

Tesco Law and Tesco Lawyers: Will our Needs Change if the Market Develops?

AVROM SHERR*
SIMON THOMSON*

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Abstract

The purpose of this paper is to examine how recent regulatory changes, and the on-going effects of the global economic crisis, have affected legal services in England and Wales, and asks if there are, consequently, "too many lawyers". The Legal Services Act 2007 introduced new regulatory priorities, placing greater emphasis on competition within a market for legal services, and introducing "Alternative Business Structures", which enable non-lawyers to own or manage bodies providing legal services, or to carry out reserved legal activities within a licensed body. The paper speculates about the effects of a changing market, illustrated with emerging examples. Whether or not there are too many lawyers depends on who is regarded as a lawyer, what tasks a lawyer should carry out, the structure of the market for legal services, and the needs of legal "consumers".

Key words

Legal Services Act 2007; England and Wales; Legal Services Market; Alternative Business Structure; Tesco Law; Regulation; Legal Education and Training Review; Barrister; Solicitor; Paralegal; Deprofessionalisation

Resumen

El objetivo de este artículo es analizar cómo los cambios recientes en la regulación y los efectos continuados de la crisis económica global, han afectado a los servicios legales en Inglaterra y Gales, y cuestiona si, consecuentemente, hay "demasiados abogados". La ley conocida como "Legal Services Act 2007" introdujo nuevas prioridades reguladoras, otorgando mayor énfasis a la competencia en el mercado de los servicios legales, e introduciendo "Estructuras Alternativas de Negocio", lo que permitía, sin ser abogado, poseer o gestionar empresas de servicios legales, o

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* Professor Sherr is Director on Sabbatical and Simon Thomson has been Research Assistant, both at the Institute of Advanced Legal Studies, University of London.
Institute of Advanced Legal Studies. Charles Clore House. 17 Russell Square. London WC1B 5DR (United Kingdom). avrom.sherr@sas.ac.uk; Simon.Thomson@sas.ac.uk



desarrollar actividades legales reservadas a un órgano colegiado. El artículo especula sobre los efectos de un mercado cambiante, a través de ejemplos emergentes. Si hay demasiados abogados o no, depende de lo que se entiende como abogado, las tareas que un abogado debería desarrollar, la estructura del mercado de servicios legales, y las necesidades de los “consumidores” legales.

Palabras clave

Legal Services Act 2007; Inglaterra; Gales; Mercado de los Servicios Legales; Estructura de Negocio Alternativa, Ley Tesco, Regulación, Revisión de la educación y formación legal, abogado, paralegal, desprofesionalización

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"There was an oversupply of 3,000 places on the legal practice course....That glut, said Des Hudson, means thousands of LPC graduates hunting in vain for law firm training contracts....City law firms maintain that any interference in the market to shrink the pool of potential trainees will handicap them in the battle for the best talent"

Jonathan Ames (2013)

Are there too many lawyers in England and Wales, or too many law students applying to be lawyers, as Des Hudson, Chief Executive of the Law Society seems to be suggesting? This article explains some of the changes brought about by the Legal Services Act 2007 in England and Wales and considers their effects against the backdrop of this question.

1. Legal Services Act 2007

The Legal Services Act 2007 ("LSA") introduced wide-ranging changes to the legal services sector in England and Wales¹. Principally, it created a new overarching regulator, called the Legal Services Board, sitting above individual legal profession regulators and taking away from the legal professions their ability to regulate themselves. It enforced a separation between a professional representative body for each profession (such as the Law Society for solicitors) and a regulatory body (such as the Solicitors Regulation Authority) which was to look after the consumers rather than the professionals. And it enacted a new approach to regulating lawyers called "outcome focused regulation" (Solicitors Regulation Authority 2010) which would regulate through the outcome of lawyers' behaviour rather than give detailed rules of how to behave. Most relevant to this paper, in order to encourage competition in the legal services sector, it introduced new regulatory objectives and "Alternative Business Structures".

2. Regulatory objectives

Section 1 of the LSA sets out eight regulatory objectives, many of which had not previously appeared as elements within the regulated conduct of legal professionals.

