CONSUMER HARM AND LEGAL SERVICES:

FROM FIG LEAF TO LEGAL WELL-BEING

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court action by consumers. Not surprisingly, these burdens mean that enforcement is patchy.

The main emphasis of both the sector-specific and general consumer law approaches is on 'dealing with' the provider rather than providing redress directly to the consumer who has suffered harm. These harms are likely to be continuing unresolved legal issues (because the provider has not dealt with the presenting legal need effectively or at all), economic loss, or consequential detriment for the consumer such as stress, ill-health, delays and lost opportunities.

For the most part, only economic loss will be remedied directly under the current approaches to regulation – though the Legal Ombudsman has some power to require rectification or compensation.

The Report finds that the fundamental weakness of the current regulatory approaches is their 'front-end loading'. They focus more on before-the-event requirements that reduce the *prospect* of harm, but leave consumers exposed and without redress when they try to pursue after-the-event redress for the *actuality* of harm suffered.

The current approaches also emphasise taking action against delinquent providers, which are usually undertaken by third-party regulators with limited powers to offer redress directly to individual consumers, or by the consumers themselves in (expensive and uncertain) legal action.

How individual consumers react to their presenting legal needs, and then seek – or fail to seek – advice and support, will depend on what type of consumer they are and their own legal capability. This Report identifies three broad types of consumer: the fully informed, rational consumer (broadly, the *homo economicus* of neoclassical economics), the ordinary consumer (broadly, the 'average' consumer of consumer protection legislation), and the vulnerable consumer.

Existing research of consumer behaviour suggests that we are all, in some way, likely to be vulnerable

Against this background, the Report offers an alternative approach. In affirming the conclusions and recommendations of the Final Report, it advocates for a shift in emphasis in legal services regulation. Primarily, it seeks a move away from the pursuit of a negative (the avoidance of consumer harm) to a positive. The outcome would be a positive state of 'legal well-being'.

Such a state is not so much about securing the *absence* of harm as about achieving the *opposite* of it. The concept of legal well-being imagines a state in which consumers can have confidence in their choice of legal advisers without burdensome enquiry about their regulatory status; in which the legal sector offers ease of access to advice, representation and document preparation; in which enquiry, engagement and redress are similarly less burdensome processes; and through which the legitimate participation of citizens in society is supported, in accordance with their legal rights and duties.

In promoting such outcomes, regulatory policy would need to accept that vulnerability is not exceptional, that *caveat emptor* (buyer beware) has no role in the engagement of legal services, that disclosure creates more difficulties than it solves, that competition in provision needs to be encouraged but cannot be relied on to result in fair dealing

When a state supreme court judge in the United States says that the interests of justice now require ‘breakthrough change’ (see page 136),

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This Supplementary Report has been a largely solitary endeavour, conducted through various iterations of Covid-19 lockdowns and isolation. Nevertheless, it has continued to build on the many meetings and submissions made during the course of the main independent review between 2018-2020.

I therefore gratefully acknowledge again the value of those contributions in shaping the content, concerns and possibilities explored in this Report. Similarly, I am grateful for the contributions and support of members of the Advisory Panel.

There are two other individual acknowledgements to make in relation to this Report. The first is to Crispin Passmore (former Strategy Director of the Legal Services Board and former Executive Director of the Solicitors Regulation Authority). He particularly

Glossary

The following terms and abbreviations are used in this report.

ABS	alternative business structures (licensed bodies under Part 5 of the Legal Services Act 2007), not wholly owned or managed by lawyers and authorised for one or more of the reserved legal activities
BEIS	Department for Business, Energy & Industrial Strategy
BSB	

arise from the actions of providers who are not already subject to sector-specific regulation[1].

These questions also beg further enquiry about the nature and extent of the consequences of actual or perceived harm

aggravated abuse following a complaint of domestic violence. In this case, there is harm both from the underlying legal need (domestic violence) and from the provision of ineffective legal services (aggravated abuse).

1.2.2 Systemic or structural causes of harm

1.2.2.1 The systemic deficiency

The evidence of the nature and extent citizens' unmet legal needs has been consistent, persistent, and replicated worldwide.[5] The consequences are significant and serious for society, as well as for the individuals involved (as powerfully expressed in this judicial observation from the United States[6]):

> Many thousands of our ... most vulnerable residents have serious legal problems and cannot get any help in resolving them. Many don't even realize their situations have a legal dimension. Others don't know where to seek help or are too overwhelmed to try. Meanwhile they are systematically denied the ability to assert and enforce fundamental legal rights, and forced to live with the consequences.

The acknowledgment of 'systematic denial' and being 'forced to live with the consequences' should send shivers down the spine of anyone with a concern – let alone a responsibility – for supporting the constitutional principle of the rule of law (as in section 1(1)(b) of the Legal Services Act 2007).

The particular harm here is the persistence of unmet legal needs resulting from the inability of consumers to access legal advice and representation because it is, for any reason, not available to them. This *absence of access and availability*

The next point to make here, as Sandefur explains, is that not all instances of citizens not having legal advice or representation should be characterised as 'unmet legal need' (2016: page 451):

> The conventional understanding greatly oversimplifies the idea of 'need.' If a justice problem is a situation that has civil legal aspects, raises civil legal issues, and has consequences shaped by civil law, we can consider a legal need as a special case of this phenomenon: a legal need is a justice problem that a person cannot handle correctly or successfully without some kind of legal expertise. Not all justice situations are legal needs in this sense. People are perfectly capable of handling some situations on their own without understanding the legal aspects of those problems, in the sense that the problem is resolved in a way that is roughly consistent with the law but without reference to it or contact with it....
>
> The ... challenge is figuring out when these informal solutions are consistent enough with formal norms not to threaten the rule of law and social order[7].... Sometimes we do want to make sure that people resolve their justiciable problems with explicit reference to law. For those situations where we do, people's justice situations become legal needs.

The key, then, to a 'legal need' is that the need engages an explicit reference to law.

A further point, though, is that a need with an explicit reference to law does not have to be met only with the assistance of a lawyer: it must simply engage 'some kind of legal expertise'. Consequently, not having access to a qualified lawyer will not necessarily mean that the legal need is unmet.

This is important because the evidence suggests that, over time, there are fewer lawyers available and willing to act in relation to the sort of criminal and civil law problems most often faced by individual 'consumers'. Available data shows that lawyers and law firms turn increasingly to revenue (and profit) from serving commercial and organisational interests and away from individual consumers' needs.

