The Law Society of England and Wales

UCL review of Legal Services Regulation

The Law Society position paper

February 2019

Introduction

1. The Law Society is pleased to put forward this response to the University College London review of legal services regulation carried out by Professor Mayson.

2. We welcome a number of the helpful comments made in the review and in particular share the concern that the regulatory objectives laid down by the Legal Services Act 2007 (the Act) are being inconsistently applied.

3. Having considered both the strengths and weaknesses of the regulatory framework, we do not believe that now is an appropriate time for the Government to overhaul the legislative framework for legal services regulation. Put simply, we believe that the costs of a wide-scale regulatory reform, in terms of regulatory uncertainty, compliance burden, and international implications, would outweigh any perceived potential benefits.

4. While we therefore consider that further legislative reform is presently unnecessary, we do have views on a number of the important issues raised by this review and appreciate the opportunity to set out how the operation of legal services regulation might be improved.

Executive Summary

5. We highlight the following conclusions:

    a. **Timing of a legislative review:** The Law Society would not argue that the current regulatory framework is perfect, but it succeeds in its purpose. There are a number of broader pressures on the profession which mean that now is not the best time for the Government to re-open the legal framework. The appropriate time for change would be if (a) there are specific problems identified with the current framework, (b) workable solutions are identified which cannot be implemented without amending the framework, and (c) there has been evidence-based demonstration that regulatory reform is in the interests of the public, the profession and consumers. Before any change is considered, there must be an assessment of the impact of regulatory reform on the sector as a whole, in order to avoid any unintended consequences, bearing in mind the Competition and Markets Authority's warning: "We appreciate that a wholesale reform of the regulatory framework may be risky and that the detail of any alternative model will be important"[1].

    b. **Regulatory objectives:** The eight regulatory objectives cover the right areas, but need to be applied in a balanced way, especially in cases where there are tensions between objectives. Tensions between regulatory objectives should be more transparently acknowledged and impact-assessed by regulatory bodies, otherwise there is a danger that certain regulatory objectives will be ignored, or there will be a perception they are being ignored, in favour of others.

    c. **Rationale for regulation:** Legal regulation must, among other objectives, promote and preserve the public interest in the rule of law and the administration of justice. To take a narrow view of regulation, for example, by merely regulating for economic

[1] The legal services market study, CMA, December 2016, p. 213.

reasons, or to promote competition in the market, is not sufficient to ensure that the broader public interest is protected.

d. **Reserved activities:** There is a public interest in maintaining reserved activities that only regulated professions can perform. The key characteristics of reserved activities should be:

    i. They relate to an area of significant risk and detriment to both individuals and society at large, such that poor quality service, incompetence or dishonesty will impact not only on the individual consumer, but the wider public.

    ii. There is a public interest in the existence of a broader set of professional and ethical duties, which go beyond the duty to serve a client's best interests, such as duty to the court and proper administration of the law and the legal system.

    These criteria link well with the current list of reserved activities and should be applied in considering the future scope of reserved activities.

e. Professional titles: Strong and distinct professional titles give meaningful choice to consumers and help to ensure that regulatory standards are maintained. Title-based regulation should be encouraged, as it helps to deal with consumer protection gaps in non-reserved areas.

f. Independence of the legal profession: At the core of the regulatory framework there must be an independent legal profession - independent of the state and able to act free from any risk that the regulatory framework is fettered by the state. An independent legal profession is an essential cornerstone of our justice system, which underpins the rule of law and provides the public with confidence in the justice system domestically and abroad.

When is the right time to review the regulatory framework?

6. Stability and certainty of the legal system is vital to the health and continuous functioning of the legal services market and further, the whole UK economy.

7. The legal services industry is worth £25.8 billion to the UK economy and provides 354,000 jobs.[2] It is a key enabler for UK trade, investment and export, predominantly because the English and Welsh legal system is trusted and respected internationally. The legal services sector is responsible for net exports worth nearly £4 billion.[3]

8. In addition to the direct benefit to the economy, the sector has a wider social and economic value. For example, our economic research shows that every £1 of turnover in the sector

[2] The Law Society of England and Wales, Economic Value of the Legal Services Sector, March 2016; https://www.lawsociety.org.uk/support-services/research-trends/a-25-billion-legal-sector-supports-a-healthy-economy/

[3] Ibid.

stimulates £1.39 in the rest of the economy, and every 100 jobs in legal services supports a further 67 jobs elsewhere.[4]

9. However, it is important to acknowledge that the legal sector is going through a period of unprecedented change and uncertainty driven by market and technological development, changes to consumer behavior, Brexit and regulatory reforms.

10. This has a bearing on growth in the sector. For example, the Law Society legal services sector forecast for 2017-25, predicts that real turnover growth for law firms in the medium to long term will slow down.[5]

11. Regulatory change also has an unsettling impact on the public and consumers. It is important that, as far as possible, the public can understand their legal rights and be reassured that when they use a regulated legal professional, they will benefit from certain consumer protections. At the moment, a series of reforms have been proposed or implemented which will change the way that the public engages with solicitors. For example, from December 2018 solicitors must publish certain price and service information on their website. From 2019 there will be reductions in the consumer protections that the public will benefit from, as a result of the SRA Handbook reforms. All of these changes need time to bed in and it would be disruptive and counterproductive from the public's perspective to begin a review of the Legal Services Act before these changes can be evaluated.

12. Given the cumulative impact of changes on the profession, clients, and the wider economy, we believe it would be more productive to achieve stability in the sector rather than contemplate a major overhaul of the current system.

13. The appropriate time to review the Act is when (a) there are discrete problems identified with the current regulatory framework, (b) workable solutions are identified which cannot be implemented without amending the framework, and (c) analysis of the impacts on the legal services sector and the public shows a substantial benefit from regulatory reform.

The current framework is sufficiently flexible

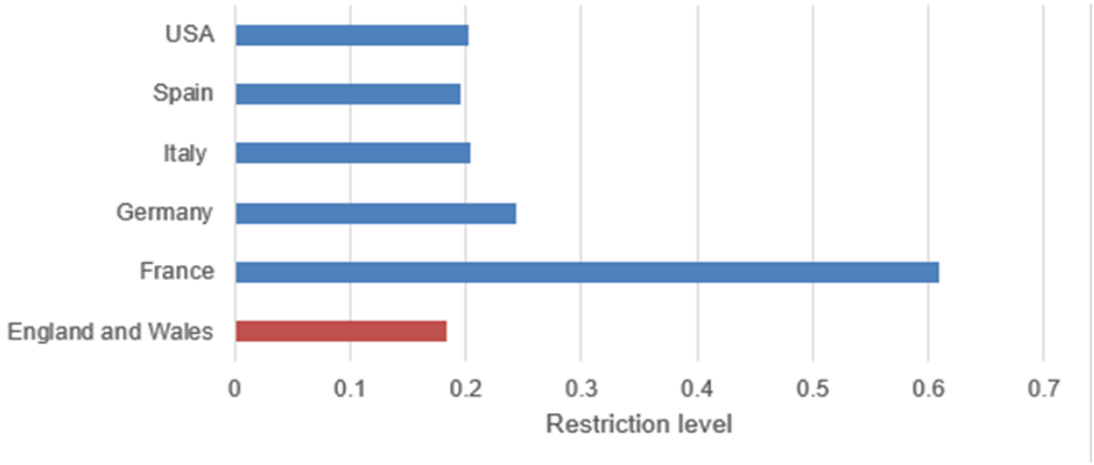
14. The Law Society would not argue that the regulatory framework is perfect, and we will go on to explore some of the potential issues with the current system. However, as it stands the framework is serving its purpose and is flexible enough to allow for regulatory intervention if needed.

