

The Regulated and Unregulated Legal Services Market in Scotland: A Review of the Evidence

Annex

Europe Economics (October 2018)

Estimating the market share of unauthorised and unregulated legal professionals

One of the aims of this study was to understand the number of unauthorised and unregulated professionals operating in the Scottish legal services market, in particular those professionals who are not regulated (in the legal sector nor any other sector), and who are not employed by an authorised legal professional.

We are aware of no studies that have been conducted on this type of provider in the context of the Scottish legal services market. However, a study on the legal services market in England and Wales has attempted to estimate the number of unauthorised, unregulated legal professionals by area of legal activity.

The purpose of this Annex is to provide a simple extrapolation of these numbers to the Scottish legal services market. While the approach set out below has several limitations, it nevertheless can serve as a useful initial estimate of the potential prevalence of these providers and as a springboard for further, more robust research in this area.

Evidence from England and Wales

A 2016 study by the Legal Services Board of England and Wales (LSB)¹ estimated the number of for-profit legal providers who are not regulated in any sector. The study helps to provide a very preliminary indication of the scale of for-profit unregulated provision in the Scottish unreserved legal services market (at least until any primary research in the Scottish legal services market is conducted). The study does not however capture the number of unauthorised legal service providers that are either not-for-profit, and/or are regulated in a specific legal activity (e.g. immigration) or in another sector (e.g. finance).

The study estimates the total share of provision by for-profit unregulated providers as a percentage of all legal problems advised on at 3 per cent. If restricted to only paid-for legal advice, the share of for-profit unauthorised provision is higher at 5 per cent.

The study estimated the market share of for-profit unregulated providers for different areas of legal activity. The study estimates the market share of for-profit unregulated providers to be highest in family law, housing and wills (where they are estimated to hold in the order of 10 per cent market share). In other areas of legal services, the market penetration of for-profit unregulated providers is estimated to be much lower (in the order of 1 to 2 per cent).

¹ Legal Services Board (2016) "Unregulated legal service providers: Understanding supply side characteristics."

Preliminary extrapolation to the Scottish legal services market

By combining the LSB data on England and Wales with Law Society of Scotland membership data, we can provide some initial estimates of the number of for-profit unregulated professionals in different Scottish legal services. In doing so we combine the estimated percentage market share of for-profit unregulated providers in England and Wales with the number of solicitors in Scotland to estimate the number of for-profit unregulated professionals in Scotland for each area of legal activity. The results of this very basic extrapolation approach are shown in the table below.

Estimated number of for-profit unregulated legal professionals by area of activity

Area of legal activity	Number of solicitors in Scotland	Estimated market share of for-profit unregulated providers in England & Wales²	Inferred number of for-profit unregulated professionals in Scotland
Accident and injury	1,277	1-2%	13-26
Consumer and civil rights	676	1-2%	7-14
Employment	1,202	1-2%	12-24
Family and relationships	2,246	10-13%	225-292
Houses, property & neighbours	1,713	10-11%	171-188
Wills	1,700	7-9%	119-153

Source: Legal Services Board (2016) and Europe Economics' analysis.

These figures provide an initial crude estimate of the likely scale of for-profit unregulated provision. This could act as a basis for further work in this area.

We note here that, given key differences in consumer and market factors, there are some inherent difficulties in using the market share in England and Wales to make any inferences about the extent of unregulated provision of unreserved services in Scotland. Some potential reasons for this may include (though would need further investigation):

- 1) Key differences in courts systems, with fewer cases taking place at lower level courts in Scotland than in England and Wales.
- 2) Consumers being less liable to litigate justiciable problems in Scotland than in England and Wales.
- 3) The presence of far fewer mediation and pre-action protocols in Scotland than in England and Wales.

² Legal Services Board (2016), page 10.

- 4) The position on legal aid is very different, with cutbacks taking place in England and Wales across many categories of legal aid, whereas legal aid has been maintained across many areas in Scotland in comparison.
- 5) Some areas of legal practice in England and Wales are provided in-house to a larger extent than in Scotland (for example, employment law services being provided by trade unions), which may not show up as for-profit providers in the LSB statistics.
- 6) Claims management companies being regulated in England and Wales, but this is not yet the case in Scotland. This regulates companies in England and Wales that offer services to those seeking compensation for: personal injury; mis-sold financial products and services; employment and redundancy; criminal injury; industrial injury; and housing disrepair.