

Legal Services Market Study

Interim Report

8 July 2016

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1. Summary

- 1.1 On 13 January 2016, the Competition and Markets Authority (CMA) launched a market study into the provision of legal services in England and Wales. This document provides an update on the key issues we have considered so far, setting out our interim findings and emerging views on possible remedies.
- 1.2 Our interim findings are based on the information we have received to date from a wide range of interested parties, meetings with key stakeholders, our own survey of individual and small business consumers and our analysis of existing data and research.
- 1.3 The market study focuses on individuals' and small business consumers' experience of purchasing legal services in England and Wales.¹ The scope of our market study encompasses 'legal services' in a broad sense, including regulated and unregulated services across a range of different legal areas, such as conveyancing, wills and probate, immigration, family and employment law. Criminal legal services have been excluded from this market study because the issues that we are considering are less relevant to them.
- 1.4 We decided to limit this market study to the supply of legal services in England and Wales in light of both the differences in the regulatory frameworks in England and Wales, Scotland and Northern Ireland and the timings of regulatory reform in Scotland and Northern Ireland.
- 1.5 The UK legal services sector is large and diverse, with an annual turnover of around £11–£12 billion for the services within our scope.² Individuals and small businesses often use legal services providers (which, for the purposes of this report, includes both regulated and unregulated providers) at critical points in their lives. The advice they receive in these situations can have major personal and financial consequences.
- 1.6 Following a 2001 report into professional services³ by our predecessor body, the Office of Fair Trading (OFT), and the subsequent major review of the legal services regulatory framework by Sir David Clementi in 2004 (the Clementi Review), the legal services sector in England and Wales underwent significant regulatory change, implemented by the Legal Services Act 2007. In 2013, the OFT commissioned a report from Europe Economics⁴ that looked at

¹ For the purposes of this report, we refer collectively to individual consumers and small business consumers as 'consumers'.

² CMA estimate based on data from the Law Society and the CMA's consumer survey (used to estimate the size of the unregulated sector).

³ OFT (March 2001), [Competition in professions \(OFT328\)](#).

⁴ OFT (January 2013), [Economic Research into Regulatory Restrictions in the Legal Profession \(OFT1460\)](#).

regulatory restrictions in the legal services sector and reviewed the evolution of the sector in light of these reforms.

- 1.7 Our current work was prompted by a range of concerns raised by interested parties that the legal services sector may not be working as well as it should be, including concerns related to the affordability of legal services, the high proportion of consumers that were not seeking to purchase legal services when they had legal needs ('unmet demand') and the possibility that regulation might be dampening competition.
- 1.8 Most of these concerns can be linked to the fact that the legal services sector is characterised by incomplete or asymmetric information; in particular, that consumers are often unable to judge quality before (or after) they choose to buy a legal service. Information asymmetries can give rise to consumer protection issues, which provide the rationale for sector-specific regulation.
- 1.9 Information also plays a direct role in driving competition, as consumers need to have access to accurate information on price and quality in order to make informed purchasing decisions. If this competitive process works well, it can lead, for example, to lower prices, higher quality, and greater innovation.
- 1.10 Competition is particularly relevant in the legal services sector, given the concerns about unmet demand. Some unmet demand can arise for reasons that would arise in a well-functioning market,⁵ for example if consumers can handle the issues themselves, but in other cases it may be because of a lack of low cost alternatives for the provision of advice for certain legal services. As noted by the Clementi Review, 'high quality legal services are important to society, but of limited value if available only to the very rich or those paid for by the state'.⁶ A lack of information may also contribute to unmet demand directly if consumers do not have the relevant information to identify their legal needs or legal service providers who can assist with their needs. Unmet demand may also arise if consumers lack trust in providers because of consumer protection concerns.
- 1.11 In our work so far we have focused on three issues: the role of information in driving competition, the role of regulation in protecting consumers and the potential for regulation to restrict competition.

⁵ Even in a competitive market, there will be some consumers who are only willing to pay an amount below the market price and who therefore choose not to purchase.

⁶ Sir David Clementi (December 2004), [Review of the regulatory framework for legal services in England and Wales](#).

Interim findings

- 1.12 Overall, we have found that legal services markets are not functioning as well as they might. In particular, we believe that a lack of transparency of price and service make it harder for consumers to compare providers and identify value for money. It may also allow providers to negotiate prices on an individual basis rather than committing to standard prices.⁷ Both of these effects undermine competition, reducing the incentives for providers to compete on price, quality and innovation. In addition, a lack of information about providers and available prices contributes to consumers not seeking legal advice when faced with a legal issue.⁸ While it is difficult to measure the level of consumer detriment arising from these issues across the legal services markets as a whole, the large difference between prices for the same service identified in Legal Services Board (LSB) pricing research⁹ indicates that the potential gains from greater competition may be substantial.

Competition

- 1.13 Legal services markets, particularly those involving the provision of services to individual consumers and small businesses, are typically characterised by local competition.¹⁰ Despite the large numbers of providers in these local markets, our preliminary view is that a lack of transparent information is limiting the ability of consumers to drive effective competition.
- 1.14 Fixed fees appear to be more prevalent than used to be the case and are predominant in the higher volume, more commoditised areas of law.¹¹ Fixed fees give consumers greater certainty over total cost and are easier to compare than more complex pricing structures or hourly billing.
- 1.15 However, the effectiveness of fixed fees in driving competition is limited if there is limited price transparency when consumers are searching for providers. We found there to be considerable scope for providers to improve the transparency of pricing, particularly online. Only 17% of firms in the LSB

⁷ Individual negotiation can lead to good consumer outcomes where consumers are sophisticated and able to bargain effectively. However, this is unlikely to be the case for the majority of consumers of legal services, who have limited previous experience and do not review what competing offers are available.

⁸ Ipsos MORI (2016), [Online survey of individuals' handling of legal issues in England and Wales 2015](#), commissioned by the LSB and the Law Society.

⁹ OMB Research (2016), [Prices of Individual Consumer Legal Services: Research Report](#), commissioned by the LSB, p3.

¹⁰ LSB (2016), Evaluation: Changes in the legal services market 2006/07 - 2014/15, p134.

¹¹ A fixed fee sets the full amount that needs to be paid for the service in question. According to the Legal Services Consumer Panel's (LSCP) 2015 Consumer Tracker data, 46% of consumers had had their costs calculated as a fixed fee, up from 38% in 2012. See also Ipsos MORI (2016), [Online survey of individuals' handling of legal issues in England and Wales 2015](#), commissioned by the LSB and the Law Society.

price research advertised their prices online.¹² This lack of transparency is also reflected in the fact that, according to our survey, few consumers use the internet to search for providers. A tendency for providers to price on a case-by-case basis may reduce the competitive constraint arising from the minority of consumers who do search on the prices faced by the majority of consumers who do not search.

- 1.16 The LSB research also indicates a very substantial degree of price dispersion, ie a large difference between prices charged by providers for the same service, which suggests limited price competition. This is consistent with the result from our consumer survey that only 22% of individual consumers had compared two or more providers before choosing a provider for their most recent legal issue. Our qualitative research suggests that this figure is even lower for small businesses.
- 1.17 There are inherent difficulties in signalling quality directly in the legal service sector, where quality is largely unobservable before purchase. We found that most consumers rely on previous experience or recommendation from peers, friends or family to assess quality. This is unlikely to drive effective competition and may make it more difficult for new providers to compete. Mechanisms for signalling quality indirectly through reputation, either through consumer feedback or through developing brands, are currently not widely used in this sector.
- 1.18 In contrast to other service markets, digital comparison tools (DCTs) are not currently widely used in legal services. Some of the DCTs that are attempting to operate in the legal services sector have submitted that many legal service providers do not see transparency in pricing or consumer feedback as in their best interest.
- 1.19 We have found a number of examples of innovation in the provision of legal services, including online service delivery, unbundling of services and the introduction of automation into certain areas. These examples are being introduced both by Alternative Business Structures (ABSs) and also by other regulated and unregulated providers. However, the overall rate of innovation does not appear fast compared to the rates of innovation in other sectors,¹³ particularly in the provision of legal services within our scope. We believe that competition is not providing strong incentives for providers to adopt innovation quickly.

¹² OMB Research (2016), [Prices of Individual Consumer Legal Services: Research Report](#), commissioned by the LSB, p3.

¹³ Enterprise Research Centre (2015), [Innovation in legal services](#), commissioned by the Legal Service Board.

- 1.20 Similarly, while there do not appear to be significant barriers to consolidation or expansion to develop brands and take advantage of economies of scale, the provision of legal services within our scope remains very fragmented. This contrasts with the reported higher levels of consolidation in the larger corporate and ‘mid-market’ segments of the legal services sector. These initial findings are based predominantly on high volume areas of law, which tend to be more commoditised. For more complex areas of law, we recognise that services are necessarily more bespoke and comparable simple pricing structures may be inherently more difficult to implement. Nevertheless, we note that fixed pricing exists even within some of the more complex areas looked at by the LSB pricing research.

Consumer protection

- 1.21 Based on our discussions with stakeholders and our review of complaints data, we have focused on three key issues in relation to consumer protection.
- 1.22 First, we have considered concerns that consumers are unaware of the differences in consumer protection between regulated and unregulated providers and may, as a result, be exposed to consumer protection risks when using unregulated providers. Evidence from consumer surveys, including our qualitative studies, shows that the majority of consumers are not aware of the regulatory status of their provider or what this implies for consumer protection.¹⁴ Most assume that all providers of legal services would be regulated.
- 1.23 However, to date we have not found that consumers are exposed to material risks as a result of a lack of knowledge or understanding of differences between regulated and unregulated providers. This is for several reasons. The limited evidence that we have seen so far does not suggest that the quality of services carried out by unregulated providers is lower than that of regulated providers.¹⁵ We also note that, at least in will writing, many unregulated providers are members of self-regulatory bodies with certain consumer protection mechanisms in place. While there may be differences between the consumer protection afforded by regulated and unregulated providers, particularly in the availability of redress, it is not clear how material

¹⁴ While in our quantitative study of individual consumers, 73% were confident that their legal service provider had explained whether the service was regulated or not, this was not replicated in the in-depth qualitative interviews.

¹⁵ In particular, evidence from a shadow shopping exercise into will writing commissioned by the LSB showed no significant difference in quality between regulated solicitors and self-regulated/unregulated specialist will writers. We note, however, the low sample size of this exercise. IFF Research (2011), Research report: [Understanding the consumer experience of will writing services](#), prepared for LSB, LSCP, OFT and SRA.

an issue this is in practice. Finally, we note that unregulated providers only account for a small share of legal services markets.¹⁶

- 1.24 Second, according to data from the Legal Ombudsman (LeO) and certain regulators, a lack of clarity around the provision of key information by legal service providers such as information about fees is one of the key sources of complaints and dissatisfaction. We consider that more consumers should be provided with clear information on costs when they engage their legal services provider. In addition, several stakeholders have mentioned that the ‘client care letter’, given by the provider to the client at the start of the engagement, could be drafted more clearly and concisely.
- 1.25 Third, we have not found strong evidence that consumers are being significantly harmed by a lack of clarity around redress mechanisms. In our survey, the majority of respondents were confident that their legal services provider had explained how to complain should they be dissatisfied with the service provided, and in practice we found that around 25% of dissatisfied consumers went on to complain. In addition, we have not found evidence that confusion about where to complain is a significant issue, in part because consumers will often be redirected if they initially complain to the wrong body. While there do not appear to be significant problems, we consider that clarity around redress mechanisms as well as the handling of some complaints could be improved.

Regulation

- 1.26 We have considered the potential for regulation to adversely affect competition in several ways: by creating unnecessary or disproportionate costs that are then passed on to consumers; by creating barriers to entry, expansion or innovation; and by distorting competition between regulated and unregulated providers. In doing so we have focused primarily on the regulatory rules applying to legal services providers rather the regulatory structure, in light of the government’s proposed consultation on regulatory independence.
- 1.27 Legal service providers are subject to a complex set of sector-specific regulations. They must be authorised to carry out specific reserved activities. However, for some regulated providers, in particular solicitors, once they are authorised to provide reserved activities, regulation applies to all of their activities, regardless of risk. This creates the potential for disproportionate regulatory costs, particularly for lower-risk activities. By contrast, unregulated

¹⁶ Economic Insight (2016), [Unregulated legal service providers: understanding supply side characteristics](#), prepared for the Legal Service Board.

providers that do not carry out reserved activities are subject to general consumer law and do not face sector-specific regulation.

- 1.28 Stakeholders generally agreed that some regulations may be disproportionate to the consumer protection benefits they achieve. However, we found limited evidence that the costs of regulation actually create significant barriers to entry. A report commissioned by the LSB and the Law Society of England and Wales (the Law Society) estimated the annual rate of entry and exit to be approximately 10% for Solicitors Regulation Authority (SRA) regulated firms. This rate of entry is consistent with the average rate across the economy.¹⁷ Nonetheless, we are concerned that regulatory costs may be excessive, may be passed through to consumers in terms of higher prices, and may discourage currently unregulated providers from becoming regulated.
- 1.29 The existence of reserved activities may have an impact on competition by only allowing providers to practise those activities if they meet regulatory requirements. However, they may be justified for consumer protection reasons. Furthermore, most of these reserved activities seem to be narrowly defined,¹⁸ and the majority of legal service provision falls outside the reserved areas.¹⁹ In addition, we have heard that unregulated providers can to a certain extent ‘work around’ the reserved activities by providing associated services that are not reserved and ‘outsourcing’ the reserved element to a regulated provider or to the consumer.²⁰
- 1.30 We note that unregulated providers have only had limited success so far in winning market share from regulated providers. Our preliminary view is that the main barrier to greater use of unregulated providers currently arises from a lack of consumer awareness rather than a lack of trust in unregulated providers. Regulated providers have historically held, and continue to hold, a very large overall share of the legal services market. Since consumers predominantly rely on recommendations from others or their own previous experience, it is likely to take a long time for new types of provider to become established in the market. However, it is possible that a lack of trust might

¹⁷ RPI (2013) [Understanding barriers to entry, exit and changes to the structure of regulated legal firms](#), commissioned by the LSB and the Law Society.

¹⁸ Most reserved activities either describe a specific type of identifiable activity which is narrow in itself and/or they relate to subsets of the overall legal activities forming part of a particular service, eg probate is a small part of estate administration.

¹⁹ Under the Legal Services Act 2007, the ‘reserved legal activities’ constitute a subset of ‘legal activities’. For example, the provision of general legal advice is a legal activity, but not a reserved legal activity. The six reserved legal activities are: the exercise of a right of audience; the conduct of litigation; reserved instrument activities (conveyancing); probate activities; notarial activities; and the administration of oaths.

²⁰ For example, accountants have historically been able to provide estate administration services while outsourcing the probate to a solicitor (although it is now possible for accountants to become regulated providers of probate too).

emerge as more of an issue were awareness of alternative providers to increase.

- 1.31 While we have focused primarily on regulatory rules rather than the institutional structure of the regulators, we note that the structure is complex, with nine²¹ arms-length regulators overseen by the LSB. We have not seen clear evidence that this framework significantly impedes competition in the current market. We note, however, that there has been a trend towards consolidation of regulators in other sectors.²² Reducing the number of regulators has the potential to reduce costs, improve regulatory independence, avoid duplication of regulation and allow the remaining regulator(s) to encourage competition and move to a more risk-based approach across legal services as a whole. On the other hand, some stakeholders have pointed out the potential for such a change to lead to loss of expertise in specific areas and to higher regulatory costs being placed on lower-risk providers.

Remedies

- 1.32 Taken together, the initial findings set out above suggest to us that it is predominantly a lack of information that is currently restricting competition. In order to stimulate competition in the current market, which is of primary importance in addressing concerns about affordability and unmet demand, we believe that the priority is to change supplier behaviour in order to address the lack of transparency over price and quality. Nevertheless, we recognise that regulatory reform might helpfully complement reforms to improve transparency and competition. We have identified some potential incremental changes to the current regulatory framework and at this stage we are open to the possibility that a move to an alternative regulatory model might lead to benefits.
- 1.33 At this stage we have identified the likely nature and scope of possible remedies. We are inviting views to help us develop detailed remedy proposals.

²¹ There are two additional regulators: the Institute of Chartered Accountants of Scotland and the Association of Chartered Certified Accountants, which we consider to fall outside the scope of this market study; the former for geographical reasons (see paragraph 1.4 above) and the latter because it is not currently in operation as a regulator in this sector.

²² For example, Ofcom was formed in 2003 from five regulators, and the Financial Services Authority combined 11 previously separate regulators.

1.34 The possible remedies we are considering to enhance transparency fall into three categories:

- Improving transparency of price and service quality before a consumer chooses a legal service provider. We want to drive changes to supplier behaviour as this will help consumers to compare prices and quality (to the extent possible) before engaging a provider. There is a range of possible options from obliging providers to publish their prices in a suitable common form to providing guidance for those providers on best practice principles for transparency. In addition, we are also exploring options on improving transparency on service quality, for example, through the publication of consumer feedback and complaints data. Such improvements might be implemented by the LSB and frontline regulators or by industry bodies.
- Improving transparency of price and service quality after consumers have engaged a legal service provider. These remedies would be aimed at changing supplier behaviour in order to improve consumers' visibility of the total cost of the legal service they have sought and at reducing the level of dissatisfaction and complaints arising from unexpected costs and charges or poor ongoing communication by legal service providers. These remedies might be implemented through revisions to the client care letter and would take into account the work that is ongoing in that respect.
- Improving information on legal service providers. We are seeking ways to improve consumers' awareness of factors such as the different types of legal service provider, the differences between regulated and unregulated providers and how to make a complaint. The likely focus of these remedies would be to create better signposting and linkages between existing online information.

1.35 Our initial view is that changes to the regulatory framework are unlikely to be effective in generating greater competition unless the issues with transparency are also addressed. However, we have identified various changes to the existing regulatory framework for further consideration. In particular, we believe that regulation should be proportionate and risk based. We support the work that is being done to reduce the asymmetries in costs between regulated and unregulated provider and have identified various potential changes to the existing regulatory framework:

- Reducing the regulatory burden on regulated providers in areas where it is not justified by consumer protection risk. We recognise and support the work currently being undertaken by the regulators in exploring ways to reduce the costs relating to professional indemnity insurance (PII),

training and codes of conduct, and realigning regulation with risk. We also support the principle of regulation that is focused on outcomes rather than rules, though we recognise that there are some circumstances where more prescriptive rules may be more effective.

- Considering the case for extending regulation to specific unregulated activities but only where there is clear evidence of detriment to consumers.

- 1.36 While our current focus is on incremental changes to the existing regulatory framework, we are open to the possibility that moving to an alternative regulatory model may generate longer term benefits to competition. We recognise that the emphasis on regulatory titles within the current regulatory framework may contribute indirectly to the lack of consumer awareness of legal service providers other than solicitors. It is therefore possible that an alternative regulatory model may improve competition if it is successful in reducing the emphasis on regulatory titles.
- 1.37 However, we also see risks with a wholesale change to a regulatory framework. There is a risk of harming competition, for example, if such a change results in extending, rather than reducing, the scope of regulation beyond the currently reserved activities without justification. It is likely that wholesale reform would result in significant design and transition costs and a period of regulatory uncertainty. Finally, as we have discussed above, there may be scope for further ensuring that regulation is proportionate and risk based within the current framework.
- 1.38 We consider that there may be merit in a systematic review of which legal services or activities should be regulated and how, focusing on identifying where regulation is required because of consumer protection risks. This would inform both whether wholesale change to the regulatory framework was required and how regulation could be changed within the current framework.
- 1.39 Finally, we are mindful of the fact that the government is planning to carry out its own consultation on regulatory independence of the regulators. At this stage we have not carried out detailed analysis on regulatory independence or the multiplicity of regulators. We consider that a key principle should be to ensure full independence of the regulator from the providers it regulates. We also note that reducing the number of regulators is linked to the question of regulatory independence and may result in benefits as described above.
- 1.40 We do not judge it necessary to make a market investigation reference in this case. We are well placed to identify effective remedies in a timely way through this market study to address the issues that we have identified. We propose to

deliver these remedies by engaging actively with government, the regulators and industry bodies to put in place the improvements to transparency that will make a real difference to how these markets work and to adapt the regulatory framework as necessary.

2. Introduction

2.1 On 13 January 2016, the CMA launched a market study into legal services in England and Wales to examine whether they are working well for consumers.

2.2 We decided to conduct this market study in light of various concerns raised by interested parties:

- Perceptions in the sector, supported by market research, that there is ‘unmet’ demand for legal services (ie that consumers may not be seeking to purchase legal services when they have legal needs)²³ as well as concerns around the affordability²⁴ of legal services.²⁵
- Concerns about service standards offered by both regulated and unregulated providers of legal services.²⁶
- Concerns about the complexity of the current regulatory framework that were identified by the Ministry of Justice (MOJ) in its call for evidence in 2013/14 as part of the ‘red-tape challenge’.
- Concerns about specific regulatory rules aimed at provider conduct and market entry that might be dampening competition.
- Continued relatively low levels of consumer empowerment in the sector (as identified in the Legal Services Consumer Panel’s Impact Reports²⁷).

²³ According to research recently commissioned by the LSB, over a three-year period about half of citizens experienced at least one legal problem, but one in three did not get the legal help they needed. Also, 54% of small and medium-sized enterprises (SMEs) see law as very important for doing business, but fewer than 20% seek legal advice when they have a problem. (See Pleasence & Balmer (2014), *How People Resolve ‘Legal’ Problems* and Pleasence & Balmer (2014), *In Need of Advice? Findings of a Small Business Legal Needs Benchmarking Survey*).

²⁴ For example, the major reason for the increase in people representing themselves in court proceedings involving family law matters has been identified as the inability to afford a lawyer. See Ministry of Justice Analytical Series (2014), *Litigants in person in private family law cases*, pp12–15. In addition, according to the LSCP, around one in five legal services transactions involves some form of unbundling (where the client undertakes some of the work rather than the lawyer). These transactions may be unbundled to enable people to afford a lawyer. See Ipsos MORI on behalf of LSB and LSCP (August 2015), *Qualitative research exploring experiences and perceptions of unbundled legal services*, pp20–21.

²⁵ These concerns do not necessarily imply that competition is not working effectively. In almost any market there will be some consumers whose willingness to pay is below the market price, and who therefore choose not to purchase. Our focus in this investigation is on whether any features of the legal services market contribute to the concerns around affordability and unmet demand, for example by allowing providers to charge higher prices, provide lower levels of quality, or restrict the supply of legal services to consumers compared with a well-functioning market. We are not considering wider issues relating to affordability and access to legal services, such as whether the current provisions for legal aid are appropriate and whether there is a case for subsidising the costs of legal services for certain groups.

²⁶ As seen in the LeO’s recent reports on complaints relating to claims management companies (LeO (2015), *Complaints in focus: Claims management companies*) and will writing (LeO (2015), *Complaints in focus: Wills and probate*).

²⁷ See, for instance, LSCP (2014), *Consumer Impact Report 2014*.

