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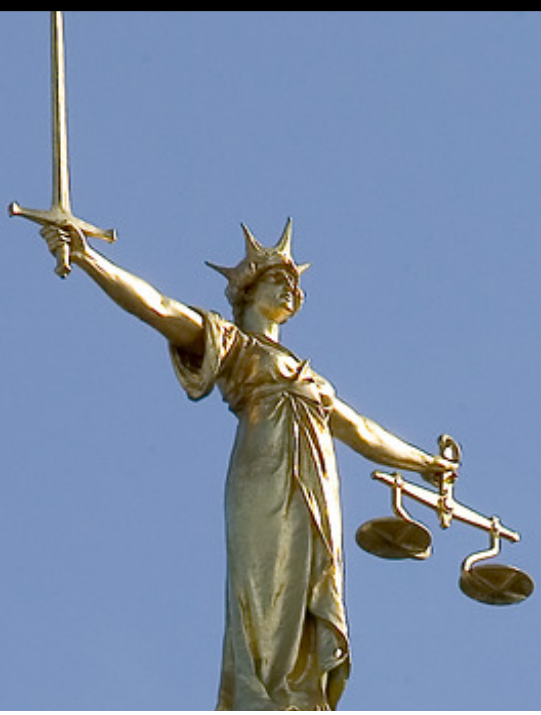

INDEPENDENT REVIEW OF LEGAL SERVICES REGULATION

The Structure of Legal Services Regulation

Working Paper LSR-5 | March 2020

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1. Introduction

The Centre for Ethics & Law in the Faculty of Laws at University College London has undertaken a fundamental review of the current regulatory framework for legal services in England & Wales. Further details and the full terms of reference are available at https://www.ucl.ac.uk/ethics-law/news/2018/jul/ucl-centre-ethics-law-undertake-regulatory-framework-review.

The independent review has explored the longer-term and related issues raised by the Competition and Markets Authority (CMA) market study in 2016 and its recommendations, and therefore intended to assist government in its reflection and assessment of the current regulatory framework.

The Review's scope reflected the objectives and context set out in the terms of reference, and included: regulatory objectives; the scope of regulation and reserved legal activities; regulatory structure, governance and the independence of legal services regulators from both government and representative interests; the focus of regulation on one or more of activities, providers, entities or professions; and the extent to which the legitimate interests of government, judges, consumers, professions, and providers should or might be incorporated into the regulatory framework.
This project was undertaken independently and with no external funding.

This is the fourth of five Working Papers that address the issues and challenges raised by five fundamental questions for the Review:

(1) Why should we regulate legal services? (Rationale)
(2) What are the legal services that should be regulated? (Scope)
(3) Who should be regulated for the provision of legal services? (Focus)
(4) What are the tools of regulation? (Form)
(5) How should we regulate legal services? (Structure)

These Working Papers have been updated and reissued as the Review progressed.

The work of the Review has been helped by input from the members of an Advisory Panel[2]. Some of the published work and comments of Panel members are referred to and referenced in the working papers. However, the content of this working paper is the work of the author, and should not be taken to have been endorsed or approved by members of the Panel, individually or collectively.

1. The author has led the Independent Review, and is an honorary professor in the Faculty of Laws and was also chairman of the regulators' Legislative Options Review submitted to the Ministry of Justice in 2015.
2. For details, see: https://www.ucl.ac.uk/ethics-law/publications/2018/sep/independent-review-legal-services-regulation.

The first Working Paper in this series (LSR-1 2020, *The rationale for legal services regulation*[3]) addresses the fundamental question of whether there is something special about legal services that requires sector-specific regulation. It concludes that there is, and posits that the public interest provides both the justification and the 'moral compass' for regulatory intervention in legal services.

This also then suggests that sector-specific regulation is particularly justified to ensure that the public good of the rule of law, the administration of justice and the interests of UK plc are preserved and protected, as well as to ensure appropriate consumer protection where incompetent or inadequate legal services or other consumer detriment could result in irreversible, or imperfectly compensated, harm to citizens.

The second Working Paper (LSR-2 2020, *The scope of legal services regulation*[3]) examines the scope of legal services regulation – that is, the legal services to which regulation should apply – on the basis that scope is fundamentally a policy issue, driven by a mix of political, social, economic and professional considerations. The outcome of balancing those considerations can place regulatory scope on a spectrum between 'all' and 'none'.

The current scope of regulation represents an 'intermediate' approach between no regulation and full regulation of legal services, in that before-the-event authorisation to practise is limited by the Legal Services Act 2007 to the reserved legal activities.

These activities are an historical feature of legal services regulation imported into the 2007 Act with no modern, risk-based reassessment of whether or not they provide the correct foundation for 21st century, post-Brexit, regulation.

Using the public interest rationale from LSR-1 (2020) as a criterion, the case for regulation is stronger for some of the current reserved activities than others, and there could also be alternative or additional candidate activities. LSR-2 (2020) suggested that the question of whether the notion of 'reservation' needs to be retained should be considered, given that what would be most important in the public interest is some form of before-the-event authorisation.
This, along with other forms of during-the-event and after-the-event approaches, could be applied to defined legal activities without necessarily needing to characterise them as 'reserved'. This might also allow after-the-event regulation to be applied in some form to all legal activities, or at least to provide protection to individual consumers and small businesses where it is most needed.

The third Working Paper (LSR-3 2020, *The focus of legal services regulation*[3]) then explores the potentially more challenging issues that arise from proper focus of that regulatory attention, whether that is on one or more of activity, title, individual, entity, or provider.

The fourth Working Paper (LSR-4 2020, *The form of legal services regulation*[3]) addresses the possible combination of before-, during- and after-the-event regulation as a more flexible way of providing targeted, proportionate and cost-effective intervention.

Having considered *why* legal services should be regulated, *which* of those services should fall within the scope of regulatory intervention, and on whom, when and where regulatory attention should be focused, this final Working Paper accordingly turns to the consequential issues of regulatory structure. Who should the regulators be; how many should there be; is there a need for an oversight regulator; how should consumer and provider interests best be represented; how can regulator independence (from government and from representative interests) be assured; what are the appropriate arrangements for supervision and enforcement, discipline and ombudsman services?

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3. Available, as updated, at: https://www.ucl.ac.uk/ethics-law/publications/2018/sep/independent-review-legal-services-regulation.

2. How should we regulate legal services?

2.1 Introduction

Even when all the foundation issues of why, what and who to regulate are clarified, the question of how to regulate remains a complex and multi-faceted one.

2.2 Alternatives to statutory regulation

Government policy rightly encourages the consideration of alternative ways of bringing about change, with regulation as a last resort.[4] In this way, the regulatory burden on citizens and businesses can be reduced, and economic growth encouraged.

However, many of the alternative approaches have already been used in legal services. It might be that the greatest scope for alternatives will exist in relation to lower-risk legal activities (cf. CMA 2016: paragraph 6.87).

2.2.1 Self-regulation

The traditional professional model of self-regulation was the predominant approach examined and superseded by the Clementi Review and the Legal Services Act 2007. It was the approach in which the public and consumers had largely lost confidence by 2004, by being insufficiently independent of those who were regulated, insufficiently responsive to the handling of client complaints and consumer concerns, and unduly restrictive of the structures and innovation. It is therefore difficult to see that any substantial return to such an approach would be welcome or acceptable so soon after replacing it.

However, LSR-3 (2020: paragraph 4.5) explored the possibility of a sharper distinction in future between the award and 'regulation' of professional titles, on the one hand, and authorisation and other forms of regulatory intervention, on the other. The former might revive as self-regulation, and the latter be subject to a revised statutory framework: this would create a new approach of co-regulation (cf. paragraph 2.2.3 below).

It also leaves room to recognise and celebrate the potential importance and value of the formation and maintenance of a professional identity, a set of values and an ethical culture (cf. LSR-4 2020: paragraph 4.3.1) as alternatives or enhancements to formal regulation.

Further, because of the regulatory gap referred to several times in these Working Papers (cf. LSR-0 2020: paragraph 4.5; LSR-2 2020: paragraphs 2.5 and 4.4), the use of such inherently 'voluntary' regulation could remain a viable option for those who operate in the unregulated sectors of legal services but wish to promote ethical practice and redress for dissatisfied consumers.

This is the approach adopted, for example, by the voluntary codes of conduct of the Professional Paralegal Register, the Institute of Professional Willwriters, and the Society of Will Writers.

The significant drawback of such voluntary self-regulation is that vulnerable consumers who are most in need of protection are also perhaps more likely than others to choose providers whose service and track record is such that they elect not to submit themselves to self-regulation.

4. See https://www.gov.uk/government/policies/reducing-the-impact-of-regulation-on-business/supporting-pages/using-alternatives-to-regulation.

This leaves those consumers currently with no redress or remedy, and no access to the sanctions that might otherwise follow or to Ombudsman services. Again, however, a distinction between the regulation of title or qualification, and other forms of statutory intervention in respect of all providers of certain legal services, might help to address these needs and offer more targeted, risk-based and consistent protection.

2.2.2 Information and education

In light of the conclusion at the end of the preceding paragraph, consumer education and informed decision-making by consumers can help reduce the risks associated with the choice of unregulated providers. There is a necessary connection here with general public legal education and the development of legal capability in citizens, as well as the informed ability to recognise and deal with a specific legal need.

Pleasence & Balmer emphasise that the concept of 'legal capability' remains contested (2019: page 144; see also Legal Services Board 2020). Nevertheless, they identify the following commonalities in its specification: knowledge of law; the ability to spot legal issues; awareness of legal services; understanding of dispute resolution options and the ability to assess them; planning and management skills; communication skills; confidence; and emotional fortitude.

They also observe (2019: page 145) that some of these are specific to law, but that some are generic (such as communication skills).

The use and protection of professional titles, and the use by professional bodies of quality accreditations (such as The Law Society's Conveyancing Quality Scheme and the Wills and Inheritance Quality Scheme)[5], are capable of providing both before-the-event signals to potential clients that a provider is appropriately qualified for their needs and after-the-event redress if something goes amiss. Title and accreditation might, of course, be perceived differently by consumers, and distinct credence or reliance attached to them.

Beyond this, independent – and perhaps commercial – systems are emerging to offer directories and comparisons of legal services providers.[6] However, the veracity and reliability of such assessments – and the reputational harm that could be caused to providers by them – remains relatively untested, adding to the challenge for the previously uninformed, inexperienced, and time-poor enquirer.

As discussed in LSR-4 (2020: paragraph 4.3.5), we are beginning to see the greater use of formal requirements for transparency, such that some information must now be disclosed as part of regulation rather than as an alternative. Even so, the scope for a gap between the *availability* of information and the public *seeking*, *understanding and using* what is available remains a challenge – particularly for vulnerable and occasional users of legal services.

Howarth & Wegner point out that "clients typically lack the expertise to evaluate the specialized and arcane knowledge held by professionals". They then add, tellingly (2019: 398): "In a strange way, the availability of volumes of self-help information on the internet make this dilemma an even more challenging one since … clients may have more facts and opinions at their fingertips while assuming that they actually understand more than they in fact do."[7]

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5. See https://www.lawsociety.org.uk/support-services/accreditation/.
6. See, for example, the Law Superstore (https://www.thelawsuperstore.co.uk) and Solicitor.info (https://www.solicitor.info).
7. Howarth & Wegner cross-reference the 'Dunning-Kruger effect', derived from research that demonstrates "that those with limited understanding and expertise are consistently more likely to overestimate their expertise" (2019: footnote 36).

Greater information and transparency might, paradoxically, lead to greater harm – unintended and unconscious.

2.2.3 Co-regulation

Co-regulation involves a mix of self-regulation (cf. paragraph 2.2.1 above – and likely to be referred to these days as 'earned autonomy') and independent regulation (if necessary, through government involvement). It presents particular challenges in legal services regulation. The legal sector already has elements of professional codes of conduct, and the adoption of other standards and accreditation.

The principal challenge of government involvement (beyond establishing the statutory framework for regulation) is the fundamental need for the perception and reality of independence from government of regulation, regulators and the providers of legal advice and representation.

Nevertheless, there might remain scope for some element of self-regulation or earned autonomy in the legal sector (cf. paragraph 2.2.1 above). The question of regulatory independence is considered further in paragraph 5 below.

2.2.4 Economic instruments or incentives

There would appear to be very limited scope for the use of economic instruments in legal services to change people's behaviour, or to adjust the financial incentives facing businesses and citizens. There are, perhaps, two significant points – though neither is attributable to legal services regulation directly.

First, the cost of legal services is tax deductible for businesses, and the VAT paid by them is recoverable. This presents a significant disparity in the treatment of businesses and private citizens. It increases the relative net cost of legal services for private citizens, and will add to the disincentives to seek legal advice when it is perhaps most needed.

In terms of supporting the rule of law and access to justice, as well as encouraging further economic growth (at least in relation to the legal services market, or assisting those who might wish to take legal advice in respect of starting their own business), some element of tax break or VAT exemption for certain legal services or certain types of client might encourage different behaviour that will strengthen personal or social relationships as well as fuller participation and economic growth in society. It is, however, a policy issue beyond the scope of this Review.