In England & Wales, as an admittedly rough-and-ready proxy, 'large' law firms tend to deal with the legal needs of businesses and institutions, and the smaller firms with the needs of individuals[8]. Taking firms with more than 11 partners as a working definition of 'large', the Law Society's annual statistical reports show that, in 1988, only 367 firms of 8,216 (4.5%) solicitors' firms were large. They employed 33.6% of all practising

54.2% of practising solicitors. In other words, about 70% of the increase in the number of solicitors in private practice between 1988 and 2019 had located in 'large' firms – meaning that these large firms had, on average, grown relatively even larger.

This trend shows that the 'centre of gravity' in private practice has shifted further towards the generally more lucrative areas of business, commercial and institutional law, and away from the needs of individual consumers and their everyday legal problems.

There are two particular consequences of this shift. First, in relation to criminal legal aid, the report of the Independent Review of Criminal Legal Aid records that, on any measure, there has been a significant decline in the number of solicitors' firms engaging in criminal legal aid

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1.2.3.1 Scam

Arguably the most extreme form of consumer harm is to pay for a product or service that is not delivered at all. With a scam, there is never an intention on the part of the provider to supply any product or service in return for the price paid. It is, in the vernacular, a rip-off.

For example, P might be an online provider who takes payment from C and then intentionally

it difficult for consumers to assess in advance the cost involved in agreeing to proceed.[22] In some cases – say, pre-paid probate and estate administration

clauses, or technology to provide an under-engineered will and LPA service for the reduced price (cf. paragraph 1.2.3.4 above).[25]

1.2.3.8 Poor service

This category of harm is potentially the most problematic, not least because the perception of the quality of service received can be subjective. There are often clear differences between a client's view of service and responses to concern compared to the view of the provider (see London Economics 2017).

In addition, there could be said to be degrees of poor service, and not all instances of poor service will necessarily result in 'harm' or 'detriment' to the client.

Analysis of the reasons for clients' and consumers' expressions of dissatisfaction with the providers of legal services show that the principal areas of concern are[26]:

(a) delays and failure to progress;
(b) failure to update or keep informed;
(c) mistakes and incompetence;
(d) failure to follow instructions;
(e) failure to advise; and
(f) excessive costs.

Some of these have already been identified as specific harms, such as incompetence and excessive costs (see paragraphs 1.2.3.2 and 1.2.3.6 above). It is important to note, though, that some mistakes are not necessarily seen as incompetence but as, say, 'sloppy' work (such as errors in parties' names and addresses, and false cross-references in formal documents – often resulting from cutting and pasting or the use of boilerplate templates), or inadequate computer security leaving the firm vulnerable to cyber-attack and the consequent criminal exploitation of client confidential material[27].

While all of these concerns might be expressed as 'poor service', they do not necessarily lead to harm. For example, a client might perceive there to be delays in their matters, but it could be that the provider is doing everything possible to progress it and the reason for the delay lies with third parties. In these circumstances, there is a significant difference between the delay experienced by the client (not the fault of the provider) and a failure to progress a matter (which would be the fault of the provider).

with more onerous or expensive terms. In these cases, there is clear detriment to the client.

Even where a delay is not the fault of the provider, there might nevertheless be a valid claim for not keeping the client informed[28].

1.2.4 The Utah typology of harm

As a cross-check, it might be worth a brief comparison of the approach to consumer harm taken by a regulator in a different jurisdiction. In 2020, the Supreme Court of Utah approved a new regulatory sandbox to regulate innovative approaches to the delivery of legal services in the state of Utah. It set up an Office of Legal Services Innovation to oversee the new scheme.

The Utah typology does not on the face of it include over-charging or poor service (in paragraphs 1.2.3.6 and 1.2.3.8 above), although it does emphasise in (1) the consequential effect of unresolved legal needs (as in paragraph 1.3.1 below).

Although harm can arise from a number of different causes, as considered in paragraph 1.2, the effects of those harms on individual consumers can be clustered into just three main categories: economic loss, unresolved legal needs, and consequential detriment.

However, in suggesting a limited number of categories, I do not intend to deny that those effects can be multi-faceted and have relative consequences that will be experienced differently by consumers, depending on their own individual circumstances.

As the OECD

having an effective will in place could lead to C's estate facing unwelcome claims from dependants or from tax authorities.

Unmet legal need can arise because of systemic failings (cf. paragraph 1.2.2 above), as well as from the *consumer's* own decisions and actions (which could be informed and rational as well as arising from ignorance or unfortunate circumstances: cf. paragraphs 3.4.3 and 3.4.4 below). Both unmet and unresolved legal needs should be of particular concern to regulators. This is because they will arise from some failure on the part of market structure or of a provider.

It is also possible that current or past experience of legal services leading to unmet or unresolved legal needs will become the principal reason why future legal needs are not

1.3.3 Consequential detriment

Just as the OECD identifies different types of financial detriment (cf. paragraph 1.3.2 above), so it recognises different types of non-financial detriment. These include (OECD 2010: page 55, Table 3.1 and OECD 2020: page 11, Table 2.1):

adverse effects on health;

psychological issues (such as stress, anger and embarrassment);

delays, lost time and opportunity, as well as the inconvenience of addressing problems caused by harm;

arise as a result of experienced harm, either on its own or in combination with one or both of the other two. It is, in that sense, an almost universal experience of using legal services.

Indeed, it would be fair to observe that stress will often arise in otherwise *successful* engagements with the law and legal services providers. It is not, therefore, an outcome only of troublesome relationships. However, it is unfortunate that legal services cannot always deliver entirely positive outcomes from successful engagement.

This is important because a positive sense of well-being is arguably what should be

CHAPTER 2

(despite the specialisation inherent in most of them). The front-line regulators[34] are responsible for ensuring authorisation and professional compliance; the Legal Ombudsman (LeO) is responsible for investigating and, where appropriate, defining redress for unresolved complaints from consumers about poor service from authorised providers.

Once a provider is authorised for at least one reserved activity, their regulator (and LeO) will also have jurisdiction over any non-reserved activities performed by that provider. No distinction is then drawn between legal services that must be delivered only by regulated providers (reserved activities) and those that need not (non-reserved activities). However, the vast majority of legal services that are provided to consumers by regulated providers are, in fact, non-reserved[35].

This approach to the reserved activities is not risk-based: the reserved activities are the result of historical practices and anachronisms.

In other words, the sector-specific approach of the 2007 regulatory framework does not – and, indeed, cannot – apply.

It would perhaps be potentially misleading to describe this approach as ‘unregulated’, since general consumer law will apply.

