- Client bases (by reference to the Oxera market segmentation model).
- Client acquisition and broader marketing strategies.
- Fees and charging structures used.
- Benefits to consumers (by reference to Legal Services Consumer Panel (LSCP) Consumer Principles Framework).
- An analysis of the risks to consumers (by reference to 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.

20. The Project Team is confident in the research team and the methodology, which should deliver reliable results that significantly advance understanding of the supply side characteristics in the three chosen markets.

Analysis of s.163

21. [REDACTED]

22. The project team is also exploring other comparable schemes, such as the Professional Standards Authority's Accredited Register Scheme and Trustmark. This will assist with understanding of how a voluntary arrangement could operate and what the key practical and operational considerations would be. Other options, including standards development through British Standards Institute, will also be considered.

23. Detailed consideration of the practicalities of establishing a voluntary arrangement, including how it could be funded, would need to be undertaken through a separate project if the Board decides that voluntary arrangements should be considered further. However, the Project Team will ensure that in April 2016 the Board is furnished with a sufficient understanding of how a scheme under s.163 could operate to enable it to make an informed decision. This will include giving an indication of the likely costs involved and what options the Act provides for meeting these.

Stakeholder issues

24. This work package attracted significant interest from respondents to the Strategic and Business Plan consultation and most were generally supportive of the need to gather evidence in this area. A number of representative bodies expressed concern about the lack of a level playing field between regulated and unregulated providers and the Law Society in particular cautioned against the use of LSB funds for work that primarily concerned unregulated competitors in the market.

25. The published LSB's response was as follows:

"It is clear that there are strong views about LSB's interest in the unregulated sector. We have considered responses carefully and concluded that we would be remiss in our duties to both consumers and providers of legal services if we did not take steps to understand the legal services market in its entirety. The specific points raised by respondents will be taken forward as we scope this work in more detail."

26. In the light of the potential sensitivities concerning this project, significant time has been devoted to meeting with regulators and professional bodies to discuss

the project and also to seek any evidence or suggestions on areas to focus on through the research.

27. If the Board does decide that the development of a voluntary arrangement under s.163 should be further considered, stakeholder concerns about appropriate use of LSB funds would likely come to the fore again.

LSCP Input

28. The LSCP's Strategy and Work Programme 2015/16 contains a strategic objective concerning unregulated legal services providers and the following action:

"Participate in and be ready to respond to the LSB's research study to map unregulated providers"

29. A paper was presented to the Panel at its September meeting. Overall the Panel is supportive of the approach being taken and welcoming of the commitment to improve the evidence base in this area. Some specific suggestions will be taken forward by the Project Team. It was also agreed that the Panel Leads on unregulated providers will be consulted informally, when required, as the project progresses.

30. The intention is to consult the Panel again at its February 2016 meeting. At this point it is hoped that there will be sufficient evidence available to enable the Panel to express views on whether there is a compelling case for seeking to extend consumer protection. This would mean that the Panel's view could be included in the material presented to the Board in April 2016.

Proposal

31. The Board is invited to:

- Note the progress made so far on this project and the next steps;
- Note that a paper will be presented to the April Board for discussion and a decision on whether, in principle, we should seek to extend consumer protection to any unregulated providers;
- Raise any pertinent issues that should be considered through the next stages of the project.

Next steps

32. The next steps for the project are briefly outlined in the table below.

Dates	Action
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November 2015 to March 2016	<ul style="list-style-type: none"> • Economic Insight undertakes evidence gathering • In house mapping continues • Examination of other voluntary oversight schemes continues
January / February 2016	<ul style="list-style-type: none"> • Receive results from Legal Needs Survey and analyse for inclusion in the mapping report and in depth research
February 2016	<ul style="list-style-type: none"> • Consult LSCP
March 2016	<ul style="list-style-type: none"> • Receive report on research and evidence gathering and draft accompanying Board Paper
April 2016	<ul style="list-style-type: none"> • Board discussion
May 2016	<ul style="list-style-type: none"> • Publish material alongside Board decision

17.11.15

Categories of providers used for mapping

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.