Second, the availability of legal aid represents an economic incentive for some to seek legal advice and representation in some of the ways and for some of the purposes suggested in the previous paragraph. The interplay between regulation and legal aid is somewhat complex, in that many of the issues for which legal aid is desirable (such as housing and social welfare, immigration, and crime) involve highly technical law in respect of which the competence and experience of an adviser are critical.

The accreditation and regulation of a provider might therefore be necessary to give assurance both to the client (who will be affected by acting on the advice and representation) and to the state (which is providing the funding, and paying for the courts system that underpins the rights and obligations in question): see further LSR-2 (2020: paragraphs 3, 4.2 and 4.3).

However, where the cost of accreditation or regulation is (too) high, the ultimate economic burden on providers of participating in the legal aid system may prove to be too great if the rewards offer an inadequate return on the expertise, experience or resources required for effective advice and representation – and compliance with regulatory obligations.

2.2.5 Conclusion

For the most part, the feasible options for alternatives to statutory or more formal regulation have been adopted in the legal services sector, and their use and value should continue to be recognised. In particular, it is important not to abandon the strong sense of identity and professionalism[8] arising from title-based, (self-) regulatory approaches.

However, that does not inevitably mean that title-based regulation is the only approach capable of inculcating and maintaining those benefits.

8. However, Cochran adds a note of caution in relation to professionalism (2000: page 314): "For some, professionalism requires a lawyer to do whatever the client wants; for others, professionalism requires a lawyer to impose his morals on the client; for others, professionalism requires a lawyer to direct the client to act selfishly. It may be that in a postmodern world, the term 'professionalism' can mean whatever the lawyer wants it to mean."

3. The regulators

3.1 Background

The current structure of regulation reflects multiple routes to authorisation based predominantly on professional titles. It has the LSB as the oversight regulator (overseeing ten front-line regulators[9]), along with the Office for Legal Complaints and the Legal Ombudsman to provide a single point of complaint resolution and redress for dissatisfied consumers of legal services, and the Legal Services Consumer Panel to represent the interests of consumers.

This structure has some of its origins in longstanding and deep roots. As the Legislative Options Review noted (2015: paragraphs 11.1 and 11.2):

> While there has been significant change to regulation of legal services in recent years, there is, nonetheless, a range of cultural and social factors which continue to exert a strong influence and which must be taken into account when considering any future structure of the regulatory framework. Any future structure needs to be practical to implement, and those designing it should be mindful that policy development would neither exist in isolation nor start from a 'clean slate'.
>
> There are also, of course, a range of key stakeholders already within the system, which includes practitioners and providers, consumers, government and the legislature, the judiciary, organisations that provide representative functions, and organisations that fulfil regulatory functions.

In relation to the judiciary, the Legislative Options Review also noted (2015: paragraphs 11.5 and 11.6):

> The judiciary, in the context of the current regulatory framework, is an important and significant stakeholder, and will naturally remain so in the future … as the embodiment of the Crown in terms of controlling their own courts (including who appears before them, in what capacity, and with what effect)[10] …. It could be argued that, under the present system, the judiciary do sometimes act as 'regulators', for example if they refuse to hear specific advocates on specific occasions. However, where professional standards for practice are set, these are set by legal services regulators, and not directly by judges.
>
> The contribution of the judiciary to an effective, efficient and accessible justice system is, nonetheless, of paramount importance, and a future system should recognise this by clearly defining and 'hard-wiring' mechanisms, where appropriate, for involvement of the judiciary in the functioning of regulatory system through legislation. In part,… this is already achieved in the LSA by the statutory requirements to consult the Lord I8yChief Justice in certain instances.

It should be noted, however, that the Options Review added an important point in footnote 34 that, for completeness, bears repetition:

> In any reference to the role of the judiciary in regulation, a distinction needs to be drawn between the roles of judges in the secular courts and those of the ecclesiastical courts. The senior ecclesiastical judicial posts in England are the Dean of the Court of Arches and Auditor of the Chancery Court of York who preside over the ecclesiastical appellate courts for the provinces of Canterbury and York respectively. Both posts are held by the same person appointed by the Archbishops of Canterbury and York jointly, with the approval of the monarch (Ecclesiastical Jurisdiction Measure 1963, s. 3(2)(a)). The Dean of the Arches and Auditor is, by virtue of his office, also Master of the Faculties to the Archbishop of Canterbury (Ecclesiastical Jurisdiction Measure 1963, s. 13(1)). The Master of the Faculties has been responsible for the appointment of notaries public in England and Wales (and certain other Crown dependencies and overseas

9. They are: Solicitors Regulation Authority, Bar Standards Board, CILEx Regulation, Master of the Faculties, Council for Licensed Conveyancers, Intellectual Property Regulation Board, Costs Lawyers Standards Board, Institute of Chartered Accountants in England & Wales, Institute of Chartered Accountants in Scotland, and Association of Chartered Certified Accountants.
10. In relation to barristers, Lord Mansfield declared in *R.* v. *Gray's Inn Benchers* (1780) 1 Doug 353, at page 364: "The original institution of the Inns of Court nowhere precisely appears, but it is certain that ... all the power they have concerning the admission to the Bar, is delegated to them from the judges." For a brief account of this history, see Mayson (2018).

territories) since the creation of his post pursuant to the Ecclesiastical Licences Act 1533 and he is now the approved regulator for notaries under the LSA. He is the presiding judge of the Court of Faculties of the Archbishop of Canterbury which, inter alia, acts as the disciplinary court for notaries, although the Master delegates his judicial role in disciplinary cases to a commissary. His role as regulator is thus an administrative one and consistent with that of the other approved regulators and with the principles of regulation set out in the LSA.

It is also the case that, in some other jurisdictions (such as the United States), judges continue to play a prominent role in the regulation of lawyers. This is a reflection both of history and of an approach to regulation that is constructed around (effectively monopoly) professions rather than activities or a broader range of providers.

3.2 Structural options

The CMA identified some of the structural factors in its market study (CMA 2016: paragraph 5.121):

> In principle, we consider that there are three main groups of structural issues that might affect regulatory outcomes:
>
> - The **horizontal separation** of regulation between eight[11] different frontline bodies might lead to duplication of costs, inconsistency of approach, or make it difficult for new business models to emerge.
> - The **vertical separation** between the frontline regulators and the oversight body (the LSB) might lead to disagreements on the preferred approach, and might make it more difficult to achieve necessary regulatory change.
> - The **lack of full independence** between regulators and their representative bodies might make it more difficult for the regulators to carry out their statutory duties.

The Legislative Options Review set out the following options for structuring the regulators (2015: paragraph 11.7):

(1) *Separate regulatory bodies focused on professional groupings, with or without independence from representative bodies, and with or without an oversight regulator*: where the focus of regulation is on authorisation by title [cf. LSR-3: paragraph 4], the responsibility for regulation and supervision could fall naturally to those regulators that operate by reference to professional groupings….

Such an approach is close to the current settlement, and brings the potential for specialist expertise by type of practitioner. But it also runs the risk of lack of independence, of perceptions of conflict and regulatory capture, lack of consistency in the regulation of the same legal activities carried out by members of different professional groups and, for that reason, of regulatory arbitrage.

Further, in the new landscape of organisations carrying out multidisciplinary legal and other activities within the same business, the multiple regulation of practitioners and employees from different professional groups presents potential complexity, burden and cost, and exacerbates the risks of inconsistency in regulatory standards.

(2) *Separate regulatory bodies focused on regulated activities, with independence from representative bodies, and with or without an oversight regulator*: to address the risks of regulatory consistency, capture and arbitrage, regulators could instead be organised by the activities carried out. Such a structure would be more likely to bring separation from professional groups. It would, however, contain a similar risk of multiple regulation for the same business carrying out a range of activities, with consequent risks of complexity, burden and cost.

(3) *A single regulator with specialist sub-units or divisions (focused on professional groupings or activities, or possibly a flexible combination of both)*: to encourage consistency and economy across specialist regulators – whether they regulate by title or activity – an alternative to

11. See now footnote 9.

separate oversight regulation would be to establish the specialist regulators as sub-units or divisions of a single sector regulator. Potential advantages of this model include economies of scale, while retaining specialist expertise that recognises market diversity. However, the model risks (as a result of the likely size of the organisation) lack of responsiveness and more bureaucratic decision-making structures as various interests are accommodated.

All three options – and particularly options (1) and (2) – are based on an assumption that the principal choice in relation to focus lies between activity and title, or some combination of the two.

However, as LSR-3 (2020) explored, this might present a false or limiting portrayal of the options. For example, parallel processes for regulating individuals and entities are probably necessary for both, though title-based approaches do not offer the award of title to entities and therefore necessarily require a different regime for entity regulation.

The discussion in LSR-4 (2020) suggests that these options need to be expanded by allowing for the possibility of regulators focused on before-the-event authorisation rather than title, and on other approaches that, based on degrees of assessed risk, distinguish before-the-event authorisation from during- and after-the-event responsibilities (cf. 2020: paragraph 4).

3.3 Oversight regulation

The Legal Services Act 2007 introduced the Legal Services Board as a new oversight regulator. In the Legislative Options Review (2015), the position of oversight regulation was considered:

> 11.9 The current role of the LSB is as an oversight regulator acting independently of Government. The LSB was created to oversee the new regulatory framework and ensure that the approved regulators carry out their regulatory functions to the required standards. The benefits of oversight regulation include: monitoring the independence of regulators from those they regulate; promoting consistency of approach and alignment of public and consumer interests on rule changes in areas where multiple regulators may have conflicting perspectives; spreading good practice; and doing things that can only practically and realistically be achieved through a coordinating body. However, there are potential drawbacks too, including: increasing the time before rule changes can take effect; duplication of effort; and additional cost, including the resources required for the front-line regulators to interact with it.
>
> 11.10 The LSA gives the LSB a range of duties, functions and powers so that it can fulfil its responsibilities. In this sense, one possible set of functions for such a regulator are already set out in statute. Under a structure where representative and regulatory functions are combined within one organisation, there is a case for strengthened oversight to ensure that all interests are fairly addressed. Other areas of the economy – for example, the medical or teaching professions – might provide useful models for how these key stakeholder relationships could develop as part of a future regulatory framework.
>
> 11.11 Conversely, where there is full separation of regulation and representation, it might well be proportionate for separate oversight of rules and decision-making to be more relaxed, with a more strategic approach to oversight becoming increasingly feasible. For example, at present the LSB is required to approve changes to regulatory arrangements proposed by the approved regulators. However, if there was a more independent regulatory architecture, the need for such oversight could be reduced or possibly even eliminated. There would need to be clear lines of accountability were this to be considered as an option.

In its market study, the CMA considered that the 'vertical relationship' between the LSB and regulatory bodies "has the potential to create inefficiency due to the risk that the LSB may refuse applications [for changes to regulatory rules and arrangements] submitted by front line regulators" (CMA 2016: paragraph 5.140).

It also suggested that (CMA 2016: paragraph 6.50) “the current oversight model may not have sufficient flexibility to implement changes in a timely way as it creates the potential for conflict between the oversight regulator and frontline regulators”. However, it also noted (CMA 2016: paragraph 5.144):

> While it appears that the performance of the LSB’s oversight role may lead to some unnecessary costs, several stakeholders have noted that this role serves an important function to ensure that regulatory changes do not conflict with the regulatory objectives set out in the Legal Services Act 2007. This is particularly relevant in the context of ensuring that there is independence of regulation from the representative interests of the profession. However, we believe that there may be scope to ensure independence without the need for a separate oversight regulator.

It seems likely, on balance, that the need for an oversight regulator will turn primarily on whether there is a single regulator across the sector (where there will be no need for a separate oversight regulator), or a continuing multiplicity of regulators in respect of whom there remains a requirement for some supervision of consistency, performance, and conflict resolution.

4. Single or multiple regulators

4.1 Clementi's compromise

The current multiplicity of regulatory players arising from the Legal Services Act was noted in paragraph 3.1 above. In his Review leading to the Act, Sir David Clementi considered very carefully the challenges of multiple regulators. He nevertheless concluded, on balance, that there were then benefits in retaining the existing approach of multiple front-line regulation (Clementi 2004: page 36).

4.2 Multiple regulators

Sir David's observations in favour of multiple regulators included (pages 34-35): leaving day-to-day rule-making and oversight as far as possible at the practitioner level, which is "likely to increase the commitment of practitioners to high standards"; independence from government is more clearly demonstrated where front-line regulatory powers are exercised at practitioner level; and a system of multiple regulators allows the possibility of regulatory choice and competition (though this needs to be mediated by an oversight regulator setting minimum standards applicable to all).

In addition to the 'asymmetry of regulation' created by the regulatory gap referred to in LSR-0 (2020: paragraph 4.5), Sir David also identified a second form of asymmetry in his report (Clementi 2004: page 98):

> The second asymmetry is that the rules set by front-line regulatory bodies may be different, even for the same reserved service…. These arrangements may create significant anomalies between lawyers regulated by different front-line bodies, and between lawyers and non-lawyers, in terms of both consumer protection and the regulatory burden.

