



Innovation – the view from the Legal Services Board

Westminster Legal Policy Forum Keynote Seminar

24 January 2018

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Introduction

Thanks very much to the Westminster Legal Policy Forum for inviting me here to speak today.

I thought I might start by asking why regulators take an interest in innovation – what business is it of ours? And I think the answer is that innovation is in the public interest. And the very first regulatory objective in the Legal Services Act 2007 (the Act) is to protect and promote the public interest. The environment and what the public wants from legal services is changing, and it is important that legal services evolve too. And innovation to make legal services more accessible, more effective and better value-for-money can help address the issue of unmet need for legal services and help improve access to justice.

We've just heard Crispin Passmore from the SRA talk about what the SRA is doing to create a safe space and new opportunities for innovation for its regulated community. I thought I might take a step back and talk a bit about the role of an oversight regulator like the Legal Services Board in relation to innovation.

I want to talk about four key things:

1. The LSB's market intelligence work, in particular its joint research with the SRA in 2015 on innovation in legal services, and our plan to repeat that research over the next few months.
2. Our draft strategy and business plan (which are both out currently for consultation) and what they say about our plans around innovation over the next few years
3. The innovations enabled by the Act, and the impact they have had so far
4. Why thinking about innovation, competition and a market for legal services is not in tension with the public interest, but is in fact an integral part of protecting and promoting it.

1. Market intelligence and innovation research at the LSB

Those of you who know the LSB will know how much emphasis we put on evidence in our decision making. As part of our commitment to evidence-based decision making, we carry out significant research into legal services and how they are provided. While there are plenty of opinions and assertions about how legal services should be provided and regulated, this has historically been an under-researched and 'data sparse' area. It is also an area in which the LSB is uniquely well-placed to undertake and publish impartial research that covers the whole sector rather than having a narrow focus on just one area of law or professional group.

The LSB continues to be strongly committed to research and wider market intelligence gathering. This is so that, firstly, we can make our decisions on the best evidence available, and, secondly and equally importantly, we can share our insights and underlying datasets with as wide an audience as possible so that developments and views are shaped by the facts rather than by assertion or rhetoric.

We're in dialogue with MoJ and BEIS about how to publicise our research and our datasets. We know from our own experience and from the readout from BEIS's 'LawTech challenger workshop' in September last year, that these are valuable information sources for new

entrant businesses, both in legal services and LawTech. Our data can help identify and quantify new business opportunities, and assist in developing new products and services. If you're a recent or potential new entrant in these areas, please do have a look at our research website.

We undertake recurring large scale surveys on the legal needs of individuals and small businesses and on the prices of key consumer legal services. And, as I mentioned earlier, we're about to repeat a quantitative survey of innovation in legal services that we and the SRA first undertook in 2015. Our fieldwork for this survey is beginning - could we strongly encourage any firm that is contacted by our researchers to take part and let us know your views? We know that we and the SRA are not the only ones doing research in this area, but our joint 2015 survey covering 1500 organisations was the largest ever survey of innovation among legal services providers. Some key findings in 2015 were that:

- Solicitors were, on average, more innovative than other regulated legal services organisations in terms of both managerial and organisational changes.
- ABS status had a positive effect on innovation. ABS solicitors firms were 13-15 per cent more likely to introduce new legal services than traditional solicitors firms.
- Unregulated providers were more innovative than any other type of firm
- Legislative change and regulatory change are the two most commonly cited drivers of innovation AND biggest barriers to innovation

We're slightly modifying the innovation survey this time around. We want to find out more about knowledge and use of technology by law firms. We know it is important to collect this information in the most meaningful way, so we're putting quite a lot of thought into what categories to use for the different types of technology and how we describe them. We may supplement our survey of law firms with conversations with LawTech companies. We expect to publish our report on this research around July, so watch this space.