- (a) "protecting and promoting the public interest.
- (b) supporting the constitutional principle of the rule of law.
- (c) improving access to justice.
- (d) protecting and promoting the interests of consumers.
- (e) promoting competition in the provision of services.
- (f) encouraging an independent, strong, diverse and effective legal profession.
- (g) increasing public understanding of the citizen's legal rights and duties.
- (h) promoting and maintaining adherence to the professional principles."

Items (a) to (e) are decidedly consumer focused, as is item (g). Only (f) and (h) sound like previous approaches favouring the view from the profession rather than the consumer. Perhaps the objective with greatest difference from the previous approach is (e) promoting competition in the provision of services.²

¹ An Act to make provision for the establishment of the Legal Services Board and in respect of its functions; to make provision for, and in connection with, the regulation of persons who carry on certain legal activities; to make provision for the establishment of the Office for Legal Complaints and for a scheme to consider and determine legal complaints; to make provision about claims management services and about immigration advice and immigration services; to make provision in respect of legal representation provided free of charge; to make provision about the application of the Legal Profession and Legal Aid (Scotland) Act 2007; to make provision about the Scottish legal services ombudsman; and for connected purposes.

² Rule 1 of the Solicitors Practice Rules 1936 had been the "no touting" rule, so that solicitors should not compete with each other. Rule 2 was no charging under the scale fees. Rule 3 was no fee sharing (Hopper and Treverton-Jones 2010) (but no "April fool").

'Our legal services are already rated among the best in the world, used by millions of people around the globe as well as in the UK, and these changes will set them up to move to new heights. They will enable firms to set up multi-disciplinary practices and provide opportunities for growth.'

Justice Minister Jonathan Djanogly (2011), introducing the Bill in Parliament

3. Alternative business structures

In order to promote competition, Part 5 of the LSA set up Alternative Business Structures (ABSs) to carry out reserved legal activities such as exercising a right of audience, conducting litigation, administration of oaths, probate, notarial, and certain instrument "activities"³. Through ABSs legal services could be delivered in new ways which would tend to promote greater competition, innovation and new systems of financing. It was expected that this would provide a better response to consumers' demands. Different kinds of lawyers would be able to work together with non-lawyers in the same business structure. Law businesses could be funded by external investment from non-lawyer owners.

An ABS is therefore a business providing regulated, reserved legal activities (like any solicitors firm or barristers chambers) but which has either, or both, non-lawyer owners and managers. Creating ABSs would increase competition by providing consumers with greater choice and access to legal and related services.

4. Tesco and "Tesco Law"

For a while the media colloquially characterised the ABS approach as "Tesco Law" (BBC News 2012b, Rose 2012). Tesco is the world's 3rd largest retailer by revenues, and the 2nd largest by profits. Originally a UK-focused supermarket or grocery retailer, since the early 1990s Tesco has increasingly diversified, both geographically, and into areas such as: books; clothing; DVDs; games; music; electronics; furniture; petrol; pharmaceuticals; eye glasses; telecoms and internet services; and financial services. The Tesco Law characterisation, never yet actually taken up by the Tesco supermarket retailer, suggested that a well known brand name might lead on ABSs by providing legal services from inside their supermarkets. Because the brand was trusted, clients would be drawn to it and legal services might be sold in the same way as baked beans: "pile 'em high and sell 'em cheap"⁴. "Tesco Law" would therefore be "Walmart Law" in the USA or "Carrefour Law" in France. In fact a different supermarket chain, the "Coop" has set up Cooperative Legal Services as an ABS for family, probate, employment law and will making, "offering fixed fee pricing for most services"⁵.

5. Professionals and professionalism – control of the market?

Before the LSA only legal professionals could provide regulated, reserved legal services. ABSs are licensed to do so provided the Licensor accepts the level of supervision and management of advice and cases to be at an acceptable level (Legal Services Board 2009). ABSs can use a mix of legal staff, both qualified professionals and unqualified persons. Law firms could also employ unqualified staff provided they are properly supervised in their work, but the law firms individually would have control over their own numbers and the profession as a whole would therefore retain such control. The LSA seems to remove that control from the professionals themselves.

Professor Richard Abel (1988) in his classic work on the Legal Profession in England and Wales⁶ suggests that control of the production of producers is an essential part

³ S. 12(1), LSA

⁴ Mythically attributed to the founder of Tesco, Jack Cohen in London's East End over 90 years ago.

