

Research Specification: Understanding behaviour in legal services

Purpose

The purpose of this research is to explore the lessons from behavioural economics/decision making theory for legal services, relating the literature both to consumers of legal services and the partnership model of supply of legal services typical in 'high-street'¹ solicitors.

Background

The LSB has been set up to reform and modernise the legal services market in the interests of consumers, enhancing quality, ensuring value for money and improving access to justice across England and Wales. The LSB will achieve this pursuing its regulatory objectives² and providing regulatory oversight for the eight approved frontline regulators³.

Existing regulation of legal services consists of a number of branches of the profession, some with reserved titles, other branches do not have reserved titles but are allowed to practise one or more of the six *reserved legal activities* set out in the Legal Services Act 2007:

- The exercise of a right of audience
- The conduct of litigation
- Reserved instrument activities
- Probate activities
- Notarial activities
- The administration of oaths.

The role of the LSB given to us by the Legal Services Act 2007 is to support the delivery of the regulatory objectives.

The legal services market(s)⁴ consist of a range of suppliers – from the traditional professions who are regulated as legal service providers, to a range of other professionals (accountants, bankers, financial advisers) to third sector providers (Citizens Advice, Law Centres, Councils etc.). An analysis of consumer's use of legal services is contained in our recent research report⁵. Our research found that in practice only 43% of people with a legal problem sought advice and around half of those sought advice from regulated providers (see chart below).

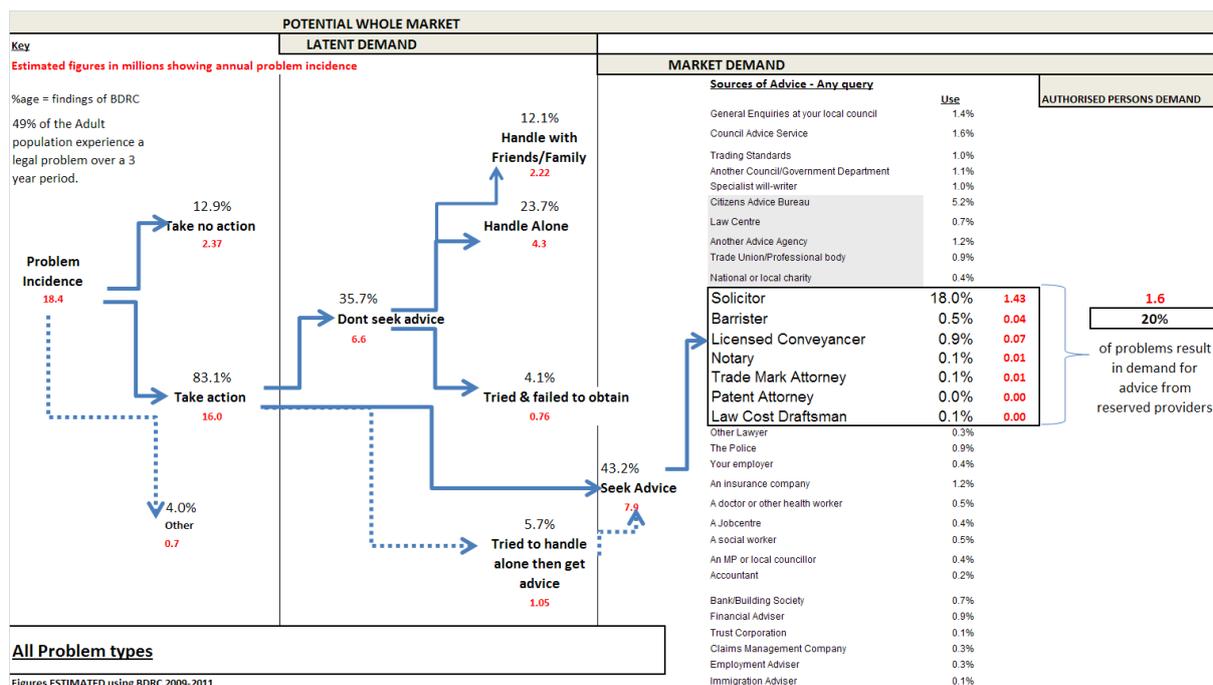
¹ There is no clear definition of 'high-street' legal practices, but for the purpose of this research, we take it to mean legal partnerships offering legal services, to individual consumers, predominantly face to face to those living in the local area of the legal practice.

² http://www.opsi.gov.uk/acts/acts2007/ukpga_20070029_en_2#pt1

³ The Law Society, General Council of the Bar, Council for Licensed Conveyancers, The Institute of Legal Executives, The Chartered Institute of Patent Attorneys, The Institute of Trade Mark Attorneys, Association of Costs Lawyers, Master of the Faculties.

