

## Objectives?

Access to justice

Manage expectations and expenditure (of solicitors and clients)

Equitable outcomes across society and country

## 'Market' structure

The sector has elements of monopolistic competition where there are many firms, perhaps separated by some qualitative factors in service delivery such as expertise, location, reputation. Profits and profitability would be expected to be low in such a market with no 'excess profits' being made at the expense of taxpayers or clients. The submission in the Criminal Legal Assistance Market paper I find confusing as it seems to suggest that high returns to Partners is a 'good thing' rather than a particular way to distribute the overall expenditure on Legal Aid. So, unless there is an objective measure of 'efficiency', which should be related to both quality of legal support for clients on the one hand and avoidance of high cost operations on the other eg through a particular form of company structure, then why is there a concern for partners to be 'increasing profitability'?

At the lower end, micro or self-employed solicitors, there appears to be a 'contestable market' (as described in the Criminal Legal Assistance Market paper): solicitors can move to self-employment, micro-businesses etc. fairly readily as long as they meet the accreditation standards. With ease of entry and exit from providing legal aid, very low capital/sunk costs, few economies of scale and scope, there is an acceptable service at minimal cost? Are there issues with such a market structure/set of processes apart from perhaps higher marginal costs per case for SLAB, loss of specialisms and synergies within firms. If there are these should be spelt out.

Natural turnover – individuals leaving the profession through retirement, career choice, migration etc. - may be at a rate sufficient to manage the overall size of the sector without recourse to encouraging or forcing market restructuring. So there may be no need or moves for specific firms to grow their share of the market to survive or continue to operate at profit. I would welcome some detail on numbers of solicitors extant, entering, leaving and approaching 'retirement age' so that estimates of 'replacement demand' could inform the analysis of labour market changes.

In para 3 of the paper *What does fee reform involve?*, there is some mention of quality control and anticipated behaviour changes; some actual evidence on what might follow changes in fees would be helpful.

In the economic modelling, some key variables and assumptions are omitted, ignored, or undefined. Research and evidence does not suggest most small business owners want to grow, to become major players. Why would solicitors and partners be any different? Therefore much of the analysis and modelling in the Criminal Legal Assistance Market paper, premised on seeking an optimum model, is pursuing a solution that practice and theory does not support. Most appear to want to stay in small or micro firms, with consequent cost management benefits from operating from the kitchen table, etc. Is this a problem – are there ‘Economies of scale and scope’; if so spell them out as by embedding them into the model nothing is proven? On the other side of comparing business models, all employment, accommodation, etc costs need to be recognised – a self-employed solicitor will not be covered for sick pay, maternity pay, training and development, etc and no one will be making a contribution into their pension fund apart from themselves: together these (financial and other) benefits need to be included alongside the salary for those employed in a partner firm; and estimates of the equivalent costs included in the micro and self-employed models. Generally, according to neoliberal economics, interference in a market should only be considered where there is identifiable market failure. Here the company structures described above and contestable market characteristics do not seem to raise such concerns, and the micro businesses offer a competitive fringe to guard against excessive profits being made in the sector. However, for many of the general public there are elements of ‘moral hazard’ and ‘asymmetric information’ with professional advice and guidance from trained solicitors offered without clients being able to judge quality. The role of the professional bodies and SLAB in managing these is critical; is this easier with larger partnerships, if so there is an argument for economies of scale and scope on the regulator and compliance side?

## Behaviour

Appears to be limited evidence of significant merger and takeover activity so no obvious disproportionate market power being acquired by a few players; therefore they have limited monopoly power and are unable to distort the market i.e. they cannot charge higher fees, etc. as Scottish Government determines the fees payable.

The behaviour i.e. reactions of solicitors, SLAB and clients may influence what happens in reality but without strong evidence of changes or profit-maximising practices there seems no reason to expect recent trends to alter radically.