- Concerns about how effective the redress mechanisms for legal services are and whether there are gaps in the current redress framework.

2.3 In addition, a report commissioned by our predecessor body, the OFT in 2013 indicated that the effect of ABS²⁸ entry into the sector might be reviewed once numbers grew.²⁹

The scope of this market study

2.4 This market study focuses on individuals' and small business consumers'³⁰ experience of purchasing³¹ legal services in England and Wales.

2.5 We have decided to limit our market study to the supply of legal services in England and Wales due to the differences in the regulatory frameworks that operate in each of the three jurisdictions and given the timings of regulatory reform in Scotland and Northern Ireland.

2.6 The scope of our market study encompasses 'legal services' in a broad sense. This means that it covers services that are 'reserved',³² regulated and unregulated across a range of different legal areas, including conveyancing, wills and probate, immigration, family and employment law. However, criminal legal services have been excluded from this market study. This is because, on the basis of our research, we found there to be factors that distinguish the supply of criminal legal services from the supply of legal services in the areas of civil law such that the themes that we are considering in this market study do not apply to those services to the same extent.³³

²⁸ The ABS structure allows lawyers and non-lawyers to offer services covering multiple disciplines (these ABSs are called Multi-Disciplinary Practices). In addition, the ABS structure allows non-lawyer ownership and for non-lawyers to be managers. The Legal Services Act 2007 gave the LSB powers to authorise the approved regulators to issue licences for the operation of an ABS. The first ABSs were authorised in 2011. The LSA07 also allowed Legal Disciplinary Practices (LDPs) where solicitors can co-own and manage firms with other legal professionals and with up to 25% non-lawyer ownership. The first LDPs were authorised in 2009. However, after the introduction of the ABS regulations, existing LDPs became subject to a transitional regime and ultimately will have to become ABSs.

²⁹ Europe Economics on behalf of the OFT (2013), [Economic Research into Regulatory Restrictions in the Legal Profession](#) (OFT1460).

³⁰ In particular, small businesses with up to ten employees.

³¹ We note that some legal services are provided for free (see further paragraphs 3.35-3.37 below). However, the focus of our market study is on paid for legal services.

³² This term is explained in paragraph 3.15 below.

³³ In particular, in criminal legal services, there are certain prescribed processes in place that guarantee advice and representation for defendants in criminal proceedings. Furthermore, the degree of legal aid provision available for criminal as opposed to civil legal services following recent reforms, means that some of the issues that we are considering do not have the same relevance to criminal law services.

2.7 This market study is examining the following issues:³⁴

- **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.
- **Theme 2** – Whether information failures result in consumer protection issues that are not being adequately addressed through existing regulations and/or redress mechanisms.
- **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.

2.8 We are also carrying out ‘case studies’ into the following legal areas in order to enable us to conduct a more detailed examination of these issues:

- Will writing and probate services to individuals.
- Employment law services to individuals and small businesses.
- Commercial law services to small businesses.

Purpose of this document

2.9 The purpose of this document is to provide an update on:

- our work to date;
- our interim findings; and
- our emerging views on possible remedies to improve how the market works.

2.10 Interested parties are invited to comment on the interim findings and possible remedies **by no later than 19 August**.³⁵

³⁴ See the market study [statement of scope](#).

³⁵ For the avoidance of doubt, we are not inviting comments on whether to make a market investigation reference (MIR). We did not receive any requests from interested parties to make a MIR and have taken a decision not to make a MIR. As such, in accordance with section 131B of the Enterprise Act 2002, there is no duty to consult on whether to make a MIR.

2.11 We consider there to be reasonable grounds for suspecting that features³⁶ of this market, including information asymmetries between suppliers and consumers and a lack of transparency, prevent, restrict or distort competition.³⁷ We have decided not to exercise the CMA's discretion to make a market investigation reference (MIR) in this case. We consider that, through the use of our other powers, we are well placed to identify effective remedies in a timely way in the course of this market study to address the issues that we have identified. We propose to deliver these remedies by engaging actively with government, the regulators and industry bodies to put in place the improvements to transparency that will make a real difference to how these markets work and to adapt the regulatory framework as necessary.

Progress to date

2.12 The interim findings of this market study, as summarised in this document, are based in part on the information we have received to date from a wide range of interested parties in response to the statement of scope published on 13 January 2016.

2.13 In addition, we have gathered evidence through the following methods:

- Drawing together and evaluating existing research, reports, surveys and databases on the supply of legal services to consumers.
- Commissioning our own survey of individual and small business consumers³⁸ to supplement existing research, in order to understand better the purchasing experiences of those consumers. That survey comprises two strands, which are:
 - a quantitative consumer survey of 750 individual consumers combined with some qualitative interviews; and
 - 100 qualitative interviews with micro and small businesses.
- Meeting key interested parties including the oversight regulator the LSB, the key approved regulators and representative bodies, self-regulatory bodies, the LeO, government bodies, trade associations and providers of legal services (for a full list of the parties we have met, see Appendix E).

³⁶ See [Market investigation references](#) (OFT511), as adopted by the CMA Board. See also [OFT511](#), paragraph 2.1; and [Market Studies and Market Investigations: Supplemental guidance on the CMA's approach](#) (CMA3).

³⁷ Section 131 of the Enterprise Act 2002.

³⁸ See market study [Case page](#)

- Analysing responses to supplementary information requests to key parties.
- Conducting in-depth case studies on the three legal areas set out in paragraph 2.8 above.

Next steps

2.14 This market study is still ongoing. The statutory deadline for completing this market study is 12 January 2017.

2.15 Following publication of the interim report, we will continue to engage with stakeholders through:

- inviting submissions in response to our interim report;
- holding roundtables to discuss our interim findings and emerging views on possible remedies; and
- holding bilateral meetings with key interested parties to discuss our interim findings and emerging views on possible remedies.

2.16 We will carry out the following work in preparation for publication of our final report:

- Completing the analysis of our case studies, involving further desk research and engagement with key stakeholders.
- Building on the submissions in response to our interim report and the further stakeholder engagement referred to above, we will:
 - refine our analysis of the key issues and develop our findings; and
 - design a set of remedies by building on the possible remedies outlined in this report.

Interim report structure

2.17 This interim report is structured as follows:

- Chapter 3 provides an overview of the legal services sector.
- Chapter 4 assesses the role of information in driving competition.
- Chapter 5 assesses the effectiveness of consumer protection regulation.

- Chapter 6 assesses the impact of regulation on competition.
 - Chapter 7 identifies possible remedies.
- 2.18 This interim report also contains a brief appendix on each of our three case studies (wills and probate, employment, and commercial law). Although the case studies are ongoing, evidence from the case studies that relates directly to the three themes that we have been exploring has been incorporated in the relevant chapters of the interim report.
- 2.19 In addition, this interim report also contains the following appendices:
- Appendix A: Wills and probate services case study.
 - Appendix B: Employment law services case study.
 - Appendix C: Commercial law services case study.
 - Appendix D: Overview of standards required of providers by regulatory status.
 - Appendix E: Stakeholder engagement.

3. Overview of the legal services sector

- 3.1 This chapter provides an overview of the legal services sector in England and Wales in order to provide context for our assessment of competition and consumer protection issues in subsequent sections.

Characteristics of the legal services sector

- 3.2 Legal services are of public importance. Individuals and small businesses often use legal services providers at critical moments in their lives. The advice they receive in these situations can have major personal and financial consequences, which it may not be possible to reverse or remedy, and this distinguishes legal services from other services that are purchased by consumers.³⁹ For example, an individual may face deportation as a result of receiving poor quality advice in relation to an immigration law issue. From a business perspective, if a business fails to obtain a patent for a new product as a result of receiving poor quality advice, the income that the business can generate from that product will be drastically reduced.
- 3.3 In addition, legal services are an essential input for the economy as a whole and an important foundation of society.
- 3.4 A well-functioning market, where consumers have a choice of providers that offer services of a suitable quality and where the services offered represent value for money, is particularly important where the products or services are critical to consumers, the economy and society. There are certain key characteristics of the legal services sector, some of which can lead to market failures, which underpin the regulation of legal services:
- **Asymmetry of information** – legal services providers require expert knowledge and skills which consumers of legal services typically do not hold.⁴⁰ As such, consumers may be unable to judge the quality of the service provided.⁴¹ This asymmetry of information between the consumer and the legal services provider can sometimes create incentives for providers either to ‘gold-plate’ (in order to charge a higher price) or to cut

³⁹ LSCP (2010), [Quality in Legal Services](#), paragraph 3.27.

⁴⁰ In certain circumstances, information asymmetry may also extend to the provider of legal services such as when the provider is unable to obtain the relevant case facts from the client.

⁴¹ For example, consumers are likely to be unable to judge the quality of legal advice, although they may be able to judge the quality of service provided (eg whether they were kept sufficiently up-to-date about progress by their lawyer). In some cases, it may be possible for consumers to judge the quality of the legal service provided once it has been purchased (an ‘experience good’) but in other cases it may not be possible to judge quality even after its provision (a ‘credence good’).

corners in quality (in order to appear competitive on price) which can give rise to significant consumer protection issues.⁴²

- **Broader negative impacts** – the consequences of poor quality legal advice can significantly affect the consumers who purchase those legal services but also unrelated third parties, who may not have an influence over which legal services provider is selected.⁴³ For instance, a child may suffer as a result of incompetent advocacy in the context of a family dispute or the intended beneficiaries of a will if it is poorly drafted. Other negative impacts may arise from the poor representation of clients by lawyers, which may lessen the efficiency and effectiveness of the justice system.

3.5 In addition, wider public interest issues are commonly regarded as justifying specific regulations within the legal services sector. These considerations include a fundamental public interest in supporting the rule of law; protecting the legal rights of individuals; enshrining the independence of the legal profession; and ensuring access to justice so that individuals may participate equally in society.⁴⁴

3.6 There are inherent characteristics of legal services which relate to the demand side (ie to consumers' experience of such services) and the supply side (ie the behaviour of suppliers). These characteristics may prevent consumers from obtaining good outcomes, and are not typically addressed by regulations:

- 'Legal' issues are not always clearly defined. Consumers may not always be able to identify that they have a 'legal' problem, and may sometimes either ignore the issue or try to handle the matter on their own (for instance through their own research or by seeking informal advice from a contact), rather than seek the advice of a legal services provider.
- Asymmetry of information – as set out above, consumers may be unable to judge the quality of legal services upfront, and may therefore face difficulties choosing a provider that meets their needs on the basis of quality (see Chapter 4 for further details).

⁴² This is referred to as the 'moral hazard' problem.

⁴³ This is referred to as a 'negative externality'.

⁴⁴ These may be alternatively characterised as 'positive externalities' or the provision of 'public goods'. See Van den Bergh, R (2008), [Towards Better Regulation of the Legal Professions in the European Union](#), Rotterdam Institute of Law and Economics (RILE) Working Paper Series, p5.

- Signalling the quality of service that consumers can expect to receive from a particular service provider can be inherently difficult in this sector.
- Consumers tend to purchase legal services infrequently, or on a one-off rather than repeated basis. They may therefore have a limited frame of reference from which to choose a legal service provider that meets their needs (both in terms of quality and price). Consequently, it is particularly important that they seek information that helps them to make informed purchasing decisions.
- Time-pressure and distress – legal services may also be distress purchases (for example due to an urgent need or because the situation may be upsetting, such as in the case of obtaining probate). Consumers, many of whom may be able to make sophisticated choices in other circumstances, may therefore find it more difficult to seek or consider alternative offers available in the market and their choice of offers and suppliers may be limited.
- Advertising of prices is possible in relation to certain legal services but may not always be possible in all cases (especially where the price depends on the facts of the case/are prone to change due to external factors as, for example, in complex litigation).

Regulation and regulatory framework

- 3.7 The following section summarises the regulatory framework for legal services. In addition to the baseline consumer protection regulations that apply to all businesses and service providers (for example, prohibitions on high pressure selling and misleading advertising) and that are described in more detail below, certain rules apply specifically to legal services to safeguard the interest of consumers of legal services.
- 3.8 These rules are a hybrid of activity and title based regulation. They specify that legal service providers cannot carry out specific reserved activities unless they are authorised by an approved regulator under the Legal Services Act 2007.⁴⁵ Most of these reserved activities seem to be narrowly defined and the majority of legal service provision is not captured by the reserved activities. However, for the majority of legal service providers authorised to provide reserved activities, regulation then applies to all of their activities regardless of risk. Unregulated providers, who are not authorised to carry out reserved

⁴⁵ The process of authorisation by approved regulators is explained further in paragraph 3.16 below.

activities, are subject to general consumer law and do not face sector-specific regulation.

Baseline consumer protection regulation

3.9 As set out above, there is a baseline level of consumer protection afforded to all individual consumers, which protects them from certain unfair sales practices and requires that the provision of goods and services meets certain minimum requirements:

- The relevant consumer protection framework includes the Consumer Rights Act 2015 (CRA), which consolidated and enhanced the pre-existing business to consumer legislation, as well as the Consumer Protection from Unfair Trading Regulations 2008 and the Consumer Protection (Distance Selling) Regulations 1999. Under the CRA, providers of services need to do the following:
 - Perform the service with reasonable care and skill.
 - Where information is said or written about the provider or the service to the consumer (by or on behalf of the trader), then it should be binding where the consumer relies on it.
 - Provide the services for a reasonable price, where the price is not agreed beforehand.
 - Carry out the service in a reasonable time.
- In any case where the service does not satisfy any of the criteria set out above, then the consumer may be entitled to the remedies provided for by the CRA. These include the right to require repeat performance and, if impossible or if the provider fails to remedy the fault, then the individual consumer has the right to a price reduction.

3.10 Business consumers also receive a certain level of protection under consumer protection legislation, but not to the same extent as individual consumers.⁴⁶ This reflects the fact that businesses are more capable of judging the potential risks associated with purchasing goods and services, although we note the concerns that have been raised that this may not always be the case for smaller businesses such as micro businesses.⁴⁷

⁴⁶ See Supply of Goods (Implied Terms) Act 1973, the Unfair Contract Terms Act 1977, the Sale of Goods Act 1979 and the Business Protection from Misleading Marketing Regulations 2008.

⁴⁷ See CCP (2014), [Small Business as Consumers: Are they sufficient well protected?](#), p3.

3.11 Further, both individual and business consumers can claim common law remedies for breach of contract such as damages or a right to terminate the relevant contract.

Sector specific regulation

3.12 Following a 2001 report into professional services⁴⁸ by our predecessor body, the OFT, and the subsequent major Clementi Review in 2004, the legal services sector in England and Wales underwent significant regulatory change, implemented by the Legal Services Act 2007.

3.13 The Legal Services Act 2007 introduced a range of reforms designed to address previous concerns about the legal services sector in England and Wales. In particular, these changes placed greater emphasis on meeting the needs of consumers than had previously been the case.⁴⁹ The most notable changes included the following:

- The creation of an independent legal services oversight regulator, the LSB, which brought an end to the complete self-regulation of the legal profession.
- An obligation on ‘approved regulators’⁵⁰ (such as the Law Society) to establish functionally separate regulatory arms (such as the SRA as established by the Law Society). In addition, regulators now have lay majorities on their boards and lay Chairs.
- The introduction of eight regulatory objectives, including those of promoting competition and protecting and promoting the interests of consumers, which the LSB is under a duty to promote in discharging its functions.
- The creation of an independent body for handling complaints about ‘regulated’ legal service providers from consumers (now LeO).
- Reforms that allowed for the possibility of non-lawyers owning or managing firms that offered ‘reserved’ legal activities⁵¹ (these entities being known as ABSs). These reforms were designed to lower barriers to

⁴⁸ OFT (March 2001), [Competition in professions](#) (OFT328).

⁴⁹ See: Department for Constitutional Affairs (2005), [The Future of Legal Services: Putting Consumers First](#).

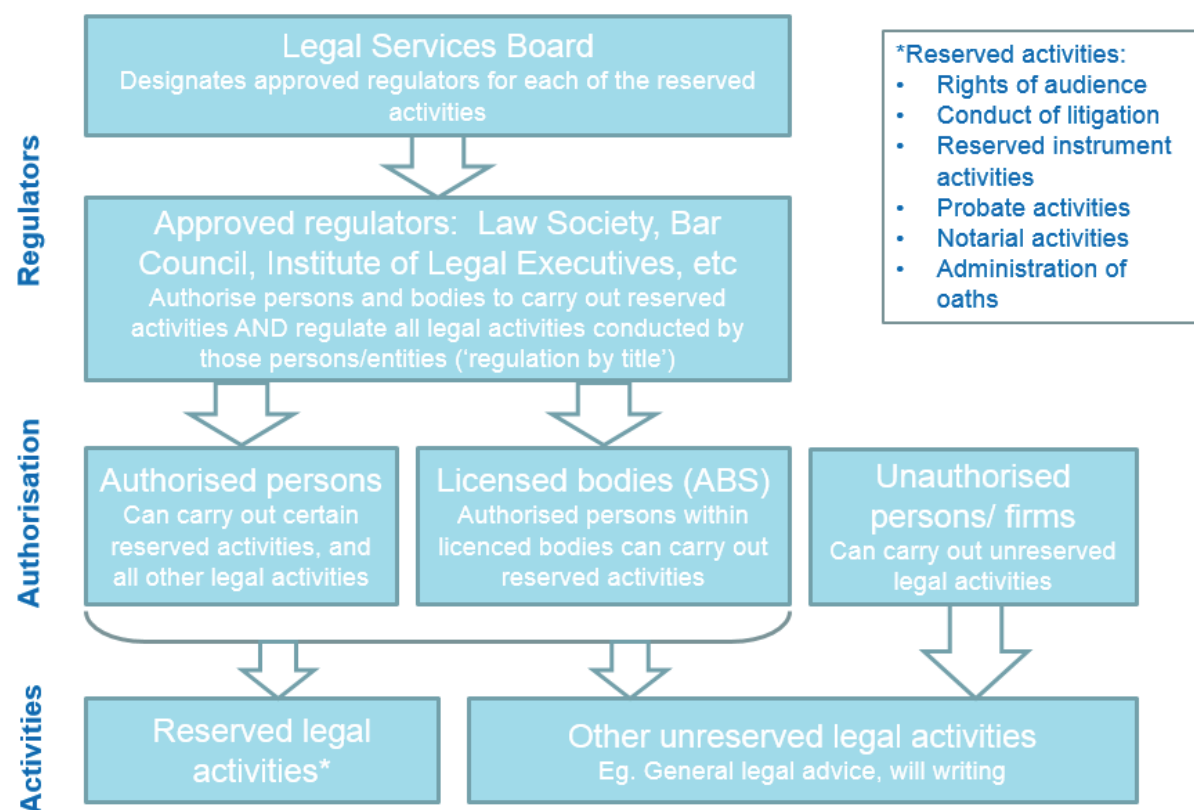
⁵⁰ These bodies directly regulate lawyers practising in England and Wales. A complete list of ‘approved regulators’ can be found on the [LSB website](#).

⁵¹ The Legal Services Act 2007 specifies six reserved activities (see paragraph 3.15 below).

market entry and stimulate competition and innovation for the benefit of consumers.

3.14 The diagram below summarises the sector-specific regulatory framework for legal services.

Figure 1: Overview of the sector-specific regulatory framework for legal services



Source: CMA.

Reserved activities and regulation through professional title

3.15 Certain legal services are ‘reserved’ to professionals who are authorised to carry out those services on the basis of the qualifications they hold. The Legal Services Act 2007 specifies six reserved activities, which in most cases seem to be narrowly defined, although they involve some key areas or services which lawyers provide such as litigation and advocacy, or commonly purchased services such as conveyancing and probate.⁵²

3.16 Authorisation to carry out those services is obtained from an authorised regulator whose professional qualifications and standards must be met, and

⁵² The six reserved activities are: (i) the exercise of a right of audience; (ii) the conduct of litigation; (iii) reserved instrument activities (undertaken when conveyancing property); (iv) probate activities; (v) notarial activities; and (vi) the administration of oaths.

upon which their professional title will be awarded.⁵³ There are nine designated approved regulators for England and Wales which, in turn are governed by an oversight regulator, the LSB.⁵⁴ Since the Legal Services Act 2007, the approved regulators have been required to separate their representative functions from regulatory functions and this has led some approved regulators to establish independent regulatory bodies. The nine approved regulators and their independent regulatory bodies include the Law Society (with the SRA being the independent regulatory body which regulates solicitors and awards the title 'solicitor'), the Bar Council (with the Bar Standards Board being the independent regulatory body which regulates barristers) and the Council of Licensed Conveyancers (which does not carry out representative functions and thus directly regulates licensed conveyancers and awards the title 'licensed conveyancer').⁵⁵

- 3.17 The regulation of the majority of these professionals is not limited to the regulation of the reserved activities but extends to all activities undertaken by those professionals. The approved regulators require members of their profession to adhere to rules on standards of service and conduct,⁵⁶ to hold PII and to maintain up-to-date training (these requirements are further discussed in paragraphs 3.20 to 3.21 below). Their members are also governed by a redress framework in the event that things go wrong, which includes access to the LeO.
- 3.18 In addition to the regulation of individuals, business entities (eg solicitors' firms) are regulated so as to ensure that the risks that a legal business faces are properly addressed.⁵⁷
- 3.19 In addition, there are special provisions for ABSs. These provisions enable lawyers to partner with providers of non-legal services to establish firms that offer services covering multiple disciplines or to permit non-lawyers to act in management roles and take financial interests in such firms. The Legal Services Act 2007 gave the LSB powers to authorise the approved regulators

⁵³ Typically, qualification involves obtaining an academic diploma as well as a period of workplace training.

⁵⁴ Designated under Part I, Schedule 4 of the Legal Services Act 2007.

⁵⁵ The other approved regulators (and their independent regulatory bodies) include: the Chartered Institute of Legal Executives (CILEx Regulation); The Chartered Institute of Patent Attorneys and the Institute of Trade Mark Attorneys (with the Intellectual Property Regulation Board acting as the independent regulatory body for both these approved regulators); the Association of Costs Lawyers (Costs Lawyers Standards Board); the Master of Faculties and the Institute of Chartered Accountants in England and Wales.

⁵⁶ Codes of conduct may cover a range of aspects including complaint handling measures, protection of clients' interests where referral arrangements are entered into with third parties and client care outcomes, such as informing clients upfront as to the likely scope and costs of the work, and the availability and the means to access redress mechanisms.

⁵⁷ In 2011, the LSB developed the following four regulatory standards: effective risk assessment, outcomes focused regulation, proportionate supervision and an appropriate enforcement strategy. To achieve systematic adherence with these standards, the approved regulators have expanded the scope of entity-based regulation to include rules that require firms to have effective management processes.

to issue licences for the operation of an ABS and established certain minimum requirements for applicants of such licences. ABSs are subjected to similar ongoing regulatory requirements to other business entities.

