



“Innovation in the legal services market”

Westminster Legal Policy Forum

Innovation in the legal services market – growth, skills and emerging business models

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The Legal Services Board took on its full powers about five years ago.

The 2007 Act had a primary purpose in the liberalisation of a legal services market place that had in many areas successfully resisted change in order to protect the interests of the supplier and to the detriment of the consumer.

Two key components underpinned this – first the introduction of new regime allowing for a different business model to encourage new entrants, new ways of working, new thinking.

And second, for the first time genuine independence for those involved in front line regulation – an essential underpinning for the new ABS world, as well as necessary for many other reasons,

So I will talk about briefly about ABS and about what more needs to be done looking forward.

What else has to be done to see further liberalisation in legal services?

I am not sure that the word revolution is totally apt to describe what has happened so far in regulation, but we have made a very significant set of changes.

Just as they fought hard during the passing of the Act – foretelling all sorts of disasters – the reactions even now of some of the professional bodies suggest that is still how they see it.

Many would happily revert to the cosy world of self-regulation.

The MoJ “*call for evidence*” provoked a fascinating range of responses.

So I will also touch briefly on the counter revolutionary suggestions now being propounded, primarily I believe by those opposed to change and innovation .

But to begin let me focus on ABS.

The LSB has successfully, I would argue, brought in a new regime which operates with a degree of success

Is it enough to transform the consumer market place?

As **Zhou Enlai** never actually said about the impact of the French revolution – “*it’s too early to say*”¹.

When it comes to ABS and the innovations that they have triggered in legal services it really is too early to speak definitively.

But there are 300 or so ABS licensed firms out there with more in the pipelines.

And not just, I might add, licensed firms by the **Solicitors Regulation Authority** and the **Council for Licensed Conveyancers**.

And hopefully soon firms licensed by the **Institute of Chartered Accountants in England and Wales** and the **Intellectual Property Regulation Board**.

Numbers, are important and any business change needs both momentum and volume.

So though I do not judge the ABS scheme solely on numbers, that is not a bad start.

And we should also I look at the variety, inventiveness, responsiveness and range of ABS firms.

We should look at the diversity of and in the ABSs that have been licensed to date. And if what we have seen so far is any indication of what is to come, categorically ABSs are a success.

¹ Zhou Enlai is said to have been misinterpreted by the translator... he was referring to the student demonstrations in Paris in 1968 rather than the revolution that was triggered by the storming of the Bastille in 1789 which is what most commentators think he was referring to.

ABS are still very much work in progress but there is significant progress that is steadily beginning to make inroads and shows considerable promise.

What I am saying isn't anything new.

Two very different but authoritative commentators – **Stephen Mayson** and **Neil Rose** – have come to similar conclusions².

Neil even referred to this as a *Dyson moment*.

We have the big ABS which are, as predicted, firms with non-lawyer involvement in ownership, private equity investment, big brands, MDPs, in-house teams moving externally, etc. such as **Irwin Mitchell**, **Cooperative Legal Services** and **BT Law**. And we have small ABSs. One of the first licensed firms was **Lawbridge** which was a firm with one solicitor becoming an ABS to allow the non-lawyer practice manager who had worked at the firm since its inception become a legally recognised director.

We have traditional law firms signing up to be ABS e.g. **Gateley**, **Weightmans** and **Knights Solicitors**.

We have large personal injury firms, again **Irwin Mitchell**, providing services themselves and providing “white label” services to others.

And we also have some decidedly non-traditional firms getting on the boat... **Stobart Group**, **Admiral Insurance** and **PWC Legal** for example.

But most of all we have is diversity.

And what diversity that is turning out to be...

we have financial services firms (**BlackStar Legal**), surveyors (**South East Leasehold**) and a firm that I wasn't aware of until researching this speech which helps Russians relocate to London (**Red Square (London)**)... and it will be interesting to see how this one plays out given events elsewhere in Europe...).

We have **Slater and Gordon**, listed on Australian stock exchanges with a record of buying and keeping open struggling upcountry firms in Australia, now moving into the UK.

² **Neil Rose's** '*Dyson moment*' article [30 January 2014] and **Stephen Mayson's** blog post '*ABS two years on: cautiously optimistic*' (6 October 2013).

We have the **Country Gentlemen's Association**, the **Transport Salaried Staffs' Association**³, the **Community Advice and Law Service**, and **Richmond Chambers** (the first SRA-licensed ABS without a solicitor) all licensed as ABS.

Expressions of interest in becoming an ABS have been put out by local authority legal teams (**HB Public Law** [the merged legal teams of Barnet and Harrow borough Councils] and **Kent County Council**⁴), by non-profit venture capitalists (**BRE Ventures** expressing its intention to invest in a start-up legal firm called **Atypical Law Firm**), and **Capita**.

