

Introduction

A diverse and innovative market is another way of saying a changing market.

Professor Richard Susskind in his latest book ***Tomorrow's Lawyers*** identifies what he sees as the three drivers of change in the legal sector today. They are the:

- *More for less* challenge
- *Liberalisation* , and
- *Information technology*

These three factors will radically change the way lawyers and the legal sector works. Of the three which he identifies it is *liberalisation* which we as regulators focus on mostly.

There are two liberalising developments that are contributing to increasing diversity and innovation in the legal sector today:

- one is the introduction of **Alternative Business Structures** (ABS)
- the other is the need for a **flexible work force**.

I will talk about both before considering some of the further regulatory implications of these changes.

Section one

There's no doubt that ABS are a game changer.

They create new scope for investment in firms and more choice for consumers. Their arrival has helped drive delivery of a modernised

regulatory framework, one that encourages innovation whilst more effectively targeting risks to consumer and public interest. ABS are challenging old orthodoxies and unleashing innovative thinking.

Slowly but surely we are beginning to see the evidence of change.

New ownership structures are emerging, new service models are being put together, and trusted household brands are entering the consumer market via the ABS route.

And a key, very welcome, development is that the sheer diversity of ideas about service provision is being widely embraced. It is also resulting in more traditional firms who have shown little interest in going down the ABS route, beginning to think radical thoughts. In fact the boundary between new and traditional is already blurring.

ABS have spurred existing and traditional players to innovation and to respond to the changes brought about by their introduction. It is indeed a changing market.

But it is not just the advent of ABS that is driving the changes: they are simply responding to consumer need. Whether talking about individuals, small business, or large corporate consumers it is more likely that the service sought is problem avoidance and problem resolution – rather than legal advice. I think that this is an important distinction.

And let us be clear: ABS is not a threat to traditional law firms. The only real threat they face is if consumers prefer someone else's offer more than their's.

In a recent survey of high street firms¹, solicitors mainly saw other solicitors as their main source of competition.

Yet, there are many solutions to the legal problems that consumers face that are offered by providers who are not lawyers. Those solutions will likely differ depending on the nature and severity of the problem, and the preference and circumstances of the client. But the fact remains that there are non-lawyer solutions which is something that lawyers are going to have to respond to.

And indeed this is beginning to happen as new entrants and innovative law firms are increasingly seeing that if their challenge is problem avoidance and resolution, then legal advice may not be the only product in this market.

The public interest and rule of law demands access to justice for all consumers. So let us consider some of the key consumer segments in the market and consider what this means for the types of legal services provided versus the types of legal activities required...

- **Large corporate clients** – whether it is advice on mergers and acquisitions, dispute resolution, disclosure work, tax planning, risk management or major financing, all of this can be, and is, delivered by lawyers. But many of these sorts of needs can often be met by accountants, banks and other professional advisers.

And increasingly there are technological solutions such as e-disclosure, document assembly and compliance software that replaces or reduces the need for lawyers.

¹ <https://research.legalservicesboard.org.uk/wp-content/media/Summary-and-LSB-context-survey-of-solicitor-firms-January-2013.pdf>

- LSB research shows that many ***micro, small and medium sized businesses*** face real problems in sustaining, developing and growing their business².

Taking on their first employee, expanding into new premises, financing major investment, securing intellectual property, initial steps into export and export finance, managing consumer interfaces – all of these are problems to avoid or manage.

Do these clients choose between competing lawyers for help or look elsewhere? Accountants, business consultants, financial advisers and banks are all playing a role in helping these firms grow. And these small businesses often use the internet wherever they can.

- There is a long tradition of research showing that the problems that ***individual consumers*** face are not legal problems but problems of everyday life.

The law provides the context or environment for the problem but that does not mean that reverting to the law is always the best solution.

And many consumers are making active choices to use the internet to garner the information and support they need to tackle their problems without recourse to formal advice at all.

² <https://research.legalservicesboard.org.uk/wp-content/media/2012-Small-business-legal-needs-framework.pdf>

A diverse, and as a response, an innovative market is slowly but surely emerging and the legal profession needs to adapt to this reality. As Blockbuster, Jessops and HMV all discovered, you can argue your business is different because you offer expertise and personal service, but no part of this market is immune to change. I think that most lawyers now recognise this – but as those three once retail giants discovered, you have to respond to change to survive.

There are many aspects to adapting to the new world, but the one that I want to focus on now is developing a flexible workforce to deliver the services that consumers actually want.

Section two

Professor Susskind identified a number of different types of legal sector roles that he believes will come to the forefront in **Tomorrow's Lawyers**.

It seems like a comprehensive list but why are they tomorrow's lawyers? Why not tomorrow's accountants, paralegals, business adviser etc? My point is that in this world we do not have to start with the lawyer and add skills – others start with different skills and add the legal knowledge to fulfil these roles. .

And already about two thirds of the legal sector's workers are not 'authorised persons' (what the regulatory law calls traditional lawyers).

I believe that legal education needs to equip the legal sector workforce for the realities of the emerging diverse and innovative market. As that market changes over time so too will legal education need to liberalise to keep pace.

Increasingly, the other parts of the delivery chain beyond traditional lawyers need to be considered within the broader legal education mix. These people aren't new to this market. On the contrary it has long been accepted by clients of solicitors firms that solicitors aren't the only people working in those firms.

This is more than an argument in favour of legal executives and other types of lawyers – important as they are in driving change. This is about how we educate and employ the whole workforce that is involved in helping consumers avoid and resolve the problems that they face in ways that that consumers find approachable and affordable.

It's not necessarily the case that individuals working in every area of the problem resolution market or even the legal market need to be titled and regulated professionals. It is necessarily the case that they need to be able to do the job asked of them by consumers.

