Executive Summary: Redress for Legal Services

Introduction

This précis summarises the findings of the research study commissioned by the Legal Ombudsman to consider redress from the perspective of consumers of legal services. The research identifies that the legal services market was complex with various business models, regulatory changes and economic conditions. The research highlights consumer perceptions of what amounts to legal services and the lack of awareness of what does and does not amount to 'legal services'.

The research also highlights which services attracted redress mechanisms and which did not; from who redress maybe sought; what sort of redress mechanism was available and what powers were available to the complaint handler.

Key findings

The study defines the legal services market and the services provided by authorised persons and the alternative legal services market. The report also highlights that the core authorised person legal services market is already confusing for the consumer who may find it hard to differentiate between e.g. a Chartered Legal Executive and a Solicitor and that the Alternative Legal Market may to some extent be indistinguishable from this market.

The study finds that this is complicated further by advice on legal issues provided by other professionals and advisers such as, for example, planning advice from an architect, or probate advice from a financial adviser. The study also highlights that there were already asymmetries of information and a lack of consumer empowerment in the provider / consumer relationship. This is set against a fragmented market with a regulatory web, which makes redress difficult for the consumer.

This is in the context of a legal services environment where consumers are – at the outset – pessimistic and drained by the thought of pursuing a complaint. It is arguable that the current system represents a series of barriers to complaining rather than a facilitation mechanism designed to provide redress where appropriate, with a view to "*that everyone can access legal services in which they have confidence".* Not all professional bodies have separation of representation and regulation; not all

professional bodies have a shared ethos towards complaint handling and some variations are discernable even from the accessibility of information on process on the website and tone adopted.

If the consumer is to play the role envisaged by Clementi (details of which are contained within full report) in shaping the legal services market then it is important that s/he is able to seek redress and has confidence in the market.

The study points out that there is still an issue to be addressed as to how the consumer judges the quality of services but as a starting point redress where the consumer does know s/he is unsatisfied about the service should be improved in terms of accessibility.

Conclusions

The legal services market – however broadly or narrowly it is defined – is diverse and fragmented. The redress available across "legal services" is also disparate and fragmented. In order to make redress in such a market effective, the options are either to simply the regulation of the market itself or simplify the redress mechanism available. This presents key strategic issues for the LSB as oversight Regulator. The LSCP has commented[1] that:

> "1.6. It seems to us that the LSB"s first priority should be to set the right strategic direction on a market-wide basis, by identifying the correct balance between consumer and competition policy."

Chris Kenny of the LSB commented recently[2] that, "*Sir David Clementi once talked about a 'regulatory maze' but the Legal Services Act managed to replace it with a three-dimensional labyrinth instead*". Given the competition and change that the LSA was designed to produce, the legal services market is unlikely to be simplified in the short term. There are fundamental policy and strategic decisions to be taken by the LSB as to what is to be regulated and how, which will not be answered quickly. Yet Chris Kenny acknowledges in this same article that, *"I'm not sure you can have the*

[1] LSCP March 2013 – Empowering Consumers op cit

[2] http://www.legalfutures.co.uk/latest-news/bringing-legal-advice-regulatory-net-may-resolve-consumer-confusion-says-lsb-chief

position where you can go to one person for advice and have access to the Legal Ombudsman and you go to another person and you don't[3]."

If simplification of regulation of legal services is a longer term project, what can be done in the short term to help consumers better understand the market and their rights? This is essential for consumers themselves but also for the legal services market itself if it is to evolve as Clementi envisaged. The LSCP has said that some "cosmetic" changes could help make a difference for the consumer, and may be go towards masking the complexities of what lies beneath. This could include utilising choice tools identified, and simplifying and harmonising redress. This could involve bringing redress services together in terms of jurisdiction, time limits, the conduct / quality of service approach and powers. In the shorter term, it could involve a signposting / triage service along the lines of Complaints Wales.

In addition to this executive summary, readers may wish to read the full report which contains a detailed analysis, findings and conclusions.

[3] Op cit