

Research Specification: Developing a framework for benchmarking the supply of legal services

Purpose

The LSB would like to evaluate its impact on the supply of legal services, to do this we will need to carry out research to benchmark how legal services are currently provided and then at a later date repeat this exercise to measure how the market has changed over time. This research will develop a workable framework for analysing market supply that can be applied to segments of the legal services market.

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 objectives¹ and providing regulatory oversight for the eight approved frontline regulators².

We have been set up to improve outcomes for consumers dealing with legal services. But, it is also important for us to understand our impact on the market more generally. This was recognised in the Legal Services Act, which gave equal focus to maintaining the rule of law, access to justice and the other Regulatory Objectives. Understanding whether access to particular services from legal providers changes, and if so how it changes, will be an important part of our overall evaluation strategy. The information needed will be collected using the framework developed in this project.

In our early years, we are focusing our efforts on the delivery of three particular reforms to the legal services market:

- Ensuring regulation is independent of legal services professional bodies and vested interests
- The introduction of Alternative Business Structures (ABS) to open up legal services firms to investment and ideas from non-lawyers
- Improving consumer redress when things go wrong by improving first tier complaints handling and introducing a new independent legal complaints ombudsman

Reforms such as these will have a number of complex impacts on the market that are difficult to predict at the outset of the reforms with any certainty. In evaluating the impact of reforms we will therefore need to obtain a significant amount of data about the way legal businesses provide legal services in order to understand how the market changes over time. The majority of this data is not easily available at present, and will require significant activity to gather. For example Alternative Business Structures could result in more legal services being provided:

- by stockmarket listed companies
- online
- by non-lawyers with fewer lawyers in support

¹ http://www.opsi.gov.uk/acts/acts2007/ukpga_20070029_en_2#pt1

² 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 Law Costs Draftsmen, Master of the Faculties, Association of Certified and Chartered Accountants, Institute of Chartered Accountants of Scotland.

- with new charging structures at lower costs.

While these changes are significant, the reserved activities and requirements that only regulated individuals can carry out reserved activities are not changing. All that is changing are the rules that currently restrict the ownership and management of law firms. The impact of these changes will not be limited to those firms operating as an Alternative Business Structure but will also affect those firms competing with Alternative Business Structures. The changes may in fact not be as a result of our reforms at all but could be caused by other factors, examples include:

- A reduction in government spending on legal aid
- Changing technology altering the provision of legal services
- Changing consumer demands
- Economic downturn reducing demand
- Closing down of traditional channels for work e.g. smaller bank panels

This research must enable us to produce robust evidence to illustrate how the market is changing in practice to support our evaluation of the impact of the Legal Services Act 2007 and the Legal Services Board. Ideally future evaluations using this framework should attempt to isolate those changes in market structure driven by actions of the LSB rather than those occurring as a result of unrelated market trends.

Since May 2010 we have been engaged in a review of the available evidence to support the evaluation of our effectiveness as part of a process we call our Regulatory Information Review. This review, while not yet complete, has identified a significant evidence gap about the supply of legal services. We have good knowledge of the location of solicitors and barristers, but know little else about the nature and operation of their businesses, including how they offer services to the market, pricing, and nature of market competition.

Separately to this project we are planning to commission a pilot study to test the framework produced in this project. This will run concurrently with the later stages of the development of the framework and the researcher developing the framework would be expected to work closely with the researchers carrying out the pilot study, reflecting lessons from the pilot in the final published framework.

Aims and Objectives

We would like this research to provide us with a framework for assessing the provision of legal services. The organisation developing the framework will not necessarily be commissioned to conduct any/all of the subsequent market studies. Given this, the framework should be sufficiently comprehensive, such that it could be used easily by a third party organisation to conduct an assessment of a market segment.

We would expect this project to develop and apply a methodology for segmenting the legal services market. Though we expect this segmentation to be limited to the part of the market providing reserved legal activities³. The segments developed, whether by type of legal service, customer type

³ Exercise of the right of audience, conduct of litigation, conveyancing, probate, notarial activities and administration of oaths.

or some other measure, would then form the basis of the future application of the framework developed in this project. The segmentation should be robust and suitable for a data collection exercise, we are not looking for a competition law market analysis.

The framework produced should provide a detailed replicable project plan for an organisation carrying out an assessment of a market segment. The plan should be high-level enough such that it is applicable to any of the market segments identified. The framework would map out the information that the studies would gather, techniques used as part of any study, interview guides, questionnaires, sample structure and a timetable.

Given the breadth of the potential future studies we would expect the researcher to provide guidance to the LSB on prioritisation of issues and market segments. This should include an analysis of the likely difficulty of obtaining the evidence with regards to each of the areas of interest to the LSB and their recommendation on those issues which should pragmatically be left out of any benchmarking study.

