

Competition, Regulation and ABS

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Scottish Competition Law Forum, 24th January 2013

Agenda

- Overview of regulatory system
- Competition rationale for legal services regulation
- Next steps
- Alternative business structures (ABS) the theory & practice
- Challenges

Legal Services Act 2007 – drivers of change

- Collapse of confidence in self-regulation
- Perceived anti competitive restrictions
- The ‘regulatory maze’
- Regulatory failure in complaints-handling
- Market developments

ABS

The Legal Services Act 2007 set out a framework

- Approved regulators apply to be “Licensing Authorities” (LAs) of ABS
- Regime started with first licence on 6 October 2011
- Two bodies currently able to license ABS:
 - Solicitors Regulation Authority (SRA) – 70 licences issued
 - Council for Licensed Conveyancers (CLC) – 18 licences issued
- Others regulators working towards applications to become LAs

The new regulatory landscape

Regulatory Objectives

- 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

New regulatory model

Regulatory effectiveness

- Outcomes-focused rules – Regulators need to ensure standards without crowding out business decisions
- Regulation is better focused on risk - by subject and firm
 - Better data flows will enable more targeted interventions
 - Lower-risk businesses will be treated with a lighter-touch
- Robust enforcement where necessary
- LSB seeking to practice what it preaches in the way it relates to regulators

Why regulate?

The [economic case](#) for regulation of legal services was set out by the Regulatory Policy Institute* in 2010. They highlighted three areas of justification:

- public policy objectives
- problems caused by the nature of legal services
- problems caused by sector organisation

Further work by OXERA* looking at segmentation started to illustrate an [approach](#) by which the market could be analysed to assess where regulation was proportionate. They are segmentation by:

- consumer
- types of business
- legal problem

* See last slide for further information

Why regulate?

Public policy objectives of regulation

1. Equity and access – because we want more people to access legal services. Increasing challenge of affordability, given legal aid constraints
2. Efficiency and access – structure of the market may inhibit access and have a detrimental impact on the legitimacy of the legal system
3. Addressing power imbalance – because lawyers usually have more power/knowledge than their clients which can effect services

Why regulate?

Problems caused by the nature of legal services

Assessing quality

- Combination of specialist skill and application is likely to mean that many consumers will be unable to assess the qualities and specific attributes of the product
- Sometimes classified as ‘credence good’ i.e. a service for which a consumer may never know if they are obtaining a quality product or not, because quality is difficult to assess *ex post* as well as *ex ante*
- In addition, the same type of service may warrant different categorisations (credence, experience, search) according to the type of customer.

Why regulate?

Problems caused by the nature of legal services

Getting redress

- more difficult given tendency to view consumer service failings through disciplinary spectacles

Historical self regulation: potential for monopoly –like behaviour

- The general result is an example of the envelope theorem: while small changes in regulation/rules may not affect overall efficiency very much, they may lead to significant transfers of income between suppliers and their customers
- Minimum quality standards or licensing requirements are a possible solution to the informational problems. The introduction of such standards increase social welfare in a number of the cases. However if the quality standards are set exclusively by the profession to which they apply, the likely result will be that they will be set too high with exclusionary effect

Why regulate?

Problems caused by sector organisation

Guild-like behaviour

- One of the central roles of a professional association is to establish various forms of *control* over the profession or trade. This control can be exercised through formal and informal measures such as rules, norms and standards of acceptable conduct and behaviour
- Central issue in efficiency terms is that these forms of organisations effectively write the ‘rule-book’ for the profession and their activities
- Historically this has resulted in a range of restrictions/rules including: prices, advertising, entry requirements, exclusive rights and organisational form

The need for a new regulatory model

Implications for regulators

These characteristics of the supply structure of legal services raise a number of potential issues from an economic perspective in so far as they have implications for quality of service and for competition:

- there may be issues of degradation in quality of service, restrictions of new entry, and stifling of innovation, including in relation to different ways of doing business
- the empirical evidence on the effects of self-regulation appear to be very limited. What exists is mixed in its conclusions as to the effects of entry restrictions and exclusive rights on prices and competition
- Public interest will not always be aligned with lawyer interest e.g. growth, confidence in justice, lower prices, confidence in quality etc.
- Issues raised and solutions may vary in different segments of the market

What are we doing?

Better regulation principles

Five principles were identified by the Better Regulation Task Force in 1997 as the basic tests of whether any regulation is fit for purpose:

- 1. Proportionality:** regulators should intervene only when necessary; remedies should be appropriate to the risk posed, and costs identified and minimised.
- 2. Accountability:** regulators should be able to justify decisions and be subject to public scrutiny.
- 3. Consistency:** Government rules and standards must be joined up and implemented fairly.
- 4. Transparency:** regulators should be open, and keep regulations simple and user-friendly.
- 5. Targeting:** regulation should be focused on the problem and minimise side effects.

Historically legal services regulation has passed #3 but has done less well on the others.

