



UCL Review of Legal Services Regulation

THE LAW SOCIETY
MEMBER BRIEFING

4 May 2019

Foreword

1. Last year University College London (UCL) launched an independent review of legal services regulation led by Professor Stephen Mayson, which is due to complete in early January 2020, with a report being presented to the Ministry of Justice (MoJ).
2. The review is being conducted in three stages between October 2018 and January 2020. In the first stage (Autumn 2018) Mayson called for submissions to three working papers published in October.
3. In December last year the Council held a session on the Mayson review and discussed issues such as the scope of regulatory objectives, reserved activities and title-based regulation.
4. Following the Council's feedback, we developed our [position paper](#) and submitted it to Professor Mayson in February this year. This paper sets out the following policy positions:
 - a. **Timing of a legislative review of legal services regulation:** The Law Society argues that the current regulatory framework, while not perfect, currently serves its purpose. Now is not the right time to reopen the regulatory framework debate. The costs of reform, in terms of regulatory uncertainty, compliance burden, and international implications, would outweigh any potential benefits.
 - b. **Regulatory objectives:** The eight regulatory objectives cover the right areas, but need to be applied in a balanced way, especially in cases where there are tensions between objectives.
 - c. **Rationale for regulation:** Legal regulation must, among other objectives, promote and preserve the public interest in the rule of law and the administration of justice. Economic concerns or the promotion of competition are not sufficient to ensure that the broader public interest is protected.
 - d. **Reserved activities:** We argue that there is a public interest in maintaining reserved activities that only regulated professions can perform. The reserved activities should be defined by the following characteristics:
 - i. The activity relates to an area of significant risk to both individuals and society at large, such that poor quality service will impact not only the consumer but the wider public as well.
 - ii. For a given activity there is a public interest in the existence of a broader set of professional and ethical duties which go beyond the duty to serve a client's best interests, such as the duty to the courts and to the proper administration of the legal system and law.
 - e. **Professional titles:** The Law Society argues that strong and distinct professional titles give meaningful choice to consumers and help to ensure that regulatory standards are maintained. Title-based regulation should be encouraged as it provides protection for consumers in non-reserved areas.

- f. **Independence of the legal profession:** At the core of the regulatory framework there must be a legal profession that is fully independent of the state. This means that the regulators of the legal profession should also be able to act free from state interference.
5. The review is now in the second stage which will run from March until June. In this stage stakeholders are invited to make further submissions to two further papers published in March, by June this year. The papers address:
 - the focus of regulation: activities, individuals, entities, professions; and
 - the structure of regulation: who should the regulators be, how many, the need for oversight regulation, independence of regulators from government and the regulated profession.
6. On 12 March, UCL held the first public event on the review during which Professor Mayson outlined the review's objectives, scope, timelines and expected outcomes.
7. The review's terms of reference and published working papers are available [here](#).

Mayson's key concerns

8. At the UCL event on the independent review of legal services regulation, Professor Mayson outlined his key concerns with the existing framework. The points raised were:
 - The regulatory gap for non-reserved activities (80% of legal services) which can leave consumers without sufficient protections.
 - The regulatory objectives not being fit for purpose – should access to justice or competition be regulatory objective or outcome?
 - Reserved activities – a 'faulty' gateway to regulation which needs replacing with a more suitable alternative e.g. 'before the event authorisation' and the type of activities to regulate.
 - There should be a test to determine what activities should be regulated based on public interest and consumer interest criteria.
 - Future form of regulation could consider a combination of ex ante and ex post regulation, with authorisation of some activities and individuals.
 - Title based regulation maintains a system of gold standards regulation, but there is a question of whether a lower level should suffice. There could be a place for professional titles, but they could be decoupled from regulation, and become part of self-regulation, e.g. being awarded by professional bodies.
 - Regulatory oversight – should we maintain the current system of multiple regulators or create a single 'super' regulator? How to ensure independence from government and representation?
 - The current framework does not take into account emerging technologies such as substitutive legal technology, which are likely to play a more prominent role in the future legal services market.

