



Society of Professional McKenzie Friends
Ltd. 11 Windsor Gardens
Wolverhampton
WV3 8LY

Maria Rican-Sevitz (by email to: legal.services@cma.gsi.gov.uk)
Assistant Project Director
Legal Services marketing Study
competition and markets authority
Victoria house
Southampton Row
London
WC1B 4AD

Competition and Markets Authority (CMA) – Legal Services Study.

Initial Response from the Society of Professional McKenzie Friends (SPMF).

Introduction

SPMF welcomes this study. Whether legal services are working well for consumers and small businesses would seem to us exactly the right question to be asking at this time.

SPMF was formed in 2014 in response to a [recommendation by the Legal Services Consumer Panel](#), which was [endorsed by the Legal Services Board](#); the LSB recognised McKenzie Friends as an emerging market within the legal sector, and decided, for good reason in our view, that McKenzie Friends should not be regulated, but should instead form a widely recognised Trade Association. SPMF was designed to be that Trade Association. We currently have 23 members; our focus is to offer consumers a low-cost alternative to instructing a solicitor or barrister, while maintaining a degree of consumer protection in this unregulated field; that is why the subject of this study is close to our heart and we welcome this opportunity to contribute to it.

The issues set out in section 4 in the Statement of Scope

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?

In addition to will writing, employment law and commercial law, we would suggest a fourth case study: on family law. LASPO has impacted significantly on family proceedings, leading to large numbers of litigants in person, and it is in this field of law that McKenzie Friends principally work; there are a number of challenging issues, peculiar to this field of law which could usefully be explored in a case study; for example we recently participated in a workshop run by the Ministry of Justice on the subject of “Alleged perpetrators of abuse as litigants in person in private family law: Cross-examination of vulnerable witnesses”. Allowing McKenzie Friends to do such cross-examination is one answer; there may be others that would emerge from such a case study.

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

We take no view on this.

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?

There could and should be greater transparency of pricing among legal services providers. The absence of published pricing rates, or opaque published information on pricing,

requires the consumer to make initial contact with a provider in order to find out cost, and having done so, a consumer may then be drawn in and agree to paying a higher cost than they initially budgeted for. For this reason, consumers should be able to quickly and easily ascertain the approximate rate of charging of a provider before making that initial contact. [We list our members online](#) in a simple table, with key information about each member, including contact details, area of law, geographical area and hourly rate, to enable consumers to make quick and simple comparisons before deciding which to approach. We believe other sectors of legal services should do the same.

- 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?

Online advertising is our preferred method. However, our members find that most new business comes from recommendation and informal networking.

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

Yes, but such intermediaries play a relatively minor role. For those McKenzie Friends who work in family law (and most do work in family law), charitable and voluntary sector organisations are more significant as intermediaries.

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?

In deciding not to regulate McKenzie Friends, [the LSB](#) said this: “to do so (regulate McKenzie Friends) might drive such provision out of the market, and in any event, the basis on which this would be done is unclear given that many of the services are unreserved.” This seems to us the right decision and for the right reason. The essence of a McKenzie Friend service is that it offers a low-cost alternative for someone who cannot afford the services of a solicitor or barrister. Regulation would add cost to McKenzie Friend services and make them unaffordable for many of those who most need them.

Additional regulation drives up prices and as such, over-regulation is not in the consumer's interest. A balance must be struck. All of our members carry professional indemnity insurance as a condition of membership. We see this as critical to protecting the interests of consumers, and as a Society we see and retain a copy of the schedule of PII insurance for each member. It is this which provides greatest security and protection

for consumers, rather than additional regulation.

Our members are very much at the budget end of legal services provision, and we believe that additional regulation, unless there was a clearly proven need for it, would not be in the interests of those using our services.

- Are consumers aware of the existing redress mechanisms? Are they being pointed to redress mechanisms by providers when appropriate?

We publish details of the [standards customers can expect and a means of redress if those standards are not upheld](#).

- Are redress mechanisms effective in addressing consumers' complaints?

Our complaints system has only been operational for a year and so it's still early days. As yet we have not received any complaints. We are aware that an absence of complaints is not necessarily a good thing; it could, for example, indicate that the complaints system is poorly advertised or difficult to access, or that the consumer has no faith in the complaints process. We state [on the front page of our Society's website](#) that there is a complaints procedure and provide a link to it on that front page. The means of accessing it is simple: we invite any initial complaint by email without needing to follow any prescribed pro forma. As such, we believe that the absence of complaints so far indicates a general satisfaction with the services provided by our members, rather than indicating an inaccessible complaints procedure.

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?

Yes. See comment below.

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

A number of our members have previously worked as solicitors, and remain on the roll with the Law Society, but choose to practice as McKenzie Friends rather than as solicitors. The reasons for making this choice vary with each individual, but one factor which some cite is the high cost which regulation as a solicitor imposes and this cost must be passed on to the

consumer. Operating in the unregulated capacity of McKenzie Friend, but with the protections which SPMF offers to the consumer, strikes the right balance for some, who feel that as a McKenzie Friend they can offer the same professionalism and client care as they would do as a solicitor, but can do so at a cheaper cost to the consumer.

- 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?

ABS has not impacted on our work in SPMF.

- Have there been opportunities for more competition in particular legal service areas as a result of regulatory reform?

We believe that the research and report of the [Legal Services Consumer Panel](#), and [the qualified endorsement of McKenzie Friends by the Legal Services Board](#); has enabled McKenzie friends in general and our members in particular to compete more effectively .

Next Steps

We believe there are important steps for others to take in order to ensure that the Trade Association which we have formed takes on the role envisaged for it. When recommending that McKenzie Friends should form a recognised Trade Association ([recommendation 14 of the LSCP report](#)), the report said this:

“ 6.13 there may be scope to create incentives for self-regulation as part of the overall regulatory response. For example, if court forms completed by McKenzie friends included a question on membership of a recognised trade Association, judges could use this information to inform decisions on granting a right of audience.”

Such incentives for self-regulation envisaged by the report have not materialised as yet. We have taken the first step in setting up and establishing this Trade Association. It is now the turn of others within Legal Services and the Judiciary to provide incentives to join it.

Many Professional McKenzie Friends have not joined SPMF, and it is in the interests of consumers and the wider law industry that they do so. We believe that courts need to treat members of SPMF in some way which is tangibly different to non-members, such as that recommended at paragraph 6.13 – i.e. membership of SPMF (and any other trade Association which might form in future) should be a factor taken into account when deciding whether to grant a McKenzie Friend a right of audience.

The wider UK

We note the study will focus on the market in England and Wales, but that the CMA plans to use the outcome of this study to inform any future consideration of similar issues in Scotland and Northern Ireland.

It is unfortunate in our opinion that professional McKenzie Friends cannot operate in Scotland. While McKenzie Friends are permitted to charge fees for their services in England, Wales and Northern Ireland, they are not permitted to do so in Scotland. We understand that a McKenzie Friend may only charge expenses in Scotland, and not fees for their services, and that this rule even bites when someone employed by an advice agency wishes to attend a sheriff's court as a McKenzie Friend; if they are paid a salary for the time they are assisting the litigant, they are deemed to be fee charging and therefore may not assist as a McKenzie Friend. In our view, the impact of, and rationale behind, this rule in Scotland should be re-examined and consideration given to permitting fee charging McKenzie Friends to assist litigants in Scottish courts.

Raymond Barry

Chair, Society of Professional McKenzie Friends