We also have a situation developing where some ABS license holders are actually from the unregulated sector (leading probate providers **Kings Court Trust** and **Landlords Action**) who have chosen to become regulated by becoming ABS licensed operations.

This is diversity and innovation in the provision of legal services the like of which was unthinkable even three years ago as ABS were starting off.

It shows us a glimpse at the future of what legal services provision will be.

What we are seeing so far are the first steps down a long road.

No one predicted three or four years ago that the likes of the **AA**, **Direct Line Insurance**, **MoneyPlus Group**, or even **Saga** would be leading the way and initiating change .

I would argue that this could only happen because of the second major goal of the 2007 Act – independence in regulation.

During the passage of the Bill there was scaremongering.

Those resisted change y misinformed, frightened and primarily sought to undermine ABS as a concept and in reality.

They said that ABS would give us big businesses churning out low-quality, bulk legal services.

Barristers demonstrate in front of the Law Courts with cans of baked beans.

But **Tesco law** has not happened.

Providers of any size interested in the market knows that they have a brand to protect.

It is too early to say where we will end up.

³ The **Transport Salaried Staffs' Association** ABS is via investment in *Morrish Solicitors*.

⁴ Barnet / Harrow and Kent have expressed interest but haven't as yet progressed as far as actually putting an ABS application in.

It is as much a cultural shift as it is a business change. Nothing happens overnight when it comes to legal matters.

Not long after the ABS regime was introduced I said:

Let me be clear at the outset, though, that for me, liberalisation is not solely about 'new ways of doing things'.

Liberalisation is not just about 'alternative business structures', important catalysts to change these might be.

Liberalisation, if introduced carefully and with an open-mind, should also deliver benefits to those who simply wish to continue to provide legal services in the way that they always have.

If a business model has provided good service to the client base and returned adequate profits to partners I can well understand why a firm might wish to continue as it always has.

Liberalisation should allow for that.

What is happening in the legal services market is more than just about ABS.

The changes that are happening today and will continue to happen in legal services will come as much from existing firms (remember there are over 11,000 law firms out there in England and Wales) and what they do as much as from ABS firms setting up shop to deliver services.

Why?

Again I quote myself...

Such firms might well find themselves under greater competitive pressure – and they will need to face it - but there is nothing new in that.

Whether the competitor is a new entrant like Co-operative Legal Services or a long-standing top 100 firm like Russell Cooke – competing for business has always been the name of the game.

By removing out-dated and unnecessary restrictions on ownership and management of law firms, we have allowed for an influx of both financial and intellectual capital that has historically been out of bounds for law firms in the consumer market place.

This approach will give lawyers – and new business partners – much greater flexibility in how they organise and collaborate both with each other and with other non-lawyer professionals.

And in doing this we have seen, and will continue to see, new ways of working brought into the legal services market and the benefits of new competitive pressures being harnessed.

The legal services market is responding to ABS in the way that it needs to.

And that is through the provisions of innovative new services.

The type of services that reflect what the consumer wants and needs rather than what the law firm decides it wants to offer.

Having businessmen or a private equity firm in charge does not lead to reductions in quality of services or a lessening (if that's even possible any further) of trust in the profession.

What it is, is a strong spur to find new, cost-effective and innovative ways of working.

Stephensons is a case in point.

It has taken the pioneering step of offering a broad range of fixed-fee services to individuals and our business consumers.

Another new entrant, **Red Bar Law**, provides fixed fees for barrister-led legal services that it claims are at least 20 percent lower than other litigation options.

It has attracted a wide pool of barristers with its policy of paying them within 24 hours of taking on a case, and makes savings by employing a minimum of more costly solicitors, supplemented by freelancers that work from home at busy times.

To get to where we are has been a huge struggle – the Act stipulated an appallingly complex approvals regime, the front line regulators have had to devise new processes, rule change processes are convoluted – the compromises made in Parliament make to my mind the 2007 Act a model of how not to draft primary legislation.

I take some pride in what the LSB has achieved in the five plus years of its existence.

We have delivered to a large extent the priorities outlined in the Legal Services Act 2007.

There has been a major shift in the way regulation is carried out detached from the special interests of the profession.

We've set up a functioning complaints resolution body.

ABSs now exist and are not going away.

I believe more has been delivered than even the most optimistic thought was possible.

Yet despite these achievements I have argued and will continue to argue that the post Act regulatory regime has yet to deliver its real potential.

At its most basic, the current regulatory framework is over-engineered.

It is exceptionally complex with ten regulators some of whom operate inconsistent lengthy codes of conduct, plus oversight and plus a statutory ombudsman scheme.

Much of the culture and behaviour of the front-line regulators still rests on detail not outcomes with a focus on "*their*" part of the profession rather than seeing matters as a whole.

The continuing link to representative bodies can also result in a lack of clarity for the regulators on their objectives and a lack of transparency of the cost of regulation.

