

**10<sup>th</sup> Feb 2016**

Dear Ms Rican-Sevitz

## **MARKET STUDY INTO THE SUPPLY OF LEGAL SERVICES IN ENGLAND AND WALES**

The Federation of Small Businesses (FSB) welcomes the opportunity to respond to the above named consultation.

The FSB is the UK's leading business organisation. It exists to protect and promote the interests of the self-employed and all those who run their own business. The FSB is non-party political, and with 200,000 members, it is also the largest organisation representing small and medium sized businesses in the UK.

Small businesses make up 99.3% of all businesses in the UK, and make a huge contribution to the UK economy. They contribute 51 per cent of the GDP and employ 58% of the private sector workforce.

We trust that you will find our comments helpful and that they will be taken into consideration.

Yours sincerely,

**Richard Parlour**

Chairman of the Home Affairs Committee  
Federation of Small Businesses

# **FSB response to CMA market study into the supply of legal services in England and Wales**

**February 2016**

## INTRODUCTION

The Federation of Small Businesses (FSB) welcomes the opportunity to respond to the above consultation document on behalf of its 200,000 members across the UK.

The law and the legal services are vital ingredients in a well functioning market economy. The law provides the enabling framework within which commercial activity can take place. Therefore, an effective commercial legal services sector meeting the needs of small businesses is crucial to a thriving small business sector and a competitive UK economy.

The legal services sector has not served the small business community as well as it might. A report in 2013 by Pleasence and Balmer identified a £100bn worth of unsatisfied legal need among the UK's small business population.<sup>1</sup> This is a considerable failure of the legal services market to meet the needs of small businesses.

Consequently, it is time for a thorough look at the functioning of the legal services sector. FSB welcomes this consultation on the scope of the proposed market study by the CMA as the first step along the road to a better commercial legal services sector fit-for-purpose for small businesses. The CMA should aim to clearly identify the failings in the commercial legal services sector and make recommendations about how those failings might be reduced.

## CASE STUDIES

FSB supports the inclusion of commercial legal services in the list of proposed case studies. It is an area of the wider legal services sector that is under studied and poorly understood but evidently contains a number of failings.

We consider that the scope of the case study should be drawn as widely as possible by the CMA, encompassing all the main types of services that small businesses need legal services providers to offer. Only by looking at the full scope of small business legal needs and the providers offering them will a complete picture of the market be established of the scope and scale of the deficiencies identified. Therefore we believe that two broad categories of commercial legal services should be within scope of the study:

- Transactional services i.e. those legal advice services that enable commercial activity such as compliance advice, contract drafting, company formation, Patent registration, mergers and takeovers, etc.
- Litigation and associated dispute resolution services i.e. representation and privately provided mediation, arbitration, adjudication services etc. It is an unfortunate fact of commercial life that businesses have disagreements. They sometimes end-up as disputes with parties. Businesses may have to defend their position and assets against others or hold suppliers or customers to account for breaching obligations that they had entered into and failed to fulfil. Services which help resolve disputes (as an alternative to going to court) are an important option for small businesses. They can be quicker, cheaper and ultimately less resource intensive and disruptive than going to court.

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<sup>1</sup> Pleasence, P and Blamer, N J (2013). 'In Need of Advice: Findings of a Small Business Legal Needs Benchmarking Survey', can be accessed at: <https://research.legalservicesboard.org.uk/wp-content/media/In-Need-of-Advice-report.pdf>

Most transactional and dispute resolution services can be delivered by both regulated and unregulated providers. Litigation services on the other hand are largely offered by regulated providers.

**Recommendation:** Consequently, in order to obtain a full and detailed picture of the legal services sector and its deficiencies FSB believes that the scope of the case study should include both categories of commercial legal services (transactional and litigation/ dispute services) and all types of providers i.e. both regulated and un-regulated.

## SCOPE AND ISSUES

### Whether customers can drive effective competition by 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?*

Small businesses tend to act in similar ways to consumers when purchasing goods and services. Their treatment by suppliers also often resembles that of consumers too.<sup>2</sup> These characteristics are evident in relation to legal services. Consequently small businesses experience many of the same problems that consumers face when purchasing legal services.<sup>3</sup> These problems are particularly acute however, because of the basic information deficiencies that are prevalent in the legal services sector. As a result the ability of small business customers to act as demand-side drivers of competition is limited.