⁵ www.co-operative.coop/legalservices/why-choose-us/

⁶ See also Abel (2003).

of the “professional project”. The essence of professionalism, in accordance with Larson and Weber, includes maintaining such “control”. But there are other views among the academic theorists. Paterson (2004) suggests that there is a slowly changing social contract between professionals and society which can include or exclude such control. Abel’s descriptive position seems to have been correct, but the new LSA may suggest that Paterson will be prescriptively correct.

6. How the market for lawyers distorts the Justice system

It is not only the sociologists of the legal profession who produce a critical view in line with the LSA changes. Economists such as Gillian Hadfield have also analysed the effects of the legal services market on the costs of hiring lawyers. There is an assumption, she suggests, that profit is consistent with quality. The high training and regulatory costs of becoming and being a lawyer must be recouped and law tends to need high intellect entrants who are relatively scarce- both of these drive the cost higher.

At the same time as these costs grow higher, the adversarial nature of most cases means that each side is anxious to have the better lawyer. Since profit appears to be consistent with, or is a proxy for, quality, those who charge higher costs look like the best. This also becomes a circular, self-fulfilling proposition as more people will want to work in higher cost entities. Therefore the more lawyers there are, the higher their costs; and the higher their costs the more lawyers there are. This makes it very difficult for a lawyer to put a client’s interests before their own. If this analysis is correct, it explains the need for the new regulatory objectives, but it also suggests that they are unlikely to succeed (Hadfield 2000).

7. Legal professions in England and Wales

Hadfield’s approach works on the North American model in which only qualified attorneys can practice the law. In England and Wales there are larger groups of providers of legal services including:

- Solicitors provide a wide range of legal support and advice directly to clients. They take instructions and advise on legal action and also in general act as advocates in the lower courts, handing on certain cases for advice or representation to barristers.
- Barristers act as advocates in court and provide written legal opinions generally through solicitors.
- Legal Executives are fee-earning, qualified lawyers (whose training is largely carried out while working in solicitors’ firms). They frequently specialise in conveyancing property, civil and criminal litigation, family law and probate, but currently can only practice the reserved activities within solicitors’ offices.
- Paralegals are not regulated, but may have equivalent examination qualifications to solicitors and barristers; they tend to support solicitors with legal transactions, mainly in an administrative capacity, with varying levels of responsibility.

In the new ABSs it is assumed by many that more paralegals may be employed, supervised by fewer qualified staff, solicitors, barristers or legal executives (Des Draper 2011). Working more like a business than a law partnership or barrister’s chambers, ABSs will be released from the older forms of management within legal practice, to adopt more efficient business like approaches. This would involve something of a deprofessionalisation of legal work but it might engender more innovation. By competing with the classical forms of practice they could encourage current legal practices to become more efficient.

However, unintended consequences might also occur. Business oriented organisations with non-lawyer owners and managers may lack the altruism which is part of the legal professional ethos. They might "cherry pick" the easier cases and undercut local lawyers with cheaper prices and branded shop fronts. This could mean that local lawyers will be out of business and not be available to assist those in need of legal help for the more unusual or more difficult or more uncertain cases.

8. The current legal services market

In this context it is necessary to review what else is happening in the legal services market in England and Wales in order to determine what effects on the numbers of lawyers the LSA and ABS changes will have.

The global recession and general downturn in the economy have resulted in many law firms restructuring, downsizing and in some cases merging or closing (Tromans 2013). The key areas of practice affected by the recession include banking, finance and property law (Weston 2012, Baksi 2011). There has also been a considerable decrease in both civil and criminal litigation in recent years (Minister of Justice 2011, 2012). Civil litigation seems to have been affected by the changes in court practice, the costs of litigation, and moves towards mediation and arbitration where possible (Genn 2012, Clarke 2011). Crime has dropped, it is assumed, because there are less police employed and therefore less cases coming forward (BBC News 2012a).

Legal practice growth areas include energy and environmental law, intellectual property law, international law, alternative dispute resolution, insolvency, shipping, insurance and employment law. There has been a rise in niche law firms and emergence of some virtual law firms operating on a consultancy basis (Bassett 2011).

*The Legal Aid, Sentencing and Punishment of Offenders Act 2012*⁷ made great changes to public funding of legal services in England and Wales. Apart from structural reforms bringing the Legal Services Commission into the Ministry of Justice there were reforms to payments made to acquitted defendants from central funds and the implementation of Lord Justice Jackson's reforms to the costs of civil litigation. However, the major impact on legal services has been the cuts to legal aid itself.

