

Presentation to OECD online workshop: Regulatory barriers to competition in professional services

19 November 2021

Introduction

One of the challenges we face when speaking at international conferences is that half of the allocated presentation time is required to explain how the regulatory system in England and Wales works. Chris Decker did this task for me in yesterday's session, and I congratulate him on an excellent paper. And Sharon has helpfully set out the CMA's findings and its recommendations.

The Legal Services Board published its own assessment of the reforms a year ago and this is available to read at your leisure. I'm going to focus most of my remarks on solutions that aim to empower consumers, especially those designed to help them find a good quality provider. Before doing that, I would like to make four wider observations as context for the remainder of my remarks.

Four observations

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- Importance of national competition authorities
- The Legal Services Act is a journey which continues
- Independent regulation and competition
- Law is more than a market

My first point is about the important role played by national competition authorities as a complement to sectoral regulation. One of the main triggers of the 2007 Act which established the reforms in England and Wales was a report in 2001 on competition in the professions by the CMA's predecessor organisation. The CMA then carried out a major market study exercise in 2016 and returned to review progress in 2020. The LSB has actively encouraged the CMA's interest in the legal services market, and we have maintained a strong working relationship. The LSB is a small oversight body rather than a large economic regulator, so the multi-disciplinary expertise and

resources that CMA brings is very helpful. As the UK's national consumer and competition body, when the CMA speaks it gives the LSB a stronger mandate to take action to improve the market.

My second point is that the Legal Services Act 2007 marked the start of a journey, which continues to evolve. LSB's initial focus was to implement the liberalisation reforms in the legislation, specifically a licensing regime for alternative business structures. However, as Chris detailed in his paper, there has since followed a programme of deregulatory reforms. The regulatory bodies have slimmed down codes of conduct, modernised routes to qualification and removed practising restrictions. These reforms have created a more innovation-friendly environment for legal businesses. While maintaining vigilance on supply-side restrictions, over time the balance of our focus has shifted to demand-side reforms, specifically on increasing transparency on the price and quality of services.

My third point is about the importance of independent regulation in promoting competition. A requirement of our legislation is for our board to have a majority of lay members and a lay chair. We have lawyer members on our board and on the staff team and value their expertise, but having a lay majority gives the public confidence that regulation is working in their interests rather than in the interests of the legal profession. We have made rules that the frontline regulatory bodies for solicitors, barristers and so on, must also have lay majorities on their decision-making boards.

These requirements for independent regulation are not just about public perception. Our experience is that they have made a practical difference. Over the years the professional bodies have resisted efforts by the regulatory bodies that aim to introduce greater competition in the market. Reforms introduced over the last decade are unlikely to have happened if this jurisdiction had retained a self-regulatory system. Independent regulation has enabled our jurisdiction to take bolder decisions, act more quickly and put the interests of consumers at the heart of everything we do.

My final observation relates to the eight regulatory objectives that Chris outlined in his paper. One of objectives is promoting competition, but our focus goes much wider. The law is more than a market and we must tackle a range of issues that matter to the public, including dismantling barriers to a diverse and inclusive legal profession; ensuring lawyers remain competent throughout their careers not just when they qualify; considering ethical implications of developments in technology; and how to support vulnerable people in society to access and use legal services. Indeed, I would go further to say that regulation is a key component of upholding the rule of law. To the extent that competition is a means to a greater end of improving access to justice, it also contributes to strengthening the rule of law.

Empowering consumers



Let me turn to our work on empowering consumers.

Sharon is too polite to say, but when the CMA presented the emerging findings of their 2016 market study to our Board, one of her colleagues described legal services as perhaps the least transparent market they had seen.

So, there was a lot of work to do. In fact, since then, a lot has been done to improve transparency in the market across the four dimensions that Sharon outlined in her remarks: price, quality, redress and regulation. There remains much work to do.

Survey data shows that too few consumers shop around – about a third. This has improved over the years from a very low base. Only half of consumers who did shop around said they found it easy to compare providers. About the same percentage said it was easy to find the information they wanted on the quality of services. Historically, price comparison and customer review websites have been little used.

This is a long journey and experience shows that the market will not fix itself. Some of the regulatory bodies initially tried approaches based on voluntary guidance rather than mandatory rules but found that legal businesses did not adopt the guidance. Where rules were introduced, there have been high levels of non-compliance and we now see regulatory bodies getting tougher with those continuing to breach the rules. Some of rules have not yet had the desired effect and there is a process of review and adjustment to identify solutions that will have a bigger impact.

It is very easy to say that legal services are unique, the challenges are too difficult to overcome or that changes will fail or even lead to negative outcomes. Yes, legal services present difficult challenges, but we must not succumb to the temptation to put things into the 'too difficult box'. Perhaps the most challenging area is to help consumers to compare the quality of legal businesses, and it is here where progress

We refer to this work as ‘quality indicators’ and I’d like to say more about that.

What it's like choosing legal services

A word cloud in the shape of a heart, set against a dark purple background. The words are in various shades of white and light purple. The most prominent words are "Worry", "Stress", "Anxious", "Upset", "Confused", "Scared", "Nervous", "Angry", "Shocked", "Overwhelmed", "Lost", "Unsured", "Frustrated", "Helpless", "Determined", "Cautious", "Impatient", "Innocent", "Therapist", "Relief", "Hope", "Need", "Under", "Pressure", "Poor", "Longly", "Safe", "Apprehensive", "Vulnerable", "Concerned", "Supported", "Positive", "Informal", "Providence", "Expansive", "Local", "Product", "Project", "Elastic", "Thing", "Elated", "Ease", "Sinking", "Landscape", "Controlled", "Barometer", "Optimism", "Panic", "Disruption", "Agitated", "Resilient", "Resolution", "Intimidated", "Costly", "Strategic", "Deflection", "Capacities", "Healthy", "Rope", "Dynamic", "Assessment", "Agitated", "Resilient", "Resolution", "Intimidated", "Costly", "Strategic", "Deflection", "Capacities", "Healthy", "Rope", "Dynamic", "Assessment".