Sector-specific consumer protection regulation

3.20 The key existing sector-specific consumer protection regulations to which regulated providers must adhere are categorised as follows:

- Regulations on qualification standards:
 - The qualification requirements will vary by regulator but for solicitors, which represent the largest proportion of the ‘regulated’ sector, this will generally⁵⁸ involve: (i) a qualifying degree in law⁵⁹ which provides an academic foundation into certain areas of law; (ii) a one-year vocational training course; and (iii) vocational training at a law firm or equivalent.
- Rules on standards of service and conduct:
 - Regulated providers’ codes of conduct require that regulated providers carry out their work with care, integrity and diligence and with proper regard for the technical standards expected of them.
 - In addition, regulated providers must adhere to certain requirements that are designed to ensure an appropriate level of service. This includes requirements on key issues such as confidentiality, the handling of client money, and the provision of key information (such as information on the work that will be carried out, fees, the relevant complaints procedure and general obligations such as professional confidence) which is usually communicated in an initial letter to the client called a client care letter. For solicitors, these requirements are set out in the SRA’s Handbook.
- Redress mechanisms and financial protection arrangements:

⁵⁸ There are various other routes to qualifying as a solicitor in England and Wales. For example, CILEx and the new ‘Apprenticeship’ scheme (currently operational in Wales and later in 2016 England also) present two different ways to qualification as a solicitor. Those undertaking these routes do not necessarily require a qualifying law degree as the schemes are based on varying criteria around practical experience and academic assessment. There is also the Qualified Lawyer Transfer Scheme for lawyers qualified abroad who wish to become a solicitor in England and Wales. [The Law Society website](#) contains more detail on the various routes to qualification as a solicitor.

⁵⁹ Or conversion diploma.

- Consumers of services provided by regulated providers have access to a regulated redress mechanism for any conduct or service complaints. This includes the right to complain to the LeO.
 - In terms of financial protection arrangements, regulated providers are required to have PII,⁶⁰ run-off insurance cover⁶¹ and some regulators also maintain a compensation fund⁶² that the firms which they regulate must pay into.
- 3.21 The level of requirements are not necessarily the same across all regulated providers (some regulators have chosen to set higher requirements for their regulated members; in part this may reflect higher risks for some regulated providers compared to others).
- 3.22 Unregulated providers are not required to meet the same regulatory requirements. However, some unregulated providers have chosen to join a 'self-regulatory' body that requires its members to meet qualification standards, standards of service and to have financial protection arrangements. In many cases they also have redress mechanisms in place. However, the level of protection afforded by self-regulated providers may not always be equivalent to that afforded by regulated providers.
- 3.23 Further details on the differences in regulations between regulated, self-regulated and unregulated providers are set out in Appendix D.

Sector specific regulation outside the Legal Services Act 2007

- 3.24 In addition to the regulation under the Legal Services Act 2007, there is a limited set of activities that are regulated separately, namely immigration, claims management and insolvency. For example, providers of immigration and asylum advice became subject to a separate regulatory scheme established by the Immigration and Asylum Act 1999, which was enacted in response to concerns about low quality and expensive provision of

⁶⁰ PII is insurance that covers civil liability claims arising from a legal professional's work. These claims will most commonly involve some form of professional negligence.

⁶¹ PII is provided on a 'claims made' basis which means that the responsibility for paying a claim lies with the insurer 'on cover' when a claim is made and not the insurer 'on cover' at the time of the event that gave rise to the claim. Therefore, following the closure of the legal practice, PII 'run-off' cover is required. The SRA requires ceasing practices to obtain six years' insurance run-off cover from the expiry date of their existing PII policy.

⁶² A compensation fund allows clients, of certain regulated providers, to make a claim if they are owed money by their regulated legal services provider and have exhausted alternative routes for making their claim (eg through an insurance claim or the court system). However, strict rules apply about who may access the relevant compensation fund and in what circumstances. See paragraph 5.30 for further information.

immigration advice to vulnerable consumers, and which is administered by the Office of the Immigration Services Commissioner (OISC).⁶³

- 3.25 Certain authorised persons (for example, solicitors and barristers) are exempt from the regulation enforced by the regulators in those areas and are therefore free to carry out those activities without needing to comply with additional regulation (eg OISC regulation).

Legal services providers

- 3.26 The provision of legal services to individual and small business consumers in England and Wales is estimated to generate turnover of around £11–12 billion yearly.⁶⁴ Our quantitative survey found that the areas of law in which individual consumers most frequently sought legal help or advice (since January 2014) were: conveyancing (and non-conveyancing property matters), making a will, probate/estate management, family matters, accident or injury claims, housing/tenant/landlord problems and problems at work.⁶⁵ Figure 2 shows the incidence of individual consumers' only/most recent legal matter relevant to this market study.⁶⁶

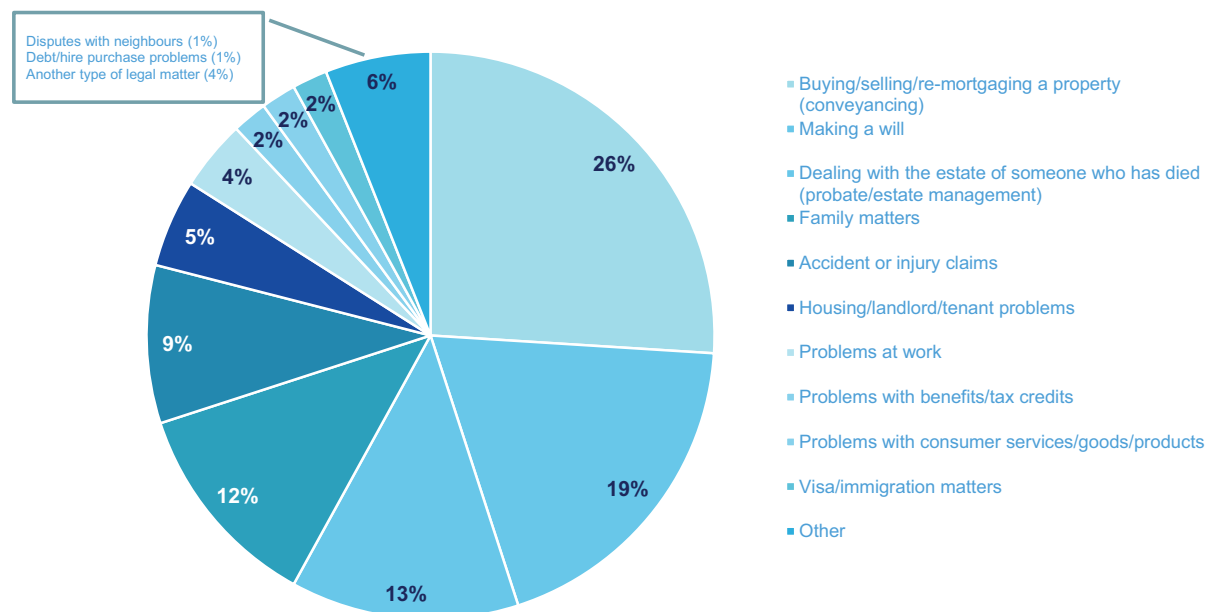
⁶³ In order to be regulated, providers must pass a fitness and competence test and must also show that they continue to be fit to practise as part of the annual re-registration process. Providers regulated by the OISC can be authorised to provide advice at three different levels, ranging from level 1, which covers basic immigration advice, to level 3, which covers advocacy, appearances at Tribunals and appeals.

⁶⁴ CMA estimate based on data from the Law Society and the CMA's consumer survey. The lower bound makes some adjustment for services in our survey that were not paid for while the upper bound includes all services captured in our survey.

⁶⁵ Note that the distribution of legal matters and providers used in our survey differs from certain other surveys, including Ipsos MORI (2016), commissioned by the LSB and the Law Society, as our survey focuses on issues where legal advice was sought.

⁶⁶ Note that the survey required consumers to self-report on which provider they used and so there may be some errors in the types of providers reported.

Figure 2: Only or most recent legal matter since January 2014

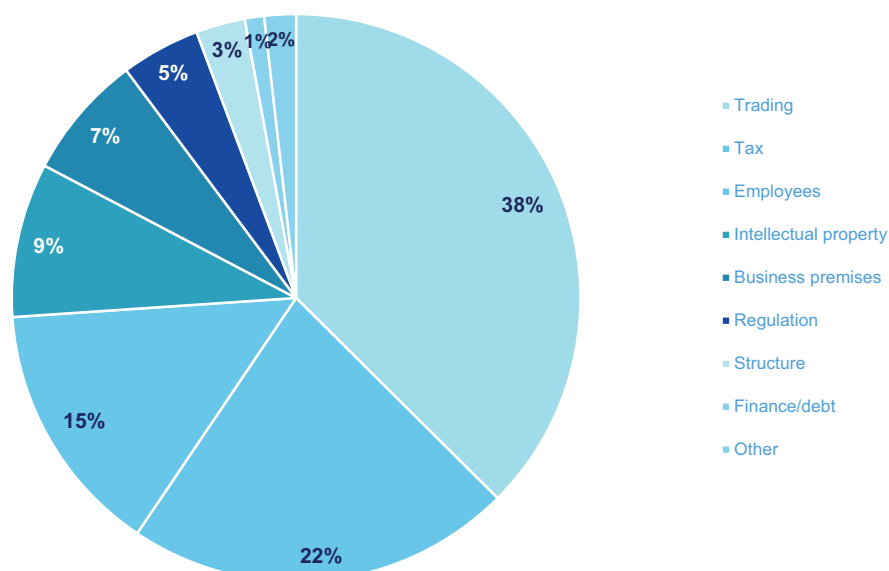


Source: CMA survey.

Note: n=750 (All with a legal matter since January 2014; only or most recent legal matter).

3.27 For small businesses, legal needs arise from a range of problems, the most significant of which are trading (38%), tax (22%), employees (15%) and intellectual property (9%).⁶⁷ Small businesses' legal needs are shown in Figure 3.

Figure 3: Problems experienced in the last 12 months, small business



Source: Blackburn, R *et al.* (commissioned for the LSB).

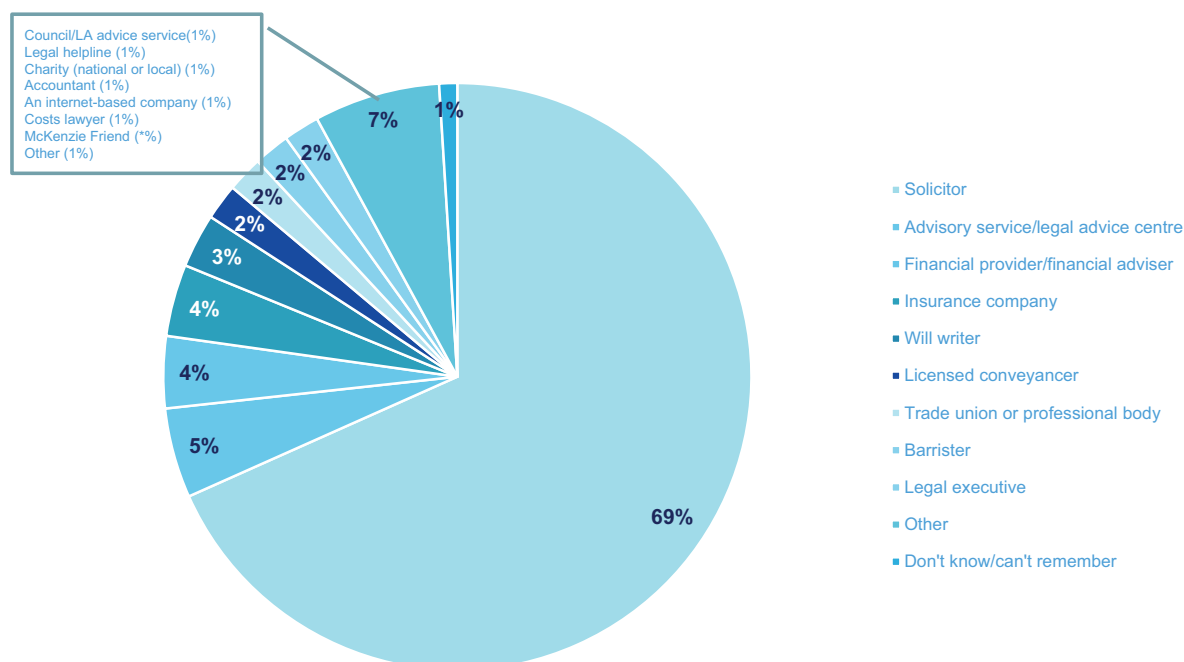
Note: n=10,528 individuals that own or manage independent small firms.

⁶⁷ Blackburn, R *et al.* (2015), [The legal needs of small business](#), p22. Figures presented here are for 2015.

Market participants

- 3.28 As noted in paragraph 3.8, services can be provided by regulated and unregulated providers, depending on the particular type of advice that is sought. For the majority of consumers, such services will be provided by a regulated provider. In our quantitative survey, these providers accounted for 76%⁶⁸ of the advice given to individual consumers; with solicitors alone being the only or main provider used by 69% of all individual consumers.
- 3.29 The key role played by solicitors is highlighted in the most common legal issues where advice was sought by consumers in our survey, for example, 77% of conveyancing advice; 78% of will writing advice; and 84% of probate/estate management advice was provided by solicitors.⁶⁹ Further, ONS data suggests that the significant role of solicitors has been a consistent feature of the legal services sector over time.⁷⁰
- 3.30 More details on individual consumers' only or main sources of legal advice from our quantitative survey are set out in Figure 4.

Figure 4: Only or main legal service provider



Source: CMA survey.

Note: n=750 (All with a legal matter since January 2014).

- 3.31 Our qualitative research with small businesses also indicated that solicitors were the most commonly used legal service provider, irrespective of the legal

⁶⁸ This includes solicitors, licensed conveyancers, barristers, legal executives, accountants and costs lawyers.

⁶⁹ CMA survey.

⁷⁰ See ONS, [Turnover of Legal Activities](#).

issue. The use of solicitors was supplemented by a range of other providers that depended on the type of business problem, for example, HR advisers for employment issues.

- 3.32 The segments of the legal services sector that serve individuals and small businesses are highly fragmented. For example, there are more than 7,000 solicitors' firms serving these types of consumers, ranging from firms with one partner to large national businesses.⁷¹ The LSB has reported that concentration levels are low across all legal service areas, with levels particularly low in the residential conveyancing and family market areas.⁷²

Regulated providers

- 3.33 As noted above, the type of legal service providers most frequently used by individual consumers as their only/main provider were solicitors. In addition to solicitors, there are a number of other types of regulated providers, including barristers, legal executives, licensed conveyancers, patent attorneys, trademark attorneys, cost lawyers, notaries and scriveners and, more recently, accountants. In our survey of individual consumers, these other regulated providers were the only/main provider for 7% of consumers. More specifically, barristers were the main provider for around 2%; licensed conveyancers for 2%; and accountants for 1%. Legal executives and costs lawyers accounted for a further 2% of provision to consumers.⁷³

Unregulated providers

- 3.34 Unregulated provision of legal services encompasses a wide range of provider types, including advice services such as Citizens Advice, legal helplines associated with insurance products, document providers that enable consumers to draft their own legal papers and paid for services such as will writers, McKenzie Friends⁷⁴ and HR companies.

⁷¹ The Law Society (2016), [Law Society response to the Competition and Markets Authority invitation to comment on the notice on the market study into the supply of legal services in England and Wales](#), p8.

⁷² LSB (2013), [Changes in competition in different legal markets](#), p5.

⁷³ Note that the importance of different types of providers varies across the areas of law, eg licensed conveyancers supply 9% of consumers in conveyancing and, indicatively, accountants supply 3% of consumers in probate/estate management. Source: CMA individual consumer survey.

⁷⁴ Litigants in person may use a 'McKenzie Friend' who can provide moral support, take notes, help with case papers and quietly give advice on any aspect of the conduct of the case. McKenzie Friends have no independent right to act as advocates (ie they have no rights of audience) or to carry on the conduct of litigation. A judge may grant such rights on a case-by-case basis, but only in exceptional circumstances. Traditionally, this lay support has been provided on a voluntary basis by a family member or friend, although for some time there have been a small number of people who charge a fee for this service. However, the majority of McKenzie Friends act on a non-fee charging basis. See the Courts and Tribunals Judiciary Practice Guidance (2010), [McKenzie Friends: Civil and Family Courts](#). See also paragraph 5.20 below.

- 3.35 Unregulated providers appear to play an important role as a starting point for consumers seeking assistance in navigating the market or potentially as a source of free advice. For example, the LSB and Law Society's recent survey of consumer legal needs found that Citizens Advice Bureaux were used by 26% of consumers who sought advice.⁷⁵ The same survey found that free advice is particularly important for issues such as welfare and benefits, homelessness and consumer problems.⁷⁶
- 3.36 Our survey of small businesses finds that for employment issues some used the Advisory, Conciliation and Arbitration Service (ACAS) as a source of information or to signpost to further advice and a small number would use their trade organisation for advice.
- 3.37 The focus of our market study has been on paid for legal services and in this area the prominence of unregulated providers appears to be much more limited across most areas of law. For instance, the LSB found that for profit unregulated providers account for around 3% of all legal problems where assistance was sought.⁷⁷ With respect to specific legal service areas, the LSB found that around 7 to 9% of purchased wills originate from unregulated providers and that online divorce providers account for 10 to 13% of total divorces.⁷⁸ Further, 4 to 5% of employment services and 2% of conveyancing services (involving DIY and automated providers) are provided by paid-for unregulated providers.⁷⁹

⁷⁵ Ipsos MORI (2016), [Online survey of individuals' handling of legal issues in England and Wales 2015](#), commissioned by the LSB and the Law Society.

⁷⁶ Ipsos MORI (2016), [Online survey of individuals' handling of legal issues in England and Wales 2015](#), commissioned by the LSB and the Law Society.

⁷⁷ LSB (2016), [Mapping of for profit unregulated legal services providers](#), p1.

⁷⁸ Economic Insight report for LSB (2016), [Unregulated legal service providers](#).

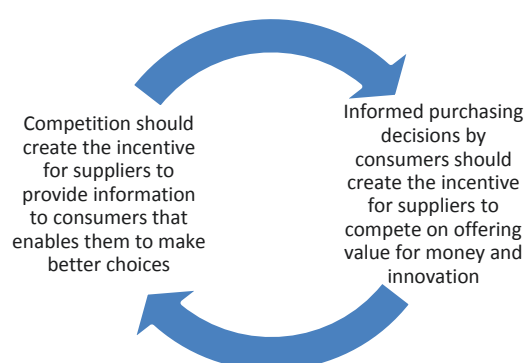
⁷⁹ LSB (2016), [Mapping of for profit unregulated legal services providers](#), p10.

4. Competition between legal services providers

Introduction

- 4.1 The legal services market is highly fragmented and includes a large number of suppliers. However, this does not necessarily imply that competition is effective. Consumers need to have access to accurate, relevant information in order to make informed purchasing decisions and to create incentives for providers to compete. Competition may take place not only on price or quality, but also on levels of innovation. The virtuous cycle of effective competition based on informed decision making by consumers is shown in Figure 5.

Figure 5: The virtuous cycle of competition with informed consumers



Source: CMA

- 4.2 This section focuses primarily on the role played by information in driving competition in the legal services sector. It considers evidence both on how consumers use information to choose legal service providers and on how providers compete.
- 4.3 In particular, this chapter examines competition in the legal services sector by considering a number of key points, including:
- (a) important characteristics of the legal services sector for individuals and small businesses;
 - (b) how informed individual consumers and small businesses are making their purchasing decisions;
 - (c) the way legal service providers compete on price, quality and innovation and whether they face barriers to entry and exit;
 - (d) an introduction to the role of intermediaries in matching consumers to providers and the use of DCTs; and

(e) the impact of ABSs on competition.

Process of competition

4.4 The legal services sector for individuals and small businesses comprises a number of areas of law and types of services. Competition across these different services share a number of common features:

- Competition tends to be based on one-off transactions rather than longer term contracts for repeated purchases.⁸⁰
- The key parameters of competition tend to be price, quality of service (such as the timeliness of the service delivery) and the quality of the legal advice itself.
- As consumers will often prefer (or need) to have face-to-face contact with their provider, competition often takes place locally.⁸¹ However, where face-to-face contact is less important (for example where the service is provided online) competition may occur nationally.

4.5 There are also some key differences in competition across legal service markets:

- The legal service may be more or less commoditised. In more commoditised markets, services are generally less complex, more process based and therefore more homogeneous (for example will writing and residential conveyancing). In these markets it is inherently easier for providers to be more transparent about their offering and for consumers to compare these offerings.
- In certain parts of the legal services sector, intermediaries actively steer consumers towards specific legal services providers. Estate agents and mortgage brokers, for example, link consumers with providers of conveyancing. Trade unions help members to access legal service providers in employment law (and may pay for the cost of legal representation). In markets where intermediaries play a major role, the process of competition is often very different. Intermediaries may generate competition between providers for higher volumes of transactions through competitive bidding processes, for example, competition to join a panel of advisers. Intermediaries are likely to have

⁸⁰ See, for example, LSB (2011), [Research note: The legal services market](#), p27.

⁸¹ A recent legal needs study found that for 40% of consumers the main channel of communication with providers was face-to-face/in person. See Ipsos MORI (2016), [Online survey of individuals' handling of legal issues in England and Wales 2015](#), commissioned by the LSB and the Law Society.

better information on price and quality than their end-consumers, as they are parties to multiple transactions across consumers. The payment of referral fees may also be an important dimension of competition between providers for access to intermediated markets in some markets. This is discussed further in paragraphs 4.36 to 4.38 below.

- 4.6 The analysis in this chapter draws on evidence across a range of different legal service markets to highlight some key emerging themes. However, it is important to note that these findings may apply in different ways across different legal services, given the variety of market characteristics. We intend to explore these differences further in the remainder of the market study, including completing our case studies of specific legal services markets – wills and probate, employment and commercial.

Demand side

Individual consumers

- 4.7 According to LSB and Law Society research, the main reasons that individual consumers do not use professional advisers⁸² once they have identified a legal need are assumptions that it would be too expensive, a lack of knowledge that advisers could help or not knowing how to find an adviser.⁸³ Many of those who assumed fees would be too high did so without searching for information on prices. Qualitative research carried out by the LSB also suggests that some unmet demand is due to a lack of knowledge, awareness and trust in legal services providers.⁸⁴ In addition, other research finds that consumers may even have limited awareness of whether their issue is legal in nature, which would prevent them from even considering whether they need advice.⁸⁵
- 4.8 Consistent with previous survey evidence, our survey found that only 22% of individual consumers had compared two or more providers when choosing one to help them with their only/most recent legal matter.⁸⁶

⁸² Note that this is other than not needing help with the issue or the issue being insufficiently important.

⁸³ LSB and Law Society (2015), Online survey of individuals' handling of legal issues in England.

⁸⁴ Optimisa Research (2013), [Consumer use of legal services](#), commissioned by LSB.

⁸⁵ Ipsos MORI (2016), [Online survey of individuals' handling of legal issues in England and Wales 2015](#), commissioned by the LSB and the Law Society.

