

# REFORM AND 'MODERNISATION' OF LEGAL SERVICES IN ENGLAND AND WALES

PRESENTATION TO OECD WORKSHOP  
ON REGULATORY BARRIERS TO COMPETITION IN PROFESSIONAL SERVICES

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18 NOVEMBER 2021



# 1. Market and policy context

- **British legal system has long been held in high regard**; important service in its own right (around 1.7% of GDP) also important intermediate input to other services.
- **Differentiation of legal service providers** within authorised sector (solicitors, barristers, patent attorneys etc); between types of services (reserved/unreserved); and also between authorised and non-authorised/(unregulated) providers.
- **Historically self-regulated** by a series of practitioner bodies.
- **Major changes introduced through Legal Services Act (2007)**: focus on modernisation and reform; specific objectives for sector established.

## 2. Why the need for reform and modernisation?

- **Reports and studies from the early 2000s** concluded that: rules for the profession were unduly restrictive; regulatory framework was inflexible, over-complex and flawed; and insufficient regard was paid to interest of consumers.
- **Demand side:** substantial unmet demand; concerns about affordability and customer satisfaction; low levels of consumer engagement.
- **Supply side:** restrictive rules on entry, conduct and methods of supply; lack of diversity in profession; low levels of price transparency; growth in online/‘do-it-yourself’ (DIY) law and in unregulated sector.
- **Technological drivers:** emergence of new technologies (Lawtech); changes in service delivery; growth in online advice; new types of participants (technology companies and impact of AI).

### 3. What changes were introduced, and what happened?

Focus on four important changes:

- Allowing for **greater non-lawyer involvement** in law businesses.
- **Shift in regulatory strategy** towards principles and outcomes.
- **Greater flexibility** in how solicitors provide legal services to the public.
- A **new regulatory architecture** and independent oversight regulator.

### 3 (a). Allowing for greater non-lawyer involvement in law businesses

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|-----------------------------|---|
| <b>What changed</b>         | <ul style="list-style-type: none"><li>• <b>Introduction of Alternative Business Structures (ABS)</b> which allow for some form of non-lawyer involvement, either at the management level (e.g.: partner, director or member) or as an owner (e.g.: investor or shareholder).</li></ul>  |
| <b>Rationale for change</b> | <ul style="list-style-type: none"><li>• <b>Traditional</b> ownership and management <b>structures seen as unduly restrictive</b> and impeding competition and innovation.</li><li>• <b>Allowed for access to external capital</b> which could provide for greater innovation.</li><li>• <b>But some argued could lead to greater conflicts of interest;</b> lower quality; and change the ‘culture of law firms’.</li></ul>   |
| <b>Impacts to date</b>      | <ul style="list-style-type: none"><li>• Initially slow uptake, but <b>now significant entry</b> – 1 in 10 entities are an ABS.</li><li>• Type of <b>ABS entities are diverse:</b> small family owned to large retail brands, charities, university, not for profits etc.</li><li>• Six ABS firms now listed on stock exchange.</li><li>• <b>Seen as competitive threat</b> by some traditional firms.</li><li>• <b>Consistently found to be more innovative</b> than traditional law firms.</li><li>• <b>No evidence of higher disciplinary proceedings</b> against ABSs.</li></ul> |

### 3 (b). Shift in regulatory strategy towards principles and outcomes

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|-----------------------------|--|
| <b>What changed</b>         | <ul style="list-style-type: none"><li>• <b>Shift</b> in regulatory approach <b>away from detailed prescriptive handbook</b> of several hundred pages <b>towards a principles-based, ‘outcomes focussed’ regulatory approach.</b></li><li>• Introduction of <b>small number of high level principles</b> which should guide everything solicitors do.</li><li>• Approach introduced in 2011 and was adapted and refined in 2019.</li></ul>  |
| <b>Rationale for change</b> | <ul style="list-style-type: none"><li>• <b>Move away from a ‘tick-box’ mentality</b> towards one where solicitors and firms are required to determine, and implement, the right systems to achieve the desired outcomes.</li><li>• <b>Reduce the compliance burden and costs</b> on legal service providers.</li><li>• <b>Allow regulation to keep in step with wider market changes</b>, in particular the increasing diversity of business structures in which legal services are being provided (avoid one-size fits all).</li><li>• <b>Some concern that it could lead to material gaps in coverage</b>, and that the generality of principles could increase uncertainty among solicitors as to how to comply.</li></ul>  |
| <b>Impacts to date</b>      | <ul style="list-style-type: none"><li>• Initial period seen as requiring a <b>gradual shift in culture and approach</b>: some solicitors not taking account of flexibility; some over-complying; and some interpreting Indicative Behaviours as rules.</li><li>• <b>Early evidence on impacts of the 2019 changes is broadly positive</b>: Law Society noted that it has provided the flexibility to adapt to Covid19; others have noted that it <b>has provided a real focus on reducing regulation and lowering costs</b> which can promote competition.</li><li>• Also appears also to be a <b>generational aspect to the changes</b>: those new to profession appear more comfortable with approach than those that have been used to detailed rule books.</li></ul> |