Regulatory focus

9. In the first of the two new papers, Mayson turns to the question of what should be the proper focus of regulation. Whether that should be one or more of activity, title, individual,

entity, or provider. He also discusses the possible combination of before-, during- and after-the-event regulation as a more flexible way of providing targeted, proportionate and cost-effective intervention.

10. It is important to note that none of the potential regulatory options outlined by Mayson considers pre-Clementi regulatory landscape, whereby professional bodies performed the dual role of regulators and representation.
11. The paper concludes that the current regulatory framework has two structural constraints. First, a narrow set of reserved legal activities does not ensure that all activities are regulated in the public interest, and the current application of reservation is inadequate. Second, providing regulated entry into the legal services sector through authorisation for one of those limited activities, primarily through a professional title creates a barrier and cost for potential market entrants.
12. As a consequence of the above, new entrants who only wish to operate in non-reserved areas are forced to (i) operate in a non-regulated environment; (ii) incur unnecessary (and, in a business context, artificial) costs of becoming qualified or authorised for reserved activities that they do not wish to offer; or (iii) submit to voluntary regulation that might leave their clients less well protected.
13. Another consequence is that there is no current route to consistently regulating emerging substitutive legal technology, such as chatbots, predictive case outcomes, document review and due diligence, intellectual property renewals, contract management, online dispute resolution and other.

Activity-based regulation and regulation by title

14. Both Clementi and the Competition and Market Authority (CMA) raised the possibility of having a distinction between minimum regulatory criteria and higher professional standards. Mayson argues that the proper role of formal regulation is not necessarily to set the highest standards of performance, but to define the minimum acceptable level of competence or performance required to meet public interest objectives.
15. Mayson considers the possibility of a dual approach, for example, an activity-based regulator for specific legal activities that would meet the public interest threshold for regulation, which would allow current (and future) professional bodies to maintain their own self-regulatory jurisdiction over the criteria for award and retention of title. This would avoid a one size fits all regulatory approach.
16. Mayson concludes that there is an equal weighting of pros, and cons around activity-based regulation. The pros include focusing attention only on those activities for which some form of regulatory intervention is justified and potentially is capable of dealing with the challenges of substitutive technology; and the cons include the potential for significant volume and complexity of 'activities' for regulation.
17. With regard to regulation by title, Mayson concludes that the pros include maintaining historic and cultural associations, as well as consistency with client familiarity with titles such as solicitor or barrister. These are outnumbered by the cons which include the potential 'gold standards' approach to regulation and the inability to deal with the substitutive technology.

Regulation of individuals

18. Mayson considers regulation of individuals and concludes that it is better where the skill and integrity of individuals is key to the regulated activity and allows for the authorisation of individuals with specialist skills without requiring a more broadly-based professional qualification. However, this approach ignores organisational or contextual influences, pressures, and lacks the additional influence of professional norms being exerted by being a member of a profession. Further, it does not adequately address the regulation of substitutive legal technology.

Regulation of entities

19. Mayson concludes that entity regulation cannot address the very personal services that require human interaction, skill or integrity unless it is also combined with individual/title regulation and struggles with the distinction between regulated and unregulated activities.

Forms of regulation

20. Mayson considers a prospect of replacing the current regulatory system by a combination of ex-ante and ex post regulation such as:
 - Before the event regulation (which includes licensing, certification, authorisation and accreditation)
 - During the event regulation (including standards and professional principles, handling client money, undertakings, professional indemnity insurance, disclosure and transparency, continuing competence, judicial control and oversight, risk profiling, non-sector specific requirements)
 - After the event regulation (including redress, conduct complaints, service complaints and compensation funds)
21. Detailed overview of the Mayson' paper on the focus of regulation is attached in Annex 1.

Regulatory structure

22. In the second of the two new papers, Mayson explores the structural landscape for regulation. Who should the regulators be; how many; 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?
23. Mayson considers the possibility of a dual approach, combining statutory and professional body regulation. He argues that 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 offer more targeted, risk-based and consistent protection.

