



CAN Mezzanine
49-51 East Road
London N1 6AH
DX36603 Finsbury
Switchboard: 0207 250 8465
e: insert email address
w: clc-uk.org

Maria Rican-Sevitz
Assistant Project Director
Legal services market study
Competition and Markets Authority
Victoria House
Southampton Row
London
WC1B 4AD

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Dear Ms Rican-Sevitz

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

I am grateful for the opportunity to comment on the statement of scope for this timely market study. We are very supportive of the broad approach and have some specific areas that we believe need investigation as part of the study.

I will follow the structure of section 4 of the consultation document in making my comments.

Case studies

We are especially interested in the case study on will writing and probate services.

We supported proposals to make will writing a reserved legal activity or at least bringing it within the regulated sector. We took this position because of the nature of the service provided which means that any shortcomings will generally only come to light after the death of the client, at which point it may prove very difficult to correct mistakes. The mass market for such services and the fact that most consumers will not be in a good position to understand quality issues when making purchase decisions also indicate a need for some form of regulation to protect consumers. Greater transparency about the provision of will writing services may also help the market to mature through more effective competition and greater innovation.

Similar arguments apply to the provision of probate services.

Theme 1 – The ability of consumers to drive effective competition through making informed purchasing decisions

It has long been recognised that the vast majority of individual consumers of legal services rely on recommendations from friends and family. Our 2015 survey of the regulated community found that two out of three initial enquiries received by CLC-regulated firms are converted into sales. This high conversion rate would seem to indicate that there is a low degree of shopping around going on in relation to conveyancing and probate and perhaps a reliance on one form of referral or another.

Consumers of conveyancing services in particular may well be relying on referral by another adviser – mortgage broker or estate agent – who is helping them in the process. The purchase of conveyancing services is so infrequent for most consumers that this is an understandable behaviour, with the referrer seeming to act as a guarantor of quality of service by the conveyancer, whether that is the case in fact or not.

Sometimes those referrers are paid a fee for the referral by the conveyancer. Research by the CLC and the Legal Services Consumer Panel in the past as well as an OFT study in 2010 found no evidence of direct consumer detriment arising from paid referral arrangements as long as the consumer was fully informed of those arrangements. However, it would be useful to understand better the impact on competition of referral arrangements.

Another limitation on consumer choice of legal service provider are the panel management schemes operated by lending institutions in relation to mortgages. These schemes exclude some properly regulated entities from acting for a consumer who is borrowing from a particular institution. The rules for access to panel schemes are not transparent and would seem to be unique to each lending institution.

The CLC is concerned that these panel management schemes may;

- be an obstacle to market access for new providers,
- limit consumer choice and competition in legal services; and
- impose new, quasi-regulatory burdens on lawyers that are not subject to the usual disciplines and oversight of regulation.

It is very difficult for consumers to make informed decisions on grounds other than simple price. Legal services are almost always ‘distress purchases’. Even in the case of conveyancing and probate, when the benefit to the consumer is clear, they are likely to be perceived as obstacles to the desired outcome (possession of a house, settlement of the affairs of the deceased) rather than the facilitation of those outcomes. This may well militate against shopping around, especially when reliable and useful comparators of quality are in short supply. Clear, accurate and fair information on quality of service is not available. Proxies for indicators of quality, such as numbers of complaints against a firm or details of any regulatory breaches which might indicate poor quality, are generally not put against the relevant background or context that would make those proxies genuinely useful and reliable.

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

The legal services front line regulators are planning joint work to investigate some areas of consumer experience and need. This begins with the effectiveness of client care letters that set out the terms of the service that is to be provided. It seems to us that these are not working effectively although there is no evidence that conveyancers are not using them to signpost their clients to their in-house complaints handling procedures and then on, if necessary, to the Legal Ombudsman or the CLC. Considerable efforts by the Legal Ombudsman to flush out more consumer complaints have not revealed an untapped need but that does not prove that need is not there. It will be useful to understand better how any lack of awareness can be corrected. If there is lack of confidence in the system that makes clients reluctant to seek redress, there will be different steps to take, including completing the separation of representation of the legal professions from their regulation so as to demonstrate the clear independence of regulatory action. Although the CLC has always been an independent regulator with no institutional ties to a representative body, it may well be that if there is a perception that regulation of lawyers takes too much account of the interests of those lawyers, the CLC will be tarred with the same brush.

Theme 3 – Impact of regulations and the regulatory framework on competition

There are a number of aspects of the current regulatory framework and regulatory practice that have a limiting impact on competition in the legal services market.

Barrier to the choice of regulator - Currently, the Solicitors Regulation Authority (SRA) requires that a regulated entity that wishes to move into another, more appropriate regulatory regime takes out run-off professional indemnity insurance cover. 'Run-off' cover is designed to cover residual claims after an entity ceases trading. If that entity simply wishes to continue to trade under the supervision of another regulator, no such need arises. The SRA's requirement is a barrier to the choice of regulator envisaged by the LSA by requiring a transferring entity to make a significant insurance premium payment and this is a major disincentive to the exercise of choice. While it would clearly not be desirable for regulated entities to 'shop around' frequently for a more comfortable regime, it should be open to specialist entities to elect the regime that is most tailored to and appropriate for their business and clients.

Alternative Business Structures regime – As you might expect from the CLC, which was regulating *de facto* ABS firms prior to LSA, we believe that there is considerable scope for simplifying their regulation. They pose no greater risk to consumers than traditional law firm structures. The risks that arise from external ownership are easily identified and managed through due diligence in relation to those owners that is little different to the due diligence that is undertaken in relation to licensing Authorised Persons.

Tailored, appropriate regulation – The CLC's experience of specialist regulation of specialist property lawyers indicates that there are benefits for consumers and in terms of fostering competition and innovation. Whatever the future structure for the delivery of regulation - whether by a range of

front line regulators or by a single regulator for the entire sector – it will be important to extend the benefits of the specialist approach, perhaps especially to other areas of high volume provision.

There are also quasi-regulatory arrangements that, as mentioned above, lie outside that framework and so escape the rigour that sets out to ensure the proportionality and effectiveness of regulation. As mentioned above, lender panels established and managed outwith the Legal Services Board's framework may nonetheless be having a negative impact on competition by:

- Acting as a barrier to market entry
- Placing additional quasi-regulatory compliance burdens on member firms
- Increasing the cost of delivery of legal services through membership fees

There is also regulation by the FCA that also impacts on the delivery of legal services either directly or through lenders operation of their panels.

Another area for examination is whether the relationship between those Approved Regulators which are representative bodies and the front-line regulators they have established is delivering truly independent regulation or whether representative concerns are inhibiting the independence of the actual regulator in ways that damage competitiveness and the operation overall of regulation in the sector.

The current framework is very heavily a creature of various statutes leading to difficulties in making desirable changes to meet the needs of contemporary regulation and evolving best practice. This in itself creates a regulatory burden and too great a dependence on Ministerial intervention.

I hope that this summary of the CLC's views in relation to the proposed scope of the study is useful. We look forward to discussing these issues in greater detail with Robert Stewart when we meet him next week and I am copying him in to this letter.

Yours sincerely

Sheila Kumar
Chief Executive