

Presentation to the Danish Consumer and Competition Authority

4 November 2021

Introduction

I must admit to approaching today's talk with some trepidation. Last month the World Justice Project published its annual Rule of Law Index. The UK has gradually fallen down the global rankings over the last few years. Sadly, this trend continued in the 2021 edition. The UK ranks 16th out of the 139 countries and jurisdictions measured. On the accessibility and affordability of the civil justice system, it ranks a lowly 88th. However, I was delighted to see that Denmark ranks no.1 in the Index as a whole. So, it seems that we may have more to learn from you than you from us, but I will do my best to share our experience of reforms to legal services regulation.

The reforms in England and Wales were the outcome of legislation passed in 2007. Given my hosts today, I'd note that a report on competition in the professions by our national competition authority was an important factor that led to the reforms.

Internationally, in 2007, the legal services reforms here were viewed with a mixture of curiosity, envy and suspicion – an interesting English experiment, if you will. Over time, though, other jurisdictions have liberalised their markets in a similar way, and more are thinking of doing so. Hopefully this means we have done something right.

The Legal Services Board assumed its powers in 2009 so these reforms are now mature. As part of the process for creating a new long-term strategy, last year we reflected on the successes and failures of the last decade or more. This analysis was based on a wide range of surveys, statistics, stakeholder engagement and other evidence, and I will share some of this with you in later in my remarks.

Regulatory objectives and the rule of law

Before launching into that, I should say a little about the LSB, the legislative framework in which we operate, and the changes introduced by the 2007 legislation.

The Legal Services Board is the oversight regulator for legal services in England and Wales. The UK has three separate legal jurisdictions and there are different regulatory arrangements in Scotland and Northern Ireland. LSB does not regulate lawyers or law firms itself, but instead oversees the different organisations who do. Currently there are eight of these organisations, each responsible for regulating various types of legal professionals like solicitors, barristers, notaries and so on.

We are independent of government and of the legal profession. We are funded by an annual levy on the profession. This reflects a key principle underlying the Legal Services Act that the legal profession should pay for the cost of its own regulation.

Much like in Denmark, only a small number of legal activities are reserved to the legal profession, i.e. activities that only regulated individuals and law firms can do. This creates scope for a large unregulated market, although in practice most consumers use solicitors and barristers. We can make recommendations to the government that the list of reserved legal activities should be changed.

In all our work, we must consider how best to promote eight regulatory objectives set out in the Legal Services Act. These are central to everything we do, and they bind the regulatory bodies we oversee as well as ourselves. Let me read them out to you:

- protecting and promoting the public interest
- supporting the constitutional principle of the rule of law
- improving access to justice
- protecting and promoting the interests of consumers
- promoting competition in the provision of services
- encouraging an independent, strong, diverse and effective legal profession
- increasing public understanding of the citizen's legal rights and duties
- promoting and maintaining adherence to the professional principles

You'll see that one of objectives is promoting competition, but our focus goes much wider. This reflects that the law is more than a market. The law matters. It keeps us safe. It provides ways to resolve disputes without violence and gives the weak a voice in the face of the strong. In terms of economic life, it gives us the confidence to be able to transact and invest, and in so doing unlocks prosperity.

We recently published a new strategy for the sector. Some of the issues we are currently working on include: 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. While trying to increase competition is an important feature of our work, being an independent oversight regulator with responsibility for pursuing the eight regulatory objectives gives us a mandate to tackle a range of issues that matter to the public.

Indeed, I would go further to say that regulation is a key component of upholding the rule of law. Through our activities we help people to understand the law, to access the law and to make it possible for people of all backgrounds to have successful careers in the law. Through education and training regulation helps develop lawyers to play their part in supporting the rule of law by delivering high quality legal advice and representation. By maintaining standards of ethics, conduct and performance regulation safeguards against practices – both deliberate and unconscious – that erode the rule of law. Regulation helps to make sure that the overall system operates in public interest – where the interests of users of legal services are paramount.

Overview of the reforms

Let me briefly summarise the key changes introduced by the 2007 legislation. There were three main areas of reform:

- Firstly, it created a simpler and more consumer-focused regulatory system, which is more independent of the legal profession
 - Before 2007 the professional bodies regulated their own members
 - Under the 2007 Act, the professional bodies are required to clearly separate their regulatory functions from their representative functions within a framework of rules set by the LSB. In practice, regulation is carried out by arm's length or fully separate regulatory bodies
 - The creation of an expert policy advisory body to represent the interests of consumers – the Legal Services Consumer Panel (LSCP). The Panel is embedded within the LSB but operates independently
- Secondly, the creation of a single, independent complaints handling service
 - Before 2007 the professional bodies handled complaints about their own members, whereas now complaints about poor service by law firms are handled by a fully independent body – the Legal Ombudsman
 - Misconduct is handled by regulatory bodies and disciplinary tribunals
- Thirdly, restrictions on competition were removed to allow new ways of delivering services for consumers
 - Different types of legal professional are permitted to form partnerships
 - Alternative business structures facilitated via a licensing regime, including combinations of lawyers and non-lawyers
 - External investment and ownership of law firms is permitted

While the focus on these reforms among international audiences has been on the removal of restrictions on competition, creating a more independent regulatory system has been important in enabling a more competitive market. In a report on global developments on the regulation of technology in legal services, Alison Hook noted that the extent to which the sector is governed by self-regulation as opposed to independent regulation, can have an impact on the response of regulatory bodies. In England and Wales, over the years the professional bodies have resisted efforts by the regulatory bodies that aim to introduce greater competition in the market.

