

# Solicitors Regulation Authority submission to CMA market study into the supply of legal services in England and Wales

## Overview of the legal services market

1. The SRA regulates over 160,000 solicitors and 10,500 legal services businesses. This includes, but is not restricted to, solicitors and solicitor firms. It includes alternative business structures (ABS) with lawyer and non-lawyer managers/owners and multi-disciplinary practices made up of lawyers and other types of service provider. 15% of barristers are employed in SRA regulated businesses as are many conveyancers, intellectual property lawyers, notaries, legal executives and costs lawyers. The turnover size of the market that we regulate is £21 billion (England and Wales) of the £29 billion legal market (UK).
2. The legal services market is evolving faster now than at any time in its history. Providers are changing how they organise themselves and their services. Changing consumer behaviour is both driving and responding to these supply side developments.
3. The SRA continues to reform the restrictive and prescriptive regulation that it inherited [§<] to:
  - provide greater flexibility for solicitors and other legal services providers to organise their business in the way that works for them, their clients and their potential clients
  - ensure regulation is proportionate and targeted, removing unjustified burdens
  - make our rules, regulations and guidance easier to use and understand for both providers and users of legal services
4. Throughout this work we remain focused on our core regulatory purpose to both protect those consumers that need protecting and uphold the rule of law and the proper administration of justice.
5. Our reforms are set out in more detail below. Key market developments include:
  - Licensing of ABS
  - Licensing of multi-disciplinary practices
  - Removing prohibitions around regulated individuals and providers owning and managing, or being owned and managed by, separate businesses delivering non-reserved legal activities outside of sector specific regulation
6. We have also spoken to those we regulate and reviewed our internal processes to remove unnecessary burdens and made improvements to better align our regulation to the principles of better regulation and best regulatory practice. Examples of recent improvements include:
  - Removing over 200 pages of rules from our Handbook
  - Simplifying and speeding up our authorisation processes
  - Dedicated support for small firms and those firms looking to innovate

7. Together these market and regulatory changes are leading to greater competition and innovation in the legal services market. You will be aware that we are seeing developments both online and offline including subscription services, unbundling, legal process outsourcing and qualified lawyers being contracted to support or provide in-house legal functions.
8. These are just a few examples. But there is still a way to go. This is evident by the high level of latent demand within the market. This is well documented in the context of individual consumers and small business consumers:
  - Individual consumers – research indicates that around 50% of individual consumers have legal problems, but only around 20% access a regulated legal services provider
  - Small business – research indicates around a third had a legal problem in a twelve month period business but only about 10% access a regulated legal services provider
9. Surveys indicate that cost is a common barrier to accessing lawyers and law firms. 63% of individual consumers do not consider that professional legal advice is an affordable option. Only 13% of small businesses report that they consider lawyers provide value for money. There is also considerable disparity between the proportion of solicitors that consider that they deliver a good service and the proportion of consumers that consider that they receive one.
10. We are continuing to promote competition and flexibility with our future reform programme (further details are set out below) and are starting work to scope out how we might make more data available to aid consumer choice. Our aim is to take the market from where it is to a position where opportunities for competition drive innovation and growth, leading to cheaper, more accessible services for consumers. We will do this by moving away from a one size fits all approach. This approach has allowed a sense of protection from competitive pressures to develop. However, changing regulation will only get us so far. [§<] . We recognise that we do not have the luxury of designing the regulatory system from scratch and inherit not only a rule book but a set of institutions, cultural behaviours among firms and deep-seated consumer attitudes that need to be shifted in order to make the market work better for the public<sup>1</sup>. Dealing with institutions or rule books on their own will have only limited impact if we do not address those wider cultural challenges. It would be costly and time consuming to ignore the realities of the market by trying to remove information asymmetry – that is the very reason consumers often seek legal advice. This is not to suggest the challenge of reform is too great. The benefits of reform are being felt in the changing attitudes, changing language and changing aspirations of the legal market, and these are precursors to more radical change.
11. We consider that it would be disproportionate to try and protect all consumers as if they are unable to make any rationale decisions around who to choose. The

