

Unregulated legal services – good or bad?



Based on research that we have recently conducted for the Legal Service Board, this Insight discusses the benefits and risks of unregulated legal service providers. For consumers to realise any benefits, they must be able to make informed choices between regulated and unregulated providers. As identified by the CMA in its interim market study report, transparency is a key issue within legal services markets.

Background

The Legal Services Board (LSB) commissioned Economic Insight to conduct a study of the characteristics of unregulated providers of legal services. The Legal Services Act 2007 states that providers must be authorised and regulated to provide any of the six 'reserved legal activities'. Therefore, unregulated providers are able to offer legal services which fall outside of these reserved activities.

Our work for the LSB focussed on three particular areas of law:

- » **Will writing and estate administration**, which includes specialist will writers, those offering 'DIY' will kits and providers of estate administration services.
- » **Divorce**, consisting of predominantly online providers of divorce services.
- » **Intellectual property**, which includes providers of services in relation to trademarks and patents, along with invention promotion companies.

Evidence was collected from a range of sources, including:

- 45 interviews with unregulated providers;
- a review of over 250 unregulated providers' websites;
- analysis of quantitative survey results, including the two legal needs surveys conducted in 2015;
- discussions with 11 regulatory bodies and organisations representing providers; and
- desk-based research of existing literature, Companies House data and online review websites.

Using the evidence collected, we identified supply-side characteristics of unregulated providers within the three areas of law. Such characteristics included the business models used, the number and market shares of providers, and marketing techniques used.

In addition, we identified the potential benefits and risks that unregulated providers present to consumers – which is the focus of this Insight. We did not, however, seek to evaluate the technical quality of the legal advice provided.

Supply-side characteristics

The three markets that we studied share certain commonalities, but also differ considerably in other respects. Some notable comparisons are made below.

The wills and estate administration market consists of over 1,600 unregulated providers. Many of the providers are sole traders that have entered the market after pursuing a different, but often related, career. This large number of providers contrasts to the intellectual property market, where we identified 26 trademark and patent providers and eight invention promotion companies. Further still, there are only five active providers in the online divorce market.

All three markets have adopted technology, but to varying extents. Online divorce providers utilise the internet and software to process divorces as efficiently as possible. Some intellectual property providers communicate and deliver their services predominantly online. There are also some 'online' wills and estate administration providers, but the majority still rely on face-to-face meetings, including in-home visits. The use of software to write the actual will is, however, widespread.

Participation in voluntary regulation also varies considerably across the areas. There are two large, established bodies for will writers that have codes of conduct and offer consumers some protection. There are various standards that intellectual property providers can subscribe to. But, for

online divorce providers, there are no such schemes (with the exception of an organisation set up by one of the providers, and its only members are the provider’s own brands).

The three types of unregulated providers that we studied are therefore very different to each other in certain respects. This may have implications for any regulatory interventions. That is, a remedy may work in some of the unregulated markets but not others.

Potential benefits

Our research suggests that consumers may benefit from the following features of the legal services offered by unregulated providers.

- » **Lower prices, on average, than regulated providers for wills and divorce.** Evidence sources differ, but the order of magnitude could be £50 for a simple will, and hundreds of pounds for an uncontested divorce. There is limited evidence in relation to intellectual property.
- » **Greater price transparency and certainty than regulated providers for wills and divorce.** Unregulated wills and divorce providers often display prices on their websites. Furthermore, they tend to charge flat, fixed fees.
- » **Service differentiation from regulated providers.** Unregulated providers offer services which utilise technological developments, particularly within divorce and intellectual property. For example, services can be obtained entirely through online channels. Wills and estate administration providers focus on in-home delivery.
- » **Good levels of client service.** Consumers of unregulated services appear to generally receive a high level of client service. Consumers report comparative levels of satisfaction in surveys, and online reviews are typically positive.

The potential benefits that may flow from these features include greater access, choice and fairness in the supply of legal services. These benefits may flow to clients of unregulated providers in the first instance, but also clients of regulated providers through competition. That is, regulated providers may react to the presence of unregulated providers by altering the service that they offer or the price that they charge. Indeed, we saw some evidence of regulated firms ‘mimicking’, to a certain extent, the business models of unregulated providers.

