

# **Market study into the supply of legal services in England and Wales**

Statement of scope

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# 1. Introduction, role and possible outcomes of a market study

- 1.1 This document accompanies the 'Market Study Notice: Supply of Legal Services in England and Wales'.<sup>1</sup>
- 1.2 The Competition and Markets Authority's (CMA's) mission is to make markets work well in the interests of consumers, businesses and the economy. It achieves this by promoting and protecting consumer interests while ensuring that businesses are fair and competitive.
- 1.3 Market studies are one of a number of tools at the CMA's disposal to examine possible competition or consumer protection issues and address them as appropriate, alongside its enforcement and advocacy activities. They are examinations into the causes of why particular markets may not be working well, taking an overview of regulatory and other economic drivers in a market and patterns of consumer and business behaviour.
- 1.4 A market study formally begins with the publication of a market study notice by the CMA. A market study notice must be published where the CMA is proposing to carry out its functions under section 5<sup>2</sup> of the Enterprise Act 2002 (the Act) for the following purposes:
- To consider the extent to which a matter in relation to the acquisition or supply of goods or services of one or more than one description in the UK has or may have effects adverse to the interests of consumers; and
  - To assess the extent to which steps can and should be taken to remedy, mitigate or prevent any such adverse effects.<sup>3</sup>
- 1.5 Market studies can lead to a range of outcomes. They may conclude that a market can be given a clean bill of health and that the initial concerns about consumer detriment are not substantiated by the information collected over the course of the study.
- 1.6 Where the market is not found to be working well, the CMA may consider several options:

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<sup>1</sup> [Legal services market study case page](#).

<sup>2</sup> Under section 5 of the Act the CMA has the function of obtaining, compiling and keeping under review information about matters relating to the carrying out of its functions, with a view (among other things) to ensuring the CMA has sufficient information to take informed decisions and carry out its other functions effectively.

<sup>3</sup> Section 130A of the Act.

- improving the quality and accessibility of information to consumers or promoting consumer awareness;
- encouraging businesses in the market to self-regulate;
- making recommendations to government to change regulations or public policy;
- taking competition or consumer enforcement action;
- making a market investigation reference;<sup>4</sup> and/or
- accepting Undertakings in Lieu of making a market investigation reference.

1.7 The above is an illustrative list of possible outcomes. The CMA retains an open mind as to which outcomes, or combination of outcomes, may be appropriate to address any concerns that it may identify during the course of this market study.

1.8 Further information on market studies can be found in the following guidance documents: [Market Studies Guidance on the OFT Approach](#) (OFT519) and [Market Studies and Market Investigations: Supplemental Guidance on the CMA's Approach](#) (CMA3).

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<sup>4</sup> Where the findings of a market study give rise to reasonable grounds for suspecting that a feature or combination of features of a market or markets in the UK prevents, restricts or distorts competition, and a market investigation appears to be an appropriate and proportionate response, the CMA may make such a reference.

## 2. Background to the market study

### Introduction

- 2.1 Markets work well when businesses compete vigorously and fairly to win customers. When markets work well, efficient businesses are rewarded and productivity growth is higher, and consumers have confidence that market processes deliver good outcomes for them in terms of price, quality, variety, innovation and service.
- 2.2 Competition is also enhanced when consumers are empowered to shop around through access to readily available and accurate information about the products and services they are seeking and the various offers available in the market. Consumers who are empowered are also able, through their purchasing decisions, to discipline providers and drive competition in the market. Furthermore, consumers who are able to make informed choices are better able to achieve value for money.
- 2.3 Ensuring that the market provides consumers with value for money, so that services are more affordable and of a suitable quality, is particularly important where the product or service may be critical to the purchaser. This is especially so where the consumer may be vulnerable and/or where the service might be urgently needed.

### Significance of the legal services sector

- 2.4 Competition between firms is a key driver of productivity and growth in an economy. As set out in our current Strategic Assessment, the CMA's aim is to ensure that sectors of the economy which play a significant role in promoting growth in the UK economy, such as the legal services sector, are characterised by healthy competition.<sup>5</sup>
- 2.5 Legal services are particularly important to the UK economy for two reasons. First, the sector is significant in its own right with a UK turnover of around £30 billion.<sup>6</sup> Second, the provision of legal services to both individuals and

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<sup>5</sup> CMA (January 2014), [Vision, values and strategy for the CMA](#).