(which "tend to focus almost entirely on enforcement against criminal behaviour"[42]) and the Competition & Markets Authority (CPUTR, regulation 19(1) and (2)).

However, rights of redress for the consumer (including rights to unwind a contract, to a

product or service provided. While its influence in legal services is reduced, this Report suggests that it has not entirely disappeared.

(3) Assumption of a fully informed

Indeed, in the absence of any obligation of disclosure or professional ethics, it appears that the provider is still entitled to say nothing at all and rely on *caveat emptor*.[46] The doctrine very clearly remains the default position and is, for these reasons, of more consequence in relation to unregulated providers.

Where disclosure requirements are introduced, they might be partial or targeted (for instance, limited to business-to-consumer transactions), specific or targeted (as with price information), and even expressed negatively (as, in the CPUTR, not to omit or hide material information). Any obligation on providers to comply with disclosure requirements will add costs to their transactions that, in turn, are likely to be reflected in increased prices to consumers.

Further, in circumstances of partial or incomplete disclosure, the burden of *caveat emptor* is not removed from the buyer, and appropriate due diligence might still be required. The buyer's search costs are not therefore eliminated by disclosure, and the parties' joint transaction costs could easily be raised by extension and duplication of effort (cf. Weinberger 1996: page 418).

2.3.4 *Homo economicus*

Stucke & Ezrachi write (2020: page 71):

> On paper, competition works well. Assuming that we generally know what serves our own interest, and that we have the time, judgment, mental energy, and willpoudAssumegyure, a24 18 621.92 cr

used even when they have additional data that would enable a more accurate and precise evaluation" (Urbina & Ruiz-Villaverde 2019: page 68).

Further (Urbina & Ruiz-Villaverde 2019: page 69): "Richard Thaler (1980) … concludes that the neoclassical model of consumer behavior is particularly poor at predicting the optimizing behavior of the average consumer. This is not because consumers are fools: rather, they do not use all of their time attempting to make the best decisions".

In short, the "neoclassical scheme of homo economicus is clearly inadequate and deficient in portraying the complexity of human behavior" (Urbina & Ruiz-Villaverde 2019: page 85). Alternatively put, it is "simply a useful, yet unrealistic assumption about human behavior … that is only applicable where human action takes place under certain institutional preconditions" (Braun 2021: pages 231 and 232).

Nevertheless, it is arguably more important to recognise the limitations of the concept than to dismiss it. We can perhaps accept that "context rather than cognition is important in determining behaviour" (Coyle 2019: page 4). However, we "do not yet understand which aspects of context determine when people (or other entities) act in the individual rational choice mode or [make] 'behavioural' decisions shaped by social or psychological factors, or by rules of thumb" (Coyle 2019: page 10).

In particular, whether a choice driven by emotions is 'rational' "depends on whether you think that emotions are natural responses we should respect, like eating and staying warm, or evolutionary nuisances our rational powers should override" (Pinker 2021: page 190).

Pinker also observes (2021: pages 175 and 181; emphasis in original):

> Rational choice is not a psychological theory of how human beings choose, or a normative theory of what they ought to choose, but a theory of what makes choices *consistent* with the chooser's values and each other. That ties it intimately to the concept of rationality, which is about making choices that are consistent with our goals....
>
> Utility is not the same as self-interest; it's whatever scale of value a rational decider consistently maximizes....
>
> But we do always want to keep our choices consistent with our values. That's all that the theory of expected utility can deliver, and it's a consistency we should not take for granted.

Rationality is not, therefore, an objective condition, because utility and choice are

CHAPTER 3

CONSUMERS, CAPABILITY AND ENGAGEMENT

One of the great challenges when thinking about the appropriate regulatory responses to consumer harm is that not only is the nature of harm varied but so is the nature of consumers themselves and how they respond to their legal predicament. This means that the effects of any harm

Further, there is evidence that (Maule 2013: page 25):

> consumers often choose by taking account of a single factor. In the legal services context this could involve choosing a provider by taking account of a single factor such as price, availability or recommendation from family or friends. The use of simplifying strategies provides a serious challenge to the view that consumers are able to make informed choices

Consequently, experiencing legal issues "has an additive effect. Each time a person experiences a problem they become increasingly likely to experience additional problems" (Pleasence et al 2004a: page 31). In particular, "domestic violence was

A key determinant of outcome and effect will be the consumer's legal capability throughout the interaction within a consumer context. Legal capability can be defined as "the personal characteristics or competencies necessary for an individual to resolve legal problems effectively" (cf. McDonald & People 2014: page 2). It is a multi-dimensional faculty, such that deficiency in any one dimension may limit a person's ability to resolve issues effectively.

Wintersteiger describes the conceptual model of legal capability as encompassing subjective capabilities (2015: paragraph 2.7): "the skills, knowledge and confidence that are needed to cope with day-to-day legal situations"[58]. This capability is affected by socio-demographic factors, such as (2015: paragraph 2.8; cf. paragraph 3.2.3.1 above):

> age, gender, ethnicity, household composition, housing tenure, level of education, household income, employment status, and health status. Other factors such as attitudes and motivations may also help to explain someone's level of legal capability.

There is therefore no doubt that vulnerability and disadvantage affect both consumers' legal needs and their capability to deal with them. As the OECD observes (2019: page 11), justiciable problems "disproportionately affect disadvantaged groups, and can create and exacerbate disadvantage…. Disadvantaged people can draw on fewer resources and have less capability to avoid or mitigate problems."

The issue of how to define and measure legal capability is a significant challenge in considering the effects of vulnerability and disadvantage. The OECD states (2019: page 86):

> The ability of individuals to respond effectively to justiciable problems – and, linked to this, the support that may be required to meet legal needs – varies with legal capability. The concept of legal capability centres on the 'range of capabilities' … necessary to make and carry through informed decisions to resolve justiciable problems. There is no consensus on the precise constituents of legal capability, but there is much agreement among recent accounts of the concept. All reference, to some extent, the following constituents: the ability to recognise legal issues;

difficulty of navigating court processes, a perception that the costs of pursuing legal action are high, and the reservation of certain legal activities to (relatively expensive) lawyers. The decision to represent oneself therefore usually arises from believing that a legal need should be pursued but that the cost or other burden of engaging legal representation is too high.

The self-representing consumer might well be described as either fully informed and rational, or ordinary, and as having a high or at least medium degree of legal capability (that is, sufficient confidence and self-efficacy to take on the burden of self-representation). It seems unlikely that an individual who is vulnerable or with low legal capability would have sufficient confidence or self-efficacy to do so.