However, Sir David had earlier made the point (Clementi 2004: page 34) that:

> precise uniformity in standards that a single regulator might lead to may not always be in the public interest or lead to greater competition. Some degree of choice in the type of provider, and the regulatory rules under which they operate, is to be welcomed, subject to a minimum standard being met…. The Bar Council makes a similar point in its submission: that the need for consistency in the regulatory regime should not be equated with uniformity, the requirement that an identical set of rules should apply to all lawyers.

Of course, he did ultimately recommend the retention of multiple regulators, and so his broader point about choice and competition is more relevant to the totality of the legal services market.

A multiplicity of regulators in relation to the same legal service was referred to by the CMA as 'horizontal separation' (cf. paragraph 3.2 above). The CMA's concerns with such separation are the potential for duplication of fixed costs, a focus on professional titles that might adversely affect regulation according to risk, overlaps among regulators leading to the need for the same individual or entity having to be regulated by more than one regulator, inconsistency in regulatory approach across regulators, and competition among regulators to reduce costs or burdens (CMA 2016: paragraph 5.124).

While these are undoubtedly legitimate concerns, the CMA's market study did not find significant evidence of all of them actually being manifested in practice (CMA 2016: paragraphs 5.136 and 5.137):

> While the current structure appears largely to avoid duplicating compliance costs for providers, it risks imposing inconsistent standards on providers performing similar activities. This may have the potential to distort competition between different types of providers. In addition, from a consumer's perspective, it may be confusing that similar entities are regulated by different regulators and are subject to different regulatory conditions. Consumer harm may materialise when consumers assume that a particular level of regulation applies to a legal services provider

> that is perceived to be identical to any other provider, when it does not. In addition, low consumer understanding of regulatory protections, coupled with inconsistent regulations across regulators, might over time reduce consumer engagement in the sector by adversely affecting confidence in both regulation and legal services as a whole.
>
> However, we note that the LSB's oversight role … may reduce the risk of inconsistent regulatory standards. Furthermore, we are not aware of evidence that inconsistent regulation has directly led to poor outcomes for consumers.

In relation to overlaps and competition, the CMA view is (CMA 2016: paragraphs 5.138 and 5.139):

> Overlaps may also result in competition between regulators to reduce regulation and compliance costs. There is a risk that competition between regulators may incentivise regulators to reduce regulation to an inappropriate degree in seeking to grow the number of their authorised providers. This may lead to a 'race to the bottom' whereby standards and regulations are reduced to a level that is below the socially optimal point in terms of consumer protection.
>
> On the other hand, competition between regulators can have positive effects on regulatory rules through encouraging frontline regulators to become more efficient, implement best practice and develop more proportionate regulation for their providers. This process may incentivise best practice among the regulators as they strive to obtain a strong 'regulated brand' that may even attract unauthorised providers.

This assessment of multiple regulators would seem to suggest that an oversight regulator, such as the LSB, can manage the potential concerns that arise, and leaves only the challenge of title-based regulation responding appropriately and consistently to risks across the sector.

It is not surprising that the current multiplicity of regulators finds favour with those who prefer title- or profession-based regulation (their concern is more about the need for the separation of representative and regulatory bodies, the need for an oversight regulator, and the role of government in appointments and approvals required under the 2007 Act).

The CMA recorded this support for 'specialised' regulators as follows (CMA 2016: paragraph 5.129):

> Stakeholders submitted that separate frontline regulators better understand the particular needs of their regulated individuals. In particular, having separate regulators may allow regulators to be more effective in (i) tailoring of regulations to tackle risk in an appropriate manner; (ii) supervision of compliance with those regulations with a sharper understanding of their regulated communities' business models; and (iii) enforcement of those rules with greater precision.

Nevertheless, the CMA confessed that (2016: paragraph 5.130) "it is not clear to us the extent to which these benefits would be lost with fewer regulators, in particular if there were specialised departments within a smaller number of regulators dedicated to each professional grouping".

Thus, while the evidence against a multiplicity of regulators falls mainly in relation to its connection with a professions focus (rather than a multiplicity as such – as might arise in relation to an activity-based approach), the CMA still favours a reduction in the multiple. In addition, in its vision for reform, the LSB also advocated either a single, sector-wide, regulator or 'a radical reduction' in the number of regulators (LSB 2016: paragraphs 100-101; cf. further, paragraph 4.3 below).

It is probably a reasonable assumption that, without more, a multiplicity of regulators will result in additional cost to the regulated community and, ultimately, to consumers. Where the same regulated person is subject to the jurisdiction of multiple regulators, therefore, one would hope that those regulators would explore and adopt ways in which compliance with the requirements of one would result in deemed compliance with another's.

4.3 A single regulator

In the context of the current structure, the expression 'single regulator' could suggest two rather different outcomes. The first would be a single, overarching regulator for all legal services. This would reflect structures in other sectors, where single regulators are established primarily to avoid the same individuals or entity having to be regulated by more than one regulator.

Such an approach was taken, for instance, in setting up Ofcom and, initially, the Financial Services Authority[12]. The subsequent splitting of the FSA into the Financial Conduct Authority and the Prudential Regulation Authority might be taken to suggest the limitations of a single regulator model.

On this issue, the CMA wrote (CMA 2016: paragraph 5.135):

> in contrast to other sectors where regulatory consolidation has occurred, the focus of the current regulatory structure on separate professional groupings implies that these providers are not typically regulated by multiple legal regulators at the same time. However, due to the interactions between entity regulation and title-based regulation, firms authorised by one frontline regulator, for example the SRA, may employ individual legal professionals who are regulated by a different frontline regulator, for example the CLC. We understand that these situations do not pose significant additional compliance costs. There is a clear understanding between approved regulators and the LSB about potential tensions between individual and entity-level regulation, supported by a framework Memorandum of Understanding. In addition, we are not aware that tensions between individual and entity regulation lead to excessive compliance costs in practice.

The LSB's vision statement sets out what it thought should be the outcomes of an alternative structural approach to legal services regulation (LSB 2016: paragraph 99):

> an institutional architecture should be sought that:
>
> - creates scope for significant economies of scale and scope by reducing the current duplication of back office functions and fragmentation of regulatory activity amongst eight[13] different regulatory bodies and an oversight regulator
> - increases transparency and clarity for both consumers and providers of legal services around which regulatory body to contact, and for the public more generally about the identity and role of the legal service regulator(s)
> - increases the accountability of regulation by simplifying governance arrangements and making lines of accountability clearer …
> - reduces the risk of regulators becoming more likely over time (due to the long term relationships with key providers) to serve the interests of providers rather than consumers or the public, for example a structure in which the regulator(s) are no longer exclusively responsible for, and associated with, one particular professional group
> - brings decisions on relative prioritisation of areas for regulatory attention into a more coherent over-arching framework, and avoids a situation where resources are spent on issues of low overall consumer or public impact simply because a dedicated regulator exists for that part of the market
> - enhances the consistency of regulation and reduces incentives for providers to 'shop around' between regulators to the potential detriment of consumers
> - removes organisational barriers to knowledge sharing across the different branches of regulation
> - makes it easier to attract and retain a workforce with the necessary expertise, skills and experience, by offering a greater range of responsibilities and opportunities.

The LSB stated that these outcomes could be achieved with either a single regulator or a radical reduction in the number of regulators (LSB 2016: paragraphs 100 and 101).

12. Though even this framework was more akin to a system of tiered regulation, with some professional bodies still able to regulate their members in respect of certain exempt activities.
13. See now footnote 9.

The second meaning of a 'single regulator' would be one regulator for a particular legal activity (such as advocacy or probate) or group of related activities (such as probate and estate administration). This would change the current model from title to activity (cf. LSR-3 2020: paragraphs 3 and 4).

Whereas currently, for example, several regulators are approved in relation to the same reserved activity, a new approach to activity-based regulation might in principle lead to a single regulator authorising and supervising a range of authorised persons in respect of an activity or group of activities, even if they come from different professional backgrounds.

However, as recorded in LSR-3 (2020: paragraph 3.4), in the context of the recent Scottish review of legal services regulation, Roberton's observation (2018: page 41) that activity-based regulation can equally lead to a proliferation of regulators, inflexibility and a lack of agility has great force in relation to legal services.

Further, even if there were to be a single regulator of, say, exercising rights of audience, the need for or desirability of different approaches could still arise. For example, should or would the same regulatory requirements apply in relation to rights to appear in the Supreme Court and the senior courts as compared to county courts and magistrates courts, or in relation to cases that might result in a custodial sentence?

In his consideration of the merits of a single regulator, Sir David Clementi referred (2004: pages 32-33) to a 'simpler system', with clearer lines of responsibility and greater accountability; a clear forum for dealing with conflicts ("It is better that resolution of such conflicts rests within one accountable body, rather than in separate bodies where deadlock may arise"); greater consistency "providing a single coherent system of authorisation, supervision and investigation"; and more consistency in training and entry standards, permitting common training and making it easier to transfer between different legal service providers.[14]

The Legislative Options Review acknowledged that any structural arrangement would require appropriate expertise (2015: paragraph 11.12):

> any future regulatory body or bodies would require access to both specialist knowledge of legal activities and specialist knowledge of regulation itself, whatever form the organisational architecture took. In addition, expertise in research and analysis in this historically under-researched and under-analysed sector is likely to be critical in ensuring that there is a sound evidence base for effective and proportionate policy development and decision-making.

However, in seeking to counter the natural resistance from those who might favour more specialised, multiple regulators, the LSB's vision statement noted (2016: footnote 55):

> we do not believe that it is inherently impossible for a regulator with a wide scope to have access to the necessary specialist expertise (in both legal services and in regulation itself) to regulate effectively across a sector as diverse as the legal services sector. For example, Ofcom as a communications regulator regulates the TV, radio and video on demand sectors, fixed line telecoms, mobiles, postal services, and the airwaves over which wireless devices operate.

Without being specific about the principles on which any reduction in the number of regulators might be based, the CMA's market study concluded (CMA 2016: paragraph 6.87) that "over time, there is a case for consolidation of regulators [that] may allow for better prioritisation over risk factors [that] relate more to the relevant types of consumer, activity and legal services than types of provider".

14. These observations were directed principally to the comparison between a single regulator for all legal services, compared to what became the 2007 Act's structure of an oversight regulator with multiple front-line regulators. However, many of them are equally valid in the context of a single activity-based regulator when compared to multiple regulators for the same regulated activity.

In this conclusion, the CMA and the LSB are aligned in believing that a future structure with fewer (at least) regulators is worthy of serious consideration.

5. Regulatory independence

The CMA regards regulatory independence as "a fundamental principle for the regulatory framework" (CMA 2016: paragraph 5.152). It is difficult to disagree with such a principle. Nevertheless, it begs the questions: independence from whom, and for what purpose?

5.1 Independence from government

One of the challenges arising from the current regulatory settlement is the perception that the structure might not be sufficiently independent of government (cf. LSR-0 2020: paragraph 4.6). This was elaborated in the Legislative Options Review (2015):

> 11.3 The current system contains an integral requirement for consultation with and approvals by the Lord Chancellor, for example in relation to appointments, financial penalty limits and the Legal Ombudsman's scheme rules. A future framework would need to consider carefully the role of ministers in relation, for example, to approving designations [as an approved regulator or licensing authority] and appointments, while being particularly mindful of the imperative to maintain the reality and perception of the independence of regulation and legal services from state interference. This is particularly important in the context of international perceptions of the independence of lawyers and the justice system that underpin the contribution of legal services to 'UK plc'….
>
> 11.4 There would, therefore, need to be appropriate checks and balances in the future regulatory framework, and the role that the legislature or ministers might play in this.

As the Options Review observed (2015: footnotes 26 and 33):

> it is possible for independent regulators to have structures and governance processes that ensure accountability as necessary to Parliament and the relevant government departments, but which nonetheless enable them to maintain the independence of their decision-making processes.

Also (2015: footnote 33):

> The audit model provides an interesting alternative outside the legal services sector: the Department for [Business, Energy, and Industrial Strategy] has devolved a substantial part of the decision-making to the Financial Reporting Council[15]; and the [Ministry of Housing, Communities and Local Government] has followed this model for local audit. This has allowed these ministries and Parliament to stand clear of day-to-day discussions and intervene only at major stress points.

The LSB followed up on the Legislative Options Review. It noted (LSB 2016: footnote 44) that the major UK economic regulators are accountable to Parliament rather than government, as is the Professional Standards Authority (the oversight regulator for health and social care professionals in the UK)[16].

It then expressed the following views about independence from government (LSB 2016):

> 81. Independent regulation does not therefore mean that regulators can do what they want; nor does it mean that they should operate in a vacuum. Regulators are entrusted with making significant decisions, can impose tough sanctions on providers, and operate with substantial budgets. Regulators must be accountable for their impact, their cost and delivery against their objectives. Being able to demonstrate delivery against objectives gives regulators legitimacy by showing what they are achieving for consumers and society.
>
> 82. A model needs to be developed which will strengthen the accountability of the regulatory system in legal services. One of the key decisions … will be what the organisational status

15. See: https://www.frc.org.uk/auditors/professional-oversight.
16. The LSB also referred to a government white paper from 2007, 'Trust, Assurance and Safety - The Regulation of Health Professionals in the 21st Century', which set out a series of measures to ensure the independence of the national professional health regulators, including enhanced accountability to Parliament: see https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/228847/7013.pdf.

of the new regulator(s) should be. The regulator(s) may or may not be public bodies, and a full range of alternatives should be considered. However, due to the need in this sector for regulators to operate – and be seen to operate – independently of the state, in our view it may be best if accountability primarily operated through Parliamentary processes. A body need not be a public body to be accountable to Parliament, although it would need to be named in statute. The status of the body will have implications for (amongst other things) funding … and arrangements for Board appointments.

