

## **Summaries of certain responses from individuals to the statement of scope**

### **Legal services market study**

#### **Respondent 1**

1. The respondent raised two concerns:
  - (a) First, the respondent was concerned that some solicitors were charging a percentage fee based on the price of the property they did conveyance work for. The respondent noted that this practice was prohibited but not enforced by the law societies.
  - (b) Second, the respondent was concerned that some solicitors did not pass on the interest earned by client funds while it was held in a client account (the respondent noted that by law they could only retain the interest earned from client funds for the first week in which the funds were in the account).
2. The respondent claimed that law societies were not interested in considering the above as they represented the interests of solicitors who profited from the above practices.

#### **Respondent 2**

3. The respondent described various personal experiences (including examples in the areas of conveyancing and family law) where mistakes had been made by the legal service provider that they had used, and to highlight that members of the legal profession often failed to act in their client's best interests.

#### **Respondent 3**

4. The respondent claimed that various government policies had made it harder for an individual or small and medium-sized enterprises (SMEs) to bring claims against a bank, insurance company or similar large business or

organisation for a claim of between £10,000 and £250,000. The respondent noted that governmental policies that had had this impact included:

- the increase in the court issue fee; and
  - the removal of the rights for the winning party to recover the cost of a 'no win, no fee' success fee and any premiums paid for After-the-Event insurance from the losing party.
5. The respondent also noted that, for claims taken to the Financial Ombudsman Service, compensation awards were limited to £150,000, with any recommendation of a higher award by the Financial Ombudsman Service being non-binding on the defendant party. The respondent also noted that consumers could only bring claims in court to recover amounts covered by a Financial Ombudsman Service award.
6. The respondent claimed that the UK seemed to have a poorly developed Before-the-Event insurance market, as compared with other jurisdictions such as Germany; most Before-the-Event insurance was sold as an add-on to other policies and therefore tended to be cheap and of low quality.

#### **Respondent 4**

7. The respondent noted that in the area of conveyancing there was a lack of transparency around the fact that solicitors often paid large referral fees to estate agents or to an online provider. The respondent provided an example of how referral fees were presented.

#### **Respondent 5**

8. The respondent claimed that the Solicitors Regulation Authority regulatory regime disproportionately burdened sole practitioners. The respondent supported this claim by referencing personal experience on the basis of which they claimed that the regime had made it more difficult to provide cost effective legal services in the area of employment law to SMEs. The respondent currently worked for an umbrella firm that was regulated by the Solicitors Regulation Authority but would like to go into business as a sole practitioner. However, the respondent had been deterred from doing so due to the costs of compliance (such as the need for a sole practitioner to appoint a compliance officer), including the requirement to take out professional indemnity insurance.

## Respondent 6

9. The respondent claimed that the narrow scope of the Competition and Markets Authority's (CMA) market study would hamper the CMA's ability to resolve issues within the legal sector. In particular, the respondent noted that a number of issues within the sector derived from the increasingly complex state of the common law. First, it made it more difficult for practitioners to accurately advise their clients which in turn could make it more difficult for SMEs to fund litigation; and, second, it incentivised clients to opt to pay for legal services that may be of higher quality (and expense) than may be necessary. The respondent also separately claimed that governmental policies relating to court fees made it disproportionately harder for SMEs to assert their rights.

## Respondent 7

10. The respondent described the personal experience of dealing with a firm of solicitors. The respondent had been co-executor to a deceased relative's will, and had requested the firm to provide an estimate of the likely total costs for administering the will. The firm had stated that it would charge a percentage of the value of the deceased's estate, but had not specified the percentage that would be applied. The respondent had decided not to appoint the firm as its estimate of costs was too vague; however, the co-executor appointed the firm. The respondent claimed that the firm had used tactics of intimidation, such as the use of threats of litigation and refusing to return the will, to try and coerce the respondent into appointing the firm to administer the will. The respondent also noted that the firm had appeared to act in its own interests and in a manner intended to generate fees rather than to progress the probate process. The respondent had complained to the firm about its conduct. The firm had rejected the complaint as the respondent was not a client of the firm. The Solicitors Regulation Authority and the Law Society had rejected the complaint for the same reason. The respondent noted that one could not complain about a solicitor that one had not appointed, and that this should be addressed. In addition, the respondent considered that wills should be deposited with the Probate Office so that they could not be withheld by a particular solicitor.
11. The respondent also described that, after probate had been completed, the respondent's share under the relative's will had been held in trust by a different solicitor. The respondent noted that, when the solicitor had transferred the respondent's share to the respondent, the solicitor had withheld the large majority of the interest that may have been earned on that

share during the time it had been held in trust (based on a comparison with the going market rate).

## **Respondent 8**

12. As a barrister and solicitor who was also in the process of completing a doctorate in law firm accounting and finance, the respondent claimed that the fragmented nature of the supply side (consisting of over 10,000 tiny firms) precluded economies of scale and limited the possibility of professionalised management or external capital which in turn the respondent considered would improve firms' ability to provide adequate consumer protection. Therefore, the respondent claimed that the CMA should explore factors that inhibit law firm growth, such as the possible misalignment of incentives between solicitors and firms, and promote a regulatory regime which facilitates the merger of law firms.

## **Respondent 9**

13. The respondent was a practising solicitor in the area of probate, wills and inheritance tax, who hosted a radio show which allowed listeners to ask questions about those areas of law. The respondent noted that one of the aims of the show was to illustrate to the public that legal matters such as writing a will or probate services must be dealt with properly and that to look for a cheaper alternative to a solicitor was, in the respondent's opinion, 'penny wise and pound foolish'.

## **Respondent 10**

14. The respondent claimed that the insurance requirements of £2 million imposed by the Solicitors Regulation Authority and the Law Society were excessive and prohibitively expensive for someone looking to go into business as a sole practitioner. The respondent also claimed that the Solicitors Regulation Authority and Law Society forced solicitors to take out insurance from a restricted set of pre-approved insurers. The respondent considered that this practice prevented solicitors from seeking cheaper alternatives as most pre-approved insurers charged similar prices.

## **Respondent 11**

15. The respondent described instances that related to personal experience in which it was claimed that both lawyers and the courts had operated primarily for the purposes of generating fees. The respondent also claimed that courts impeded access to justice by functioning inefficiently, for instance by allowing

cases to run for unreasonably long durations. The respondent also questioned the independence of the legal profession from the government.

## **Respondent 12**

16. The respondent, who ran a company that provided due diligence reports for people moving home, raised concerns around potential misaligned incentives in the conveyancing sector between the interests of the conveyancer/solicitor and those of the client.
17. The respondent noted that many conveyancing solicitors did not offer – or make their clients aware of – due diligent reports. The respondent noted that this was true even in instances in which there were clear risks around the property in question. The respondent claimed that the reason conveyancing solicitors tended not to use due diligence reports was that their primary incentives were to appease the estate agents from whom they earned commission. The respondent considered that conveyancing solicitors would therefore avoid reports which may cause a transaction to collapse, even where that was in their client's best interest, because this would also cause them to lose their commission or lead to work no longer being referred to them (for example from an estate agent on whom they may rely for work). On the basis of these observations, the respondent concluded that the conveyancing market was no longer acting in the best interests of the consumer.