



Justice Committee

Oral evidence: Legal services regulation, HC 166

Tuesday 28 June 2016

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Members present: Robert Neill MP (Chair); Alex Chalk MP; Alberto Costa MP; Philip Davies MP; David Hanson MP; John Howell MP; Dr Rupa Huq MP; Victoria Prentis MP; and Marie Rimmer MP.

Questions 1 - 79

Witnesses: Chantal-Aimée Doerries QC, Chairman, Bar Council of England and Wales; Dr Vanessa Davies, Director General, Bar Standards Board; Catherine Dixon, Chief Executive, Law Society of England and Wales; and Paul Philip, Chief Executive, Solicitors Regulation Authority, gave evidence.

Chair: Good morning, everyone. Welcome to our evidence session on regulation of legal services. I thank our witnesses very much for coming to help us today. I am delighted to see a very full public gallery as well. Can I start by asking members to make any relevant declarations of interest? As I think is well known, I am a member of the Bar, but not practising.

Alex Chalk: I am a practising member of the Bar.

Victoria Prentis: I am a member of the Bar, but not practising.

Alberto Costa: I am a practising Scottish and English solicitor. I would also like to declare that I had numerous discussions over the years, prior to my election as an MP, with Mr Philip and Ms Dixon on the issue of legal services regulation.

Q1 Chair: That is that. For the record and for the sake of the television transmission, can I ask the witnesses to introduce themselves?

Paul Philip: Good morning. I am Paul Philip. I am the chief executive of the Solicitors Regulation Authority.

Catherine Dixon: Good morning. I am Catherine Dixon. I am the chief executive of the Law Society of England and Wales.

Chantal-Aimée Doerries: Good morning. I am Chantal-Aimée Doerries. I am the chairman of the Bar Council of England and Wales.

Dr Davies: Good morning, everybody. I am Vanessa Davies. I am the director general of the Bar Standards Board.

Q2 Chair: I am sorry if I cannot quite see everybody at times. It is a bit like the layout at court 11 at Snaresbrook, where you could never see over the shorthand writer. Anyway, let's carry on.

Can I start with a broad view as to where we are? We have seen that you have the 2007 system, which has been up and running for a while now. The Government decided not to do the normal post-legislative review of things, but to have this broader review. Now we also have the Competition and Markets Authority review going forward. Some people have suggested that we have a slightly crowded framework at the moment. That is one of the issues of debate. I would like to ask the panel whether, in broad terms, the current system for regulating legal services is working well in practice—leaving aside the theory or the legal framework—well enough, or not. Mr Philip, do you want to start?

Paul Philip: Certainly. It is fair to say that legal services regulation is on a journey. It has been on a journey for some decades. Is it working well? It is certainly working better than it worked in the past. Is it optimum? One can always do better. It is a crowded playing field; there is no doubt about that. There are about nine legal services regulators, although my organisation, the SRA, regulates something like 86% of all lawyers—that is to say, solicitors—in England and Wales. We can always do better and do more.

From my perspective, it is about reducing bureaucracy and red tape, opening up the market to greater competition, in the genuine public interest, and making sure that the public are adequately protected, while not tying up business in bureaucracy and rules. It is working relatively well. In the 10 years or so since the SRA was established, we have made very significant progress, but there is more to be done. There is certainly no room for complacency.

Q3 Chair: Do you seek any change to the basic framework?

Paul Philip: This morning's session probably has its genesis in the Treasury announcement of last November. As members will know, the Treasury gave notice of its intention at that time to consult on making the front-line regulators, such as the SRA, independent of the bodies that represent solicitors. I think that is a good thing as a matter of principle. It completes the journey we have been on for the past 20 years—the journey that the OFT identified in 2003 and that Sir David Clementi identified in 2004. The reason for doing it is purely perception. It is about public perception and public trust in solicitors and in the regulation of solicitors. It is a development that we would welcome and that we welcomed at the time.

Q4 Chair: Is it a perception that is based on evidence?

Paul Philip: It is a perception that to some extent is based on evidence. We did some polling a couple of months ago. Probably about 20 people a day who ring up our call centres are confused about who we are—whether or not we are the Law Society, whether or not we are there to represent solicitors, or whether or not we will genuinely act in their interest and give them an even hand, in terms of complaints. When they find out that we

are actually the Law Society, they have a bit of a crisis of confidence; there is no doubt about that. Although we treat them fairly and we act in their interests, it is difficult to convince them that that is the case when, essentially, we are part of the Law Society.

Catherine Dixon: Our view is that the regulatory framework should ensure that consumers are protected and it should operate in the public interest. We think that the current system is broadly effective. We think that there is still a journey, as Paul said, and that there are opportunities to improve. It is still a relatively new system, so things are still embedding. It would probably be the wrong time, given the outcome of the referendum, to undertake a full review of legal services. Clearly, Government, the public and, indeed, the legal profession and its clients are going through a period of what will be unprecedented change. I would therefore question whether now is the right time.

We have a vision for the future of legal services regulation. In our view, the current regulatory definition of legal services is too broad. Currently, sitting with legal services regulation are entry into the profession, education and training, awarding the professional title of solicitor, professional standards, regulatory rules and enforcement. If Government were minded to undertake a full review of legal services—we believe that it would have to be a full and holistic review—there may be an opportunity for simple and better regulation, which we think should focus on protecting the consumers of legal services. That would look at regulating the market and enabling professional standards. Clementi was always of the view that professional standards best sit with the profession. Those professional standards should sit with the profession, so that they can be owned and driven to a higher level than would perhaps be the case if they sat with a lay regulator. In the event of a full review, that is what we would be minded to see and support, but our position is that we do not think now is the right time and the current system is broadly effective.

Q5 Chair: Do you have any comment on Mr Philip's point about perception?

Catherine Dixon: If there is a perception issue, the key thing is that we tackle it. If the public are confused, we should focus on public legal education. There is no doubt or dispute that regulation is operating independently. That is how the framework was set up. The role of the LSB is to ensure that the independence of regulation is maintained. If there is a concern about perception, let's tackle that and get some public education out there to deal with it. It strikes me that it would be a bit of a sledgehammer to crack a nut to go through what would be quite a complex process of changing primary legislation and so on to deal with what seems to be a perception issue. We know that we have independent regulation.

Q6 Chair: Ms Doerries, it seems to me that the Bar is very different from the solicitors' profession in scale, at 135,000 to 16,000 or thereabouts, and in the nature of work undertaken. Against that background, what is the Bar Council's view of the current set-up? What sort of changes do you seek?

Chantal-Aimée Doerries: I certainly agree in terms of the scale and scope of work. Of course, it is still predominantly a referral profession, and although there is more direct access work and so on, we anticipate that it will remain predominantly a referral profession. Against that background, the Bar Council's view is that the current two-tier system, with an oversight regulator and a regulator that is dedicated to the profession, is

working reasonably well. As others have indicated, it is relatively young in its life, in terms of the arrangements, and there continues to be some bedding in. By and large, the profession takes the view that the current arrangements work both in the public interest and consumer interest and in terms of ensuring the profession's high standards.

Bearing in mind what you flagged at the outset, Chair, I emphasise that the Bar is a low-risk branch of the profession, in the sense that there is a prohibition on handling of client money and a complete ban on referral fees. I flag that because, from the Bar's perspective, it is vital that any regulation is proportionate to the level of regulatory risk posed. There has been some mention of the arena being crowded. I should flag at the outset that the profession does not support a super-regulator or a consolidated regulator. We have always argued that one size does not fit all. For the profession and in the public interest, we believe that a regulator dedicated to barristers and the provision of advocacy services through entities is the right way to go.

Dr Davies: The Legal Services Act aimed to do three things for the public. The first was to put consumers much more at the heart of things. The legal ombudsman and the Legal Services Consumer Panel have made great contributions to getting the regulators and those who provide services to focus much more on that. That is a success of the Act.

The second thing that the Act sought to do was to shake up the regulatory rulebooks to foster innovation and economic growth. At the Bar Standards Board, we have made tentative steps there. As the chairman of the Bar pointed out, we regulate a very different scope and segment of the market. It is very early days to be able to say whether the changes that we have brought about through the regulation of entities and, hopefully, by being designated as a regulator of alternative business structures later this year, have had the impact for consumers that those who designed the Act originally intended.

The third aspect of the Act is getting competent regulatory bodies that are independent of those they regulate. Again, this is a journey, and we have made really good progress. For me, the most important thing about the independence of legal services regulation is that it should be independent of Government. That is the primary goal as far as the Bar Standards Board is concerned. We are well aware that we too, like the SRA, have problems of perception from the public when we are handling complaints. The statistics are very small, and it is hard to draw fast conclusions from them, but those problems of perception need attending to. Actually, the Act as it stands gives us more scope yet to deal with those public perception issues, and we have been working very constructively with the Bar Council, within the internal governance rules set up by the Legal Services Board, to address those matters of perception. Both of us recognise that there is more to do and we are working on that.