83. There is ample evidence from across the UK economy that governance arrangements can and do exist that deliver regulator accountability without facilitating government interference in the substance of regulatory decisions and operations. These arrangements sit alongside mechanisms which have a disciplining effect on the conduct of regulators and which provide assurance to government about the conduct and efficiency of regulators. Examples include the better regulation principles …, the Regulators Code and regulatory impact assessments. Legislation might also create specific expectations about the transparency of any new legal services regulator(s), over and above the general expectation of transparency under the better regulation principles, on the basis that transparency is one of the key enablers of accountability.

85. The National Audit Office (NAO) scrutinises public spending for Parliament. In our opinion, legal services regulation should continue to be funded by providers rather than taxpayers, but scrutiny by the NAO would offer an important additional accountability mechanism. The legislative reform measures suggested in this paper have considerable potential to deliver savings for providers and consumers – the scope for NAO scrutiny would provide assurance to both audiences that cost-effective regulatory arrangements were in place [which would also be important given that the effectiveness of regulation has an impact on publicly funded services such as legal aid].

The CMA affirmed that its principle of regulatory independence applies with equal force to independence from government (CMA 2016: pages 5, 14 and 17, and paragraphs 5.145, 6.10, 6.17, and 6.80), and noted the LSB's vision for a new regulator accountable to Parliament (CMA 2016: paragraphs 5.149 and 6.19). However, it recorded that it had "not received evidence showing that the current framework is not securing independence of the legal services sector from government" (CMA 2016: paragraph 6.19).

This serves to emphasise that the *perception* (particularly of consumers and international observers) of a lack of independence in the present structure is apparently not borne out in practice: however, we should be careful not to dismiss or underestimate the effect of such perceptions on the buying decisions of potential domestic or international consumers of legal services.

In this context, the perceived and actual independence of other regulatory actors, such as the Legal Ombudsman, should also be taken into consideration.

5.2 Independence of regulation from representation

5.2.1 Background

One of Sir David Clementi's objectives was to secure greater independence of regulatory functions from the representative activities of professional bodies. The Legislative Options Review (2015) explained:

9.1 The legal profession in the United Kingdom has a strong tradition of independence from government. The issue of independence of regulation from representative functions is, however, a newer concept. Before the LSA, regulation of legal services was largely carried out by the same organisations that represented the interests of their members. The LSA 2007 brought significant change to regulation of legal services in England and Wales in that it introduced a requirement that regulation should be independent of these representative bodies. This was in part driven by the need for greater public confidence in the regulation of legal services.

9.2 In his work prior to the LSA, Sir David Clementi concluded that combining regulatory and representative powers did not result in the public interest being consistently placed first and nor did it provide the right incentives to encourage competition or a framework for promoting innovation. Clementi also pointed to issues of public perception, and indeed highlighted the perceptions of members of professional bodies that their respective bodies gave insufficient attention to representative needs due to the combination of roles.

….

9.4 The culture and behaviour of regulators – both oversight and front-line regulators – will ultimately determine how effective they are in delivering the regulatory objectives. The 2007 settlement was seen at its inception as a radical departure from the *status quo*. But now, after significant experience of working under the current system, it is increasingly clear that the absence of full separation between the representative bodies and regulators is proving a strong impediment to progress for some. The present arrangements are fragile as they rely heavily on individual personalities and goodwill, whereas a robust regulatory framework should be capable of working successfully independently of these things.

9.5 Issues relating to regulatory independence have manifested in various ways, although the nature of these problems are different across the regulators:

- resistance by professional bodies to some reforms which would appear to benefit competition and consumers[17];
- some instances where complex governance arrangements have been established to manage relationships between the representative and regulatory functions, which do not achieve full independence of the regulator and distract senior management attention from regulatory matters; and
- lack of transparency of the cost of regulation, as a result of sharing of some resources and costs for common purposes, as well as some costs that should be collected from providers as optional professional membership being imposed as a compulsory regulatory levy.

9.6 The representative bodies provide important value to regulators, for example by providing expert knowledge, constructive criticism and a practitioner's perspective on the market and regulation. However, this insight could be retained under alternative arrangements.

9.7 Moreover, the current structure risks undermining the credibility of regulation in the public perception in that some professions are still seen by consumers to be policing themselves (and therefore inferentially to be 'protecting their own'). To ensure public confidence in regulation, it needs to be independent and be perceived to be independent. The experience of the legal regulators is that the public continue to question the fairness and independence of regulatory decisions despite the changes introduced by the 2007 reforms.

9.8 Finally, … commercial drivers are reducing the relevance of a structure where regulation is tied to specific representative bodies. For example, the advent of legal disciplinary practices (combinations of lawyers) and multi-disciplinary partnerships (combinations of lawyers and non-lawyers) in the market is breaking down barriers between professional groups and thereby undermining regulation structured primarily by reference to those groups.

5.2.2 The nature of independence

One of the interesting features of the Legal Services Act is how the drafting of the legislation addressed the issue of regulatory independence. Although the heading to sections 29 and 30 refers to 'Separation of regulatory and representative functions', there are no substantive uses of 'separation' in this context. There is therefore no statutory requirement that the regulatory and representative functions of an approved regulator should be carried out by separate legal entities.

17. Examples given in the paper are the ICAEW's application to become a licensing authority for ABSs, and resistance to the Legal Ombudsman establishing a voluntary scheme.

There are, however, several explicit references in the Act to the LSB's role in ensuring that decisions taken by approved regulators relating to regulatory functions are "taken independently" from those relating to representative functions[18].

The Act also refers to the exercise of regulatory functions not being "prejudiced" by representative functions[19]. In some circumstances (such as the LSB's internal governance rules, which set out the LSB's requirements and expectations in relation to regulatory independence), there are references to 'influence' rather than 'prejudice'.

This is contentious (and was the subject of representations during the LSB's consultations on revisions to the internal governance rules).

During the passage of the Legal Services Bill through Parliament, the responsible minister was concerned to emphasise that 'prejudice' in the context of regulatory independence was intended to suggest a higher threshold than 'influence'. In the House of Commons Committee Stage of the Bill, an amendment was moved to substitute 'improperly constrained or influenced' for 'prejudice': see *Report of proceedings of 6th sitting of the House of Commons Public Bill Committee on the Legal Services Bill*, columns 222-223.

In response (and as a result of which the amendment was withdrawn), the Parliamentary Under-Secretary of State for Justice, Bridget Prentice MP, said:

> A lot of consideration has gone into the use of the word "prejudiced" in the clause. It has been argued that it would not be unusual for representative bodies to seek to influence regulatory decisions, if it is in the interests of their members to do so. As the approved regulator is the body recognised in the Bill as responsible for both representative and regulatory functions, I would argue that it should accept certain responsibilities as part of that role. It might be reasonable for the representative arm to try to influence regulatory decisions, but it is important that the [LSB] is able to take appropriate action where it considers that the approved regulator is allowing representational interests to prejudice the exercise of regulatory functions. It is important to ensure that the [LSB] is able to act where, for example, the actions of the representative side discredit the regulatory arm, resulting in damage to consumer confidence. [The clause] is necessarily and deliberately wide in definition to ensure that the [LSB] is not prevented from taking such appropriate action. Therefore the use of the word "prejudiced" is correct in the context…. To suggest that the [LSB] may use its powers only where exercising the representative functions has "improperly constrained or influenced" the regulatory functions implies that there may be circumstances where it is "proper" for representative interests to constrain or influence regulatory functions. I do not think that that is appropriate. Furthermore, the proposed formulation suggests that there must be an element of wilfulness, but again that might not be the case. There might be no intent whatsoever on the part of the regulator, but that does not mean that the [LSB] should be prevented from acting if necessary. I understand that these are often very fine definitions, but "prejudiced" is more appropriate than "improperly constrained or influenced", because the latter wording would narrow the definition just a little bit too much.

It is instructive that the Minister acknowledged that it might be "reasonable for the representative arm to try to influence regulatory decisions"[20]. It is clear from this statement that the representative activities of an approved regulator can include actively seeking to 'influence' the deliberations and outcomes of its regulatory body.

The substitution of 'influence' for 'prejudice' is therefore highly questionable, and potentially limits the ability of an approved regulator to carry out its legitimate representative functions.

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18. See sections 29(2)(b), 30(1)(b), and 32(1)(c), Schedule 4 paragraph 13(3)(b), Schedule 10 paragraph 11(3)(b), and Schedule 18 paragraph 5(3)(b); and cf. other references to independence in section 30(2)(b) and (3)(b).
19. See sections 29(2)(a), 30(1)(a), 30(2)(b), 30(3)(b), and 32(1)(c), Schedule 4 paragraph 13(3)(a), Schedule 10 paragraph 11(3)(a), and Schedule 18 paragraph 5(3)(a).
20. Sir David Clementi probably went further when he said that "representative bodies have a legitimate right to fight their corner" (Clementi 2004: page 29).

5.2.3 Structural options

The Legislative Options Review identified three options for regulatory infrastructure (2015: paragraph 9.9):

(1) *Regulation and representation functions in one body (with safeguards, for example, such increased oversight, and strict functional separation ('Chinese walls'))*: although the general movement in legal services regulation has been towards independence of regulation from representative functions, the option of combined regulation and representation in one body (with safeguards) remains. This could be incorporated with a maintained or indeed strengthened oversight function that could give additional assurance if regulatory and representative functions are to be combined in one organisation. Such an approach could in some circumstances be more efficient and would ensure that the regulator always has access to relevant sector and practitioner expertise. This option however would need to address freedom of choice for practitioners in relation to membership of a representative body.

(2) *Partial separation of regulation and representation functions (with safeguards)*: under the current arrangements, mandatory separation of regulation from representative functions has resulted in most regulation being carried out in bodies that are, to varying degrees, at arms' length from the representative bodies. There are still, however, some historic financial and structural links between some representative and regulatory bodies. However, as above, this option would need to allow freedom of choice for practitioners in relation to membership of a representative body.

(3) *Full separation between regulation and representation*: complete regulatory independence could be enshrined in statute, enabling greater clarity and efficiency in the regulatory infrastructure. Full independence of regulation contributes to the vital issue of market and consumer confidence in, and the credibility of, regulation, providing a means of addressing perceptions of conflict of interest, even if these do not manifest in reality. Full separation of representation and regulation also makes functional and institutional boundaries clear, and allows full transparency of funding and cost controls.

In such a system, practitioners could then be given a choice about whether or not they wish to belong to a representative body, and any fee for authorisation to practise would clearly cover only the compulsory, non-discretionary costs of formal regulation.

In its subsequent vision statement, the LSB confirmed its preference for the third option (LSB 2016):

72. We consider that the current lack of full independence between the legal services regulators and their associated professions is unlikely to be sustainable because:

- it fosters complex governance arrangements to manage relationships between the regulatory and representative functions of approved regulators, which do not achieve full independence of regulation and which distract senior management attention on both sides from regulatory and representative matters respectively
- it risks undermining the credibility of regulation in the public perception in that some professions are still seen by consumers to be policing themselves (and therefore – whether true or not – inferentially to be 'protecting their own')
- it creates scope for representative bodies to delay reforms which would benefit competition and consumers generating regulatory uncertainty and deterring investment
- it results in lack of transparency of the cost of regulation, as a result of (i) sharing of some resources and costs between the regulators and their representative bodies, and (ii) some costs that should be collected from providers as part of optional professional membership arrangements being imposed as a compulsory regulatory levy [the so-called 'permitted purposes' under section 51 of the Legal Services Act: cf. paragraph 5.2.5 below]
- it leads to confusion in other parts of government about which body is responsible for wider regulatory functions, for example under anti-money laundering and insolvency regulations
- market change is reducing the relevance of a structure where regulation is tied to specific representative bodies ….

….

74. We do not believe that combining regulation and representation functions in one body, even with safeguards (for example organisational 'Chinese walls' and strengthened oversight), is likely to be a viable long-term solution. Such a halfway house would not overcome the problems listed in paragraph 72 above. In particular, experience has shown that the tensions generated by the inherent conflict of interest in such arrangements distracts management attention, delays the pace of reform, and does not deliver the clear separation that (at least in relation to some professional groups) consumers, investors and the public expect. In addition, it links regulation to professional groupings, the boundaries between which are eroding over time, and raises questions about practitioners being forced to join specific representative bodies in order to be allowed to practise.
75. The scope for input by bodies representing different types of legal practitioner would be safeguarded by the usual public law (and wider) requirements on public bodies to consult adequately, for example on their draft budgets, business plans and policy decisions. We are aware of formal mechanisms in a small number of sectors that offer avenues for representative bodies to enter into dialogue with regulators. The case would need to be made for introducing similar structures in legal services – it would need to be demonstrated that these are likely to be effective and that the benefits would outweigh the costs.

