

Evaluation: Changes in the legal services market 2006/07 - 2014/15 - Summary

An analysis of market outcomes associated with the delivery of the regulatory objectives

July 2016

Overview

This document provides an overview of the findings of the LSB's triennial evaluation of changes in the legal services market since the Legal Services Act (LSA) was passed. We focus here on three major dimensions: competition, access and quality.

Competition – positive developments but improved outcomes for consumers are emerging slowly

The sector has grown substantially since 2007 and new business models permitted by the LSA have established significant market shares. Changes to regulation have acted as drivers for procompetitive changes in the market. While levels of innovation have remained broadly the same, research suggests that ABS are more innovative and there have been interesting individual examples of service innovation. Levels of shopping around by consumers have only marginally improved. Limited price transparency, little advertising and an absence of high profile comparison website services inhibit faster improvement. There is some evidence that prices have risen over time, but a positive trend is the rise in fixed fee deals which offer consumers greater certainty on price.

Access to legal services – same proportion of people taking action, but more consumers handling their matter alone rather than seeking advice

Research evidence suggests more people are handling legal issues alone and fewer are obtaining professional advice; however the proportion of those who do nothing when faced with a legal issue appears unchanged. Analysis of official data suggests the trend to handle issues alone is driven by better technology (e.g. online probate applications and commercial DIY services) and legal aid reform (e.g. increase in litigants-in-person). People tend to handle things alone as they believe the matter is relatively straightforward and should not require lawyers, but a perception that lawyers are high cost is a barrier for some. Small businesses are experiencing fewer legal issues, probably due to an improved economic picture; however, they still do not view lawyers as cost-effective.

Quality of legal services – improvement in most areas

Levels of satisfaction with service have remained above 2009 levels. While the volume of complaints about SRA regulated entities has increased, more are being resolved at the first-tier – this trend is driven by new business models which have better complaint resolution ratios. The Legal Ombudsman's caseload has also fallen. Misconduct cases appear to be falling over time, although their seriousness appears to be increasing, as measured by the severity of penalties and compensation fund pay-outs. The international standing of UK law has been maintained: over time the reputation of the UK legal sector has improved, while in 2014 net exports of legal services were 33% higher than in 2007.

Looking ahead – what this means for us and others

Overall our analysis shows signs of positive change and a lack of negative impacts of reform on quality, but it also reveals the continued scale of existing unmet need and suggests there has been limited progress towards delivering better market outcomes. Looking ahead our view is that more progress needs to be made and the pace of change needs to increase. We need to continue to break down regulatory barriers to competition, innovation and growth, empower consumers and enable the need for legal services to be met more effectively. In the longer-term we consider that legislative reform is necessary to complete the liberalisation of the legal services market.

Introduction

1. This document provides an overview of the findings of the LSB's triennial evaluation of changes in the legal services market since the LSA was passed. This work is essential to understand what market developments have occurred in the last few years so as to understand whether the eight regulatory objectives set out in the LSA¹ are being met better now than they were a few years ago. We want to know where progress has been made that has benefited consumers and citizens and where more improvements are necessary.
2. Our conclusions are based on a review of a wide range of sources of information, analysis of a range of different data sets, and the findings of research published by us and others.² We recognise that this is 'best available' evidence rather than perfect evidence, given constraints on resources and our desire to minimise the burden of information collection on the regulated community. We have not sought to isolate the impacts of a single regulatory change but instead looked at wider market outcomes associated with the delivery of the regulatory objectives.