The economic downturn had led to an increase in the number of people eligible for legal aid and a Ministry of Justice study in June 2009 (Ministry of Justice 2009), revealed unprecedented demand for community legal advice, with huge jumps in demand for information on benefits, debt and employment matters.

In a Ministerial Statement in June 2010, The Lord Chancellor, Ken Clarke said:

'This Government's immediate priority is to reduce the financial deficit and encourage economic recovery.... I am seeking to develop an approach to legal aid spending which balances these necessary financial constraints with the interests of justice and the wider public interest. We will seek to develop an approach which is compatible with fair and necessary access to justice for those who need it most, the

⁷ An Act to make provision about legal aid; to make further provision about funding legal services; to make provision about costs and other amounts awarded in civil and criminal proceedings; to make provision about referral fees in connection with the provision of legal services; to make provision about sentencing offenders, including provision about release on licence or otherwise; to make provision about the collection of fines and other sums; to make provision about bail and about remand otherwise than on bail; to make provision about the employment, payment and transfer of persons detained in prisons and other institutions; to make provision about penalty notices for disorderly behaviour and cautions; to make provision about the rehabilitation of offenders; to create new offences of threatening with a weapon in public or on school premises and of causing serious injury by dangerous driving; to create a new offence relating to squatting; to increase penalties for offences relating to scrap metal dealing and to create a new offence relating to payment for scrap metal; and to amend section 76 of the Criminal Justice and Immigration Act 2008.

protection of the most vulnerable in our society, the efficient performance of the justice system, and our international legal obligations.’ (Clarke 2010)

The largest saving (of £270 million, net) was to be generated by removing significant categories of law from the scope of Legal Aid. £170 million was to be saved by removing most of private Family Law from scope, leading to a 40% reduction in the volume of Family Law cases that will be eligible for Legal Aid-funded representation. Funding in family civil justice issues is only retained for cases where abuse is present. Similarly, housing law advice will only be available e.g. for cases involving a serious risk to ill health. The cuts in funding for family law cases will be the most significant cuts to the funding of work of High Street solicitors many of whom relied totally on legal aid public funding for this work (Cookson 2011).

Other areas of law that face significant impact include housing, welfare benefits, debt and immigration with large absolute cuts in legal help. As a proportion of current spending, consumer, immigration, welfare benefits and personal injury will fall significantly. 85% of the total savings from the proposals come from cuts to just three broad areas of work: Family Law (61%); Social Welfare Law, including Housing, Welfare, and Debt (21 %); and Clinical Negligence (4%). Taking social welfare law out of the scope of legal aid would reduce by 86% the funding that Law Centres receive to provide advice or ‘legal help’. The government provided £107 million in transitional funds and an additional £20 million to help the sector restructure. However the Not-for-profit Advice Sector staffed by a mixture of lawyers, paralegals and volunteers has almost collapsed with the removal of public funding for their cases (Byrom 2013).

The Government have threatened price competitive tendering for criminal defence work under legal aid (Baksi 2013). Until the beginning of July 2013 this included removing clients’ ability to choose their own lawyers. However the Government appear to have stepped back on this issue at time of writing (mid July 2013) (Grice 2013). The intention is still to reduce the number of law firms with which it will contract from the Legal Aid Agency for criminal defence.

It will be difficult empirically to test the effect of each of these elements, the downturn in the economy, the changes wrought by the LSA and the massive reductions in legal aid as they are happening at the same time. But there will no doubt be changes in the number of lawyers and the number of law firms.

9. Too many lawyers?

So, how many lawyers does England and Wales actually have? According to figures released by the relevant legal professional bodies, there are a total of just over 200,000 people employed in a professional or ancillary role in the UK legal industry, about 0.7% of the total UK working population. Approximately 155,000 of these are members of the three largest legal professions in England and Wales, and this number comprises approximately 118,000 solicitors (76.13%), 15,000 barristers (9.67%), and 22,000 CILEx members (14.20%) (LETR Research Team 2012b).