Current structure of regulation

24. For the future structure of regulation Mayson considers the Legislative Options Review 2015¹ which set out options for restructuring the regulators:
- Separate regulatory bodies focused on professional groupings, with or without independence from representative bodies, and with or without an oversight regulator.
 - Separate regulatory bodies focused on regulated activities, with independence from representative bodies, and with or without an oversight regulator.
 - A single regulator with specialist sub-units or divisions (focused on professional groupings or activities, or possibly a flexible combination of both).
25. It is worth noting that the review could have section 51 implications, as one of the recommendations that Mayson could make would be for government to reconsider the entire LSA.

Single or multiple regulators

26. Mayson believes that the current system of the multiple regulators is based on a compromise adopted by Clementi in his review of legal services leading to the Legal Services Act 2007 (LSA).
27. The current system has been criticised by the CMA which is concerned about 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. However, Mayson notes that “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”.
28. A single regulator could either mean a single overarching regulator for all legal services, or 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. However, activity-based regulation can equally lead to a proliferation of regulators, inflexibility and a lack of agility.
29. Mayson notes that the LSB is aligned with the CMA in believing that a future structure with fewer (at least) regulators is worthy of serious consideration, although he also points out that the CMA study was “not specific about the principles on which any reduction in the number of regulators might be based”.

Regulatory independence

30. Mayson considers regulatory independence from government and representation.

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https://www.legalservicesboard.org.uk/news_publications/LSB_news/PDF/2015/20150727_The_Case_For_Change_Legislative_Options_Beyond_The_Legal_Services_Act_2007.html

31. As far as independence of regulation and representation is concerned, Mayson examines the nature of independence and how this was covered in the drafting of the LSA. He also considers the structural options which were set out in the Legislative Options Review.

- Regulation and representation functions in one body (with safeguards, for example, such as increased oversight, and strict functional separation ('Chinese walls'))
- Partial separation of regulation and representation functions (with safeguards)
- Full separation between regulation and representation (confirmed by the LSB in its vision statement as its preferred option). Mayson also notes that the CMA backed the Government's announced intention to carry out a review of regulatory independence (which did not happen after the turn of political events in the EU referendum)

32. Mayson notes that the LSB has compelling reasons for full separation but adds that full separation would come with consequences such as further distance between regulatory bodies and the regulation of their members.

Consumer and provider representation

33. Mayson considers the role and remit of the Legal Services Consumer Panel and concludes that any future consumer representation should be guarded by the following principles and 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.

Representation of providers' interests

34. The title-based foundations of the LSA assume that providers' interests will be represented through the representative activities of the approved regulators, suitably distanced from the exercise of regulatory functions.

35. Mayson notes that the current framework already allows the authorisation of individuals and entities that are not necessarily members of professional or other representative bodies. Further, if one envisages a future in which regulatory and representative interests might be fully separated and in which the approach to regulation is no longer title-based, 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. He seems to accept the need for the representation of providers' and professional interests, and the benefits to the regulators and the regulatory framework from that representation.

Regulatory arrangements

36. 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 LSA, 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).
37. Mayson says that this list is assumed for present purposes to be a fair representation of the regulatory arrangements also likely to be needed in any future structure.

Complaints and ombudsman service

38. Mayson discusses the issue of the emerging and proper role of consumer ombudsmen and whether it should have a broader remit. He concludes that the 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. He also raises questions about their perceived independence and wonders whether they should be directly accountable to parliament.
39. Detailed overview of the Mayson's paper on the structure of regulation is attached in Annex 2.

Key questions arising from Mayson

- A. Which of the regulatory frameworks considered by Mayson, do you prefer?
- B. Does 'reservation' need to be retained, or succeeded by an alternative approach (before-the-event authorisation, during-the-event authorisation or after-the-event authorisation)? In this context do you believe we should maintain the six current reserved activities?
- C. Do you agree that some of non-reserved activities should be brought within the scope of regulation?
- D. What are your views on maintaining professional title?
- E. Does the regulator require greater independence from:
 - 1) The representative body?
 - 2) The Government?