I think that the combination of my own inexperience in the field, a potential lack of understanding of jargon being used and needing trust in their complete professionalism and formality would make it one of the most challenging service providers I could select.

Participants felt that – in ‘real life’ – their decision-making process would be affected by the stress, anxiety and worry caused by their situation, exacerbated by the difficulties of finding a provider. As a result, most felt that they would be more likely to make a rushed decision; to be swayed by more emotional factors (such as rapport with an advisor); and more likely to fall back on familiar and known providers and recommendations from friends and family.

The participants found it easy to come up with a long list of providers, but more difficult to gauge and compare the quality of their service. This was partly because they lacked the knowledge of what they needed or how legal services worked, and partly because the information was hard to find, inconsistent or non-existent.

What consumers want



In the research participants did not talk explicitly about 'quality', but when pushed to consider what 'good' looks like in legal services, they focused on four things:

- **Outcomes:** participants wanted a provider who would get a good result for them but struggled to know how to judge this. Most would rely on customer reviews to gauge whether a firm had achieved good outcomes for others.
- **Technical skills and knowledge:** participants found it hard to know whether a provider would have good technical skills. Some assumed this as a given, but others wanted more on individuals' qualifications and experience
- **Values:** several participants sought clues as to the values of a provider, such as honesty, trustworthiness, reliability, and professionalism. Again, they relied on 'gut feel' to judge this, or on personal recommendations
- **Customer experience:** a combination of accessibility, responsiveness, timeliness, and – often more importantly – good 'rapport' with an advisor. Once again, they tended to rely on personal recommendations, reviews, and 'gut feel' from conversations with providers to judge customer experience.

This builds a picture of consumers wanting a range of information to assess the quality of providers, but which isn't available to them. In the absence of this, they must rely on their instincts and recommendations from others.

What we're doing

Pulling different levers

- Setting expectations of regulators using our statutory powers
- Making more information about the quality of legal services available
- Pilots with law firms and comparison websites
- Using technology to allow consumers to check for complaints and disciplinary information in one place
- Considering the case for a centralised database of regulatory information accessible by consumers and third parties

As Sharon outlined, the CMA asked the LSB to take the lead in developing solutions on quality indicators and we've been working with the frontline regulatory bodies for the different legal professionals and other agencies to do this. There is no silver bullet, but rather a case of pulling different levers in combination.

We are currently consulting on a document setting out what we expect the regulatory bodies to do to support consumers to make good choices. We consider that consumers need information about the price, quality and service of legal providers, so we are setting minimum expectations about the types of information that legal businesses should be publishing on their websites.

A range of organisations hold information that consumers would find useful, but some of it isn't publicly available, some is publicly available but not well known, and more can be done to improve the quality of this information and make it more useful.

As well as a focus on the type of information, we also want to make it easier for consumers to compare providers. We are keen to see price comparison and customer review websites become a stronger presence in this market. By bringing together various types of information in a consistent format and making the process of selecting or researching a legal services provider easier and quicker, we think these platforms will reduce the barriers consumers face when shopping around.

The Solicitors Regulation Authority has taken the lead in developing a pilot scheme bringing together comparison websites and legal businesses to encourage clients to post reviews about the services they received. The legal businesses are reporting benefits from taking part and the comparison websites are seeing increased usage. Indeed, our monitoring suggests that consumers have increasingly turned to online services during the pandemic. It is likely that comparison tools will become more

widespread in legal services, as they have done in other markets, but we think fostering change could need some assistance from regulators.

The regulatory bodies have developed a tool for consumers to search for disciplinary records and complaints histories of lawyers and law firms. This uses technology which trawls the registers of the participating regulators and the Legal Ombudsman allowing consumers to access this information in one place. Consumers can access the tool through the Legal Choices website – a website run by the regulatory bodies providing independent facts about legal issues and legal advisers.

We are now considering going one step further to establish a centralised, cross-sector database of standardised regulatory information. This will bring together in one place more of the information that consumers say they want to make choices. Such a database could serve a range of purposes: it could be directly accessible to consumers who are looking for regulatory information, and accessible to third parties like comparison websites, who could use the information to develop consumer-facing products. As a next step we plan to commission a proof-of-concept study.

Takeaway points

I will end by offering three takeaway points:

- Firstly, the reforms introduced by the 2007 legislation have been successful when judged on their own terms. There hasn't been a transformative change in access to justice, but this was not realistic to expect. The reforms have helped create a more innovation-friendly environment. Pursuing a path of independent regulation has enabled this jurisdiction to take the bold decisions needed, enabling us to modernise to a greater extent and at a far greater pace than would have been possible under a self-regulatory system
- Secondly, this is an evolving story. It's not a case of removing restrictions on competition and sitting back to see what happens next. Making the market work requires a focus on empowering consumers as well as liberalising measures on the supply side. Experience shows that increasing competition in legal services is difficult, so a concerted effort is needed to improve this. Fostering change is likely to require careful intervention by regulators
- Thirdly, the conditions are ripening that offers us more hope for the future. Consumers are becoming more demanding in all markets; legal businesses are becoming more responsive to consumer expectations; and comparison websites are experiencing rapid growth in legal services as the shift to online services has accelerated. We are determined to exploit these changing conditions to help deliver better outcomes for consumers.

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