Q7 Chair: What about the performance of the Legal Services Board itself? Is that satisfactory? Who wants to start on that?

Dr Davies: I will give it a go, if you like.

Chair: We will come back the other way.

Dr Davies: Yes. There is some balance then, isn't there?

Clearly, it was very important for the Legal Services Board to push on those three core aspects of the Legal Services Act. It has done an excellent job in relation to consumers. The Legal Services Consumer Panel is making increasingly important contributions, through its research, to focusing regulators. The emphasis on common standards of regulation—not necessarily identical rules, but everybody regulating to the same level of competence—has been an important contribution. Of course, while the structure of the Act still has us somewhat tied to our parent—or whatever metaphor you want to use—approved regulator, in my case the General Council of the Bar, holding the ring on the independence question seems to me an important role for the Legal Services Board. Inevitably, the question arises of what Parliament, which of course took the original decision to set up the Legal Services Board, might want to do at a subsequent point.

Chantal-Aimée Doerries: In very short terms, we take the view that it could do better. As I said at the outset, in the context of two-tier regulation, we recognise the role of an oversight regulator, but we feel that there are areas where the LSB has strayed beyond its remit. We have raised those from time to time in our response to the draft annual business plans. If I can put it bluntly, it seems to us that from time to time it is unable to resist the temptation to go beyond what we think is either necessary or appropriate. One example of that would be the research that it commissioned a few years ago into the cab-rank rule, which not only involved a significant cost on the part of the LSB, but led other regulators and representative bodies to incur cost in responding to it. A more recent example would be the push towards encouraging regulators to take more active steps in the context of equality and diversity. Obviously we recognise the importance of that area, but would take the view that a representative body is better placed to promote best practice in relation to it.

Q8 Chair: I seem to recall that the Bar Council has long had an equalities and diversity committee—certainly going back to my time on the south-eastern circuit committee, many years ago.

Chantal-Aimée Doerries: Indeed. That is correct.

Q9 Chair: I think the same applies to the Law Society. I am sorry for interrupting you.

Chantal-Aimée Doerries: The only other point I was going to make was that, although I have been critical, it is fair to recognise that we support the LSB's intention to improve scrutiny of regulatory costs. We are certainly in favour of that.

Catherine Dixon: It is the case that the LSB has improved quite significantly over the last few years. Like the Bar, we have concerns about what could be considered scope creep.

Q10 Chair: Micromanagement, almost.

Catherine Dixon: Yes, and the fact that some of the work that has been done around the unregulated sector is being funded by the regulated sector. There are certainly some concerns in relation to that.

Q11 Chair: Could you explain that a little, for those who may not understand it?

Catherine Dixon: Some research has been done by the LSB looking at the fact that a proportion of the legal service market is unregulated. Of course, the LSB is funded by the

legal profession. Therefore, that could be seen as creating a competitive disadvantage for those who have to pay for that regulatory cost.

There are some areas we would like the LSB to focus on, such as some of the issues around the performance of the front-line regulators—to scrutinise that performance and support them to improve it where shortcomings have been identified. It should certainly look closely at the proposals around opportunities to deregulate, to make sure that consumers are protected. The LSB did a very good job around the PII issue that came to it. There was a recommendation from the SRA to reduce PII cover, which was stopped by the LSB. We also think that it is important that it really focuses on ensuring that consistent rules are applied across the legal service market, particularly given the fact that we have a number of front-line regulators. If that is not scrutinised very thoroughly, our concern is that there could be a rush to the bottom, with regulators trying to attract new members, as it were.

Paul Philip: Our view is very similar to the BSB's. As I said earlier, this is a journey. We are improving legal services regulation on a year-by-year basis. The LSB is an animal of the Legal Services Act and has been in existence for only a few years. In my opinion, it had a bit of a baptism of fire, entering an area where competition was not welcome and where the public interest is best served by ensuring that individuals and members of the public have access to lawyers and legal advice. As you all know, that is not always the case.

From our perspective, the LSB did quite a good job in the past. By necessity, it pushed the boundaries in thought leadership, as it would be called in the jargon, in terms of whether the present tectonic plates between the professions are correct or best serve the public. By and large, its scorecard is relatively positive. Could it do more? Of course it could. Do the examples that have been given in relation to the research that it does indicate that it is acting outside its scope? No, not in my opinion.

Q12 Alex Chalk: Can we move to Tesco law—alternative business structures? Four hundred and fifty are now licensed by the SRA. We are aware that people had misgivings about proposals for their being licensed. A few years have passed. Are those fears borne out? Was it nothing to worry about? Can I start with you, Mr Philip?

Paul Philip: The so-called alternative business structure, being alternative to a traditional business structure, is alternative in a number of different ways. The primary way is through the ownership model. It is alternative in that it is partly or wholly owned by an individual or a number of individuals who are not practising lawyers.

A number of concerns were raised at the time of the passage of the legislation. We have been licensing ABSs since December 2012, which is not very long at all. We now have about 480 ABSs, but it is fair to say that most of them are small, traditional law firms that have just done obvious things, such as putting their finance director on the board or giving a wife or husband an equity share in the business. They are not particularly radical, in terms of service delivery. Are there a growing number of organisations that are pushing the boundaries, in terms of doing radical things? Is there any evidence of unethical behaviour, or that the owners of those businesses are any less ethical than solicitors, from my perspective? Absolutely none whatsoever.

Q13 Alex Chalk: In the more radical ones, where people are doing more fundamental things within that structure, you have not noticed any particular problems.

Paul Philip: No, we have not. One or two are listed on the alternative investment market. Clearly, they are subject to the vagaries of the market and market sentiment, but I do not think that what has happened to those organisations can be attributed to the fact that their business structure is an alternative business structure.

Q14 Alex Chalk: I will ask you one additional question; the rest of the panel can then answer as they come along. Does this do anything to the standing of England and Wales? Some rather disobliging remarks have been made by other European jurisdictions about the very existence of these structures. Does the fact that we even have them cause us any reputational difficulties?

Paul Philip: Personally, I do not think that it does. When you speak to people who own alternative business structures, they say that within those structures there are numbers of solicitors—in some cases, quite large numbers. They are exactly the same as other solicitors and are regulated in exactly the same way as traditional firms. No one ever questions the quality of the legal advice given by those solicitors. I do not believe there is any real hard evidence that they reduce the standing of English law or the English legal system abroad.

Catherine Dixon: I broadly agree with Paul on this. We are supportive of ABSs. It is still quite early days, in terms of the impact that they may have on the market. Ultimately, that will be driven by the market. It is interesting to see where some of the ABSs are springing up; for example, we see that quite a significant proportion of the personal injury market—somewhere in the region of 30%—is now ABS.

Your point about the international perception is interesting. We get very few questions about ABSs when we are in England and Wales. It is when we go abroad that questions are asked. We do a lot of work on the issue of that perception; there certainly is concern internationally, and it is important that we make it clear that the organisations are regulated and that there is protection in place in relation to the individuals who work within them.

Q15 Alex Chalk: Forgive me for interrupting. Is the fit and proper person test sufficient safeguard and comfort for people who might think, “Hang on, do we have the right people”?

Catherine Dixon: It is modelled on the requirement under financial services, so I think that it is. There is a question about how the suitability test and the fitness of a person test fit together, because they are slightly different tests, so that may be something for the regulators to consider. On the perception of English and Welsh law, and of England and Wales as the jurisdiction of choice, some questions have been asked about that because of the creation of ABSs, and the Law Society is very keen to do some myth busting about some of those misperceptions on the international scene, particularly in the States and some of the European jurisdictions.

Chantal-Aimée Doerries: From the Bar’s perspective, it is less of an immediate topic, because the regulator has not yet received a licence.

Q16 Alex Chalk: But it’s coming.

Chantal-Aimée Doerries: Absolutely, and there are already some barristers in ABSs. We have supported ABSs. We recognise the challenges around them, particularly for a predominantly self-employed profession. I have spent a lot of this year travelling around the country, speaking to chambers and asking barristers, “Are you looking at options? Are you thinking about entities? Are you thinking about ABSs?” Broadly speaking, the feedback I have had is that most barristers I have spoken to are looking actively at what is possible, but the vast majority think that they will continue to practise at the self-employed Bar. That broadly seems to be partly as a result of concerns around conflicts and partly as a result of concerns around overheads and the relatively good arrangement that chambers offer, in terms of low overheads and the ability to practise. At the moment, we do not see a large number of barristers going into ABSs.

I agree with Catherine Dixon in relation to perception issues. It is certainly the case that, when we travel overseas, the introduction of ABSs is something we are asked about a lot—perhaps slightly less at the moment than when ABSs were first introduced. Partially, I suspect that that is because the uptake has perhaps been slower than was originally anticipated.

Alex Chalk: I see.