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<sup>1</sup> *Understanding the economic rationale for legal services regulation: A report for the Legal Services Board prepared by Dr Christopher Decker & Professor George Yarrow, 31 October 2010*  
[http://www.legalservicesboard.org.uk/news\\_publications/latest\\_news/pdf/economic\\_rationale\\_for\\_Legal\\_Services\\_Regulation\\_Final.pdf](http://www.legalservicesboard.org.uk/news_publications/latest_news/pdf/economic_rationale_for_Legal_Services_Regulation_Final.pdf)

available information does not support this assumption (please see the attached consumer slides).

12. Our view is that the reserved legal activities are an arbitrary “accident of history” that mean little to most legal services providers, let alone consumers of legal services. However, trying to come up with an alternative may result in less competition – as with the American model of all legal practice being restricted. Or “paralysis by analysis” if a totally risk based model is adopted. We think the better approach is for independent regulators to build proportionate and clear consumer protections around easier to understand concepts i.e. protected lawyer titles and regulated firms. The risks that present in the legal market do not fit into neat categories of law or activity that can be analysed in a way that leads to risk based regulation being secured segment by segment. The major risks are around ethical behaviour, competence and service rather than neater supply side categories. In our view appropriate control of the title that inspires consumer confidence and choice, supported by redress systems that deliver a resilient market are more likely to meet the better regulation principles than a detailed risk assessment of each area of law or category of activity.

### **Impacts of SRA Regulatory Reform Programme**

13. We are now in the second year of a multi-year programme of liberalisation and deregulation, and have made significant progress in a number of areas. Highlights of our regulatory reform programme are summarised below.

#### *Handbook Review*

14. In Spring 2016 we will be consulting on a new approach to our Handbook which will see a significant reduction in the complexity and length of our regulations. It is our intention that the new Handbook will make it significantly easier for both new entrants and currently regulated businesses to do business and really focus on the core elements of SRA regulation. This will be delivered in two phases - starting with a new Code of Conduct for solicitors, for SRA regulated firms, and revised Practice Framework Rules which set out permitted models of practice.
15. As set out in our *Looking to the Future* paper we will also be consulting on proposals to remove the current restrictions on solicitors working in legal business which are not authorised by a legal services regulator. Solicitors will be permitted to work in these alternative legal services firms, carrying out unreserved work, and subject to a clear ethical code - giving consumers the additional choice of getting advice from a solicitor even if the business itself is not authorised and regulated by the SRA.

#### *Accounts Rules*

16. We have already implemented significant changes to our Accounts Rules which ensure the requirement to obtain and deliver an independent accountants report are better targeted. While the accountant’s report provides an important check on risks to client money, the costs for firms to obtain one are significant – on average £800 for small firms and several thousand pounds for larger firms. We have therefore made changes to ensure the requirements are proportionate to the risks to client money (removing the requirement from those firms with low client balances or that

do only legal aid work) and shifted the focus of the reporting accountant from a checklist approach to one of professional judgement which offers firms greater value from the accountants work. The impact of these changes has removed 13% of firms (or 1,014 businesses based on 2014 figures) who hold client money from the cost of obtaining a report, and ensures that only qualified reports are submitted to the SRA. We will soon be consulting on further changes to our Accounts Rules, to reduce length and complexity in line with the first phase of Handbook reform and to also consider what the level of regulation in relation to client money should be. This is likely to include proposals around the current definition of client money, where under current arrangements professional fees paid in advance are subject to significant regulation. We are interested in exploring whether the current level of protection is appropriate given the developments in general consumer protection law.

