

In it to win it

In the next instalment of our month-by-month countdown to ABS day, **Stuart Bushell** considers competition between regulators

Most people view the idea of competition between regulators as rather puzzling, akin to observing a group of bald men fighting over a comb. The Lord Chief Justice may have had something similar in mind when he said that he could see no strong public interest in granting the Council for Licensed Conveyancers (CLC) rights to conduct litigation and advocacy. Lord Judge said those areas of work lie outside the proper sphere of activity of a licensed conveyancer.

However, this may highlight the potentially difficult position in which the Legal Services Board could now find itself on the whole subject of which regulators should be allowed to license the conduct of which reserved legal activities.

The last two years have seen a gradual escalation in the number of approved regulators overseen by the LSB and in the scope of the reserved legal activities which some regulated firms will be permitted to undertake.

In its early days the board, a significant number of whose senior policy makers come from a telecommunications background, openly favoured the idea of competition between regulators. So, the initial group of eight approved regulators became ten, with the addition of ICAS and ACCA, both from the accountancy world – and the ICAEW has now applied to join them.

The LSB's rationale in wanting competition between regulators appears to be that competition makes the regulators more efficient, which is both in the public interest and of benefit to consumers of legal services – the twin mantras which drive much of the LSB's policy. The board has never indicated what inefficiencies it is trying to drive out, although cost is never far from its thinking.

It is of course logical that, in a situation where legal services will be provided incidentally to other professional services, existing regulators should be licensed to extend their remit to the required extent.



The LSB may also have been prompted by the increasing number of firms which will require regulation.

Difficult decisions

Trickier questions arise when it comes to deciding which regulators should be licensed to regulate which reserved activities. ICAEW has applied to be licensed to regulate the conduct of probate work and it is difficult to see on what basis the LSB could logically refuse. ICAS and ACCA have already become legal regulators for probate work, though, interestingly, neither has done much about making the rules which would enable their members to take advantage of the extension.

Meanwhile, ILEX has applied for its members to be permitted to perform probate and litigation work, as well as to have civil and criminal rights of audience; and last month the LSB agreed to permit ILEX to award the right to conduct litigation to associate prosecutors.

CLC, for its part, has won probate rights for its members and now seeks to extend into litigation and advocacy, which, going hand in hand with the advent of ABS in October, has made some solicitors, barristers and, it appears, senior members of the judiciary, a little nervous.

The Office of Fair Trading, which, let us not forget, produced the initial report which led to the Legal Services Act, published in 2009 *A guide for policy makers on why competition matters*. Tellingly, part of that guidance states that "where government has a reason for intervening in markets, it should do so in a way that avoids unintended consequences as far as possible".

It is difficult to predict the possible consequences of the LSB's decisions. If the CLC and ILEX are granted their latest requests, then where does the LSB go from there? If, however, they choose to say 'that's far enough' following Lord Judge's comments, on what basis would they do so?

The CLC has a particularly good argument in any event, since section 53 of the Courts and Legal Services Act 1990 actually provides for it to be authorised to regulate advocacy and litigation services. It would be fascinating to know how close the LSB might be to calling a halt to the further licensing of reserved legal activities.

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