Dr Davies: I have two very quick points. Inevitably, the Bar has less to say about this, because it is not yet a practical reality. There are a few pieces of international research, looking across jurisdictions, as to whether there is any evidence of the fears in relation to ABSs having been realised. I would be very happy to send a note to the Committee with those sources afterwards, rather than recite them now. The long and short of it is that, to date, fears have not been realised.

It is worth pointing out that the Bar Standards Board’s regime for ABSs will not be the same as that of the SRA. It is deliberately focused on a different segment of the market, where there are some different principles. For example, we will not normally expect to authorise a body that does not have actively engaged owners and investors; you have to be an active part of the business. If there are sleeping partners, it will not be a BSB ABS. The other very fundamental thing, which we think will lead to proportionate, cost-effective regulation and lower risk for the public, is that our ABSs will not be able to hold client money either.

Q17 Alex Chalk: Exactly. They will be a different species.

Dr Davies: They will focus on what the Bar does really well—specialist legal advice, advocacy in the courts and so on.

Q18 Alberto Costa: Could I ask one final question about ABSs? It is about cost. I will confine my question to the Law Society, given that we do not yet have ABSs within the barristers’ profession. Does the Law Society have any issue with the cost in applying to become an ABS?

Catherine Dixon: We do not currently. What we would say is that the rules should be applied consistently to ABSs and to traditional law firms, as should the cost, but it is not a specific concern. I could make further inquiries as to whether that is a current issue for solicitors and write to the Committee, if that would be helpful.

Q19 Alberto Costa: I will throw the next question to Mr Philip. The first ABS, Lawbridge, was a sole practitioner and was promoted by the SRA; your predecessor certainly promoted it. If a sole practitioner wishes to convert to or become an ABS, what is the difference in cost between becoming a recognised sole practitioner and becoming an ABS?

Paul Philip: Like Catherine, I am afraid I do not have that information. I do not think it is particularly significant, but I am happy to provide it at a later date, if that would be helpful.

Q20 Alberto Costa: You do not know what the application costs are to become an ABS.

Paul Philip: Not right at this point in time.

Q21 Alberto Costa: Would it be fair to say that they are in the tens of thousands of pounds?

Paul Philip: As I said, I do not know. I would need to check that.

Q22 Alberto Costa: I would be grateful if you could provide the Committee with a fuller answer.

I turn the panel's attention to regulator shopping. One of the purposes of the 2007 Act is to give the opportunity to authorised persons to decide which authorised regulator should regulate their particular business. As Mr Philip said, there are nine approved regulators that sit under the LSB at present. My first question is for the two regulators before us. Are you comfortable with the idea that authorised persons can shop and choose which regulator they think best fits their business?

Dr Davies: You are looking at me, so I will start. Almost inevitably, the Act set up the possibility of what one might see as competition between regulators—that people would be able to move between them. That was presumably a deliberate bid to shake up the market and to stimulate different forms of provision among different legal services professionals.

We are cautious. We currently authorise six entities run by an individual solicitor, one two-solicitor entity and two entities that have one solicitor and one barrister at the helm. The SRA probably authorises 76 entities in which at least one barrister holds a manager position. It is still a very small-scale shift-around. We would be concerned if we thought that a barrister was deliberately forum shopping in order to try to escape duties that we see as integral to a barrister's work. Of course, the Act puts us in the position that, where there is an entity and an individual regulator, it is the entity regulatory rules that prevail. We are cautious and we take a risk-based approach. We look at the evidence before us when dealing with whatever is before us. To date, we have not had any complaints in respect of the behaviour of persons who may have been shopping around.

Paul Philip: I said earlier that we regulate about 86% of all lawyers in England and Wales. About 50% of all practising barristers work within solicitors' firms. I would hazard a guess that a very large percentage of paralegals and licensed conveyancers work within solicitors' firms. Your proposition, I think, is that nine legal regulators seems like a bit much. It certainly leads to competition between regulators and the possibility of people

hopping from one to the other, and we have seen a few examples of that, particularly between us and the Council for Licensed Conveyancers.

Do we think it is a good thing? As I said in my introductory statement, we are very much on a journey in terms of legal services regulation. The fact is that many people have criticised legal regulators for being over-bureaucratic and having too many rules. I certainly agree with that criticism. Competition between legal regulators creates a thought process whereby legal regulators have to think about whether their model is correct. Do I think that in the fullness of time there should be nine legal regulators? No, I do not. Consolidation is a foregone conclusion, but right now the system has worked in the public interest and it is a good thing.

Q23 Alberto Costa: Can I drill down? A change from nine regulators to a single regulator is a fundamental change. Mr Philip, I am not quite sure why you are saying that everything appears to be working okay but at the same time, ideally, your goal would be to see a single regulator. I would like to understand why you feel there ought to be a single regulator in the market. Could you help the Committee to understand why you think that fundamental and significant change should occur in the market?

Paul Philip: I started off by saying that I thought things were improving and that, although more can always be done, the fact is that legal services regulation is working relatively well. I do not think I am on record as saying that a single legal regulator is the right way forward at all. As a matter of fact, I would probably be more with the Bar Council on this one. What I am saying is that it is probably a foregone conclusion that there will be fewer than nine regulators, in the sense that most of the registrants with other regulators are already operating within SRA-authorised firms. I think that in the fullness of time there will be fewer than nine. I have no idea whether there will be one, two or five. The market will sort that out itself.

Q24 Alberto Costa: I do not really think that it is a matter for the market. It is for Parliament to determine whether there should be one regulator or nine. I am still not clear about your answer, I must confess. Can I ask this question? Take client money, for instance. There are nine regulators, many of which permit authorised persons to hold client money. Why should there be different sets of rules, not on the professional standards but on the administration of how one provides legal services? I use client account rules as an example. Do you think that it is beneficial to consumers—or, indeed, the professions—to have such replication of those rules?

Paul Philip: First, we did not create the present arrangement. As a matter of fact, Parliament created it. Do I think that there should be one set of business administration rules, particularly for client money? Yes, I do. We are already talking to other regulators about the differences in relation to client accounts and professional indemnity insurance. That discussion is ongoing. Over a period of time, you will see far more commonality between regulators in that respect. In a way, that is why I am suggesting that in the fullness of time there will probably be fewer than nine legal regulators.

Q25 Alberto Costa: Can we turn to access to legal services? Again, one of the central tenets of the 2007 Act is to provide a better playing field and more competition in the legal services market. I understand that a major survey by the Legal Services Board and the Law Society indicated that only 35% of people get legal advice of one sort or another from

regulated professionals when they encounter a legal issue, and a substantial minority attempt to handle the issue alone. Doesn't that suggest that there is, in fact, a problem of market failure and that the 2007 Act is not providing what it said it would? Perhaps the Bar would like to start.

Chantal-Aimée Doerries: One needs to look at this in context. Since 2007, as well as the introduction of the Act and the changes that introduced, we have seen some fairly radical cuts to legal aid, in both family and social welfare areas where in many cases legal aid has been removed altogether, as much as in crime, where we have seen a severe reduction. More recently, we have seen the court fees, which I know the Committee has considered recently. I mention both those issues because it seems to me that one needs to look at access to legal services in the context of developments over time.

The Bar Council was not involved in the Law Society and LSB survey, but it would be fair to say that there is a need for legal services out there. The Bar Council and the Bar support the Bar pro bono unit. Over the years since LASPO was introduced, we have seen a 30% year-on-year increase in applicants seeking pro bono assistance. That must show that there is an unmet need at the moment, met to some extent through pro bono work, but it is not sufficiently met, nor should it be met, entirely through pro bono.

Does that mean—if this is what the question is asking—that, effectively, the 2007 Act has not, to that extent, been successful? I would disagree. The challenges that exist in the market at the moment go beyond and outwith what the 2007 Act was seeking to do. The market has also become a lot more competitive. Speaking from the Bar's perspective—this is something that has come to the fore in the context of the CMA investigation—the way in which the Bar prices and markets itself and offers its services is increasingly changing and has changed, although it remains predominantly a referral profession. From our perspective, it has become a more competitive market.

Q26 Chair: You made a point about cumulative effects. I get the sense that that is what the Lord Chief Justice was hinting at in his speech to the Legal Research Foundation.

Chantal-Aimée Doerries: Indeed.

Q27 Chair: It was that a number of things put together had had that effect.

Chantal-Aimée Doerries: Yes.

Dr Davies: The chairman of the Bar has said nothing I disagree with at all. We need to see this in context; the Legal Services Act has helped, but it has not got us all the way. Other things have intervened that have changed the landscape. The point I would add is that other surveys recently have shown that public legal education remains an issue. It is an objective in the Act that perhaps, collectively, we have not pursued as much as we might have done. Only 11% of the population identify a legal problem accurately. People may not even recognise that they need legal services. If the market is not in a great state to meet that need, it adds to the problem.