What we are doing

The strategic priorities for the LSB for the coming three-year period:

- Assuring and improving the performance of approved regulators
- Helping consumers to choose and use legal services with confidence
- Helping the changing legal sector to flourish by delivering appropriate regulation to address risks
- And with specific projects focused on:
 - Assuring and improving regulator performance
 - Cost and complexity of regulation
 - Greater flexibility in regulatory requirements on education and training
 - Scope of regulation

ABS – innovation

New ownership structures

Everyman legal employs lawyers at its Oxfordshire base and through a network of home-working solicitors. First law firm in UK with private individual investors. Specialises in acting for entrepreneurs.



Slater & Gordon is an Australian Stock Exchange listed firm who have bought *Russel Jones and Walker*. Geographic spread in Australia through organic growth and acquisition. Maintains local access through remote IT links to head office.



ABS – innovation

New ownership structures

MyHomeMove is a brand name for specialist conveyancers, Premier Property Lawyers (the first every ABS) delivers specialist conveyancing services on a ‘white label’ basis to smaller firms.



Irwin Mitchell is a personal injury firm and provider of ‘white label’ general advisory and personal injury services. It has four ABS licences and intends to list as rapidly as possible. On record as aiming for an IPO.



ABS – innovation

New service models

Brilliant Law promises fixed-price, pay-as-you-go packages for micro SMEs, start ups, and SMEs. It also offers a ‘fixed-priced ABS application process for law firms and other organisations’.



Brilliant Law

Blue Trinity Law is an early stage start up which will offer SMEs company and commercial, contract, and employment law advice. It will also provide a website development service arguing that the ‘change in the legal landscape’ has created ‘an opportunity to diversify’.



ABS – innovation

Post-Jackson and post-legal aid reform

Stephensons has ten offices and is based in the north west. It is the LSC's third largest civil supplier and plans to secure external investment to grow the business geographically.

Quindell Portfolio has acquired three separate law firms (Sliverbeck Rymer, Pinto Potts and The Compensation Lawyers) with a view to building an end-to-end outsourced claims proposition for insurers.

Stephensons
legal services the way you want them



ABS – innovation

New service model development for consumers

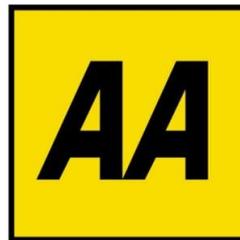
Cooperative Legal Services started out offering personal injury services, probate/estate administration etc. services and is now rolling out national family law advisory services with a focus on fixed fee services and securing major LSC contracts. Aims to expand to 3000 legal staff by 2016.

The **co-operative**
legal services

ABS – innovation

New brand entry

Household name brands who have announced an intention to enter the consumer market via the ABS route include:



ABS – innovation

Other services models

Shared service models in the public sector

Kent County Council's in-house department already provides services to a range of districts to both reduce the need for external advice and secure better value for money. Reported to be investigating the scope for becoming a specialist public law practice.



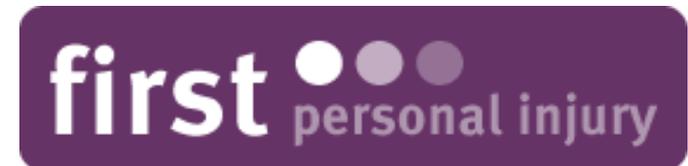
Non ABS – innovation

Development of networks

Quality Solicitors which started out as an internet based alliance of independent law firms which now has 400 locations. It has opened legal access points in WH Smith stores across the UK. Private equity injection has enabled a significant expansion and national TV advertising.



First Personal Injury which is launching early in 2013. It will be a new national marketing network for solicitors specialising in personal injury claims and aims to advertise primarily on the internet and TV.



Non ABS – innovation

Development of networks

Riverview Law which is a combined law firm and barristers' chambers. It sells fixed-fee advice to business consumers (SMEs to FTSE 100 companies) using an annual contract model which covers all a business routine legal advice. It offers for free many services and products usually charged to SMEs.

Stobart Barristers announced in May 2012 and intended to link members of the public and businesses directly with a barrister with needing to employ a solicitor.



Riverview
LAW



Challenges

- Legal services one aspect of a functioning economy. They are essential for SME growth and inward investment
- Regulation needs to evolve in a way that allows competition to flourish
- Competition matters in legal services. Different models of regulation are required to achieve it
- If this is true for England and Wales, would it be truer still for an independent Scotland?

Questions?

References

Slide 7

1. **Understanding the economic rationale for legal services regulation** by *Regulatory Policy Institute* (<https://research.legalservicesboard.org.uk/wp-content/media/Why-regulate-legal-services-RPI-report.pdf>)
2. **A framework to monitor the legal services sector** by *Oxera* (<https://research.legalservicesboard.org.uk/wp-content/media/A-framework-to-monitor-the-legal-services-sector.pdf>)