

Lawyers urged to accept the need for reform

Following the Office of Fair Trading's recommendation to open up the Scottish legal market, MARGARET LANG and TONY WILLIAMS ask what the future may bring for firms

THE Scottish legal system faces significant overhaul as a result of last week's report delivered by the Office of Fair Trading (OFT) in response to a complaint lodged by the consumer group Which?

The "super-complaint", as defined in the 2002 Enterprise Act, argued that the current structure of the profession has hindered market innovation, restricted consumer choice and may have led to higher prices.

The OFT's report has recommended a significant overhaul of the Scottish legal profession, both lifting restrictions on the way lawyers operate and opening up the profession in Scotland to the levels of competition envisaged by the English Legal Services Bill.

The Scottish Executive has agreed to respond to the OFT report within three months, and it is expected that the resulting legislation will follow the English model, revolutionising the delivery of legal services in Scotland and dismantling the closed arrangements between solicitors and advocates. But there is no recommendation to remove the regulatory and representative roles of the Law Society of Scotland and so have an independent regulator, as is the case in England.

In England, the Legal Services Bill, which heralds potentially major reforms of the legal profession in England and Wales, will permit solicitors and barristers to practise together, lawyers to practise in one firm with other professionals, and law firms to be owned wholly or partly by third parties and able to raise external capital, including by flotation on the stock market.

Effectively – subject to detailed regulations as to qualifications, protecting client money, avoiding conflicts of interest and ensuring minimum levels of professional indemnity insurance – lawyers will be able to

practise in whatever structure they want, and where they feel there will be consumer demand. Legal services may also be provided by major corporations using their existing brands, and probably a very significant investment in technology. The Co-op and the AA are already providing limited legal services and have made clear their intention to expand when the law permits.

The new law will also take regulation and complaints relating to the lawyers outside of their own hands and into the control of a regulator majority run by non-lawyers, with a view to protecting the consumer.

It is important to appreciate that these reforms were not proposed by lawyers. Indeed, the legal profession, not renowned for its forward thinking, initially opposed this type of reform. The reforms arose from a 2001 report by the Competition Commission, which found that the restrictions on the operation of lawyers in England were anti-competitive. This was followed by a report by a committee chaired by Sir David Clementi, which recommended a wide range of reforms. The Government, in its white paper, endorsed these reforms and went even further than Clementi. The current bill will come into force in stages, with many of the more controversial points not becoming law until 2011.

There has been a high level of interest in new business models for providing legal services. Major companies have been considering if this is a market they should enter, and private equity firms are considering financing new retail-focused offerings and also taking minority stakes in existing firms. Law firms are considering the advantages and disadvantages of raising outside capital. It is widely anticipated that the fragmented English legal profession will start to consolidate significantly over the next five years.



In a restructured market, legal services could be purchased along with the groceries Graphic: Clive O'Neill

This is not just an English trend. In Australia, reforms are already in place, and in May the first Australian law firm floated on the stock exchange. Spain has recently brought into force legislation permitting 25 per cent ownership of professional firms. Despite the opposition or indifference of many local bars, many governments think the regulation and structure of the legal profession needs to be dragged from the 19th century straight into the 21st century.

So where does all this leave the Scottish legal profession? Although England and Scotland have different legal systems, there have been significant cross-border move-

ments in recent years. Many major Scottish firms – including Dundas & Wilson, McGrigors and Dickson Minto – have significant London offices, and English-based firms – such as DLA Piper, Pinsent Masons and CMS Cameron McKenna – have offices in Scotland. In addition, many lawyers have been lured to London by the quality of work and high incomes available there. Senior partners in the largest London-based international firms now earn close to £2 million. If English law firms, on top of significant salaries, are able to offer long-term benefits – including share options – this may make them even more attractive to lawyers working in Scottish firms, thereby creating an ever greater retention problem in a market that is already crying out for talent.

Until now, the Scottish legal profession, or at least the leadership of its professional bodies, appears to have been opposed to an Eng-

lish type reform. But, in so doing, the profession risks being seen as reactionary and self-serving. In the current age of the consumer, it is questionable whether the profession's interests are best served by regulating itself in the manner of an ancient guild and dictating in what business form its members should operate. Given that the English reforms started with a Competition Commission report, the Scottish profession may be well advised to engage positively and proactively in debate rather than to suggest that reform "is the end of civilisation as we know it".

The political and business climate in Scotland is changing. Business birth rate is at an historic low, with the latest 2005 figures showing new VAT registrations at 28 per 10,000 adults, compared with 37 in England, as Scotland's business leaders are analysing the implications of an independent Scotland structured from a fiscal perspective.