3. In this summary we focus on competition, access to legal services, and quality – three areas we believe to have the greatest relevance for consumers. Further detail can be found in the full Evaluation report published alongside this summary document.³

Context

4. It has been nine years since the LSA was passed; six years since the LSB's oversight regulation became operational; seven years since Legal Disciplinary Practices (LDPs) were first permitted; six years since the Legal Ombudsman gained its full powers; and five years since the first Alternative Business Structure (ABS) license was granted.⁴
5. Over the past five years regulation has evolved both in scope and nature, and now the three largest frontline regulators (SRA, BSB and CILEx Regulation) all regulate the same set of reserved activities, breaking down traditional distinctions between professional groups and allowing for more competition between the professions. The range of other changes to regulatory arrangements approved by the LSB since 2010 can be expected to have acted as drivers

¹ In summary, these are: protecting and promoting the public interest, supporting the rule of law, improving access to justice, protecting and promoting the interests of consumers, promoting competition, encouraging an independent, strong, diverse and effective legal profession, increasing public understanding of legal rights and duties and promoting the professional principles.

² A full list of reports reviewed for this analysis are contained in Annex 1 of the main report

³ Available at <https://research.legalservicesboard.org.uk/>

⁴ New regulations allowed solicitors, for the first time, to co-own and manage solicitors' firms with other legal professionals and with up to 25% non-lawyer ownership in business structure known as an LDP. ABS is the business structure where changes to historical regulations allowed complete non-lawyer ownership of firms providing reserved legal services. The CLC licensed the first ever ABS in England and Wales on 6th October 2011 for firms operating in the conveyancing and wills, trusts and probate market segments. The SRA which regulate entities in all market segments granted its first ABS license in March 2012.

for procompetitive changes in the market.

- The legal services sector is not known for its fast pace of change, and individuals and small businesses are not frequent purchasers of legal services (and so do not generate particular pressure for rapid change). However, we believe a reasonable period of time has passed since the main changes came into effect to expect to see some changes in market outcomes.

Competition - positive developments but improved outcomes for consumers are emerging slowly

Growth

- The legal services market has grown substantially since 2007 despite challenging times for the wider economy. UK wide legal services turnover grew from a post crisis low of £27bn in 2009 to an all-time high of £32bn in 2015.⁵ Our analysis suggests a real terms increase in turnover of SRA regulated entities of around 7% in the past five years, to £22bn in 2014/15. The number of authorised persons has grown over time from a total of 143k in 2009/10 to 162k in 2015/16 – a rise of 13%.

Entry and new business models

- There is some evidence that providers are adapting to changes in regulation, legal aid funding and technology – all of which are changing the shape of the market. Key developments include consolidation among law firms, the fast pace of entry by accountants and new business models.

Figure 1. A growing market



- Rates of entry into the SRA regulated legal service market appear to have fallen over time: 7% of entities in 2014/15 were new entrants compared to 11% in 2011/12. This compares to 17% for comparable industries in the UK as a whole. Our analysis suggests that for the 2012/13-2014/15 just 25-30% of all SRA regulated ABS were brand new entrants (others converting from the traditional partnership model). However new entrants in 2014/15 were on average larger than in previous years.
- As at 2014/15, new business models in the form of LDPs and ABS account for 33% of the total turnover of SRA regulated entities. Between 2012/13 and 2014/15 ABS firms have established a presence in all market segments, most significantly in personal injury, welfare and benefits, civil liberties and employment. Research findings suggest that ABS are more innovative and more productive than other types of business structures.

⁵ 2015 Prices – LSB analysis of ONS data.

Innovation

11. Our research shows that the major effects from the changes made by innovative organisations in the legal services sector were to extend the range of services offered, attract new customers, and improve quality. Reducing the cost of delivery was a benefit for less than half of all innovating organisations, however. Notably the intensity of competition was reported as a driver of innovation for only 26% of organisations compared to 40% reporting regulatory and legislative changes as driving innovation.

Figure 2. Market share for new business models



12. There is some evidence that specific liberalisation measures such as the Public Access Scheme for barristers are starting to benefit providers and consumers in terms of wider choice. However, take up of new opportunities appears to have been modest so far – although we acknowledge that some of these opportunities have only recently become available. Public access is a relatively small proportion of barristers' workload, although this is expected to grow. Just over 1% of legal executives have taken up additional practising rights for advocacy since 2012, and just 0.5%

for probate and reserved instrument activities (conveyancing) since November 2014. The BSB and CILEX Regulation have experienced slow take up of entity regulation to date, although this option has only become available from the beginning of 2015. More positively the ICAEW's regulated community of probate practitioners has grown quickly. ICAEW is consulting on rights to regulate in all the other reserved activity areas.