### 3 (c). Greater flexibility in how solicitors provide legal services to the public

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|------------------------------------|--|
| <p><b>What changed</b></p>         | <ul style="list-style-type: none"> <li>• Since 2019 <b>solicitors can provide unreserved services to the public</b> or a section of the public by <b>practising in an ‘unauthorised’ entity</b>.</li> <li>• In addition, individual <b>self-employed solicitors (freelancers)</b> are now able to provide reserved legal services without being authorised as an entity (subject to certain conditions).</li> </ul>  |
| <p><b>Rationale for change</b></p> | <ul style="list-style-type: none"> <li>• <b>Aim to provide solicitors with greater flexibility</b> in how they work with the aim of making it easier for people (including vulnerable consumers) to access legal services thus address unmet demand.</li> <li>• More flexibility could also lead to a <b>more diverse legal market</b>.</li> <li>• <b>Some concern that consumers would lose some protections</b>; that they may fail to understand relevant distinctions between providers; and could incentivise some regulated law firms to move into unregulated sector.</li> </ul>  |
| <p><b>Impacts to date</b></p>      | <ul style="list-style-type: none"> <li>• <b>Too early to properly assess</b> the impacts of changes.</li> <li>• <b>Freelancers: early signs</b> are that has allowed for <b>greater operational flexibility</b> and <b>potentially provided lower cost options</b> to consumers. Appears to be a lot of interest.</li> <li>• <b>Solicitors in unauthorised firms:</b> <ul style="list-style-type: none"> <li>• <b>Competition and Markets Authority (2020):</b> ‘early signs are positive’; entry and expansion partly result of reforms; <b>no submission raised concerns about consumer protection. But regulatory gap exists.</b></li> <li>• <b>Legal Services Board (2020)</b> new entrants use technology to serve large numbers of consumers; <b>unregulated providers tend to be more innovative and cheaper</b> and <b>could address unmet demand.</b> But concerns around regulatory gap and levels of satisfaction.</li> </ul> </li> </ul> |

### 3 (d). New regulatory architecture and independent oversight regulator

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|-----------------------------|---|
| <b>What changed</b>         | <ul style="list-style-type: none"><li>• Introduced a co-regulatory arrangement between public and self-regulation involving the creation of a new statutory oversight regulator and a number of ‘independent’ practitioner frontline regulators.</li><li>• Requirements for practitioner bodies to <b>separate regulatory and representative functions</b>.</li></ul>   |
| <b>Rationale for change</b> | <ul style="list-style-type: none"><li>• An influential 2004 Review found that the <b>existing regulatory model for legal services</b> was, at that time, <b>flawed and a ‘maze’</b>.</li><li>• Considered various regulatory ‘models’. But ultimately <b>placed particular emphasis on the need to build on the strengths of the current regulatory system</b> rather than starting from scratch.</li></ul>   |
| <b>Impacts to date</b>      | <ul style="list-style-type: none"><li>• <b>General dissatisfaction</b> with arrangements, <b>particularly in initial period</b>.</li><li>• <b>Ministry of Justice review (2013)</b>: system is <b>‘overengineered and exceptionally complex’</b>; maintained ‘a legacy of over-detailed rules and cultural biases’.</li><li>• <b>Legal Services Board (2016)</b>: <b>need for the complete separation of regulation from representative bodies</b> and recommended that a single regulator covering the whole sector be established.</li><li>• <b>Competition and Markets Authority reviews (2016 and 2020)</b>: complex regulatory structure could lead to <b>practical difficulties in coordinating regulatory changes</b>; residual concerns about the <b>independence of regulation from the representation of the legal professions</b>.<br/><b>Recommended a review by government</b> (which has not yet been undertaken)</li></ul> |

## 4. Broader insights for other professional services and jurisdictions and for the OECD's PMR

1. **The importance of the ‘unauthorised sector’ in professional services especially if it is to become more than a ‘fringe’ activity** in the future (e.g. new entry by non-traditional providers, impact of tech and AI)
2. **The need for special/additional consumer protections for some professional services, and whether differences are based on the nature of the provider or form of delivery of the service.**
3. **A possible need distinguish more between conduct rules that apply to firms/entities and to individual practitioners** to facilitate changes and a risk based regulatory approach
4. **The importance of the regulatory approach/strategy for professional services, especially give rapid changes in some services (i.e.; rigidity in rules and high levels of prescription can be a barrier to entry, innovation, new ways of doing things)**

#### 4. Broader insights for other professional services and jurisdictions and for the OECD's PMR



5. **What's the right regulatory architecture for professional services** and the balance between state regulation/oversight and professional self-regulation.
6. **Should there be explicit regulatory objectives for some sectors, and if so what should they be ?**(i.e.: broad notions like the 'the public interest', or specific objectives relating to competition, innovation and access to a service/affordability etc.).
7. **Do we need to understand more about the nature of any rules about quality standards** in professional services (e.g.: specific rules about on-going professional development and training requirements).
8. **What are appropriate expectations about the pace of change for reform of professional services,** which may be more gradual and incremental than in network sectors.