### *Financial protection*

17. We are continuing to review and reform our client financial protection arrangements. Our aim is to secure an appropriate balance between the overall level of financial protection and the cost and regulatory burden imposed. If the cost of client protection arrangements prevent firms entering or remaining in the market then this could impact negatively on consumer choice, the diversity of the profession and access to justice. In some cases arrangements may also impact on how firms can exit from the market. We remain concerned that the level of premiums for PII increases costs for firms in ways that make it more difficult to compete.
18. We issued a [discussion document](#) setting out a range proposals to reform the Minimum Terms and Conditions that apply to solicitors professional indemnity arrangements and identifying where changes would have a potential impact on the SRA's Compensation Fund<sup>2</sup>. Any changes to the eligibility criteria for those who can make a claim on the Fund need to be considered alongside proposed changes to the SRA's Accounts Rules and definition of client money. Continued payments for a narrower set of account rules breaches and targeted protections for individual more vulnerable consumers could provide a better balance overall. We will be consulting on proposals in Autumn 2016, informed by analysis of ten years of claims data which is currently being analysed for the SRA by a third party. In future, this level of analysis will mean that further proposed changes to mandatory insurance requirements are informed by detailed analysis of how the current arrangements are operating.

### *Training for Tomorrow*

19. We are also liberalising the labour market through our Training for Tomorrow programme.
20. We are currently consulting on proposals to introduce a centralised assessment for would be solicitors – the Solicitors Qualifying Examination (“SQE”). The new

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<sup>2</sup>This is a statutory purpose trust and provides a safety net for those affected by authorised individuals or firms who have misappropriated or failed to account for money in the course of practice. Most payments are necessary as a result of intervention by the SRA on the grounds of suspected dishonesty, breach of accounts or other rules or in the event of financial difficulty. The Fund also has the discretion to make grants in respect of the civil liability of the defaulting practitioner, where the authorised individual or firm has failed to take out qualifying insurance. In line with its purpose it is not intended that grants are made where the applicant is otherwise indemnified against loss.

approach will focus our regulatory effort more rigorously than we do at present on assuring consistent and comparable standards at the point of admission across the different ways of qualifying as solicitor. The SQE could also allow us to be less prescriptive about the training process leading to qualification, and therefore encourage the development of a legal education system which is more innovative, flexible and responsive to the changing legal services market. We expect this to both improve consistent quality and reduce costs.

21. Such a system could also cater better to wider variety of students and therefore encourage a more diverse and representative range of the population to qualify as a solicitor. One example of where we have already made significant progress is the introduction of the Trailblazer solicitor apprenticeship which will provide a work-based route to qualification. If we proceed with proposals to introduce the SQE, all intending solicitors will be required to pass the assessment irrespective of the route taken.
22. We have already taken steps to increase flexibility around our training requirements. Changes to our Training Regulations, introduced in 2014, removed requirements for student enrolment (a saving of £80 per student), and reduced the level of prescription around the period of recognised training (often referred to as the training contract). We have also reduced the LPC enrolment fee from about £200 (in practice it varied from year to year) to £15. Rather than inspecting teaching quality (which is regulated by the QAA), this now funds the Chief Assessors who are doing a piece of work looking at end-point standards in LPC exams.
23. While the breadth and depth of training has been retained, the SRA no longer stipulates employment terms, minimum salary<sup>3</sup> or that training must take place under an SRA specified training contract. Changes to our CPD requirements are also allowing firms to better align ongoing professional development with the needs of their business and clients, offering better value for money than the previous hours based requirement.

[&<]

## Key Issues

### ***ABS - Restrictions in primary legislation***

24. Schedules 11 and 13 of the Legal Services Act 2007 raise questions of what is required in primary legislation, and how current legislation inhibits our ability to regulate effectively. We suggest that the current approach of material ownership tests (Schedule 13) and the contents of licensing rules (Schedule 11) being prescribed in legislation is not the most effective way to deliver the regulatory objectives.
25. We have made significant changes to speed up our authorisation processes to much success but we continue to be restricted by the degree of prescription in the legislation.