⁸⁶ This is low relative to certain other sectors such as car insurance where shopping around is closer to 71% but is comparable to shopping around for savings accounts and credit cards, where the level is 26% and 25%, respectively. However, there are numerous differentiating factors between these markets and legal services that mean these comparisons may not be meaningful. Lowe, J (2015), [Consumer behaviour and attitudes when shopping around for multiple financial and household services](#), p10.

- 4.9 Most consumers rely on previous experience or recommendations, typically from friends or family, rather than search themselves. This may be a practical approach to ensuring they get adequate quality and value for money given the inherent issues in assessing quality. However, even the recommendations they received appeared to be based largely on individual experiences rather than being informed by a previous review of what is on offer in the market.⁸⁷
- 4.10 This lack of comparison may be due to low price transparency. Only 24% of individual consumers knew what the exact cost of their work would be before they contacted providers. A minority of both consumers overall, and of comparers, had used the internet or online tools.⁸⁸
- 4.11 We note that the majority of respondents to our survey (72%) felt able to judge the quality of the provider before choosing. Given the inherent difficulties in directly observing quality, we consider that this largely reflects the fact that they feel able to rely on recommendations on quality rather than that they are able to observe quality themselves.
- 4.12 Our qualitative survey, in line with previous surveys, indicates that awareness of unregulated providers was low.

Small businesses

- 4.13 Small businesses, like individual consumers, lack awareness and understanding of legal service providers:
- Small businesses are more likely to handle their legal problem on their own or with the help of family and friends than they are to seek external legal advice.⁸⁹ Our qualitative research suggests that businesses with recurring issues tend to develop capability to deal with these issues themselves. However, for other businesses, not seeking legal advice may be driven by a lack of information on suitable providers or lack of transparency of cost.
 - Our qualitative survey suggests that small businesses compare providers to an even lesser extent than individual consumers.⁹⁰ We consider that

⁸⁷ IFF Research (2016), Market study into the supply of legal services in England and Wales – consumer findings, qualitative research commissioned by CMA.

⁸⁸ IFF Research (2016), Market study into the supply of legal services in England and Wales – consumer findings, qualitative research commissioned by CMA.

⁸⁹ In 2015, around 57% of small businesses handled their legal problem entirely on their own or with the help of family and friends. See Blackburn, R *et al.* (2015), [The legal needs of small business](#). Figures presented here are for 2015.

⁹⁰ IFF Research (2016), Market study into the supply of legal services in England and Wales – consumer findings, qualitative research commissioned by CMA.

this is likely to be due to the nature of the legal services required by small business which are in general less commoditised.

- Small businesses also tend to rely on recommendations from informal networks of either peers or contacts in the legal services industry. While a previous survey stressed the importance of accountants,⁹¹ both as legal service provider and as an informal intermediary between small businesses and solicitors, the respondents to our research did not say that accountants played an important role.⁹²
- Our qualitative research with small businesses also suggested that a lack of transparency of information on price and quality is an important issue when selecting legal service providers. Small businesses perceived it to be necessary to have telephone or face-to-face conversations about their specific legal need in order to make price and quality comparisons.

Supply side

Competition on price

- 4.14 An important aspect of price competition in legal services is the structure of fees presented to consumers. Fixed fees are important for competition as they enable consumers to have greater certainty over potential legal costs and an ability to compare price across providers more easily than hourly fees. Survey evidence consistently shows that consumers have a strong preference for fixed pricing rather than hourly billing.⁹³
- 4.15 Stakeholders in general agree that there has been a move towards fixed pricing in recent years, particularly in more commoditised services such as wills and conveyancing. The SRA draws on consumer surveys to show that fixed fee arrangements are now more prevalent than hourly billing in will writing, conveyancing, power of attorney and immigration.⁹⁴ This is consistent with the findings of our individual consumer survey and the LSB pricing research that fixed fees predominate for less complex matters.⁹⁵

⁹¹ Blackburn, R *et al.* (2015), [The legal needs of small business](#). Figures presented here are for 2015.

⁹² Our view is that this finding may be explained partly by the fact that our research focused on small and micro businesses which may not have regular contact with their accountants and partly because the research was focused on commercial and employment legal issues rather than other issues such as tax where the role of accountants may be more significant.

⁹³ This is noted in the Law Society's submission and also emerges from the CMA's qualitative interviews with individual consumers and small businesses.

⁹⁴ [SRA Risk Outlook](#).

⁹⁵ OMB Research (2016), [Prices of Individual Consumer Legal Services: Research Report](#), commissioned by the LSB.

- 4.16 Fixed fees are less common in certain legal service areas which are less commoditised, though importantly are still offered by some providers who provide such services. According to the LSB pricing research, fixed fees are being offered in relation to more complex legal scenarios albeit that they represent a lower proportion than in relation to the less complex scenarios, for example 36% in complex divorce as opposed to 92% for a standard will.⁹⁶ In addition, our market research suggested that fixed fees are offered less commonly to small businesses.
- 4.17 Some stakeholders have submitted that there are limits to the ability of providers to offer a menu of fixed prices for less commoditised legal issues. Others have suggested that the offering of a fixed fee is simply about the allocation of risk (of uncertain cost) between the provider and the consumer and that in most instances providers should be able to bear these risks if aggregating over multiple cases. They suggest that the willingness to bear these risks simply reflects differences in attitude across law firms. There are other indications that fixed fee offerings could become more prevalent for less commoditised services. For example, the Law Society notes that Lord Justice Jackson has recently proposed that fixed fees could be introduced for a wide range of litigation.⁹⁷
- 4.18 Some stakeholders have raised concerns that there are risks that the use of fixed fees can reduce incentives to provide high quality in certain situations. However, others have suggested that hourly billing can create the incentive for providers to bill excessive hours. On balance, we do not currently consider that the risks associated with fixed fees are sufficient to outweigh the benefits to competition where they are used.
- 4.19 Some stakeholders submitted that price transparency is an important issue and that pricing is often not available until the consumer has had an initial consultation with the provider. The Federation of Small Businesses (FSB) pointed out that this creates considerable search costs for small businesses.⁹⁸ On the other hand, the Law Society submitted that the market has been moving to provide more transparency of fees with more law firms now offering fixed fees on their websites and quotation services.⁹⁹

⁹⁶ OMB Research (2016), [Prices of Individual Consumer Legal Services: Research Report](#), commissioned by the LSB, pp21 & 33.

⁹⁷ The Law Society (2016), [Response to the invitation to comment on the notice on the market study into the supply of legal services in England and Wales](#), p10.

⁹⁸ FSB (2016), [Market Study into the Supply of Legal Services in England and Wales](#), p6.

⁹⁹ The Law Society (2016), [CMA Legal Services Market Study: Theories of Harm](#), p7.

- 4.20 Our survey of individual consumers found that 24% ‘knew exactly’ what the price would be before they contacted the provider, and a further 28% ‘knew roughly’ what the price would be. In contrast, though, 45% said they ‘didn’t have any idea’. The LSB pricing research suggests that the publication of prices online is still limited with only 17% of firms in the sample displaying their prices on their websites.¹⁰⁰ In addition, it finds that firms that do display prices on their websites are generally cheaper than those that do not for certain products (though in other cases the difference is not statistically significant).¹⁰¹ Our market research with small businesses similarly found low price transparency.
- 4.21 The LSB research also suggests that most firms use case by case pricing rather than committing to a fixed menu of prices (which may either be used internally or published online). This may be an important factor for competition. If firms commit to a menu of prices, comparison and search by some consumers will normally constrain prices for others who do not shop around, but this is not necessarily the case if firms price on a case by case basis. The research also found that firms that use a menu of prices rather than case by case pricing are cheaper on average for certain services (though for other services not statistically significantly so).
- 4.22 The Law Superstore (a comparison website) submitted that, in its experience, there are considerable differences in attitudes across law firms to pricing transparency with the majority being reluctant to employ transparent pricing.¹⁰²
- 4.23 LSB research¹⁰³ shows substantial price dispersion for similar products suggesting that competition is limited. This evidence is consistent with the evidence that only a minority of consumers compare providers. The LSB used a set of scenarios to compare prices. This approach controls for service differentiation to a large extent by clearly defining the service required. The research showed that price dispersion across all of the legal services considered is substantial, though it is greater for more complex services than for more straightforward services. For example, the difference between prices in the upper and lower quartile for a standard will is £90 (where the median price is £150) while the same difference for a complex divorce with a dispute

¹⁰⁰ OMB Research (2016), [Prices of Individual Consumer Legal Services: Research Report](#), commissioned by the LSB.

¹⁰¹ OMB Research (2016), [Prices of Individual Consumer Legal Services: Research Report](#), commissioned by the LSB, p3.

¹⁰² The Law Superstore further submits that this could be due to them not being able to produce a price as they do not have the internal business systems to do so.

¹⁰³ OMB Research (2016), [Prices of Individual Consumer Legal Services: Research Report](#), commissioned by the LSB, p3. The research asked providers for the price they would charge for certain scenarios (‘non-mystery’ shopping) in conveyancing, divorce, wills and estate administration.

over assets is £1,740 (with a median price of £2,000). We considered whether some of the variation may be caused by differences in prices across different parts of the country. For example, we know that prices are higher in the South East than in other parts of the country. However, using the data from the LSB research we found that there was still substantial price dispersion within regions.

- 4.24 The price dispersion evidence suggests that there could be very significant benefits were consumers to compare prices to a greater extent. For example, consumers currently purchasing a standard will at the median price in the LSB research would save between 20% and 27% if they instead purchased the will at the lower quartile price.¹⁰⁴ Savings for consumers purchasing at higher than median prices or purchasing more complex products would be greater. This illustration does not control for any variation in quality across services from different providers. However, while the price dispersion is substantial, as far as we are aware there is little evidence to suggest that lower priced services are in general of lower quality, particularly for more commoditised and less complex services.

Competition on quality

- 4.25 As a starting point, we note that there are inherent difficulties in signalling quality directly in the legal services sector. This is because services tend to be 'experience services' where quality is largely unobservable before purchase. Stakeholders have generally agreed that it is inherently difficult to signal quality effectively as it is difficult to measure and is largely unobservable to consumers. A number of stakeholders have suggested that consumers lack the information on quality of advice and service necessary for effective decision making.
- 4.26 In our view this suggestion is consistent with significant variation in quality across legal service providers, which is indicated by the limited evidence that is available. For example, a shadow shopping study examining 101 wills found that approximately one-quarter of the wills collected failed the assessment because they either did not meet the needs of the client (ie they were of insufficient quality) or they were not deemed to be legally valid.¹⁰⁵ Similarly, a recent study on the quality of legal advice provided to asylum seekers found, amongst other issues, that some immigration and asylum advisers had poor

¹⁰⁴ These savings are reported for regions where the sample size is greater than 100 and are 20% for a consumer in the North of England, 23% in the South East and 27% in the Midlands.

¹⁰⁵ IFF Research (2011), [Understanding the consumer experience of will writing services](#), commissioned for the LSB, LSCP, OFT and SRA, p9.

legal and case knowledge.¹⁰⁶ As noted above, we are not aware of evidence of a relationship between the variation in quality and the price charged for the service.

- 4.27 As noted in paragraph 4.9 above, consumers currently assess quality primarily through either their own personal experience or informal recommendations made by peers, family or friends. However, as these assessments tend to be limited to individual experiences rather than reviews of what is on offer in the market, they are unlikely to be effective in driving competition on quality.
- 4.28 More effective mechanisms for driving competition on quality in markets for 'experience' services are those which signal reputation. Reputation mechanisms enable consumers to benefit from information on the aggregated previous experience of other users when they choose their provider. These mechanisms include published consumer feedback, such as online reviews, and the development of recognisable brands with a reputation for high quality.
- 4.29 Published consumer feedback in this sector is currently very limited. While some mechanisms for capturing consumer feedback exist,¹⁰⁷ they are not widely used by consumers.¹⁰⁸ Several stakeholders have commented on the absence of online reviews and some have highlighted the reluctance of the legal profession to endorse the use of online reviews. The Law Superstore in particular highlights that, in its experience, the majority of legal service providers are very averse to consumer feedback or review mechanisms. Some stakeholders identified the risk of defamatory postings; the Law Society also raised the issue that requirements for client confidentiality and legal privilege may make it difficult for providers to respond to client feedback and some have suggested the client reviews may be overly influenced by the outcome of the case rather than the quality of the advice or service.
- 4.30 Another way of signalling reputation for high quality is through the development of brands, for example through advertising. The Law Society has submitted that the legal sector has historically not invested,¹⁰⁹ and to some extent continues not to invest, materially in advertising or marketing,¹¹⁰ although the Law Society notes that two national law firms (Slater & Gordon and Irwin Mitchell) have launched major TV advertising campaigns in the last

¹⁰⁶ MigrationWork CIC *et al.* (2016), [Quality of legal services for asylum seekers](#), commissioned by the SRA and Legal Ombudsman, p4.

¹⁰⁷ For example, [LegallyBetter.co.uk](#), [ReviewSolicitors.co.uk](#) and [Solicitor.info](#).

¹⁰⁸ LSCP, [Tracker Survey 2015](#).

¹⁰⁹ Prior to 1983, there were restrictions on the freedom of solicitors to advertise.

¹¹⁰ The Law Society notes that while advertising is one way of attracting clients, for solicitors important routes include networking, training opportunities and client publications.

two years. Volume growth, either organically or through consolidation, is also an important aspect of brand development. We examine in paragraphs 4.47 to 4.51 below whether there are barriers to achieving such volume growth.

- 4.31 In the context of a lack of effective direct competition on quality, regulation and self-regulation may play an important role in ensuring minimum quality standards and signalling these to consumers.
- 4.32 The Law Society notes that professional titles such as ‘solicitor’ or ‘barrister’ are indicators of quality that can be easily understood by consumers.¹¹¹ However, we note that these do not provide a mechanism for differentiating quality between different solicitors, who form the majority of the market.
- 4.33 In addition, we note that there are some quality signalling mechanisms, such as quality marks or accreditation schemes. The Law Society has several accreditation schemes¹¹² and the Bar Council is currently conducting research to establish whether there is sufficient demand to set up a bar-led quality mark. Unregulated providers in some cases have developed self-regulatory schemes in order to signal quality, for example in will writing. However, limited consumer understanding of these self-regulatory mechanisms currently limits their effectiveness.¹¹³

Intermediaries

- 4.34 As noted above, intermediaries play roles of varying importance across legal service areas. In the context of a demand side characterised by one-off transactions and a lack of consumer search, intermediaries may play a key role in driving greater competition.
- 4.35 We note that some of the markets in which intermediaries play a greater role (for example conveyancing)¹¹⁴ appear more competitive in terms of price. We also note that these markets tend to be more commoditised which may partly explain both the greater levels of competition directly and why intermediaries have found these markets attractive to enter.
- 4.36 Some stakeholders have raised concerns about the impact of panel arrangements in certain legal services areas and the need for transparency of

¹¹¹ [The Law Society initial response](#), p19.

¹¹² See the Law Society’s [Accreditation](#) webpage.

¹¹³ IFF Research (2016), Market study into the supply of legal services in England and Wales – consumer findings.

¹¹⁴ For example, less price dispersion was found for conveyancing in the LSB pricing research than for other services. OMB Research (2016), [Prices of Individual Consumer Legal Services: Research Report](#), commissioned by the LSB.

referral arrangements to avoid potential conflicts of interest that may arise. We note that the LSB conducted a review of referral fees where it consulted with stakeholders and commissioned two substantial pieces of analysis. The LSB found relatively little evidence of actual or potential harm to consumers or the public interest. However, the LSB did require regulators to demonstrate that measures were in place for consumers to be told about regulatory fees and arrangements.¹¹⁵

- 4.37 One piece of analysis supporting this investigation in conveyancing found that while the referral fee paid by the conveyancer to the intermediary had risen over time, there was no evidence that this had been passed on to the consumer in the form of higher conveyancing fees. Further, the average conveyancing fee charged by a conveyancer using referral arrangements was lower than that charged by conveyancers who did not use referral arrangements, suggesting that the net impact on consumers was positive.¹¹⁶
- 4.38 We note that referral fees are currently banned in certain areas of law but allowed in others. We consider that referral fees can have a significant positive effect on competition by incentivising third party intermediaries.¹¹⁷ However, there can be a trade-off between this positive impact on competition and potential conflicts of interest arising from referral fees. We note some of the previous scrutiny and research into referral fees has considered this trade-off and we do not plan to revisit this analysis.

Comparison tools

- 4.39 Several stakeholders have highlighted the potential role that DCTs could play in the legal services market. A review by the Legal Services Consumer Panel (LSCP) in 2012 found that DCTs have the potential to benefit consumers by empowering them to drive competition between providers on price, quality and service features.¹¹⁸ However, the current usage and impact of these sites in the legal services market is very limited.
- 4.40 Unlike in some other sectors, comparison sites are not readily available in legal services. Of the UK's large price comparison websites, only

¹¹⁵ LSB (2011), [Referral fees, referral arrangements and fee sharing: Decision Document](#), pp5–6.

¹¹⁶ Charles River Associates (2010), [Cost benefit analysis of policy options related to referral fees in legal services](#), commissioned by the LSB, pp1–2

¹¹⁷ For example, in the Competition Commission's Private Motor Insurance Market Investigation, referral fees were found to have played a key role in facilitating intermediaries, and in turn driving greater competition.

¹¹⁸ LSCP (2012), [Comparison Websites](#).

MoneySuperMarket operates in the legal services sector and even then only for conveyancing.

- 4.41 A survey in 2015 found that just 1% of consumers purchasing legal services used a comparison website.¹¹⁹ This is likely because very few of the comparison websites currently in operation in legal services allow consumers to search on price and select providers directly. The majority of comparison tools available are simply directories or referral websites which instead give leads to providers who may or may not respond with a quote.¹²⁰ These websites typically only include regulated providers.
- 4.42 A number of websites offer directories of legal services providers. The Law Society's 'Find a Solicitor' tool aims to list all regulated solicitors' firms and individual solicitors and is described as being popular with consumers averaging over half a million visits per month.¹²¹ However, information is limited to basic details and the different areas of law covered. Others, such as Contact Law, email the details of a solicitor to the consumer but do not assist comparison between providers.
- 4.43 Other listings services do have comparison features such as reviews and ratings, for example LegallyBetter.co.uk and ReviewSolicitors. However, the low levels of use¹²² mean these comparison tools are less useful than they could be. Figures given by another website, Solicitor.info, show it has just under 10,000 reviews on its site, fewer than the number of solicitors firms in England and Wales.
- 4.44 Comparison sites we have spoken to have highlighted significant challenges. Some of the reasons cited for not entering the legal services sector include the one-off nature of most transactions and the presence of intermediaries in the high volume legal services areas (for example, mortgage brokers in conveyancing).
- 4.45 For some of those who have chosen to enter the market, concerns have been raised about difficulties in accessing data held by regulatory bodies. In addition, it has been suggested that the introduction of transparent online services where client feedback can be provided simply and effectively is not seen as in the best interests of many in the legal profession.
- 4.46 The Law Superstore, which is due to launch in August, has invested substantially in developing IT and categorising legal services according to

¹¹⁹ LSCP, [Tracker Survey 2015](#).

¹²⁰ LSCP (2012), [Comparison Websites.](#), p3.

¹²¹ [Law Society submission](#).

¹²² LSCP, [Tracker Survey 2015](#).

nature and complexity. This would allow consumers who have answered a few questions to contract directly with providers for a range of legal services with published prices. However, the Law Superstore has found it difficult to sign providers to its website, for a number of reasons, including that the majority of solicitors do not want their peers to see their explicit pricing (or even their pricing model); or allow online reviews of their services.

Barriers to entry, expansion and exit

- 4.47 The fragmented markets and churn rate of approximately 10% suggests that barriers to entry for solicitors are not material, at least once they become qualified.¹²³ Given the fragmented nature of the market and the potential significance of brands in signalling reputation, barriers to expansion and consolidation may be more important. It is clear that training and qualification requirements for entry to the profession impose a cost for new solicitors, and this in turn might increase costs for consumers. However, the evidence suggests limited barriers to entry for new law firms employing already-qualified solicitors.
- 4.48 The SRA¹²⁴ noted a ‘growing trend in mergers’, though overall the rate at which solicitors have been consolidating in the legal service areas within the scope of the market study is low, with the exception to some extent of the conveyancing and personal injury markets.¹²⁵ This contrasts with other parts of the legal services sector, notably in the larger corporate and ‘mid-market segments’, where stakeholders have highlighted that consolidation has been occurring.
- 4.49 Some possible barriers to expansion and consolidation for solicitors have been suggested, though none of these barriers appears to be substantial. For example, stakeholders have mentioned that insurance may be an issue in some cases where a record of frequent changes in business structure may make a practice less attractive to insurers and that conflicts in referral arrangements may be an issue in some cases. Evidence from a small-scale survey cited by the SRA suggested that the great majority of practices that contemplated a merger in 2012 did not ultimately proceed with a merger.¹²⁶ However, the main concerns were not specific to the legal service sector and were around the purchase price being inadequate, issues around whether it would be a good fit with the existing management structure and the need to

¹²³ RPI (2013), [Understanding barriers to entry, exit and changes to the structure of regulated legal firms](#).

¹²⁴ SRA (2013), [Risk Outlook 2013: The SRA’s assessment of key risks to the regulatory objectives](#), p6.

¹²⁵ We are currently reviewing data from the SRA to get a more granular picture of the extent of consolidation across legal service areas.

¹²⁶ SRA (2013), [Risk Outlook 2013: The SRA’s assessment of key risks to the regulatory objectives](#), p18.

observe the Transfer of Undertakings (Protection of Employment) Regulations.¹²⁷

- 4.50 Some stakeholders noted that unregulated providers of paid-for legal services had had limited success in gaining market share despite evidence of lower prices and greater price transparency than regulated services in some key parts of the market, and the innovative services on offer. This is consistent with the evidence on market shares set out in paragraph 3.30.
- 4.51 Evidence from consumer surveys, including our qualitative studies, shows that the majority of consumers are not aware of the regulatory status of their provider or what this implies for consumer protection.¹²⁸ The qualitative survey we commissioned into individuals and small businesses suggest that they are typically familiar with solicitors but much less aware of alternative unregulated providers. In addition, the reliance of consumers on recommendations from others or their own previous experience to identify suitable providers means that it is likely to take a long time for alternative providers to become established in the market. Our initial view is that these factors may limit competition from unregulated providers.

Innovation

- 4.52 We have seen a range of innovations taking place in the legal services sector. However, evidence suggests that the uptake of these innovations by legal service providers and consumers is limited.
- 4.53 In 2009, Nesta conducted a survey to examine the strength of innovation activity in nine sectors of the UK economy.¹²⁹ The survey found that there were significant gaps between innovation practice and performance in legal services and other UK business services sectors in 2009.¹³⁰ A later larger scale survey carried out by the Enterprise Research Centre (ERC) in 2015 suggests that since then there has been stability in the sector, rather than significant change.¹³¹ Similarly a recent report on the legal service market found that 'the level of innovation is broadly unchanged since before the [Legal Services Act 2007] reforms were introduced'.¹³² Some stakeholders

¹²⁷ RPI (2013), [Understanding barriers to entry, exit and changes to the structure of regulated legal firms](#), pp63–65.