At the time of the CMA's market study, the Government had announced its intention to carry out a review of regulatory independence[21], which the CMA supported (CMA 2016: paragraph 5.150). The implication and expectation of such a review was that full separation along the lines of the LSB's third option was the most likely outcome.

In light of an expected review, the CMA understandably did not offer its own view on what might be a more suitable approach, other than emphasising regulatory independence as 'a fundamental principle' (cf. page 16 above).

However, given the turn of political events since the EU Referendum in June 2016 and subsequent claims on government attention, the review has not taken place. We therefore have the CMA's assessment that (CMA 2016: paragraph 5.150):

> Given the serious concerns being raised with us about the current arrangements, we believe that there is a strong rationale to assess the degree to which frontline regulators can operate free from the influence of representative bodies.

We also have the LSB's clear preference for full separation, expressed for compelling reasons (as set out in its paragraph 72 above) and consistent with a general trend for fully independent regulation in other sectors.

5.2.4 Some consequences of full separation

As with the emerging challenges of title-based regulation (cf. LSR-3 2020: paragraph 4), the prospect of full separation between regulatory and representative activities emphasises further distance between professional bodies and the regulation of their members. The LSB noted in its vision statement that (LSB 2016: footnote 32):

> the advent of legal disciplinary practices (combinations of different types of lawyers) and multi-disciplinary practices (combinations of lawyers and non-lawyers) in the market is breaking down barriers between professional groups and thereby undermining regulation structured primarily by reference to those groups.

Even so, some of the current approved regulators with longstanding professional origins are unlikely to welcome such complete separation. Their first reason will relate to their wish to retain some influence over the regulatory decisions that most closely affect them (hence the importance of the distinction between 'prejudice' and 'influence' discussed in paragraph 5.2.2 above).

21. See HM Treasury (2015).

However, it is quite possible to imagine an alternative situation. The independence of regulatory decision-making is now well established and protected. Consequently, the representative body's efforts on behalf of its members could conceivably be expressed in more robust and forceful terms to the appropriate regulatory body if there were full separation.

There could be no suggestion of any residual capacity for 'prejudice' where there are no legal, structural or financial links between the regulatory and representative functions.

The LSB has acknowledged that, even with full separation, professional bodies would still have an important role to play within the regulatory framework (LSB 2016: paragraph 73):

> Bodies representing different types of legal practitioner provide important value to regulators, for example by sharing expert knowledge and offering constructive criticism and a practitioner's perspective on the market and regulation. These benefits can be retained without the need for structural links between the profession and the regulator. …. [The] profession can still participate in the regulatory process in a number of ways, including:
>
> - playing an advisory role, providing information, feedback and opinions
> - in the implementation of regulation, for example outcomes-focused regulation, where organisations apply more general regulatory principles to their own situation.

The second reason for concern about full separation might arise from a finance perspective with the anticipated loss of 'permitted purposes' funding currently collected by the regulator and passed to the representative arm. This also warrants further consideration.

5.2.5 The 'permitted purposes'

The Legal Services Act continues the pre-2007 approach of requiring practitioners to maintain an annual practising certificate and to pay a fee for that privilege. The practising certificate fee (PCF) must be approved by the LSB, and covers a range of regulatory costs.

The Act requires that an approved regulator may only apply amounts raised by the PCF for one or more of the permitted purposes (section 51(2)). Some of those permitted purposes are carried out by the regulatory bodies and, in circumstances where there is a representative arm of an approved regulator, some of the permitted purposes are carried out as a representative function.

As a result, some elements of the PCF raised by a regulatory body are paid over to a representative body. For example, the following activities, which are permitted purposes under section 51, might well be carried out by the Bar Council, the Law Society, the Chartered Institute of Legal Executives, and the Institute of Chartered Accountants of England & Wales, in their representative capacities:

(a) accreditation, education and training of practitioners and students;
(b) maintaining and raising professional standards;
(c) participation in law reform and the legislative process;
(d) the provision to the public of *pro bono* reserved legal services;
(e) promotion of the protection by law of human rights and fundamental freedoms;
(f) promotion of relations with national and international bodies, governments or the legal professions of other jurisdictions.

Many of these functions can rightly be regarded as public interest activities; some could even be thought to be more challenging (and possibly even inappropriate: cf. LSR-0 2020: paragraph 4.2) for regulatory bodies – such as participation in law reform, the provision of pro bono advice and representation, and the promotion of human rights protection.

Understandably, professional bodies might be concerned at the loss of funding through the PCF if the effect of full separation of regulatory and representative functions resulted in the removal of permitted purposes funding. However, a case could be made for preserving compulsory funding for such important public interest activities.

The correlation between the PCF communities (such as solicitors) and the funding recipient (currently the Law Society) might be disrupted by full separation. However, that should not necessarily prevent a future framework from empowering a regulator (including a single or oversight regulator) from raising funding through the PCF (or future equivalent) for these important public interest purposes.

The distribution of those funds might in future be based on a transparent process for securing that they are expended by those organisations (including current professional bodies) that are assessed to be the best-placed to apply them most effectively and cost-efficiently. It is not therefore an inevitable consequence of full separation that professional bodies would lose all of their permitted purposes PCF funding.

6. Consumer and provider representation

The role of professional bodies as representative agencies was recognised and preserved under the Legal Services Act. A specific new role in relation to the representation of consumer interests was created by requiring the LSB to establish the Legal Services Consumer Panel (section 8 of the Legal Services Act).

Any consideration of a different approach to the structure of legal services regulation must therefore include the need for, and the role and position of, representation of consumer, professional and provider interests.

6.1 Representation of consumers' interests

The Legislative Options Review addressed the role of consumer representation as follows (2015: paragraph 10):

> 10.1 … While general consumer law and sector-specific arrangements provide before-the event protections and after-service routes for dispute resolution on a case-by-case basis, the focus of consumer representation should promote the collective interests of consumers and focus on ensuring regulatory arrangements work for all consumers. There is therefore an argument that the regulatory infrastructure should facilitate continued effective consumer representation.
>
> 10.2 The ongoing need for consumer representation reflects a range of imperatives:
>
> - that consumers are a principal intended beneficiary of regulation …;
> - the scale of consumer spending on legal services and associated potential severity of detriment;
> - the inevitable asymmetries of information and power that exist between consumers and providers; and
> - the relative inability of consumers compared to lawyers to mobilise and influence decision-makers.
>
> 10.3 The LSA defines consumers broadly, including potential as well as actual clients, and encompasses persons who are indirectly impacted by the provision of legal services as well as direct users[22]. Consumers are not one homogenous group and some types of users will have greater need for representation than others. For instance, corporate clients have less need for a consumer voice since they tend to be knowledgeable, repeat users and are well placed to exercise their buying power[23].

The Legislative Options Review therefore identified a number of options for the effective representation of consumer interests (2015: paragraph 10.4):

> Representation of consumer interests should include a combination of expert input by consumer representatives and engagement with the public through a range of mechanisms. Options for consumer representation therefore include:
>
> (1) *An independent consumer panel*: under the current arrangements, the LSB is required to appoint a Legal Services Consumer Panel (LSCP) which is independent of any of the professional bodies. This is a panel of expert individuals to represent the interests of consumers, supported by a small secretariat team within the LSB. This is a relatively low-cost model that ensures ongoing input from the panel members who bring a range of perspectives. The key characteristic of the embedded panel model is that the LSB, and to a lesser extent

22. Under the Act, 'consumers' are defined in section 207 as "persons – (a) who use, have used or are or may be contemplating using, [legal services], (b) who have rights or interests which are derived from, or are otherwise attributable to, the use of such services by other persons, or (c) who have rights or interests which may be adversely affected by the use of such services by persons acting on their behalf or in a fiduciary capacity in relation to them".
23. The paper notes that the Act did not specify which types of consumers should be represented, and gave discretion to the Consumer Panel to choose its own priorities. In practice, it has focused on individual clients, small businesses and small charities.

the approved regulators and the Legal Ombudsman, can access expert advice at the early stages of policy development.

(2) *A remit for Citizens Advice*: Citizens Advice could be given a remit to work on legal services regulation issues, funded through practising certificate fee contributions (as the LSCP is now). The energy and postal services work of Citizens Advice, for example, is funded on a similar basis.

(3) *Duties to consult, etc*: a further option would be to place a statutory requirement on the legal regulator(s) to consult with consumers and/or establish mechanisms to obtain the consumer perspective, but without being prescriptive about the precise form this should take. The extent to which the regulators deliver this successfully would likely be a focus of scrutiny by Parliamentary and other mechanisms.

The LSB observes, rightly, in its vision statement (2016: paragraph 94) that Citizens Advice (and Which?) are also major providers of legal services and this could raise issues of conflict of interests. In my view, this undermines the viability of option (2).

In its vision statement, the LSB elaborated on the options, expressing a view that the duty to consult should be a minimum legislative requirement. It acknowledged that the particular form of consumer representation would depend on any new institutional structure and current best practice in consumer advocacy (2016: paragraph 88). It was also clear that (2016: paragraph 89):

> Having an external consumer perspective does not, and must not, stop a regulator taking an independent view on where the consumer interest lies. Nor can a regulator outsource or delegate its responsibility to engage with consumers to the consumer representation body. However, a regulator must balance the interests of consumers with other interests to determine what is in the overall public interest.

The LSB continued:

91. A useful starting position would be to assume that there is no organised consumer voice and then to consider why legislation should make requirements in relation to consumer representation. There are potential disadvantages to consider:
    - the cost of a statutory consumer body will ultimately be passed through to consumers
    - specifying in law the form that consumer representation should take might constrain a regulator from adopting more innovative approaches that could prove to be equally or more effective
    - national consumer representative bodies might be deterred from taking on responsibilities in this area, as they otherwise might do in the absence of intervention to create a statutory body.
92. There is a particularly strong justification for having some form of organised consumer voice in the legal services market for the following reasons:
    - consistent with the consumer protection rationale for sector-specific regulation [cf. LSR-1 2020: paragraphs 4.2 and 5], there is an imbalance of information and power between consumers and providers which often makes it difficult for consumers to identify how their interests are best served by the regulatory system
    - developments such as customer review websites and other collective action mechanisms notwithstanding, individual consumers cannot easily mobilise to represent their collective interests. This contrasts with the position of providers who self-organise by setting up bodies representing different types of legal practitioner and can thus more readily collectively access and seek to influence a regulator.
93. Without a funded remit, our experience suggests that economy-wide consumer bodies would not fill the gap in the absence of a statutory sector-specific body…. There are likely to be good reasons for this, including that:
    - legal services does not attract the same level or regularity of consumer spending as in other sectors
    - the often technical nature of this sector makes it difficult for consumer bodies to dip in and out, meaning that it is likely to be better for a regulator to have access to a dedicated,

permanent, discrete consumer voice that can give the issues on-going attention (and such a body, in the form of the Legal Services Consumer Panel, exists)
- the issues generally do not achieve a high media profile.

….

94. Statutory consumer panels currently operate in some other regulated areas of the economy as well as in legal services. The principal benefits of the embedded consumer panel model include the concentration of expertise on legal services regulation, ongoing input from the panel members who bring a range of perspectives, and access by the regulator to advice at the early stages of policy development. The location of the consumer body inside the regulator uniquely enables the sharing of documents and discussions during the policy formulation stage based on a relationship of trust supported by a regulatory framework with reciprocal duties and powers. It is also a relatively low-cost model, especially in the context of consumer spending on legal services. There may be disadvantages with this model, however, including the risk of restricted thinking which does not take into account wider developments in other sectors, due to the exclusive focus on legal services. Nonetheless, the LSB's experience is that the model has worked successfully and this risk has not materialised.

Ironically, the very strength of this case for an *embedded* consumer panel (which, in essence, is to allow representative interests to be expressed to the LSB) might not sit comfortably with the separation of representative and regulatory interests required of approved regulators (cf. paragraph 5.2 above), despite the LSB's statement in paragraph 89 of its vision statement as recorded on page 24 above about its obligation of independent decision-making.

The need for and role of representing provider interests is considered in paragraph 6.2 below but, as a matter of principle, if full separation of regulatory and representative functions is achieved in the future, the existence of embedded representation of consumers' interests but not of providers' could make any claims of parity of treatment difficult to sustain.

A judgement might need to be made about whether the need for consumer representation arises more from an *imbalance* in the 'ability to mobilise and influence' or from a need to achieve *parity* of representation as between consumers and providers.

At this stage of the Review, it might be best to note the principles that the LSB identified as appropriate to the representation of an independent sector-specific consumer voice (LSB 2016: paragraph 96):

These are that it should:

- be independent of thought and evidence-based;
- combine an expert perspective on the consumer interest with an understanding of regulation;
- provide dedicated attention to legal services regulation issues;
- maintain a relationship of constructive challenge with the regulator(s);
- have access to sufficient dedicated resources but also provide good value-for-money;
- take into account developments and make connections across the economy; and
- have legitimacy amongst stakeholders and the public.