<sup>6</sup> The legal services sector for England and Wales, which is the focus of this market study, accounts for the vast majority of this turnover. We estimate that around £28 billion turnover is likely to be attributable to the supply of legal services in England and Wales.

businesses underpins the wider UK economy by helping consumers access and enforce their rights under the law.<sup>7</sup>

- 2.6 A well-functioning legal services sector, where consumers are able to make informed choices in relation to the services on offer and where firms are encouraged to innovate, improve the quality of services and provide consumers with value for money, can help consumers to secure their rights and access appropriate services.

## **Legal services and regulation**

- 2.7 The rationale for regulating legal services is that, as with other professional services, consumers often have difficulties assessing the quality of the services they purchase. There is therefore an asymmetry of information between suppliers and consumers. In order to protect consumers from potential exploitation, given their relative weakness in relation to suppliers, such services are regulated.
- 2.8 There are a number of restrictions in the legal services sector, including restrictions on who can supply legal services, on what such providers of legal services can do and on permitted business models. These restrictions stem from legislation and from rules set by the regulatory bodies. While such restrictions can dampen competition, they may be justified if they are in the public interest and if the restrictions do not go further than is necessary to protect consumers.

## **Previous research and work in this sector**

- 2.9 Following a 2001 report into professional services<sup>8</sup> by the CMA's predecessor body, the Office of Fair Trading (OFT), and the subsequent major review of the legal services regulatory framework by Sir David Clementi in 2004, the legal services sector in England and Wales underwent significant regulatory change which was implemented by means of the Legal Services Act 2007.
- 2.10 The Legal Services Act 2007 introduced a range of reforms designed to address previous concerns about the legal services sector in England and Wales. In particular, these changes placed greater emphasis on meeting the

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<sup>7</sup> For instance, the Law Society estimates that every £1 of output of the UK legal services sector underpins £2.39 of output in the UK economy as a whole and that every 100 legal services jobs support 67 more in the wider economy. [Law Society press release](#) (2 September 2014).

<sup>8</sup> OFT (March 2001), [Competition in professions \(OFT328\)](#).

needs of consumers than had previously been the case.<sup>9</sup> The most notable changes included the following:

- The creation of an independent legal services oversight regulator, the Legal Services Board (LSB), which brought an end to the complete self-regulation of the legal profession.
- An obligation on ‘approved regulators’<sup>10</sup> (such as the Law Society) to establish functionally separate regulatory arms (such as the Solicitors Regulation Authority as established by the Law Society). In addition, regulators now have lay majorities on their boards and lay Chairs.
- The introduction of eight regulatory objectives, including those of promoting competition and protecting and promoting the interests of consumers, which the LSB is under a duty to promote in discharging its functions.
- The creation of an independent body for handling complaints about ‘regulated’ legal service providers from consumers (now the Legal Ombudsman).
- Reforms that allowed for the possibility of non-lawyers owning or managing firms that offered ‘reserved’ legal activities<sup>11</sup> (these entities being known as ‘alternative business structures’ or ‘ABSs’). These reforms were designed to lower barriers to market entry and stimulate competition and innovation for the benefit of consumers.

2.11 In 2013, the OFT commissioned a report from Europe Economics<sup>12</sup> (‘the 2013 report’) that sought to examine regulatory restrictions in the legal services sector and review the evolution of the sector in light of the reforms introduced by the Legal Services Act 2007. The 2013 report found that the regulatory structure remained complex, but did not find that structure to be a major regulatory burden at that time. The report highlighted that a further review of the impact of ABSs on competition might be merited once the ‘new system of ABS’<sup>13</sup> had been given more time to establish itself. Finally, the 2013 report identified that only a small proportion of those consumers who were dissatisfied with the legal services they had received went on to make a

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<sup>9</sup> See: Department for Constitutional Affairs (2005), [The Future of Legal Services: Putting Consumers First](#).

<sup>10</sup> These bodies directly regulate lawyers practising in England and Wales. A complete list of ‘approved regulators’ can be found on the [LSB website](#).

<sup>11</sup> The Legal Services Act 2007 specifies six reserved activities (see paragraph 3.2 below).

<sup>12</sup> Economic Research into Regulatory Restrictions in the Legal Profession, A Report for the Office of Fair Trading by Europe Economics (2013), OFT1460.