15. The current framework allows our jurisdiction to thrive and attract global business. England and Wales is considered globally as a highly competitive and liberalised jurisdiction, open to European and foreign lawyers. According to the OECD trade restrictiveness index, England and Wales has one of the most open and liberal regimes among the established jurisdictions (Chart 1).[6] Unlike many other jurisdictions, foreign lawyers can have their qualifications

[4] Ibid.
[5] Legal services sector forecasts 2017-2025, the Law Society, August 2018; https://www.lawsociety.org.uk/support-services/research-trends/legal-services-sector-forecasts/
[6] OECD Services trade restrictiveness index; https://stats.oecd.org/Index.aspx?DataSetCode=STRI; http://www.compareyourcountry.org/service-trade-restrictions; http://www.oecd.org/tad/services-trade/STRI_GBR.pdf

recognised by applying for the Qualified Lawyers Transfer Scheme or may receive a temporary license to appear in court for a specific case.

Chart 1. The OECD legal services trade restrictiveness index per country[7]



Source: OECD Services trade restrictiveness index

16. Some have suggested that the regulatory framework is insufficiently flexible, but an international comparison demonstrates that it allows for more flexible and innovative business models than many other jurisdictions. The Act created a pathway for new kinds of legal practices to be developed in which non-lawyers can own and invest in legal businesses (Alternative Business Structures – "ABSs"). This has led to greater variety and diversity of suppliers of legal services. Whilst the take up of ABSs has been slower than first anticipated, in 2017 there were an estimated 950 ABSs in operation across England and Wales. The Law Society Future of Legal Services Report suggests likely change in the ABS market in the next few years, with this model gaining traction. [8]

17. These types of alternative practice models are heavily restricted in other jurisdictions. For example, in the USA law firms are generally not permitted to enter into partnership with other professionals. Similarly, the French jurisdiction does not allow ABSs to be established. There are also limitations on external ownership by non-lawyers in Germany, Italy and Spain.

18. There are just six reserved activities which means that many types of legal and quasi legal services can be performed by unregulated providers. Moreover, the term lawyer is not protected, meaning that anyone can call themselves a lawyer, even if they have no legal qualifications. This can be contrasted with other jurisdictions. For example, in the USA all legal services are reserved to lawyers/attorneys, who receive their license from the relevant state judiciary following completion of the bar exam.

[7] Ibid.
[8] The Future of Legal Services, the Law Society, January 2016; https://www.lawsociety.org.uk/support-services/research-trends/the-future-of-legal-services/

A regulatory review would create a significant compliance challenge

19. Any regulatory change brings uncertainty and short-term compliance costs. These compliance costs, associated with adjusting from an old set of rules to a new set, should be distinguished from ongoing compliance costs which firms face year-in, year-out.

20. The solicitors' profession is currently facing significant regulatory change and a high compliance burden, which will last several years whilst the changes take place. For example, the Law Society Firm Survey for 2015/16 indicates that 'complying with regulations on legal services provision' was considered one of the most significant problem for firms.

21. To give some examples, the Solicitors Regulation Authority is pressing ahead with a substantial programme of regulatory reform:

    - The SRA Handbook has been reviewed, with new rules to be introduced in 2019[9];
    - From December 2018, firms have been required to publish price and service information on their website in a particular format[10];
    - There has been a consultation on amending the Professional Indemnity Insurance rules[11];
    - A new route to qualification is being introduced[12];
    - The reporting obligation is under consideration[13].

22. These are a few examples of the changes that the profession is facing from its own regulator. To add to this, solicitors must also comply with broader regulatory changes. The introduction of the General Data Protection Regulation last year has caused all firms to re-assess their processes for handling data. Anti-money laundering remains a major compliance focus for solicitors' firms, and all practitioners are currently planning for how they will respond to the challenge of Brexit.

23. There is a risk that constant regulatory change has an economic impact, as firms and solicitors adjust to and implement the requirements. This in turn can have knock-on effects on clients who are likely to bear the cost of regulatory compliance.

[9] The LSB's decision to approve changes to the SRA's Regulatory Arrangements relating to its 'Looking to the Future proposals', 5 November 2018; https://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/2018/FINAL_Revised_LttF_Decision_with_Full_Annex_.pdf

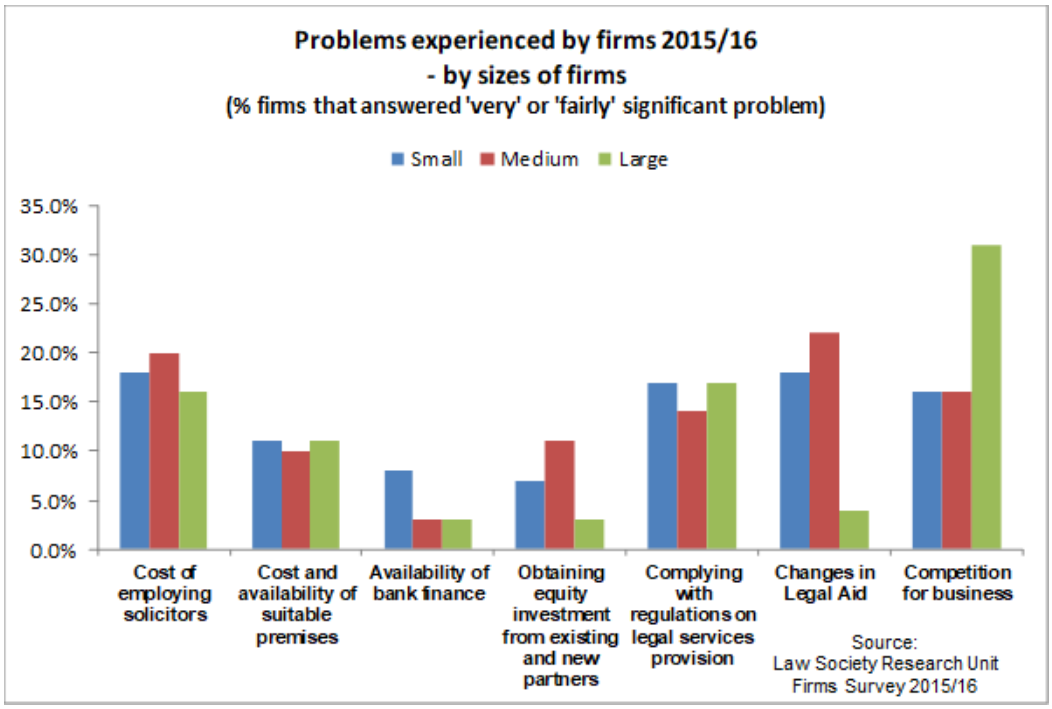
[10] The LSB's decision to approve changes to the SRA's regulatory arrangements to introduce the SRA Transparency Rules and the SRA Roll, Registers and Publication Regulations, 3 August 2018; https://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/2018/FINAL_Decision_Notice_Inc_Annexes.pdf