¹²⁸ While in our quantitative study of individual consumers, 73% were confident that their legal service provider had explained whether the service was regulated or not, this was not replicated in the in-depth qualitative interviews.

¹²⁹ NESTA (2009), *Measuring sectoral innovation capability in nine areas of the UK economy*.

¹³⁰ The conclusion reached in LSB (2015), *Innovation in legal services*.

¹³¹ LSB (2015), *Innovation in legal services*.

¹³² LSB (2016), *Evaluation: Changes in the legal services market 2006/07 - 2014/15*, p134.

believe that further change is coming. The Law Society has reported that ‘it seems inevitable that solicitors and lawyers face a future of change’ and ‘innovation in services and service delivery will become a key differentiating factor’.¹³³

- 4.54 Among different types of legal service providers, ERC’s report found that unregulated providers were more likely to have introduced a new or improved service in the previous three years (36% versus an average of 28.4%) and had the highest share of their revenue from innovative services (10.3% versus an average of 6.3%). They also found that, all other things being equal, ABS solicitors are 13 to 15% more likely to introduce new legal services (ABSs are further discussed below).¹³⁴
- 4.55 Levels of innovation appear to be affected by the nature of the legal service with less complex, more commoditised, higher volume, and more competitive areas of law appearing to be more amenable to innovation. In addition, several stakeholders have suggested that innovation may be more prevalent in larger law firms serving corporate clients which are outside the scope of our market study.

Examples of innovation

- 4.56 While the overall level of innovation has not been particularly high, we have found a number of examples of different types of innovation, including online service delivery, the unbundling of services and automation.
- 4.57 Online services can range from the provision of information about legal problems to delivery of the entire service online. Currently just a small, albeit growing, number of consumers use online-only organisations: 5% in 2015, up from 2% in 2014.¹³⁵ A greater number of consumers (24% in 2015) report having their legal service mainly delivered online, including by email.¹³⁶
- 4.58 One area where managed online service provision is available in the UK is divorce. Research commissioned by the LSB and LSCP into the consumer experience of online divorces found that online divorces were significantly cheaper and quicker than divorces using face to face providers, although this

¹³³ The Law Society (2016), *The Future of Legal Services*.

¹³⁴ LSB (2015), *Innovation in legal services*. This research standardised for a range of factors that may impact firms’ likelihood of choosing to become ABSs, such as firm size, age and area of law. There remains the possibility that some unobserved characteristic of firms, such as an open culture, is making them both more innovative and more likely to become ABSs.

¹³⁵ LSCP, [Tracker Survey 2015](#).

¹³⁶ LSCP, [Tracker Survey 2015](#).

is likely to be at least partially a reflection of the fact that they typically involve a higher number of amicable divorces.¹³⁷

- 4.59 There are a large number of companies selling legal documents online in the UK, including LegalZoom, Rocketlawyer and Mylawyer.¹³⁸ Documents are provided either at a fixed price or as part of a subscription service, including as part of a wider offering such as that from the FSB. They can range from simple templates intended to be printed off and signed to more interactive templates using document automation. A relatively common area of use has been for writing wills.
- 4.60 Unbundling is where a package of legal services is broken down into parts with some undertaken by the legal service provider and others by the consumer. While there may be some risks associated with unbundling,¹³⁹ the main advantage for consumers is the reduced cost. In addition, some consumers see value in having direct control over their case.¹⁴⁰ In 2015, 19% of consumers reported agreeing that their legal service provider would carry out some of the specific tasks on their case and the consumer would do the others.¹⁴¹ 30% of firms surveyed by the Law Society reported providing unbundled services.¹⁴²
- 4.61 Unbundling takes a number of forms and is available across a wide range of areas of law. Pricing varies depending on the service and can be done on a pay as you go basis, where payment is made after each discrete service, billed on an hourly rate or based on fixed fees for particular agreed tasks. We have identified the following examples in our case studies:¹⁴³
- Self-help packs such as those available for will writing and probate which are typically provided for a small fee or for free. Some have an interactive element that takes the consumer step by step through the process.

¹³⁷ BRDC Continental (2015), Comparing methods of service delivery: A case study on divorce.

¹³⁸ These three were referenced in OECD (2016), Protecting And Promoting Competition In Response To 'Disruptive Innovations In Legal Services.

¹³⁹ See, for example, the Law Society's [practice note](#) on the unbundling of civil legal services which signals to providers that unbundling carries certain risks. These risks include failing to explain to the client the scope of the unbundled services being offered and allegations of professional misconduct or negligence in relation to client care and duties to the court and third parties. A recent case at the Court of Appeal, [Sequence Properties Ltd v Kunal Balwantbhal Patel](#), highlights these possible risks. In that case, a law firm was found liable for negligence despite having entered into a 'limited retainer' which stated that the law firm would only undertake certain activities on behalf of the client and the activity which formed the basis of the client's negligence claim fell outside the scope of those specified activities. We note that it has been suggested by commentators in the trade press that this judgment might dampen firms' incentives to offer unbundled services, as they cannot be sure that they will not be found liable for the elements of the service that they 'outsource' to the client.

¹⁴⁰ Ipsos MORI (2015), Qualitative research exploring experiences and perceptions of unbundled legal services, prepared for LSB and LSCP.

¹⁴¹ LSCP, [Tracker Survey 2015](#).

¹⁴² Law Society, 2015 Omnibus Survey.

¹⁴³ These levels of unbundling follow the Law Society's [practice note on unbundling](#).

- The provision of discrete advice, for example on appropriate next steps in a commercial dispute.
- Checking or drafting documents such as probate forms, wills and papers for employment tribunals.
- Advocacy may apply to any legal issue that ends up in court. Consumers may now directly instruct barristers meaning that this service can be unbundled from the provision of legal advice by solicitors to reduce the overall cost.

- 4.62 There are a range of examples of innovation taking place through the introduction of automation but the broader impact is limited. A survey by the Law Society found that, in just 12% of law firms, work undertaken by non-fee earning staff has been replaced with automated/IT based systems during the previous three years.¹⁴⁴ Just 3% had done so for work undertaken by qualified solicitors.
- 4.63 The Law Society's latest Future of Legal Services report highlighted two examples of legal service providers teaming up with academics to explore the potential for automation in legal services.¹⁴⁵ Riverview Law is working with the University of Liverpool to see how far Artificial intelligence can be used in a commercial law firm. Riverview has launched virtual assistants designed to enable lawyers to manage work flows more effectively. Hodge, Jones and Allen worked with academics from University College London (UCL) to create software that assesses the merits of personal injury cases.¹⁴⁶ The result is a model that predicts the likely outcomes of personal injury cases and is able to challenge the firm's views about the cases they should be taking on.
- 4.64 Document automation software creates bespoke legal documents based on the consumer's relevant circumstances by replicating the question and answer session a solicitor would have with clients when drafting a legal document. An example of this is Rapidocs from Epoq, which also allows the user to see the document being built in real time. This type of software can be used to provide legal documents to clients directly or to support legal providers and increase their productivity.

¹⁴⁴ Law Society, 2015 Omnibus Survey.

¹⁴⁵ The Law Society (2016), The Future of Legal Services.

¹⁴⁶ The Law Society (2016), The Future of Legal Services.

Barriers to innovation

- 4.65 We have not received evidence of any major supply-side barriers to innovation. The ERC report on innovation in legal services found that regulatory and legislative factors were the most commonly cited barriers to innovation. However, as the report notes, its figures also suggest that 75 to 80% of respondents did not consider these factors to be a major constraint on innovation. Other external factors identified in the ERC report included a perceived lack of market opportunities and a conservative attitude among clients. Although these were cited by a relatively small number of respondents, most participants in the ERC's in-depth qualitative interviews¹⁴⁷ noted that many people within the legal profession have (or at least have had until recently) a lack of incentive to change.
- 4.66 The report identified lack of finance and a lack of expertise in the business as important internal constraints on innovation. A conservative attitude within the profession was cited as a barrier by a relatively small number of legal organisations and has been raised during our market study by some stakeholders. There is however evidence that some firms within the sector are more innovative and the Regulatory Policy Institute (RPI) considered that while many firms fit the 'traditional' description, an increasing number do not.¹⁴⁸
- 4.67 Overall, there do not appear to be any significant supply-side barriers to innovation. We note that one of the implications of a lack of transparency and competition may be that legal service providers have less incentive to innovate.

Impact of ABSs on competition

- 4.68 The introduction of ABSs was expected to increase competition in the legal service sector by facilitating entry of innovative business models. Specifically, the possibility of accessing external capital could enable ABSs to innovate, achieve efficiencies by exploiting economies of scale, develop brands and offer greater convenience for consumers seeking a one-stop shop. Furthermore, the ABS structure was expected to allow practices to retain high-performing non-solicitor employees or attract outside talent by rewarding them with a direct stake in the firm. Finally, the involvement of non-lawyers in

¹⁴⁷ ERC (2015), Innovation in legal services: annexes.

¹⁴⁸ RPI (2013), Understanding barriers to entry, exit and changes to the structure of regulated legal firms.

management was expected to facilitate the entry of more 'business oriented' firms with a longer term perspective.

- 4.69 There are now around 700 ABSs: around two third are authorised by the SRA.^{149,150} According to LSB,¹⁵¹ SRA-licensed ABSs had a total turnover of £2.29 billion in 2014/15 (11% of the total market). The majority of them operated in the personal injury area.¹⁵²
- 4.70 Stakeholders have in general agreed that the impact of ABSs on competition has so far been limited. Many ABSs currently in the market do not differ greatly from traditional firms that were operating in the sector prior to 2011. The motivation for many of these firms to seek ABS status has been to bring non-lawyers into senior roles within the firm, rather than to apply a fundamentally different business model or seek external capital for investment.¹⁵³
- 4.71 Our research suggests that only a minority of ABSs have accessed external investment. While stock floatation and private equity investment are often identified to be the most common sources of external finance, investment from a parent firm is more typical amongst ABSs. Firms that have secured external financing tend to have a strategy oriented to market expansion by acquiring other firms, entering into new service areas, aggressive marketing strategies and investment in technology and other infrastructure.¹⁵⁴ These ABSs tend to be active in the more commoditised/high volume area of law (mainly personal injury).
- 4.72 Some stakeholders have indicated that having an ABS structure has enabled firms to bring in expertise on commercial and business matters and a more strategic view of the business. Moreover, we have been told that the ABS structure has facilitated effective leadership and has allowed for a change in culture that has driven innovation.

¹⁴⁹ Other ABSs are authorised by the following licensing bodies: the Council for Licensed Conveyancers (CLC), the Institute of Chartered Accountants in England and Wales (ICAEW) and the Intellectual Property Registration Board (IPReg). For more details, see IRN Research (2016), UK Legal Services Market.

In April 2015, the Bar Council applied to become a licensing authority for ABS and, in May 2016, the LSB has formally recommended the Lord Chancellor that the application should be accepted.

¹⁵⁰ In addition, in 2014/15 there were still 462 LDPs in operation. Since the implementation of ABS regulations, a total of 59 LDPs have converted to ABS status. Source: LSB (2016), Evaluation: Changes in the legal services market 2006/07 - 2014/15, p123.

¹⁵¹ LSB (2016), Evaluation: Changes in the legal services market 2006/07 - 2014/15.

¹⁵² The focus on the SRA regulated ABS is due to data availability.

¹⁵³ In the past three years, around 65% of SRA regulated ABSs were existing SRA regulated entities, which converted to ABS. New entrants account for c.30% SRA regulated ABSs. See LSB (2016), Evaluation: Changes in the legal services market 2006/07 - 2014/15.

¹⁵⁴ Aulakh, S & Kirkpatrick, I (2016), Changing Regulation and the Future of the Professional Partnership: the case of the Legal Services Act, 2007 in England and Wales, Leeds University Business School working paper.

- 4.73 We have seen examples of innovations in business model and service delivery introduced by ABSs. As discussed in paragraph 4.54, there is some evidence that, all other things being equal, ABS solicitors are more likely to introduce new legal services. However, we have also observed that ABSs are not the sole source of innovation within the market. In particular, a number of unregulated providers have also sought to adopt innovative business models and technologies – including firms that have made a conscious choice not to become ABSs in order to do this.
- 4.74 When ABSs were introduced, some commentators noted the risk of permitting non-lawyers' ownership and management. Such risks were perceived to relate to the potential misalignment of interests between non-lawyers and lawyers. While the former may seek only to maximise the return on the investment, the latter have to balance their duties to investors and their duties to their clients or the justice system. Moreover, it was stressed that ABSs may have an incentive to adopt a low-price, low-quality approach to legal services.
- 4.75 We have not found that the conflict of interest between lawyer and non-lawyers has, in practice, materialised. Nor have we found evidence showing that ABSs have caused harm to consumers or resulted in a deterioration of the legal profession's 'core values'. Stakeholders we met broadly agree that there is no greater risk caused by ABSs than by firms owned and managed by lawyers.

Conclusion

- 4.76 On the basis of the evidence set out above, our preliminary view is that a lack of transparent information provided by legal service providers is limiting the ability of consumers to drive effective competition. In particular, the following:
- A lack of information about providers and available prices appears to be an important contributing factor leading to individual consumers and small businesses not seeking legal advice when faced with a legal issue.
 - We believe there to be considerable scope for providers to improve transparency of pricing, particularly online. The fact that some providers are publishing prices to a greater extent suggests that firms are not constrained in general from more transparent pricing.
 - We note that there also appears to be a tendency for providers to price on a case by case basis which may reduce the competitive constraint arising from the minority of consumers who do search on the prices faced by the majority of consumers who do not search.

- In contrast to other service markets, DCTs are not currently widely used in legal services. A lack of price transparency may also restrict the entry of DCTs and published consumer feedback. There are inherent difficulties in signalling quality directly in legal service markets. In this context, there is considerable scope for further development of mechanisms for signalling quality indirectly through reputation, either through consumer feedback or through developing brands.
- Intermediaries appear to play a key role in driving competition in the markets in which they are present.
- While there do not appear to be specific barriers to innovation, the rate of adoption does not appear fast. Similarly, while there do not appear to be significant barriers to consolidation or expansion, the provision of legal services within our scope remains very fragmented. It appears that competition is not providing strong incentives for legal service providers to innovate, consolidate or expand.

4.77 This lack of transparency of price and quality can lead to consumer detriment through reducing the incentives for providers to compete on price and quality and to innovate. This arises because it:

- increases search costs, making it harder for consumers to compare providers and identify value for money; and
- allows suppliers to negotiate prices on an individual basis rather than committing to prices, potentially undermining the ability of passive consumers to benefit from the better price-quality offerings made in an attempt to win the business of consumers who actively shop around.

4.78 While we are unable to measure the level of consumer detriment across the market as a whole, the difference between what a consumer might expect to pay for a particular legal service depending on whether they find a high or low price offering coupled with the size of the overall sector (around £11–£12 billion) indicates that it is likely to be substantial in scale.

5. The effectiveness of consumer protection rules and regulations

Introduction

- 5.1 As described earlier in Chapter 2, legal services are of public importance. Individuals and small businesses often use legal services providers at critical moments in their lives. The advice they receive in these situations can have major personal and financial consequences, which it may not be possible to reverse or remedy, and this distinguishes legal services from many other goods/services that are purchased by consumers.
- 5.2 In addition, the provision of legal services requires expert knowledge and skills which consumers of legal services typically do not hold and as such, consumers may be unable to judge the quality of legal services either before or even after purchasing the service.¹⁵⁵ This can give rise to consumer protection risks. For example, consumers may, unknowingly, choose a supplier that offers poor quality services (ie under-provision), or may receive a higher level of service than is needed (ie over-provision which includes paying for a 'gold-plated' service when a more basic offering would suffice). Where things do go wrong, this can also affect consumers' trust in the sector as a whole.
- 5.3 One way of addressing these risks is through appropriate regulations (for example, regulations on qualifications, training requirements and quality standards) and mechanisms that allow consumers to obtain redress if things have gone wrong. An effective redress mechanism can also offer a feedback loop that may discipline providers to improve the quality of their offering. Transparency of information on key issues (such as costs) is also important to protect consumers.
- 5.4 We have not sought to conduct a comprehensive review of consumer protection regulations, but rather have focused on those concerns that stakeholders have raised during the course of our market study:
- consumers may be at risk when using unregulated providers which are not required to adhere to sector-specific regulatory requirements;

¹⁵⁵ See further paragraph 3.4 and footnote 39 above.

- consumers may not be being provided with clear information on costs when engaging a legal services provider (regardless of the type of provider); and
- existing redress mechanisms may be complex and not as effective as they should be.

5.5 In this Chapter we consider each of these concerns in turn.

Whether differences in regulation between regulated and unregulated providers give rise to consumer protection risks

5.6 We consider in this section whether differences in regulation between regulated and unregulated providers give rise to consumer protection risks. Such risks may arise if, for example, consumers are provided with poor quality advice by unregulated providers and are unable to obtain redress where things go wrong. We are less concerned where consumers are aware of the differences in regulation between regulated and unregulated providers (and the different levels of protection that may be afforded to them) and can therefore make informed choices. However, where they are not aware of those differences, this can raise concerns if there are consumer protection risks involved in using an unregulated provider.

Consumer awareness of the level of consumer protection afforded to them

5.7 As a starting point, we therefore examined whether consumers were aware of the regulatory status of their legal services provider and the differences in levels of consumer protection afforded between ‘regulated’ and ‘unregulated’ providers.

5.8 In our qualitative survey of individual consumers, we found that the majority of consumers were unaware of the regulatory status of their legal services provider. Most individual consumers assumed that their legal services provider was regulated and had not checked their regulatory status before engaging them; others did not understand what it might mean for a legal services provider to be regulated. In addition, our survey of small business consumers shows that consumers had simply assumed that it was possible to get redress if things went wrong.

- 5.9 Consistent with our survey findings, an LSB report into ‘unregulated providers’¹⁵⁶ found that a significant proportion of consumers are unaware of the regulatory status of their provider, and are therefore unaware of the protection they receive (see below). In addition, many consumers simply assume that their provider is regulated.¹⁵⁷
- 5.10 As noted above, this lack of awareness is less of a problem if consumers are unlikely to suffer detriment by using an unregulated provider. We have therefore examined in paragraphs 5.12 to 5.33 below whether the provision of services through unregulated providers in itself gives rise to consumer protection issues. This issue is examined on the basis of the following factors:
- Quality.
 - The sales practices employed.
 - Clarity of information around costs.
 - The redress mechanisms available in the event that things go wrong.
- 5.11 We then consider whether, in light of our findings on the above, consumers’ lack of awareness can give rise to consumer protection problems. Our analysis of this issue draws on the initial findings of our case study into the will writing sector, where both regulated and unregulated providers offer will writing services.

Does the provision of services through unregulated providers in itself give rise to consumer protection issues?

Quality

- 5.12 We have considered below the differences in regulation between regulated and unregulated providers, and, using will writing as a case study, whether there is any evidence of quality problems in the unregulated sector compared to the regulated sector.

¹⁵⁶ Economic Insight (2016), Unregulated legal service providers: understanding supply side characteristics, commissioned by the LSB.

¹⁵⁷ Ibid. Although the base sizes are low, the survey results suggest the main reasons those clients of unregulated providers did not check were that the individual:

- assumed the provider was regulated;
- did not think regulation was important; and
- did not know how to find the relevant information.

- 5.13 One way of addressing the risk that consumers receive poor quality legal advice is through appropriate regulation in order to ensure that only providers who have met certain academic and professional training requirements are able to offer legal services. In addition, rules can be put in place that specify how to conduct certain activities/services so as to ensure that they are of a suitable standard.
- 5.14 As set out in paragraph 3.20 above, the academic and professional training requirements to become a solicitor, which apply to the largest proportion of the 'regulated' sector, are high.
- 5.15 Unregulated providers, with whom solicitors compete in relation to 'non-reserved' legal activities, are not required to meet the same requirements. However, as set out above, some unregulated providers have chosen to self-regulate their profession and impose qualification and training requirements that are targeted at the specific service they offer. For example, the Institute of Professional Willwriters (IPW) and the Society of Will Writers (SWW) impose specific requirements for becoming a will-writer which relate to understanding the law and the skills relevant to will writing alone.¹⁵⁸ In addition, the codes of practice of the IPW and the SWW set out certain service requirements to which their members must adhere.
- 5.16 The Institute of Paralegals also has membership requirements that include a law degree and may include a number of years of legal practice experience. Further, the additional voluntary scheme of paralegals (ie the Professional Paralegal Register) requires the provider to be a member of a recognised membership body such as the Institute of Paralegals and to comply with the membership body's code of conduct.
- 5.17 There is limited evidence comparing the quality of regulated providers with unregulated providers. Most of the evidence that we have relates to will writing. We have in particular considered existing research carried out in 2011 by IFF Research on behalf of the LSB. The LSB commissioned a shadow shopping exercise in order to assess the quality of wills provided by unregulated and regulated providers. The quality of 101 wills in the shadow shopping exercise was assessed by a panel of experts selected by the LSB.¹⁵⁹ It found that the wills it assessed as part of that exercise showed no

¹⁵⁸ For example, entry requirements as a full member of IPW consist of successful completion of a 1½ hour written examination paper and a role play taking will instructions and a will drafting exercise. There are also a number of alternative routes to entry depending on alternative qualifications and/or demonstrable practical experience. Similarly, the SWW requires members to undertake education and training and has developed a professional development body, the College of Will Writing, to assist delivering it.

¹⁵⁹ Each will and testator questionnaire collected was passed on to two assessors (one solicitor and one specialist will-writer) from an assessment panel of solicitors and specialist will-writers recruited by the LSB. The

significant differences in quality between regulated solicitors and self-regulated/unregulated specialist will-writers, and that there were quality concerns in relation to both.^{160 161}

- 5.18 Two stakeholders suggested that will-writers specialise in the provision of will writing services as opposed to some solicitors who offer several legal services. This could be seen as a possible explanation for the findings of the shadow shopping exercise.
- 5.19 It should, however, be noted that the majority of the ‘unregulated’ providers in the LSB’s shadow shopping exercise were self-regulated providers. In practice, unregulated providers may often be self-regulated.
- 5.20 Certain stakeholders who represent members of the regulated professions have also expressed concerns in relation to advocacy services provided by fee-charging McKenzie Friends. However, the Legal Services Consumer Panel’s report on McKenzie Friends stated that while it had heard of McKenzie Friends who had caused detriment, there was no evidence of this occurring on any scale.¹⁶² It further noted that McKenzie Friends can benefit consumers, for example, by improving access to justice and enabling greater equality of arms, especially when the other side is represented. We have been informed that there may only be as few as 40-50 fee-charging McKenzie Friends. Furthermore, the Judicial Executive Board is currently considering the approach that courts should take in relation to McKenzie Friends and whether there should be a prohibition on fee recovery by fee-charging McKenzie Friends.
- 5.21 The evidence in wills suggests that the quality of advice may be comparable to that offered by regulated providers. We cannot conclude, however, whether the same applies to unregulated providers in other areas of law. Whilst we recognise the difficulties in gathering evidence on relative quality, we have received no other evidence on this to compare the quality of regulated and unregulated providers’ services.

assessors reviewed the wills alongside the completed testator questionnaires to establish (a) whether the wills were legally valid and (b) whether they met the needs and circumstances of the respondent as set out in the testator questionnaire. In the event that the outcomes of the two assessments were different, the will was passed on to three more assessors to adjudicate.

