

**UCL CENTRE FOR ETHICS AND LAW  
UCL FACULTY OF LAWS**



**UCL**



**INDEPENDENT REVIEW OF  
LEGAL SERVICES REGULATION**

# Welcome

- First public meeting of the Review
- All five working papers now published
- Purpose:
  - summarise the story so far and next steps
  - summarise the working papers and issues raised
  - pose some big questions
  - hear your views

# Background

- Ministerial Summit of regulators (2014)
- Legislative Options Review (2015)
- Secretary of State at Justice Select Committee (2015)
- Competition & Markets Authority market study (2016)
- Brexit ...
- ... time to think

# The mission

- No timing for reform in mind
- Simply assuming that the time will come ...
- ... and what then might be a better approach?
- No axe to grind
- A genuinely open mind
- Not a quest to 'prove' a pre-conceived outcome
- Therefore, currently raising issues, listening, exploring and testing ...
- ... so don't infer any conclusions from a question!

# The story so far

- July 2018: Terms of reference published
- October 2018:
  - Advisory Panel formed
  - First three Working Papers published: assessment; rationale; scope
  - Meetings with interested parties (80+) and submissions received
- March 2019:
  - Updates to first three Working Papers
  - Two new Working Papers published: focus; structure

# Where next?

- Phase 2 – March-June 2019:
  - More meetings planned; open for further submissions
  - Further work on comparative approaches (sectors; jurisdictions)
- Phase 3 – September-December 2019:
  - Interim report: issues and findings; possible solutions
  - Feedback and debate
  - Second public event at UCL: 9 October
- January 2020:
  - Final report: conclusions and recommendations
  - Third public event?

# LSR-0: Assessment (where are we?)

- LSA 2007 improvements; but some significant shortcomings
  - inflexibility in statutory framework
  - competing/inappropriate regulatory objectives
  - anachronistic reserved activities that are pivotal to all else
  - title-based authorisation creates entry barriers, and additional burden and cost
  - a regulatory gap that exposes consumers to potential harm
  - an incomplete separation of regulation and representation
  - potentially misconceived 'mission' of regulation and regulators
  - insufficient public confidence in legal services regulation
  - now 'behind the times': global financial crisis/austerity; legal tech

# LSR-1: Rationale (why regulate?)

- Some legal services so important, cannot leave only to general consumer law
- Suggested rationale = the public interest
  - secure the fabric of society and legitimate participation of citizens
  - sector-specific regulation justified to achieve:
    - the *public good* of the rule of law, justice and interests of UK plc; or
    - appropriate *consumer protection*, particularly where incompetent or inadequate legal services could result in irreversible/imperfectly compensated harm
- A primary regulatory objective?
- ‘Public interest’ and ‘consumer interest’ are distinct; but both require appropriate consumer protection to be in place

# LSR-2: Scope (what to regulate?)

- Regulation on a spectrum from no legal services to all (cf. UPL)
- Currently have reserved legal activities as a faulty 'gateway' to full regulation
- Public interest case for reservation stronger for some activities than others
- There might be alternative or additional candidate activities, based on a public good/consumer protection threshold
- Does 'reservation' need to be retained, or succeeded by an alternative approach to before-the-event authorisation?
- If reservation no longer needed, BTE authorisation need not be the only gateway to regulation: then scope for a different approach to DTE and ATE requirements?

# LSR-3: Focus (who to regulate?)

- CMA and LSB Vision (2016) suggest move away from title
- The ‘proper’ role of regulation?
- Possibilities:
  - titles – problem of ‘portmanteau’ and ‘consequential’ regulation
  - activities – definitions; cf. Robertson Scottish review (2018)
  - individuals – needs entity regulation, too (as with title)
  - entities/business unit – needs individual/title regulation, too?
  - providers – a neater catch-all or a step too far?
- Challenge of ‘substitutive legal technology’

# LSR-3: Form (when to regulate?)

- Form of regulation:
  - before-the-event: reservation; authorisation; title/licence; certification
  - during-the-event: standards/code; client money; undertakings; PII; disclosure/transparency; continuing competence; judicial oversight; risk-profiling
  - after-the-event: redress; conduct complaints; service complaints; compensation
- Scope for more differentiated applications of BTE, ATE and DTE?
- Special bodies; McKenzie Friends; in-house lawyers; regulatory gap/‘unauthorised’ providers
- Rules vs outcomes

# LSR-4: Structure (how to regulate?)

- Single or multiple regulators ?
  - single, overarching regulator for all legal services
  - single regulator for one or more (group of) activities
  - multiple regulators (as now) for the same activity; cf. regulatory competition
  - with or without an oversight regulator
- Independence from government and representation
- Consumer and provider representation
- Regulatory arrangements: authorisation, practice rules, conduct, discipline, qualification, indemnification, compensation, ABS licensing; consolidation and consistency
- Complaints and ombudsman: a broader remit?

# Some (big) questions

- Does 'reservation' need to be retained, or succeeded by an alternative approach to before-the-event authorisation?
- Why 'full' regulation (in fact) only for the legally qualified?
  - does full regulation need to be retained for everything the legally qualified do?
  - do risk, targeting, and proportionality point towards DTE and ATE requirements for some activities, without need for BTE authorisation?
- Future place of title in the regulatory framework?
  - is activity-based regulation a feasible alternative, or complement?
  - when do we really need to focus on individuals (e.g. skills, integrity)?
- If no other regulated involvement, how should we address substitutive legal technology?

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**To request a meeting,  
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