<sup>13</sup> See paragraph 1.18. At the time of the OFT’s review, only 16 ABSs had been authorised.



formal complaint. The report stated that such low levels of formal complaints might mean that consumer detriment might be going unaddressed.

2.12 Since publication of the 2013 report, the OFT, and subsequently the CMA, have continued to monitor developments in the legal services sector. From a competition and consumer protection perspective, the following developments have been of particular interest to the CMA:

- Perceptions in the sector, supported by market research, that demand in legal services is ‘unmet’ (ie that consumers may not be seeking to purchase legal services when they have legal needs)<sup>14</sup> as well as concerns around the affordability<sup>15</sup> of legal services.<sup>16</sup>
- Concerns about service standards offered by both regulated and unregulated providers of legal services.<sup>17</sup>
- Concerns about the complexity of the current regulatory framework that were identified by the Ministry of Justice in its call for evidence in 2013/14 as part of the ‘red-tape challenge’. This consultation exercise also highlighted markedly different views on how the current regulatory framework could be further reformed. Some parties advocated the re-adoption of the framework which predated the Legal Services Act 2007. Others argued that the Legal Services Act 2007 had not gone far enough in reforming the regulatory framework and that further reforms were

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<sup>14</sup> According to research recently commissioned by the LSB, over a three-year period about half of citizens experienced at least one legal problem, but one in three did not get the legal help they needed. Also, 54% of small and medium-sized enterprises (SMEs) see law as very important for doing business, but fewer than 20% seek legal advice when they have a problem. (See Pleasence & Balmer (2014), [How People Resolve ‘Legal’ Problems](#) and Pleasence & Balmer (2014), [In Need of Advice? Findings of a Small Business Legal Needs Benchmarking Survey](#)).

<sup>15</sup> For example, the major reason for the increase in people representing themselves in court proceedings involving family law matters has been identified as the inability to afford a lawyer. See: Ministry of Justice Analytical Series (2014), [Litigants in person in private family law cases](#), pp12–15). In addition, according to the Legal Services Consumer Panel, around one in five legal services transactions involves some form of unbundling (where the client undertakes some of the work rather than the lawyer). These transactions may be unbundled to enable people to afford a lawyer (see pp20–21 of Qualitative research exploring experiences and perceptions of unbundled legal services, Ipsos Mori on behalf of the Legal Services Board and Legal Services Consumer Panel, August 2015).

<sup>16</sup> These concerns do not necessarily imply that competition is not working effectively. In almost any market there will be some consumers whose willingness to pay is below the market price, and who therefore choose not to purchase. Our focus in this investigation will be on whether any features of the legal services market contribute to the concerns around affordability and unmet demand, for example by allowing providers to charge prices that are above a competitive market level, provide lower levels of quality, or restrict the supply of legal services to consumers. We are not intending to look at wider issues relating to affordability and access to legal services, such as whether the current provisions for legal aid are appropriate and whether there is a case for subsidising the costs of legal services for certain groups.

<sup>17</sup> As seen in the Legal Ombudsman’s recent reports on complaints relating to claims management companies (Legal Ombudsman (2015), [Complaints in focus: Claims management companies](#)) and will writing (Legal Ombudsman (2015), [Complaints in focus: Wills and probate](#)).

necessary. In particular, the LSB's submission<sup>18</sup> advocated wholesale reforms including the creation of a single legal regulator and a risk-based examination of the reserved activities. Most recently, HM Treasury has indicated the government's intention to launch a consultation by spring 2016 on making legal service regulators independent from their representative bodies.<sup>19</sup>

- Concerns about specific regulatory rules aimed at provider conduct and market entry that might be dampening competition. For example:
  - regulations that may be slowing the entry of ABSs into the legal services sector (as identified by the LSB and other legal services regulators in their letters to the Ministry of Justice in July 2015). The government's consultation which HM Treasury announced in November 2015 (see preceding bullet) will also set out proposals for removing barriers to entry for ABSs in legal services; and
  - statutory and regulatory restrictions on who may provide certain legal services to consumers (discussed in more detail in paragraphs 3.2 to 3.5). This includes the current reserved activities..
- Continued relatively low levels of consumer empowerment in the sector (as identified in the Legal Services Consumer Panel's Impact Reports).
- Various reports<sup>20</sup> outlining new developments in how legal services are provided to consumers (such as 'unbundled' provision and the use of unregulated providers).
- Concerns about how effective the redress mechanisms for legal services are and whether there are gaps in the current redress framework.