⁴ http://www.legalservicesboard.org.uk/news_publications/latest_news/pdf/a_framework_to_monitor_the_legal_services_sector.pdf

⁵ http://www.legalservicesboard.org.uk/what_we_do/Research/Publications/pdf/individual_consumers_use_of_legal_services_lsb_report_17_07_12_ii.pdf



While we have a number of research projects exploring consumer behaviour when using legal services, we would like to understand more about the drivers behind the choices they make in order to understand how regulation can best deliver the regulatory objectives. We are interested both in the underlying drivers of how they select a type of legal services provider – whether regulated or unregulated - and in their behaviour when engaging with regulated legal services providers.

While, in terms of solicitor numbers, the solicitor market is dominated by a small number of large firms (see below), individual consumers are more likely to use small, high-street based partnerships for key legal services.

Number of Partners	Number of firms	As a %age of all Legal Practices	Number of Solicitors	As a %age of all Solicitors at Legal Practices
Sole Practitioner	4,011	39%	6,746	8%
2-4 partners	4,824	46%	19,936	23%
5-10 partners	1,018	10%	13,112	15%
11-25 partners	348	3%	10,901	13%
26-80 partners	155	1%	15,736	18%
81+ partners	57	1%	20,318	23%
All firms	10,413	100%	86,748	100%

As changes in the regulation of legal services allow new non-lawyer led legal services practices (Alternative Business Structures) and seek to develop regulation that is more permissive to innovation we expect smaller legal practices, in particular, to face significant challenges to their existing business practices. To the extent to which compliance with legal services regulation is, at least in part, supported by the ethical behaviour and practice of those offering legal services, regulatory changes could influence behaviour and regulatory compliance.

The research literature on the behaviour of legal firms is certainly less complete than the state of recent research on consumers. The LSB has in the past year, in partnership with The Law Society and the Ministry of Justice, been carrying out a survey of 'high-street' solicitors (albeit with a wider definition of 'high-street' than used here given it includes all solicitors firms outside of the top 200 firms unless a firm in the top 200 provides legal aid funded work). This research is now not expected to be published until 2013, though we would be able to discuss with the successful researcher the findings from the research. A further study, which may be of interest for the research is the Solicitors Regulation Authority 2012 study looking at regulatory compliance among solicitors' firms⁶.

The legal market(s) are ideal for a study of this nature given the variety of specific characteristics:

- Information asymmetries
- Vulnerable consumers
- "Distress" and one-off purchases rather than regular interaction
- Linked purchases e.g. conveyancing
- Purchases linked to interaction with the state

The second largest supplier of legal services, in terms of numbers of regulated individuals, are barristers. Like solicitors, many are supply services in-house to other businesses, but the majority 80.7% in 2010 (12,420) work in private practice mainly in barristers chambers (there are estimated to be over 300 barristers chambers). Chambers are made up of a set of self-employed barristers brought together with a central clerking and often practice manager.

Aims and Objectives

We are aware of the literature on behavioural economics and the extent to which it has been helpful in understanding consumers e.g. competition policy⁷, vulnerable consumers⁸ and applied to market segments⁹. More recently the closer linkages developed between behavioural economics and standard theories of the firm have extended the role and usefulness of this branch of academic thinking¹⁰. Given the success of such analysis in helping us understand consumer behaviour in other markets, we are keen to explore what behavioural economics tells us about the legal services market(s).

In their 2011 report for the LSB, the Regulatory Policy Institute considered the economic rationale for regulation of legal services¹¹. Principal among the reasons identified for legal services regulation was the desire to ensure an acceptable minimum standard of quality for consumers. This was exacerbated by the problems created by information asymmetries that prevent consumers from

⁶ "Attitudes to regulation and compliance in Legal Services", Solicitors Regulation Authority, 2011

⁷ http://www.offt.gov.uk/shared_offt/economic_research/oft1224.pdf

⁸ <http://www.communicationsconsumerpanel.org.uk/Behavioural%20Economics%20and%20Vulnerable%20Consumers%20final%20report%20correct%20date.pdf>

⁹ http://www.ofgem.gov.uk/MARKETS/RETMKTS/RMR/Documents1/Behavioural_Economics_GBenergy.pdf

¹⁰ http://oft.gov.uk/shared_offt/economic_research/oft1213.pdf

¹¹ http://www.legalservicesboard.org.uk/news_publications/latest_news/pdf/economic_rationale_for_Legal_Services_Regulation_Final.pdf

being able to judge the quality of the services they buy¹². There are many ways in which we might imagine it being possible for consumers to play an active role in supporting the delivery of high quality fairly priced legal services e.g. shopping around, negotiating with their provider over costs etc.

In practice research, evidence suggests such active consumers are uncommon in legal services (see BDRC report on consumers¹³). There are a number of levers that regulators might use to support more active consumers e.g. legal education, price disclosure, publication of complaints data etc. Behavioural economics may also help explain consumers engagement with or willingness to purchase specific legal products, for example does loss aversion help to explain why people put off making a will? This research should explore how behavioural economics might help improve our understanding of consumer behaviour and how regulation might influence such behaviour in future.