Catherine Dixon: There is certainly concern about access to justice in this country. We know that LASPO had the impact of making 600,000 fewer people eligible for legal aid than were eligible before that, with a reduction of around £350 million per year. Inevitably, that will have an impact, particularly on people who perhaps do not have the

means to afford legal services. The report that was jointly issued by the LSB and ourselves said that around 67% of people did not actually know that they had a legal problem. Of that 67%, many were not looking for legal advice or a legal solution, because they did not know that they had a legal issue to be solved. It is really important that as part of our public interest work we do more to raise issues of public legal education and to ensure that the public are informed. We must then look at innovative ways of providing support to them.

Last year, we issued a report looking at access to justice and how the profession can respond by providing new and innovative services. Unbundling is one way. We have issued practice notes and directives on how unbundled services can be provided, because there are some risks associated with that. We would welcome Government looking at some of those risks, to see whether there is a regulatory solution that could encourage and support more unbundled services to be provided. There are other things we can look at. We know that some of the processes and procedures within courts could be improved and streamlined. That could reduce cost. We know that there are some technological solutions that could be looked at. It is important that we continue to support pro bono. We are doing a lot of work in that area, to enable people to get access to pro bono advice. It is a complex problem, but it is important that we work together as a profession to try to come up with some solutions to what is a grave concern for many people.

Chair: Mr Howell, before Mr Costa carries on, do you want to make a specific point on the issue that has just been raised?

Q28 John Howell: I am sorry I was not here at the beginning, but let me declare an interest: I have already discussed this with the Law Society. When I read the Lord Chief Justice's speech, I was struck by the fact that he had identified very keenly that the cost of providing legal services is out of proportion to what people want. I have been very struck by the moves to create an online court, for example, as a means of getting round the problem of having too many lawyers and their either having to charge amounts of money for this or doing things pro bono. Those seem to be ways of working that simply lock in the existing system that we have, whereas the online court is a way of getting round that. Would you like to comment on that bigger picture? From the explanation you have given, I feel that you are locked into the existing system, rather than looking at challenging it.

Catherine Dixon: We are supportive of an online court. We have been working very closely with Lord Justice Briggs on the proposals and, hopefully, contributing to the thinking in relation to online courts. Irrespective of improving a process, it is important that people get legal advice as to whether they have a case to bring, be it in an online court or otherwise. We would support early advice, which can often stop legal problems escalating over time.

Q29 John Howell: I am sorry to interrupt you there, but that is precisely what I am trying to get at. It is "We support the online court, but" and that "but" locks us back into the provision of legal services by members of the legal profession. I discussed this with your staff, and I did not get the impression that there was wholehearted support for an imaginative proposal that is likely to have a big effect on the cost of legal services.

Catherine Dixon: We would say that it is really important that anybody going through a court process has access to advice as to whether they have an actionable case in law. Many cases are dealt with by solicitors before they even get to the court doors. It is important that that triaging role is supported. We also think that, in particular, having early legal advice about a case can stop cases being escalated. If an individual goes through an online court but they do not know the law and whether or not they have a legal case, it could potentially clog up the online court.

The conversations that we have been having with Lord Justice Briggs are about making the process work as efficiently and effectively as it can, recognising that legal advice and the input from practitioners can be really helpful in that process. I do not think it is a question of trying to take the lawyers out of the legal process. Bearing in mind that the professions are very focused on supporting those who buy legal services—that is what we do—it is a question of looking at the processes and making sure that we get the right ones to enable those we serve to get the support they need to take them through what is often quite a complex legal process, irrespective of the streamlining of some of those processes within the court.

John Howell: I suspect that we will have more conversations about this. I, too, have spoken to Lord Justice Briggs about it. I am very supportive of what he is trying to do. This is a question we will have to return to. Would any of your colleagues like to comment?

Q30 Chair: Does the Bar have a view? I do not think that the regulators need to have a view on this issue.

Chantal-Aimée Doerries: Thank you for the opportunity, Chair. I just want to make the point that we support Lord Justice Briggs in principle, in terms of the introduction of technology into the courts and looking for an online solution for the smaller-value claims. As the Law Society indicated, we too focused very much in our response on the importance both of early legal advice and of sufficient representation in cases where a hearing will be necessary, which, it is anticipated, will be a small number of the cases going through that court.

The focus for early legal advice is threefold. It is to ensure that the client is aware of whether he has a good claim or, if it is for the defendant, whether there is a good defence. It is also to ensure that consideration is given to other options, such as mediation. We know that one of the consequences of the withdrawal of legal aid in the context of family work was a plummeting of mediation, partly as a result of the withdrawal of early legal advice. We see the involvement, perhaps in an unbundled way, of barristers and/or solicitors or others from time to time in the online court as supporting the aims of what Lord Justice Briggs is trying to achieve. Obviously it is a matter for Lord Justice Briggs in his final report, but in the more recent open forums that he has held, he has indicated increasing openness to the idea of, effectively, building in some form of unbundled service, be it early advice or specific support in relation to cross-examination, in cases where there are issues to do with credibility, for example.

Chair: Mr Costa, do you want to pursue that? You raised some issues before this one was raised.

Alberto Costa: We have heard about unbundled services. That was the question that I was going to ask. Ms Dixon has given a fairly thorough answer to it.

Q31 Chair: Are there any other comments on that?

Paul Philip: I agree with everyone else on access to justice. There is a real issue, but it is not about the Legal Services Act. It is much wider than that. Although we are making a contribution by trying to increase competition, the fact is that there will always be some people who cannot afford the services of professional lawyers.

Q32 Victoria Prentis: We have all come across McKenzie friends who charge fees. Indeed, our Chair told us earlier about a particularly heinous example he was aware of. I suspect that I know your answer to this question. Nevertheless, I would like to hear your ideas on how to control it. Is it something that can be done through court rules, or would you rather they were not allowed in the first place?

Chantal-Aimée Doerries: Perhaps I could respond initially, as we are the representative body for most advocates. We are aware of the JEB consultation. Our response supports the proposals in that, which are for a complete ban on paid McKenzie friends. In the context of what we were talking about before, we recognise the role of a traditional McKenzie friend, in terms of providing support on an unpaid basis.

Q33 Victoria Prentis: We all do, and we would all support that. These are merely people who charge fees and make a living from it.

Chantal-Aimée Doerries: In relation to that, the stories and feedback that my members have given me—particularly those at the junior end, who often face these McKenzie friends on the other side—have been quite surprising to me and, in some cases, quite extreme. I have great difficulty with the concept of someone who is often insured, frequently unqualified and always unregulated effectively charging for the service.

Q34 Victoria Prentis: And who may previously have been struck off as a practitioner.

Chantal-Aimée Doerries: Absolutely. There are examples of that. We know that in some cases they are charging as much, if not more, than a junior barrister or presumably a junior solicitor or others might. We have real concerns in relation to that. Fundamentally, it is about the public interest and the consumer interest. It is about ensuring that people understand the protection they are entitled to. Insurance, regulation and qualification are not there to protect me; they are there to protect the consumer and the public.

Catherine Dixon: I am very supportive of those comments. It is important to differentiate this from the unpaid and those who are genuinely acting as a friend. We certainly support the unpaid. There is real concern about the protection of people buying those services. There may be a perception that the services are cheaper, yet the evidence does not necessarily bear that out. It could be a struck-off solicitor or barrister.

Q35 Chair: That is exactly what I found in one instance, as it happens—somebody who had been struck off.

Catherine Dixon: It does not feel right that they are operating in this unregulated way when clearly there is recognition that the professions that provide these services are quite

heavily regulated. We support the Judicial Executive Board's findings, which are to prohibit non-professionals from charging for legal services and being able to recover the fees for litigation.

Q36 Chair: Is there any dissent from that?

Dr Davies: Just a minor nuance, if I may. The Bar Standards Board responded to the consultation separately from the Bar Council, and perhaps Committee members have seen that. The most important thing is that consumers know and understand what they are and are not getting through these services. There is a lack of transparency and understanding that needs to be addressed.

Where the service that is being provided is, in effect, exactly the same as a reserved legal activity under the Act, it seemed to us that it was inappropriate for fees to be charged by unregulated people, because that undermines the Act. We had a slightly more nuanced view on the position of people providing more generalised support in court, along the lines of unregulated providers anyway, and whether that should or should not be paid. We did not necessarily see that payment for those services should be outlawed, notwithstanding the fact that there are quite a lot of voluntary services providing support to people in court. I should declare an interest. Until very recently, I was the trustee of a charity that provides such services.

Q37 Chair: Isn't it a bit difficult to tell in practice where that stops and starts?

Dr Davies: Absolutely. That is precisely the problem.

Q38 Chair: If it is paid or unpaid, it is very easy to police, isn't it?

Dr Davies: Yes.

Q39 Victoria Prentis: For the rest of you, is that the difference—paid or unpaid?