13. The relatively low take up of the variety of new business models and additional rights might reflect the limitations of regulatory enabled 'innovations' compared to strictly market led innovations. It is notable that rates of service innovation among unregulated providers – those not covered by the regulatory structure of the LSA – were the same as for ABS (36%) and higher than non-ABS solicitors and barristers chambers (both around 25%).

14. There are interesting individual examples of service innovation, but research shows that overall levels of innovation are broadly unchanged. Regulatory and legislative issues were highlighted more frequently by legal services providers than businesses in other sectors as the main barriers to innovation. Within regulation, specific factors that were most commonly cited as a barrier to innovation were keeping up to date with changes in regulations, professional indemnity insurance, and anti-money laundering regulations.

Investment

15. There is limited information on investment activity. Anecdotally, new forms of financing include entry by established retail brands, private equity investment, stock market

flotation and foreign firms setting up as ABS.

16. There are some factors that could deter external investment. The Competition and Markets Authority has recently noted concerns about the complexity of the current regulatory framework as well as the retention of specific regulatory rules aimed at provider conduct and market entry that might be dampening competition. The wider cost of legal services regulation remains an issue. Our research shows that the largest professional groups consider that both the annual practising certificate fee and ongoing compliance costs represent poor value for money.
17. We have previously highlighted the case for reform of the LSA legislative framework, and in 2016/17 we will continue our work on developing options for reform.⁶

Consumer empowerment and prices

18. Consumer empowerment, as measured by the extent of shopping around, remains relatively static. Consumers still largely rely on personal recommendation, go back to the provider they used before or use referrals from commercial intermediaries.
19. LSB commissioned research has provided robust data on the price of common legal services for the first time. This evidence could be construed as being consistent with weak price competition as seen by a wide spread of prices for the same services and considerable geographic variation in prices. Only 17% of firms

displayed prices on their websites. It is notable that firms displaying prices were cheaper than those which did not, often by a considerable margin. This again underlies the importance of consumers comparing prices so they can achieve the best deal, yet only 25% currently do so.

20. A positive trend for individual consumers is that the use of fixed fees has increased significantly from 38% in 2012 to 46% in 2015, with associated significant decreases in the use of hourly rates. This provides increased certainty as to the cost of the legal service at the point of purchase. Research also shows that, for some legal services commonly used by individual consumers (for example, conveyancing and wills), providers that offer fixed prices tend to be cheaper.
21. In these circumstances, there is scope for providers to increase prices rather than compete on service offerings to increase their volume of business. The 2012 survey of solicitors' firms found that 28% of firms reporting a decrease in turnover over the past three years had responded by simply increasing fee levels. In the 2015 survey of prices, the majority of firms said they had kept prices the same but 29% of respondents reported increasing prices in the previous 12 months. Public access barristers have increased their profitability over time, but in the main have also increased their fees and there are mixed views among these barristers as to whether services are cheaper for consumers.

⁶ For the latest information on this work please click on the following link

http://www.legalservicesboard.org.uk/what_we_d_o/Ministerial_Summit_2014_Follow_Up.htm

22. Limited information on prices points to increases in the price for business to business legal services over time, and a growth in the cost of resolving a contract dispute. Additionally our analysis also suggests that one hour of litigation advice from a senior solicitor remains close to half of the average weekly earnings of all UK adults.

Figure 3. Affordability of legal services

ONE HOUR of litigation
costs **47%** of an individual's
average weekly earnings
(guideline hourly rate, 2014)



Access to legal services: same proportion of people taking action, but more consumers handling their matter alone rather than seeking advice

23. Recent evidence suggests people are responding to legal needs by handling problems on their own. There have been no significant changes over time in the proportion of people taking no action in response to a problem, but there has been a reduction in people seeking advice.