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<sup>3</sup> From 1 August 2014, trainees' salaries have been subject to the [National Minimum Wage](#) regulations

[✂]

26. In summary, Schedule 13 causes problems in its application, particularly in relation to less than straightforward business structures. As with Schedule 13, it is our view that the prescription of Schedule 11 as to what our licensing rules must cover is unnecessary. Further, there is a significant risk that the current level of prescription and detail set out in primary legislation:
- May lead to overregulation
  - Reduces flexibility to amend in light of market changes and/or based on the experience of the regulators
  - Unjustifiably introduces different statutory provisions for ABS compared to traditional law firms
  - Creates barriers, blockages and inconvenience for new entrants that it is unlikely was intended
27. In our view, primary legislation should be limited to the key issues that all regulators must include in order to safeguard the regulatory objectives, with a high degree of flexibility allowing regulators to develop and set out their own procedural arrangements. These arrangements will need to set out respective rights and obligations in a robust and lawful way, and will also require approval by the LSB. If necessary the LSB has the ability to issue guidance to regulators including further detail about the make-up of these rules which it has already done so in relation to the contents of licensing rules.
28. We have therefore suggested that the wording of Schedule 11 should better reflect what it wants to achieve. This would include essential overarching requirements and the outcome expected so there is more flexibility for how those are incorporated into each regulator's rule book. This would also allow discretion where the needs of the applicant require it. Clear outcomes, plus flexibility on how outcomes should be met, will allow regulators to tackle risks more effectively.

### ***Regulatory independence***

29. Regulation that is independent of representative interests would realise the evolution of legal services regulation as set out by Sir David Clementi. It completes the journey to independent, modern regulation alongside robust representation for the profession. Public polling shows that independent regulation would boost trust in solicitors. Separation would free up the Law Society to be the voice of solicitors.
30. The lack of fully independent regulation in this sector has a number of impacts on innovation, competition and consumer choice in the legal services market. [✂]
31. Severing the ties that we still have to the Law Society would enable us to implement policies designed to promote the regulatory objectives in a more efficient and effective manner. Reducing the bureaucracy we are subject to in our current structure, and being able to reduce unnecessary barriers in the market, would enable competition to grow in this sector to the benefit of consumers, businesses and the public. Our governance would be clearer and better, with a more focussed Board and clearer accountabilities. Access to justice would improve as we could do

much more, much faster to open up a competitive market so that people get better access to justice at affordable prices. Doing more faster to develop an open and competitive market is a win win for the economy and our international legal sector.

32. Direct and indirect costs to firms and solicitors would be reduced, improving the competitiveness of the sector and reducing costs passed on the public. [32]
33. Regulatory independence would put the public interest at the heart of regulation. Public confidence in regulation and solicitors would increase. Accountability to the public, perhaps through Parliament and Welsh Assembly, would replace accountability to the profession. Opening up the profession is good for social mobility and a diverse profession will benefit access to justice and public confidence. [33] Given the potential simplicity of a legislative option for independence, we suggest that securing independence in the shortest period possible while maintaining the focus and pace of our regulatory reform programme is the most effective route to securing a more competitive market.

### ***Reserved legal activities and professional title***

34. The existing regulatory framework uses both activity and title based regulation:
- The titles 'solicitor' and 'barrister' are protected by law. Use of these titles without the appropriate qualifications is a criminal offence
  - Certain activities are 'reserved', meaning that only individuals authorised (or exempt) under the Legal Services Act are legally allowed to undertake them
35. The legislative origins of these different approaches are complex. There is no single founding legislation. The Solicitors Act 1974 and the Administration of Justice Act 1985 cover the solicitor title and solicitor only firms, while the Legal Services Act 2007 covers the reserved activities and ABSs. However, the Legal Services Act also includes title based elements. Further, the reserved activities were in place many years (or in some cases even centuries) before the Legal Services Act. It would be wrong to view title as an old fashioned hook for regulation and activity as modern.

### ***Legal services activities and areas of law - relying just on 'activity'***

36. Relying solely on regulating activities is hugely problematic because it is so easy to game. [36] As undertaking reserved activities outside of authorisation is a criminal offence the courts will always construe them narrowly. That simply increases the opportunity for gaming. Activity based approaches will always struggle when the definition and perimeter is artificial.
37. Non regulated bodies are allowed to deliver legal aid services (subject to not undertaking reserved activities). There has therefore been an activity based approach to control legal practice in legal aid where there is no title restriction. [37] The LSB's experience of activity based analysis shows the futility of such an approach. Their investigation into will writing took around two years and an attempt to assess the risk on general advice was abandoned. The task of introducing a risk based approach across all legal activities, other than never getting past the perimeter issues described above, is simply too big and too expensive a task.