2.13 The 2013 report indicated that the effect of ABS entry into the sector might be reviewed once numbers grew. Given that around 600 ABSs have now been licensed, the CMA considers that this is an appropriate time to look again at their impact. However, since the Legal Services Act 2007 is now nine years old and in light of the developments outlined above, the CMA considers that a more comprehensive examination of the supply of legal services, putting the use of ABSs in context, is merited. Further details on the scope of our market study can be found in the following section.

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<sup>18</sup> LSB (September 2013), [A blueprint for reforming legal services regulation](#).

<sup>19</sup> HM Treasury (November 2015), [A better deal: boosting competition to bring down bills for families and firms](#), paragraph 2.11.

<sup>20</sup> Recent reports of interest have included: Ipsos Mori on behalf of the Legal Services Board and Legal Services Consumer Panel (August 2015), Qualitative research exploring experiences and perceptions of unbundled legal services; Legal Services Consumer Panel (April 2014), [Fee-charging McKenzie Friends](#).

### **3. The scope of the market study**

#### **Legal services and legal service providers to be considered within our market study**

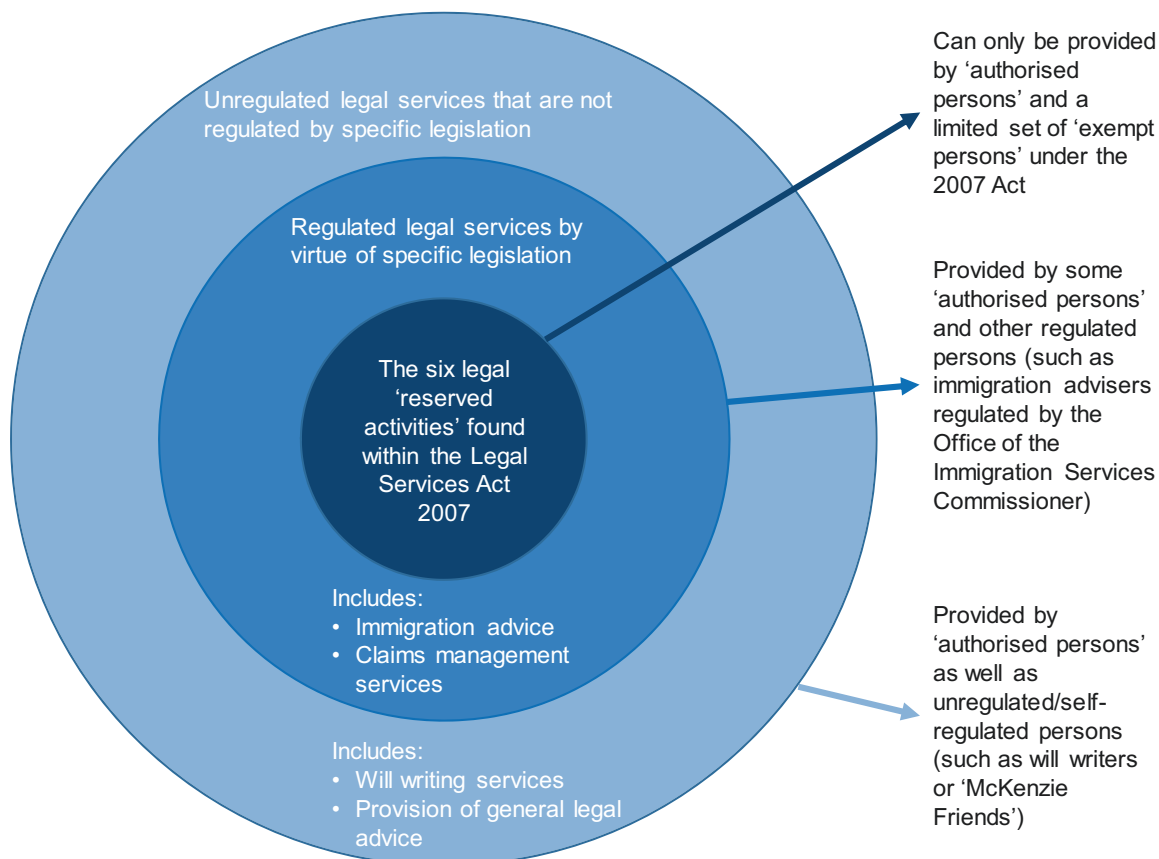
- 3.1 The term 'legal services' encompasses a broad spectrum of services, from the provision of legal advice or assistance to being represented in a court of law in connection with the resolution of a legal dispute. The nature of the legal service required will depend on the type of legal need in question.
- 3.2 At one end of the legal services spectrum are the 'reserved activities' that can only be provided by persons who are authorised to do so by their relevant approved regulator (known as 'authorised persons'). The Legal Services Act 2007 specifies six reserved activities: (i) the exercise of a right of audience; (ii) the conduct of litigation; (iii) reserved instrument activities (undertaken when conveyancing property); (iv) probate activities; (v) notarial activities; and (vi) the administration of oaths. Persons authorised to provide reserved activities include solicitors, who need to be authorised by the Law Society, and barristers, who need to be authorised by the Bar Council.<sup>21</sup>
- 3.3 In addition to the six reserved activities, legal services also include both regulated and unregulated services.
- 3.4 Regulated services encompass a number of activities the provision of which is regulated by a statute other than the Legal Services Act 2007. For instance, immigration advice can be provided by immigration advisers who are regulated by the Office of the Immigration Services Commissioner (OISC). However, some authorised persons, such as all solicitors and barristers, are exempt from having to be regulated by the OISC in order to provide immigration advice.
- 3.5 Unregulated legal services are those which can be provided by persons who are not authorised by an approved regulator or regulated under a specific statute. For example, the provision of will writing services to individual consumers is neither a reserved nor a regulated activity and can therefore be

