

Please find below my comments on the Legal Services Market Study: Interim Report.

I come at this from an independent standpoint, advising both law firms and ‘unregulated’ legal services suppliers of commercial services on how to plan their businesses and develop services for the future. Our views are based on a rigorous supply-side economic analysis of the legal services market, and in particular the supply of commercial services to UK business. In broad terms we do not see the legal services market from a lawyer’s perspective, but from an in-house lawyer’s one (be they qualified or unqualified), and we have an especial focus on services for SMEs and micro firms.

I do not find the use of the term ‘consumer’ to include individuals as well as micro and SME firms useful. Equally law firms are not facing one competitive threat, but many, usually industry or service specific. Using research about how personal injury lawyers work for claimants and extrapolating it to how a 20 employee business deals with a tribunal claim is disingenuous and unhelpful. It is important to be specific about these segmentations, especially when considering regulatory reform on the basis of such evidence. The responses to the findings are numbered according to the Interim report below.

1.13 It is unhelpful to continually conflate individuals and small businesses in this way. SMEs can be up to 50 employee £5m turnover businesses, and they do not buy legal services in the same way as a divorcing individual does. The world is not divided into lawyers and non-lawyers it is much more subtle. Some lawyers may be able to switch between giving conveyancing and employment law advice, but buyers increasingly expect specialists to stick to the knitting. In employment law services, the locality of service delivery issue is simply not born out by the supply side analysis, for example. Peninsula Business Services is now the largest supplier of employment law services in the UK and operates nationally. Their ability to target any small or micro business with an employment issue locally is driven by the largest team of regionally based business development managers nationally.

1.14 Fixed prices have been around for a long time now and law firms worry a lot about ‘alternative billing structures’. Insurance led legal services have been comfortable with fixed fees for decades; it is not new. In commercial services many suppliers offer fixed price or free initial documents or advice slots. Much of the document/precedent supply market has been eroded almost entirely by these ‘free’ efforts.

1.15 In contentious business fixed pricing is much harder to design and deliver, but it is standard practice among the regulatory consultancies in particular.

1.16 Price dispersion in one-off legal business is common; in commercial repeat work it is less common and typically the suppliers to SMEs will price a first year service to ensure renewal business is high or even contracted for several years. 3 year contracts are normal in employment law services, for example. Price competition among regulatory consultancies and between them and law firms is currently high.

1.17 There are several authoritative and independent Guides which law firms and lawyers use extensively to display their strengths. See Chambers & Partners, Legal 500, LBR. Awareness of these among small businesses is not as high as among larger businesses, but they are current, free to end users and extensively researched.

1.18 The lawyer comparison guides are available on-line and yes, they do not compare prices. As above, pricing for consumer work and commercial work have to be considered differently. In commercial work the distinction between transactional and contentious business is key too (it is simpler to deliver fixed fees in transactional work). Lawyers are not facing competitors across the

board on price or services generally, but different industries have specialists taking sectors of legal work on increasingly. Insurers are taking much of the personal law services (family, wills, PI), financial services take much of the conveyancing work too. In commercial work the teams who take property services work will often not be the same competitors who take employment law or commercial contract work. I coined the phrase ‘the competitor who kills you doesn’t look like you’ to summarise this simple application of Christensen economics here. Lawyers will lose business to Peninsula in employment law and Achilles in commercial contracting and others in other sectors too. These competitors do not co-operate or even know each other exist very often; they don’t need to. The proposition of being a full-service law firm, makes sense to law firms, less so to businesses seeking best of breed specialist advisers.

1.19 There are well established examples of ABSs and firms offering fixed price work, especially for SME employment law work. See Avenure, Adviserplus, Citation, ELAS, Ellis Whittam, Mentor, Park City, Strictly education; and law firms like 3HRplc, Abbiss Cadres, BDBF, GQ, Menzies and Outset as employment law firm examples. The level of innovation is higher in some areas than others, often driven to some degree by the level of dissatisfaction within the solicitors firms, but more by innovation of teams working outside the scope of these regulators. In 1995 there were 26 firms delivering regulatory consultancy services (£71m) and in 2016 there are 85 (£418m) and 3 of the top five employment law services teams are now regulatory consultancies (not law firms). In 1995 there was only 1 specialist employment law boutique, today there are 29 generating over £36m in sales annually. Innovation among both of these groups is high in terms of business process, pricing, technology deployment and service scope. Rates of innovation vary significantly according to sector and industry specialisms; a horizontal overview is not revealing the real picture here.

1.20 There are barriers to brand development and expansion; ask Rocket Lawyer and LegalZoom. Again they tend to come from other industries choosing to offer some services free to build scale. The law-for-business publishing market in the UK used to be c£200m in sales (Croner/Gee/Tolley); it is now under £50m and dropping. Inter industry competition is intense. The same regulators complaining of competitive asymmetry here are silent on the fact that law firm content marketing has decimated a publishing market which underpinned the ability of small firms especially to competently manage legal issues in a DIY manner. Normal inter-industry competition in play; but it’s a 2-way street.