10. Too many law students?

Another way of looking at the issue is to ask, as Des Hudson does at the first quote in this paper, whether there are too many people coming in to law or becoming lawyers. At undergraduate degree level, in 2009 there were 29,211 applicants to study first degree courses in law in England and Wales, of whom 19,882 (68%) were accepted. However, this says little about numbers progressing onwards to professional legal education, which is also open to non-law graduates who have take a “conversion course” lasting a year.

In order to qualify professionally as a solicitor it is necessary to take the Legal Practice Course (“LPC”). 9,337 students enrolled on the LPC in 2009, with an

overall pass rate of 62%. There were 12,142 full-time and 3,024 part-time LPC places available in 2010/11, and not all of these were taken up.

After completing the LPC, those who wish to qualify as solicitors must secure a training contract with a solicitors firm licensed to take on trainees. Training Contracts are increasingly difficult to obtain. The number of training contracts offered by law firms fell by 18% between 2009 and 2010. The Law Society's annual statistical report revealed that only 4,784 training contract places were offered in 2010, compared to 5,809 in 2009. The drop reflects the impact of the economic downturn on firms. Anecdotally, fewer firms are offering fewer training contracts, and this trend is likely to continue. However it is difficult to predict and react to market trends in any definite way,

'There is historically a time-lag between drops in Training Contracts and drops in LPC candidates. When things are bad, more students decide not to do the LPC than is probably healthy for the profession. When things are good, more students decide they will do the LPC than is probably healthy for the profession. The LPC market is not expanding. It is shrinking fast. The profession needs to be wary of talking its prospects down with would-be recruits. It's done from the best of motives, but the time-lag between what happens on the ground and the publication of the figures tends to mean that the markets and, if I may say so, the Law Society react rather late in the day.'

Professor Richard Moorhead (2011), University College London

11. Too many lawyers in relation to what?

Another way of looking at this question is to compare the numbers of lawyers with numbers of other important occupations. In 2010, there were more lawyers than police officers in England and Wales. The number of qualified solicitors and barristers was almost 165,000 in England and Wales. By contrast the official count of police officers was 142,363 and there were 177,260 doctors. All of these numbers are likely to fall as a consequence of spending cuts since all are funded to an extent by central and local government. It should be noted that the National Health Service broadly costs each week what legal aid has cost per annum.

12. Too many solicitors in England?

The particular question whether there are too many solicitors was addressed in a recent study by the Royal Bank of Scotland ("RBS") where many law firms carry out their banking. This study found that the profession is over-resourced in face of "permanent structural change in market forces in the UK" and has the "opportunity" to remove 5% of fee earner base. They advised that nearly 6,000 of the 117,862 solicitors currently practising in England and Wales would need to go to deal with substantial over-capacity in the legal market, with estimated savings of around £280m a year (Royal Bank of Scotland 2012). In particular they suggested matching reductions at fee earner level with cuts in equity (partners). The study noticed an upsurge in law firm mergers. It thought that outcomes-focused regulation put in place through the LSA reforms would put further pressure on small firms. Many partnerships were said to be "in denial" about the scale of these challenges, though this was not necessarily true of management within these firms.

Meanwhile, at the same as the RBS report hit the headlines, Deloitte reported that the top 100 UK law firms were expanding, with an average income rise of 7.2% in the third quarter of 2011-12. And it was separately reported that the revenue of the UK top 50 firms rose by 5.3% in 2010-11, with profits per equity partner up 4.4%. It is difficult to know which to believe. But law firms do have a tendency to

hide their difficulties and the word on the street suggests that RBS may not be far off the mark⁸.

13. On the other hand, could there be too few lawyers?

If we cannot tell whether we have too many lawyers with any level of certainty, it is equally possible that we have too few. The concerns which lay behind the LSA in England and Wales are reflected elsewhere in different ways. Economists Clifford Winston and Robert Crandall of the libertarian think-tank the Brookings Institution, and Vikram Maheshri of the University of Houston, argue in their 2011 book that barriers to entry have kept the number of lawyers artificially low, and that this — combined with an economy over-regulated by lawyers who go on to politics — results in an unearned premium on legal wages. Lawyers are said to keep control of their numbers and keep their numbers low to push up costs. Winston *et al.* (2011) quantify this for the United States, suggesting that of the \$170 billion spent on lawyers every year in the US, \$64 billion is a premium produced by market distortions. The economy suffers another \$10 billion in annual “deadweight” loss; economic activity stifled or deterred by the cost of the system.