Chantal-Aimée Doerries: Yes.

Catherine Dixon: Yes.

Paul Philip: I most align myself with my colleague from the BSB and with all the comments in relation to maintaining high quality and making sure that the people who do this work are not people who have been struck off elsewhere. Quite frankly, that is just ridiculous.

Our response was that a complete ban has the law of unintended consequences attached to it. We have just had a discussion about access to justice and people not being able to afford the services of regulated lawyers. It strikes us that it is not beyond the bounds of possibility that there are unregulated people who could provide the type of support that the BSB has just described. Therefore, we came to the decision that, in their procedure at the moment, the courts very much regulate who attends in front of them. They could probably do that at the moment, so a complete ban is probably—to use my colleague's phrase—a sledgehammer to crack a nut.

Q40 Alex Chalk: Is there a problem with transparency and the poor old punter knowing what they are getting, in that they are able to call themselves lawyers as well? There is no

regulatory magic about that word. If you did not have that problem, because they could not hold themselves up as lawyers, at least the individual would know that what they were getting was nothing of the sort—not someone who has a legal qualification.

Paul Philip: Yes. I agree with that.

Q41 Alex Chalk: I do not know anecdotally whether McKenzie friends are holding themselves up as lawyers in a way that is liable to mislead.

Catherine Dixon: Certainly the use of the title “lawyer” is not protected by regulation. Effectively, anybody can call themselves a lawyer. Our view is that you should be a lawyer before you can call yourself a lawyer. You should be a legal professional—a barrister, a solicitor or a legal executive—before you can call yourself a lawyer, otherwise it is misleading for the people who are buying those services.

Q42 Alex Chalk: It would be interesting to know whether they are holding themselves up as lawyers. What is the view from the front, as it were?

Chantal-Aimée Doerries: One of the challenges is that there is remarkably little research into this area, beyond what one can find out oneself, either by going online or by speaking to judges or advocates who have encountered McKenzie friends. We have just commissioned some research into McKenzie friends that, hopefully, will be delivered at the end of this year. It will both look at those who have used McKenzie friends’ services and look at it from the courts’ perspective, specifically in relation to family law and in a region, largely because we had to draw a line somewhere and those seemed to be the areas where McKenzie friends had become most prevalent.

Q43 Mr Hanson: During the initial part of the discussion, you weaved in and out of the Treasury proposals. For the purposes of clarity for the Committee, I want to ask you all individually to indicate to me whether the Treasury proposals on making legal services regulators independent of their representative bodies are positive or negative, and whether there should be a single regulatory body or myriad regulatory bodies. It is just so that we get some clarity. We have weaved around this, but it would be really helpful to have four views on whether the proposals are positive or negative and on that other point.

Paul Philip: They are positive, from our perspective. If a consultation is released into the wild, as it were, we will respond positively, for the reasons I gave earlier. It is all about perception. Perception is everything. We suggest that making the regulator independent of the body that it represents and the interests of solicitors is clearly in the wider public interest. It bolsters confidence for the public, in relation to having a fair hearing, and bolsters confidence in the profession, by making sure that the small minority of people who derogate from the acceptable rules are dealt with independently.

In relation to the issue of a single legal regulator, as the Chair indicated at the beginning, we have the Competition and Markets Authority investigation into the legal services market coming out some time in the first half of July. We will probably wish to wait and see that. As I said earlier, my view is that, over time, there will inevitably be market consolidation in relation to regulators. We would not support a single legal regulator, because the law of unintended consequences would mean that it might cause more problems than it would solve.

Catherine Dixon: We would say that regulation is already independent. We would be concerned if the legal regulators were to be separated from their professional bodies, given the current definition of regulation, because we think that that definition is too broad. Currently, it includes professional standards, legal education and training, entry into the profession, awarding the professional title of solicitor, regulatory rules and enforcement.

If a more holistic review of legal services were undertaken, there would be an opportunity for simple and better regulation, which would focus on protecting consumers in the legal service market. We think that the regulatory rules should be applied consistently to that market and that professional standards are not regulatory rules that should sit with a lay regulator. As envisaged by Clementi, those professional standards should come back to the profession and should be owned and driven by it.

In those circumstances, there is an opportunity to look at potentially consolidating the number of legal service regulators, because then the focus is on ensuring that the legal service market is consistently and effectively regulated, rather than on professional standards. There is also an opportunity to deregulate. Our concern about deregulation at the moment is that you have regulatory rules and professional standards sitting together, and the risk is that you end up lowering those standards. We would be concerned about that.

We are keen to encourage the profession to own professional standards, which will enable it to differentiate itself and enable consumers to make an informed choice, while still ensuring that there is regulatory protection that applies effectively across the legal service market, but we think there is independent regulation and we do not think that now is the time to change, particularly given some of the challenges that will come up in the next few months as a consequence of Brexit. It will be really important that the legal profession is there supporting its clients and supporting Government to bring about the changes that flow from the consequences of the referendum.

Chantal-Aimée Doerries: There are two questions: independence, and a single regulator. Like Catherine, we believe that our regulator is independent and ring-fenced, and indeed has been since 2006. It is at the heart of the 2007 Act that there is, effectively, regulatory independence. We think that there are sufficient safeguards in the Act and through the oversight regulator, the LSB, to ensure that there is regulatory independence. Obviously we would look at any Treasury or MOJ consultation and engage with it, but we do not believe that there is any need for separation of the regulator from the representative body.

On a single regulator, or consolidated regulators, as I said before, the Bar would not support a single regulator. We believe that a separate regulator for the Bar is in the public interest, has the buy-in of the profession and effectively ensures that there is expertise and efficiency in the regulation of the profession. It seems to us that it is also consistent with the Clementi proposals in his final report.

Dr Davies: I have slight variations on those views. First, to be very clear, the Bar Standards Board is quite satisfied that all its policy development and regulatory decision making are, in practice, independent of the representative body. We do not of course have a separate legal identity, which can lead to some slightly unusual legal technical situations and the problem of perception that my colleague from the SRA has already explained to

the Committee. Broadly speaking, we would be in favour of separation, if that is what is proposed in any consultation.

On the single regulatory body, we share the view of the Bar Council. We think that there is a very clear and distinct public interest, which goes way beyond the interests of any individual client user of legal services, in the separate and distinct regulation of what happens in the litigation and advocacy before the courts process. The public good there is much more important than individuals. From examples in other sectors, we have seen that things can go wrong if you do not have sufficiently expert, knowledgeable, specialist regulation that is legitimised by and credible in the eyes of those who are being regulated. For those reasons, we think that there would be big risks in losing those interests and having them swallowed up in a very large single regulator. They need to be kept separate.

Q44 Alberto Costa: Ms Dixon, can I drill down on a point that you made? You have twice referred to Brexit. At the outset of this hearing, in response to the Chair's question about whether the legal regulatory environment is working well in practice, you said that broadly it is, yet prior to the EU referendum result, the Law Society issued documents to its members about the problems with the legal services environment. For example, as recently as February, you personally sent me a document that states very clearly, "Currently the regulatory maze is complex. There are numerous regulators of legal services and there is an opportunity to consolidate to save cost." You went on, "We"—the Law Society—"believe that the Government should look at the Legal Services Act." Now you have changed your view. That is probably down to Brexit, is it not? You are concerned that what the British people decided last week will have such an impact on the legal profession that your focus will now change to that, not legal services regulation. Isn't that correct?

Catherine Dixon: We have not changed our view. We have said consistently that, if Government are minded to look at legal services regulation, there is an opportunity to look at it in a holistic way, and in those—

Q45 Alberto Costa: I am sorry to interrupt, but that is not what it says here. It says, "We believe that the Government should look at the Legal Services Act." You do not say in this document that the Government should take the decision to look at the Act by themselves—you are asking the Government to look at it. Are you changing your view?

Catherine Dixon: That was in response to the Treasury announcement in relation to the better deal, which suggested that there would be a review of legal services regulation. There was also the fact that we had a Competition and Markets Authority review of the legal services market. We had an indication from the current Lord Chancellor—in fact, in answer to a question that you asked, Mr Costa—that he was minded to look at legal services regulation. There was also an announcement in the last Budget that legal services regulation would be looked at. The Law Society's response to that was to say, "If we are going to look at this, let's look at it in a holistic and considered way." If that is what Government are minded to do, we have some ideas and a vision for what the future of legal services regulation could look like.

It is certainly the case that Brexit has an impact on this. Over the course of the next few months and beyond, the legal services market, particularly solicitors and other legal professionals, is going to be working very hard to advise clients and to support Government and other key stakeholders to steer through what will be a very complex legal

process. We will work to ensure that, as the Law Society, we support Government, the public, solicitors and their clients in that process. Given the amount of time and complexity that that will take up, we do not think that now is the right time to look at legal services regulation.

Q46 Mr Hanson: Further to the Brexit argument, I was a Remainer, but I think we can agree that it will be good for lawyers.