The resulting studies using this framework should together allow us to build up a detailed picture of the provision of legal services in England and Wales to benchmark changes in the market over time.

Issues and scope

The framework developed in this research will need to be able to produce a range of data about particular identified segments of the legal services market for England and Wales. We are particularly interested in the impact our reforms have on the way in which legal services are provided for example: what services do they provide (types of legal area/non-legal etc.)? Who provides the service (lawyer/paralegal etc.)? How do they provide the service (face to face/telephone/online etc.)? How are their businesses structured (part of a network/sole practitioners/corporate etc.)? How big are their firms (number of employees/costs/turnover/profit etc.)? What are the key market dynamics that drive firm behaviour (competition/regulation/technology etc.)?

The framework developed should allow for the categorisation by work not only by type of firm, but the type of worker within the firm carrying out the service e.g. lawyer/non-lawyer fee earner/support staff, regardless of who ultimately supervises the work. Equally when looking at pricing we would like to understand pricing structures, how pricing relates to bundled services and the nature of cross selling within firms.

In broad terms we would expect the framework to break down the analysis into three areas of analysis:

- how legal services are provided
- business drivers experienced by providers
- firm accounting information.

An in depth consideration of the types of question that we would like to consider in each of these areas is included below in Annex A. The framework should specify in detail the approach an organisation should take to carrying out this analysis. This should include:

- How the segments should be defined e.g. how large, what features in common
- How the segments can practically be separated for the purpose of these studies
- What mix of techniques should be used in carrying out an analysis e.g. survey's, depth interviews, accounts analysis etc.
- What sample sizes would be appropriate and how the samples should be selected

We expect that the issue of market segmentation will provide a significant challenge given the market is not neatly segmented between different providers offering fixed range of services. In practice providers are likely to offer a range of different services to a range of different client types. Segmenting will not be simple given the need to carry out a full market study over a range of smaller studies of individual segments. We expect the research to consider the range of options for developing the segments and provide clear evidence for the segmentation chosen.

A further challenge which the research will need to consider is how to analyse the market within each segment as this will need to be defined within the framework. For example, how do we define small, medium, and large legal service providers? Given the dominance in the current market of terms such as “high-street” providers, the research will also need to ensure that the categories created are understood and accepted by stakeholders.

The researchers will be expected to draw on experience in the market of previous studies with legal services providers in providing guidance on an appropriate methodology and prioritisation.

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. How diversity issues would be addressed in the research.

Deliverables

Output

The output for this research should be an executive summary together with a report. The report should be suitable for publication, although any decision to publish will remain with the LSB. It is essential that the report and underlying research is sufficiently robust so that the LSB can use this in discussions with external stakeholders and can underpin the work of the LSB.

The LSB will retain ownership of the report.

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.

Duration

The research should commence in December 2010. Tenders should set out dates for completing key milestones such as information gathering, analysis, synthesis and report writing. The draft final report should be completed by the end of February 2011. A final agreed report should be completed by May 2011.

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 25 November

Annex A: Service analysis

What does supply consist of who's in it/who does what? How does the total market value breakdown? (reserved & unreserved)

How much of a provider's work is reserved/unreserved?

What types of management structure and business models exist in the market?

What is the breakdown of firms in terms of informal partnerships, franchises and legal/non legal entities?

What is the diversity of providers by size/profitability?

What is the number of lawyers by service type?

What types of work are undertaken by different law firm staff?

How does the medium of service delivery e.g. F2F, phone, internet breakdown across legal services?

What is the take up of LDPs and MDPs?

What types of charging methods do firms use (by different areas of law, type of fee earner, profitability)?

Business driver analysis

What are the entry & exit barriers for reserved/unreserved activities and regulatory activities?

What is the elasticity of supply by product?

What determines the types of service they provide and what are the barriers to changing services offered?

Why do providers segment their business the way they do?

What form does supply side substitution take?

What are the most common areas for transfer between different types of law?

What factors determine whether a provider expands into/withdraws from an area of legal services?

What is the impact of new regulatory arrangements (complaints, oversight) on the market?

How do legal service providers compete for work?

What use of Legal Process Outsourcing and international outsourcing are providers making and in what ways?

How do they advertise their services?

Analysis of accounting information

What is the level of profitability of law firms?

What is the turnover of law firms by size?

Who are the most/least profitable consumers?

What are the most profitable/least profitable types of legal services?

What are the staff costs at law firms?

What are the costs imposed by regulation by type of activity?

How do providers set a fee? Profit required back, service required?

What effect does transparency of billing have on price of legal service?