The existence of self-representation, and any increase in its preponderance, may or may not be evidence of unmet legal need. In one sense, self-representation by definition suggests that a legal need does not go unmet. However, the position of this Report is that, as discussed in paragraph 1.2.2.2 above, a legal need will be unmet if it does not engage *any* kind of legal expertise or experience.

Self-representation, therefore, is an instance of legal expertise not being engaged and, in this sense, the legal need is unmet. Nevertheless, the absence of that engagement could be intentional or unavoidable: in the terms used in paragraph 3.4.4 below, it could arise from informed or constrained inaction.

The perils of self-representation are compounded by the implications of *caveat emptor*

Most consumers have a limited ability to absorb information because they buy and use legal services irregularly and are inexperienced in doing so. This will particularly be the case for vulnerable consumers but, as we have seen (in paragraphs 3.2.2 and 3.2.3 above), even otherwise 'ordinary' consumers can become behaviourally and situationally vulnerable.

In turn, these factors influence and then determine a consumer's legal capability – their confidence in achieving an outcome, their self-efficacy in addressing their legal needs, and their belief that a just outcome to those needs is available and accessible.

The dominant regulatory response to asymmetry of information and power is greater transparency and disclosure to consumers. The objective is an understandable attempt to level the imbalance and put consumers in a position to be as well-informed as possible in making their choices. It is intended to empower them by improving their legal capability.

The argument runs that transparency will enable consumers to make informed choices, and thereby drive greater competition among providers, leading to lower prices. Where the argument might fall down, though, is on the central notion of choice. There is no doubt that choice is intrinsically a good thing. As Markus & Schwartz explain (2010: page 344):

> Choice is what enables each person to pursue precisely those objects and activities that best satisfy his or her own preferences within the limits of his or her resources. Any time choice is restricted in some way, there is bound to be someone, somewhere, who is deprived of the opportunity to pursue something of personal value.

Unfortunately, ever-greater transparency and disclosure is more likely to lead to *information overload* and *choice-induced paralysis*. This simply exacerbates the original challenges of inexperience and cognitive limitations. In short, the la(e) 1 o1.92cm04Tc 46 0 0 62 (b) 3 1 (g

action. Or, confronted by information overload, they may just be overwhelmed by the situation and become *disengaged*, whether reluctant or relieved to be so.

Accordingly, the current regulatory framework is simply not delivering for the benefit of the consumers that it is supposed to support. Virtually all start their interactions with p0.24 0 8Gw34 0 0 0.24 18 621.92 cm BT -0.0025 Tc 46 01 (u) 1(p) 101512.01 (wor) -1 (k) -1 (1 T0) -1 (or) -T

The consequences of increasing self-representation, disengagement and exclusion are often described as ‘the crisis in access to justice’.

For me, it is a much broader issue, and the characterisation of the challenges as relating to ‘justice’ can lead to a narrowing of the perceived options. I shall return to this theme

CHAPTER 4

NATURE AND VALUE OF CURRENT REMEDIES

consumers of legal services are not fully or appropriately supported at the moment, in

perhaps most likely to be dealt with, though, as unresolved poor service by way of complaint to the Legal Ombudsman. If upheld, the remedy could be limitation or repayment of the provider's fee, plus interest and perhaps compensation[77].

Although over-charged,.927d,.q 01(r's fe) 1 (e) 140y way of

resolution (in terms of both numbers of staff and their understanding of consumer interactions in legal services). Here, too, there have been recent struggles.[80]

4.3.1 Nature of remedies

As with the regulated sector (paragraph 4.2 above), so the unregulated sector can cause all three effects that arise from the types of consumer harm identified in Chapter 1:

While recovery for economic loss might therefore be possible, there will be no remedy for the remaining unresolved legal need or for consequential detriment.

(2) ***Incompetence:*** Redress for losses sustained as a result of a provider's incompetence must be sought through a civil legal action for negligence. The securing of financing, the burden of proof and the costs risks will lie with the consumer-claimant. Some of the risks might be offset by contingent fee arrangements, and court might be avoided altogether by insurer-led settlement proposals if the provider has (voluntary) professional indemnity insurance.

Alternatively, the provider might have contravened the requirements of professional diligence (CPUTR, regulation 3(3)(a)), meaning "the standard of special skill and care which a trader may reasonably be expected to exercise towards consumers" (CPUTR

specific categories of unfair commercial practice set out in CPUTR, regulation 3 (see paragraph 2.2.2 above). This includes, for example, actions that materially distort consumer behaviour, false information, confusing marketing, omissions and hidden information. Still, rights of redress must be pursued by a consumer through civil proceedings[82].

regulatory or consumer law consequences discussed in this chapter might be available where a consumer decides against retaining a provider.

First, if the consumer's only reason for not engaging legal advice or representation arises from the wrong or misguided advice or assertion of a *regulated* provider, there

CHAPTER 5

LEGAL WELL-BEING

It should come as no surprise that: “Legal problems routinely impact on the wellbeing of those who face them. This impact can be grave, and by acting to increase the risk of further legal, social, economic and health problems, can contribute to vicious cycles of social exclusion.” (Pleasence et al 2015: page 8).

The connection between general health and legal services was raised in paragraph

Our starting point might therefore usefully be to explore the extent of any 'read-across' from those professional spheres. In both health and finance, the consumer is typically at a similar disadvantage in terms of knowledge, expertise and experience, both in the subject-matter of their engagement with providers as well as the nature and frequency of that engagement.

While there is no settled definition of well-being[89], there do seem to be a number of accepted features or indicators of it. In short, it can be explained as "doing well physically, mentally, and financially" (Xiao 2015: page 3). I would add 'socially'. More comprehensively, it can be described as (Ruggeri et al 2020: page 192):

> the combination of feeling good and functioning well; the experience of positive emotions

much of a sense of well-being might be founded on how individuals perceive their existence (cf. Magyar & Keyes 2019: page 389),

the absence of malfunction [such as disease, disorder, or problems]; rather, well-being consists of the presence of assets, strengths, and other positive attributes".

Although empowerment implies 'agency', that is, the ability to make choices and act, I agree that we should not simply equate well-being with the economists' notions of 'welfare' and 'utility' (cf. Thompson & Marks: page 8 and Austin 2016: page 4). There is more to it than that.

In addition, and in line with the earlier critique of the rational actor implicit in the concept of *homo economicus* (see paragraph 2.3.4 above), 'choice' does not imply a freely choosing individual actor who is "somehow or another disembedded from the social relations and networks in which they are immersed" (cf. Hoggett 2001: page 52).