[11] The SRA consultation 'Protecting the users of legal services: balancing cost and access to legal services'; https://www.sra.org.uk/sra/consultations/access-legal-services.page

[12] The LSB's decision to approve amendments to the SRA's Authorisation of Individuals regulatory arrangements related to the proposed introduction of a Solicitors Qualifying Examination, 26 March 2018; https://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/2018/FINAL_decision_notice.pdf

[13] The SRA consultation 'Reporting concerns', 27 September 2018; https://www.sra.org.uk/sra/consultations/reporting-concerns.page#download

Chart 2. Problems experienced by law firms



Source: The Law Society Firms Surveys 2015/16

The international perspective

24. As well as a compliance challenge, Brexit brings with it another consideration, which is that it has focused attention upon the reputation of the jurisdiction in England and Wales. The widespread use of English law in international commerce, highly skilled international workforce, quality and efficiency of its courts and arbitral institution, the cluster effect of financial and related professional services and the mobility and flexibility of UK-based lawyers makes the UK a global legal services hub in direct competition with other jurisdictions. Continuing with a stable regulatory regime is an important factor in maintaining the current high reputation of this jurisdiction.

25. In light of the vote to leave the European Union, the legal services market is facing an unprecedented period of instability. Our legal services sector forecasts that Brexit is likely to have a significant negative knock-on impact on the legal sector.[14] Because issues like Brexit are time-limited, we would argue that these risks and uncertainties should be managed before a far-reaching review of regulation is implemented.

[14] The Law Society legal sector forecasts, August 2018; https://www.lawsociety.org.uk/support-services/research-trends/legal-services-sector-forecasts/

Regulatory objectives

26. The remainder of this position paper provides the Law Society's perspective on the functioning of the regulatory system and provides our suggestions for the future. We will start by looking at the regulatory objectives contained in Section 1 of the Act. These are:

    - protecting and promoting the public interest
    - supporting the constitutional principle of the rule of law
    - improving access to justice
    - protecting and promoting the interest of consumers
    - promoting competition in the provision of services
    - encouraging an independent, strong and diverse legal profession
    - increasing public understanding of the citizen's legal rights and duties
    - promoting and maintaining adherence to the professional principles

27. Although there is no hierarchy among the regulatory objectives, "protecting and promoting the public interest" is considered as one of the key regulatory objectives. This is, to some extent, already reflected in certain existing regulatory arrangements. For example, the Legal Services Board, when considering a regulatory rule change put forward by a regulator, may refuse to grant the rule change in the circumstances set out in paragraph 25(3) to Schedule 4 of the Act. This says that the Board may refuse to grant a rule change application if (among other reasons) granting the application would be "prejudicial to the regulatory objectives", or if it would be "contrary to the public interest".

28. However, one of the problems that we face is that there is no shared understanding or agreed definition of 'public interest'. So, while the suggestion that the public interest should take precedence over the other regulatory objectives is superficially attractive, it may give rise to less clarity if different organisations take differing views of what the public interest means.

29. The public interest is a broad concept, not confined to legal matters, as helpfully set out at the Terms of Reference of the Review[15], recognising that the regulatory framework must include a number of objectives which are not narrowly cast or applied.

30. In our view, the public interest is underpinned by the principle of the rule of law; the effective administration of justice and operation of the broader legal system; access to justice; the sustainability of the economy; and the provision of independent and impartial legal advice to citizens. These fundamental components of the public interest are all issues with which legal services providers will come into regular contact when undertaking certain legal activities. Legal service providers therefore play a special and important role in the public sphere. This must be considered when formulating a regulatory framework for the supply of legal services. It is not sufficient to avoid harm to consumers; the regulatory framework must also guard against wider harm to the public interest and defend a common set of values. In this context professional titles and reserved activities fulfil a special role in safeguarding both the public interest and the rule of law.

[15] Independent Review of Legal Services Regulation, Terms of Reference of the Review, paragraph B; https://www.ucl.ac.uk/laws/sites/laws/files/irlsr_tor_180822.pdf

31. There are other examples within the regulatory objectives where the terminology is inconsistent. For example, one objective refers to "public understanding of the citizen's legal rights and duties". Although the word citizen is used here, it appears clear that the intent is that it is the public more broadly should be encouraged to have the best possible understanding of their rights and duties. This is a minor point, which can be addressed in the meantime by regulators interpreting this objective in the broader sense.

Balancing the regulatory objectives

32. The regulatory objectives that have been set out in the Act, encapsulate the right aims for regulatory bodies to take into consideration. However, in our view, there are significant problems with how these regulatory objectives have been applied in practice.

33. It is almost inevitable that whenever a regulator is considering a rule change there will be some regulatory objectives that will be advanced by the rule change, but there will always be a risk that others will be undermined. The job of regulators is to ensure that the benefits of a change outweigh the disadvantages.

34. It should be at the heart of the role of both frontline regulators, and the Legal Services Board (LSB), to ensure that there is consistency and rigour in the balancing of regulatory objectives. Unfortunately, we observe a lack of evidence behind rule change applications and a trend of regulators prioritising some regulatory objectives over others.

35. Over the past few years the explicit focus in the strategy of regulators such as the SRA and the LSB has been the promotion of competition. This has resulted in the undermining of other important regulatory objectives such as the safeguards for consumers, the public interest, and promotion of a strong legal profession. We note that the working paper LSR-1 paper also recognises the prospect of such tensions:[16]

> *"There is a public interest in competition and consumerism, but these might lead to behaviours or outcomes that are not ultimately in the public interest."*

36. For example, the SRA Handbook changes remove a regulatory barrier to competition by allowing solicitors to practise outside regulated firms. This comes at the cost of weakening client protections, such as the removal of mandatory insurance, access to the Compensation Fund and other important safeguards, impacting in particular on vulnerable clients.

37. On other occasions we observe that regulators see the promotion of consumer interests and consumerism as a proxy for protecting the interest of the general public. However, consumer and public interests may not always align. For example, a consumer may not have other citizens' interests at heart, and may instead pursue self-serving or even harmful causes to the detriment of others.

