

**February 1, 2021 Crispin Passmore to SCOPE Subcommittee:**

I make this submission based on having set up probably the world's first regulatory sandbox in the legal market - [SRA innovate](#) - back in 2014.

The SRA had at that time a set of rules that were partially reformed to allow ABS (non lawyer ownership) but remained overly prescriptive and prevented all sorts of innovation. It was felt that the reforms to that date allowed specific models but were still a permissions based approach that hindered new ideas. It also created a culture of 'the regulator will not allow this' rather than a more engaged discussions based on what is best for the public.

By permissions based I mean that lawyers were only able to do the things, work in the ways, be in the sorts of businesses that the regulator had specifically allowed. That is a very restrictive way of thinking. We decided to shift our way of thinking so that lawyers could work in any sort of model that the general law allowed unless we could justify restricting it. None of this changes the ethical standards - in fact we committed to strengthening them, more of which later.

The advantage of this approach is that it means that lawyers and businesses can innovate more freely, and regulators still have the power to restrict models or practices that are unsafe. None of the innovation sought is about loosening ethical behaviour - ie acting in best interests of client, supporting the rule of law etc are non negotiable. The innovation is about how businesses are organised or structured, how they use technology and capital to leverage lawyers knowledge and ethical practice and how they work with adjacent services to meet customers needs.

Clients, lawyers, other professions and businesses are best placed to innovate. Regulators will always have a partial or incomplete view. They will always be behind the curve. They will therefore always need to be convinced about changes that are commonplace beyond their remit and much needed by clients. witness how long regulatory reform has taken so far and how many Californian citizens and small business do not get access to legal services each and every day. It is not regulators that pay the price of their caution: it is real people.

The SRA innovate sandbox was very simple and based on the above approach. Rather than write complex rules about which innovations we would sanction we placed the responsibility to convince the regulator that an innovation was appropriate on the applicant firm/lawyer. Thus the SRA innovate was simply the use of the general power the regulator had to waive any of its rules. So applicants were invited to say what service they wanted to deliver or how they wanted to be structured, what rules inhibited that and then we would work with them to consider if the rule(s) could be waived in their circumstances.

This is a very flexible approach for a sandbox. It allows you to be cautious and targeted. For example you might allow a specific model but put in place a condition that the service is not offered to vulnerable consumers. That might allow the regulator to learn about the effect of delivery gradually before setting it free upon all consumers.

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A similar condition might be that additional supervision is put in place (either on all work or on a sample of work) so that extra quality control is in place. Other conditions might be about approval of specific people informed in the business, cooperation with other regulators (where an applicant is also regulated by another jurisdiction's legal regulator or another professional regulator). Conceivably a sandbox set up in this way could also require an applicant to place a bond with the regulator to cover redress if consumer harms are subsequently discovered.

Any attempt to preempt innovation and write detailed rules will fail. Regulators that try this end up gradually reducing the real focus on innovation with so many conditions and rules baked into the sandbox that serious businesses walk away.

It is important to remember that applicant firms have a choice. Many already exist, solving clients' problems adjacent to the legal market without breaching UPL. They are successful businesses that have been around for more than 20 years. They do not need to be regulated and are competing with attorneys - seizing market share consistently across the whole legal market.

The challenge for a regulator is to face up to the innovation that is already happening rather than to close their eyes and ignore it. By bringing it into its regulatory world it can raise standards by applying ethical standards to legal business owners, ensure a level playing field for attorneys and their firms to compete upon and ensure that consumers decide what they want rather than patrician lawyers. The reality is that these new businesses emerge and thrive because they meet needs that regulated attorneys are not meeting.

So I urge the working group not to get sucked into trying to forecast, predict or guess what sorts of innovation will emerge. It is better to build the capability and capacity of the state bar to assess applicants and identify appropriate conditions. And it is even more important to build the regulator's capacity to spot misconduct or consumer harm (across the whole market, not just new entrants) than it is to pretend that once in every business and attorney is safe and ethical for life. A more flexible regime is the most effective way to both encourage innovation, exercise constraint/target regulatory control, and raise standards more generally.

Detailed and prescriptive rules will not deliver a sandbox. They will create a quiksand.