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<sup>21</sup> In addition, other types of legal professionals, aside from solicitors and barristers, can also undertake one or more reserved activities, depending on their specific regulatory authorisation. These professionals are: Licensed Conveyancers (able to undertake reserved instrument activities; probate activities and the administration of oaths); Legal Executives (able to exercise rights of audience; conduct litigation; undertake reserved instrument activities; probate activities and the administration of oaths); Patent Attorneys and Trade Mark Attorneys (able to exercise rights of audience; conduct litigation; undertake reserved instrument activities and the administration of oaths); Costs Lawyers (able to exercise rights of audience; conduct litigation and the administration of oaths); Notaries (able to undertake reserved instrument activities; probate activities; notarial activities and the administration of oaths). Furthermore, Chartered Accountants within the Institute of Chartered Accountants in England and Wales (ICAEW) may also be authorised to provide probate activities.

offered by unregulated providers as well as by qualified lawyers. Furthermore, the provision of general legal advice is not a reserved activity and can thus be provided by a wide range of providers such as charities or accountants in addition to qualified lawyers.

**Figure 1: Scope of market study**



3.6 The scope of our market study will encompass 'legal services' in a broad sense. This means that we will consider services that are reserved, regulated or unregulated across a broad range of different legal areas, such as residential and commercial conveyancing (reserved); immigration advice (regulated) and will writing (unregulated). However, criminal legal services will be excluded from the scope of our market study (see paragraph 3.10 below).

**Case studies**

3.7 While our market study covers a broad range of legal services, we will also carry out a limited number of 'case studies' (in which the provision of reserved, regulated or unregulated activities may be a feature). These case studies will contain a more detailed examination of the themes and issues outlined below in paragraphs 3.17 to 3.29. We currently propose to conduct case studies into the provision of the following legal services:

- **Will writing and probate services to individual consumers.**
- **Employment law services to individuals and small businesses.**

3.8 We are also keen to ensure that our case study selection addresses legal services required by new and expanding small businesses. Our proposed case study into employment law services should cover one aspect of such businesses' legal needs. However, we propose to undertake a further case study that is particularly relevant to such businesses. In that regard, we have identified **commercial law services** as a potential third case study, the scope of which will cover trading issues including advice relating to commercial contracts.

3.9 We invite parties to submit views on our proposed case studies. We are particularly keen to receive views on the scope of our case study on commercial law services.

### ***Exclusion of criminal legal services***

3.10 We do not intend to examine criminal legal services as part of this market study. On the basis of our preliminary research, we consider that the supply of legal services in the context of criminal law is distinguishable from areas of civil law. There are certain prescribed processes in place that guarantee advice and representation for defendants in criminal proceedings. Furthermore, the degree of legal aid provision available for criminal as opposed to civil legal services following recent reforms, means that some of the issues that we have identified may not have the same relevance to criminal law services.