A key part of well-being arises from the feelings of connection and relatedness that result from personal relationships (Ryan & Deci 2001: page 154; Huppert & So 2013: Table 1). Browne tells us that this is "because social support reduces stress, provides a buffer for negative events, and enhances self-esteem" (2015: page 3). A 'normal' consumer would not therefore disregard the effects of their decisions and choices on their social reference groups.

The following summary by

By focusing on individual well-

> cultural, and institutional relationships that profoundly affect our destinies and fortunes, structuring individual options and creating or impeding opportunities.... [We] are all, and always, dependent upon societal structures and institutions, which provide us with the assets or resources that enable us to survive, and even thrive, within society.

The resultant 'resources and mindset' of any current state of well-being that I referred to above in turn determine the resilience that individuals can then demonstrate in dealing with the various challenges in their lives. In other words (Fineman 2017: page 146): "Although nothing can completely mitigate our vulnerability, resilience

In sum, well-being and resilience are the result of both personal and institutional factors, including those for which the state is responsible. The presence of positive well-being and its associated resilience will therefore determine how, and how well, an individual can respond to their legal needs.

In addition, though, changes in the embodied or embedded elements of well-being can improve or detract from resilience, and themselves give rise to new legal needs. For example, an injury, loss of employment, or relationship breakdown, could all lead to emergent legal needs at the same time as the individual's well-being and resilience are consequentially compromised.

In this context, the Government's policy agenda for 'building back better' and 'levelling up' (HM Government 2022) provides a clear connection between policy intention and well-being. As implementation of these policies proceeds, there should be an inevitable improvement in general well-being across the population.

It is probably obvious that overall well-being is founded on other described and specific components of well-being (such as general health and well-being, financial well-being, social well-being). This overall state will be key as we now turn to a conception of 'legal well-being'.

In the Final Report, I identified the legitimate participation of citizens in society as one of the two main foundations of the public interest (IRLSR: paragraph 4.2.1). In this sense, "the conditions for a just society come to be defined as the recognition of the personal dignity of all individuals" (Honneth 2001: page 43).

Put differently, this dignity arises from "the reciprocal recognition through which individuals come to regard themselves as equal bearers of rights from the perspective of their fellows" (2001: page 49). The converse of this is "the denial of rights and ... social exclusion, where human beings suffer in their dignity through not being granted the moral rights and responsibilities of a full legal person within their own community" (2001: page 49).

The connection between personal well-being and higher-level concerns of the public interest is

The dimensions of confidence, self-efficacy and belief in 'the system' that underpin legal capability, as discussed in paragraph 3.3 above, arguably emphasise only subjective dimensions of well-being. On this view, legal capability would be a necessary but not sufficient element of a broader notion of legal well-being. Focusing on it could lead to other crucial aspects of well-being being missed.

Although confidence and self-efficacy

CHAPTER 6

FOUNDATIONS FOR REFORM

There is no easy or obvious solution to the issue of addressing consumer harm or securing well-being

they are prevalent, universal, constant and complex. In turn, rather than focusing on vulnerability, this should nudge us towards considering how to shape and use regulation to support a more positive state of legal capability and well-being for all consumers of legal services.

6.2.2 The doctrine of *caveat emptor*

Given that all consumers are, at some point, in one way or another, and to some degree, vulnerable or lacking in legal capability, I believe that the default position or foundations for regulation to address the potential for harm to consumers in their experience of legal services cannot be either any vestiges of *caveat emptor* or the notion of a fully informed, rational consumer.

Fineman elaborates that what is needed is (2019: pages 342 and 355-356):

> a state that is responsive to universal human needs and for the reorganization of many existing structures, which are currently based on a conception of legal order that unduly valorizes individual liberty and choice and ignores the realities of human dependency and vulnerability....
>
> Our contemporary legal subject is posited as an autonomous and independent being whose primary demand is for liberty or freedom from state interference.... This enlightenment vision of legal and political subjectivity has ... formed the basis for the rational, self-interested agent in economic theory.
>
> [Instead], a legal subject that is primarily defined by vulnerability and need, rather than exclusively by rationality and liberty, more fully reflects the human condition.

Consequently, it is time for policy-makers and regulators to accept that "the rational response of consumers to the profusion of complex information is to stop shopping around and disengage from the market. Such an approach by consumers will naturally have a dampening effect on competition" (Riefa & Gamper 2021: paragraph 2.5).

In other words, an alternative approach would accept the rationality of consumer disengagement. The consequence of this acceptance is a recognition that "a much larger group of consumers can be made vulnerabl

were so emotionally drained by the worry about the problem that even if they would normally feel competent and confident, at that particular time and in those particular circumstances they were not able to manage dealing with the problem. They did not want to be *empowered*, they wanted to be *saved*. When respondents commonly talk about abandoning or giving up because of 'the hassle' involved in trying to deal with a problem, this simple colloquialism actually obscures what is in many cases an important form of paralysis.

The psychological or mood states that Genn (and others) describe contribute to reduced general and legal well-being. Perhaps, then, we should shift our regulatory policy emphasis away from empowering consumers and towards saving them – from both their underlying legal need and from 'the hassle' involved in dealing with it.

6.2.4 The role of public legal education

Part of the reason for this could be that people assume that the requirements of the law coincide with their beliefs and therefore address legal questions according to their own notions of fairness: in other words, people "tend to assume the law concurred with what they thought it ought to be" (cf. Pleasence et al 2017: pages 839 and 840).

Wintersteiger's reference above to ignorance in relation to consumer law is picked up by Pleasence et al. Consumer issues are the most common form of justiciable issue faced by citizens and on which they express the greatest confidence in their knowledge of the law. This confidence is misplaced (2017: page 855):

> the profound mismatch between people's actual and professed understanding of the law in the case of consumer law is likely strongly influenced by the practice norms of retailers. Respondents' beliefs about consumer law, while strikingly wrong, are also strikingly in line with retail practice, where cancellations of orders for late (or even on-time) delivery are routinely accepted, refunds are consistently provided for 'mistake' purchases and defective products are ordinarily replaced with new ones.

But even addressing the knowledge deficit through PLE is no guarantee of improved outcomes, for two reasons. First, because "[one] consequence of the tendency of beliefs about the law to align with social attitudes is that ... erroneous beliefs may prove resistant to being dislodged" (Pleasence et al 2017: page 841).

