



Dr Andrea Coscelli
Chief Executive
Competition and Markets Authority
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19 December 2017

Dear Dr Coscelli

LEGAL SERVICES MARKET STUDY

I am writing on behalf of the Ministry of Justice, as the Department's House of Lords Spokesperson, in response to the market study on the legal services market carried out by the Competition and Markets Authority (CMA), the final report of which was published on 15 December 2016. I do apologise for the delay in responding.

I understand that officials from my Department along with officials from HM Treasury and the Department for Business, Energy and Industrial Strategy have worked with the CMA throughout the study and that you have also worked closely with the legal services regulators. I welcome the study and am grateful for your work in this important area. The government is committed to ensuring that competition in this vital market is functioning well and delivering value, quality and innovation for consumers and businesses.

I note that within the wider legal services market, your study focused on individual and small business consumers' experience in purchasing a broad range of regulated and unregulated legal services particularly in conveyancing, wills and probate, immigration, family and employment law. You found that the market was not working well for these consumers, and identified a range of issues with the way this part of the market operates as well as with the regulatory framework, and have made a number of thoughtful recommendations, both to the Ministry of Justice and to the legal services regulators.

The study identified that a lack of transparency and consumer understanding, particularly in pricing, service and quality, as well as the range of services available, may be preventing effective consumer choice, impacting on the effective functioning of the market. You made a number of detailed recommendations to the regulators to address these issues including, but not limited to, the requirement that they should revise their regulatory requirements and guidance to ensure a minimum level of transparency and to improve the quality and prominence of information on providers' websites, including information on price, service, redress and regulatory status. I am aware that the legal services regulators had previously recognised and begun to address these issues.

I also note that you made recommendations to the regulators to address the range and quality of information available to consumers more generally, in particular that they should overhaul the Legal Choices website to make it a more effective and informative tool for consumers needing advice on what type of legal services provider might be best placed to assist, and that they should promote this tool more effectively. Again, I understand that this work is now underway.

Related to this, I note that you have made recommendations to the regulators to facilitate the development of a more dynamic intermediary market through making data more accessible. In addition to publishing data in a standard format that can more easily be integrated into digital comparison tools, you have recommended that the regulators consider the feasibility of a single digital register across authorised professionals combining relevant regulatory and customer focused information. Again, I am aware that some regulators were already looking at these issues, and believe that your recommendations will provide greater impetus to their work. I understand that the Solicitors Regulation Authority (SRA) has agreed to take forward work on the feasibility of the single digital register.

Finally, I welcome your recommendation that the regulators continue to take steps to reduce unnecessary regulatory burdens, and note your specific recommendation to the SRA that they remove current restrictions that prevent solicitors from offering non-reserved legal activities from unauthorised firms.

The Legal Services Board (LSB) and regulators are independent from government. I am, however, pleased that they have responded so positively to the CMA's work. I am aware that a Programme Implementation Board has been set up to ensure consistency in response to the cross-profession recommendations, and that each of the regulators have now published their own implementation plans. These have been reviewed by the LSB, which, as recommended by the CMA, will continue to monitor implementation of these recommendations by the regulators.

The CMA faced some challenges in your work because of the lack of available evidence, particularly in relation to the extent and range of the unauthorised sector, and I note that some of your recommendations are aimed at establishing a fuller evidence base in reviewing what further action may be required. In considering future action, the Ministry of Justice will also need to reflect on the impact on the market of the immediate steps being taken by regulators to increase transparency, particularly if this changes consumer behaviour in the choices they make about which legal providers to use and this leads to changes in the shape of the market. As such, I regard the publication of the market study as part of an ongoing process, and we will continue to work closely with the CMA and the regulators, as we assess developments in the market over the coming period.

The market study includes recommendations to government in a number of areas. We have carefully considered each of these with this wider context in mind, and our response is set out in the attached annex. Wherever possible we have accepted your recommendations and clearly explain in the annex where we are currently unable to do so.

I would like to thank you again for the valuable work you have done as part of this market study. It forms the basis for further work that government and the regulators can take forward to make sure that the market is functioning as effectively as possible for the consumers of legal services.

Yours sincerely,

A handwritten signature in black ink that reads "Ken of Elie". The signature is written in a cursive, slightly stylized font.

RT HON LORD KEEN OF ELIE QC

ANNEX

Response to recommendations to the Ministry of Justice

The CMA recommends that the Ministry of Justice (MoJ) should coordinate changes to the content on GOV.UK and introduce signposting to the Legal Choices website across its content

We accept this recommendation. It is important that consumers have access to better information, so that they are able to identify when they might benefit from legal support to address problems, and to make informed choices about which type of legal adviser is most suited to their needs for those particular legal problems. The Legal Choices website is owned and paid for by the legal services regulators, and they are responsible for its content. We note your recommendation to them to overhaul that website to provide improved information to consumers. We have now included signposting to the regulator's Legal Choices website on the GOV.UK website.

