

ANNEX C, Chief Executive's Report

Summary of Mayson Review papers

Working Paper 3 – The focus of legal services regulation

The paper addresses the question of who should be regulated for the provision of legal services, and at what points regulation should bite.

It starts by identifying challenges to the regulatory framework posed by technology, distinguishing between 'supportive' and 'substitutive' legal technologies. The first is defined as supporting providers in the delivery of a legal activity (eg. e-discovery, deal rooms) and is considered to present few regulatory issues because regulation will still bite on law firms. However, substitutive technology (eg. chatbots, predictive case outcomes, online dispute resolution) is considered more problematic. Although regulation will also bite when this is used by regulated law firms, this is not the case for unregulated providers. While this regulatory gap already exists, in the author's view, it is the ability of such services to reach mass audiences that calls the scope of regulation into sharp focus. Also, the absence of human involvement at the point of delivery is seen as a paradigm shift and in some cases "*could come close to supplanting the rule of law with technology becoming the regulatory tool*".

The paper envisages an activity-based regulator for specific legal services that meet the public interest threshold for regulation (see paper 1). The regulator would set the minimum regulatory standards, authorise those who meet the standards (either independently through various routes to authorisation and assurance of competence or, as now, as part of the award of a professional title). This could allow professional bodies to maintain their own self-regulatory jurisdiction over the criteria for award and retention of title; these standards might be higher than a regulator might impose. The author highlights some issues that such an approach raises, eg implications for legal professional privilege and consumer confusion, which require further debate.

While acknowledging that professional titles have some brand value and provide some consumer protections, he concludes that the future regulatory framework should not be built around them. However, if there is a shift in focus, it will be important to retain a) the cultural side of regulation that shapes behaviour and attitudes through professional norms, and b) the emphasis of self-regulation on a person's fitness, suitability and integrity, as well as on their technical competence.

The paper is critical of existing regulators going beyond the LSA by regulating providers for all their legal activities, rather than for the reserved activities only. Professor Mayson envisages a residual role for professional bodies in relation to the carrying on of non-reserved legal activities as well as award and retention of title.

Professor Mayson suggests that having an element of entity regulation within the legal framework would enable a differentiated approach to regulation. Some form of regulation could apply to all legal activities, but differentiated layers of before, during and after the event interventions could then be adopted based on risk:

- Higher-risk activities that require personal competence, skill or integrity might be subject to before-the-event authorisation at an individual level
- Other activities with lower assessed levels of risk might be subject to during- or after-the-event regulation (or both), at either the individual or entity level

- Other, more process-based or contextual regulation might be attached at entity level (such as handling client money)
- Activities thought to present no or very little risk, could be subject to general consumer law only. However, the paper identifies a residual question of whether all consumers should have access to the Legal Ombudsman

Rather than differentiate between professional titles, or between individuals and entities, an alternative focus for regulation could be a broader notion of a 'provider'. This could be defined in such a way that all forms of the provision of legal services could be captured. Once it is decided that a legal activity should fall within the scope of regulation, any form of provision by any provider could then fall within scope. Further, decoupling authorisation from title could pave the way for regulated authorisation of certain individuals who do not hold a professional qualification but have extensive experience in an activity, eg social and care workers, paralegals.

Working Paper 4 – The structure of legal services regulation

The paper is concerned with a series of issues: who the regulators should be; how many; the need for an oversight regulator; how consumer and provider interests should best be represented; how regulator independence (from government and from representative interests) can be assured; and the appropriate arrangements for supervision and enforcement, discipline and ombudsman services.

However, Professor Mayson has largely elected not to provide views on these issues at this time and the paper largely consists of a potted history of recent discussions, including by quoting from the LSB's legislative options and vision documents. This stems from the argument that the appropriate structure should flow from the preferred regulatory approach in relation to issues explored in his other papers.

Nevertheless the paper states clearly that any "substantial return" to self-regulation would be unacceptable so soon after the Legal Services Act replaced it, although his views on ownership of professional titles (see paper 3) would revive this somewhat. In relation to non-regulatory permitted purposes, he suggests that a regulator could raise funding through the PCF for important public interest purposes and distribute funds to those organisations (including current professional bodies) that are assessed to be the best-placed to apply them most effectively and cost-efficiently.

His views on a single regulator are hard to read from the paper. However, he does say that the need for an oversight regulator will turn primarily on whether there is a single regulator across the sector, or a continuing multiplicity of regulators in respect of whom there remains a requirement for some supervision of consistency, performance and conflict resolution.

Professor Mayson sees a continued need for consumer representation but does not specify a preferred model, except to rule out giving a funded remit to Citizens Advice on conflict of interest grounds (since they are a major provider of legal services). However, as a matter of principle he sees force in having an equivalent body for providers to achieve parity of representation.

Finally, he briefly considers the proper role of consumer ombudsmen and argues that it is too limiting to think of them purely as complaint-handlers. The paper discusses wider roles for ombudsmen. Some are familiar, such as the feedback loop, but others are not part of the present system, eg conducting thematic reviews.