Adopting these principles might go some way towards addressing the challenges of representation often felt by individual consumers and consumer groups in having their voices are heard. This has been articulated, for example, by Bond & Brody (2016: page 10, in relation to Australia, but in words that are consistent with the deep sense of frustration in views expressed to me):

> legal profession regulators have been slow to identify the benefits of consumer engagement and consumer research in identifying and addressing risks. This is perhaps a reflection of the token attention paid by Governments and by the legal profession to understanding the consumer dimension to legal profession regulation. While consumer interests are represented on governing bodies of regulators, this has been so far insufficient to drive a strategic consumer focus within these bodies….

> A successful strategy should commit a regulator to seeking information about consumer issues that don't appear in complaints, to consider the consumer 'viewpoint' in all its work and to better apply consumer research in addressing problems.

6.2 Representation of providers' interests

The title-based foundations of the Legal Services Act assume that providers' interests will be represented through the representative activities of the approved regulators, suitably distanced from the exercise of regulatory functions. As recorded in paragraph 6.1 above, the Legislative Options Review (2015: paragraph 10.2) thought that lawyers had a relative advantage in being able "to mobilise and influence decision-makers".

However, the current framework already allows the authorisation of individuals and entities that are not necessarily members of professional or other representative bodies. There are often limited formal channels through which their interests might be represented to regulators (and, as an entity, might be fragmented as a consequence of the representation by their authorised managers or employees through several different professional bodies).

Further, if one envisages a future in which regulatory and representative interests might be fully separated (cf. paragraphs 5.2.3 and 5.2.4 above), and in which the approach to regulation is no longer title-based (cf. LSR-3 2020), the issue of representing the various interests of those who provide legal services and who are regulated under such a framework almost certainly requires fundamental re-thinking.

The need for the representation of providers' and professional interests, and the benefits to the regulators and the regulatory framework from that representation, seems to be accepted. The following statement appears in the Legislative Options Review (2015: paragraph 11.8):

> The representative bodies in the legal services sector represent a wide range of professions and service providers. Some representative bodies are newer than others, and some have been through many changes and iterations of purpose. They all, nonetheless, have strong traditions of representing the best interests of their members. Whichever structural option is adopted, it is important that any future regulatory framework creates scope for regulators to invite participation and obtain expert input from representative bodies as significant stakeholders.

The LSB's vision statement also recognised the need for and value of input from representative bodies (2016: paragraphs 73 and 75; see respectively paragraphs 5.2.4 and 5.2.3 above).

With full separation of regulatory and representative activities, the existence of providers whose interests would not otherwise be represented, and a formal place for the representation of consumer interests, the case for parity of treatment as between providers and consumers might be seen to be a strong one.

This is subject to the observation in paragraph 6.1 above about whether the true objective is parity of representation or to rectify a perceived imbalance of influence.

This would suggest some form of provider panel with the same role and duties in respect of providers as the Consumer Panel has in relation of consumers, and similarly embedded (or not) in the regulatory infrastructure.

If the future role of representing the interests of providers is no longer so explicitly tied to the established legal professions, it would presumably follow that the membership of a provider panel would be drawn from a broad group of practitioners' interests (and not necessarily on a professions-based 'constituency' model).

It might also then be the case that the representative activities of the professional bodies would be directed as much at influencing the deliberations of the provider panel as they would at influencing the decisions of any front-line, single or oversight regulator.

The LSB has stated that (2016: footnote 49) “the introduction of practitioner panels or similar formal mechanisms for bodies representing different types of legal practitioners to engage with the regulator(s) should depend on a careful analysis of benefits and costs, informed by evidence of their effectiveness in other sectors, rather than being assumed by default”.

On the basis that a comparable test is applied to the Consumer Panel, this would seem a fair approach.

It might be that the financial services approach of the four statutory panels that the Financial Conduct Authority is required to consult could offer an interesting example for a comparable model for legal services. The four panels are the consumer panel, the practitioner panel, the smaller business practitioner panel (comprising practitioners representing smaller or medium-sized firms who might otherwise not have a strong voice in policy-making), and the markets practitioner panel (representatives of sectors participating in financial markets).[24]

24. See https://www.fca.org.uk/about/uk-regulators-government-other-bodies/statutory-panels.

7. Regulatory arrangements

7.1 Introduction

Whatever the overall institutional structure of the regulatory framework, those with regulatory functions will have to implement a set of 'regulatory arrangements'. These are currently defined in section 21 of the Legal Services Act, and are arrangements in respect of:

(a) authorisation to carry on reserved legal activities;
(b) authorisation to provide immigration advice or immigration services;
(c) practice rules;
(d) conduct rules;
(e) discipline;
(f) qualification;
(g) indemnification;
(h) compensation;
(i) any other rules, regulations or arrangements (other than those for carrying out representative functions); and
(j) licensing of alternative business structures (if not otherwise covered above).

This list is assumed for present purposes to be a fair representation of the regulatory arrangements likely to be needed in any future structure, too. It is therefore adopted in the following sub-paragraphs to explore these various aspects of the required regulatory arrangements.

7.2 Authorisation

Under the current structure, authorisation is required to carry on reserved legal activities, although it is debateable whether for the future the notion of 'reserved' activities could be replaced with a less cumbersome identification of legal activities for which before-the-event authorisation is required (cf. LSR-4 2020: paragraph 4.2).

Nevertheless, whatever the basis of the need for authorisation, regulatory arrangements will need to set out what the requirements and process are for securing such authorisation.

Whether future regulatory arrangements will need to retain the inclusion of authorisation to provide immigration advice or immigration services will depend on the future relationship between those immigration-related activities and the broader framework for regulating legal services (cf. LSR-2 2020: paragraph 4.2.3).

7.3 Practice rules

Practice rules are broadly defined in the Act as those rules and regulations that govern the practice of regulated persons (section 21(2)). These rules will usually cover a wide range of aspects of practice, including practice management, accounts rules, cross-border practice, practising certificates, quality assurance, marketing, costs and complaints information (see further, Gould 2019: chapter 3).

7.4 Conduct rules

Conduct rules refer to the rules or regulations relating to the conduct or behaviour required or expected of regulated persons (section 21(2)). They are often set out in a code of conduct, and reflect the professional principles set out in section 1(3) of the Legal Services Act (cf. LSR-4 2020: paragraph 4.3.1; and Gould 2019: chapter 4).

They might also range more broadly and include such behaviours as: promoting equality by treating everyone fairly and without prejudice; dealing with regulators openly, promptly and cooperatively; adopting appropriate governance, finance and risk management principles; fee-sharing; and generally not behaving in a way that is likely to diminish the trust and confidence which the public places in those who provide legal advice and representation.

7.5 Disciplinary arrangements

Each profession has its own rules for pursuing disciplinary action against those members who are thought to have operated beyond the bounds of professional propriety. It is usual to draw a distinction between matters that amount to (professional) misconduct, and those that amount to inadequate client service.

The former are generally regarded as 'conduct complaints' (cf. LSR-4 2020: paragraph 4.4.2) and therefore as disciplinary issues, and are primarily a matter between a regulator and the regulated person.

The latter are more often regarded as 'service complaints' (cf. LSR-4 2020: paragraph 4.4.3), and are matters primarily between a client and a provider albeit with resort to a more formal determination if they cannot otherwise be resolved to the client's satisfaction: these are considered in paragraph 8 below.

The CMA illustrates disciplinary arrangements as follows (2016: paragraph 4.109):

> Complaints concerning a potential breach of professional conduct rules, such as in relation to dishonesty, are dealt with by the relevant regulator. For example, the Solicitors Disciplinary Tribunal (SDT) was established under section 46 of the Solicitors Act 1974 to hear cases involving breaches of conduct rules by providers. Decisions by the SDT can involve fines, controls such as conditions on practising certificates, regulatory settlements and agreements and, in serious cases, striking off a solicitor from the roll. We note that while most unauthorised providers do not have an equivalent mechanism that is specifically designed to handle breaches of conduct, some self-regulatory bodies do handle conduct complaints.

LSR-4 alluded to the title-based approach of the Legal Services Act, and the consequent multiplicity of regulators that led to different disciplinary systems in place, different forums for hearings, and different standards of proof (2020: paragraph 4.4.2). As the Legislative Options Review pointed out (2015: Annex 4, paragraph 9):

> Within a new regulatory settlement, the options could be to retain this division of responsibilities or to allocate them differently: for example, LeO could deal with both service and conduct issues, and a common disciplinary institutional framework could be shared across legal regulators.

There must, therefore, be an open question about whether any change in the structure of regulation and the existence of a single regulator or multiple regulators (cf. paragraph 4 above), there should in future be a common forum for dealing with conduct and disciplinary matters and a consistent standard of proof within the legal sector.

7.6 Qualification regulations

The costs and burdens of mandatory training can create barriers to market entry, as well as raise the ongoing costs to practitioners of being in a market – which costs are often then

passed on to consumers. The appropriate use of different forms of regulatory intervention through training, whether before- or during-the-event as appropriate (cf. LSR-4 2020: paragraphs 4.2 and 4.3) must therefore be considered as part of the overall framework of assuring the public interest through competence and consumer protection.

The Legal Services Act defines qualification regulations as (section 21(2)):

> (a) any rules or regulations relating to—
>
> (i) the education and training which persons must receive, or
> (ii) any other requirements which must be met by or in respect of them,
>
> (in order for them to be authorised by the body to carry on an activity which is a reserved legal activity),
>
> (b) any rules or regulations relating to—
>
> (i) the education and training which persons must receive, or
> (ii) any other requirements which must be met by or in respect of them,
>
> (in order for them to be authorised by the body to provide immigration advice or immigration services), and
>
> (c) any other rules or regulations relating to the education and training which regulated persons must receive or any other requirements which must be met by or in respect of them,
>
> (however they may be described).

The emphasis in this definition is on education and training in respect of *authorisation* for carrying on a reserved activity (or immigration advice or services) rather than, say, for the award of a title. The reference to regulated persons in (c) is to a class of persons who are also authorised to carry on a reserved activity (or are the employees or managers of a person who is) (section 21(3) and (4)). This distinction between authorisation and title is explored in LSR-3 (2020: paragraph 4.5).

The perceived high costs of education and training for entry into, and remaining within, the regulated legal sector must beg questions for the future, not simply of whether those costs can be reduced[25] but more fundamentally of whether the 'qualification regulations' are appropriately targeted and proportionate to the regulatory objectives and statutory requirements.

7.7 Indemnification arrangements

The Legal Services Act defines indemnification arrangements as (section 21(2)):

> arrangements for the purpose of ensuring the indemnification of those who are or were regulated persons against losses arising from claims in relation to any description of civil liability incurred by them, or by employees or former employees of theirs, in connection with their activities as such regulated persons.

The CMA notes (2016: paragraph 4.110):

> Authorised providers are required to have professional indemnity insurance (PII) in place. The PII arrangements also require law firms to have run-off cover. We note that some unauthorised providers have PII in place. However, unlike authorised providers, unauthorised providers are under no obligation to hold a stated minimum level of coverage.

It explains (CMA 2016: footnotes 437 and 438) that "PII is an insurance product designed for a specific professional service and to cover any claims for financial losses by a client, for example, due to negligence of the relevant service provider. The level of required PII coverage varies across the regulated sector.

25. Both the SRA and BSB have devoted considerable efforts recently to re-thinking the nature of their education and training requirements at least in part in a quest to reduce the costs of qualification.

Run-off ensures cover when a complaint is upheld following closure of a firm. The requirement for run-off cover is not imposed by all regulators nor do regulators require the same length of cover."

In a fuller exploration of the issues, the CMA wrote (2016: paragraphs 5.18-5.22)[26]:

> PII covers the cost of civil claims brought by consumers against services received by professional firms. All legal services regulators currently require their members to maintain a minimum level of PII cover. However, arrangements for obtaining PII can differ between the legal professions. These range from legal services providers choosing any PII provider subject to that provider abiding by a set of minimum terms and conditions (the open market system), to a mutual fund where the profession self-insures.
>
> Available survey evidence tends to concentrate on PII costs for solicitor firms under the SRA's open market system. The evidence shows that PII is consistently cited as a significant regulatory cost to providers…. There is some evidence to indicate that the cost of PII represents a greater proportion of smaller firms' turnover when compared with larger firms….
>
> Run-off cover is where the PII insurer pays out for successful claims made against a provider that has already exited the market. The cost of PII run-off cover has previously been identified as being a key potential barrier to exit and something that might delay efficient exit by firms…. Furthermore, we note that the CLC has recently amended its PII arrangements so that PII run-off cover is taken into account when determining regular premiums (meaning that exiting firms do not have to make an additional purchase upon exiting the market).
>
> While PII costs may be an issue for some firms (especially for some sole practitioners and smaller firms), it seems unlikely that these requirements represent significant barriers to entry or exit given the known rates of entry and exit into the legal services sector…. Furthermore, there is also some evidence to suggest that previous difficulties around obtaining insurance have lessened in recent years. While seen as a key regulatory burden, only a minority of providers seem to think that regulations mandating PII should be removed.