38. Promoting selected objectives at the expense of others can bring unintended consequences. For example, removal of the certainty of important client protections could harm access to

[16] Working paper LSR-1, Professor Stephen Mayson, October 2018, p. 6; https://www.ucl.ac.uk/ethics-law/sites/ethics-law/files/1._irlsr_wp_lsr-1_rationale_1810_0.pdf

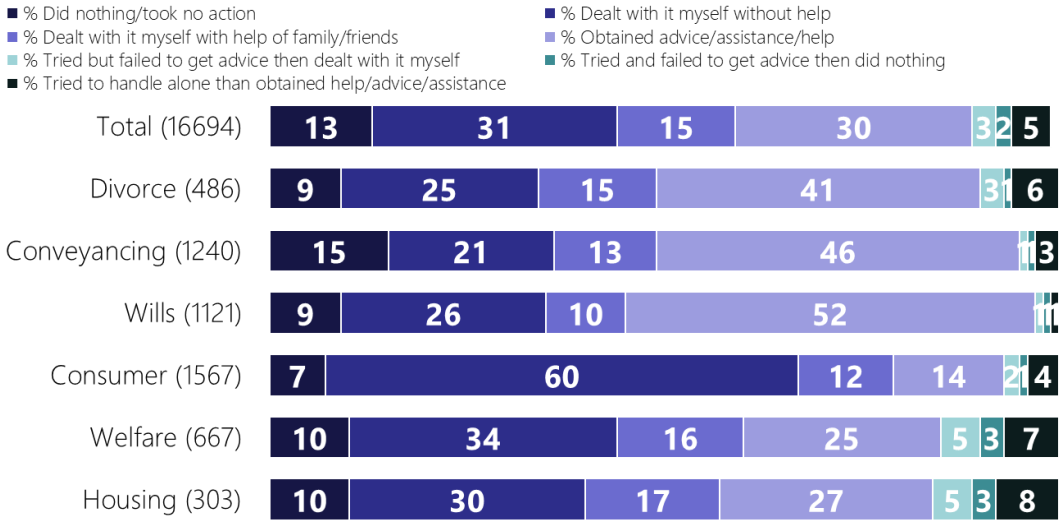
justice if it reduces the level of trust clients place in regulated providers, and this could ultimately damage the public interest.

39. Over previous years we have repeatedly called on regulators to fully adhere to all regulatory objectives when discharging their statutory duties. In our view, proportionate regulation must be balanced with the need to ensure appropriate levels of public and consumer protections.

40. Also, regulators must be held to higher standards in how they use evidence to justify their proposals. One of the regulatory objectives which has received particular attention in recent years is improving access to justice. The Law Society believes that all consumers should have access to justice, regardless of social background or wealth. However, we are concerned that the access to justice objective has been used to justify a broad range of deregulatory proposals, without full consideration of the likely impacts.

41. The Law Society and LSB's 2015 Legal Needs Survey is a detailed piece of research on why people may not use a regulated legal professional when they have a legal need. It demonstrates there is huge variety in how people seek to resolve their legal needs.[17] For example, the survey indicates that many people choose not to use legal advisers because they feel confident at handling legal issues themselves. For others cost may play a role, but it is not the main reason preventing people from seeking legal advice. Other factors such as lack of general knowledge about legal issues, limited understanding and capability of how to deal and resolve legal issues and low awareness of where to turn for help are important too. These factors often constitute a more significant barrier than price for many legal services. [18]

Chart 3. Strategies for dealing with legal issues[19]



Source: Online survey of individuals' handling of legal issues in England and Wales 2015 commissioned by the Law Society and the Legal Services Board

[17]Online survey of individuals' handling of legal issues in England and Wales 2015 May 2016; http://www.lawsociety.org.uk/support-services/research-trends/largest-ever-legal-needs-survey-in-england-and-wales/

[18] Ibid.

[19] Ibid.

42. There are clearly unmet legal needs in certain sections of the population associated with cost; this is in part a consequence of legal aid cuts, court fee rises and low levels of legal literacy. Whilst legal literacy must be improved across all consumer groups, some consumers will not have the means to fund the cost of legal services no matter how low priced. For these consumers, there is no realistic prospect of addressing their legal needs by regulatory changes alone.

43. While it is right that regulators challenge themselves to look at ways to improve access to justice, we believe that whenever a proposal is put forward with the aim of improving access to justice, then the proposal should be supported by some reasoned analysis. This should draw upon legal needs research, showing exactly which groups the proposal will help. This analysis is particularly important because reducing regulatory costs often leads to reduced client protections. Without quantifying the potential benefits, it is impossible to assess if those benefits outweigh any consumer detriment from losing client protections.

44. The Act does not explain what the meaning and scope of the objectives should be. This gives regulators and policy makers a free hand in interpreting the enforcement of the regulatory objectives. The LSB's policy document explaining their approach to the regulatory objectives states the following.[20]

> *"The Legal Services Board (LSB), approved regulators and the Office of Legal Complaints (OLC), "must, so far is as reasonably practical, act in a way – which is compatible with the regulatory objectives" and "most appropriate for meeting those objectives".*
>
> *"The regulatory objectives are not defined within the Act…"*
>
> *"The regulatory objectives can overlap and conflict with each other and they are not set out in any hierarchy in the Act".*
>
> *"The regulatory objectives are best understood as a series of considerations that we must keep in the front of our mind when carrying out our statutory functions, rather than goals that we can pursue independently of our functions."*

45. That is why to ensure a fairer and more balanced approach there is a need to provide more clarity on the meaning and scope of the objectives. This could be done in a form of guidance which could aid regulators' work and make their work more transparent and accountable, and the approach laid out in guidance should be followed in all regulatory decisions.

46. It is also critically important for regulators to consult thoroughly with interested parties prior to introducing regulatory changes, so that they can gather as much evidence as possible regarding the likely impact of those changes. This consultation can be informed by robust assessments of the impact of regulatory changes on regulated communities and consumer groups who might be affected by those changes. Quantitative impact assessments should make the trade-offs of the proposed changes clear and should explicitly explain why a

[20] The regulatory objectives, the Legal Services Board, June 2017; https://www.legalservicesboard.org.uk/about_us/Regulatory_Objectives.pdf

proposed rule change would be beneficial when viewed across all the regulatory objectives. So, if a change was proposed in order to cut regulatory costs and improve access to justice, then as a minimum the impact assessment should assess:

- the likely cost savings that would result from the changes
- the degree to which these cost savings would be passed on to consumers
- the number of practitioners likely to make use of this flexibility
- the number of additional consumers who would seek legal advice as a result of these changes.

47. At present, we feel that the quality of impact assessments is lacking. We have argued, with limited effect, for regulators to produce robust impact assessments to give the public and the regulated professions confidence that regulation promotes the regulatory objectives. This can, and should, be done within the current legislative framework.

48. The need to balance the regulatory objectives was acknowledged during the debate preceding the introduction of the Act. The government made the decision not to have a hierarchy of regulatory objectives under the Legal Services Bill as noted below: [21]

> *"The Government has not ranked the objectives and principles. The partners in regulation will be best placed to do this on a case-by-case basis. They may need to balance these if there are tensions between some of the objectives or principles in particular instances".*

49. However, the Joint Committee on the scrutiny of the Legal Services Bill led by Lord Hunt of Wirral was concerned that this could lead to uncertainty in the application of the regulatory objectives and recommended that explanatory notes to be provided to remedy potential problems arising in the future.