They note three main barriers in the US to greater numbers of lawyers entering the market for legal services and providing competition to bring down prices. The American Bar Association accredits law schools, and in most states one must be a graduate of one of them to practise law. The next hurdle for a would-be lawyer is the bar exam. Proponents say it acts as a useful quality control. Opponents say it is a gruelling but useless ritual. In 2005 the Dean of Stanford University’s law school, going into private practice, failed it on her first try. Students pay thousands of dollars to study for their bar exams (over £10,000.00 for the English LPC), even after they have finished law school. Around 80% of students who had studied at an ABA-accredited law school passed the New York Bar last year, although pass rates were lower in other jurisdictions. The bosses of legal firms note that new hires still need to be taught nearly everything about actual practice on the job.

Finally, American states do not allow non-lawyers to manage or invest in law firms, nor can companies not run by lawyers practise law in any form. Winston, Crandall and Maheshri think that — in a more sensible world — banks, consultancies, accountancy firms and others could hire lawyers and offer a full range of services, including legal ones. And individuals without law school or the bar exam under their belt could still, with training and experience, dispense routine guidance and offer legal services, such as drafting wills and arranging simple divorces, to poorer clients. Doing so in the USA risks getting a false “lawyer” sent to prison.

This contrary argument sometimes seems close to views expressed by the Legal Services Board in England and Wales set up by the LSA to carry forward the objectives of the Act (Roy, Handford 2011). It therefore reflects the approach also underlying the introduction of ABSs.

When the first three ABSs were announced on Wednesday 28 March, 2012, by the Solicitors Regulation Authority they included two fairly small High Street practices who simply wanted to involve non-solicitor practice managers in management and ownership⁹. The third was the model feared by many lawyers, not Tesco Law, but the Co-operative Legal Services.

⁸ RBS should certainly know about over-extension. They expanded rapidly before the crash, and were briefly the largest bank in the world. But in 2008 they suffered the largest annual loss in UK corporate history, and their share price fell more than 66% in a single day, to 10.9p per share, and this was from a 52-week high of 354p per share, representing a loss of 97% in a year. They are now 84% owned by the UK government, and have cut more than 34,000 jobs since the bank was bailed out.

⁹ John Welch and Stammers with seven fee earners and eleven support staff; operating in Witney, Oxfordshire since 1932; and Lawbridge Solicitors Ltd of Sidcup in Kent. Antony Townsend, The SRA Chief Executive noted:

The Co-operative Group is a UK consumer cooperative with over 6 million members, and a family of businesses, including: Food, Travel, Financial Services, Healthcare, Funerals, Motors, Online Electricals and Legal Services. The Co-operative Group has over 123,000 employees, and 3,000 supermarkets across the UK. For many the notion of a "mutual society" owned legal service would be attractive, if it produced a good service. Co-operative Legal Services are part of the Co-operative Group - set up in 2006, but until 2012, limited to personal injury claims; will writing; probate and estate administration; conveyancing and employment law. In 2012 it employed 400 staff; with at least 150 more to join within the year. ABS status will allow it to diversify into family law as well as considering how else it could meet the needs of consumers. Eddie Ryan, who was the first Managing Director of Co-operative Legal Services set out his stall, thus (Solicitors Regulation Authority 2012):

'When the Legal Services Act was first drafted it was envisaged it would enable well-established consumer brands to enter the closed world of legal services. We believe the presence of The Co-operative's trusted brand and values together with a combination of first class products and services will provide customers with greater accessibility to legal advice and better value for money. That is why we are committed to playing a leading role in this new era by offering straightforward value-for-money legal services, backed by an ethos of social responsibility and a level of protection that can be provided by a diverse, multi-billion pound organisation.'

The UK's supermarket sector is dominated by four major chains, but remains highly competitive. In an environment where discretionary spending is being squeezed, it is hard to see that Tesco, Asda, Sainsbury's and Morrisons will want to divert a slice of their reserves to launching a legal services offer currently.