¹⁶⁰ We note however the low sample size of this shopping exercise. IFF Research (2011), Research report: Understanding the consumer experience of will writing services, prepared for LSB, LSCP, OFT and SRA.

¹⁶¹ We note that there is evidence that self-completed wills are of lower quality. However, we consider there to be certain inherent risks in not seeking tailored legal advice and that consumers are likely to be aware of those risks. We therefore distinguish this category of service from those described above which involved obtaining advice from a legal services provider.

¹⁶² LSCP (April 2014), [Fee-charging McKenzie Friends](#).

Sales practices

- 5.22 One stakeholder raised concerns that some unregulated providers may be employing unfair sales practices, thereby putting consumers at risk. We considered whether there was any evidence that unregulated providers were more likely to apply unfair sales practices than regulated providers.
- 5.23 The shadow shopping exercise conducted by IFF Research (2011) on behalf of the LSB into will writing shows very little evidence of regulated and unregulated will writers applying pressure on consumers to appoint them as executor. However, research conducted by YouGov (2012) found that while 76% of 2001 respondents felt they were not pressurised by the provider to purchase any additional services, those consumers who did feel pressured were more likely to have used a non-solicitor.¹⁶³ However, the response does not provide an indication of the scale of these problems in relation to wills and to the overall legal services sector.
- 5.24 We considered the Citizens Advice response to the consultation on will writing in 2010 which provided examples of unnecessary cross-selling of related services, but did not provide details on the scale of any such problems.¹⁶⁴ We therefore carried out an initial analysis of the complaints data held by Citizens Advice. Although the complaints data held by Citizens Advice do not categorise complaints on the basis of whether they relate to a regulated or unregulated provider, they show that in recent years there have been few complaints in relation to unfair sales practices in the legal services sector generally, including in relation to high pressure selling and the targeting of vulnerable groups. Since 2012, fewer than 60 complaints each year have been made in relation to unfair sales practices in legal services. This represents 2% of all complaints regarding legal services made to Citizens Advice. In 2015, there was a total of only nine complaints in relation to unfair sales practices regarding wills.¹⁶⁵
- 5.25 On the basis of the above, there is no clear evidence that unfair sales practices are more common among unregulated providers. The low number of

¹⁶³ That is, 81% of the respondents who used a solicitor did not feel pressurised against 41% of the respondents who used a non-solicitor and did not feel pressurised. We note, however, that differences between solicitors and non-solicitors should be read carefully. Further, the same report found that among the 14% who were offered additional services, 31% said these were property sales or power of attorney (27%), 21% said investment advice, 20% said tax advice and 19% said life assurance. 68% of the 14% (those who were offered additional services) went on to buy these and 32% of the 14% did not buy. The sample size of this survey is relatively significant with 2,001 respondents. However, the majority of the respondents used a solicitor as their legal service provider (86%). Source: YouGov (2012), The use of probate and estate administration services, LSB.

¹⁶⁴ Citizens Advice, 2010, Investigation into will writing call for evidence: Response to the Legal Services Consumer Panel from Citizens Advice.

¹⁶⁵ Source: Citizens' Advice Consumer Direct database, Feb 2012-Dec 2015. We excluded bogus selling from sales practices.

overall complaints suggests that this is not an area of significant concern. In any event, we note that there is consumer protection legislation in place which specifically prohibits the use of unfair sales practices. This applies equally to regulated and unregulated providers of legal services, and is enforced in individual cases by local authority Trading Standards Services.

Clarity of information on costs

- 5.26 Stakeholders have raised concerns that, even after consumers have chosen their legal services provider, they still face uncertainty over fees and a lack of clear information on costs. We have considered this issue in more detail in paragraphs 5.34 to 5.45 below. However, we do not have enough evidence to evaluate whether unregulated providers are better or worse than regulated providers in providing clear information to consumers on the likely costs of a matter.

Redress mechanisms and access to compensation

- 5.27 Regulated providers are required to have a process in place for responding to client complaints.¹⁶⁶ Clients of regulated providers have the right to raise a service complaint with the provider in the first instance ('first tier complaint'). If the complaint has not been resolved, consumers¹⁶⁷ have the right to raise a complaint with the LeO in the second instance ('second tier complaint').¹⁶⁸ If the LeO agrees that the service provided to the complainant has been unsatisfactory, it can, amongst other matters, require the legal services provider to pay the complainant compensation for loss, inconvenience or distress (up to £50,000), or to require that they put things right if more work can correct what went wrong or reduce the complainant's legal fees.

¹⁶⁶ A complaint is defined by the LSB, using the LeO's definition, as 'an oral or written expression of dissatisfaction which alleges that the complainant has suffered (or may suffer) financial loss, distress, inconvenience or other detriment'.

¹⁶⁷ The LeO can accept complaints from individual and micro-businesses (as defined in European Commission Recommendation 2003/361/EC – broadly a business or enterprise with fewer than ten employees and turnover or assets not exceeding €2 million). There is also provision for small charities and clubs/ associations but this is outside the scope of the market study. In addition, there is provision for trustees and executors to bring or carry on complaints already made. A complainant cannot be a public body or another authorised person complaining on behalf of a client eg a complainant cannot be a solicitor complaining about a barrister's service.

¹⁶⁸ The LeO's scheme rules set out the types of complaint that are within its jurisdiction. These are complaints that relate to an act or omission by an authorised person in relation to services provided to the complainant (directly or indirectly). In addition, the LeO's website sets out a list of the categories of complaint which it investigates: (i) Costs information deficient; (ii) Costs excessive; (iii) Delay; (iv) Unreasonably refused a service to a complainant; (v) Persistently or unreasonably offered a service that the complainant does not want; (vi) Failure to advise; (vii) Failure to comply with agreed remedy; (viii) Failure to follow instructions; (ix) Failure to investigate complaint internally; (x) Failure to keep complainant informed of progress; (xi) Failure to keep papers safe; (xii) Failure to progress complainant's case; (xiii) Failure to release files or papers; (xiv) Failure to reply.

- 5.28 Complaints concerning a potential breach of professional conduct rules such as in relation to dishonesty, are dealt with by the relevant regulator. Certain legal services providers are also regulated by the FCA (as in the case of banks which offer will writing services), in which case their clients might have access to the Financial Ombudsman Service (FOS).¹⁶⁹
- 5.29 Regulated providers are also obliged to have PII in place, which covers any claims for financial losses by a client, for example, due to negligence of the relevant service provider.
- 5.30 Finally, clients of regulated providers may be protected by a compensation fund which allows them to make a claim if they are owed money by their regulated legal services provider and have exhausted alternative routes for making their claim (for example, through an insurance claim or the court system). There are strict rules surrounding access to the relevant compensation fund.¹⁷⁰
- 5.31 Unregulated providers are not required to have the above-mentioned redress mechanisms or financial protection arrangements in place, although we note that certain unregulated providers have PII in place.
- 5.32 Self-regulated providers, such as members of the IPW and the SWW, also prescribe in their code of practice that their members must have a complaints process in place. Complaints against their members are handled by the legal services provider in the first instance or potentially the self-regulatory body in the second instance. These bodies also require their members to have PII. However consumers do not have access to the LeO and there is no compensation fund in place.¹⁷¹
- 5.33 The above-mentioned regulations aim to provide consumers with additional protection beyond taking legal action against their service provider. We note that the applicability of the additional forms of redress identified above that are available to consumers who use regulated providers will vary depending on the type of complaint and circumstances.

¹⁶⁹ While we understand that the FOS will accept complaints against the bodies it regulates regarding will writing services, we are aware of the '[Barclays complaint](#)' that shows the FOS has no jurisdiction if the services were provided by an unregulated legal services provider (eg an unregulated division of the bank).

¹⁷⁰ For example, the SRA scheme requires the loss to have been suffered due to dishonesty or the client to have suffered loss or hardship due to failure to account for money the provider has received (which includes failure to complete work paid for). Only businesses with a turnover of less than £2m, and individuals can apply for the SRA compensation scheme. The total amount of available client compensation is capped at £2m. The CLC has similar access rules whereas the BSB does not maintain a compensation fund as it perceives the largest risk to clients being through the handling of client monies, an activity that barristers are prohibited from undertaking.

¹⁷¹ Please note the SWW provides a guarantee to clients of members that should they become insolvent or become ill, then the SWW will be able complete the work (subject to their terms and conditions).

Clarity of information

- 5.34 As noted above, stakeholders have raised concerns that, even after consumers have chosen their legal services provider, they are not provided with adequate information on costs in order to be able to estimate their final bill (and that in part this is due to the use of hourly billing structures). In Chapter 4 we explored whether consumers have access to information on price and quality that enables them to make informed purchasing decisions and drive competition. In this section our focus is on whether any consumer protection risks might arise as a result of consumers not having sufficient fee information once they have engaged their legal services provider. For example, in the absence of clear information on costs, there is a risk that consumers face costs that they did not expect to incur and, in extreme cases, are unable to meet. Stakeholders indicated that that is particularly an issue for small businesses.
- 5.35 We have analysed data on complaints made by legal service consumers, and have noted that one of the most common complaints is a lack of information on costs and the level of costs.¹⁷² In addition, our survey of individual consumers shows that 13% of the consumers were dissatisfied with the level of explanation given about the progress of and key developments in their case, 10% were dissatisfied with the clarity of information on any changes to the service provided and 7% were dissatisfied with the clarity of information on any changes to the initial cost estimate or quotation they had been provided.¹⁷³
- 5.36 Evidence from our quantitative survey of individual consumers suggests that about a quarter of consumers (23%) reported not receiving fee information from their legal services provider once they had chosen their legal services provider but in advance of instructing that provider. We also note that approximately 8% of complaints made to the LeO were in relation to failure to provide information on costs.
- 5.37 Our survey of individual consumers further shows that 7% of consumers reported being dissatisfied with the clarity of information on the initial cost estimate or quotation. We further note that 9% of complaints made to the LeO

¹⁷² We analysed first-tier and second-tier complaints from a variety of bodies, including the SRA, the CILEx Regulator and the LeO. We also analysed complaints made to the Citizens Advice. We do not, however, have complaints data for unregulated providers who are not governed by a self-regulatory body.

¹⁷³ Similar findings were obtained in the LSB survey conducted of individual consumers in 2015. In addition, the LSB survey found that 11% of the consumers were dissatisfied with the communication while the matter was progressing and 12% were dissatisfied with the timely way in which the matter was dealt with. Source: YouGov Tracker Survey 2015 – data tables for recent user.

were in relation to excessive costs, which might also suggest that those consumers did not have a clear understanding of what their final bill might look like.¹⁷⁴

- 5.38 Our survey of individual consumers shows that for the vast majority of individual consumers¹⁷⁵ (89%), the final amount they paid for their legal service provider's work was calculated on the basis of the cost information they had been given by their provider at the early stage of engagement (ie if the costs had been calculated as a fixed fee, the final work was also calculated as a fixed fee rather than as an hourly rate, etc.).
- 5.39 We consider it important that consumers are provided with clear information on costs when they engage their legal services provider, so as to ensure that they can properly estimate the cost of the services they are purchasing for the reasons explained above. While there is evidence that some consumers are not being provided with adequate information once they have chosen their legal services provider, the evidence does not suggest a significant problem. Nonetheless, we consider that more can be done and have, in particular, assessed whether there may be scope for improving the provision of information in the client care letter, as explained below.

Effectiveness of client care letters in conveying key information

- 5.40 We note that there are existing information requirements on providers. As set out in paragraph 3.20 above, regulated providers are expected to provide the 'best possible information' at the different stages of their engagement with a client.¹⁷⁶ At the time of engagement, regulated providers must provide the best possible information about the likely cost of a matter and are required to provide updated information, when appropriate, as matters progress.¹⁷⁷ In its practice note on initial interviews, the Law Society mentions that giving the best cost information possible includes either:

¹⁷⁴ This complaints data relates to the financial year 2014/15. Our own survey shows that 71% of respondents said that they paid what they expected to pay, 13% paid more than expected and 12% paid less. We note however that since consumers do not frequently purchase legal services and (as discussed in Chapter 3) may not have access to publicly available pricing information, they may not be well-placed to have a good understanding of what they should expect to be paying.

¹⁷⁵ Ie consumers who had received cost information and whose case was concluded.

¹⁷⁶ For example, the SRA Handbook states at outcome 1.13 that 'clients receive the best possible information, both at the time of engagement and when appropriate as their matter progresses, about the likely overall cost of their matter'; CLC 'Overriding Principle 3 – Act in the best interest of clients' includes principles to achieve the outcomes. At (3J) 'You provide the Client with all relevant information relating to any fee arrangements or fee changes' and at (3M) 'You promptly advise Clients of any significant changes to projected costs, timelines and strategies'.

¹⁷⁷ This is outcome 1.13 of the SRA Handbook. For more information see the SRA Handbook.

- agreeing a fixed fee,
- giving a realistic estimate,
- giving a forecast within a possible range of costs, or
- explaining why costs cannot be fixed or realistically estimated.¹⁷⁸

5.41 Regulated providers usually provide their clients with the relevant information in a letter format, called the client care letter. This letter is presented to the client after he or she has decided to engage the legal services provider, but before service delivery has commenced.

5.42 However, certain stakeholders raised concerns that client care letters are not working effectively, suggesting that the letters tend to be too long, overly complex and do not contain information that consumers necessarily want or need.

5.43 While our survey indicates an overall high level of satisfaction with quality of service and/or advice, some of our survey findings suggest that some consumers were confident¹⁷⁹ that their legal services provider (including a small proportion of unregulated providers) had not clearly explained:

- whether their provider was regulated or not (13%);
- their right to complain and how complaints can be made (18%); or
- the potential outcomes from complaining (23%).

5.44 Furthermore, the fact that 23% of individual consumers reported that they had not been provided with cost information in advance of instructing their provider (see paragraph 5.36) suggests that some individuals are either not informed or that the manner in which that information is conveyed is sometimes not effective or could be improved.

5.45 We understand that certain regulators are intending to examine consumers' experience and needs with a view to determining whether client care letters are effective or whether the provision of information can be improved. We consider that this initiative is timely and will monitor what changes, if any, the regulators propose to make.

¹⁷⁸ The Law Society (2011), [Practice note: Initial Interviews](#).

¹⁷⁹ This includes consumers who were fairly and very confident.

Effectiveness of existing redress mechanisms

5.46 In light of concerns raised by certain stakeholders we considered whether existing redress mechanisms are working effectively taking into account the following factors:

- Consumers' awareness of redress mechanisms;
- Consumers' trust in existing redress mechanisms; and
- Consumers' level of satisfaction on how their complaint was dealt with through existing redress mechanisms.

Consumer awareness of redress mechanisms

5.47 The SRA Handbook requires that details of consumers' right to complain, including the right to complain to the LeO, have to be provided to clients in writing at the start of a retainer. Similar requirements are placed on other regulated providers. Self-regulated providers generally require members to inform consumers of their right to complain.

5.48 Our survey of individual consumers shows that a high proportion of consumers are generally informed about redress mechanisms. However, as set out in paragraph 5.43 above, 18% of individual consumers were confident¹⁸⁰ their legal service provider had not explained their right to complain, and 23% said they were confident their legal service provider had not explained the potential outcomes from complaining. In addition, the qualitative research which we commissioned relating to small businesses found that the majority of businesses had simply assumed that redress mechanisms existed even for some unregulated providers.

5.49 A survey conducted by LSB, which explored in-house complaints procedures, found that of the dissatisfied consumers:

- one in five complainants said they were not told anything about the complaints procedure and timescales,¹⁸¹
- around one in eight were told about the in-house complaints procedure, and

¹⁸⁰ This includes consumers who were fairly and very confident.

¹⁸¹ At engagement with the legal service provider.

- Around one in twelve were told about the second-tier complaints process.¹⁸²

- 5.50 The same study commissioned by the LSB further found that about 23% of consumers who raised a complaint prematurely did not understand the law firms' complaints procedure, which suggests that information on this issue could be further improved.¹⁸³
- 5.51 As regards consumers who do actually make a complaint, we have been informed that where those consumers raise that complaint with the wrong body, they will often be redirected correctly such that confusion as to where to complain is not a significant concern in practice.
- 5.52 The evidence above therefore indicates that while a high proportion of consumers are generally informed about redress mechanisms, a minority of consumers reported that they were not informed about their rights to raise complaints and about complaints procedures. This suggests that this may be an area that can be further improved.

Consumer trust in redress mechanisms and whether the redress process is working effectively

- 5.53 The study commissioned by LeO identified that 50% of those complainants who had made premature complaints had no confidence that the law firm would resolve the complaint fairly.¹⁸⁴ This suggests that even if consumers are informed of the complaints process and understand that process, some lack confidence or trust in the redress mechanisms. In addition, our quantitative survey of individual consumers showed that, of the consumers who were dissatisfied with the overall quality of service and/or advice they received from their legal service provider, 25% did not make a complaint because they perceived it to be too time-consuming, and 22% did not believe that the complaint would be resolved to their satisfaction.¹⁸⁵

¹⁸² As explained in paragraph 5.27, a second-tier complaint is one that progresses onto the LeO.

¹⁸³ This is based on an online survey of 1,275 respondents who were dissatisfied legal service users. Source: LSB (2011), First-tier complaints handling, commissioned to YouGov.

¹⁸⁴ This is based on an online survey of 1,010 premature complainants. The report defines a premature complaint as one where the complainant has not first made a complaint to the legal services provider dealing with their case or where a formal complaint has been made but the eight week time period for the legal services provider to respond has not yet elapsed. Given the purpose of the survey we note that there may be a degree of selection bias because those consumers who have been selected will most likely feel that they have no confidence that the law firm would resolve the complaint fairly. Source: Legal Ombudsman (2012), Consumer experiences of complaint handling in the legal services market – Premature complainants.

¹⁸⁵ This is out of a sample size of 64 dissatisfied consumers who did not make a complaint (the percentages are therefore only indicative and should therefore be treated with caution).

- 5.54 We further considered what proportion of dissatisfied consumers made a complaint against their legal services provider.
- 5.55 Our quantitative survey of individual consumers shows that, for those whose legal service provider's work is ongoing or concluded, 10% of consumers were dissatisfied with the overall quality of service they received. Of those consumers who were dissatisfied with the quality of service and/or advice, 25%¹⁸⁶ made a complaint. A survey commissioned by the LSB in 2015 with individual consumers showed that only 6% of the respondents were dissatisfied with the outcome of the legal matter and 9% were dissatisfied with the service they received. However, of the dissatisfied consumers only 13% made a formal complaint, and 32% raised concerns with the service provider without making a formal complaint.^{187 188}
- 5.56 We are examining how this proportion of complaints compares to other comparable goods or services, in order to determine whether a lower proportion of dissatisfied consumers seek redress in the legal services sector.¹⁸⁹
- 5.57 Our quantitative survey of individual consumers further found that of those consumers who did make a complaint (37 in total), a fifth had not yet received any response to their complaint. A third of the 18 consumers who had received an outcome to their complaint, were dissatisfied.
- 5.58 CILEx informed us that it regards redress mechanisms to be effective, but considers that the timeframes for resolving complaints could be shortened. The LeO noted that delays in processing complaints can be the result of consumers not directing their complaints to the right body.¹⁹⁰ Where complaints contain both service and conduct complaints that too can lead to delays.

¹⁸⁶ Amongst all respondents, 5% (n=37) made a complaint about quality of service, quality of advice and/or the legal service provider's conduct. Of those 37 respondents, 21 were dissatisfied with quality of service and/or advice. There was a total of 85 respondents dissatisfied with quality of service and/or advice (of whom 64 did not complain).

¹⁸⁷ Based on LSB survey commissioned to YouGov, Tracker Survey 2015 – data tables for recent user.

¹⁸⁸ Similarly, a MOJ (2010) survey found that around 10% of legal services users whose matters had ended felt dissatisfied with their legal service provider but only 3% had in fact made a complaint. Source: MOJ (2010), Baseline survey to assess the impact of legal services reform.

¹⁸⁹ We found that in 2013 around 32.2% of dissatisfied consumers who had used a legal or accountancy service did not complain. This figure was similar to consumers who had complaints in relation to second-hand cars (another area where information asymmetries are a problem). However, its definition of 'complain' included complaining to friends and family such that it is not possible to draw direct comparisons. European Commission, Market monitoring survey, 2013.

¹⁹⁰ As noted above, regulated providers' service complaints are first investigated by the relevant provider and then by the LeO if necessary. The relevant regulator investigates conduct complaints.

- 5.59 An individual consumer who responded to our statement of scope and who had been through the complaints process with LeO twice (the first time unsuccessfully and second time successfully) noted that the experience had taught them that detailed records were required of the poor service in order for their complaint to be upheld.
- 5.60 We note that only individuals and micro-businesses who have complaints about a regulated provider can access LeO.¹⁹¹ Interested third parties (for example, a solicitor who has observed the service of another solicitor involved in the same transaction to be of inadequate standard) do not have the right to complain to LeO as they did not hire the relevant service provider. Different arrangements are in place in Scotland. The Scottish Legal Complaints Commission may accept second tier complaints from third parties and businesses of any size (ie it is not confined to micro-businesses) in addition to complaints from individuals. We would be interested to understand what impact this has and whether there is an argument for extending the scope of LeO's remit in a similar way.
- 5.61 These initial findings do not suggest that the handling of complaints raises significant problems, but there may be some improvements that could be made in the interest of consumers not only to encourage more consumers to raise complaints in the first place if they are dissatisfied, but also to ensure that their complaints are handled well. We note that the LSB opened a recent consultation on first-tier complaints handling where it proposes changes in order to improve the outcomes of first tier complaints. We welcome this development. In addition the LeO is looking at how it can work with law firms to improve first-tier complaints handling by providing them with specific advice that builds on knowledge it has gained from investigating complaints as well as its own published guidance.
- 5.62 Finally, we were informed that the recent Alternative Dispute Resolution (ADR) Directive¹⁹² requires that all legal services providers must make their clients aware of the existing ADR providers that operate in the legal services sector, but that they are not required to use such ADR providers. We have been informed that while legal services providers refer to these in their client care letters, they inform their clients at the same time that they will not use ADR (the benefits of which can be a more cost-effective and quicker process for resolving the dispute). We would be interested to hear why there is a general reluctance to use ADR as an alternative means for handling complaints.

¹⁹¹ See footnote 165 above.

¹⁹² Directive 2013/11/EU of 21 May 2013 on alternative dispute resolution for consumer disputes.