The second reason is that "4 18 621.9 cm BT -0.0019 Tc 46 0 0 46 835.6435 -58580Tm 1-580T35 -5855

There can be no doubt that (Pleasence et al 2017: page 858):

> public ignorance of law is ubiquitous, can act to undermine efforts to navigate the legal framework of everyday life, impacts on the outcome of legal issues and imposes burdens on legal institutions. It strikes at law's efficacy, efficiency and legitimacy.

Nevertheless, the implication cannot be that the removal of ignorance through PLE can shoulder the burden or even be the principal means of addressing this consumer deficit.

6.2.5 Lawyers are always best

The final assumption to be challenged is the longstanding notion that, in any circumstance involving the resolution of a legal need, a lawyer will always represent the best choice and lead to the best outcome.

For as long as there is a monopoly for lawyers over the practice of law (and whether that is the result of legal or regulatory requirements, or a matter of fact observable in the sector

it might also present a marketing opportunity for lawyers, since many people might initially seek non-lawyer

shape the effectiveness of that competence, particularly when non- or paraprofessionals try to carry out their work in contexts dominated by professionals, such as courts.

In the end, it may be that regulation should focus less on the technical content of the

6.2.6 Summary

In summary, in considering a different approach to legal services regulation that enhances consumers' access to legal services as well as their sense of legal well-being, we should:

(a) question the continued role and applicability of the doctrine of *caveat emptor* (paragraph 6.2.2);

(b) revise assumptions about the roles of transparency, competition and consumer choice, and the idea of a fully informed, rational, empowered consumer (paragraph 6.2.3);

(c) be clear about the role and limitations of public legal education (paragraph 6.2.4); and

(d) accept that lawyers are not always best placed to offer legal advice and representation

- We want the legal services sector to provide information

Of the adults in the YouGov sample who had experienced a contentious legal issue (47% of the sample), only 16% of them described their issue as 'legal'. They were as likely to describe it as a bureaucratic issue, and more likely to identify it as an economic or financial matter (28%) or a family/private matter (18%).

In seeking help, therefore, YouGov respondents approached a wide variety of 'advisers',

The point at which information is given, and the context in which it is given will be critical to whether or not the consumer is, in fact, 'informed'.[114] Too much of the wrong sort of information at the wrong time is more likely to lead to disengagement and not fulfil its goal of disclosure and transparency. In particular, disclosure of how to make an after-the event complaint (and to whom) does not seem to help the consumer with a prior decision to make.

Arguably, therefore, one of the most valuable elements of intervention to support consumers and enhance legal well-being would be to take out of the equation at the point of engaging legal advice and representation the (in reality unasked) question 'Will I be protected if something goes wrong?' This can be achieved by offering meaningful protection to *all*

> firm that does not protect … (and correspondingly has a lower price). Thus, in general, adopting a mandatory standards regime for nearly all types of consumer information is not a socially optimal approach to protecting [consumers]….
>
> In a dynamic setting, firms would have additional strategies for communicating trust to their customers, including using the value of a brand name as a bond that would be forfeited if trust is violated, or signaling trust through potential lost sales in a [repeat sales] setting. But such strategies will not be available to many retailers, particularly in settings with infrequent interaction or short/nonexistent purchase histories.
>
> Building on this point, it is important to note that none of the approaches above is a necessary or sufficient condition to build trust….

If *caveat emptor* is not a reliable foundation for legal services regulation (see paragraph 6.2.2 above), and mandatory standards are thought to be too burdensome or expensive to give rise to net gains in the sector (cf. paragraph 6.3.2 above), then what Tang et al describe as 'seal-of-approval

CHAPTER 7

A WAY FORWARD

Returning to the foundations of regulation in the public interest (IRLSR: paragraph 4.2), one of the objectives identified there is to enable the legitimate participation of citizens in society. Such participation is not possible if citizens are not able to access legal services or to act with confidence in their dealings with providers of legal advice and representation.

The analysis in this Report seeks to show that the current regulatory framework does not provide a sufficient basis for consumers to secure access or to act with confidence.

support to citizens with legal needs but who are subject to some form of sector-specific regulatory oversight. This could also increase consumer confidence, trust and protection.

Accordingly, there are two pillars to my proposed way forward. The first seeks to address the consumer harm of unmet need (paragraph 1.2.2 above) by supporting systemic or structural

It is true that those unregulated providers could adopt voluntary self-regulation and the

7.2.2 Lawtech

As with the Final Report (see IRLSR: paragraph 4.9), a detailed review of lawtech

Digital legal technologies hold

There must be a strong opportunity and future for lawtech to play a role in supporting citizens who wish to pursue their legal rights and duties. However, lawtech is one part

> insurance, early intervention programs for children with special needs, and other public benefits.

Further (2010: page 8):

> by redressing the complex social issues faced by their patients – including, for example, those associated with housing access, substandard housing conditions, employment problems, limited income and domestic violence – legal advocacy can benefit the patients

(a) consumers' interactions with providers in the sector are less daunting and uncertain;

(b) a common set of explicit expectations about what providers should do to manage their relationships and interactions with clients and consumers;

(c) clarity about which providers are regulated in their provision of legal services, and who is not permitted to offer such services to the public;

(d) relative ea

However, I believe that the most cost-effective approach to offering a seal of approval (that is, confidence to consumers) would be public registration. The Final Report recommended a single public register for all providers of legal services (IRLSR: paragraph 4.8.3). In the short term, however, the current framework could only be applied to those who are regulated under it, leaving those who are presently unregulated beyond the scope of registration.

Accordingly, the Final Report also made a short-term recommendation for a parallel approach applying to the unregulated sector, including a public register (IRLSR: paragraph 7.3.1.2; see also the Annex to this report). In time, the two approaches could be brought together, leading to a single, sector-wide, register.

For me, mandatory public registration would represent the minimum necessary intervention, leaving the regulator to determine whether, for certain services, providers or consumers, the evidence of risk suggests that the minimum intervention needed to go further and include, say, specific standards (see paragraph 7.3.5 below) or requirements for accreditation (see IRLSR: paragraphs 4.5.2.3, 5.4 and 5.6.3).

I therefore support the plans of the Legal Services Board to work on the development of a single 0 0.2l Tf[012 Tc 413(her) -1ay, wbelc (t) -1 (0 0. (i)-1bu (t) -1(si) -1 (tsl) -1 (t) -1(go) -1an(y) -1(si)

and from working in regulated financial services activities in the UK[128], the register of education professionals prohibited from teaching[129], and the register of estate agents prohibited from operating[130].