38. The experience of the legal market is that activity (in whatever form one chooses to apply it) is not a solid enough foundation from which to build regulation of the legal market.

#### *Using activity as part of the regulatory toolkit*

39. [X] When put alongside title, activity can be a useful tool. Thus a solicitor conducting advocacy or a solicitor conducting mental health work might engage deeper risk based regulatory requirements. The definitional problems remain, but title allows us to regulate the solicitor even when they try to argue an activity is outside of a specific subset.

#### *Titles and consumers*

40. Increasing liberalisation and deregulation may well deliver us retail or business services brands in the future. And 'regulated by the SRA' (or whoever) may become a strong enough consumer signal in the way that the financial services compensation fund means something to some consumers in that market. However, the solicitor and barrister title remain the most significant signal in the legal market.

Research consistently tells us that:

- recommendation and reputation are major choice factors for people
- consumers do not properly understand the difference between regulated and unregulated providers
- consumers with serious problems do end up getting the right sort of advice most of the time (ie they do navigate the market)
- consumers place value on the solicitor title and have confidence in the ability of solicitors to provide legal services

41. Title is the one signal to consumers that they have an understanding of. As a brand it tells them that the person has to stick to a code of behaviour, has to act in the client's best interests, has had to be properly trained and educated, is properly insured and that there is 'someone' to turn to if the solicitor misbehaves.

42. As a brand the title 'solicitor' tells consumers that the person has to stick to a code of behaviour, has to act in clients best interests, has had to be properly trained and educated, is properly insured and that there is 'someone' to turn to if the solicitor misbehaves. Given the market power of the title it offers a logical basis for regulation. Regulation can ensure that the brand signal of solicitor means something: it can ensure that the rules attached to title are designed to protect the rule of law and consumers rather than to protect those that have the title from competitive forces. Independent regulation based on title will therefore require control of the solicitor and barrister titles to sit with the regulator, rather than with the trade bodies.

#### *Regulating by title*

43. The advantage of title as a foundation for regulatory grip is that is not artificial. For example, a solicitor cannot avoid regulation by saying 'I am not a solicitor; I am a



health and safety adviser'. Given the market power of the title it makes sense to regulate it to avoid it being used to undermine regulatory objectives.

44. Control of the title has allowed the SRA to liberalise and deregulate, open up the legal market, make the title work better for consumers and the rule of law. It has allowed the SRA to embark upon a programme of reform of entry that will liberalise the legal labour market, reduce costs for consumers and ensure that solicitors are at the required standard of competence. It is much easier to change these things than it is to stop consumers and courts relying upon the title solicitor as a signal of ethics and quality. Effective regulation is virtuous circle. Education links to competencies and standards for entry, standards for entry set continuing competence and ethical standards, which lead to thresholds for regulatory action. [✂]
45. The SRA's position paper on our handbook and approach to regulation (*Looking to the Future*) accepts the failings of activity based approaches. We will not seek to widen the definition of the reserved activities, nor protect them from erosion by innovators and unregulated businesses. Rather we will focus on breaking down the barriers between regulated and unregulated, allowing solicitors to practice wherever they want subject to a simple code of conduct and thus giving consumers a real choice. Our proposals will widen access and increase supply. [✂]

## **Annex 1 - research relevant to CMA market study**

Below we summarise some relevant published research that may prove insightful when considering the key themes of the market study. We acknowledge there is need for more research in respect of many of the detailed questions underpinning each theme. Please note that where we feel a piece of unpublished/internal research is useful we provide a summary of any relevant findings and would of course be happy to deal with any subsequent requests for information.