Conclusion on the effectiveness of consumer protection rules and regulations

- 5.63 On the basis of the evidence available to date, we have identified the following issues.
- 5.64 Consumers are generally unaware of the regulatory status of their legal services provider and of the implications of that regulatory status. In particular, consumers are generally unaware of the protections that are afforded to them by their service provider.
- 5.65 However, based on limited evidence, we have not found that consumers are exposed to material consumer protection risks in relation to the quality of advice they receive as a result of using an unregulated rather than a regulated provider. Our initial finding is based on will writing; we cannot conclude, however, whether the same applies to unregulated providers in other areas of law.
- 5.66 Nor have we found evidence of a significant problem in relation to unfair sales practices relating to unregulated (or indeed regulated) providers.
- 5.67 We recognise that there are differences in the availability of redress and financial protection arrangements provided by regulated and unregulated providers. We would welcome views as to whether, in practice, it is a material issue that consumers who use unregulated providers benefit from fewer such consumer protection mechanisms.
- 5.68 We note the concerns that there is a lack of clarity around the provision of key information such as information on costs and that this is one of the key areas for legal services complaints. In addition, there is evidence that the client care letter, given by the provider to the client after the legal service provider has been retained, is not effective.
- 5.69 Finally, we have not found strong evidence that consumers are being significantly harmed by a lack of clarity around redress mechanisms. However, while we note that awareness of redress mechanisms is generally high, further work can be done to improve clarity around redress mechanisms.

6. Impact of current regulations and the regulatory framework

Introduction

- 6.1 This chapter sets out our initial findings on theme 3: whether regulation and the regulatory framework go beyond what is necessary to protect consumers and weaken or distort competition for the supply of legal services. Our analysis has focused on the direct impact of regulation on competition rather than broader issues of regulatory design (and how this may indirectly impact competition).
- 6.2 One of the key purposes of sector-specific regulation in legal services is to provide consumer protection in markets that are characterised by information asymmetries.¹⁹³ As with any such system of regulation,¹⁹⁴ there is a trade-off between protecting consumers from poor quality provision and allowing access to a range of lower-cost alternative providers.
- 6.3 We have considered the potential for regulation to have an adverse effect on competition in several ways. In choosing the focus for our market study, we have been guided by previous work in this sector;¹⁹⁵ responses to our statement of scope; discussions with key stakeholders and our own research and analysis. As a result of this process, we have primarily focused on the following areas:
- The impact of regulatory costs on competition;
 - The impact of ‘reserved activities’;
 - The impact of ‘regulation by title’;
 - Regulatory barriers on non-traditional business models (such as ABSs); and
 - The impact of the overall framework for legal services regulation on competition.

¹⁹³ For example, see Decker, C & Yarrow, G (2010), Understanding the economic rationale for legal services regulation.

¹⁹⁴ See CMA (2015), Competition impact assessment guidelines – in particular, paragraphs 3.20–3.23.

¹⁹⁵ In particular, RPI (2013), [Understanding barriers to entry, exit and changes to the structure of regulated legal firms](#); Economic Research into Regulatory Restrictions in the Legal Profession, A Report for the Office of Fair Trading by Europe Economics (2013), OFT1460; MOJ (2014), [Call for Evidence on the Legal Services Regulatory Framework: Summary of responses to the Government’s call for evidence on concerns with, and ideas for reducing, regulatory burdens and simplifying the legal services regulatory framework](#).

The impact of regulatory costs on competition

- 6.4 Regulation by title imposes costs on regulated providers even when they are carrying out lower risk (and unreserved) activities.
- 6.5 In this regard, many key stakeholders have submitted that some of the regulatory costs on regulated providers, in particular solicitors, are disproportionate in relation to the objectives they are trying to achieve. For example, the Law Society submits that while most current rules are necessary for the proper protection of consumers and wider interests, the costs of excessive regulatory requirements for many solicitors are unnecessarily burdensome and that the detail of certain areas of regulation could be simplified.¹⁹⁶ The SRA submits that one of the reasons why it continues to reform restrictive and prescriptive regulation is to ensure that regulation is proportionate and targeted, removing unjustified burdens.¹⁹⁷ In addition, both the SRA and the BSB acknowledge that current training requirements are excessive (both in terms of cost and prescriptiveness) and are considering reforms that will reduce those requirements.^{198,199}
- 6.6 Our review of existing surveys on this issue²⁰⁰ suggests that many legal service providers view certain regulatory costs as high or excessive. For example, almost half of respondents to a 2012 Law Society survey thought that, given the size and nature of their business and their level of risk, the internal costs of compliance for solicitors were excessive.²⁰¹ On the other hand, survey evidence has also indicated that some regulatory costs would, in any event, be incurred by solicitors in the normal course of their business even if they were not mandatory.²⁰²
- 6.7 The available survey evidence shows that PII is consistently cited by many as a key regulatory cost.²⁰³ Additionally, the cost of PII run-off cover has been identified as representing a key barrier to exit.²⁰⁴ However, while PII costs

¹⁹⁶ Law Society submission to the CMA (Theories of harm, paragraphs 4.16; 4.21 and 4.24).

¹⁹⁷ SRA submission to the CMA (paragraph 3).

¹⁹⁸ SRA submission to the CMA (pages 4-5).

¹⁹⁹ BSB submission to the CMA (paragraph 14).

²⁰⁰ This includes the following publicly available sources: In-depth investigation into the costs of regulation in the market for legal services: Report for the LSB, ICF International, September 2015; The regulated communities' views on the cost of regulation, LSB, March 2015; Regulatory performance survey Winter 2012/13 and Winter 2011, Law Society; Measuring the impact of Outcomes-focused Regulation (OFR) on firms, SRA, February 2013;

²⁰¹ Regulatory performance survey Winter 2012/13, Law Society.

²⁰² For instance, in Measuring the impact of Outcomes-focused Regulation (OFR) on firms, SRA, February 2013, 85% of respondents 'strongly agreed' or 'agreed' with the following statement – 'Even if you were not required to do so by the SRA, your firm would continue what it currently does to comply simply in order to run your firm well and look after your clients interests'.

²⁰³ LSB (March 2015), The regulated communities' views on the cost of regulation.

²⁰⁴ SRA (2014), [Proportionate regulation: changes to minimum compulsory professional indemnity cover](#).

may be an issue for some firms (especially for some sole practitioners and smaller firms), it is unlikely that these requirements represent significant barriers to entry and exit in the sector overall²⁰⁵ Furthermore, only a minority of providers seem to think that regulations mandating PII should be removed.²⁰⁶

- 6.8 We have also noted that smaller entities and individual practitioners tend to raise greater concerns about the proportionality of regulatory fees and the costs of compliance. Qualitative research from the LSB²⁰⁷ suggests that this finding may reflect that there are a number of ‘fixed cost’ regulatory tasks that must be done by a practice of any size.
- 6.9 To the extent that regulations apply equally to all providers, they do not necessarily create a barrier to entry. In this context, we note the fragmented nature of the current legal services sector and reasonably high entry and exit rates which suggest that regulatory costs do not constitute a barrier to entry or exit.²⁰⁸ In addition, as noted above in chapter 4, we have not received evidence from new and potential entrants to suggest that regulation creates barriers to innovation or expansion.
- 6.10 However, excessive regulatory costs, in our view, are likely to be passed on to consumers in the form of higher prices. In addition, they may discourage currently unregulated providers from becoming regulated. We therefore consider that it should be a key priority to reduce them. In this regard we recognise and support the work currently being undertaken by regulators with a view to reducing the regulatory burden/costs, where appropriate. For example:
- The SRA is currently undertaking a major review of its Handbook, with a view to achieving a significant reduction in the complexity and length of its regulations. It has also recently made significant changes to its Accounts Rules to ensure that its regulatory requirements are proportionate to the risks associated with handling client money.

²⁰⁵ In regard to insurance, the 2013 RPI report notes that: ‘Our investigations support the conclusion that current insurance arrangements are a source of barriers to entry, exit and mobility. However, since entry, (gross) exit and mobility rates are reasonably high, the magnitude of the barriers created does not appear to be particularly high.’ (page 96).

²⁰⁶ The regulated communities’ views on the cost of regulation, LSB, March 2015.

²⁰⁷ ICF International (September 2015). In-depth investigation into the costs of regulation in the market for legal services: Report for the LSB, p30.

²⁰⁸ Entry rate of 9.8% yearly based on SRA data outlined in RPI paper 2013 and compared to ONS business demography 2012.

- The SRA and the BSB acknowledge that current training requirements are too expensive and are considering reforms that will reduce them.²⁰⁹ The SRA and Law Society have also recently proposed a 9% reduction in fees for the practising certificate for solicitors.²¹⁰
- The SRA is currently reviewing its regulations in relation to PII with a view to potentially reducing the required minimum level of PII cover, which it considers would be more proportionate and would reduce costs for certain suppliers.

The impact of ‘reserved activities’

- 6.11 The reservation of activities allows providers to practise those activities only if they meet specified regulatory requirements. As a result, regulated providers may be protected from competition from unregulated providers when carrying out reserved activities, and unregulated providers who want to become authorised to carry out reserved activities will incur a regulatory cost. However, our initial view is that this impact is limited in practice by a number of factors. First, the reserved activities only apply to a part of the legal services sector. Indeed, some unregulated providers have indicated that they see no need to become authorised in order to operate in the legal services sector.
- 6.12 Second, the reserved activities represent a subset of the overall legal activities that can be offered to consumers. Third, the scope of most of the reserved activities is narrow in that: (i) they describe a specific type of identifiable activity which is narrow in itself and/or (ii) they relate to a small part of a wider service. Probate activities, reserved instrument activities,²¹¹ the administration of oaths and the conduct of litigation²¹² can thus be construed as being ‘narrow’ on one or both of these bases.
- 6.13 As a result of their relative narrowness, unregulated legal services providers may be able to provide similar services to regulated legal service providers

²⁰⁹ This includes the SRA’s *Training for Tomorrow* programme of education and training reform and the BSB’s Future Bar Training programme.

²¹⁰ The Law Society Gazette (June 2016), [Law Society proposes 9% PC fee cut for 2016/17](#).

²¹¹ According to Mayson/Marley, the expression ‘reserved instrument activities’ is often synonymised with ‘conveyancing’. This is, however, ‘both an unduly restrictive as well as a generous interpretation. It is restrictive, because the definition in the [LSA07] encompasses activities that are not related to conveyancing (such as the transfer of personal property). It is generous, because many of the activities carried out as part of a conveyancing transaction do not fall within the definition.’ See Mayson/Marley, *Reserved Legal Activities: History and Rationale*, Legal Services Institute, August 2010.

²¹² Case law on the scope of this reserved legal activity under previous legislation, namely sections 20 -25 of the Solicitors Act 1974, such as *Agassi v HM Inspector of Taxes* (2005) ECWA Civ 1507, indicates that while unclear in nature, the activity should be construed narrowly and would not include the giving of legal advice in connection with court proceedings.

either by outsourcing the reserved element or by working around it. For instance, the SRA has told us that accountants would typically carry out estate administration, but outsource the probate to a solicitors firm, particularly prior to the Institute of Chartered Accountants in England and Wales (ICAEW) becoming a regulator authorised to license its members to carry out probate themselves.²¹³ Similarly, stakeholders have submitted that the reserved element of litigation and conveyancing is typically a relatively small part of the overall legal service provided and in practice can be unbundled from the other unreserved elements.

- 6.14 In practice, therefore, we have found it to be possible for unregulated providers to navigate around most of the reserved activities and provide related legal services. The reservation of activities may, however, partially restrict competition from unregulated providers in the services to which the reserved activities relate, for example, through restricting their ability to provide a bundled service of both the broader legal activities and the reserved elements.
- 6.15 In addition, based on our findings set out in chapter 4, our view at this stage is that competition in legal services is primarily limited because consumers lack the information they need to make effective decisions and are often unaware of alternative providers, rather than because there is an insufficient number of competitors. This suggests that the impact of the reserved activities in limiting the ability of unregulated providers to compete for certain services may be less significant in practice.
- 6.16 Notwithstanding these points, we consider that the reservation of activities may currently reduce competition to some extent and may have the potential to do so to a greater extent if the informational issues we have identified are addressed. Consequently reducing their scope may have the potential to generate greater competition in the future.

The impact of ‘regulation by title’

- 6.17 In practice the manner in which legal services providers become authorised to provide reserved activities, for example, by acquiring the regulatory title such

²¹³ SRA submission to the CMA (paragraph 44).

as ‘solicitor’, may have a more significant impact on competition. We have considered whether:

- regulatory titles may distort consumer choice and restrict competition from unregulated providers; and
- the differences in regulatory costs between regulated and unregulated providers may distort competition.

Restrictions on competition from unregulated providers

- 6.18 In the absence of being able to observe quality directly, consumers may choose to rely solely on title as an indicator of quality. While this may be a practical way for consumers to avoid poor quality, it may distort competition if it results in consumers avoiding unregulated providers, regardless of the quality they offer. We have therefore considered whether competition from unregulated providers may be restricted because of a lack of consumer trust because they do not have access to regulatory titles.
- 6.19 As noted in paragraphs 4.12 and 4.13, our view is that competition from unregulated providers may currently be restricted due to a lack of consumer awareness of their existence coupled with the fact that the majority of consumers tend to rely on recommendations or their previous experience to choose a suitable provider. It is difficult to know whether consumers would trust unregulated providers were they aware of them.
- 6.20 Our consumer survey finds that, when asked, consumers express a preference in principle for using regulated providers because of the higher quality and adherence to minimum standards this might imply. While this evidence suggests that trust is a relevant factor in consumer decision making and that there may be some preference for regulated providers, we do not consider that it necessarily indicates a lack of trust in unregulated providers. Importantly, the majority of consumers currently also assume that all legal service providers would be regulated and do not check whether this is the case. This is corroborated by qualitative research by the SRA which finds that consumers were not aware of how to tell the difference between an unregulated and regulated provider.²¹⁴
- 6.21 In will writing research commissioned by the LSB,²¹⁵ just over one-third of respondents who considered but decided against using a will writing firm cited

²¹⁴ SRA (2011), [Consumer attitudes towards the purchase of legal services](#).

²¹⁵ IFF Research (2011), Research report: Understanding the consumer experience of will writing services, prepared for LSB, LSCP, OFT and SRA.

concerns over their reliability. In addition, ‘a further fifth (19%) were unsure as to how qualified they were to write wills and 15% had doubts whether their wills would be legally binding’.²¹⁶ However, in this regard we note that those will-writers who have participated in our market study to date have suggested that they do not consider themselves to be at a competitive disadvantage as a result of not holding the title ‘solicitor’.

6.22 Our initial view on the basis of this evidence is that the main barrier to greater use of unregulated providers currently arises from a lack of consumer awareness rather than a lack of trust in unregulated providers. Regulated providers have historically held, and continue to hold, a very large overall share of the legal services market. In light of this, the fact that consumers predominantly rely on recommendations from others or their own previous experience means that it is likely to take a long time for new types of provider to become established in the market. We also recognise that the emphasis on regulatory titles within the current regulatory framework may contribute more indirectly to the lack of consumer awareness of legal service providers other than solicitors.

6.23 Although we have not so far identified a lack of trust as a major barrier, we recognise that a lack of trust might emerge as more of an issue were awareness of unregulated providers to increase.

The impact of differences in regulatory costs on competition

6.24 As noted above, regulated providers are subject to sector-specific regulation while unregulated providers are not. The Law Society considers that excessive regulatory compliance costs place solicitors at a competitive disadvantage compared to unregulated providers.²¹⁷ The Bar Council also noted that, unlike barristers, unregulated providers of advocacy services (for example, McKenzie Friends) are not required to hold PII.²¹⁸

6.25 However, our initial view is that these cost differences do not currently appear to be significantly distorting competition between regulated and unregulated providers. In particular, we note the limited extent to which unregulated providers have gained market share from regulated providers. Higher regulatory costs for solicitors may be offset by other advantages they have in

²¹⁶ *Ibid*, p22.

²¹⁷ Law Society submission to the CMA.

²¹⁸ The Bar Council submission to the CMA (paragraph 53). We note in this context that those unregulated providers that are members of a self-regulatory body may hold PII and may be subject to other requirements that are more comparable to those imposed on regulated providers (see further Appendix D below).

the sector as incumbent providers, arising from the impact of information on competition, as noted in paragraph 6.22 above.

- 6.26 Nevertheless, even if there is relatively little evidence of a detrimental impact on competition as a result of differences in regulatory costs between regulated and unregulated providers, regulation by title imposes costs on providers regardless of the risk associated with a particular activity. As noted in 6.10 above, these costs are likely to be passed on, at least in part, to consumers.

Conclusion on the impact of regulation by title

- 6.27 Overall, our view at this stage is that regulation by title does not currently have a substantial impact on competition. However, we recognise that this may be due largely to a lack of information and transparency. Were legal services markets to become more transparent and competitive over time, the impact of regulation by title on competition might become greater. We also recognise that the emphasis on regulatory titles within the current regulatory framework might contribute more indirectly to the lack of consumer awareness of legal service providers other than solicitors.

Regulatory barriers on non-traditional business models (such as ABSs)

- 6.28 We have considered whether the regulation that is imposed on ABSs may limit competition through being overly restrictive.
- 6.29 We asked interested parties whether there were any unnecessary authorisation requirements that might deter the entry of ABSs. We were informed that some aspects of the statutory authorisation process for becoming an ABS remain difficult. In particular, we understand that some of the rules around ABS authorisation are prescriptive as they were motivated by the assumption that ABSs were intrinsically more risky than traditional law firms. For example, stakeholders have identified the following areas of concern:
- onerous checks on non-lawyer managers/owners (as per Schedule 13 of the Legal Services Act 2007); and
 - prescriptive licensing requirements resulting in disproportionate costs for legal services providers (as per Schedule 11 of the Legal Services Act 2007). Those requirements also remove regulators' flexibility in targeting regulations at identified risks.

- 6.30 However, although some stakeholders have told us that they still perceive the authorisation process for ABSs to be complicated, ABSs generally considered that the SRA had made extensive use of waivers from regulations in order to overcome these challenges in practice. In addition, ABSs commented that this signified a marked improvement relative to the SRA's authorisation process in 2011 (when ABSs were first introduced).²¹⁹
- 6.31 As a result, our interim finding is that, in practice, the authorisation process for ABSs does not create a substantial barrier to entry. However, given that our evidence does not support the idea that ABSs pose greater risks than other regulated firms,²²⁰ we consider that there may be scope for the authorisation process to be further simplified and relaxed.
- 6.32 In this context, we note that a working group made up of the LSB and the frontline legal regulators identified a series of legislative changes that could be made within the regulatory framework set out by the Legal Services Act 2007 to improve the efficiency of the authorisation process. These proposals were submitted to Ministers in June 2015.²²¹ We also note that the government has published a consultation on removing barriers to entry for ABSs which seeks to address these issues.²²²
- 6.33 Other regulatory requirements, such as the SRA's 'separate business rule' and its approach to regulation of multidisciplinary practices (MDPs), have been considered a major barrier to the development of ABSs, including those working as MDPs. We note, however, that the SRA has recently implemented major reforms in both areas, with the aim of simplifying and reducing the regulatory burden on ABSs and MDPs in order to facilitate their expansion.²²³

Our assessment of whether the current regulatory structures have an impact on competition

- 6.34 We sought views as to whether the current regulatory structure, including (i) the system of multiple regulators and (ii) the lack of full separation between regulatory and representative arms of the profession, has an impact on competition.

²¹⁹ According to the SRA, the average length of their authorisation process for ABSs has dropped from an average of 184 days in 2012 to 95 days in 2015.

²²⁰ See paragraph 4.74 above for an explanation of the perceived risks that were associated with ABSs when they were introduced.

²²¹ See LSB (June 2015), [Annex B: Proposal for minor changes to the Legal Services Act 2007](#).

²²² See Ministry of Justice (July 2016), [Legal Services: removing barriers to competition: Consultation on proposals to make amendments to the Legal Services Act 2007](#).

²²³ For more details on the separate business rule, see the [SRA website](#) and the [LSB website](#). For more details on MDPs regulation, see [SRA's full policy statement](#).

The impact of the current regulatory structures on competition

- 6.35 The regulatory framework is complex, with nine arms-length regulators overseen by the LSB. This framework allows the different front-line regulators to authorise providers to carry out certain reserved activities, but means that the front-line regulators are currently organised by profession – for example the SRA regulates solicitors and CILEX regulates legal executives.
- 6.36 While this has led to a complex regulatory framework, we have not seen clear evidence that this complexity significantly impedes competition in the current market. However, it is possible that the framework may become unsustainable in the long term particularly if the boundaries between different professional groups are eroded as competition develops. We also note that there has been a trend towards consolidation of regulators in other sectors.²²⁴ Reducing the number of regulators may have the potential to:
- (a) reduce costs and avoid duplication of regulation – for example by removing the need for different regulators to carry out similar functions;
 - (b) improve regulatory independence – a regulator or regulators that were larger might be in a stronger position to stand up to vested interests in particular professional groups; and
 - (c) allow the remaining regulator(s) to encourage competition to a greater extent and move to a more risk-based approach across legal services as a whole – because combining regulators would enable them to prioritise their activities across the sector rather than being focused on a particular professional grouping.
- 6.37 On the other hand, some stakeholders have pointed out the potential for such a change to lead to loss of expertise in specific areas and higher regulatory costs being placed on lower-risk providers. Stakeholders have also noted that competition between the regulators can help drive down regulatory costs.

Regulatory independence

- 6.38 As a general matter, we consider that independence of a regulator from the providers that it regulates is a key principle that should be taken into account in any review of a regulatory framework.
- 6.39 We received mixed views on the extent to which regulatory independence is in practice a problem under the current arrangements. These views largely

²²⁴ For example, Ofcom was formed in 2003 from five regulators, and the Financial Services Authority combined 11 previously separate regulators.

reflect the current ongoing debate. For instance, the CLC's initial submission to us queried whether current relationships between those approved regulators which are representative bodies and their front-line regulatory bodies were serving to deliver 'truly independent regulation'.²²⁵ Furthermore, the SRA has put to us that despite 'functional separation', the Law Society can, and has impeded pro-competitive initiatives in relation to the ABS licensing rules. We also note that in 2013, the LSB investigated whether there had been undue influence on the part of the Bar Council over the BSB and found that the Bar Council had not complied with the principles of independent regulation.²²⁶ On the other hand, the Law Society told us that the SRA acts independently of the Law Society and that it does not have any greater influence over the SRA than any other third party. In addition, submissions and meetings with other approved regulators and their front-line regulatory bodies have indicated general satisfaction with the current system of functional separation as supported by their specific internal governance arrangements.

Conclusion

- 6.40 The information we have reviewed to date suggests that, at least for some providers, regulatory costs can be high, which may be passed on to consumers. However, it does not appear that such costs create significant barriers to entry for regulated providers.
- 6.41 While the reservation of activities restricts competition from unregulated providers to some extent, the majority of legal service provision falls outside the reserved areas and therefore only restricts unregulated providers from competing in a relatively small part of the legal services sector. In addition, it is often possible for unregulated providers to work around the reserved activities by providing associated services that are not reserved and outsourcing the reserved element to a regulated provider or to the client.
- 6.42 Our view at this stage is that regulation by title does not currently have a substantial impact on competition. Cost differences do not currently appear to be distorting competition between regulated and unregulated providers. We note the limited extent to which unregulated providers have gained market share from regulated providers. On the other hand, it appears that the main barrier to greater use of unregulated providers arises from a lack of consumer

²²⁵ Council for Licensed Conveyancers Response to CMA statement of scope, 2 February 2016.