Catherine Dixon: We have issued some reports. I have brought some copies for the Committee—

Chair: We are not going into Brexit now.

Catherine Dixon: If I could—

Chair: Forgive me, but we are pressed for time, Ms Dixon. We need to move on.

Catherine Dixon: My apologies.

Q47 Mr Hanson: Can I pull us back to the Treasury paper? We have a list of reserved activities already. Does anybody think that, in any consultation by the Treasury, those reserved activities should be extended to important things like will making and general legal advice?

Paul Philip: I am sure that colleagues have their own views. Our view is that the present arrangement has grown up historically, because it was felt that public protection was needed in relation to those areas of reserved activity. Of course, the No. 1 activity that is not regulated in a reserved activities sense is legal advice, and the No. 1 product that most lawyers offer is legal advice. We deal with it, because we regulate everything that a solicitor does. If you were having a greenfield site review, you would look at all reserved activities, but that is a very significant undertaking.

Q48 Mr Hanson: Are there any other views?

Chantal-Aimée Doerries: Picking up the original question and linking it to this one, we take the view that we would be concerned about looking at parts of the 2007 arrangements, be that independence—separation—or regulated services, rather than carrying out a full-scale review. The arrangements are finely balanced. It is quite dangerous to look at parts of them in isolation, but much of what you referred to probably affects the Bar less than solicitors.

Q49 Mr Hanson: You will have noticed that at the beginning of our session, a number of colleagues declared themselves as lawyers or solicitors and made declarations of interest. Nobody on this side of the table did, but tomorrow I could call myself a lawyer and be perfectly free to describe myself as such, without any of the qualifications and training that my colleagues have had. Is that right? Should it be addressed by the consultation?

Paul Philip: As colleagues have said, it is really important that people who buy legal services understand the nature of the qualifications and experience of the people who are providing them. In terms of consumerism, we advocate that anybody who holds themselves up as providing any professional service should be very clear about the nature of the training and experience they have.

Q50 Chair: Nobody seems to dissent from that.

Catherine Dixon: In the event that there is a holistic review of legal services regulation, one of the things that should probably be considered is the use of the title “lawyer”. Our position has always been that you should actually be a lawyer before you can call yourself a lawyer.

Q51 Chair: There seems to be general consensus on that point. The Bar Standards Board made the point that it need not be one size fits all. Does anybody disagree with that? Does the Bar Council take that view as well?

Chantal-Aimée Doerries: Yes.

Chair: Nobody dissents from that.

Q52 Dr Huq: I have some questions about the CMA review of whether there is competition and whether there are adverse effects—the market study that it is doing on the supply of legal services. One of its central questions is whether information failures are causing consumer protection issues—whether people are ill-informed about the price of legal services and then about the right to complain about poor quality. Would you say that that is a problem? If it is, what can be done about it? Basically, are there information failures?

Paul Philip: We would say the more information, the better. You can never get enough information. In relation to the previous question, you should certainly be clear about the nature, quality and experience of the individuals providing you with legal advice. There is no doubt about that. There is the development of comparison websites within the sector, which is a development that has happened in every other sector—the Compare the Market type of arrangement. We believe that is a good thing. We provide feeds for those types of organisations. The really important thing is that the quality of the information that is given needs to be accurate. We would support consumerism, along with openness and transparency in relation to all aspects of legal regulation.

There probably is an issue about information. It goes back to Catherine’s point about who the people who call themselves lawyers are. Is it necessary to become a solicitor or a barrister to be a lawyer? Obviously there are other types of lawyers. The public are confused—or just ignorant, in a non-pejorative sense—about what it means to be another type of lawyer and what type of experience you have had. As has been said, the real issue with solicitors and barristers is that the costs of those professionals are there because they have had a lot of training and experience and, hopefully, they provide a high-quality service. If you cannot afford those types of services, what other options do you have? Information and comparison websites are one way of giving you choices when you do not have the money to pay for solicitors or barristers.

Q53 Dr Huq: What do you say, Ms Dixon?

Catherine Dixon: We are very supportive of openness and transparency. When people are buying any sort of service, they want to know the cost, and we would be supportive of solicitors providing that information. The legal needs survey that we did with the LSB showed that a significant proportion of solicitors—something like 40%—provide information about price on the first inquiry and a further 39% provide it at the first interview, so you would have fixed costs in relation to that service. Obviously much will

depend on the nature of the service, the levels of complexity and what the client needs in relation to the service. There is quite a complex issue around ensuring that there is transparency in relation to price.

We also provide information to the public about solicitors. We have a “Find a solicitor” service that enables the public to locate solicitors in an area. It also provides information about their specialist areas and the accreditations they have signed up to, to demonstrate that they are specialist in particular areas. That is something we are looking to expand, so that we can get more information out to the public on the sort of services that are provided, and they can make informed choices when they purchase those services.

Q54 Dr Huq: What is the Bar’s view?

Chantal-Aimée Doerries: Obviously the Bar is in a slightly different position.

Q55 Dr Huq: Yes, because you do not provide services directly. It is something like a rate without VAT. The headline rate will be a lot more, when VAT is 20%. There is stuff like that.

Chantal-Aimée Doerries: Predominantly it is a referral profession. Usually the solicitor or the professional instructing will fulfil the role of dealing with any lack of knowledge or information on the client’s part. Having said that, we now also have direct access. It is a small but growing part of the profession, or the work that the profession does. In relation to that, the Bar Council supports a direct access portal, which provides information regarding barristers, the region they are in and the type of work that they do.

To go back to unbundled services, which we talked about earlier, a third point I wanted to make is that one of the other aspects of the Bar is that, traditionally, we have not really done retainer work in the same sense, because of the nature of the work that most of my members do. Unbundled work, in the sense of providing advice or representing on a day—a specific element of work—is something that we have always done. In relation to that, the Bar welcomes open and transparent discussion of price. In the last 10 years, the market has developed such that there are now many more options, meaning that that discussion with the client and/or the professional instructing invariably happens up front and is probably more open and transparent than perhaps it would have been decades ago.

Dr Davies: I have a few points to add. Obviously we await the interim report from the CMA, which we understand will come in July. Insufficient transparency around pricing must be an issue for consumers of legal services, because it is very hard to judge the quality of the legal service before the event. It is a very different type of service. We have already talked about the poor levels of public legal education.

It is perhaps worth mentioning to the Committee that the regulators try to co-operate and collaborate in relation to this. We work together on a website called Legal Choices, which is there to give information to consumers about what they are getting from regulated providers and what they would not get from unregulated ones. We are also working on a project to come up with common standards for client care letters—a common framework for giving information to clients. That will almost certainly include a common standard around pricing transparency.

At the end of April or the beginning of May, we published some research, which we did collaboratively with the Legal Services Board, into our unbundled services—the public access arrangements. Transparency, getting clients to understand what service they are getting and for what price, and what their own role is in that service provision come out in that research as being very important.

Q56 Dr Huq: The CMA seems to suggest that legal services might be over-regulated—we have heard the expression “red tape”. Do you agree that there are too many of those structures?

Paul Philip: Obviously we will wait and see what the report has to say. As I said before, I suspect that there will be fewer regulators going forward. The present arrangement has led to a certain degree of competition between the regulators, which has been in the public interest. It takes us back to the issue of having a single regulator or a consolidation of fewer than nine.

We would say that less regulation is definitely the way forward. Opening up the market, increased competition and increased innovation are things we are obliged to do under the Legal Services Act and have been a big part of the work that we have done in the past nine or 10 years. More could always be done. At the moment, we are out to consultation on reducing our rule book from something like 450 pages to, hopefully, something like 50. We think that we are doing reasonably well as far as that is concerned.

Catherine Dixon: It goes back to whether Government are minded to look at holistic change in this area. If they are, based on the findings of the CMA review or otherwise, there is perhaps an opportunity to look at putting in place regulation that regulates the market, and passing professional standards back to the profession to own and drive. That would reduce the regulatory burden but ensure that there was consistent regulation across the market. Again, this is probably not the time to do that, unless there is a finding that there is significant market failure. We very much doubt that that will be the finding of the CMA. We think that, broadly, things are working well.

Chantal-Aimée Doerries: I do not really have anything to add to what I said earlier.

Dr Davies: Likewise.

Q57 Dr Huq: Lastly, the CMA has the power to make a market investigation reference, if it thinks that competition is being distorted. It is a hypothetical question, but what would be your response if the CMA decided to make a market investigation reference for legal services?

Paul Philip: All we could do is welcome it. From our perspective, that may be an output from the present initial investigation, but the market is working reasonably well and the regulators are making quite a lot of inroads into making it work better. I would be surprised, although I have been surprised in the past. All we could do is work with the CMA to understand its concerns at that point in time.

Catherine Dixon: We would be surprised if that were the outcome, because we have not seen any evidence to suggest that there is that sort of wholesale market failure. Obviously we would work with the CMA around that review and seek to inform it.