Next steps

The Law Society is planning to respond to the latest working papers, and we welcome the views of our members on the above questions posed. We encourage you to share your views directly with the Council members or email Marzena Lipman, Interim Head of Regulatory Affairs at marzena.lipman@lawsociety.org.uk or James Woolf, Policy Adviser at james.woolf@lawsociety.org.uk

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The Focus of Legal Services Regulation

Summary of Mayson Review WORKING PAPER LSR-3 | March 2019

Regulatory focus

1. Having considered in his two early papers why legal services should be regulated and which of those services should fall within the scope of regulatory intervention, in this Working Paper Mayson turns to the more challenging question of what should be the proper focus of that regulatory attention. Whether that should be on one or more of activity, title, individual, entity, or provider. It also discusses the possible combination of before-, during- and after-the-event regulation as a more flexible way of providing targeted, proportionate and cost-effective intervention.
2. Mayson argues that the 2007 Act is problematic because authorisation is connected primarily to the holders of a professional title, and that authorisation by reference to title is currently deeply rooted in the structure of the Act, the approved regulators, and authorised practitioners, as well as in the policy and culture of regulation. He states that this approach is under increasing challenge.
3. The LSB and CMA have both argued for a move away from regulating by title. Mayson offers the view that a choice between regulation by activity or by title might reflect where we have ended up under the Act, runs the risk of obscuring the real choice. This choice is as much about who (individual, entity, title-holder) should be regulated as it is about what should be regulated (activity). He states that activity-based regulation is less problematic than title-based regulation, but that the position is greatly complicated by the challenge of emerging technologies, which are widespread, whether technical, regulatory or jurisdictional.
4. Mayson differentiates between 'supportive' and 'substitutive' legal technologies. Supportive technologies support lawyers in the delivery of services (e.g. legal research or knowledge management) or organisationally (e.g. time recording or billing), and according to Mayson generally the regulation of supportive technology presents fewer issues. Far more problematic for regulatory purposes is when technology does not simply support individual or institutional providers of legal services but substitutes for them, including chatbots, predictive case outcomes, document review and due diligence, intellectual property renewals, contract management, and online dispute resolution.
5. On the positive side, substitutive technology might provide a route to addressing unmet and latent needs for legal services, offering more accessible and more affordable legal solutions. More worryingly however, such systems could come close to replacing the rule of law with technology, becoming the regulatory tool. This could undermine the idea of justice. For example, the American Bar Association's Model Rules of Professional Conduct contain a prohibition on the unauthorised practice of law (UPL), which raises a question about whether substitutive legal technology might be considered UPL.
6. The following fundamental concerns arise:

- a) Who or what is engaged in delivering legal services in these circumstances? Where is the 'hook' for regulation, and on whom should liability settle?
- b) Who should be responsible for machine algorithms, and any legal advice and actions they produce?
- c) If technology is substituting for a legally qualified human being, should there be a regulatory intervention?

Activity-based regulation and regulation by title

- 7. Both Clementi and the CMA raised the possibility of having a distinction between minimum regulatory criteria and higher professional standards. Mayson argues that the proper role of formal regulation is not necessarily to set the highest standards of performance, but to define the minimum acceptable level of competence or performance required to meet public interest objectives.
- 8. Mayson suggests the possibility of a dual approach, for example, an activity-based regulator for specific legal activities that would meet the public interest threshold for regulation, which would allow current (and future) professional bodies to maintain their own self-regulatory jurisdiction over the criteria for award and retention of title. This would avoid a one size fits all regulatory approach.
- 9. Mayson notes that the Legal Education and Training Review carried out in 2013 by the SRA, the Bar Standards Board and ILEX Professional Standards, did not see a case for across the board activity-based regulation. Mayson concludes that there is an equal weighting of pros, for example and cons around activity-based regulation. The pros include focusing attention only on those activities for which some form of regulatory intervention is justified and potentially is capable of dealing with the challenges of substitutive technology; and the cons include the potential for significant volume and complexity of 'activities' for regulation.
- 10. With regard to regulation by title, Mayson concludes that the pros include maintaining historic and cultural associations, as well as consistency with client familiarity with titles such as solicitor or barrister. These are outnumbered by the cons which include the potential 'gold standards' approach to regulation and the inability to deal with the substitutive technology.