2. Innovation in the LSB's draft strategy and business plan

The priority that we put on innovation is reflected in our draft strategic objectives for 2018-2021, which are currently out for consultation. We are proposing to focus on three objectives during 2018-21:

1. Promoting the public interest through ensuring independent, effective and proportionate regulation
2. Making it easier for all consumers to access the services they need and get redress
3. Increasing innovation, growth and the diversity of services and providers

In our draft business plan for 2018-19 which accompanies our draft strategy, we are proposing that we undertake a project on technology and regulation, to improve our understanding of the regulatory risks associated with new technology, and how regulators can respond to these without stifling innovation. I also think there is a broader flavour of innovation in our business plan, as a lot of our proposed work could be seen as renewing what we do and how we do it, for example a new approach to regulatory performance assessment and taking forward our review of the internal governance rules, which have not been reviewed holistically since they were first introduced at the beginning of 2010. Please do take a look at our consultation on our draft strategy and business plan. The closing date for responses is 19 February.

3. The Act as innovation

The Act itself can be seen as a tremendous innovation. It enabled new business structures so that non-lawyers could manage, invest in and own law firms. It created an independent Legal Ombudsman, a statutory Consumer Panel, arrangements for separating regulatory functions from representative functions and the LSB as the independent oversight regulator for legal services.

We have evaluated the impact of the Act every three years since the LSB came into existence. What we have found in our most recent market evaluation in 2016 is that, since 2006/7:

- In relation to access to legal services, the same proportion of people are taking action to resolve their legal issues, but more consumers are handling their matter alone rather than seeking advice;
- In relation to competition, there are positive developments including changes to regulation that allow more competition in the market, but improved outcomes for consumers are emerging slowly; and
- In relation to quality of legal services, there have been improvements in most areas and definitely not any sign of the collapse predicted by some commentators in the debate around the passage of the Act.

Overall our analysis shows signs of positive change and a lack of negative impacts of reform on quality, but it also reveals the continued scale of existing unmet need and suggests there has been limited progress towards delivering better market outcomes. We think more progress needs to be made and the pace of change needs to increase. That's why we welcomed the CMA's legal services market study report and its clear recommendations around how increased transparency of price and quality information for consumers can make the delivery of legal services better for everyone involved. More transparency will build consumer confidence in using legal services, which in turn means more business for law firms and more access to justice. We welcome the regulators' coordinated work to implement these recommendations in a proportionate and evidence-based way – which of course depends on what services are being offered, by whom and to which type of consumer. We are all aware that one size does not fit all.

4. *The public interest and the market for legal services: not a contradiction in terms*

The last point I want to make is to counter the idea that some commentators put forward, that a tension exists between the public interest on one hand, and thinking about a market for legal services on the other. That is not to say that free markets always function in the public interest – in fact, regulation exists to protect the public interest when free markets reach their natural limits.

But thinking about a market for legal services helps us understand what can be done to encourage innovation. If we want more innovation in legal services, then firms have to be able and willing to innovate. They are *able* to innovate when unnecessary regulation doesn't hold them back, and when they have access to the resources they need to invest to make innovation happen. Great strides have been made in this area – in our research on investment in legal services, published in June 2017, only 6% of ABS identified some aspect of legal services regulation that prevented them accessing finance. But we need to continue to be vigilant to make sure that regulation doesn't act as a road block, while also making sure necessary protections are in place. But for firms to be *willing* to innovate as well, they have to have reasons and motivation to do so. And a key reason to innovate is that they are competing with each to better meet the needs of consumers, and if they don't innovate, the consumers will go elsewhere.

And this all ties into the public interest, as well-functioning markets are very much in the public interest. I can't put it any better than Professor Christopher Hodges of Oxford University, in his paper on ethical business regulation for BEIS, in which he writes:

“The essence of a modern democracy is based on respect for others, expressed through support for fundamental human rights. Applying that political policy to a vibrant market economy produces the result that society supports mutual exchange through honest trade so as to improve the common good. Trade and harmonious society function on the basis of trust. So the purpose of regulation of business activity is to enable widespread trust in traders, on the basis of which a healthy, sustainable

and growing economy can exist, which in turn supports employment, social stability and innovation.”

Thank you.

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