### **Types of consumer to be considered within our market study**

3.11 This market study will focus on the experiences of individuals or small businesses<sup>22</sup> accessing legal services. We do not intend to focus on the experiences of medium-sized and large businesses. This is because, on the basis of our preliminary research, we consider that both individual and small business consumers are likely to have similar difficulties in accessing legal services as described further below. In contrast, we consider that medium-sized and large businesses are more likely to be repeat purchasers of legal services and to have access to expert advice (including in-house legal advice)

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<sup>22</sup> In particular, businesses up to ten employees.

which would enable them to navigate the legal services sector with greater effectiveness.<sup>23</sup>

## Geographic scope of the market study

- 3.12 Within the UK there are three separate legal jurisdictions – England and Wales, Scotland and Northern Ireland – each of which has its own legal framework. We consider that the separate legal frameworks that exist in these different jurisdictions may result in significant differences in market conditions in Scotland and Northern Ireland as compared with England and Wales.
- 3.13 In May 2007, in response to a super-complaint made by Which?, the OFT concluded that consumers would benefit if certain restrictions imposed on providers of legal services in Scotland (such as restrictions on permitted business structures and direct entry to advocates) were lifted.<sup>24</sup> The recommendations led to the introduction of the Legal Services (Scotland) Bill, which is now the Legal Services (Scotland) Act 2010. Those aspects of the Act which would have led to the introduction of ABSs and a regulatory regime for introducing such forms of business have not yet been implemented.
- 3.14 Regulatory reform is anticipated in Northern Ireland as a result of the Legal Complaints and Regulation Bill, which will reform consumer complaints handling and is in the process of being adopted.<sup>25</sup>
- 3.15 In light of both the differences in the regulatory frameworks and the timings of regulatory reform in Scotland and Northern Ireland, we have decided to limit this market study to the supply of legal services in England and Wales.
- 3.16 We are considering whether the consumer survey which we propose to conduct (see paragraph 4.4 below) should include consumers in all UK jurisdictions. In any event, we note that the outcome of this market study may be used to inform any future consideration of similar issues in Scotland and Northern Ireland.

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<sup>23</sup> Throughout the remainder of this document we use the term ‘consumer’ to refer to both individual and small business consumers, unless otherwise indicated.

<sup>24</sup> [Which? super-complaint: Scottish legal profession](#).

<sup>25</sup> The Legal Complaints and Regulation Bill has recently completed the scrutiny stage by the Finance and Personnel Committee and is now at the ‘Consideration Stage’. It is now a matter for the NI Finance and Personnel Minister to bring forward in line with the requirements set out in Standing Orders. The Department of Finance and Personnel has indicated that that will be scheduled for mid-January 2016.

## Themes and issues we propose to consider

3.17 In light of the issues and concerns that have been identified in paragraph 2.12 above, we propose to examine the following themes:

- **Theme 1:** Whether consumers can access, assess and act on information about legal services so that they can make informed purchasing decisions and thereby drive competition for the supply of legal services.
- **Theme 2:** Whether information failures result in consumer protection issues that are not being adequately addressed through existing regulations and/or redress mechanisms.
- **Theme 3:** Whether regulations and the regulatory framework go beyond what is necessary to protect consumers and weaken or distort competition for the supply of legal services.

3.18 The following paragraphs (3.19 to 3.29) represent a high-level outline of the types of issues which we expect to explore under these main headings:

### ***Theme 1: The ability of consumers to drive effective competition through making informed purchasing decisions***

3.19 Consumers need to have access to information that is relevant to making informed purchasing decisions (such as information on price and quality) and that information must also be accurate. Where such information is not readily accessible, it is difficult for consumers to evaluate the different offers available in the market. Equally, where consumers are unable to assess the available information on price and quality and therefore whether providers offer value for money (ie balancing price and quality) they will be unable to make informed purchasing decisions. In such circumstances, providers of legal services may not have strong incentives to compete on price or quality, to innovate or offer better terms to consumers. This can lead to poor outcomes for consumers such as higher prices or lower quality.

3.20 This dynamic may arise in part because legal services are characterised by asymmetric information between providers and consumers (as described in paragraph 2.7 above). Consumers may find it difficult to assess the quality of legal service providers before, during and sometimes even after the service has been purchased.

3.21 In addition, consumers may not have access to accurate fee estimates, making it difficult to know, before choosing a suitable provider, how much they will ultimately have to pay. Such difficulties may be compounded by the fact

that legal services may need to be obtained urgently and consumers may lack time to shop around before coming to a decision.