24. Reasons for this vary but consumers tend to handle things alone because they believe the matter will be relatively straightforward and should not require lawyers. The key reason for not seeking advice is the belief that nothing can be done to help. A perception of lawyers as being high cost acts as a barrier for some

consumers in seeking advice. However, linked to the difficulties in comparing providers, few consumers actively research costs, rather they assume advice will be too expensive.

25. Our analysis of official data suggests that the trend in handling problems alone has potentially been driven by two factors – better technology and legal aid reform. For example:
- a. the increasing trend of personal applications in probate is potentially enabled by greater use of IT as well as market entry from different types of provider;
 - b. at the same time as legal aid reforms took effect, there was an acceleration in the existing trend of neither party to private law family proceedings being represented.

26. LSB commissioned surveys suggest a reduction in the number of legal issues faced by SMEs over time - probably due to an improved economic picture. SMEs report that their problems get resolved and they more frequently get advice on legal issues from accountants rather than solicitors. Many SMEs continue to consider that lawyers are not cost-effective and only to be used as a last resort.

27. The continued level of unmet legal need has consequences for the economy as whole. Some of this could be addressed with better market information that describes what services are on offer and allows consumers to easily compare providers on price and quality. In this context, we note that (i) there are no high profile branded comparison websites for legal services and (ii) there is no evidence of significantly

increased marketing activity by regulated firms over the past ten years.

criminal justice system is fair and effective has increased over the past five years.

28. Looking at the diversity of the different regulated professions shows that entry to the professions is broadly comparable to the population of England and Wales, but progression within the professions is not. Where data was available, it suggests only minimal changes over time. If the current trends continue it will be decades before parity will be achieved at senior levels.

Quality has improved in most areas during a period of substantive reform

29. Looking back at the debates preceding the LSA, concerns were voiced about the impact of non-lawyer ownership on the standing of the sector as a whole, the ethics of lawyers, and the quality of legal services provided. The available evidence shows no adverse impacts in these areas over the past four to five years, and if anything quality appears to have increased.

Public perceptions of the profession

30. Public perceptions of the legal profession remain largely positive and have altered little in the past five years. Findings that suggest the regulatory objectives are being better met include:

- a. English common law has retained its status as the most widely used legal system in the world. Indeed in 2014 UK-wide net exports of legal services were 33% higher than in 2007.
- b. The proportion of the public who are confident that the

31. In other areas the status quo seems to have been maintained. In 2015, 47% of the public trusted solicitors to tell the truth - the same proportion as in 2011. This remains an area for further improvement, but it does suggest that the LSA reforms have not had a negative impact on trust.

Service, conduct and competence

32. Satisfaction rates with service and outcome are higher than in 2009, against a wider backdrop of falling customer satisfaction across the UK economy. Further, levels of satisfaction with legal service providers compare favourably with other sectors.

33. Our analysis of SRA data suggests an increase in the number of complaints received by solicitors firms overall – up 5% between 2011/12 and 2014/15. Available information points to falling complaints against legal executives and continued low levels of complaints for other providers. The proportion of complaints where the Legal Ombudsman required a remedy has also fallen - 45% in quarter 2 in 2012, and 40% in quarter 2 in 2015.

34. A positive trend is the substantial increase in the proportion of those complaints resolved by solicitors firms, and a subsequent reduction in the volume of complaints being referred to the Legal Ombudsman – down 10% between 2011/12 and 2014/15. Our analysis suggests that LDPs and ABS resolve more complaints in house than other types of solicitor firm when their size is taken into account suggesting

that the LSA reforms allowing new business models are gradually leading to improved complaints handling.