The Co-op is a relative minnow that wants to use an expanding retail network to build its legal services business. It controls 85% of consumer mutual business in the UK. It has long had a diverse range of businesses, from preparing funeral repasts to dispensing the drugs that failed to cure the deceased through the UK's third-biggest pharmacy chain. The Co-op bank has been in some difficulty recently (Peston 2013), and their funeral services were shown up on a Channel 4 *Dispatches* programme burying the wrong bodies in the wrong graves (Brooke 2012). Crucially, as a mutual, it is not under the same pressure as its quoted competitors to generate short-term gains for institutional shareholders. The Co-op can therefore afford to play a longer game in the new world of Alternative business Structures.

14. The legal education and training review

With the changes in regulation that were set out in the Legal Services Act beginning to take effect, the three front line regulators of the major professions, the Solicitors Regulation Authority, the Bar Standards Board, and CILEX Professional Standards decided to address the regulation of legal education. They jointly commissioned the Legal Education and Training Review ("LETR") to investigate education and training requirements across regulated and non-regulated legal services in England and Wales. It was intended to ensure that the future system of legal education and training would be efficient and effective in preparing legal service providers to meet the needs of consumers.

The key issues faced by LETR included:

'Some people may be surprised that there are two high street practices with a handful of staff among the first wave of ABS organisations that we've authorised. But we've always said that ABS offers options for all firms, not just large organisations.'

He conceded that the SRA had to create a system of authorisation flexible enough to deal with a range of companies with hugely varying corporate structures, but that's also robust enough to apply the same stringent suitability criteria by which traditional firms are judged.

- What structures will increase choice over the processes of qualification, while delivering greater certainty to consumers of the quality of outcomes?
- Can common training and cross-qualification be facilitated across a broader range of regulated activities?
- Activity-based authorisation/regulation:
 - o Linkage to ‘partial access’ to reserved activities.
 - o New (para-)professions – eg ‘personal injury attorney’, ‘probate attorney’ etc.
- What policy and regulatory choices are most likely to maximize net consumer welfare?
- How can legal education and training be used as a regulatory tool?

The work of Neta Ziv (2013) in this collection bears some comparison to the issues raised in LETR. Professor Ziv considers: Regulation by qualification – “Title”; Regulation by office/official – “Office”; and Regulation by activity – “Activity Based Regulation”. There are many ways to approach the problem of incorporating activity with qualification:

- A basic across the board, general qualification plus specific areas
- A myriad of specific occupations/professions/legal service providers
- This also begs the question who should regulate – one or many, if one, who?
- Parallel or horizontal approaches to regulation.

In the LETR Final Report, published in June 2013, the Review team produced the following headline findings and recommendations relating to the question of whether there are too many lawyers. Most of these are intended to open up the transparency of decisions in the system and enable more movement between different professions and into them. Recommendations will:

“Require regulators to gather and make available key data and information that will reduce information gaps, support decision-making by prospective entrants, consumers and employers, and increase the effective market regulation of Legal Services Education and Training “LSET”.

14.1. Access and mobility

- establish professional standards for internships and work experience;
- enhance quality and increase opportunities for career progression and mobility within paralegal work, by encouraging regulatory and representative bodies to collaborate in the development of a single voluntary system of certification/licensing for paralegal staff, based on a common set of paralegal outcomes and standards;
- provide higher quality and more accessible information on the range of legal careers and the realities of the legal services job market;
- support and monitor the development of higher apprenticeships at levels 6-7 as a non-graduate pathway into the regulated sector.

14.2. Flexibility

- expect regulators to co-operate in setting outcomes for LSET to ensure equivalence of baseline standards;
- clarify systems for accreditation of prior learning and transfer between professional routes, and ensure that these do not create unnecessary barriers to progression;
- remove requirements in training regulations that unduly restrict the development of innovative and flexible pathways to qualification, including the more effective integration of classroom and workplace learning.

The report does not recommend a move at this stage to greater activity-based authorisation, for reasons of potential cost and complexity, particularly within the present system of multiple regulators." (LETR Research Team 2012a).

15. Conclusion

It is quite possible that there are "too many lawyers", especially in the current economy, but it is equally possible that more lawyers would bring down the cost of legal services and provide more access to law. However, is opening the market to alternative legal services providers and greater competition the solution, or will it lead to competition on quality as well as price? Alongside this question, comes Professor Ziv's question about activity based regulation: Should legal services be broken into their constituent parts so that they can be performed by a greater number of less widely educated non-regulated, non-lawyers? Alternatively, if lawyers have priced themselves out of the market, should there be fewer lawyers, supervising and managing many others doing the legal work?

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