### **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.**

- *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?*

Evaluation: How can we measure access to justice for individual consumers?, Legal Services Board, 2012

- Only 41.7% of individuals with a legal need sought professional advice
- Over one third (36.6%) handled the problem on their own
- A similar picture emerges for small businesses
- Only 17% of legal needs resulted in legally regulated advice
- Over half of legal needs were handled entirely alone by the business.

How people resolve 'legal' problems, Legal Services Board, 2014

- Consumers are also more likely to obtain help from a law firm on problems they self characterise as 'legal'
- Consumer experience does not mirror traditional legal services distinctions including reserved activities
- Deficiencies in the civil justice system in meeting consumers' needs are largely due to difficulty enabling vulnerable populations with limited capability/resources access appropriate help from a complex market
- Choices of sources of help can be limited, and where people are forced to look elsewhere they can suffer referral fatigue, getting lost in the system
- Most respondents who obtained help from an advice agency rather than a lawyer said they did so because of the perceived cost.

Understanding Decision Making in Legal Services: Lessons from Behavioural Economics, by Maule, J. for the Legal Services Board, 2013

- The two systems of thinking behavioural economics model helps us understand how consumers make the necessary simplified decisions:
  - System 1 thinking is based on how options make people feel
  - System 2 thinking often involves conscious, systematic analysis and evaluation.

- System 1 thinking is far more likely to be used by consumers of legal services when choosing and using legal services
- This is because our minds are more likely to use this where we lack the capacity, knowledge or time to make more analytical decisions
- Advertising can have a very significant affect on the decisions consumers make about choosing and using legal services
- Large, recognisable brands are particularly good at influencing consumer decisions
- Short, simple and clear information is preferable to *all* of the possible relevant information
- Even with more education on how the legal services market works, consumers may continue with the quick System 1 thinking, therefore solutions should target this type of thinking.

Briefing note: how consumers choose legal services, Tracker Survey 2015, Legal Services Consumer Panel, 2015

- Reputation has remained the top influencing factor when choosing legal services, with price being the second most influential factor
- In 2011, 65% of consumers were satisfied with the choice available to them. This has increased slowly over the last 5 years to 70%.
- 25% of consumers shopped around in 2015, up from 19% in 2011
- Consumers satisfaction with choice continues to increase, and correlates with increased shopping around and a decline in difficulties comparing from 28% (2011) to 12% (2015)
- Much of this improvement however was confined to the more informed group; those with greater knowledge of what a lawyer does had greater levels of trust – 52% among those who had lots of knowledge, against 36% among those who felt they had no knowledge
- The importance of price as an influential choice factor highlights the growing demand for fixed fee pricing. This type of pricing makes it easier for consumers to compare different providers with one another, and form an assessment of which one is most suitable for them.

Briefing note: how consumers use legal services, Tracker Survey 2015, Legal Services Consumer Panel, 2015

- Just under half of transactions involve face-to-face service delivery which remains the most common of all
- there is evidence of a gradual increase in use of telephone services and the use of email/internet
- The number of silent sufferers has decreased slightly from 44% to 42% - however so has the number of those who made a formal complaint to their provider.
- *Do intermediaries (such as estate agents, insurers and accountants) play a role in helping consumers to choose legal services providers?*

There is little research on comparison websites in legal services although the increase in fixed fees is making comparison easier. Please see the following website as an example:

<http://lbcompare.co.uk/>

- *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?*

Innovation in legal services, Enterprise Research Centre – commissioned by the Solicitors Regulation Authority and the Legal Services Board, 2015

- Key drivers of innovation are changes in regulation and legislation and increasing demand for new services
- Competition is mid-ranking as a driver indicating the market is not as competitive as it could be
- 25% of all legal services providers have introduced a new and improved service in the last three years
- "Radical innovation" i.e one introduced before competitors, is much less common, indicated by 8% of respondents
- ABS was found to be 15% more innovative than other legal services providers. [38]

Legal Services Consumer Panel's report on transparency in legal services (in response to a request from the Legal Services Board)

- Approved Regulators should do more to bring together regulatory information in a meaningful way. A starting point would be to link basic and conduct information
- The Legal Ombudsman should publish all ombudsman decisions in full

**Theme 2: Whether information failures result in consumer protection issues that are not being adequately addressed through existing regulations and/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?*

Consumer Impact Report, Legal Services Consumer Panel, 2014

- 44% of consumers who were unhappy with a legal services provider did not complain
- This compares to 27% of 'silent sufferers' across the entire services sector, thus demonstrating low public confidence in expressing dissatisfaction about legal services providers.