With regard to the content on the GOV.UK website, we agree that the current content does not accurately reflect the wide variety of provision within the legal services sector and needs to be updated. We will take action in the near future to amend the content on the GOV.UK website.

The CMA recommends that the MoJ work with the Legal Ombudsman, the self-regulatory bodies, Citizens Advice, HMCTS and the Probate Service in order to consider whether there is scope to adapt existing data sources to collect additional information relating to the unauthorised part of the sector

We accept this recommendation. We will work with these bodies to consider the scope to adapt existing data sources to collect additional information. We are aware that the CMA has already done some work in this area and has already considered a range of suitable indicators. We will work with the listed bodies to consider whether further information is already available, or could be collected as part of on-going operational changes, to shed light on the size and performance of the unauthorised sector. In doing so we will ensure that the benefits of collecting additional information are weighed against any costs.

Specifically, we have noted the suggestions made in your report, and we will liaise closely with the Legal Ombudsman to review what further information could be collated and published from the complaints data it holds. We will also contact self-regulatory bodies and consider what information they currently collect that they may be able to share with us. We are already working with HMCTS and the Probate Service and will carefully consider if there is an opportunity to change the way data is collected as part of the courts reform agenda and greater digitisation of the courts and tribunals. We are also in dialogue with external bodies over data collection.

The CMA recommends that the MoJ should review whether there is a case for extending redress to consumers using unauthorised providers, and if so, how best to achieve this

We accept this recommendation. The Ministry of Justice will review any case made for extending redress to consumers using unauthorised providers. We recognise that there is a disparity in the redress available to consumers depending on their choice of provider, with those using authorised providers having access to the Legal Ombudsman Scheme, while those using unauthorised providers may have access to other redress mechanisms depending on their choice of provider. We also recognise that consumers may not understand the implications of their choices on the consumer protection available to them should there be a problem with the service they receive. At the same time, we note that under the EU Alternative Dispute Resolution (ADR) Directive, all providers of services must signpost available ADR schemes recognised under the Directive, indicate to consumers whether or not they are a member of a particular scheme, and if they are, whether the scheme they are a member of is one that is recognised.

We agree that there is a general lack of data on the scale and range of unauthorised providers, the extent to which those providers are members of ADR schemes, and the variance in the protections offered by those schemes, preventing any meaningful consideration of the scale of any consumer detriment that may arise

from this disparity, and therefore whether there is a case for reform. We will work with the Department for Business, Energy and Industrial Strategy, as the department with wider policy responsibility, to review the existing provision and consider whether further steps are necessary and proportionate.

The CMA recommends that the MoJ should undertake the review of independence of regulators

We note that you consider that regulatory independence is a fundamental principle for the regulatory framework and that you received mixed views on the extent to which regulatory independence is in practice a problem under the current arrangements. We also note the concerns that have been raised by some over the potential scope for representative bodies to delay reforms that would benefit competition and consumers. We agree that a robust regulatory regime that promotes competition and innovation while protecting consumers is vital to the effective performance of this market.

However, we believe that the sector itself can do more within the existing framework. As part of its work plan for 2017/18, the LSB is reviewing the Internal Governance Rules, and will consider, in the light of developments in the sector, what changes may be required. The LSB has recently published consultation papers on this. The LSB is also currently formally investigating whether the governance arrangements between the Law Society and the Solicitors Regulation Authority (SRA) comply with the requirements of the Legal Services Act 2007 and the Internal Governance Rules. The investigation is also expected to consider the balance between appropriate oversight by the Law Society as approved regulator and the ability of the SRA to operate independently as intended by the Act.

We therefore believe that now is not the right time to consult on legislative change, and that there is scope to make more progress within the existing framework. We want the LSB to be able to progress its important work, which could lead to further clarity around regulatory independence within the existing framework, without any unnecessary obstacles. We will closely monitor developments in this area and will keep the case for further action under review.

Longer term – The CMA recommends that MoJ review the current regulatory framework for legal services

We agree with the view that significant improvements to the current regulatory framework can be achieved through incremental change. We note your concern, however, that the current regulatory framework may not be sustainable in the longer term, particularly if the steps being taken to address issues such as price and quality transparency change consumer behaviour and lead to increasing use of unregulated providers. We recognise that the current framework is not consistent, with a disparity in the regulatory burdens on authorised and unauthorised providers potentially offering some of the same services, as well as in the related protections for consumers. While this may impact on competition between regulated and unregulated providers, it does also provide greater consumer choice. We also note the widely held view that the current reserved legal activities should be reviewed, to ensure that regulation is appropriately targeted to ensure the right balance between consumer protection, wider public interest and competition is achieved.

While we cannot commit to a formal review of the regulatory framework at this time, we agree that we will continue to reflect on the potential need for such a review, particularly as the market develops following the steps taken by regulators to address the transparency and consumer knowledge issues that your report identified.