As a requirement of our legislation, my board must have a majority of lay members and a lay chair. A lay person is defined as someone who has never practised as a lawyer. 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. 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.

Evaluation of the reforms – plusses

In September 2020 we published a state-of-nation style report looking back over ten years of legal services regulation. This consisted of a narrative volume and an evidence compendium containing a wealth of data and analysis. It is a frank account of the strengths and weaknesses of the legal services market as we see it.

There have been some real plusses:

- Over the decade the sector has performed strongly with turnover increasing by 22% and employment by 24%. Since our report, the sector has recovered strongly from the Covid pandemic and outperformed other service sectors.
- Alternative business structures have flourished. There are now more than 1500 of these businesses, representing about one in ten regulated law firms. The model has been successfully adopted by local government, universities and charities as well as by commercial entities. Our surveys suggest that alternative business structures are more innovative than traditional law firms
- Consumers have more choice. As well as alternative business structures, the Legal Services Act triggered a series of other regulatory reforms allowing some types of legal professionals to set up in business and offer a broader range of services than they were previously able to. The Big Four audit firms are regulated as alternative business structures serving commercial clients.
- Consumers are more satisfied with the service they receive. Surveys show that consumers are more satisfied with customer service, the quality of advice, and value for money than they were ten years ago. While competition isn't as strong as we would like to see, more consumers are shopping around. There has been a significant shift away from law firms charging hourly rates to fixed-fee deals that offer greater certainty for consumers
- A concerted effort has led to a more innovation-friendly environment for legal businesses. The regulatory bodies have slimmed down codes of conduct, modernised routes to qualification and removed practising restrictions. Surveys show a significant drop in businesses citing regulatory constraints as a barrier to innovation. At the same time, businesses are increasingly reporting a more competitive environment as a factor driving innovation.

As well as these successes, we can also say that the bad things that those who objected to the reforms prior to 2007 said would happen have not happened. Alternative Business Structures have not consequences for the independence of lawyers, the maintenance of professional standards or our international standing. For

example, the number of misconduct cases involving solicitors brought to the independent disciplinary tribunal have nearly halved during the decade.

Evaluation of reforms – minuses

These are all real achievements to be proud of and are unlikely to have happened without the changes introduced by the 2007 legislation. Despite these successes, the sector faces several challenges that have yet to be successfully tackled.

- As I alluded to at the start of my talk, there remains a big access to justice gap. Our data suggests that 3 in 10 people who experience legal issues involving a dispute fail to have their legal needs met. This either happens because they do not get professional help, it takes too long to resolve their issue, or they do not get the information or assistance they need. Many of the things that make a difference to access to justice – like legal aid and how the courts work – fall outside of the LSB's remit. Even so, improving access to justice is perhaps the biggest challenge for the sector to grapple with
- Secondly, there hasn't been as much innovation and take-up of technology as we would have liked to see. A conservative culture in the legal profession, rather than regulatory barriers getting in the way of change, is likely to be the main reason. However, there is a real sense this is changing. The pandemic has accelerated take up of technology and regulators are using sandboxes and other tools to make it easier for innovators to break through.
- Thirdly, competition needs to get stronger. Levels of shopping around by consumers have increased but are still too low, and consumers find it hard to compare legal businesses. There is a very wide variation in the prices that legal businesses charge for the same service.

The report goes into detail about other challenges that are less about the operation of the market, which is what I have been asked to focus on today. These include important issues like improving diversity and inclusion in the legal profession.

You will have spotted the connection between the three issues that I've highlighted. Stronger competition from more consumers shopping around should spur legal businesses to innovate and use technology to deliver more affordable services that better meet people's needs. More affordable and better services should in turn improve access to justice. This is the virtuous circle that we strive to create.

Empowering consumers

The competition reforms in the 2007 legislation were solely supply-side measures. Of course, for markets to work well we also need empowered consumers.

In the first years of the LSB's history the focus was on implementing reforms to liberalise the market contained in the Legal Services Act. There has since been an ongoing focus on removing unnecessary restrictions and modernising practices. However, with these important changes achieved, over the last five years the balance of our focus has shifted to making the market work better by improving transparency for consumers about the price and quality of legal services.

The UK's national competition authority – the Competition and Markets Authority – has been vigilant about the state of competition in the legal services market. It has published two important reports in the last five years, which have assisted us in bringing about a greater focus by the regulatory bodies on these issues.

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.

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.

As part of this effort, we are considering the merits of establishing a centralised, cross-sector database of standardised regulatory information. 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 price comparison and customer review websites, who could use the regulatory information to develop their own consumer-facing products.

Our experience has been that promoting competition in legal services is a tough nut to crack, but we are determined to improve this.

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 people here did not expect revolutionary change and a wide range of factors contribute towards access to justice. The reforms have helped to put in place the conditions to allow greater innovation in the future. During this period of change consumer satisfaction has increased while the problems that some commentators predicted have been avoided

- Secondly, 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 self-regulation
- Thirdly, 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. The two must work in tandem. Change doesn't come easily in legal services and regulation is an exercise in constant vigilance and a search for continuous improvement.

Thank you.

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