The CMA market study suggested that the costs of professional indemnity insurance might be too high and, where they are, can act as a barrier to the innovation of new products and services (cf. CMA 2016: paragraph 122(a)).

7.8 Compensation arrangements

The availability of compensation to clients is often held out as one of the defining features of the regulation of professionals that is not generally available to the consumers of other, usually unregulated, activities.

The CMA explained that a compensation fund "allows clients, of certain regulated providers, to make a claim if they are owed money by their regulated legal services provider and have exhausted alternative routes for making their claim (for example, through an insurance claim or the court system).

However, strict rules apply about who may access the relevant compensation fund and in what circumstances" (CMA 2016: footnote 84; and see also LSR-4 2020: paragraph 4.4.4, and Gould 2019: paragraphs 10.206-10.261). Further, the SRA's recent changes to the regulation of individual solicitors carrying on non-reserved activities within unregulated entities mean that the clients of those solicitors do not have access to the Compensation Fund.

The 2007 Act defines compensation arrangements as (section 21(2)):

> arrangements to provide for grants or other payments for the purposes of relieving or mitigating losses or hardship suffered by persons in consequence of—

26. See also Gould 2019: paragraphs 10.01-10.205.

(a) negligence or fraud or other dishonesty on the part of any persons whom the body has authorised to carry on activities which constitute a reserved legal activity, or of employees of theirs, in connection with their activities as such authorised persons, and

(b) failure, on the part of regulated persons, to account for money received by them in connection with their activities as such regulated persons.

7.9 ABS licensing rules

The CMA market study explained (2016: paragraph 5.23):

> ABSs are subject to a specific licensing regime put in place by the Legal Services Act 2007 and implemented by the frontline regulators via their individual regulatory schemes. Many of the provisions of these regulatory schemes sought to address specific concerns over the potential risks under this regime associated with allowing greater levels of non-lawyer ownership and/or management of law firms. We have considered whether the regulations that are imposed on ABSs may limit competition through being overly restrictive and/or costly.

The market study was also clear (CMA 2016: paragraph 5.31) that:

> many of the additional regulatory requirements on ABSs – in particular those contained in the primary legislation – originated from concerns about new business models posing an increased risk to consumers, chiefly due to the potential conflict of interests between non-lawyer owners and the consumers of legal services. However, submissions we received from the frontline regulators in relation to ABSs have not indicated that they are any more risky than other business models. Overall, we found broad agreement among frontline regulators and market participants that, while ABS constitutes an alternative business model, this is not an inherently more risky model and few practical issues have emerged as a result of this alternative model.

With a clear current requirement for licensing rules to allow the authorisation of ABSs within the legal sector, the nature and burden of those rules must still meet the requirements in sections 3(3) and 28(3)(a) for proportionate, consistent and targeted regulation. It is therefore instructive that the market study also noted (2016: paragraphs 5.28 and 5.29):

> Along with the SRA, both the CLC and ICEAW have indicated to us that the current ABS licensing regime, as set out in the Legal Services Act 2007, could be simplified further and made less prescriptive. Similarly, the SRA submitted that there was a considerable risk that the current level of prescription and detail set out in primary legislation could lead to overregulation, regulatory inflexibility, unjustifiable differences in treatment between ABS and non-ABS firms and the creation of disproportionate barriers to new entrants.
>
> Discussions with stakeholders and our own research has identified the following areas of concern in regard to the regulation of ABS. These concerns largely reflect points made to the MoJ by the LSB and other frontline regulators on this matter which indicated that the current rules may act as barriers to entry – especially for potentially innovative firms. Specifically, these concerns are:
>
> - onerous checks on non-lawyer managers/owners as set out in Schedule 13 to the 2007 Act; and
> - prescriptive licensing requirements within Schedule 11 to the 2007 Act which result in disproportionate costs for legal services providers and removing regulators' flexibility in targeting regulations at identified risk.

This led the CMA to conclude (2016: paragraph 5.32) "that there is considerable scope for the authorisation process to be further simplified and relaxed [to] allow frontline regulators more discretion on their ABS authorisation processes and would better align processes between ABS and non-ABS entities".

Any consideration of future requirements for ABS licensing rules and the regulatory framework within which those rules are made should take this conclusion into account.

However, given that before-the-event authorisation in some form will be applied (as now) to the individuals who will actually be delivering or supervising authorised legal activities, it is questionable whether the entity itself will continue to need separate before-the-event

authorisation to carry on those activities. Concerns about improper or inappropriate ownership or management interests could[27] perhaps be addressed by targeted during-the-event regulation relating to codes of conduct, handling client money, disclosure, and risk-profiling (cf. LSR-4 2020: paragraphs 4.3.1, 4.3.2, 4.3.5 and 4.3.8).

7.10 Consolidation and consistency of regulatory arrangements

The CMA market study referred to the potential for inconsistencies in regulation across regulators, which might be driven by a multiplicity of regulators as well as inflexibility in the regulatory framework (2016: paragraphs 5.10(a), 5.121, 5.124, 5.134, 5.136, 5.153, and 6.67).

Accordingly, an optimal regulatory framework would display the characteristic of consistency "so that similar activities (ie activities carrying out the same level of risk) should be regulated in a similar way" (CMA 2016: paragraphs 6.10 and 6.64).

One of the objectives of a revised approach to regulation should therefore be to achieve any necessary consolidation of, and consistency in, the regulatory arrangements that apply within the legal services sector.

27. In addition to a statutory obligation equivalent to that in section 90 of the Legal Services Act (which requires those within ABS entities who are not authorised persons not to do anything "which causes or substantially contributes to a breach" by an authorised person of their professional duties).

8. Complaints and ombudsman services

8.1 Background

A significant part of the 'pre-history' of the Legal Services Act was the perceived failure of the previous regime to deal adequately or quickly enough with consumer complaints. Proposals for a centralised complaints and ombudsman service for service complaints (cf. LSR-4 2020: paragraph 4.4.3) were therefore a key feature of Sir David Clementi's recommendations (2004: pages 67-75).

The 2007 Act established an Office for Legal Complaints (OLC) and a Legal Ombudsman (LeO). The Ombudsman's jurisdiction is limited to unresolved service complaints[28] relating to those who are authorised for one or more of the reserved activities (although once within LeO's jurisdiction, all activities of the practitioner, whether reserved or not, may be considered).

In their characterisation of approaches to ombudsman schemes, Gill & Hirst distinguish public sector and private sector schemes. Using their analysis, we should describe the Legal Ombudsman as a 'hybrid industry ombudsman' (2016: page 15):

> Established by law; appointed by or reporting to legislative or executive government; jurisdiction over consumer complaints about businesses within a particular service sector or industry. This ombudsman is a 'hybrid' because it is a public body, set up by law, with a private sector jurisdiction.

In the case of legal services, though, the sector coverage is incomplete. The arrangement under the Legal Services Act perpetuates the regulatory gap (cf. LSR-0 2020: paragraph 4.5), because the Legal Ombudsman's jurisdiction does not extend to providers of non-reserved activities carried on by those who are not authorised.

Although the Act does allow the OLC to set up a voluntary scheme (sections 164-166), these powers have not been used.[29]

There is, therefore, still uncertainty and confusion about the Legal Ombudsman's role and jurisdiction. A recent discussion paper indicated that (Legal Ombudsman 2019: page 8):

> there is not widespread understanding of the role we play in the legal services sector and the ways that we can help people to access redress. At the front end of our process, we still engage in a lot of signposting to other organisations due to misunderstanding about what we do. When people come to us, they also often have mistaken expectations about how our process works, or the type of remedy they might receive at the end.

For further details of the Ombudsman scheme, see LSR-4 (2020: paragraph 4.4.3) and Gould (2019: paragraphs 1.156-1.179)[30].

8.2 Limitations of the current scheme

The CMA's market study expressed more concern about what the current ombudsman scheme cannot do rather than what it does. As such, it highlights scope for future development (2016: paragraphs 4.153-4.154):

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28. For the distinction between service and conduct complaints, see LSR-4 2020: paragraphs 4.4.2 and 4.4.3).
29. I also note the strong support in submissions to the All-Party Parliamentary Group on Consumer Protection for one ombudsman per sector (2019: page 17), and the APPG's recommendation that schemes that do not have mandatory membership, or under which decisions cannot be enforced, should not be able to use the description 'ombudsman' (2019: page 27).
30. The Ombudsman's scheme rules are available at: https://www.legalombudsman.org.uk/wp-content/uploads/2019/03/Scheme-Rules-1-April-2019.pdf.

> We are concerned that consumers of unauthorised providers do not benefit from the redress mechanisms enjoyed by clients of authorised providers. Consumers who use unauthorised providers do not have access to the LeO and must therefore use an ADR provider or take private action themselves through the courts (which is a more costly, difficult and time-consuming means of obtaining redress for consumers). Several recent initiatives within the self-regulated part of the sector have led to the development of complaints-handling regimes. However, as noted above these are limited by their scope and enforceability. We also note that the EU ADR scheme has so far had a limited impact on the sector as it has not been taken up by many providers and does not apply to business-to-business transactions.
>
> In addition, consumers of unauthorised providers do not benefit from the feedback loop that the LeO drives within the authorised part of the sector to promote better quality of advice and service. A possible implication of this is that greater differences in service levels between authorised and unauthorised providers may emerge over time, to the detriment of consumers of unauthorised providers. In light of the concerns about redress for consumers of unauthorised providers, we are recommending that the MoJ review whether and how to extend redress to such consumers.

Similarly, the Legislative Options Review also said (2015: Annex 4, paragraph 8(a)):

> Expansion of the remit of LeO could therefore facilitate greater confidence in both the regulated sector and that part of the legal services market which does not presently fall under sector-specific regulation, and ensure better standards of service provision across the sector. The ADR Directive, which [came] into force in July 2015, reinforces such a development, since it creates an expectation that consumers can access out-of-court dispute resolution for disputes with traders across the economy.

These views were echoed in the recent working party report on the regulation of property agents (Best 2019: paragraph 18):

> Redress schemes focus on individual cases and cannot be expected to deal with issues such as:
> - Complaints by agents against other agents;
> - Complaints from related professionals (e.g. accountants and lawyers) who may wish to report irregularities or concerns;
> - Whistleblowing;
> - Complaints passed on by the media or other third parties where the victim is unable or unwilling to complain; or
> - Groups of consumers with a 'class action'-like complaint

8.3 A broader remit?

These views beg questions about the emerging and proper role of ombudsmen. In a study in 2016, Gill & Hirst referred to three important aspects of the way in which ombudsmen operate (2016: page 21): "they resolve individual disputes; they seek to promote change and improvements in services (but to varying extents); and they have, arguably, adopted a therapeutic approach, which seeks to help aggrieved citizens and consumers better to understand the problems they have experienced".

It is questionable whether the requirements and constraints of the Legal Services Act in fact allow the Legal Ombudsman to carry out the second and third functions as effectively as might be desirable, given the challenges of transparency and of managing complainants' expectations that arise from them.

Gill & Hirst also offered some helpful general conclusions about the proper role of an ombudsman (2016: pages 3-4):

> <u>Functions</u>
>
> The functions of consumer ombudsmen are:
>
> - To provide independent resolution of disputes arising from contracts and transactions between consumers and private businesses

- To provide a strict alternative to the use of the courts and, additionally, to provide an equitable jurisdiction to provide additional consumer protection
- To provide advice and assistance to consumers in relation to their disputes, reducing the need for representation
- To equalise the balance of power between parties and identify, and provide special assistance to, the most vulnerable consumers to facilitate their access to redress
- To help consumers whose complaints are not valid understand why that is the case and help them move on from their dispute
- To raise standards amongst bodies subject to investigation by feeding back lessons that arise in decisions
- To enhance consumer confidence and trust in the sectors subject to investigation

Forms

The principal forms of consumer ombudsmen include:

Process characteristics

- An impartial and fair process of dispute resolution, usually only available after a complaint has been made directly to a business
- A flexible, multi-process approach drawing on consensual and adjudicative forms of dispute resolution
- An inquisitorial fact finding and evaluative process (largely in writing or by telephone) with rare use of oral hearings
- A confidential investigation process which takes place in private (although outcomes may be published in anonymised or semi-anonymised form)
- An accessible and free process for consumers, with no requirement for them to be represented by legal advisers

Decision making characteristics

- Decisions that are binding on both parties, with no right of appeal, once accepted by consumers (but which do not constitute legal precedent)
- Decision making which begins by considering the legality of actions being complained about but which also features an equitable jurisdiction
- Decisions which consider the merits of the actions complained against in addition to the processes by which decisions were taken
- The use of flexible remedies (usually with a financial element) to provide fair and reasonable outcomes
- The use of expertise and industry knowledge to inform decision making in addition to the law
- The ability to facilitate, propose and impose solutions as part of their processes

Governance characteristics

- Governance arrangements ensure independence from industries and businesses under jurisdiction
- Can either be set up by industry (self-regulatory), by regulators (mandated self- regulatory) or the legislature (statutory)
- Funding comes from the industry through case fees and/or levies
- Tend to be considered closer to the self-regulatory or regulatory system than the justice system
- The figure of the ombudsman allows for high visibility and accountability