Chantal-Aimée Doerries: I agree with Catherine.

Dr Davies: I agree with Paul.

Q58 Marie Rimmer: Can we look at setting of professional standards? I address this question to you, Mr Philip. We are aware that there has been quite a lot of opposition to your proposals. Indeed, you have acknowledged that there is opposition, particularly from universities, academic representative groups and, not least, the Law Society, which argues that admission should still be based on a degree-level qualification and considerable time based in the workplace. Are you now having second thoughts about this idea?

Paul Philip: Can I try to be clear? We have the anatomy of the vast majority of regulators. We are responsible for education and training, leading to admission to a roll of solicitors, of which there are about 170,000 at the moment. We maintain that roll and we own the professional standards. If you derogate from those standards, you are disciplined and, potentially, are removed from the roll. We also provide compensation.

There are two different aspects of professional standards. The first is the standards solicitors have to adhere to in order to remain on the roll. In a way, they are not really professional standards; they are legislative standards, because they are contained in section 1(3) of the Legal Services Act. In one sense, that is motherhood and apple pie. In another sense, they are fundamentally important standards that the public—I repeat, the public—must demand of practising solicitors, barristers and other lawyers. They include honesty, integrity, confidentiality, independence, maintaining high standards of work and, of course, above all, an obligation to the rule of law in this country. If those are professional standards, they must be owned by the regulator, because they are the standards that the public can expect of a lawyer—in my case, a solicitor. To give them to the organisation that represents the interests of solicitors would appear to be an obvious conflict of interest, which is what Sir David Clementi said 10 years ago.

I go back to what I think your question was about—education and training, and our proposals, which have been ongoing for a number of years. We are responsible for making sure that people who are admitted to the roll of solicitors are appropriate people to fulfil that role. We have been focusing not so much on the education and training they receive but on the outputs of that education and training. Our most recent consultation, which closed a couple of months ago, made proposals, or tentative proposals, for a solicitor's qualifying examination. You would sit the same examination to become a solicitor, regardless of the type of training that you had done—whether you had done a traditional law degree, another law degree, an apprenticeship route or some sort of accredited learning, through CILEX or that type of thing. We think it is important that extremely high standards are maintained and that, therefore, there should be an independent provider—a credible academic organisation—that would independently assess people who wanted to become solicitors. We are continuing with that development, because we think it is the right thing.

Q59 Marie Rimmer: Do you think that the consultation itself might have been better handled?

Paul Philip: We always envisaged a two-stage consultation process. We did that with professional indemnity insurance and we are doing it with education. We go forward with a more philosophical consultation that asks people what they think, for instance, in relation to whether there should be independent assessment of people who want to become solicitors. Then, having reflected on that consultation, we come back with a further granulated consultation, which we will probably kick off in November, where we talk about some of the detail, such as whether there will be a training contract. Of course, there will be a training contract. How will applicants to become solicitors be assessed? The detail of the assessment will be to the fore in that particular consultation. Part of the concern was about the level of granularity of the consultation. In retrospect, perhaps we could have said at the beginning, “This is part one. We will come back with part two.”

Q60 Marie Rimmer: You think that will satisfy the solicitors who do not consider that they have been properly consulted.

Paul Philip: It will go some way.

Q61 Marie Rimmer: My next question is for the full panel. Are the mechanisms for assessing the standards of would-be solicitors or barristers the right ones, in your opinion, or should there be a new approach, as the SRA suggests? Dr Davies, would you like to take that first?

Dr Davies: Like the SRA, we have been working on a programme of education and training reform for the Bar. In fact, the Legal Services Board has issued statutory guidance in relation to that, telling us what our education and training systems need to look like, broadly speaking.

Like the SRA, we have concentrated on looking at the outcomes, rather than necessarily what goes into the system. We have published a professional statement that sets out in one place all the skills, attributes and knowledge that a barrister needs on day one of practice. Later in the year, we will consult on what kind of assessment framework and route of training you might use to demonstrate that you had met the standards in that professional statement. There is probably room for a number of different ways of doing that. Broadly speaking, we will keep the same sort of three-stage process that currently exists for assessing skills before we authorise people to practise.

There is also the question of how one assesses skills across the career of a legal services professional or barrister. At the moment, we have a continuing professional development system that puts a lot of responsibility on the barristers themselves to make sure that they maintain their standards of knowledge and competence. For professionals, that is broadly the right route. There may be areas where the public or clients are particularly vulnerable or where in some ways the market may be failing to sort out the wheat from the chaff, as far as standards are concerned, so that other mechanisms, such as accreditation schemes, are needed.

Chantal-Aimée Doerries: We look forward to the Bar Standards Board’s consultation on this. At the moment, we are broadly satisfied with the mechanisms that exist, certainly for qualification, and the three stages. For some time, the profession has had concern about the large numbers taking the Bar course, the large amounts of money charged for the course and, possibly, the variable quality of the course on offer, but that is probably a

slightly different point. Broadly speaking, we are satisfied with the stages towards qualification at the moment.

On mechanisms for assessing standards during a barrister's life or his or her practice, as Vanessa Davies said, further education is an ongoing obligation. The profession takes quite seriously obligations in relation to ensuring that advocacy standards are at the right level, through things such as the vulnerable witness training the Bar Council, together with others, is working on at the moment, and implementing for criminal practitioners.

Catherine Dixon: The Law Society is broadly supportive of having one standard of entry for the solicitor profession. We think it is important that everybody has to attain the same level. The concerns about the recent consultation were broadly spread across the profession. There were over 200 responses to that consultation. We share those concerns, which were really about what was referred to as standards being dumbed down. That caused great concern across the profession, particularly in the City. There were concerns about that impacting on our international competitiveness, in the sense that the English and Welsh qualification was seen to be of lesser standing, potentially, than qualifications overseas. We welcomed the SRA pausing to reconsider following those responses.

We think that it is in the public interest and the interest of clients that there is a high standard of entry to the solicitor profession. Whatever system of entry is set up, it is important that it enables the best to join the profession, irrespective of their background. We would support any proposals around entrance to the profession that supported that, while making sure that standards were not reduced as a consequence.

Q62 Marie Rimmer: Can I put another question to you, Catherine? You have argued that the solicitors' profession—the Law Society—should take back responsibility for setting professional standards and governing entry to the profession. Will that not create a conflict of interest, as Mr Philip said, with your representative role?

Catherine Dixon: We think that it is perfectly possible, and indeed quite usual in many professions, to have separation between a representative function and one that is effectively a self-regulatory function. We see that with, for example, chartered accountants, where the qualification sits with the professional body, as does entry into the chartered accountant profession, together with awarding of the title of chartered accountant.

We think that any conflict can be managed. Our view is that professional standards are best owned and driven by the profession—the people who really know what “good” looks like. That would also enable an element of deregulation, where regulation could really focus on the mischief we are trying to protect consumers of legal services from. Those rules could then be applied consistently across a legal service market. As I said, that is perhaps a vision for the future, in light of recent events. Perhaps now is not the time to undertake such a holistic review of the legal services framework.

Q63 Marie Rimmer: Ms Doerries, would you like to comment?

Chantal-Aimée Doerries: I have nothing to add on that.

Q64 Marie Rimmer: Dr Davies?

Dr Davies: We have separate arrangements, which are not identical. It takes us to a different territory.

Q65 Marie Rimmer: Mr Philip, you have already expressed your view on this. Do you want to say any more?

Paul Philip: Catherine is right; there are examples of self-regulation also owning regulation. There are many examples. I would suggest that the norm is that independent regulation—independent from the body or profession that it represents—is the way forward. We need to look at pharmacists, doctors and architects, where that model has been in place for a number of decades, if not centuries.

Chair: We have a couple of quick issues to raise before we finish.

Q66 Alex Chalk: I turn to claims management companies and the ban on referral fees. I want to deal with two quick things. The Budget statement announced that the regulation of claims management companies would be transferred to the FCA—the Financial Conduct Authority—with a tougher regime that will make CMC managers personally accountable. What is the reaction to that—good, bad or indifferent? May I start with you, Mr Philip?

Paul Philip: I am broadly supportive. I think that it is better with the FCA than it is with the MOJ. The FCA is a professional regulator. Claims management companies have been growing for some time. Lawyers are usually on the periphery of them. We will wait and see what happens, but I have no objection to the FCA taking over regulation of CMCs.

Q67 Alex Chalk: Does anyone have any different views?

Catherine Dixon: We are supportive of regulation of claims management companies. There is genuine public concern, particularly around nuisance calls. There is also public confusion about who is participating in those companies. Sometimes people think that solicitors' firms are participating, when clearly it is not solicitors' firms making those calls. We are particularly keen to see the ban on referral fees around personal injury—

Q68 Alex Chalk: I will come to referral fees in a moment. Could you comment just on claims management companies?

