



# Legal Services Institute

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## CHANGE AND CHALLENGES FOR THE LEGAL SERVICES MARKET<sup>1</sup>

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### 1. Introduction

Trying to describe change and challenges in the legal services market, and what the market might look like in five years' time, represent a daunting test for the ten minutes I have. Of necessity I shall have to summarise and generalise. For those interested in more detail, the Legal Services Board's research note published last month on the impact of alternative business structures on the market<sup>2</sup> is an invaluable source of further analysis and insight.

### 2. The market in five years' time

As the market unfolds towards its new future, there are two sets of influences. One set is commercial, and is shaped by the normal forces of market evolution and competition. Many of the effects that we'll be seeing in five years' time have already been set in train. The second set is regulatory and is, for the time being at least, shaped by the implementation of the Legal Services Act and the consequences that are flowing from it.

On the commercial side, five years out, we must expect, first, that the make-up of providers will have shifted. There will have been consolidation – though we need to understand 'consolidation' in different ways: it does not necessarily have to mean the disappearance of small firms. I remain convinced that this type of consolidation *will* happen to some extent (and, in the best interests of a high-quality, efficient supplier base, in my view it is needed). It cannot be efficient or necessary for a population of 60 million to be supporting more than 10,000 law firms, 85% of which are, on any definition, 'small'. Such fragmentation is expensive to the market as a whole.

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<sup>1</sup> This paper is a transcript of an address by Professor Mayson to a seminar on the future of the legal services market hosted by Westminster Legal Policy Forum in Whitehall on 6 September 2011.

<sup>2</sup> See [http://www.legalservicesboard.org.uk/news\\_publications/latest\\_news/2011/120811.htm](http://www.legalservicesboard.org.uk/news_publications/latest_news/2011/120811.htm).

However, in my view, still the more likely form of consolidation will be the amalgamation of firms or individuals into larger entities. We have seen this type of consolidation happen in the world of corporate law firms, both domestically and in cross-border mergers and affiliations. This trend is certain to continue. What is not certain is whether there will be enough work to keep so many corporate firms busy and profitable. Also, at present, there is a tendency to equate large firms with corporate and commercial work and with international practice. But the future will see large consumer or retail firms as part of this group: already firms such as Irwin Mitchell and Russell Jones & Walker would not fit the classic large firm description, and nor would Cooperative Legal Services if it were included – and yet all undeniably qualify in terms of turnover. I believe, therefore, that more consolidation of both types will follow in the corporate and retail legal worlds.

But small firms will not all disappear – and nor should they. There are already some very successful niche firms, in terms of high levels of specialisation, focused processes and virtual provision. Not all corner shops have been driven out of business by large supermarkets; nor have all independent optometrists become victims of the High Street brand opticians.

Second, the rise of new entrants and brands will continue. The market for consumer or retail legal services will change most. Access to work and clients will be concentrated in large providers and brands – particularly along the lines that we have already seen: insurance companies (DAS); financial institutions (Halifax); retailers (Co-op); and membership organisations and affinity groups (AA, Saga, Which?). There will be new types and styles of delivery through innovation of process, technology and client service; different use of paralegals and other non-lawyers; more extensive use of technology; and virtual delivery. New brands are arriving (such as QualitySolicitors, Lawyers2you, Legal365, and HighStreetLawyer), and will include some from abroad (such as LegalZoom, Rocket Lawyer, and possibly Slater & Gordon). Solicitor & Co is being displaced by LawBrand.com. The mystique of legal practice will disappear, and advice and offices will be more accessible and user-friendly.

Third, the internal impacts of these commercial changes on traditional law firms are likely to be profound. The idea of pricing for value rather than cost, and of managing for profit rather than turnover, will have taken hold. To accompany this, new approaches to structure will be common, with more overtly corporate styles and a new relationship between ownership and management. The everyday life and discourse of legal practice will change. We'll see new sources of capital (including shifts in the funding of claims and of firms, and the adoption of private equity and public flotation – although it's interesting to observe that external investors currently seem more focused on the better-organised and more attractive outsourcers than traditional law firms). There will be economies of scale; better decision-making; more enlightened and respectful use of professional managers and non-executives; multi-sourcing of resources; and greater transparency of performance assessment and distribution of rewards (both income and capital).

Fourth, the redistribution of work and rewards will force firms and individuals to focus on what type and level of expertise is truly necessary, and whether it needs to be carried out by legally qualified talent in a regulated environment. Some entrepreneurial lawyers, along with some highly prized specialists, might earn even more than well-paid lawyers do today. Others will need to accept that their qualification is not in fact needed, and their rewards will reflect that. However, five years from now, I'm not convinced that we will have yet solved the public interest conundrum of high specialisation and uneconomic rewards that some aspects of legal aid work present.