Regulation of individuals

- 11. Mayson goes on to consider regulation of individuals and concludes that it is better where the skill and integrity of individuals is key to the regulated activity and allows for the authorisation of individuals with specialist skills without requiring a more broadly-based professional qualification. However, this approach ignores organisational or contextual influences, pressures. and lacks the additional influence of professional norms being exerted by being a member of a profession. Further, it does not adequately address the regulation of substitutive legal technology.

Regulation of entities

12. The paper goes into some detail about the regulation of entities and says that the principal purpose of entity regulation lies in the need to exercise some form of regulatory oversight over organisations, which are owned by individuals who are not themselves subject to regulation, as in the case of Alternative Business Structures (ABSs).
13. Mayson concludes that entity regulation cannot address the very personal services that require human interaction, skill or integrity unless it is also combined with individual/title regulation and struggles with the distinction between regulated and unregulated activities.

Forms of regulation

10. Once a policy decision has been taken on what should fall within the scope of legal services regulation, and the appropriate focus for that regulation, Mayson argues that the issue that next arises is what form that regulation should take and when it should be applied. The CMA recommends a targeted approach to regulation where activities are regulated in a way that corresponds with risk.
11. In the paper, Mayson considers the following types of regulation:
 - Before the event regulation (which includes licensing, certification, authorisation and accreditation)
 - During the event regulation (including standards and professional principles, handling client money, undertakings, professional indemnity insurance, disclosure and transparency, continuing competence, judicial control and oversight, risk profiling, non-sector specific requirements)
 - After the event regulation (including redress, conduct complaints, service complaints and compensation funds)
12. In this section Mayson also considers special bodies, unauthorised providers, McKenzie Friends, in-house lawyers and rules versus outcomes. He recognises that outcome focused regulation is not without problems despite being clearly established within the current framework.

Conclusions

13. The paper concludes that the current regulatory framework has two structural constraints. First, a narrow set of reserved legal activities does not ensure that all activities are regulated in the public interest, and the current application of reservation is inadequate. Second, providing regulated entry into the legal services sector through authorisation for one of those limited activities, primarily through a professional title creates a barrier and cost for potential market entrants.
14. As a consequence of the above, new entrants who only wish to operate in non-reserved areas are forced to (i) operate in a non-regulated environment; (ii) incur unnecessary (and, in a business context, artificial) costs of becoming qualified or authorised for reserved

activities that they do not wish to offer; or (iii) submit to voluntary regulation that might leave their clients less well protected.

15. Another consequence is that there is no current route to consistently regulating substitutive legal technology.
16. The paper finishes with 23 questions for further thought (pp 62-64) available through [this link](#).

Annex 2

The Structure of Legal Services Regulation

Summary of Mayson Review WORKING PAPER LSR-4 | March 2019

How should we regulate legal services?

1. In this fourth paper, 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, Mayson turns to the consequential issues of regulatory structure. Who should the regulators be; how many; 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?
2. Mayson states that as many alternative approaches to regulation have already been used in legal services, the greatest scope for alternatives will exist in relation to lower-risk legal activities. The traditional role of self-regulation lost the public's confidence and was superseded by Clementi and the Legal Services Act. It's therefore difficult to see how any return to this system would be credible.
3. However, as mentioned in the third paper, there is the possibility of a dual approach, combining statutory and professional body regulation. Mayson argues that 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 offer more targeted, risk-based and consistent protection.
4. Increased education and information made available to consumers would help mitigate the risks associated with unregulated providers. Even so, the 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.