- 3.22 We will consider the extent to which these issues arise in different legal service areas and whether, as a result, competition between legal service providers is reduced.

*Specific issues under theme 1*

- 3.23 In addition to general submissions on this theme, we would particularly welcome responses to the following questions:
- What information do consumers use to judge the quality of legal services and/or legal services providers? What price information is made available to consumers? Do consumers find it easy or difficult to compare the quality and prices of legal services?
  - How do providers of legal services compete with each other in seeking to win new business? Do they face any difficulties in winning new business?
  - Do intermediaries (such as estate agents, insurers and accountants) play a role in helping consumers to choose legal services providers?

***Theme 2: Whether information failures expose consumers to harm that is not being adequately addressed through existing regulation or redress mechanisms***

- 3.24 As described above, consumers who lack adequate information on price and quality may receive poorer deals in the market. For example, a consumer may pay more than was expected for a service or be supplied with a poor quality service.
- 3.25 We will consider whether current regulations provide adequate protection to consumers. In addition, we will consider whether consumers are able to obtain redress should things go wrong with their legal services provider. To the extent that consumers are not raising complaints or find that their complaints are not being addressed appropriately, we will consider whether this results from a lack of information on the redress system or a lack of confidence on the part of consumers.

*Specific issues under theme 2*

- 3.26 In addition to general submissions on this theme, we would particularly welcome responses to the following questions:



- Are current regulations effective in protecting consumers' interests?
- Are consumers aware of the existing redress mechanisms? Are they being pointed to redress mechanisms by providers when appropriate?
- Are redress mechanisms effective in addressing consumers' complaints?

***Theme 3: Impact of regulations and the regulatory framework on competition***

3.27 As set out in paragraphs 3.19 to 3.23 above, legal services provided to consumers can be complex to understand and are characterised by asymmetries in information. These services may also be provided to consumers at critical moments or situations that may have a significant impact on their lives and businesses. As a result of these features, many of the regulations that apply to legal service providers are primarily designed to protect consumers from harm. However, it is possible that these regulations may, in some circumstances, go beyond what is necessary to protect consumers and, as a consequence, may dampen competition in the sector through raising barriers to new entrants and/or restricting the ability of incumbents or new entrants to innovate in the market.

3.28 We also propose to consider whether existing regulations and the current regulatory framework, including the system of multiple regulators, may create barriers to entry or distort competition. This may, for example, arise if the regulatory framework results in excessive costs being introduced into the system. The regulatory rules that may be relevant to our assessment include the authorisation and set-up costs for providers of legal services (in so far as they may constitute unnecessary entry restrictions) as well as the authorisation to undertake the six reserved activities (which constitute restrictions on who may offer such services). We will also consider whether the regulatory framework results in unnecessary and duplicative compliance costs for providers.<sup>26</sup>

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<sup>26</sup> In this context, we note the government's proposed consultation on removing barriers to entry for ABSs in legal services and on making legal services regulators independent from their representative bodies (see footnote 19 above). We will take into account the government's proposals in assessing the impact of existing regulations and the current regulatory framework for legal services in our market study.

### *Specific issues under theme 3*

3.29 In addition to general submissions on this theme, we would particularly welcome responses to the following questions:

- Do the current regulations create disproportionate barriers to entry and expansion into the legal services sector? What difficulties have new entrants faced?
- Does the current regulatory framework impose disproportionate costs on legal services providers?
- What has been the impact of ABS entry on competition in the legal services sector, including on innovation, price and quality? Are the rules governing ABSs unnecessarily restrictive such that they have hindered the entry and expansion of ABSs?
- Have there been opportunities for more competition in particular legal service areas as a result of regulatory reform?

### **Summary of the scope of our market study**

3.30 In summary, our market study will be on the provision of civil law legal services to individuals and small businesses in England and Wales.

## 4. Next steps

### Invitation to comment on our market study notice

4.1 The CMA welcomes submissions on the market study from interested parties by no later than 3 February 2016. In addition to general submissions on the market study, we would particularly welcome responses to the following questions:

#### ***Case studies***

- Do you agree with our three proposed case studies?
- Do you agree with the scope of our case study on commercial law services?