This research should summarise the key elements of behavioural economics and explore how they might provide insights into the behaviour of consumers of legal services. Furthermore, we would like the researchers to consider how behavioural economics might be extended to consider the behaviour of firms that provide legal services. Here we would like to understand specifically the drivers for behaviour of individuals within the partnerships that own and manage many of the ‘high-street’ legal practices – whether in how they manage and market their services, their approach to regulatory compliance or treatment of customers, the impact of new entrants, consolidation, geographical markets etc. We would also like the research to consider in parallel how the behaviour of barristers chambers might differ from solicitors’ partnerships. In this we would like to look beyond the well known micro-economics behaviour of firms literature to try and seek to apply the behavioural theories emerging from economics and psychology that drive individuals behaviour and the extent to which individuals drive firm behaviour¹⁴.

In particular, the research should:

- set out the key areas of behavioural economics that are relevant to customers of legal services;
- Illustrate examples of how particular lessons from the theory can be applied in the behaviour of customers of legal services
- Explore whether behavioural theory provides any insights into the behaviour of ‘high-street’ partnerships and barristers’ chambers supplying legal services, and where possible how these lessons can be extended in more complex firm structures.

The researchers should draw directly on the wide existing literature, particularly where the literature has looked at other sectors with similar characteristics and features as the legal market.

¹²http://www.legalservicesboard.org.uk/what_we_do/Research/Publications/pdf/lsb_will_writing_report_final.pdf

¹³http://www.legalservicesboard.org.uk/what_we_do/Research/Publications/pdf/individual_consumers_use_of_legal_services_lsb_report_17_07_12_ii.pdf

¹⁴<http://www.bis.gov.uk/assets/biscore/consumer-issues/docs/b/11-749-better-choices-better-deals-consumers-powering-growth.pdf>

Issues and scope

There have been numerous studies illustrating the key elements of behavioural theory e.g. loss aversion; time discounting etc. While any report would be expected to outline those consumer biases that are most pertinent to legal services, the core of this research should be about the application of behavioural theory to legal services and its extension to consider the extent to which such analysis could help explain the behaviour of suppliers.

Specifically the research should focus on the application of behavioural economics in areas of law commonly delivered by 'high-street' providers whether in civil or criminal law e.g. conveyancing, divorce, family, crime etc.

The research is aimed to help the LSB and other legal regulators to understand how the behaviour of individual consumers and firms may be subject to biases that inhibit the delivery of the LSB's regulatory objectives. We would expect a successful tender to combine skills from both experts in behavioural economics or decision making theory and academics with a comprehensive understanding of the legal services market in England and Wales.

We are not expecting the researchers to develop detailed proposals resulting from their analysis, but rather to provide the LSB with a clear steer as to the issues of most relevance for us in our work. We would welcome specific examples of how the biases can help explain consumer behaviour in this market. We would also expect the researchers to consider the types of approaches that might help ameliorate the negative impacts of the behaviour seen and how firms' likely behaviour may influence our approach to regulation.

Our desire to use behavioural economics to explore provider behaviour recognises that this is a more recent development in behavioural economics. We would like the researchers to consider how the lessons drawn from research on consumers in the behavioural economics literature could help us understand the behaviour of individuals with management and ownership controls over small legal businesses. Our objective here is to provide behavioural context alongside other regulatory information, again with the research providing specific examples where common behaviour by firms might be explained by behavioural biases of the individuals who own/manage the firms and how market structure and regulation may influence that.

Tender Evaluation Criteria

All projects commissioned by the LSB are subject to our standard terms of contract. Tenders will be evaluated on best value for money and will be assessed on the basis of:

1. Overall cost. Please include appropriate breakdowns
2. The extent to which tenders are clearly written and meet the specified objectives, present a sound methodology, identifying any potential problems, and proposing suitable solutions
3. Address outputs and ensure these are in line with requirements and the required timing of the project
4. Proposed team composition, expertise and management and the organisation's diversity policy
5. The ability of the research team to write about complex technical issues in clear accessible language

6. How diversity issues would be addressed in the research.

Deliverables

Output

The output for this research should be a report with executive summary, suitable for publication, summarising:

- the key areas of behavioural economics that are relevant to customers of legal services;
- examples of how particular lessons from the theory can be applied in the behaviour of customers of legal services
- some insights from behavioural economics into the behaviour of 'high-street' partnerships supplying legal services and where possible the behaviour of other more complex business structures.

Project plan

Tenders should include a project plan and time schedule for the work that identifies the main task and key milestones that will be used to monitor progress. The plan should be accompanied by a resource profile, giving a breakdown of the resources in person days allocated to each task. We would also expect the tenders to include a clear analysis of the potential risks and how they propose to mitigate them during the project. We value tenders that are short and concise.

Duration

The research should commence in November 2012. Tenders should set out dates for completing key milestones such as information gathering, analysis, synthesis and report writing. The report should be finalised by 28 March 2013.

Legal Services Board Contact Details

Tenders with any queries about the research specification should contact:

Alex Roy 020 7271 0060

Tenders must be submitted by 5pm on Thursday 8 November 2012