The barriers small businesses face in resolving legal problems are numerous. They begin before a business is ready to enter the legal services market to look for potential suppliers. The first barrier is whether a business recognises that the issue they face is legal i.e. has a legal element and is amenable to satisfactory resolution through legal methods. This is an example of micro-businesses in particular behaving like consumers. The latter are often unable to recognise a problem as legal. Very often a small business will see an issue as a commercial issue but not as a legal issue, despite legal advice being one (and maybe the best) way of resolving it. This perception issue is a very significant barrier to accessing legal services because it prevents a small business even considering legal services option as a way of sorting the problem out. In such circumstances a small business will likely try and resolve an issue themselves or, if advice is needed, perhaps go to their accountant or another business. Some problems may continue on and may not ever get satisfactorily solved, or it might be resolved but unfairly in favour of one-side over the other.

**Recommendation:** The CMA's study needs to look at wider perception and conceptualisation issues by small businesses (i.e. small business awareness and identification of legal

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<sup>2</sup> This is a well observed phenomenon in sectors such as banking, communications and energy. The evidence is summarised in the 2014 report by Dr Amelia Fletcher. Fletcher, A (2014). 'Small Businesses as Consumers: are they sufficiently protected'.

<sup>3</sup> Pleasence, P and Balmer, N J (2014). 'How People Resolve 'Legal' Problems', can be accessed at: <https://research.legalservicesboard.org.uk/wp-content/media/How-People-Resolve-Legal-Problems.pdf>

This report offers a comprehensive overview of the factors which drive individual decisions with regards to legal problems and the subsequent 'consumer journey' that individuals with legal problems make.

problems). The study should not just focus on the 'consumer journey' from the point at which a business decides to purchase legal services and searches the market for options.

Further, even where a small business realises their issue is legal or has a legal element, their first instinct is often to avoid using formal legal services and to rely on informal advice and resolve it themselves or use existing trusted partners such as their accountants.<sup>4 5</sup>

Perceptions about the risks of taking a legal route to try and resolve a problem often turn small businesses away at this stage of the 'consumer journey' from pursuing the legal option. These perceptions include:

- High and uncertain costs e.g. legal fees are frequently high. This can be compounded by their open-ended nature.
- Complexity and associated fear and time commitments.
- The risk of escalation.
- Difficulty in identifying the right provider.
- The perceived lack of practicality and understanding of business by lawyers. This often means the small business will turn to their trusted accountants, or other trusted sources, for 'pragmatic' commercial advice.

If an issue is serious enough and a small business has decided the legal route is the one that needs to be pursued then the small business needs to try and navigate the legal services market to the best result possible. This is difficult because the legal services market fails in a number of areas:

- The inherent constraints under which small businesses operate (e.g. small businesses have little internal capacity for evaluating the quality and range of the legal services providers available and to identify and choose the very best options). These constraints are particularly salient among micro-businesses.
- The sector is lacking in many of the elements of a mature market including the provision of clear, usable comparative data for consumers about value-for-money, specialisation etc.
- The product characteristics:<sup>6</sup>
  - Usage is occasional. The infrequent purchase of legal services reduces the scope for learning-by-doing, which is a mechanism that often helps markets over-time deliver the most efficient outcomes.
  - Legal services are technical and need expertise to deliver.