Annual report and accounts 2014/15, Legal Ombudsman, 2016

- Number of complaints about lawyers referred to the Legal Ombudsman at an all time low with 7,650 investigated
- 23% of the complaints were about residential conveyancing.

Mapping potential consumer confusion in a changing legal market, University of Leicester & the Legal Ombudsman, 2011

- Consumer rights to complain and pursue redress vary depending upon the type of organisation that they choose, even though the service offered is substantially similar

- Provider title (such as solicitor or barrister) rather than activity determines whether additional rights over statutory protections apply.

#### Redress for legal services, Legal Ombudsman & Northumbria University, 2014

- The legal services market – however broadly or narrowly it is defined – is diverse and fragmented
- The redress available across “legal services” is also disparate and fragmented
- In order to make redress in such a market effective, the options are either to simply the regulation of the market itself or simplify the redress mechanism available.

#### Age of the Client, LexisNexis Bellwether Report: 2015, LexisNexis, 2015

- 80 % of lawyers think they're delivering 'above average' service, but only 40% of clients say they're receiving it
- 81% of lawyers believe they provide regular updates on progress throughout the legal matter, but only 61% of clients agree
- 95% of lawyers think they explain the charging system clearly at the outset, but only 70 % of clients agree
- 94% of lawyers think they fully appreciate their clients' needs and expectations when taking a case on, 69% of clients agree.

#### Quality of legal services for Asylum Seekers, SRA, 2016

- The complexity of the asylum legal process makes it difficult for asylum seekers to recognise the difference between the different types of legal adviser and what protections they have through the legal regulators
- Community groups and some community representative bodies sometimes signpost asylum seekers to poorer quality or unregulated advice.

### **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.**

- *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?*

#### Understanding Barriers to Entry, Exit and Changes to the Structure of Regulated Law Firms, Regulatory Policy Institute, 2013

- The entry and exit rates over the past two or three years appear to have been around 10%, with most of the exit occurring via amalgamation rather than by simple closure
- This is a little below average entry and exit rates across all UK businesses

- Regulatory impediments are more pronounced for some specific types of practice such as small practices and non-traditional business models (including, but not limited to, ABSs)
- Insurance was the major, single regulatory requirement that gave rise to difficulties for firms at each of the stages of entry
- risk-based regulation focused on business matters tends to mean that costs are raised most for business models that are the most innovative and unfamiliar: it is these that attract regulatory attention
- Simplification of regulation will help small businesses.

In-depth investigation into the costs of regulation in the market for legal services, ICF for the Legal Services Board, 2015

- the areas of regulation (cost categories) where incremental costs of regulation (or regulatory burden) were highest were professional indemnity insurance, professional development, and information from the regulator.

The regulated communities' views on the cost of regulation, Legal Services Board, 2015

- A significant proportion of both those regulated as entities and individuals rated areas that are not regulations specific to legal services (for example complying with Money Laundering regulations under the Proceeds of Crime Act 2002) as a regulatory cost.
- Many lawyers are unaware of how what they are paying for when obtaining a practising certificate each year.

Innovation in legal services, Enterprise Research Centre – commissioned by the Solicitors Regulation Authority and the Legal Services Board, 2015

- Solicitors are more innovative than other regulated providers including barristers
- ABS are more innovative than all types of providers, including those unregulated
- Key drivers of innovation are changes in regulation and legislation and increasing demand for new services
- However, the key barrier to innovation was also regulation and legislation
- These findings taken together highlight the importance of a proportionate and flexible regulatory and statutory regime to foster further innovation.