1.23 Regulation for individuals seeking services is very different to regulation for business purchasers of legal services. A generalist solicitor may not be the best supplier for a business facing serial and complex safety or employment risks and a specialist firm compliant with CIPD, FCA, ISO, HSE, IoSH, and NeBOSH and several industry specific certifications may be much more appropriate. Often regulatory consultancies unregulated by the SRA offer much more appropriate (higher and uncapped) levels of PI and regulatory specific certification than law firms do; and buyers appreciate this. The LSB research here applies largely to services to individuals and is unreliable when looking at, for example, employment law services for SMEs. Many of the suppliers unregulated by the solicitor representative bodies are heavily regulated, not least through the FCA, UKAS and HSE specialisms. The assumption that a solicitor is by definition better qualified is misleading; they have to specialise and demonstrate depth of industry relevance nowadays. Many do; most do not.

1.24 Buyers of legal services are increasingly well served now by technology assisted cost visibility and management systems (see Omnia Software). GCs have had the whip hand here for some time and transparent billing and tracking is now commonplace in commercial legal services. Lawyers are perceived to be expensive usually because they are. They are at their best in ‘principled’ or ‘bet-the-

shop' contentious business, and businesses see these gladiatorial skill sets as expensive in a good way. Most transactional work is already fixed price in employment, safety and regulatory sectors.

1.25 In commercial services fixed fee work usually involves negotiation around the duration of contracts and termination provisions. Many clients will not understand that annual renewable contracts are the norm and some suppliers insist on 3,5 or longer durations. For now commercial competition is the main route to policing this.

1.27 Unregulated suppliers are subject to much more than general consumer law in commercial sectors. Credibility as a supplier starts with extensive certification by industry and competency based regulators. Conflating individuals with SMEs here in terms of legal need is highly misleading. New entrants simply do not survive without demonstrable industry experience, certifications and endorsements. FCA, CIPD, BRC, UKAS and other accreditations can be considerably more onerous to achieve and sustain than solicitor firm or ABS accreditation. That is even before you start with the Group Purchasing Organisations and supply chain certification systems which also require qualification to a high degree. Frankly it is time that more solicitors practices took these regulatory regimes much more seriously; not doing so is costing them business. The boutiques specialising in sectors typically do 'get it', but often 'full-service' firms do not.

1.30 Unregulated suppliers have been highly successful where they want to be in commercial services for SMEs. Our supply-side economic research of the £1bn employment law services market shows that 31% of the market is now not undertaken by law firms and these 'unregulated' suppliers dominate service provision among SMEs in particular.

1.31 It has long been my view that the proliferation of regulators post Clementi was not just counter to the intention of the Report but an intentional drive to build barriers to entry into the profession's core areas of work. It has not worked.

1.32 Information is not lacking evenly across the board. For consumers, yes. For businesses, not so much.

1.34 It is again important to distinguish between individuals buying personal law services and businesses (even small ones) buying commercial legal services. Adding more regulation to commercial services suppliers would be anti-competitive and unnecessary. Arguably the only regulation needed would be an unfair contract terms provision restricting very long service agreements and enabling businesses of, say 20 employees or less to always be able to give 12 months notice. The register of safety providers and similar approaches have had little or no effect as legal services are typically a stress purchase, ie bought on short time scales and in troubled times. Time for shopping around is limited, but specialists do have well established routes to ensure they get their services in front of the buyers they want on normal commercial sales prospecting principles. A number of client recommendation services have sprung up (ie FeeFo, TrustPilot) usually allowing suppliers to put forward satisfied customers to give referrals and quoting percentage approval ratings etc. Most commercial buyers see through these and disregard them, but there is only very limited value in a regulator endorsed version. Whether a legal 'Tripadvisor' would work is doubtful in my view, as the 'prostitute principle' applies here, ie the value of services diminishes dramatically after delivery.

1.35 The review seems to have missed the fact that Government agencies play a significant part in the service delivery market here, and the roles of ACAS and the HSE in particular should be reviewed. While the current fashion seems to be to increase their scope for service delivery (and charging to offset their establishment costs), transparency of regulator actions here would be a

better route to ensuring competition. Open access to contact details for all regulatory interventions to all suppliers of legal services used to be the norm and should still be. Definitions of 'legal services' are still too muddy to allow for extensions of any regulatory ambit, and it should be remembered that the reserved activity list in all its anachronistic glory should if anything be reduced, not expanded. An SME seeking advice from a generalist solicitor who spends less than 10% of his or her time on employment law will not be well served compared to an unregulated specialist with the systems and 100% focus that dabblers simply don't know how to deliver. Supply-side analysis of the SME employment law market shows that SMEs overwhelmingly prefer the 'management systems' approach to the legal services case management one. There is clear evidence that it is those law firms who do not understand this who pose the greatest risk to consumers.

1.36 If an alternative regulatory model can harmonise the inspection, certification, authorisation and approval systems behind the ABI, Achilles, ARCA, BSI/ISO, BRC, CHAS, CIPD, CITB, FCA, IOSH, NEBOSH, SIA, UKAS to name but a few, great. Good luck. The LSB should spend more of its time and money perhaps on helping solicitors to achieve these other certifications as well.

1.37 What seems to be lacking here is a genuine recognition by PI insurers that service delivery competencies conferred by these certification bodies genuinely reduce risk to clients. The degree to which they pass on or share such risk reduction benefits with the legal services supplier should be investigated.

1.38 A divorce is not the same as a dismissal. Extending legal services regulators into areas which are already heavily regulated (see 1.36 above) is a case that needs to be proven both in terms of economic necessity and the competence of these teams to deliver what is already a highly complex service. Regulatory mission creep is about as far away from the original Clementi ideals as you can get and it should be resisted.

We have as ever the research to substantiate these points and to provide more examples and quantitative statistics if necessary.

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