> *"We note the Government's approach that the regulatory objectives are not explicitly ranked in order of importance in the draft Bill. However, we are concerned that this has the potential to create uncertainty and confusion in how they will be applied, and we note in particular the approach taken by the OFT in evidence. If it is not made explicit on the face of the Bill that they are not ranked in any particular order, it is inevitable that they will be seen as listed in order of priority. We therefore recommend that the Explanatory Notes to the Legal Services Act should make it explicit that the objectives are not listed in order of importance."* [22]

50. In response, the Government agreed with the need for providing more clarity about the application of regulatory objectives[23].

> *"The Government agrees the need for clarity in the application of regulatory objectives. While the Explanatory Notes to the draft Bill already state that*

[21] The Government white paper 'The Future of legal services: Putting consumers first', October 2005, p. 26; https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/272192/6679.pdf

[22] The report published by the Joint Committee on the scrutiny of the Legal Services Bill led by Lord Hunt of Wirral, July 2006; https://publications.parliament.uk/pa/jt200506/jtselect/jtlegal/232/23204.htm#a2

[23] Government Response to the Report by the Joint Committee on the Draft Legal Services Bill, September 2006; https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/272340/6909.pdf

regulatory objectives are not listed in any particular order, the Government agrees that they should make this more explicit. The Notes will be revised to reflect this".[24]

51. We therefore recommend that:

    a. All regulators' business plans and strategies should explicitly address the question of what they are going to do to support each of the regulatory objectives. It should not be acceptable to focus a business plan or strategy on some objectives but not on others.

    b. Whenever a regulatory rule change is proposed, frontline regulators and the LSB must assess its impact against each of the regulatory objectives. This assessment should be published.

    c. It should be expected that regulators will take into account all relevant evidence in assessing the impact on the regulatory objectives. So, if one of the primary justifications of a regulatory change is to alleviate unmet legal needs, then the proposal should be accompanied by detailed analysis of which groups the proposals are designed to help, how the proposals are designed to help them, and a prediction or estimate of the quantitative impact of the proposals.

    d. It should be the norm for impact assessments to be quantitative in nature. It is standard practice across other regulators to produce quantitative impacts whenever a significant change is proposed, yet this practice has not yet been adopted in legal regulation. A commitment to conduct an ex-post evaluation is meaningless unless there has been a prior prediction of the impacts of a change.

    e. Regulatory objectives should be defined clearly and consistently, not interpreted in different ways depending on the nature of the proposal. These definitions should be the result of public consultation and consensus.

52. These recommendations could be implemented without legislative change. They would help to improve trust and transparency in regulatory decision-making, and lead to greater confidence that the regulatory objectives are being appropriately balanced.

[24] Ibid.

What should be the rationale for regulating legal services?

53. There are a range of possible rationales for legal services regulation. One is the need to avoid harm to clients. There are several characteristics of the provision of legal services which pose a risk of such harm. These include:

    - Information asymmetries between providers and clients, for example clients are often ill-informed about the nature of their legal problem and hence unable to judge the quality of the service provided; and
    - Knowledge that a legal service has gone wrong will often not arise until a long time after the service has been delivered.

54. However, it is right to think beyond the mere justification of preventing consumer harm when considering the rationale for legal services regulation. The working paper LSR-1[25] identifies that it is more appropriate to consider the public interest, rather than simply the consumer interest, in legal services regulation. Some of the reasons for this are:

    - Access to legal services allows people to exercise their rights, so it is particularly important that citizens can confidently do so.
    - In relation to some legal activities, the potentially grave consequences of poor choice of service provider fall not only on the consumer, but also on society at large.

55. Merely regulating for economic reasons, or to promote competition in the market, will not ensure that the broader public interest is protected by legal services regulation. While in most cases the consumer interest and the public interest will align, it is not sufficient to merely consider the consumer interest when regulating legal services.

56. The Law Society supports taking a broader view of the public interest when considering the need for legal service regulation.

The reserved activities

57. The reserved activities sit at the centre of the framework for legal services regulation. These activities must be carried out by a regulated legal professional. In respect of the reserved activities, there are both ex-ante protections in place, preventing problems from occurring, such as requiring individuals to have met qualification and competency requirements, and ex-post protections, mitigating problems which occur, such as professional indemnity insurance. The reservation of activities therefore represents a significant piece of regulatory protection.

58. The Act sets out six reserved activities, which can only be undertaken by certain authorised legal professionals, as follows:

    - Exercise of a right of audience
    - Conduct of litigation

[25]Working paper LSR-1, Professor Stephen Mayson, October 2018; https://www.ucl.ac.uk/ethics-law/sites/ethics-law/files/1._irlsr_wp_lsr-1_rationale_1810_0.pdf

- Reserved instrument activities
- Probate activities
- Notarial activities
- The administration of oaths

Why should certain activities be reserved?

59. The fact that certain activities are reserved to regulated professions could be seen as a barrier to competition, and the question then is whether that barrier to competition can be justified with regard to the public interest. We would argue that there are two primary justifications, from a public interest perspective, which set the reserved activities apart from other legal services.

60. First, reservation can be justified where the risk of low-quality service does not fall only on the consumer, but also on others or society more broadly. In cases where other parties to transactions or society will bear the cost of poor service, ex-post regulatory protections like insurance or compensation are insufficient, as these protections can only compensate individuals but the harm to society cannot be undone. For these legal activities, it is important to put in place a degree of ex-ante protection by restricting these activities to certain groups of authorised professionals. For example, the conveyancing process works because solicitors give and receive undertakings, and the recipient can rely on such undertakings as being cast iron. There is also back-stop in the form of indemnity insurance if anything goes wrong. The process would break down completely if parties to the transaction lost trust and confidence in the system.

61. A common theme among the existing six reserved activities is the fact that they cover systems of public importance, which from a wider public perspective we cannot afford to see fail. Litigation and advocacy relate to the effective functioning of the court system and a restrictive appeals process. For conveyancing, it relates to trust in the Land Registry and system for the transfer of property ownership. For probate, the reservation ensures that the system of inheritance retains integrity and inheritance tax operates properly.

62. The second justification for reserving activities to authorised professions is where there is a public interest in the existence of a broader set of professional and ethical duties, which go beyond the duty to serve a client's best interests. For solicitors, as Officers of the Court, their primary and overriding duty is to the court. The trust that the public has in the English and Welsh system relies on the trust placed in authorised persons to act with honesty and integrity.

Case study 1: Advocacy and conduct of litigation

Advocacy and litigation are examples of activities that are fundamental to the functioning of the justice system; they impact on the proper and efficient administration of justice, upholding of the rule of law, and the smooth running of the court system.

The undertaking of advocacy and litigation by authorised persons ensures that the court system runs efficiently because advocates, by virtue of the professional obligations imposed upon them,

have duties to the public. In addition to acting in their clients' best interests, these professionals have additional duties to the court; to uphold the rule of law and the proper administration of justice; and not to allow their independence to be compromised. They cannot further their client's case by means that are not compatible with their other duties. For example, if the obligation to act in the best interests of a client comes into conflict with the duty to the court (e.g. if a solicitor has knowledge that their client is lying to the court), the public interest, served by the proper administration of justice, must take precedence over the interests of the client. Reserving advocacy and litigation activities to professionals such as solicitors ensures that the public interest is served, not just the client's interest.