Figure 4. Better complaints resolution ratios



This is driven in part by SRA regulated new business models – LDPs and ABS – who have better complaint resolution ratios

35. Another encouraging finding, although based on limited information, is that misconduct amongst practitioners seems to be falling. While the number of allegations of misconduct by solicitors has risen, the number of allegations upheld by the SRA has fallen substantially. However, the seriousness of those upheld allegations - as measured by different types of disciplinary rulings and per entity compensation fund pay-outs - appears to be increasing. For barristers, available data suggests fewer conduct complaints overall. There remains low numbers of conduct complaints for other regulated providers.
36. There remain very limited measures of the technical competence of lawyers, but as a broad proxy indicator SRA regulated firms making professional indemnity insurance claims fell between 2012/13 and 2014/15, and claims against the Bar Mutual

Indemnity Fund fluctuate annually, but are broadly static over the longer term.

Consumer action

37. Consumer confidence in the regulatory system is unchanged. However, consumer confidence in complaint handling has not improved and levels of inaction in response to poor service are persistently high – and far in excess of levels of inaction in other sectors. Therefore, apparent improvements in complaints handling by providers have not yet led to an increase in consumers' confidence to complain.
38. There is continued confusion among consumers about who is regulated. A significant minority of consumers assume all providers are regulated and so do not check whether this is the case although in practice some may not be regulated. While this is of concern, the evidence shows that, aside from a small number of market segments, paid for unregulated services appear to be a rather small presence in most market segments. The largest element of unregulated services are free to consumers and provided by organisations such as Citizens Advice.

Looking ahead – what this means for us and others

39. Our market evaluation work uses the best information available to help us understand how market outcomes have changed since the LSA came into force. It is particularly valuable in terms of what it tells us about the priorities for the regulatory community going forward.

40. Looking at our Strategy for 2015-2018⁷ and our Business Plan for 2016/17⁸, our strategic objectives remain well-aligned with the issues we have identified. We need to continue to work, together with the approved regulators, to break down regulatory barriers to competition, innovation and growth and to enable the need for legal services to be met more effectively. The evidence collected for the evaluation supports this.

41. The findings of the 2015 research into innovation that we jointly commissioned with the SRA should guide regulators in prioritising reform of regulation that acts as the biggest barriers to innovation, noted above. Similarly the LSB cost of regulation survey highlighted the areas that were perceived as high cost. Regulators wishing to deliver lower cost regulation should focus on understanding whether the benefits outweigh the costs in relation to these particular areas of regulation. We have also identified a need for regulators to improve transparency around their costs. This information will enable better targeted reforms to regulation.

42. There remain significant gaps in knowledge about the legal services market. These include information on the quality of services offered, and capital flows into the sector.⁹ We will continue to encourage regulators to undertake more analysis themselves and to publish that analysis, and we will continue to jointly commission research and undertake our own

analysis to close identified gaps in knowledge.

43. Overall our analysis shows signs of positive change and a lack of negative impacts of reform on quality, but it also reveals the continued scale of existing unmet need and suggests there has been limited progress towards delivering better market outcomes. Our view is that more progress needs to be made and the pace of change needs to increase. This is not just in the interests of consumers, but also practitioners, to ensure they remain competitive in the face of future changes in demand, consumer behaviour and market developments.

44. Therefore we think that further legislative reform is necessary to complete the liberalisation of the legal services market. This will build on the reforms introduced in the LSA and other legislation to maximise the opportunity to unlock growth and address unmet need for legal services. Reform is very much a matter for Government and ultimately Parliament. As the oversight regulator under the current framework, we can support the reform process. As set out in our Business Plan for 2016/17, we are using our experience and research evidence to develop our ideas for an effective and 'fit for purpose' future legislative framework, and expect to publish these ideas later this year.

⁷ Available here http://www.legalservicesboard.org.uk/news_publications/LSB_news/PDF/2015/The_Strategy_2015_18.pdf

⁸ Available here http://www.legalservicesboard.org.uk/Projects/pdf/20160412_LSB_Business_Plan.pdf

⁹ A full list of the 31 major gaps in knowledge identified can be found in the main report.