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<sup>4</sup> Research by the Small Business Research Centre (SBRC) found that: 'Over half of firms experiencing a problem tried to resolve it by themselves'. Source: Blackburn, R Kitching, J and Saridakis, G (2015). 'The legal needs for small businesses: An analysis of small businesses' experience of legal problems, capacity and attitudes', can be accessed: <https://research.legalservicesboard.org.uk/wp-content/media/PUBLISH-The-legal-needs-of-small-businesses-19-October-2015.pdf>

<sup>5</sup> Research by the Small Business Research Centre (SBRC) found that accountants were consulted more than lawyers about problems. Source: Blackburn, R Kitching, J and Saridakis, G (2015). 'The legal needs for small businesses: An analysis of small businesses' experience of legal problems, capacity and attitudes', can be accessed: <https://research.legalservicesboard.org.uk/wp-content/media/PUBLISH-The-legal-needs-of-small-businesses-19-October-2015.pdf>

<sup>6</sup> Legal services are credence goods. As Bester and Dahm describe it in their paper: 'Credence Goods, Costly Diagnosis and Subjective Evaluation': 'The concept of credence goods was introduced by Darby and Karni (1973). Unlike experience goods, a credence good has important properties that the consumer cannot detect even after consumption. Classical examples include medical and legal advice, a variety of repair services, real estate services or taxi services...auditing services (Causholli et al. (2013), Knechel (2013)), financial services (Brown and Minor (2013)), and contracting for infrastructure projects (Dulleck et al. (2013))'. Source: Bester H and Dahm M (2014). 'Credence Goods, Costly Diagnosis and Subjective Evaluation', can be accessed at: <https://www.nottingham.ac.uk/cedex/documents/papers/cedex-discussion-paper-2014-13.pdf>

- It can be difficult to identify the return on the purchase of a legal service. The benefit can be about preventing something rather than it generating any revenue. Even where there is income to be gained this may not be fully realised for a considerable period of time. Similarly, it can take months or years for poor service and even negligence to emerge, by which time damage is significant and irreversible.

These factors mean that proxies play an important role, with previous experience, recommendation and customer service being important ways in which small businesses identify and decide which legal services provider. Consequently businesses often stay with the same provider rather than actively searching the market and switching. The overall result is not a process of informed pro-active rational choice from a clear menu of competing options but conservative purchasing behaviour.

**Recommendation:** The CMA should aim to get a clear picture of the make-up of small business demand for commercial legal services and litigation/ dispute resolution services. The study should examine the constraints experienced by small businesses in detail in order to enable a thorough understanding of their causes and to help identify possible ameliorating measures. There should be a specific focus on the demand-patterns and market behaviour of micro-businesses. The latter are the most vulnerable category of business and the type most likely to suffer from the kinds of constraints described.

The demand-side barriers faced by small businesses who want to access legal services are compounded by supply-side issues such as the lack of transparency about providers and products in the market and consequently high search and information costs, contributing to the significant barriers to switching in the commercial legal services sector. There are a number of areas where lack of transparency creates considerable problems for smaller businesses:

- Pricing. It is often not provided upfront. In many cases price information is only offered after an initial consultation. This approach prolongs the search process generating considerable sunk costs for a small business and increasing the search costs of looking around the market for alternatives. It is time-consuming for a business owner to have to go through numerous initial consultations just to compare prices. Further, price estimates made on the basis of initial consultations may be exceeded as the legal process gets underway. The sunk costs increase the further along the process a business gets. The consequences for switching away from the provider are that it becomes even less likely. While there is evidence that fixed fees are becoming more common in part through the un-bundling of services, the extent to which these have spread to commercial legal services is not clear.<sup>7</sup> Small businesses need transparency in pricing and some sort of market standard or norm, which would enable small business owners to make better judgments about the cost of offerings and act as a basis on which to challenge egregious pricing policies.

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<sup>7</sup> 'The use of fixed fees remains...popular at 46% (the same in 2015 as in 2014)', Source: LSCP (2015) 'Tracker Survey 2015: Briefing note: how consumers choose legal services', can be accessed at: [http://www.legalservicesconsumerpanel.org.uk/publications/research\\_and\\_reports/documents/Choosing\\_legal\\_services\\_000.pdf](http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/documents/Choosing_legal_services_000.pdf)  
The extent to which fixed fees are offered for commercial legal services remains more of an open question. This should be investigated by the CMA.