The Final Report raised the issue of prohibition orders and barred lists for legal services (IRLSR: paragraph 4.8.3.3). Alongside the public register of legal services providers, the regulator could maintain – also for public inspection – a 'barred' or 'prohibited' list of individuals and entities who have been removed from the register or who are otherwise considered unsuitable to be placed on the register or to be involved with a legal provider as an owner, manager, or employee.

The UK Law Commissions declared themselves in favour or such prohibitions in the health sector, for reasons that are worth setting out in full (see Law Commissions 2014: pages 67-68):

> 5.49 Proponents of barring schemes argue that they are a proportionate and cost-effective alternative to full statutory regulation, and ensure higher levels of public protection than voluntary or self-regulatory arrangements. Whilst there is a danger that some degree of public confusion and misunderstanding may arise if negative, 'barring' lists are maintained by the regulators alongside the positive lists constituted by registers of professionals, such misunderstanding is unlikely to be significant and could be addressed by public information campaigns. In any event, we think that the potential advantages of negative registers outweigh the drawbacks....
>
> 5.51 .... There would be common criteria for imposing a prohibition order, including:
>
> (1) a breach of a code [of conduct] (where one has been issued);
> (2) an order is necessary for the protection of the public or otherwise in the public interest; and/or
> (3) certain convictions, cautions or banning decisions.
>
> 5.52 In terms of sanctions, we think there should be a binary system which simply determines whether or not a person is barred (including interim barring). The schemes should not allow for the use of conditions or warnings. We also consider than an individual to whom a prohibition order relates should be able to apply to the regulator for the order to be set aside....
>
> 5.53 It should be a criminal offence for a person included on a barred list to work as a relevant professional, or perform the activity or work in the relevant occupational role prescribed by the regulations. [Powers should be given] to specify any information that must be included in any individual prohibition order or register of prohibited persons, and to make provision about the publication of information relating to a prohibited person.

In 2016, the Professional Standards Authority published a detailed evaluation of the feasibility of prohibition order schemes for unregulated health and care workers. It contains many valuable insights and considerations to be taken into account that are relevant to such schemes generally (see PSA 2016).

Whereas positive registration schemes can be funded through registration fees, registers of prohibited persons pose different issues in relation to covering operating costs. To my mind, the issue resolves to this:

(a) The introduction of mandatory registration that would extend to presently unregulated providers would offer assurance to consumers and the public that in future there would be a single, accessible reference point to establish whether a current or prospective provider of legal services was regulated (if on the register) or not (if not on the register). Through registration fees, such a scheme could cover its costs of operation.

(b) If a registration scheme for unregulated providers is not supported, then the only alternative way in which consumers might be better protected than they are now from rogue unregulated providers would be for a prohibited list to be created for those providers in respect of whom the regulator[131] judges that a

7.3.4 The role of consumer dispute resolution

Zorza & Udell suggest that (2016: page 1310): "a consumer protection system of regulation could potentially focus on post-error enforcement, rather than on accreditation, examination, and other systems that tend to create barriers to entry and raise costs". For reasons that could make regulation less intrusive and market-dampening, as well as more cost-effective, combining consumer dispute resolution with mandatory public registration does appeal in principle.

We have already seen (and as acknowledged by BEIS) that remedies that rely on private action by consumers through the courts do not offer a readily accessible solution for most consumers for most forms of harm (see paragraph 2.2.2 above). It is not surprising that many recent initiatives in the sphere of consumer protection and redress have therefore focused on alternative dispute resolution (ADR), assuming that this must be a better route to a solution.

Graham explains (2021: paragraph 10.6):

> The future for consumer disputes lies in ADR, rather than the courts. It is already the case that most consumer disputes are dealt with by ADR, rather than the courts and the workload of these bodies seems to be increasing. From a consumer perspective, there are some good reasons for this. First, consumer disputes are not confined to complaints about legal entitlements but encompass wider issues such as delay, poor service, etc. ADR can encompass these issues whereas courts cannot, unless they can be seen as part of the legal obligations of a provider. Secondly, ADR typically offers some form of advice and assistance both initially and, in the case of Ombudsmen, as a case proceeds. The court

Some will therefore assert that CDR changes the emphasis "from finding a just solution towards finding an acceptable solution" (Graham 2021: paragraph 10.2.2). It raises the question of whether this is a failure of justice, or a pragmatic compromise to mitigate the risks of any greater cost, delay and stress of making a formal civil claim.

Despite the adoption of CDR mechanisms, it seems clear that they are not yet a universally available or entirely satisfactory way of resolving consumer disputes or of leading to redress for consumer harm. Nevertheless, the reality is probably best expressed by Gill et al (2016: page 463):

> consumers will be increasingly likely to

However, unless otherwise

My preference therefore remains for an extension of mandatory CDR jurisdiction to include currently unregulated providers of legal services. This would offer greater consistency of protection for consumers across the sector. The role of a legal services ombudsman was explored in the Final Report (IRLSR: paragraph 5.3.2).

Given current concerns about the efficacy of the Legal Ombudsman, it need not in my view follow that an extended jurisdiction must incorporate LeO; but any alternatives would – at least in the short term – need to be overseen by one or more of the Ministry of Justice, the Legal Services Board, or the Office for Legal Complaints (distinct from its continuing oversight role in relation to LeO).

Alternatives to extending LeO's jurisdiction could be considered. This could include allowing the OLC to approve alternative CDR schemes for providers to adopt, in a way

In conclusion, my view is that only mandatory CDR, appropriately designed and administered, can adequately offer investigation and redress relating to harm arising from the actions of legal services providers

personal difficulties, and many do not think of themselves as ‘vulnerable’. In consequence, staff guidance on how to spot verbal or behavioural indicators that an individual may be experiencing difficulties, and how to encourage disclosure, is vital to achieving positive outcomes.

As recognised in paragraph 6.4.2 above, such an approach could benefit more consumers than only those who are identified as vulnerable.

BS18477 also offers an annual audited certification process, so that organisations that meet its requirements can signal their implementation of it to consumers and so offer additional confidence. This would be another form of a ‘seal-of-approval’ approach: see paragraph 6.4.3.2 above.

Businesses that have implemented BS18477 have identified six key benefits (Hunter 2021: paragraph 9.3.1):

(1) allow

clients and regulators (including CDR providers) about the basis on which actions and outcomes might be assessed after the event.

