

**April 6, 2021 Crispin Passmore to CTJG:**

**Scope of sandbox**

I think there is a certain irony in a group such as us forming a view as to who is unserved and underserved by current regulated market participants. To exclude corporate clients on the ill-informed view that they get enough or get good enough legal services shows the risks that come from a narrow or inwards looking view of the legal market.

If we look at the evidence of the last 25 years it is fairly self-evident that corporate clients do not feel adequately served by the current regulated law firm market. In that period we have seen General Counsel of corporate clients gradually shift more of their legal advisory work away from traditional law firms towards business operating on the margins of and outside of the regulated environment. They are doing that because they are not satisfied with what is on offer from the market that State Bars sanction and regulate. Axiom is now over 20 years old, the Big Four have hundreds of attorneys operating within the US, global clients are routing their legal advisory work outside of the US and new models are springing up that simply bypass regulatory restrictions. All of these things are happening not because corporate clients are adequately served but because they are NOT adequately served by the current market that the State Bar oversees.

A decision to exclude legal services meeting the needs of corporate clients from the sandbox serves no one:

- It would accelerate the rerouting of legal services away from California attorneys operating in California to attorneys in more flexible regulatory regimes in the US and beyond
- It will give alternative providers and the Big Four a competitive advantage as they can offer services outside the regulatory reach of the State Bar
- It undermines the protection of corporate consumers because they have to accept alternative providers operating outside of regulatory protections or accept regulated attorneys that do not offer services in the way they need them
- It undermines the rule of law because it shifts more and more legal work beyond the supervision of the courts.
- It disadvantages small businesses who might access legal services while they are growing but would be unable to use them if they reached the size of larger corporates excluded from the sandbox
- It is impossible to police. It would be easy for some large corporate clients to create small vehicles within a group structure for receiving the legal advice from a sandbox participant that can only serve small or medium sized businesses
- It disadvantages access to justice initiatives directly if it stops participants from building technology that serves both groups
- It disadvantages access to justice initiatives indirectly if it stops the development of technology and services that others can learn from to develop new services for the poorer

Furthermore the only justification for barring services that better meet the need of corporate clients is to protect the profits and income of corporate lawyers. They are the people that least need protection in the legal market. I am not sure how a sandbox would be sold to consumer lawyers who may face new competition when their rich cousins in corporate law are to be ringfenced.

**April 8, 2021 Bridget Gramme to CTJG:**

With respect to the SCOPE committee's memo, I am concerned about two aspects that I believe would unnecessarily limit the scope of the sandbox, and would hinder its success.

First, as to the proposed statement of purpose, I am concerned with the proposed standard that any services offered must "substantially outweigh" any identifiable risks to consumers. Second, I disagree that applicants to the sandbox should be limited to only those who are serving the "unserved" or "underserved." Setting aside the logistical questions as to how the regulator would go about implementing these proposed standards/limitations, which appear to be quite subjective, I am primarily concerned about both of these proposals from a policy perspective.

In my view, the point of the sandbox is to permit innovation, under a close eye, and see what kinds of services can emerge with relaxed barriers to entry — services that can be designed to benefit society as a whole and attract the level of investment needed to design and implement these services. I strongly believe that we should think about ways to incentivize the development of services that are targeted to benefit the underserved population. But to limit the sandbox to only those applicants who will be serving individuals who have limited means to pay for them seems to me to be setting it up to fail.

Furthermore, what is the regulatory justification for establishing these limits? What problem are we trying to solve by diminishing the scope of the sandbox right out of the gate?

Crispin Passmore spent a great deal of time explaining to us what worked and what didn't when he was setting up a similar project in England and Wales. I highly recommend that we take those experiences and learn from them.

To that end, I propose the following alternative "purpose" statement for the group's consideration:

"The purpose of the sandbox is to monitor and assess whether modifying the rules concerning the practice of law facilitates innovation in the public interest. The public interest to be served is increasing access to justice by expanding the availability of competent legal services in California. The sandbox is intended to identify existing regulatory barriers that prohibit expanding such access, and assess the level of harm (if any) that the expanded access is imposing upon consumers."