- A second price issue is the relatively high cost of legal services compared to the value of the issue at stake.<sup>8</sup> This is part of the reason why lawyers are seen as a last resort option after first seeking self-help solutions or trying their accountants.<sup>9</sup> Many small businesses, like consumers, consider the cost of legal services to be high and so value for money is low, and too often simply an 'opinion' which in the end can only be tested in court.
- A third is a lack of available comparable and usable data on the quality of legal services providers, the effectiveness of the work carried out (e.g. whether the outcome achieved could have been better if another provider had carried out the work) and the service levels. The inability of good legal services providers to positively differentiate themselves and poor service providers means that the latter are less frequently driven out of the marketplace or forced to improve.

In contrast, larger businesses have a number of advantages small businesses do not. Therefore they can more effectively utilise the market and drive competition. Larger businesses have two advantages when it comes to purchasing legal services:

- The more specialised internal division of labour i.e. in-house legal capacity, means that those doing the purchasing of external legal services are engaged and specialists with expert knowledge not only of the issue but of the providers available in the market with the time to dedicate to sophisticated searches for the best deal.
- Larger firms have more market power because they have more revenues and resource with which to purchase legal services. This greater resource immediately puts larger businesses in a more powerful position in any dispute compared with a smaller business.

**Recommendation:** Given the range of 'imperfections' that exist in the legal services market on both the demand and the supply-side we urge the CMA to rigorously investigate each one in order to identify their causes and how they might be mitigated to enable a better functioning market.

**Recommendation:** As part of the scope of the study we consider that the CMA should examine what role there might be for remedies to ameliorate some of the seemingly persistent problems in the sector. These should include:

- How small businesses can be made more aware about legal issues and associated problems and the best routes for their resolution.
- How small businesses can be better informed about the range of options on the market for both transactional and litigation/ dispute resolution services, where they can obtain trusted information and better enabled to more effectively navigate the sector and find the best solutions.
- Whether there are structural reforms which can be instigated which will enable the market to be more responsive to the legal needs of small businesses.

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<sup>8</sup> The SBRC found that: 'Only 13% of firms viewed lawyers as cost effective – little improved since the LSB's 2013 survey. Microenterprises were the least likely to view lawyers as Affordable'. Source: Blackburn, R Kitching, J and Saridakis, G (2015). 'The legal needs for small businesses: An analysis of small businesses' experience of legal problems, capacity and attitudes', can be accessed: <https://research.legalservicesboard.org.uk/wp-content/media/PUBLISH-The-legal-needs-of-small-businesses-19-October-2015.pdf>

<sup>9</sup> The SBRC found that: 'Almost 50% of respondents strongly agreed or agreed with the statement that they use legal service providers as a last resort to solve business problems compared with 12% who disagreed strongly or disagreed'. Source: Blackburn, R Kitching, J and Saridakis, G (2015). 'The legal needs for small businesses: An analysis of small businesses' experience of legal problems, capacity and attitudes', can be accessed: <https://research.legalservicesboard.org.uk/wp-content/media/PUBLISH-The-legal-needs-of-small-businesses-19-October-2015.pdf>



***Do intermediaries (such as estate agents, insurers and accountants) play a role in helping consumers to choose legal services providers?***

Intermediaries do play a role in helping small businesses navigate the legal market. This is because intermediaries:

- Might be trusted because of their expertise and existing relationship with the small business and can help the small business find the best option in what is a difficult to navigate sector.
- They by-pass the need for the business to search the market for providers because they have options readily available.
- They rationalise some of the available market information into a form understandable and usable by a small business, which then enables them to make a more informed (if not fully informed) choice.

Intermediaries can play one (or more than one) of these roles at any point in time.

For most small businesses the key trusted advisor, except family and possibly other business friends, is their accountant. If an issue is legal a small business, in the first instance, may very well go to their accountant because:

- They may be able to offer the service themselves without the need to go elsewhere e.g. accountants often help a business incorporate.
- Many multi-disciplinary (i.e. combined) professional services businesses are emerging, as a result of the recent reforms to the legal sector. In such circumstances, while the accountant may not be able to directly provide the service, the small business may be referred to a legal advisor in the same business.
- The accountant is likely to be aware of competent legal advisors that can deal with the issue and indeed may be in a referral relationship with a law firm.