**February 1, 2021 Rebecca Sandefur to SCOPE Subcommittee:**

Here are my contributions to the issues discussion for the scope committee:

1. What up-front screens will limit eligibility and how can these be constructed so that they are tightly focused on consumer protection and do not have discriminatory impact by race, gender or other traits? For example, will we ask people to disclose felony history? If so, we won't want an automatic exclusion for felons, because that will disproportionately affect people of color. What about disbarred lawyers in front-line service roles, or management roles? Disbarred lawyers are just a type of nonlawyer, but they are a particular type of nonlawyer.

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2. Will lawyers licensed in other states but not California be permitted to practice as lawyers in a CA sandbox?
3. How can we minimize regulatory replication and conflict? Consumer protection law already exists for many issues; various types of providers (e.g., financial services of various sorts) are already regulated by existing regulators; etc. And of course lawyers are already regulated by the bar, though many will apply to enter the sandbox to offer nontraditional services or offer services through nontraditional organizations. What are the activities a sandbox would actually have to be responsible for, and what are already taken care of elsewhere?
4. How can we avoid just replicating the front-loaded, tradition-bound model of lawyer regulation? Can we start with what we want to achieve -- e.g., consumer protection -- and design a scheme and system that regulate to achieve those goals? And that don't regulate for any other purposes. This will require some hard, open-minded re-thinking.
5. How can we design an application process that is minimally burdensome but manages to elicit the same kind of information from all applicants? There will be many service models and business models that we cannot foresee up front, and some of this information a sandbox would not need, but some it will. For example, let's say my service model is to offer people free legal services via software and make my money by selling information I collect from the process of offering the service to third parties. In this example, the high level issues are what services are offered and what uses the clients' information are put to. Can we identify a core of these high-level issues that we then ask each entity about? Can we work to limit this core to only those pieces of information that a necessary to support the regulatory objective?

**February 2, 2021 Thomas Greene to SCOPE Subcommittee:**

This is a quick note on some of the issues I see ahead, primarily through the lens of the SCOPE Subcommittee:

- Think about the end at the beginning: I think it is important to look at what the end product for the sandbox will be. The major takeaways for me from our charter are that we come up with information on new structures that can be introduced into the market under circumstances that “protect the public” and generate “data to assess the impact on access to legal services.” To these ends, we need to provide entry conditions that will assure the public is protected and that we get sufficient information so we can tell the Bar and the public that these new practice models (or at least some of them) are safe and effective.
- This may mean that we impose entry conditions that allow us to get information from the innovative firms and potentially their clients/customers (presumably in anonymized form) sufficient to assess both effectiveness and quality. Entry conditions might include review of algorithms used to provide guidance to customers or data from the experience of the sandbox candidate in other jurisdictions including in the UK.

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- SCOPE and entry conditions should be understood as part of the larger goals of the sandbox. To effectively assess and regulate innovative firms may require them to agree to provide information at the beginning that will be important during the time these firms are in the sandbox and later when we make our report. Bottomline, the SCOPE subcommittee is part of the broader enterprise and should be understood as such.
- The charter seems broader than the name of the task force. I think we should focus on improving access to services to populations that are currently underserved, but that is not clearly the charge given to our group. On who is underserved, I would include middle class individuals and special needs populations like veterans.
- We should think through our relationship with the Paraprofessional Working Group. This was another spin off from the ATILS task force. We should consider whether our group should leave paraprofessional issues to that group, even though our charter does not clearly preclude more work by us in this space.
- We should not exclude lawyers from the mix. One of the sad realities is that many graduates of law schools cannot find legal jobs. This wasted supply stands in sharp contrast to the lack of services available to many people in California. We should consider incubators or business models that would allow these wasted resources to be put to use.
- Potentially, older lawyers who want to reduce their hours but still want to contribute their time and talents may be another resource. We should explore how new practice models might work to take advantage of this hitherto unused resource.
- Complaints from client/customers will not necessarily provide sufficient information to be able to address the two commands of our charter. One is tempted to suggest that regulation by Yelp review should be a non-starter. The extent to which sandbox participants may be audited or their work reviewed (potentially on a sample basis) should be disclosed at the point of entry into the sandbox
- Privacy is important. Attorneys are bound by a duty of confidentiality. Firms not run by attorneys are not so limited. This may lead to abuse of private information for gain. However, the California Consumer Privacy Act does provide for some privacy protections in non-legal settings. We need to sort out privacy rules for innovative providers. This is important to know generally but also for us to assess any disclosures firms should make to their clients/customers.