Limits

The role of consumer ombudsmen is limited as follows:

- While their decisions and other activities may influence the practices of those subject to investigation, consumer ombudsmen cannot provide authoritative and binding legal precedents such as those that could be issued by the higher courts
- While consumer ombudsmen have a special role in terms of providing direction to bodies subject to investigation about the requirements of fairness beyond minimum regulatory standards, they cannot create regulatory rules or standards

- While consumer ombudsmen are able to provide advice to consumers in relation to the handling of disputes and may seek to manage consumers' expectations, they should stop short of providing advice on the substantive merits of cases, since to do so could prejudice subsequent decision making and give the appearance of prejudgment and bias
- While consumer ombudsmen have a particular responsibility towards vulnerable consumers and must assist all consumers to present their best possible case, they must remain impartial and cannot advocate for the consumer

This analysis suggests that it could be too limiting a conception of ombudsman schemes to think of them only in terms of 'complaints handling' or as a form of financial compensation scheme. This is because:

(a) consumers might wish to raise 'concerns' about service providers rather than 'complaints'[31];
(b) the proper role of an ombudsman could be described as dealing with unresolved disputes between consumers and providers, reflecting occasions of vulnerability and power imbalance (as well as instances of information asymmetry or service 'failure'), and so allow Leo to remedy injustices in service provision;
(c) such an approach would also allow a provider to raise an issue about a consumer, for instance, in relation to a client's refusal to deal appropriately with the provider in a genuine attempt to resolve a dispute or concern, without the provider having to raise a 'complaint' about a client (which is not presently allowed);
(d) the ability for LeO to consider all concerns about all providers of legal services would remove the current confusion that consumers have about whether activities are reserved or not, and whether their provider is regulated or not: this could increase consumer confidence in the sector without necessarily having to increase the scope of formal regulation;
(e) an ombudsman might wish to raise 'own-initiative' investigations and to undertake thematic reviews in order to pursue issues that give rise to concern, without being limited to 'complaints' from 'consumers';[32]
(f) greater flexibility in ombudsman scope and powers would permit more proportionate responses depending on the level of risk or vulnerability to the consumer in the activities 'complained' of; and
(g) such a broader conception would enhance LeO's role in providing a more informed 'feedback loop' to providers, consumers and regulators about lessons learned, dissemination and encouragement of best practice, and opportunities for improvement.

As Gill et al. point out, there is now a greater need for ombudsman schemes to stake their claim in the emerging terrain of alternative dispute resolution (2013: paragraph 5.15):

> Ombudsman schemes – particularly in a world that may see their increasing use due to restrictions on access to the formal court system and a general trend towards favouring cheaper, inquisitorial dispute resolution – must be able to make the argument that their decisions are more than pragmatic solutions that keep the status quo between consumers and organisations. Ombudsman schemes must, instead, be able to demonstrate clearly the nature and value of the unique system of justice which they exemplify. This system of justice reconciles informality and formality, pragmatism and principle, and must be explained in a way that is clear to stakeholders and the public.

31. This point becomes more relevant in the light of research in other sectors. For example, Lloyd-Bostock & Hutter (2008: page 75) point out that complaints "are extremely unlikely to be representative of risks". This is because, in relation to 'expert' services, consumers do not recognise most of the risks they face and are, in any event, less likely to report dissatisfaction because they do not feel competent to make an assessment.
32. Gill et al. (2013: paragraph 5.38) observe that "ombudsman schemes should abandon the 'misleading and disingenuous' view that they simply deal with individual cases and that their casework does not have wider regulatory effects. Rather, they should now seek to maximise the impact of their casework in shaping industry practices".

8.4 Independence

Finally, as with other aspects of the regulatory framework, the actual and perceived independence of the OLC and LeO from government and from other regulators and representative bodies should also be considered (cf. paragraph 5 above).

Such experiences and perceptions will underpin the confidence of both consumers and practitioners to engage in the sector and in their dealings with each other. This can also influence the propensity of consumers to shop around and switch providers, as well as contribute to an innovative and competitive sector.

Perhaps, accordingly, the OLC and LeO should be accountable directly to Parliament (in the way that other ombudsmen are, for instance, for health services and financial services[33]).

33. The APPG on Consumer Protection recommends that "All ombudsmen should be required to give evidence to Parliament, via the appropriate select committees" (2019: page 27).

9. Regulatory objectives

The challenges of the current regulatory objectives in section 1 of the Legal Services Act 2007 were referred to in LSR-0 2020: paragraph 4.2. It is also questionable whether those regulatory objectives are entirely appropriate for some elements of the regulatory structure (such as the Legal Ombudsman).

In a final consideration of the regulatory structure, therefore, the question of what it is all for, as set out in statutory objectives, will need to be addressed. This will form part of the Review's final report.

For the moment, it might be helpful to record the following synthesis from Terry et al. (2012: pages 2725-2726):

> a number of jurisdictions around the world have adopted or proposed regulatory objectives for the legal profession. There is clearly a significant amount of overlap among these objectives. For example, most jurisdictions list client protection as a regulatory objective. Most jurisdictions also include public protection or public interest among their regulatory objectives. Many include concepts of access to justice, public understanding of the legal system, and promoting the rule of law.
>
> As to other regulatory objectives, however, some jurisdictions consider them important enough to explicitly include in their list of regulatory objectives, whereas other jurisdictions do not. For example, some jurisdictions have included as an explicit regulatory objective promoting the diversity of the legal profession or promoting equal opportunity within the legal profession. Some jurisdictions consider it important to explicitly state that it is their objective to encourage competence or compliance with the professional principles, whereas other jurisdictions are silent on this point. Several jurisdictions explicitly refer to the importance to independence to the legal profession, but others do not. At least two jurisdictions – Australia and Ontario – have included general regulatory principles among their regulatory objectives…. Australia's Draft Legal Profession National Law includes as a regulatory objective promoting regulation of the legal profession that is efficient, effective, targeted, and proportionate. Australia also includes as a regulatory objective an explicit call for consistency. The importance of consistency among regulators is a topic that is important to a number of clients and lawyers.
>
> It is unclear how much one can or should read into a jurisdiction's silence with respect to a particular objective. Especially for those jurisdictions that adopted their objectives some time ago, they simply may not have considered the issue. As to at least one issue, however, there appears to be a clear divergence of views about how to state the objective and where the emphasis should be. This concerns the objective about promoting competition for legal services. In the United Kingdom, for example, the objectives states "promoting competition in the provision of services within subsection (2)" (referring to authorized persons); whereas in the Draft Indian regulatory objectives, it states "promoting healthy competition amongst the legal practitioners for improving the quality of service." Finally, it is perhaps worth noting that a few jurisdictions have regulatory objectives that arguably are self-protective and that might lead at least some commentators to wonder whether they could withstand challenges from the competition authorities that have been very interested in lawyer regulation.
>
> As this brief summary shows, jurisdictions that are considering whether to adopt or amend their regulatory objectives for the legal profession have many examples to follow and will face many choices.

10. Conclusions

Exploring structural options for regulation in the abstract is potentially a disconnected exercise, given that, as the CMA puts it (2016: page 216) “the appropriate structure should ultimately depend on the preferred regulatory approach, rather than structure being something that should be considered in isolation”.

Any consideration of regulatory structure will therefore be dependent on the position taken in relation to issues and options raised in Working Papers LSR-1 to 4. Thus, once the future scope of regulation is agreed and the activities that need to be regulated determined, and the focus for that regulation established and the form it will takes for any given set of circumstances, then the structural options and response will be easier to explore.

How many regulators will be optimal, regulating what and whom, and with what set of tools, will – as the CMA suggest – be an outcome, not a predetermined starting point.

Accordingly, this Paper has explored different aspects of the structural landscape in order to lay the ground for further consideration, including a look at comparative structures, whether for other professions or sectors, or in other jurisdictions.

It is probably the case that consumers are not much bothered about who regulates the legal services they use – as long as someone does. But practitioners will no doubt care passionately about by whom, and how, their activities are authorised and monitored. Meeting all legitimate and reasonable expectations remains the challenge.

References

All-Party Parliamentary Group on Consumer Protection (2019) *Report from the Ombudsman Inquiry*, Volume I: Report

Best (2019) *Regulation of property agents working group: final report*; available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/818244/Regulation_of_Property_Agents_final_report.pdf

Bond, C. & Brody, G. (2016) 'Regulation of the legal profession: consumer focus and engagement'; available at: https://consumeraction.org.au/wp-content/uploads/2016/10/Legal-Profession-Consumer-Focus-Engagement.pdf

Clementi (2004) *Review of the regulatory framework for legal services in England and Wales*; available at: https://webarchive.nationalarchives.gov.uk/20060926084700/http://www.legal-services-review.org.uk/content/report/report-chap.pdf

Cochran, R.F. (2000) 'Professionalism in the postmodern age: its death, attempts at resuscitation, and alternate sources of virtue', *Notre Dame Journal of Law, Ethics & Public Policy*, Vol. 14, page 305

Competition and Markets Authority (2016) 'Legal services market study'; available at: https://www.gov.uk/cma-cases/legal-services-market-study

Gill, C., Williams, J., Brennan, C. & O'Brien, N. (2013) 'The future of ombudsman schemes: drivers for change and strategic responses'; available at: https://eresearch.qmu.ac.uk/bitstream/handle/20.500.12289/3251/eResearch_3251.pdf?sequence=1&isAllowed=y

Gill, C. & Hirst, C. (2016) 'Defining consumer ombudsmen'; available at: https://esrcjustenergy.files.wordpress.com/2017/05/defining-consumer-ombudsman-schemes.pdf

Gould, J. (ed.) (2019) *The Law of Legal Services and Practice* (2nd ed)(London, LexisNexis)

HM Treasury (2015) 'A better deal: boosting competition to bring down bills for families and firms', available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/480797/a_better_deal_for_families_and_firms_print.pdf

Howarth, J.W. & Wegner, J.W. (2019) 'Ringing changes: systems thinking about legal licensing', *FIU Law Review*, Vol. 13, page 383

Legal Ombudsman (2019) 'Transparency and reporting impact', available at: https://www.legalombudsman.org.uk/wp-content/uploads/2019/10/Transparency-discussion-paper-October-2019.pdf

Legal Services Board (2016) 'A vision for legislative reform of the regulatory framework for legal services in England and Wales'; available at: http://www.legalservicesboard.org.uk/news_publications/LSB_News/PDF/2016/20160909LSB_Vision_For_Legislative_Reform.pdf

Legal Services Board (2020) 'Reshaping legal services to meet people's needs: an analysis of legal capability'; available at: https://www.legalservicesboard.org.uk/wp-content/uploads/2020/02/PLE-Reshaping-Legal-Services.pdf

Legislative Options Review (2015), 'The case for change: legislative options beyond the Legal Services Act 2007'; available at: https://lsbstaticwebsites.z33.web.core.windows.net/what_we_do/pdf/20150727_Annex_To_Submission_Legislative_Options_Beyond_LSA.pdf

Lloyd-Bostock, S.M. & Hutter, B.M. (2008) 'Reforming regulation of the medical profession: the risks of risk-based approaches', *Health, Risk & Society*, Vol. 10, page 69

LSR-0 (2020) ‘Assessment of the current regulatory framework’; IRLSR Working Paper available at: https://www.ucl.ac.uk/ethics-law/publications/2018/sep/independent-review-legal-services-regulation

LSR-1 (2020) ‘The rationale for legal services regulation’; IRLSR Working Paper available at: https://www.ucl.ac.uk/ethics-law/publications/2018/sep/independent-review-legal-services-regulation

LSR-2 (2020) ‘The scope of legal services regulation’; IRLSR Working Paper available at: https://www.ucl.ac.uk/ethics-law/publications/2018/sep/independent-review-legal-services-regulation

LSR-3 (2020) ‘The focus of legal services regulation’; IRLSR Working Paper available at: https://www.ucl.ac.uk/ethics-law/publications/2018/sep/independent-review-legal-services-regulation

LSR-4 (2020) ‘The form of legal services regulation’; IRLSR Working Paper available at: https://www.ucl.ac.uk/ethics-law/publications/2018/sep/independent-review-legal-services-regulation

Mayson, S. (2018) ‘The regulation of barristers: past, present and future’; available at: https://stephenmayson.files.wordpress.com/2018/06/mayson-2018-the-regulation-of-barristers-past-present-and-future.pdf

Pleasence, P. & Balmer, N. (2019) ‘Development of a general legal confidence scale’, *Journal of Empirical Legal Studies*, Vol. 16, page 143

Roberton, E. (2018) ‘Fit for the Future: Report of the Independent Review of Legal Services Regulation in Scotland’; available at: https://www2.gov.scot/Resource/0054/00542583.pdf

Terry, L.S., Mark, S. & Gordon, T. (2012) ‘Adopting regulatory objectives for the legal profession’, *Fordham Law Review*, Vol. 80, page 2685

YouGov (2020) *Legal needs of individuals in England and Wales: Technical Report 2019/20*;available at: https://www.legalservicesboard.org.uk/news/largest-ever-legal-needs-survey-in-england-and-wales