Insurers and banks can play a similar role. They often have panels of law firms that they will prefer small business clients to use, should the situation of needing one arise. For ease a small business may go with such a provider. However, small businesses should never be required to use a 'panel' law firm or indeed feel unduly pressured to use one.

The third type of intermediary which small businesses use to help navigate the legal services market, are online platforms. These might be legal services price comparison sites or user review sites.<sup>10</sup> Such online intermediaries have considerable potential to harness the power of the available market information about commercial legal services providers and their quality, and help small businesses identify the best value-for-money deals and most appropriate providers. The level of usage of such intermediaries by small businesses is unknown. However, FSB would be surprised if it was high. Awareness of these intermediary systems is not extensive. In addition, there is always a risk of such sites being 'gamed' by some providers or not being 'whole of market' and thus not providing a comprehensive picture of choice.

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<sup>10</sup> The Legal Services Consumer Panel found that many law firms are failing to follow-up the business opportunities that comparison sites raise. Source: LSCP (2012). 'Comparison websites', can be accessed at: [http://www.legalservicesconsumerpanel.org.uk/publications/research\\_and\\_reports/documents/ConsumerPanel\\_ComparisonWebsites\\_FinalReport.pdf](http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/documents/ConsumerPanel_ComparisonWebsites_FinalReport.pdf)



**Recommendation:** The CMA should include in the scope of the commercial legal services case study the role of intermediaries and in particular research and analyse:

- The role of alternative providers such as accountants and multi-disciplinary businesses in delivering legal services and in referring small businesses onto legal providers.
- The extent to which small businesses are able to choose their preferred legal services provider e.g. when banks or insurance companies 'recommend' providers as part of getting a loan or in the context of insurance policies and claims etc and the extent of any detriment that accrues from such relationships.
- The current and potential role for various types of online platforms in facilitating more competitive legal services markets and consider ways that policy may be used to further their usage e.g. ensuring that they can be trusted by users.

## Whether customers are adequately protected from potential harm or can obtain satisfactory redress if legal services go wrong

*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?*

The questions of adequate levels of protection and access to redress are fundamental issues for small businesses. Protection and redress are effectively two-sides of the same coin. Using redress requires some principle or rule on which to base such a claim for redress. Their existence is important for two reasons:

- To protect smaller businesses on those occasions when they receive inadequate legal advice and poor service from a legal services provider. Micro-businesses in particular can be very vulnerable market participants, like consumers. Therefore both are needed to ensure that those vulnerabilities are minimised and the constraints under which small businesses operate are ameliorated wherever possible.
- Feedback mechanisms provided by redress channels are important for driving up standards of quality both in individual legal services providers and within and between markets more generally. Persistent sectoral problems can be identified through high levels of complaints and persistent payouts of compensation.

In a market where competition is not as fulsome as it might be the competitive process cannot be relied upon to ensure standards are continuously driven upwards. Further, there is a perception among small businesses that self-policing, which the legal professions largely still are despite the advent of the Legal Ombudsman (LeO), does not work. Therefore, in a sector like legal services, where the opportunities for causing significant levels of detriment are considerable protections and access to redress are particularly vital. Poor quality advice, representation or dispute resolution can have substantial negative effects on a small business. Small businesses do not have the resource-base to absorb significant problems and any associated losses. Therefore it is vital that, in such circumstances, small businesses can obtain quick and effective redress.

**Recommendation:** As part of the case study, the CMA should examine the range of protections currently available to small business customers of legal services providers and

their robustness and effectiveness at reducing detriment.<sup>11</sup> The levels of detriment experienced by users of un-regulated providers should also be examined and compared to the level of detriment among customers of regulated providers. There is no available data on the differences in quality between regulated and un-regulated providers of commercial legal services (transactional, litigation/ dispute resolution) yet a picture of the differences and similarities would be immensely valuable. A particular focus of the study should be on:

- Whether the Legal Ombudsman (LeO) is effective enough.
- If LeO is helping ensure micro-businesses in particular access redress in situations where they might not otherwise have been able to obtain.
- Whether the remit of LeO needs to be expanded to cover un-regulated providers and those providing dispute resolution services.