Catherine Dixon: We are supportive of their being regulated.

Chantal-Aimée Doerries: We also support regulation.

Dr Davies: Ditto. They are better with the FCA than with the MOJ.

Q69 Alex Chalk: That is very helpful. It is like being a judge. I ask, “Do you have anything to add?” You say, “Nothing to add.” Can I move on to the issue of referral fees? We know there is a problem with a minority of solicitors' firms getting round the ban on referral fees in ways that are technically lawful, but in breach of regulatory principles. Is enough being done to tackle that, or are greater measures needed? I will ask you first, Ms Dixon.

Catherine Dixon: Our position is that we are supportive of the ban on referral fees. If there are any breaches in relation to that, they should be dealt with robustly. There is a risk that this brings the profession into disrepute. There are also serious concerns around the

people the profession is serving in that regard. We are keen for the regulator to take all appropriate steps—

Q70 Alex Chalk: The question was whether you think that there are firms that are getting round the ban in ways that are technically lawful—in other words, that the spirit is being breached.

Catherine Dixon: We have not seen any evidence of that. It would be a matter for the regulator to respond to that. As the Law Society, we have not seen evidence of that. If we did, it would be a matter that we would refer directly to the regulator. We would encourage them to take very swift action.

Q71 Alex Chalk: All right. I turn to you, Mr Philip.

Paul Philip: Like Catherine, clearly we support the ban on referral fees. They are already banned within our professional rules, so I do not think there is anything between us on that. The fact is that, essentially, claims management companies engage in a variety of activities, some of which are legitimate and some of which are definitely not legitimate. In terms of advertising and harvesting legitimate claims, the extent to which they do that tastefully, or indeed ethically, is questionable from time to time. We certainly have a few such solicitors' firms in our disciplinary processes at the moment. There is no doubt that a small minority of the profession is doing stuff that it probably ought not to do.

Q72 Alex Chalk: In those circumstances, do you think that more is required to tighten the regulation in that regard?

Paul Philip: It is quite difficult, because people get round it, as you alluded to in your question. Solicitors can advertise, and have been able to do so for some time, as long as it is professionally done. The question comes when you are cold-calling and ringing people up—making nuisance calls, as Catherine suggested. That is most definitely unacceptable. The question is what you do about it. What more could be done about it? At this point in time, it is lawful for solicitors' firms to engage in that type of behaviour, to a point. Those are the types of cases we are looking at in our disciplinary work at the moment.

Q73 Alex Chalk: Your point is that you think that some people are doing things that are technically lawful, but you are not proposing anything that you say could legitimately or properly tighten or close off what some have perceived as a loophole.

Paul Philip: We are not too sure what can be done about it at the moment. We would welcome ideas on that.

Q74 Alex Chalk: I turn to the Bar.

Chantal-Aimée Doerries: We have raised this historically and quite recently in the context of criminal legal aid, where there has been real concern, which we responded to in the MOJ's consultation at the end of last year in relation to criminal advocacy, that the substantial cuts on both sides—in relation to both solicitors and barristers—are leading to a situation that is likely to encourage referral fees. Having said that, it is one of those areas where it is very hard to get any evidence, beyond the anecdotal. We certainly supported the MOJ's proposal in relation to an outright ban on referral fees, although our code of conduct already prohibits both paying and receiving them.

Q75 Alex Chalk: I don't suppose you have anything to add, Dr Davies.

Dr Davies: Very little. I just remind everybody that, of course, we have arrangements for sharing information with the Solicitors Regulation Authority. If we get evidence of problems, we will act.

Q76 Alberto Costa: I 'have a couple of questions to finish off. The legal profession and the legal services market, in particular the solicitors' profession, the barristers' profession and the City of London, have seen fantastic growth over the last 20 to 25 years. London is one of the global legal centres. What are the main challenges that the professions see over the next five or 10 years, both domestically and internationally, to the legal services market? Can I start with Ms Doerries?

Chantal-Aimée Doerries: I will mention it only briefly, as I gather that today the Committee is not to discuss it. Obviously Brexit will give rise to certain issues.

Beyond that, what are the challenges? On the domestic front, from the Bar's own perspective, it would be invariably maintaining our high ethical standards, in light of some of the pressures that perhaps will continue to be brought on us in relation to public funds and cuts in that area. We have touched on referral fees, for instance.

Another area would be dealing with the digital developments that we will undoubtedly see going forward. We already have digitalisation in the criminal courts, and we will see something similar, I suspect, come forward in the civil courts. There has been discussion of the online court. All of those, good as they are—if I can put it loosely—will bring with them challenges to practice and the need for barristers and, indeed, others to ensure that they are up to date and able to deal with the confidentiality issues that will undoubtedly arise. I do not say that as a negative, but simply as something we will need to deal with.

More broadly speaking, as a market, I think that the English and Welsh market, which is my own purview, has been very successful over the last 20 years. We know that, for the Bar, over 30% of the increase in earnings last year related to international work. That is an indicator of the increasing importance of international work. Perhaps the shift in recent years has been that it is not just in commercial work, but spreads across to personal injury, family work and criminal regulatory work. I suppose that the challenge for us going forward will be ensuring that we are able to continue to compete in the international market, where there is increasing competition from other jurisdictions.

Dr Davies: We focus our interests first and foremost on consumers and the public interest, so I will answer from their perspective. The challenges going forward are set out in a number of our strategic documents. They are to have legal services available at an accessible cost, delivered by highly competent people, to the highest ethical standards. An increasing challenge going forward is for the legal services profession to be able to reflect the diversity of society and to meet the needs of a diverse society. We see impacts of technology and changes in the court infrastructure as having an effect in the future. Then, notwithstanding the fact that it is not to be talked about, the Brexit.

Q77 Chair: We are not ducking it. It is just a fact that it is a bigger issue than we can hope to deal with today.

Catherine Dixon: The Law Society has issued a report on the future of legal services. I will focus on some of its findings. We have also issued a couple of reports on Brexit. The picture is not quite as rosy for the legal services sector. There will certainly be an initial flurry of activity, but longer term, subject to where we get to with the negotiations, the independent economic analysis showed an adverse effect on legal services.

Focusing on some of the challenges around Brexit, ensuring single market access will be really important for legal services. It is important to enable UK-qualified lawyers to continue to practise across the EU and to have a standing in other jurisdictions, so the establishment directive and ensuring that that is maintained will be key. Financial services passporting will be key, particularly for the City. Ensuring that we still have mutual recognition and enforcement of judgments will be really important for certainty around some of the contractual arrangements we will be looking at. There are other issues, such as extradition and the European arrest warrant. Managing to keep that in place will be really important to safeguard our citizens and ensure that the interests of justice are served.

All of this is around continuing to promote England and Wales as the place to do legal business, ensuring that we remain the global jurisdiction of choice. That plays into some of the other findings that we saw in our futures report, which looked at increased globalisation and competition. We are seeing competition from other jurisdictions, particularly emerging markets, such as Singapore. We are seeing a greater level of legal complexity, as business is done globally.

There is also the impact of technology. As artificial intelligence develops, the role of a lawyer will potentially look quite different, with some services that have traditionally been supplied by lawyers, particularly things like due diligence, perhaps being able to be done by machines. We sometimes refer to this as the commoditisation of law. We will see that changing the nature of legal services.

There is the issue of how people buy legal services. We are likely to see an increasing number of in-house lawyers over the course of the next few years. That will certainly have an impact. Then, of course, there are policy issues, which we have already touched on today.

Q78 Chair: Are there any other comments?

Paul Philip: I agree with the vast majority of that. The international reputation of English law and English lawyers is fundamentally important. Access to justice and affordability will be challenges for any legal system, and they are certainly challenges here. Consolidation in the market is something that will continue to happen. We will continue to see small legal businesses becoming unsustainable and, therefore, having to grow together and consolidate. It is fair to say that the solicitors' profession has not responded very well to that in the past. The internet and technology are a real issue. People need to wake up to the fact that the way consumers access legal services will be different in future.

Q79 Alberto Costa: I have one final set of questions. You may not have the answers to them, but I would be grateful if you could consider them and write to the Committee. I am not sure to what extent the Bar regulates RFLs—registered foreign lawyers—specifically, EU lawyers who come into this country. I would like to know how many registered foreign lawyers your organisations regulate and what revenue they generate for the regulators.

Turning to the representative bodies, in terms of financial sums, what value do EU lawyers bring, particularly to the City of London? I need those figures going forward, when discussing the issues that will no doubt face us. I would be very grateful if you could supply them to the Committee, with answers to those questions.

Paul Philip: Certainly.

Chair: That would be helpful. I am sure that the issues you flag up are ones we will need to return to further along the line. I am tempted to say that I thought artificial intelligence almost was the definition of a lawyer. At all events, thank you very much for your time and your evidence today. We are very grateful to you. The evidence session is concluded.