Legal regulation needs to keep abreast by moving from a 'telling' and 'permission' culture towards setting outcomes (something that needs to be mirrored in education and training).

Detailed requirements produce common curricula and identikit lawyers – and reduce competition on price, innovation and diversity of teaching method.

Regulators have to make sure that the education and training restrictions that they impose support new and evolving models – identifying the new

risks and targeting them rather than relying on existing models of professional education designed for a more stable and fixed environment.

This isn't an argument in favour of designing new education and training for a new world but making sure that education and training can cope with an evolving world where change is driven by businesses responding to consumers.

So what might this look like? Specifically I would suggest that:

- We should focus regulation in respect of education and training at the entity level more often;
- Regulators must use detailed and prescriptive entry qualifications only where they can be justified against real and evidenced risks;
- Authorisation of individuals and firms to undertake specific legal activities should be more closely related to education and training, as well as systems and controls within firms;
- Flexibility in qualification is central to a dynamic labour market that supports an innovative sector. Regulators could encourage and support a mix of professional qualifications that lead to authorisation across a range of activities alongside routes to authorisation for specific activities; and,
- To build and retain public confidence, the legal services market must be seen to reflect the diversity of the nation it serves.

Education and training is currently rooted in and still shaped by the origins of the legal profession. That is not something that we should throw away with abandon. However these days the professional is no longer the sole legal service provider. This is a fast changing, diverse and innovative market – and lawyers are just one part of it.

Just like ABS liberalised ownership and control of law firms, we need a similar liberalisation of education and training to secure a flexible workforce. And that means the workforce requirements of a diverse and innovative legal sector might go beyond the eight example roles identified by Professor Susskind. I'd take his list as indicative, rather than exhaustive – and, of course, as roles can unbundle, so they can re-bundle in different combinations to those we see today.

And remember, that with liberalisation of ownership and control of law firms, it is not simply lawyer partners that are making decisions about the shape of their workforce. The liberalisation that we are experiencing right now leads to my third and final point.

How does liberalisation help growth and secure the regulatory objectives?

Section three...

Legal services are one, very important, aspect of a functioning economy. They are essential for SME growth and inward investment. As the Lord Chancellor noted last week, our city law firms and justice system are a crucial export industry in their own right as well supporting other exports and global business.

However regulation needs to evolve in a way that allows competition to flourish in order to support and enhance growth.

We do not need to choose between competition and regulation as some argue: good regulation in markets like this can support competition and in turn deliver growth.

But different models of regulation are required to achieve this.

Why talk about growth when there is much said about oversupply in the legal sector?

It is estimated that around 20,000 students are accepted onto courses to study law each year. The problems that these students face in gaining training contracts, pupillage is said to be proof of oversupply.

I am more sceptical. If there is oversupply why is it that it's that nearly one third of individuals don't get the advice that they need? How come the majority of SMEs don't go near a lawyer to tackle their problems and disputes?

The LSB will soon publish research on small business legal needs. This project has thrown up some startling findings...

The standout finding is that only **12.6%** of small business respondents suggested that "*lawyers provide a cost effective means to resolve a legal issue*".

This is the reality out there. I don't see how there can be oversupply with this level of latent demand. In fact coupled with other research that suggests that close to **30%** of the general population don't get their legal needs addressed for reasons of cost and approachability of the

profession, then it suggests that while progress has been made in opening up the market, we still have a long, long way to go.

We need to get this right so that this market can itself grow and in turn support other business to grow – as well as helping individuals to play an active role in our society.

With this in mind I would contend that regulators have to continue to move to more targeted and better regulation to boost competition, diversity and innovation and therefore drive growth.

The work to deliver ABS and that to deliver a similar liberalisation in education and training is in fact regulation to support competition: competition that can drive innovation; better services; greater choice; and, lower and more certain pricing. We are oversupplied in the old ways of doing things; under supplied with what consumers really want.

Regulators need to sweep away the restrictions that hold legal services back without offering appropriate consumer protection, focusing their regulatory resource on the real risks to consumers and the public interest.

To do this, I think the amount of secondary legislation – and indeed some of the statutes – defining legal regulation will have to be reduced.

Regulators also have to become more responsive to market led changes and be fleet of foot in responding to potential risks – that means less rules and more targeted supervision. The Professional Standards Authority has called for agile regulation for the bodies it oversees in health care. I don't see any legal regulator – including my own – winning medals for gymnastics just yet.

And we have to continue encouraging and supporting entry to, and of course growth and innovation in, the whole legal services market.

These are not just desirable goals in themselves. They are necessary outcomes if we are to enable significantly better access to affordable legal services, particularly for SMEs and individual consumers.

Legal services regulation should be about enabling change in the market. Not specifying change, not seeking to control or limit it. Rather it needs to be about removing obstacles to innovation and maintaining essential consumer protections and protecting the public interest.

Conclusion

Where does this leave the LSB?

Looking forward, our agenda is very much slanted towards ensuring that our regulation, and that of the approved regulators, is kept to the minimum needed to secure clear outcomes. But we are also absolutely ruthless in targeting risks and improving regulatory performance.

Clear expectations have been set for regulatory independence, standards of regulatory performance, quality and diversity.

The LSB intends to hold itself; the approved regulators; and others, to account for the delivery of commitments already made.

We will also remain focused on the various problem areas such as access to justice, consumer and competition issues which are so closely related.

But we are still some way from having a regulatory system that is, in its entirety, fit for purpose: one which delivers growth by enabling greater innovation and competition whilst protecting the wider public and consumer interest to support access to justice and the rule of law.

There is more change ahead for tomorrow's lawyers and tomorrow's workforce to meet the needs of today's consumers.