And there is some evidence that the caution of its regulators – and the mid set of the professional bodies - continues to cause delay, difficulties and avoidable cost for new provider types to enter the market, especially those with truly innovative delivery models.

So what must be done?

I'm already on record with regards to what we at the LSB thinks needs to be done to secure the future.

When the Ministry of Justice put out its call for evidence we produced our own [blueprint for reforming legal services regulation](#) which outlines in great detail what I think is needed and that is a new regulatory framework which is needed in order to secure a liberalised market, to offer greater innovation, choice and value to support growth, focus on skills and standards, encouragement for new business models, and to improve access to advice and to ease dispute resolution for all comers.

Legal services that offer greater protections for consumers, but which are too expensive for the majority of consumers to afford, would be a poor outcome.

Equally, a regulatory free-for-all or, in my book even more harmful, a return to self regulation by the professions would undermine public confidence and the wider civic role of the law.

I should be clear though that what I mean is incremental but significant change to legal regulation in England and Wales rather than a big bang style change.

We have proposed a short-term action plan to simplify, rather than fundamentally replace, the legislative framework for legal services significantly over the next two to three years if a suitable vehicle can be found.

Better targeted and more proportionate regulation intended to reduce the cost and complexity of regulation.

In the longer term we have argued for an independent review to develop timetabled and costed proposals for a new framework of regulation that is structurally, legally and culturally independent of both the professions and Government.

The core model to be tested in this process should be the introduction of a single legal services regulator unrelated to any existing regulator, including the LSB, with professional bodies playing a standard setting role rather than controlling the right to offer services.

Although many of the changes in our short term action plan would require primary legislation, I don't believe that they would require wholesale revision of the current regulatory framework.

I do believe however that the real goal of reduced, but more effective, regulation could be most securely built on a new paradigm, rather than within the existing framework or through incremental changes to it.

While this is not feasible in the short-term, it is not too early to begin to think through its core statutory and institutional ingredients.

A simplified statutory framework, in a single Act significantly shorter than the current one, is needed to ensure that regulators have only those powers needed to carry out their functions.

My core personal hypothesis is that we should begin working towards a single smaller cross-cutting regulator with sector specific skills but also with a deep understanding of the public interest, consumer rights and market efficiency issues.

Such a body would need to be created from scratch.

This new regulator should be organisationally, statutorily and culturally fully independent of both government and the representative bodies' "*vested interests*".

In turn, its own rule book should start from a blank sheet of paper - informed, but not constrained, by current requirements with no “*passporting in*” of old rules.

If I have one regret during my nearly six years as Chairman of the Legal Service Board it is that rulebook revisions still produce immensely complex books that seek to restrain legal professionals. This needs to change.

The title of today’s lecture is ‘***Innovation in the legal services market - growth, skills and emerging business models***’.

The attitude of some in positions of immense responsibility in the legal profession represents a direct threat to an innovative future for legal services which strives for growth, prioritises legal skills and legal competence, and which celebrates new business models.

There is no better illustration of this counter-revolutionary attitude than the submissions made by the Bar Council and the Law Society to the Ministry of Justice’s review, with their arguments in favour of returning regulation to the professional bodies as a way of cutting the cost of regulation.

Arguments like this totally miss the point.

What matters is not who regulates, but how they regulate.

The problem with self-regulation is that it inevitably introduces more regulation not less through, for example, making greater attempts to restrict competition.

Since the LSB has been in place, and this ties in with what I said earlier about ABS, it is the professional bodies that have resisted multi disciplinary partnerships, resisted foreign ownership and private equity, resisted a flexible legal labour market and tried to slow down the pace of change.

We should be very clear that this costs money – higher costs of regulation, higher costs for business and higher costs for consumers.

Have no doubt – regulatory independence underpins innovation and enterprise.

Some responses to the Ministry’s call for evidence on the way in which regulation operates showed a visceral dislike not just of the LSB but for the fundamental principles of independent regulation.

But to conclude I’d like to quote the final line of a recent article in the Students Newsletter put out by those servants to the legal profession **Chambers & Partners**.

In the article which focused on ABS and what they mean for the aspiring lawyer they made the following concluding statement “*for students ABSs represent more opportunities for training and careers in a more varied range of workplaces. And they introduce the kind of diversification to the law that other industries gained long ago*”.

That pretty much sums it up.

ABSs are here to stay.

Change, diversification and innovation will happen... provided you are very watchful.

They, and initiatives such as the **quality assurance scheme for advocates**, the **legal education and training review** and others are changing legal landscape regardless of whether you think this is too fast or too slow or whether you support it or not.

I guess that if I had any advice as I leave this post in seven weeks time it is to the Bar Council and the Law Society – yes, you have 800 years of history but much of that has been about fighting for your own self-interest.

That is a proper role for a Trade Union – but accept that this is your role – focus on that – accept independent regulation, welcome initiative and change – you might just find that it is your members who flourish as a result.