In addition, clients of those currently authorised to undertake advocacy and litigation benefit from Legal Professional Privilege (LPP). LPP plays a crucial role in ensuring the proper and efficient administration of the justice system. The reservation of advocacy and litigation ensures that clients benefit from LPP. It is a privilege which is accorded only when clients are involved with trained and qualified persons who are subject to professional obligations.

The holding of a professional title also ensures that authorised individuals have a level of knowledge that allows them to discharge their public duties effectively. Without this expertise, the process of litigation may be slowed down, cases may not be settled at an appropriate stage and court time and costs may be wasted, including by spurious claims.

A non-expert might make mistakes that could result in delays, further litigation, mounting costs and possibly an unjust outcome. These inefficiencies in the justice system would have implications both for parties to litigation as well as for the public purse. Highly trained advocates should be able to contribute towards more valuable precedents through better argued cases. This in turn can lead to a greater degree of consistency in the law. The reliability of precedent in a common law system is vital to the underlying credibility of the legal system as a whole. It is therefore in the public interest that those advising and representing litigants should be properly qualified and competent.

If advocacy and litigation activities were not undertaken by appropriately qualified professionals who are subject to high professional standards, then public trust in the justice system could be eroded. Important public duties would be removed, with the consequent risk that justice would not be properly administered, and the public would lose trust in the court process and justice system more generally.

Finally, the quality and efficiency of advocacy and litigation services, which contributes to the effective operation of the courts, is one of the main reasons for the economic success of the legal sector. There is much evidence that, in a global marketplace, the UK is regarded as a 'safe' place to do business, and English law is often the governing law of choice in multinational commercial transactions. The existence of authorised persons gives investors the confidence to invest in England and Wales.

It is worth noting that rights of audience are reserved to authorised individuals in all mature legal jurisdictions.

63. The reserved activities play a vital role in supporting the rule of law by enabling the effective administration and maintenance of the justice system. They promote and protect the justice system of England and Wales as a legal forum, given its contribution to the economy. They support the proper functioning of markets and systems that are of fundamental importance to the economy.

64. The Law Society therefore believes that the public interest case for reserving activities (as opposed to merely regulating them) is strong.

Do we have the right list of reserved activities?

65. The question that follows is do we currently have the right list of activities and are there other activities which should also be reserved.

66. The two potential justifications for reserved activities, as outlined above, are:

    a. The reserved activity relates to an area of significant risk and detriment to society at large, such that poor quality service will impact not only on the individual consumer, but on the wider public.

    b. For a particular legal activity, there is a public interest in the existence of a broader set of professional and ethical duties, which go beyond the duty to serve a client's best interests, such as supporting the rule of law and ensuring the proper administration of justice.

67. We believe that these criteria reflect the thinking in the LSR-1 paper that stated:[26]

    "while reserved legal activities may restrict competition between different types of legal services provider, they may be justified on the basis of their importance in ensuring consumer protection and/or securing specific public interest benefits. In particular:

    • Given the substantial risk of detriment that may be a consequence of poor-quality legal services and the difficulty a consumer faces in assessing quality and value for money, the reservation of an activity to a specific authorised provider may provide an important upfront assurance of quality and/or regulatory protection.

    • The reservation of an activity may help secure public interest considerations such as the fundamental public interest in supporting the rule of law; protecting the legal rights of individuals and ensuring access to justice so that individuals can participate equally in society."

68. We have already explained the justification for reserving advocacy and litigation to reserved legal professionals. Both justifications are met in respect of these activities. Next, we come to reserved instrument activities, which are of particular relevance in the conveyancing process.

Case study 2 - Conveyancing

The property market is a key part of the UK economy. Certainty of title and confidence in the conveyancing process underpin public confidence in property transactions. It is a matter of fundamental importance to a well-functioning housing market, and to society in general, that buyers and sellers have confidence that ownership of property has been properly transferred. The

[26] Woking paper LSR-2, Professor Stephen Mayson, October 2018, p. 12; https://www.ucl.ac.uk/ethics-law/sites/ethics-law/files/2._irlsr_wp_lsr-2_scope_1810_0.pdf

process would break down completely if parties of the transaction could not be assured whether an undertaking given by authorised persons was cast iron.

Undertakings given by authorised persons are key to the current system for conveyancing:

- Financial institutions involved in the transaction rely on conveyancers to properly register their mortgages against the property.
- Buyers and sellers rely on conveyancers to ensure an effective discharge of any existing mortgages on a property.
- The relationship between the buyer's and seller's conveyancer, as two professionals, is crucial in relation to exchange of contracts and completion. These transactions currently take place by telephone, reliant on the undertakings given by both conveyancers.

Where an authorised individual provides an undertaking they have an obligation, above their duties to clients, to discharge this undertaking. Trust is placed in professionals to act with integrity and honour any undertakings they make. This is confirmed by the fact that conveyancing is generally undertaken by regulated professionals, even though the reservation is drawn tightly and only covers a small segment of conveyancing concerning the title. Financial institutions involved in the process, based on their own risk assessment, require the reassurance of authorised persons' obligations to abide by undertakings, as well as the mandatory qualification and training requirements imposed on them. The Law Society's Conveyancing Code for Completion is based on the trust that can be placed in solicitors discharging their undertakings.

Without clarity as to the status of the providers of the undertakings and the assurance provided by their professional integrity, those involved in the transactions would lose confidence, and the system could grind to a halt. Exchanges would have to take place face to face; funds would have to be transferred by bankers' drafts; and conveyancers would have to know who represented all of the parties in the conveyancing chain due to the potential problems and uncertainties that might affect their client. This situation would clearly be detrimental to those involved in the transactions but would also have negative consequences for the economy.

In addition, it is not just parties to a transaction who rely on authorised persons. Both the Land Registry and HMRC place reliance on the veracity of statements to maintain their functions. HMRC relies on conveyancers to establish, collect, pay and file a tax return in relation to the proper amount of Stamp Duty Land Tax. There is a clear public interest in the Government receiving the tax it is owed in relation to the transactions. In addition, the Land Registry mandates that certain conveyancing operations can only be carried out by authorised persons. In Government 'help to buy' schemes, the conveyancer is required to show that the buyer meets certain criteria, providing assurance to the Government that this information is reliable. The Treasury also relies on regulated persons to abide by anti-money laundering requirements in conveyancing transactions and to carry out due diligence as to the origin of purchase funds, maintaining confidence that the system is not open to abuse.

If trust is lost in conveyancers, the negative implications for the public interest will be profound. Reservation of this activity to authorised persons maintains reliability and credibility in this crucial market.

69. The reservation of "reserved instrument activities" is supported by both of our justifications. But there is a question about whether the scope of the reservation is too narrow. If the

reserved activities were to be reviewed, it may be useful to consider whether the scope of this activity should be broadened, so as to capture more of the conveyancing process.