### ***Are redress mechanisms effective in addressing consumers' complaints?***

Small businesses will tend to take a pragmatic approach to an issue of poor quality/ inadequate service provision of legal services. A pragmatic approach to problems is the type of approach small businesses try to take in all circumstances. In a way not dissimilar to consumers unless the harm done is significant then they will generally be dissuaded from using formal the channels for recourse because of the time and costs that would be incurred in doing so.

Where complaints are taken forward, it seems unlikely that LeO would be the route that most small businesses would take. Recent FSB research into commercial disputes found that only a small proportion of small businesses use alternative (ADR) avenues for redress. For most small businesses, if there is a complaint with the provider of a service their instinct is to resolve it informally through negotiation. If that fails then a semi-formal approach might be tried, for example with a letter perhaps from a lawyer, but trying to avoid escalation. If that does not succeed, research by the FSB has shown that businesses are more likely to take the dispute to the small claims court rather than ADR.

The possibility of obtaining redress is also constrained by the source of the legal advice. For example, small businesses tend to use solicitors for legal advice. The solicitors profession has the most well known and trusted brand. However, lack of effective competition and the practical difficulties of navigating the market have meant a lack of incentives for developing sophisticated complaint handling operations by many regulated legal services providers. Further, access to LeO comes at the end of a process of trying to resolve a complaint with the provider. If the provider does not have effective complaint handling mechanisms in place then complaints can be a protracted and painful process. It takes up valuable resources, which a small business cannot spare.

Finally, the redress landscape is further complicated by:

- The scope of LeO's remit. The ombudsman's jurisdiction is not always clear to users and potential users of legal services. Small businesses will rely very much on being made aware of LeO by the legal service provider against which they have a complaint. There is a potential redress access bottleneck here for small business users or legal services.

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<sup>11</sup> Existing protections include: professional Codes of Practice, professional dispute tribunals and the Legal Ombudsman.

- Un-regulated providers are not covered by LeO. Yet who might be a regulated and un-regulated provider and consequently not subject to LeO's jurisdiction. However, this is not always clear to potential small business customers.
- Regulated providers also offering their own redress avenues e.g. for instances of negligent practice. However, the multiplicity of professions with different dispute tribunals is additionally confusing for small business clients.

**Recommendation:** The CMA should look at how other markets make such information on provider quality available and how lessons from these other sectors might be brought across to the legal services sector.

**Recommendation:** The CMA should examine access to redress, perceptions among small businesses of available redress avenues and the extent to which there is redress 'attrition' among small businesses who suffered from sub-standard service quality or negligent advice. The CMA should attempt to build a picture of:

- The proportions of small businesses that did not bother making a complaint and why.
- The proportions that started but failed to complete the complaints process and why.
- The proportion that pursued a complaint to the end, whether that was through the provider's own complaint handling or through to Leo, some other form of ADR or the court and the reasons for their perseverance.

**Recommendation:** The CMA should consider the case for extending the opportunities for redress to clients of un-regulated providers of legal services for micro-business customers. One option might be to follow the model now in place for consumers e.g. extending the remit of LeO to cover the provision of legal services (transactional, litigation/ dispute) by any provider.

It is better and more efficient if potential purchasers of legal services can avoid the poor quality providers in the first place. This requires useable information on the quality of providers to be more readily available to potential buyers. Better decisions can be made by buyers if they have access to such information. For sellers the availability of such information mechanisms helps quality suppliers sustain their customer base and grow while weaker ones either have to improve or leave the sector.

## How regulation and the regulatory framework impact on competition for the supply of legal services

***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?***

The legal services market is going through a period of considerable 'flux'. The Legal Services Act 2007 (LSA) liberalised the legal sector to a significant degree. Since the commencement of the provisions of the LSA large numbers of new entrants have come into the market, often using the ABS route.<sup>12</sup> In addition, existing providers have expanded their offering. New

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<sup>12</sup> A recent report from the Law Society stated that there are around 84 ABS serving business clients. Source: Law Society (2016). 'The Future of Legal Services'.

technologies have been introduced or their usage expanded, resulting in new ways of delivering legal services e.g. online. FSB has considerable hopes that, as the market evolves:

- The application of technology will accelerate.
- There will be more innovation in business models, routes to market, pricing and processes.
- A more specialised division of labour will develop across the sector.<sup>13</sup>

In combination, these trends should help widen access and bring more legal services within the budgets of more small businesses. However, a recent survey for the Legal Services Board suggested that innovation in the legal services sector still had some way to go.<sup>14</sup> This suggests the application of technology and the development of new innovations in the legal services sector is not as advanced as it might be.