Finally, the Bar is also over-supplied, facing competition from within and from solicitor-advocates, as well as challenges in public funding for criminal and family barristers. I cannot see the need for high-quality advocacy disappearing, and this will remain the natural preserve of barristers and their regulator. What I also cannot readily see is the commercial merit of chambers competing with law firms for litigation. The business structures, economics, and management discipline and expertise

necessary to support legal services requiring direct relationships with clients are not comfortable territory for the Bar. Chambers will start with a significant competitive disadvantage relative to law firms and new entrants in relation to litigation, procurement and resourcing that will stretch many of them to breaking point and beyond. This could be a situation where a strategy of sticking to the knitting could well be to the Bar's medium and long-term benefit.

In short, the inefficient, over-supplied, out-of-touch, and over-priced consumer legal services market that David Clementi investigated in 2003-4 will have been transformed by 2017. There will have been some casualties along the way: providers (of whatever hue or origin) who cannot or will not provide high quality and value for money, or avoid complaints, surely cannot expect to survive in a modern competitive market.

### 3. Regulatory influences

There is a considerable burden on regulators at the moment. The LSB is still new; the SRA is adopting a different approach to regulation, as well as extending to entity regulation; the other regulators are adapting to changes, too. The public at large is probably indifferent to the changes – or even ignorant of them. The regulated community seems to display a mixture of scepticism, unreasonable expectation, some degree of fear arising from uncertainty, and even (shocking to say) some pockets of ignorance, too. The stakes are high.

It is now coming up for seven years since Sir David Clementi's final report and four years since the Legal Services Act received the Royal Assent. The commercial interests are now pretty well all in place. The market is expecting change. There are law firms and outsiders itching to press on. We have been working for some time towards a new regulatory framework from 6 October 2011. The changes are no longer novel, and the process has hardly been rushed. Congratulations to the Council for Licensed Conveyancers for making it.

The SRA will introduce outcomes focused regulation on 6 October ... but with one crucial outcome missing. The planned date for SRA-regulated ABSs will come and go: we now have certainty replaced with uncertainty. Policy-makers and regulators rightly want the legal services market to be more commercial and business-like. But with new entrants, new capital, and entrepreneurial law firms ready to respond, the regulators have failed them. Some of the market initiatives waiting in the wings for ABS implementation will have taken years to prepare. Some of them cannot happen overnight; they are not short-term projects, and need detailed planning and preparation. Some of them are commercially sensitive, and some are similarly sensitive to timing. Such is the nature of business and competitive advantage.

At this point, the implementation of ABS has become – I say with deep regret – something of a shambles. Whether there has been a failure in aspiration, project management or communication, I'm not sure. For those new entrants and sceptics who are unsure about the regulators' ability to supervise a new framework and style of regulation effectively, the failure even to start on time presents a significant blow to credibility. It might be formally correct to say that 6 October was never set in stone; but the weight of expectation and momentum around that date was openly encouraged, and it would be disingenuous now to hide behind such a regulatory sleight of hand. This implementation was simply too important in terms of policy and commercial execution to get the timing wrong. Nor is it an adequate response to say that the delay will only be a matter of weeks (not least because we still don't know for sure that this will be the case). If a week is a long time in politics, three months is an age in the world of business and the movement of capital.

#### 4. Conclusion

Change is inevitable and is continuing. The market in five years' time will be significantly different – and for some firms will lead to outcomes that are unthinkable and unrecognisable today. The challenges will be considerable for all. Incumbent law firms (particularly those in the retail legal services market) will need to restructure their businesses and finances, their ownership and rewards, and their resources and processes. New entrants and investors will need to come to terms with a new regulatory framework, and how to absorb or compete with structures, people and cultures that they might well struggle to understand. Regulators currently have ground to make up and much to prove in their ability to supervise the new market effectively.

The legal services gravy train has been consigned to history. The future is now arriving at a new platform: all change, please!

## Legal Services Institute

The Legal Services Institute (originally the Legal Services Policy Institute) was established by the College of Law in November 2006 as part of its charitable activities. Its principal objectives are to:

- (a) seek a more efficient and competitive marketplace for legal services, which properly balances the interests of clients, providers, and the public;
- (b) contribute to the process of policy formation, and to influence the important policy issues, in the legal services sector and, in doing so, to serve the market and public interest rather than any particular party or sectional interest;
- (c) alert government, regulators, professional bodies, practitioners and other providers, and the wider public, to the implications of these issues; and
- (d) encourage and enable better-informed planning in legal services by law firms and other providers, government, regulators and representative bodies.

The Institute seeks to form and convey independent views that it believes reflect, support and promote the public interest rather than the preferences or views of other interested parties. Where the College might have views as a provider of education, these are expressed separately.

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