For the potential benefits to be fully realised, however, it is critical that consumers are able and willing to make an informed choice between providers – both between regulated and unregulated providers – and also between providers within these groups. An informed choice can be facilitated by a number of market participants, including:

- providers – e.g. by publishing prices on their websites;
- other clients – e.g. sharing experiences with friends and family;

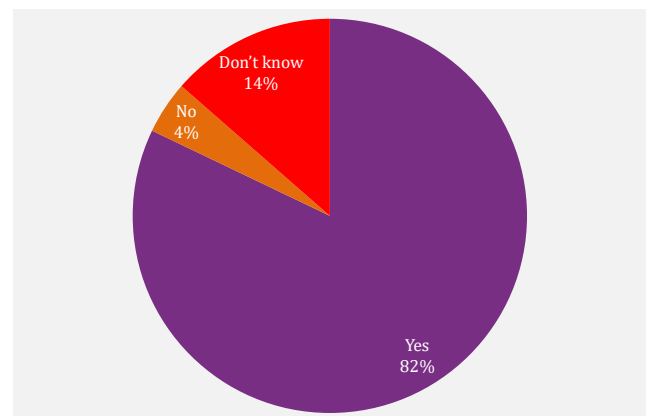
- intermediaries – e.g. online review websites and local authorities; and
- public bodies, such as regulators.

Potential risks

Without the relevant awareness, consumers may be exposed to risks. We identified the following features of the services that could create risks:

- » **Lack of awareness of regulatory status and its implications.** In general, a significant proportion of clients are unaware of the regulatory status of their provider, even though it affects the level of consumer protection they receive. Many clients assume that their provider is regulated, and do not check.

Figure 1. ‘Was the organisation that provided the legal services regulated?’, all users of legal services



Source: LSCP tracker 2015

- » **Differences in consumer protections.** Beyond general law provisions, consumers may not get access to consumer protections that regulated providers offer, such as: alternative dispute resolution schemes; indemnity insurance; compensation funds; and mechanisms to deal with firm closure. Levels of membership of voluntary regulation bodies, which mirror the protections offered in the regulated sector to varying degrees, are mixed across the different areas of law.
- » **Lack of transparency about services.** We have seen evidence that suggests providers are not always transparent enough for clients to fully understand the services they are buying, particularly within divorce and intellectual property. We have also seen examples of potentially misleading claims on provider websites.
- » **Poor client service.** As noted above, in general consumers receive a good level of client service. However, we did see some specific examples of poor service, particularly in relation to loss of confidential information and poor communication.

Furthermore, some of the characteristics of the services being provided may increase risks. Poor quality drafting in wills

and patents, for example, may only be identified years later, and due to the amount of elapsed time, the provider may not face any repercussions. Consumers who use an online divorce company will, hopefully, only use the service once and therefore will not 'learn from previous mistakes', which occurs in markets where there is repeated interactions.

Conclusion

Unregulated providers present both potential risks and benefits. Whilst our work does not allow us to quantitatively weigh up the pros and cons, it does highlight some interesting aspects, and questions, from a regulatory perspective.

- » Some unregulated markets have adopted approaches to 'self-regulate'. The wills market has adopted a 'supplier-led' approach of voluntary regulation bodies. The online divorce market has adopted a 'consumer-led' approach of online review websites (which can limit information asymmetries in relation to quality). *How effective are these self-regulatory approaches compared to statutory regulation? And, what market characteristics are likely to help and hinder such approaches being adopted?*
- » Some unregulated markets offer greater transparency than their regulated counterparts. *In light of the potential remedies the CMA set out in its interim market study report, what lessons can be learnt as to how transparency could be improved across the whole legal services market?*
- » Existing providers demonstrate that legal services can be provided outside of the regulatory regime without severe negative consequences. *But where should the line be drawn, and what factors should be used to decide this?*

Economic Insight undertakes economic research and evaluation for government, regulators and others.

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