70. Grant of probate is a similar example. While this is obviously of importance to the individual client, at a distressing time in their lives, there is a public interest too. Inheritance tax is a significant source of revenue to the Government, and therefore from a public perspective, it is important that it is carried out by professionals who have a wider set of ethical duties (e.g. to act with honesty and integrity) that go beyond the individual client. In its 2016 report, the Competition and Markets Authority noted that only certain parts of the probate process are reserved, and other parts (e.g. the distribution of assets) are not included in the scope of the reservation. It is a legitimate question as to whether the scope of this reserved activity should be expanded in order to protect other parts of the probate process.

71. Lastly, it is worth mentioning notarial activities and the administration of oaths. In both of these cases, the reason that the notarised document, or the oath, is given credibility is because of the professional status of the person carrying out the process. Therefore, by definition these processes need to be carried out by authorised professionals.

Should there be new reserved activities?

72. In addition to the above activities, we believe that there could be a case to consider reservation for some other activities which carry sufficient risks to the public interest.

73. There are some activities which are currently unreserved – meaning that they attract regulatory protection if they are delivered by a regulated professional like a solicitor, yet they attract no regulatory protection if they are delivered by an unregulated legal services provider. This is a potential source of confusion to the public and could result in consumer detriment as a result of making a wrongful assumption that a particular legal service provider is regulated.

74. Will-writing is an example of an activity that is currently not reserved. If a client purchases the will-writing services of an unregulated legal services provider, they are afforded no regulatory protection beyond the general consumer law relating to the general supply of services. This is despite evidence of consumers experiencing problems with will-writers such as[27]:

    - Dishonest practices – Wills being advertised as cheap to make but in fact ended up being significantly more than the advertised price, or inappropriate selling techniques were used.

    - Lack of information – Clients not provided with full and frank information about the services being provided and the charges for these services, and not able to make an informed decision about services.

    - Storage Problems – Clients being unable to locate their will.

[27] The Law Society of England and Wales, Regulation of will writing, October 2010; Regulation of will writers, Briefing paper no 05683, House of Commons 29 November 2018; http://researchbriefings.files.parliament.uk/documents/SN05683/SN05683.pdf

- Executorships – Will writers naming themselves as executor without explaining this to the consumer, and problems arising out of will writers being named as an executor.
- Complaints without a remedy – Clients having legal recourse for their complaint, but recovery is not feasible, or the will writer cannot be located.
- Lack of succession planning – No safety net in place to protect a client's will and file, if an unregulated business ceases trading (by becoming insolvent/ closing their business)
- Inability to make capacity assessments.

75. In 2013 the LSB recommended to the Lord Chancellor that will writing should become a reserved activity.[28] While the Lord Chancellor acknowledged consumer detriment in the will writing market, at the time he decided to reject the LSB's recommendations. Instead the Lord Chancellor proposed considering alternatives to regulation, to ensure that the costs and burdens of increased regulation were not imposed unnecessarily.[29]

76. The CMA study also found a range of consumer protection issues but had not been able to identify the scale of consumer detriment. The CMA concluded that due to the nature of will writing, particularly consumers' difficulty in assessing quality and the potentially long delay before the will is used, there could be a role for ex-ante regulation, such as training and entry requirements.[30]

77. Therefore, consideration should be given to whether will writing should become a reserved activity. Similar considerations could also be applied to other areas of law considered in the working paper LSR-2 paper[31], using the public interest test. At this stage we believe it would be premature to apply the tests outlined to all areas of law, but if the reserved activities were to be reviewed in the future, one would want to consider new areas as well as reviewing the existing activities.

78. An international comparison with other countries shows that the majority of developed jurisdictions impose restrictions depending on the type of law practiced. The level of restrictions varies between country to country, with some jurisdictions reserving all legal activities to qualified attorneys, while others being more in line with our model of reservation. For example, legal advice is reserved to qualified lawyers in the USA and several European countries[32] such as France, Germany, Hungary, Poland, Portugal, Romania and Slovakia. Some countries like Finland or Sweden have no reservation of legal activities, and instead rely on a strong regime of regulatory consumer protections underpinned by a universally accessible ombudsman system.

79. In conclusion, the Law Society believes there are strong public interest justifications for having reserved activities, and that these public interest justifications align well to the

[28] Legal Services Board, Sections 24 and 26 investigations: will-writing, estate administration and probate activities - Final Report, February 2013; https://www.lawsociety.org.uk/policy-campaigns/articles/regulation-of-will-writers-campaign/
[29] Ibid.
[30] The Legal Services Market Study, The Competition and Markets Authority, 2016, para 12, p. 292.
[31] Working paper LSR-2, Professor Mayson, October 2018; https://www.ucl.ac.uk/ethics-law/sites/ethics-law/files/2._irlsr_wp_lsr-2_scope_1810_0.pdf
[32] Communication on reform recommendations for regulation in professional services, The European Commission, January 2017, p. 18; https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016DC0820&from=en

existing reserved activities. We therefore don't agree with the strength of the review's emerging conclusion that the reserved activities are "not fit for purpose".

80. If in the future the reserved activities were to be reviewed, there would be an opportunity to consider if the scope of some of the existing reserved activities is wide enough to protect the public, and an opportunity to consider if any other practice areas would meet the test for a reserved activity which we have outlined.

Professional titles

81. The Law Society believes there is an important role for professional titles in protecting consumers and the public interest. If you accept the public interest argument for reserving certain legal services to qualified professionals, then it follows that you need a robust system for awarding professional titles in order that only those people who are qualified to carry out reserved activities can do so.

82. Professional titles are not just important with regard to the reserved activities. For non-reserved activities, consumers must make choices from a range of different types of legal service providers. The Competition and Markets Authority observed some of the factors which can make it more challenging for consumers to purchase legal services[33]:

    - 'Legal' issues are not always clearly defined – consumers may not always be able to identify that they have a 'legal' problem, and may sometimes either ignore the issue or try to handle the matter on their own (for instance, through their own research or by seeking informal advice from a contact), rather than seek the advice of a legal service provider.
    - Consumers tend to purchase legal services infrequently rather than on a repeated basis. They may therefore have a limited frame of reference from which to choose a legal service provider that meets their needs (both in terms of quality and price). Consequently, it is particularly important that they seek information that helps them to make informed purchasing decisions.
    - Time pressure and distress – legal services may also be distress purchases (for example, due to an urgent need or because the situation may be upsetting, such as in the case of obtaining probate).
    - Asymmetry of information – consumers may be unable to judge the quality of legal services upfront and may therefore face difficulties choosing a provider that meets their needs on the basis of quality.
    - Signalling the quality of service that consumers can expect to receive from a particular service provider can be inherently difficult in this sector.

83. Greater public legal education, and the ongoing efforts of firms to provide clients with the best possible information should help to some extent with these problems. But even with the best possible information available online, there will still be a significant information

[33] The Legal Services Market Study, The Competition and Markets Authority, 2016, para 2.5.

asymmetry. The challenge is to minimise this asymmetry because we want consumers to make informed choices.