**Recommendation:** The study should examine:

- The extent to which innovations that have been introduced into the consumer legal services market have also been introduced into the commercial legal services sector where small businesses are the clients.
- What innovations/ applications of technology are bringing the most benefits to the commercial customers of legal services providers.
- If there is a difference between the rates of adoption of technology between regulated providers and un-regulated providers and between differently regulated providers e.g. barristers adopting technology faster than solicitors, and if such differences are evident, the reasons for such differences.
- Specifically, the CMA should examine whether there might be scope for measures to encourage the adoption and use of technology.

### ***Does the current regulatory framework impose disproportionate costs on legal services providers?***

The current regulatory framework within which legal services providers have to operate is considerable. The regulatory landscape is very uneven between regulated professions. The burdens on regulated providers compared to unregulated ones are additionally significant and inevitably mean that the cost base of a regulated provider is much higher than for unregulated providers. Therefore we would welcome reductions in the regulatory burden on regulated providers consistent with sustaining minimum professional standards. This would help small regulated providers compete more evenly with unregulated providers while retaining the advantages which many small business providers feel exist from operating within a professional regulated framework.

**Recommendation:** The CMA should look into whether the existing stock of professional regulation adheres strictly enough to the principle of risk and proportionality and where there might be scope for lessening the current burden. Particular attention should be paid to whether some of the professional regulation might inhibit the development and adoption of innovative business models, work practices and technologies. If there are such rules, then

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<sup>13</sup> For example, a move towards using more narrowly qualified and specialist advisors to deal with specific legal issues, especially the less complex ones, rather than relying on more generally and expensively trained solicitors or barristers.

<sup>14</sup> Roper, S et al (2015). 'Innovation in Legal Services: a report for Solicitors regulation Authority and the Legal Services Board', can be accessed at: <https://research.legalservicesboard.org.uk/wp-content/media/Innovation-Report.pdf>

CMA should examine how they might be repealed or amended in order to facilitate adoption of new business models and processes and technology.

**Recommendation:** The CMA should also look at whether the current sectoral regulatory arrangements i.e. the multiple professions and multiple regulators, are proving effective.<sup>15</sup> It is an open question as to whether (and to what extent) such regulatory fragmentation might cause frictions which inhibit collaborative working between the professions and the development of new business models. These differences between the professions can be somewhat lost on small businesses who just want to access practical and value-for-money legal services. The CMA should look into:

- The extent to which this fractured regulatory environment causes regulatory frictions which cause unnecessary regulatory burden and hinder the ability of different legal professionals to work together and adopt innovations.
- How these distinctions may help or hinder small businesses customers looking to identify the right legal services provider for their problem.

The regulatory landscape for dispute resolution providers is perhaps more disparate and uneven than the landscape for transactional and litigation services. As a result, small businesses wanting to purchase the services of a provider can find it difficult to identify providers who are regulated and consequently may be subject to formal accountability and redress channels, if things go wrong and which providers are operating on the basis of robust professional standards. Part of the reason why small businesses can be reluctant to use ADR may be as a result of the difficulty in identifying the right providers with assured standards and qualifications. Regulation may have a role to play.

**Recommendation:** As part of the package of regulatory issues the case study into commercial law should include, we consider that there should be some focus on whether regulation needs to be improved in the dispute resolution services sector or whether the current landscape is sufficient and sufficiently helping the dispute resolution sector deliver for small business users.

## For further information

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<sup>15</sup> The LSB lists 9 approved regulators on its website: [http://www.legalservicesboard.org.uk/can\\_we\\_help/approved\\_regulators/](http://www.legalservicesboard.org.uk/can_we_help/approved_regulators/)