7.3.6 Supervision

The existing framework does not define the number of non-lawyers that a lawyer can responsibly supervise, specify the tasks expected of a supervisor, or provide guidance regarding what might constitute negligence by a supervisor. Nor does it establish whether certain assumptions exist about standards of care for supervisors or non-lawyers. These ambiguities might allow reliance on non-lawyers to expand in some contexts where supervision by attorneys is attenuated, while chilling expansion in others. Nevertheless, it

Also, if insurers perceive that regulators are not taking sufficient action in response to risk, they will most likely price the

I accept that compensation funds are not uncontroversial or devoid of problems (see IRLSR: Viewpoint 2, pages 62-63), and – like PII – are certainly not free of cost implications. However, I would again (cf. IRLSR: paragraph 5.3.1) refer supportively to the experience of the Professional Paralegal Register, which manages to secure both PII and compensation fund contributions at a cost-effective level, and does not deter registered providers from the sector.

The Final Report addressed the question of the timing for reform (see IRLSR: Preamble and paragraph 7.1). I remain of the view that short-term reform is required. None of the consumer issues addressed in this Supplementary Report have eased in the 22 months since the publication of the Final Report. If anything, the

The difficulty faced by many consumers is summed up in Keene et al's description of the process of trying to find a lawyer as "challenging, expensive, and consuming of scarce emotional energy", and of

I believe that the proposals in this chapter are consistent with the following important considerations identified by Zorza & Udell (2016: page 1291):

> The purpose of regulation is to benefit the public. Prohibitions are warranted only insofar as they protect consumers and increase access to justice. The public is now deeply skeptical of professions that self-regulate in the interests of the profession itself.
>
> Regulation need not be an 'either/or' matter, but should take into account the breadth of circumstances. It may now be appropriate to allow 'intermediate' categories of legal practice by non-lawyers that would not otherwise be handled by a[redacted]neys, and that were inconceivable when the structure of regulation was p[redacted]
>
> S[redacted] that might traditionally have been considered the 'practice of law' m[redacted]ant continued prohibition under the unauthorized practice laws. For ex[redacted]use many people now have access to higher education, non-lawyers m[redacted]positioned to provide informational services than they would have be[redacted]rly twentieth century.
>
> Ad[redacted]chnology may provide new opportunities for non-lawyers to assist people with legal matters....
>
> Niche practice areas that are currently not being adequately handled by private attorneys[1] may offer opportunities for practice by non-lawyers, especially for the specific tasks that are relatively repetitive, or that depend on technical knowledge.

That the United States faces substantially the same challenges with unmet legal need

produce a more consistently observable constant: a

Though also welcome and arguably overdue, simplifying court and other formal processes in an attempt to make it easier for consumers to engage directly with substantive legal issues (cf. footnote 97 above), will similarly not deal with the challenges of enabling and protecting consumers[139].

These limitations on the efficacy of disclosure, PLE, increased provision or simplified substantive procedures in tackling the challenges arise because there is so little in the current approaches to regulation that gives the consumer immediate and low-friction access to redress.

Admittedly, all of these initiatives might improve the quality of provision or otherwise reduce the need for redress; but they do not help those consumers who still find themselves disadvantaged or harmed. They might reduce the *potential* for harm, but they fall short in dealing with the *actuality* of harm suffered.

In both the regulated and unregulated sectors, the consumer is required to take action. This is experienced as expensive, uncertain and stressful, and is detrimental to health and well-being: it compounds the initial problem, and compels the consumer to 'take on' a provider in their own expert sphere. At least the regulated sector has a dedicated consumer dispute resolution method – the Legal Ombudsman – but this option is not available for those who use unregulated providers

Where a frequently experienced harm is poor service

I would also make the point that the ultimate cost on providers lies in their own hands

Siciliani et al also observe that (2019: page 100): “Whenever public intervention is

competition, fairness is viewed as essential to cultivating trust in markets and crystallizing legitimate expectations of market participants. Fairness does not undermine the goals of competition. Rather it advances them.

I do not regard the proposals in this Supplementary Report as paternalistic. They do

competition, and creates a one-size-fits-all approach to serving the public's legal needs" (Steinberg et al 2021: page 1322).

I repeat the quotation that opened this Report: "Sometimes an expert non-lawyer is better than a lawyer non-expert."[142] Consequently, "the salient question is not whether an alternative provider of legal services is as good as a lawyer but rather, whether that alternative provider is better than nothing" (Steinberg et al 2021: page 1324).

Instead, the ‘something new’ should provide a base for all consumers, with disclosure, PLE, pro bono, lawtech and legal aid then adding to that base.

(6) While courts might remain the *final* arbiter of consumer harm

providers and competition are to be encouraged, I do not believe that competition alone can ensure sufficient protection from the types and consequences of transactional consumer harm discussed in this Report.

Both providers and consumers should be able to expect and experience balanced and effective regulation of legal services that does not impose unrealistic burdens and costs on them. Consequently, with some further points of detail offered in this Report, I continue to advocate for the risk-based, targeted, minimum necessary intervention proposals in the Final Report for both the short term and long term reform.

!

This Annex offers some thoughts about the ways in which the Legal Services Act 2007 might be amended to give effect to the short-term proposals and recommendations in the Final Report of the Independent Review of Legal Services Regulation.

In the Legal Services Act 2007:

1. Insert a new section –

191A Registration of non-authorised persons

(1) From the appointed day—

(a) the Board shall establish and maintain a public register containing the name and place of business of any0.24 0 (e) 1 (r)] TJ ET Q0.2 0.r34 18 62t.2 na

(ii) be so treated notwithstanding that no fee, gain or reward is provided by the consumer for whose benefit the legal activity is carried out[f];

(c) where a registered person provides a legal activity which is not a reserved activity free of0 0.24 (tiv)

(iii) whose main activity is designated by the Board for the purposes of this section;[n]

(h) an individual who is carrying on a legal activity—

(i) in that individual's capacity as an employee, manager or agent of an authorised person or registered person; or

(ii) at the direction and under the supervision of an authorised person or registered person;[o] or

(i) any other person subject to exemption from the provisions of this section by rules made by the Board under subsection (5).[p]

(5) The Board must make rules about the register to be established by the Board under this section and must publish those rules.

(6) In particular, rules made under subsection (5)—

(a)

(o) may, as and to the extent that the Board sees fit, make provision for the application of the rules referred to in paragraphs (l), (m) and (n) where a registered person provides a legal activity within subsection (2) free of charge, in whole or in part, to a consumer.[y]

(7) The Board may suspend or revoke the registration of a registered person if—

(a) that person fails to comply with r

4. In section 146 (Reporting failures to co-operate with an investigation to approved regulators), insert –

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