#### ***Theme 1: The ability of consumers to drive effective competition through making informed purchasing decisions***

- What information do consumers use to judge the quality of legal services and/or legal services providers? What price information is made available to consumers? Do consumers find it easy or difficult to compare the quality and prices of legal services?
- How do providers of legal services compete with each other in seeking to win new business? Do they face any difficulties in winning new business?
- Do intermediaries (such as estate agents, insurers and accountants) play a role in helping consumers to choose legal services providers?

#### ***Theme 2: Whether information failures expose consumers to harm that is not being adequately addressed through existing regulation or redress mechanisms***

- Are current regulations effective in protecting consumers' interests?
- Are consumers aware of the existing redress mechanisms? Are they being pointed to redress mechanisms by providers when appropriate?
- Are redress mechanisms effective in addressing consumers' complaints?

### ***Theme 3: Impact of regulations and the regulatory framework on competition***

- Do the current regulations create disproportionate barriers to entry and expansion into the legal services sector? What difficulties have new entrants faced?
- Does the current regulatory framework impose disproportionate costs on legal services providers?
- What has been the impact of ABS entry on competition in the legal services sector, including on innovation, price and quality? Are the rules governing ABSs unnecessarily restrictive such that they have hindered the entry and expansion of ABSs?
- Have there been opportunities for more competition in particular legal service areas as a result of regulatory reform?

Submissions should be made by email or in writing to Maria Rican-Sevitz (email: [legal.services@cma.gsi.gov.uk](mailto:legal.services@cma.gsi.gov.uk))

Maria Rican-Sevitz  
Assistant Project Director  
Sector Regulation Unit  
Competition and Markets Authority  
Victoria House  
Southampton Row  
London WC1B 4AD

- 4.2 Respondents are asked to supply a brief summary of the interests or organisations they represent, where appropriate.
- 4.3 Additional information about this study will be added to the legal services market study case page on a regular basis.

### **Evidence gathering**

- 4.4 In addition to considering responses from interested parties to this statement of scope document, in conducting our market study the CMA currently intends to gather evidence through the following methods:
- Drawing together and evaluating existing research on the supply of legal services to consumers.
  - Commissioning our own consumer survey, in particular to supplement existing research.

- Meeting key interested parties such as regulators and relevant representative groups (through roundtable meetings and workshops) and issuing supplementary information requests to key parties.
  - Conducting in-depth case studies on particular legal areas of interest (as noted above in paragraphs 3.7 to 3.9).
- 4.5 As the market study progresses, we may choose to use other means for seeking additional information.
- 4.6 For further information on how the CMA will handle information provided by interested parties towards this case study, please see Annex A.

## Annex A: Disclosure of information provided to the CMA

1. The CMA aims to be open and transparent in its work while respecting the confidentiality of information it obtains during its inquiries and reviews. The CMA may choose to disclose information that it obtains during the course of this study, including as a result of the Market Study Notice. It may also publish such information in any report produced at the end of the market study. In deciding whether to do so, the CMA will have regard, in accordance with its statutory duties under Part 9 of the Act, to the need for excluding, so far as that is practicable, any commercial information relating to a business or any information relating to the private affairs of an individual which, if published, might significantly harm the legitimate business interests of that business or, as the case may be, the individual's interests (referred to individually and collectively as 'confidential information'). Further details of the CMA's approach can be found in the following guidance: [Transparency and Disclosure: Statement of the CMA's Policy and Approach](#) (CMA6).
2. If you consider that the information that you provide contains such confidential information, you should explain in each case why you consider it is confidential by reference to the above test. In the event that the CMA proposes to include any sensitive commercial or personal information in a document that will be published it will, save in exceptional circumstances, contact the relevant persons prior to publication to give them the opportunity to explain why disclosure would cause significant harm and to request excision (or aggregation or generalisation) of any material that will still be sensitive at the time of publication.
3. The CMA is also bound by the Freedom of Information Act 2000 (the FoIA). Where a person makes a request in accordance with the FoIA, the CMA may have to disclose whether it holds the information sought and the information itself (including confidential information). The FoIA contains exemptions (including one which may exempt confidential information) and the CMA will not have to make those disclosures if an exemption applies. If you consider that any information you provide may be exempt from such disclosures you should say so and explain why. Similarly, to the extent that information you provide constitutes personal data under the Data Protection Act 1998 (the DPA), the CMA will process such data in accordance with the DPA.
4. The CMA reserves the right to disclose any information it obtains (including confidential information) as may be permitted or required by the Act or any other enactment.