84. From a regulatory perspective, there are two possible responses to this. The first possible response, with which we would strongly disagree, would be to try and level the playing field between regulated and unregulated providers. The second possible response, which we support, is to maintain distinct professional titles, giving consumers meaningful choice when they purchase legal services.

85. Why do we oppose levelling the playing field? Given the unregulated sector is, by definition, not regulated, the only way to level the playing field is to reduce or remove regulatory protections from the regulated professions. Some of these changes are either already going ahead or have been proposed. For example, the possibility of allowing solicitors to act directly for the public in unregulated entities[34], or reductions in the minimum levels of professional indemnity insurance that the solicitors' profession must offer[35].

86. By removing the regulatory protections that distinguish professions like solicitors from unregulated providers, consumers will find it increasingly difficult to tell the difference between regulated and unregulated providers, because the quality mark of being a "solicitor" would become less meaningful. In the longer term, it increases the risk that consumers lose trust in legal services regulation, especially where they may sustain uncompensated losses caused by a mistake from a regulated professional.

87. In economic terms, if you seek to remove regulatory barriers to level the playing field, then you will end up in a situation whereby you undermine the meaning of professional titles. In turn, consumers will find it more difficult to assess the quality of legal service providers. The logical conclusion is that it leads to a race to the bottom on price and quality, a point which was explored in a 1970 economics paper on the *Market for Lemons*.[36] In markets with information asymmetry, if a consumer cannot tell the difference in quality between a more expensive product and a less expensive product, then the only distinguishing factor that they can be sure about will be price. In that scenario, it will be natural for the consumer to buy the lower priced product, with the result that the market coalesces around a low-quality, low price offering. For this to happen in the legal services market would not be in the consumer or the public interest.

88. The London Economics and YouGov research we commissioned lends weight to the view that consumer behaviour could develop in this way.[37] The research found that:

[34] The LSB's approval of the SRA's handbook rule change application; https://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/2018/20181105_SRA_LttF_Decision_Notice_3.pdf

[35] The SRA consultation on professional indemnity insurance 'Protecting the users of legal services: balancing cost and access to legal services'; https://www.sra.org.uk/sra/consultations/access-legal-services.page#download

[36] The market for lemons: Quality uncertainty and the market mechanism - G Ackerloff - Quarterly Journal of Economics, 1970.

[37] Consumer behaviour research: A report by London Economics and YouGov for the Law Society, December 2017; https://www.lawsociety.org.uk/policy-campaigns/consultation-responses/sra-consultation-looking-to-the-future-better-information-more-choice-law-society-response/

"Participants tended to focus on price when comparing providers, and this tended to be more prevalent in potentially more vulnerable lower social grade participants." [38]

89. The Legal Ombudsman comes to similar conclusions: [39]

> *"In our experience, consumers rarely appreciate the difference between a regulated and unregulated business, and choice is often driven by cost and word of mouth rather than assessment of the protections available to them. Consumers generally only become concerned with protection issues if a problem arises with the service they receive."*

90. In respect of non-reserved legal services, we have multiple regulatory regimes competing with each other. To avoid the 'market for lemons' problem, it is essential that distinct quality signals exist to inform consumers of the variety of quality available. Professional titles can and should act as this quality signal.

91. That is why there is a strong case to be made for maintaining clear professional titles that can improve consumer decision-making and enhance consumer choice.

92. Rather than trying to level the playing field, regulators, professional bodies and market participants should do what they can to help consumers to distinguish between different offerings, in terms of quality and regulatory protections. If more can be done to educate the public about the distinguishing features of different professional titles, they can act as stronger quality marks.

93. That is why the SRA has introduced a digital badge that allows consumers to verify the regulatory status and protections they get when they use a solicitor. While we acknowledge that at this point in time a digital badge will mean little to most consumers, over time we hope that it will become better understood.

94. In addition, having options like solicitors with high regulatory standards that apply in all aspects of their work, goes some way to addressing what could be perceived as the "regulatory gap" for non-reserved legal services.

95. Professional titles are also an essential feature of our jurisdiction, play a crucial role in maintaining international standing of the jurisdiction, and act as an important enabler for trading of our legal services abroad. Many jurisdictions restrict practising rights to authorised professionals. The mutual title recognition agreements the UK secured with other countries enables our profession to expand their practice globally. As mentioned earlier the legal services sector is responsible for net exports worth nearly £4 billion.[40] Removing professional titles would most likely jeopardise the existing international arrangements and be harmful to the UK's international trade in legal services. That is why

[38] Ibid, p.11.

[39] The Legal Ombudsman Response to the SRA 'Looking to the Future': phase two of Handbook reforms, December 2017, para 30; https://www.legalombudsman.org.uk/wp-content/uploads/2017/11/LeO-Response-to-LTTF-Phase-2-Handbook-Reforms.pdf

[40] The Society of England and Wales, Economic Value of the Legal Services Sector, March 2016; https://www.lawsociety.org.uk/support-services/research-trends/a-25-billion-legal-sector-supports-a-healthy-economy/

there needs to be robust research into the international implications before contemplating any changes to the current status.

Independence of the legal profession

96. Lastly, we will address the issue of independence. The regulation of legal services is necessarily different to regulation of other sectors because of the importance of an independent legal profession. As the International Bar Association has highlighted in its recent report[41], an independent legal profession is one of the key safeguards in place to protect the Rule of Law. One of the indicators of an independent legal profession is the degree to which regulation of the legal profession is free from state control. As we think about the future regulatory framework, this should be one of the key factors that we judge it against.

97. Independence of the legal system from the state is vital for the international standing of England and Wales as a jurisdiction of choice, both in terms of a place to obtain legal services, to do business more generally, or to resolve major or complex disputes. England and Wales is regarded as a natural jurisdiction of choice throughout the world, but its standing might be threatened if there was any suggestion that the state is able to fetter its independence.

98. From the perspective of a citizen being prosecuted by the state, or pursuing a claim against the state, there can be no suggestion that their legal representative is being controlled by the state through an arm's length regulatory agency. There would be an indirect fetter on the appointment of an independent judiciary if the regulator is State controlled (even if it is arm's length) and it can determine who becomes a lawyer and who can no longer serve as a lawyer. Independence from the State also impacts on the ability of legal professionals to uphold the rule of law and hold government to account. The profession's ability to make representations on the conduct of foreign jurisdictions in their dealings with their citizens relies substantially on the acknowledged pre-eminence of the rule of law and the independence of the legal profession from the State.

99. One of the indicators of an independent legal profession is the degree to which regulation of the profession is free from government control. The Clementi Review of legal services addressed the issue of independence, rightly highlighting how crucial the independence of regulation is – both from the profession and the state.[42] The review and subsequent legislation delivered a solution which addressed two issues - structural separation of regulation from the profession, and also a protected status for the regulator and the profession which prevents them being fettered by the state.

[41] International Bar Association, Presidential Task Force on the Independence of the Legal Profession, September 2016.

[42] Review of regulatory framework for legal services, Sir David Clementi, December 2004; http://www.avocatsparis.org/Presence_Internationale/Droit_homme/PDF/Rapport_Clementi.pdf