Current structure of regulation

5. The current structure has the LSB as the oversight regulator (overseeing ten front-line regulators), 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.
6. It was noted in the Legislative Options Review of 2015 that the judiciary is an important stakeholder within the system and can on occasion assume regulatory functions.
7. The above review also set out options for restructuring the regulators:
 - Separate regulatory bodies focused on professional groupings, with or without independence from representative bodies, and with or without an oversight regulator.

- Separate regulatory bodies focused on regulated activities, with independence from representative bodies, and with or without an oversight regulator.
 - A single regulator with specialist sub-units or divisions (focused on professional groupings or activities, or possibly a flexible combination of both).
8. The oversight regulator. Mayson briefly considers the position of the LSB, noting that in its market study, the CMA thought 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”. He concludes that on balance, 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.

Single or multiple regulators

9. The current system of the multiple regulators is based on a compromise adopted by Clementi in his review of legal services leading to the 2007 Act. The deciding factor was that the Act allowed for the possibility of greater regulatory competition and choice.
10. The CMA is concerned about 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. However, Mayson notes that “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”. The CMA however still favours a reduction in the multiplicity.
11. A single regulator could either mean a single overarching regulator for all legal services, or 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. However, activity-based regulation can equally lead to a proliferation of regulators, inflexibility and a lack of agility.
12. Mayson notes that the LSB is aligned with the CMA in believing that a future structure with fewer (at least) regulators is worthy of serious consideration, although he also points out that the CMA study was “not specific about the principles on which any reduction in the number of regulators might be based”.

Regulatory independence

13. Much is made by the CMA of regulatory independence, which in practice Mayson concludes can be broken down into the following?
- Independence of regulation from Government

- Independence of regulation from representation
14. With regard to independence of regulation and representation, Mayson examines the nature of independence and how this was covered in the drafting of the Act. He also considers the structural options which were set out in the Legislative Options Review.
- Regulation and representation functions in one body (with safeguards, for example, such as increased oversight, and strict functional separation ('Chinese walls'))
 - Partial separation of regulation and representation functions (with safeguards)
 - Full separation between regulation and representation (confirmed by the LSB in its vision statement as its preferred option). Mayson also notes that the CMA backed the Government's announced intention to carry out a review of regulatory independence (which did not happen after the turn of political events in the EU referendum)
15. Mayson notes that the LSB has compelling reasons for full separation but adds that full separation would come with consequences such as further distance between regulatory bodies and the regulation of their members.

Consumer and provider representation

16. With regard to the Legal Services Consumer Panel, which was established under the Act, Mayson says that 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.

Representation of providers' interests

17. 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.
18. However, the Legislative Options Review thought that lawyers had a relative advantage in being able "to mobilise and influence decision-makers".
19. However, Mayson notes that the current framework already allows the authorisation of individuals and entities that are not necessarily members of professional or other representative bodies. Further, if one envisages a future in which regulatory and representative interests might be fully separated and in which the approach to regulation is no longer title-based, 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.

Regulatory arrangements

20. 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).
21. Mayson says that 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, and goes on to explore the possibilities in future arrangements of each.

Complaints and ombudsman service

22. Mayson notes that 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.
23. In terms of 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.
24. 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.
25. Mayson then discusses the issue of the emerging and proper role of consumer ombudsmen and whether it should have a broader remit. He concludes that the 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. He also raises questions about their perceived independence and wonders whether they should be directly accountable to parliament.

Regulatory objectives

26. Mayson looks briefly at the regulatory objectives. He asks whether those regulatory objectives remain appropriate for some elements of the regulatory structure (such as the Legal Ombudsman). He believes that in a final consideration of the regulatory structure, the question of statutory regulatory objectives, will need to be addressed. This will form part of the Review’s interim and final reports.

Conclusion

27. Mayson agrees with the CMA that “the appropriate structure should ultimately depend on the preferred regulatory approach, rather than structure being something that should be considered in isolation”.
28. He makes clear that this paper has been exploring the structural landscape in order to lay the ground for later deliberation. Those later deliberations will include a closer look at comparative structures, whether for other professions or sectors, or in other jurisdictions.
29. As with the third paper, he concludes with a set of relevant questions (p. 40) available through [this link](#).