²²⁶ See LSB (2013), [Bar Council Investigation Report](#), paragraphs 2.96, 2.97, 3.7 and 3.8. In this context, we note that the LSB's most recent regulatory standards report on the BSB has noted that 'changes made to its operational governance structure should improve the BSB's ability to make decisions without the perception or otherwise of undue influence from the regulated community.' See The Bar Standards Board's Regulatory Standards Report 2015/16, paragraph 41.

awareness rather than a lack of trust in unregulated providers. We consider that this may be due largely to the impact of a lack of information and transparency on competition. Were legal services markets to become more transparent and competitive over time, the impact of regulation by title on competition might become greater.

- 6.43 We also note that the regulatory framework is complex, with nine arms-length regulators overseen by the LSB and that there might be benefits in reducing the number of regulators. These benefits include the potential to reduce costs, avoid duplication of regulation, improve regulatory independence and allow the remaining regulator(s) to encourage competition and move to a more risk-based approach across legal services as a whole. In this context, we are mindful of the fact that the government is planning to carry out its own consultation on independence of the regulators, and as a result have not examined the arguments about regulatory independence in detail so far in our market study. Overall, however, we consider that a key principle of any review of the regulatory framework should be to ensure full independence of the regulator from the providers it regulates.

7. Remedies

- 7.1 In the previous chapters we have set out the evidence we have gathered so far and our interim findings.
- 7.2 Our overall finding is that the legal services markets are not functioning as well as they might. In particular, we have identified a lack of transparency of price and service quality which undermine competition, reducing the incentives for providers to compete on price, quality and innovation. In addition, a lack of information about providers and prices means that some consumers do not seek legal advice when faced with a legal issue.
- 7.3 As regards regulation, our initial view is that changes to the regulatory framework are unlikely to be effective in generating competition unless the lack of transparency referred to above is also addressed. We have identified a need to consider possible changes to the current regulatory framework in order to ensure that it is proportionate and risk based and to look at the sustainability of the institutional structure of regulators.
- 7.4 In this chapter we set out our preliminary views on how best to address the issues we have identified, particularly with respect to transparency and potential changes to the regulatory framework. We also highlight the areas and questions on which we would particularly like to engage with stakeholders.
- 7.5 In the remainder of this chapter we set out, for context, the possible ‘outcomes’ of a market study before outlining our current thinking on possible remedies. Our consideration of remedies and the regulatory framework broadly follows the structure of the report and issues raised in Chapters 4, 5 and 6.

The outcomes of a market study

- 7.6 Market studies have a number of possible outcomes,²²⁷ including a clean bill of health for the market, consumer-focused action, recommendations to business or Government, enforcement action, or an MIR.

Our approach to outcomes

- 7.7 As outlined in Chapters 1 and 2, we do not consider that an MIR is necessary as we are well placed to identify effective remedies in a timely way through

²²⁷ These are set out in further detail in [OFT519, Market Studies: Guidance on the OFT Approach](#), as adopted by the CMA Board.

this market study to address the issues that we have identified. We believe that we can make a significant difference to how the legal services sector operates through engagement with Government, the regulators and industry bodies.

- 7.8 Our consideration of outcomes is therefore focused on a number of possible recommendations to government, regulators and industry bodies. We refer to these recommendations as remedies.

Our approach to remedies

- 7.9 We set out below a number of areas where we have identified possible remedies. We welcome comments on the possible remedies we have outlined as well as alternative proposals.
- 7.10 We have sought to avoid recommending actions which might have significant unintended consequences outside the scope of our market study. Given the predominance of regulated legal services providers in the market, we have identified areas where the MOJ, the LSB or front line regulators may be well placed to remedy issues that we have provisionally found.
- 7.11 In July 2015, the Secretary of State for Justice stated that he anticipated a review of the Legal Services Act 2007 during the current Parliament.²²⁸ Subject to the scope of any such review, the findings from this study and any recommendation made to MOJ in our final report may form part of that review.
- 7.12 As the predominant suppliers of legal services, we expect that any changes in regulated providers' behaviour will provide an incentive to unregulated providers to do likewise. We do however invite views on whether and how any recommendations that we make in relation to the regulated sector can be promoted and adopted within the unregulated sector.
- 7.13 A number of the themes in our possible remedies overlap with recent recommendations or proposed or ongoing consultations within the sector. We note in particular the LSCP's work on open data and transparency.²²⁹ We are similarly conscious of work by regulators to improve client care communications and periodic reviews of codes of conduct and regulatory

²²⁸ [Response to Q27, Oral Evidence](#), The Work of the Secretary of State for Justice, House of Commons Justice Committee. The Secretary of State for Justice subsequently wrote to the Chair of the Justice Committee confirming his intention to conduct a review of the regulatory framework for legal services, but that he had not yet determined its exact scope or timing.

²²⁹ LSCP, [Opening up data in Legal services](#).

handbooks. We will take into account any relevant ongoing work by those bodies in developing our remedies.

- 7.14 In designing remedies, we are looking to bring about a situation in which:
- (a) consumers are able to access information that is relevant to making informed purchasing decisions and to establishing whether providers offer value for money (ie balancing price and quality);
 - (b) consumers are able to obtain redress where a poor quality service has been provided and understand how to obtain redress; and
 - (c) regulation supports the market and protects consumers but does not introduce excessive costs or unnecessarily restrict entry and expansion.
- 7.15 We consider that making targeted recommendations to government and industry allows the issues we have identified to be addressed effectively and proportionately in a timely manner.
- 7.16 Whilst the changes we are seeking to make are therefore based on a series of recommendations to government, regulators and industry bodies, we are seeking views on how to tailor our recommendations to maximise their impact.

Competition, transparency and informational remedies

- 7.17 Our possible remedies to encourage competition between legal service providers include remedies aimed at:
- (d) improving price and service transparency;
 - (e) addressing barriers to comparison and search; and
 - (f) improving consumer information and awareness of providers.
- 7.18 Our remedies, and in particular those relating to transparency and reducing barriers to search, are intended to drive changes in supplier behaviour.

Improving price and service transparency

- 7.19 When choosing a legal service provider, consumers need to understand both the nature of the service provided²³⁰ and the fee that will be charged.

²³⁰ At a granular level this might include the qualifications of the staff that provide a service and the nature of supervision provided by senior staff or partners.

- 7.20 Price and service information can either be published through publicly available materials (including websites) or provided directly to clients either on enquiry or immediately prior to and on engagement.²³¹ We consider possible ways of improving transparency before and at the point of engagement.
- 7.21 The extent to which information can be provided at an early stage will depend on a number of factors, such as the pricing model adopted²³² and the complexity of a legal need. Consideration also needs to be given to the relative balance of information that is provided to consumers at different stages of engagement.

Information provision before engagement

- 7.22 As noted in Chapter 4, the LSB found that only 17% of solicitors' websites included price information. We have also found that providers are increasingly offering fixed fees, particularly in more commoditised legal service areas (although these may not be published) and the providers we have spoken to have adopted a variety of approaches to price and service transparency.
- 7.23 We are considering a range of possible recommendations on how to encourage price and service transparency. At a minimum we consider that regulators should review their guidance on price transparency and disseminate examples of best practice. Given the low levels of transparency generally in the sector, we are also seeking views on whether it is necessary to recommend to regulators that they introduce a mandatory requirement to publish specific price or service information.
- 7.24 The principle of increasing transparency has been endorsed (see for example the LSCP's report on opening up data in legal services)²³³. However, there is an ongoing debate around what information can and should be made available to customers (and DCTs).
- 7.25 We received mixed evidence about the ability of solicitors to provide fixed prices or firm estimates of likely cost for some services. Particular difficulties were noted in our discussions with stakeholders in relation to commercial

²³¹ This may vary depending on the legal service offered and the ability of a legal services provider to estimate likely costs.

²³² For example, where fees are based on hourly (or unit, such as six minute blocks) charges, consumers may not be able to anticipate the likely total cost without an understanding of hourly rates, total expected hours spent by a provider's staff and the relative number of hours spent by different grades of staff.

²³³ LSCP, [Opening up data in Legal services](#).

litigation and disputes, and some employment disputes.²³⁴ A number of suppliers have noted the difficulty of providing fixed or indicative fees without incurring costs in understanding a client's need (especially for complex litigation). Some suppliers suggested that sharing price information prematurely could mislead consumers. We also received evidence that fixed fees may not be always be appropriate for consumers and had associated risks that meant they were not in the consumer's interest.²³⁵

- 7.26 We note these comments from suppliers. Our view, however, is that a significant proportion of legal services that are within the scope of the market study are not complex and should be capable of being offered for a fixed fee, as illustrated by the fact that many providers of these services already do offer fixed fees.
- 7.27 There may also be some scope for more information to be published about more complex cases. Those parties which felt that more (and more meaningful) information could be usefully provided identified examples of how to provide price information for complex services by breaking them down into discrete phases or by modelling indicative budgets (using previous experience). Indeed, some stakeholders noted that the unwillingness to offer fixed fees reflected a reluctance to take on the commercial risk of a piece of work consuming more time than anticipated.
- 7.28 Given the above considerations and the range of services offered in the market, the information that can usefully be provided pre-engagement may vary. Improvements in transparency pre-engagement might be supported through introducing guidance or requiring mandatory disclosure of matters such as:
- (a) the pricing models (hourly rates, fixed fees, capped fees) used for different types of services;
 - (b) the cost of fixed fees if available and the factors that may affect the agreed fee;
 - (c) the publication of any hourly rates;

²³⁴ Providers may not be able to readily understand the complexity of a case, and the time and resource requirement until they have an understanding of both their client and the opposing party's argument, evidence and litigation strategy. In such circumstances providers may not wish to take the potential financial risk of offering a fixed fee prematurely.

²³⁵ For example, it has been noted that by agreeing to deliver a fixed price service, providers may be disincentivised from incurring additional costs or time on addressing a consumer's legal need if that additional cost would make the engagement unprofitable, even if it would secure a better outcome for the consumer.

- (d) the prominence of any disclosure of the regulatory status and registration details of the firm and ability to access redress;²³⁶
- (e) the regulatory status or qualifications of staff likely to conduct an engagement; and
- (f) indicative timings (where determined by the provider).

Information provision on engagement

- 7.29 When a consumer engages a legal services provider, the provider will typically send the consumer some form of client care letter. Such client care communication should provide consumers with an overview of the terms of service that they can expect.
- 7.30 Client care communication is also a feature of consumer protection, as it should help a consumer to understand the service they will receive, and if necessary allow them subsequently to challenge their provider on the service received and price charged.
- 7.31 As set out in Chapter 5,²³⁷ stakeholders have raised concerns that client care letters can be lengthy and not readily accessible. We are therefore keen to explore whether key information can be provided to consumers in a more accessible, relevant format.
- 7.32 As part of our consideration of transparency on engagement of a legal services provider, we have identified (in addition to the points above) the following possible areas of focus in developing additional guidance or regulatory requirements:
- (a) how frequently consumers will be informed of the expenses incurred;
 - (a) the grade of staff²³⁸ that will typically undertake different types of work;
 - (b) the fee rates of different grades of staff where clients are engaged on a time/unit billing basis and the qualification or regulatory status of those individuals;

²³⁶ We understand, for example, that both solicitors and Licensed Conveyancers are required to disclose relevant regulatory information on publicity and other materials. Our understanding is that the approach to the prominence of such disclosure varies by firms. Additionally, the ability of clients to access LeO or an ADR provider may be disclosed to clients in client care communication.

²³⁷ Paragraphs 5.40 to 5.45.

²³⁸ For client care communication this might also include the individuals allocated to a case.

- (c) the provision of indicative estimates and budgets for key stages of work and explanations for variances against budgets; and
- (d) the treatment of disbursements.

7.33 Any improvement in transparency will complement our proposed recommendation outlined below (paragraph 7.46(ii)) that additional consumer focused materials should be developed to facilitate greater consumer engagement with price and service information.

Questions on improving price and service transparency

1. What are the barriers to providers sharing price and service information with consumers and do these vary by legal service?
2. Is there a minimum level of information that providers should either (i) publish or (ii) provide to consumers either in advance of or on engagement. Should this be mandatory?
3. Are there examples of good practice in price and service transparency that could be shared more widely?
4. How and when should legal service providers communicate:
 - fees and rates to clients; and
 - anticipated or actual cost overruns (ie where the fee will exceed an estimate or quote)?
5. Are there any measures of quality that can readily be collected by regulators or government (including HM Courts and Tribunal Service in relation to civil actions and probate) on observable trends in quality of legal services?

Addressing barriers to comparison and search

- 7.34 As we set out in Chapter 4, a number of DCTs exist in the legal services market but very few consumers use those tools when choosing a legal service provider. We also noted that the role and prevalence of intermediaries varies in different parts of the legal service market.
- 7.35 In our stakeholder engagement, some DCT operators (and other stakeholders) have noted that DCTs have faced barriers in operating in the legal services market. These have related to accessing relevant regulatory

information (such as complete lists of regulated entities)²³⁹ and signing up legal service providers to appear in comparisons.²⁴⁰

- 7.36 The evidence submitted by some DCT operators is that legal services providers are unwilling to engage with DCTs because providers do not wish to adopt standard pricing and instead tend to offer price services that they have calculated by reference to the individual consumers (for example, by reference to the sophistication or engagement of the consumer).
- 7.37 It has also been suggested that reviews of legal service providers can be unreliable since the consumer may be influenced by the outcome of a particular matter rather than the quality of the service provided. Others have suggested that legal professional privilege might prevent regulated providers from responding to public reviews and therefore reduce the appetite to appear on a DCT if there is potential reputational damage.²⁴¹ Despite these concerns, we believe there to be an opportunity to encourage public reviews and we note that a number of law firms publicly engage with consumer reviews on generalist online review websites.²⁴²
- 7.38 We note the availability of data and review mechanisms to compare providers in other professions where similar concerns might in theory arise. For example, in medicine, consultant outcomes data²⁴³ and primary care outcomes and patient reviews²⁴⁴ (which practices can respond to) are published by the NHS.
- 7.39 In the preceding section, we set out our discussion of how price and service transparency can be improved. We believe that if greater public price and service transparency were achieved through regulatory intervention, there would be greater incentives for providers to engage with DCTs.
- 7.40 We are seeking views on the barriers to the creation and development of the DCT sector and whether the measures to improve price and service transparency that we have identified in the preceding sections would be sufficient to facilitate the development of DCTs for legal services. We see significant benefit to consumers in encouraging the use of DCTs and the development of a mature comparison sector. Our expectation is that the transparency measures discussed in this section should provide sufficient

²³⁹ We understand however that there is an increasing amount of openly available data.

²⁴⁰ Specifically, DCTs have found that legal services providers have generally been unwilling to provide price information for commoditised services or to be subject to consumer reviews.

²⁴¹ Various DCTs allow consumer feedback or reviews whilst providing a supplier opportunity to respond to a criticism.

²⁴² For example, see the [TrustPilot website](#).

²⁴³ See the [NHS website](#).

²⁴⁴ For example, [a search for primary care general practices](#) near the CMA's London office.

incentive for providers to engage with DCTs though we are considering whether or not a mandatory requirement is necessary.

- 7.41 In addition to DCTs, there are a number of intermediaries that play a role in assisting consumers choosing a legal service provider (such as through providing introductions or recommendations). We are interested in any views on how intermediaries could be more effective in supporting purchasers of legal services.

Questions on addressing barriers to comparison and search

1. What are the barriers to comparison and search?
2. Are those barriers consistent across different legal services (by area of law, activity and the extent to which a service is commoditised)?
3. What additional information could be made available by regulators and trade bodies?
4. What measures would allow consumers to be better able to compare the non-price attributes of legal services providers (such as quality or consumer protections)?
5. How can intermediaries and those making recommendations better support consumers in selecting a legal service provider?
6. Is there any additional information held by government or regulators that if published would assist the development of the comparison sector or assist consumers directly conducting comparisons?

Improving consumer information and awareness

- 7.42 Consumers vary in terms of their experience in buying legal services and their knowledge of providers of legal services. Providing information to consumers on different types of legal services providers and the considerations to bear in mind when choosing a legal service provider would help consumers make more informed decisions.
- 7.43 Our discussions with stakeholders suggest that consumers do not necessarily understand the distinction between different types of regulated and unregulated²⁴⁵ legal services providers or how to identify and compare providers. There is likely to be benefit in making consumers better aware of

²⁴⁵ Furthermore, consumers may not appreciate that some providers are unregulated.

their choices and how to approach making a comparison of different providers. Improving consumer awareness of the distinction between regulated and unregulated providers would complement any possible requirement²⁴⁶ on regulated providers to disclose their regulatory status.

- 7.44 We have considered how such information could be made available to consumers and whether an existing channel, such as the [Legal Choices website](#)²⁴⁷ could be further developed or promoted. Legal Choices currently provides consumer facing information on regulated²⁴⁸ legal services providers, including how to complain and signposts to other sources of information. Our own research has indicated that the Law Society website is used by consumers as a source of information. However, since it is more heavily focused on the provision of services by solicitors, it appears to us to be a less suitable site for disseminating more general information.
- 7.45 Given that Legal Choices is an established source of consumer information (both for individuals and small business), that covers a variety of providers, our current thinking is that further development of the site's content and promotion might be more effective than developing a new site.
- 7.46 We are therefore considering making the following recommendations:
- (a) The regulators, representative bodies and self-regulatory bodies individually and collectively consider how better to promote Legal Choices, and additionally:
 - (i) each regulator, representative body and self-regulatory body should include a link to Legal Choices in a prominent location on their website; and
 - (ii) each regulator and self-regulatory body should consider whether to encourage or require the legal services providers that they regulate to include a link to Legal Choices in a prominent location on their website.
 - (b) The editorial Board of Legal Choices should include more content on:

²⁴⁶ See paragraphs 7.28(d) and 7.28(e).

²⁴⁷ The website is operated by the SRA and overseen by an editorial board on behalf of 'frontline' legal regulators in England and Wales.

²⁴⁸ Regulated under the Legal Services Act 2007.

- (i) the self-regulated and unregulated sectors of the market to improve understanding of the differences between different types of providers and the redress available; and
- (ii) how consumers can compare and identify the most suitable legal service provider. Such content might include relevant factors to consider (price, experience and regulatory status) and questions to ask providers.²⁴⁹

Questions on improving consumer information

1. How and what information should be provided by a central information hub?
2. Should Legal Choices act as the central information hub for legal services in England and Wales or would an alternative website be more appropriate?
3. How should any central information hub be promoted?
 - Should front line regulators, representative bodies and self-regulatory bodies be asked to promote an information hub?
 - Should legal services providers be obliged to link to an information hub?
4. Should Legal Choices include information on unregulated and self-regulated providers?
5. What materials should be developed to aid in comparing and selecting a provider?
 - Should materials be made available through channels other than a central information hub (such as Citizens Advice)?

Consumer protection and redress

7.47 Our consideration of consumer protection and redress addresses two issues: first the provision of appropriate information by providers to consumers on engagement and second the ability to access redress.

Consumer protection

7.48 As discussed in paragraphs 7.29 to 7.33, client care communication can assist in protecting consumers by setting out the nature of the legal services

²⁴⁹ We are aware of existing materials produced by the LeO on [questions to ask about costs](#).

they have contracted to purchase. However, if this information is not easily accessible, or does not cover relevant aspects of the engagement, it will be less effective. We are therefore consulting on possible improvements in transparency when engaging a legal service provider to provide greater consumer protection. In this context, we will take into account the work being undertaken by certain regulators on the effectiveness of client care letters.²⁵⁰

- 7.49 The Law Society told us that restricting the use of the title ‘lawyer’ by law to regulated professionals is an essential protection for consumers. We note that this proposal would be consistent with a number of professional services markets with protected generic titles (for example ‘architect’) but that this approach has not been adopted in others (for example, ‘accountant’). We believe that any such a restriction could have a significant impact on the entire legal services sector (and thus beyond the scope of this study).
- 7.50 Our interim findings have not found evidence of specific detriment caused by unregulated providers using the title ‘lawyer’ and it is not clear whether restricting the use of ‘lawyer’ might lead simply to unregulated providers using alternative titles which convey a similar service proposition.²⁵¹ We also note the need to consider carefully introducing measures which could enhance consumer protection but potentially restrict competition. At this point we do not consider this proposal to be an effective and proportionate regulatory response.
- 7.51 We believe that finding ways of making both regulated and unregulated providers more transparent about their regulatory status²⁵² and the availability of redress is more likely to better protect consumers without the same associated risks of restricting competition. Such remedies should similarly be supported with improvements in the information available to consumers. We are therefore consulting on:
- (a) whether providers should declare their regulatory status;
 - (b) how regulated and unregulated providers can be encouraged to be more transparent on such issues; and
 - (c) how consumers can be made better aware of the differences between legal services providers.

²⁵⁰ See further paragraph 5.45 above.

²⁵¹ For example, ‘legal adviser’ or simply refer to provision of legal advice rather than a specific title.

²⁵² For example the suggestion in paragraph 1.1(d).

Redress

7.52 We have identified some areas where there may be scope to improve clarity with respect to redress, and possibly further in relation to the jurisdiction of LeO and the role of ADR. We are aware that LSB has recently consulted on requirements for approved regulators in relation to first tier complaints handling.²⁵³

Jurisdiction of the LeO

7.53 At present the LeO's jurisdiction extends to individuals and microbusinesses (in relation to complaints about service quality), which is consistent with other statutory ombudsmen such as the FOS.²⁵⁴ Of the 4.9 million businesses in the UK, some 4.7 million²⁵⁵ employ fewer than ten employees and fall potentially within the scope of LeO. However, because access to LeO is subject to an assessment of a business' financial performance (which is not expressed as a pound sterling amount) there may be a risk that some businesses do not seek redress because it is not clear whether or not they are eligible.²⁵⁶

7.54 By contrast, the Scottish Legal Complaints Commission (SLCC) has a broader jurisdiction than LeO, and can receive complaints from individuals and any size of business. We understand however that relatively few complaints are received by the SLCC from businesses. Additionally the SLCC can receive complaints from third parties about a legal service provider (such as where a provider's service to its client affected the third party).²⁵⁷ Its approach to handling complaints differs from LeO's and includes an initial offer of mediation once a complaint is assessed as eligible.²⁵⁸

7.55 Given the difference in scope and approach of LeO and SLCC we are interested in views on the relative benefits of the two bodies' approach to providing redress to consumers.

²⁵³ LSB (2016), [First-tier complains handling: LSB requirements for approved regulators](#).

²⁵⁴ Some smaller charities also are able to complain to LeO.

²⁵⁵ BIS (October 2015), [Business population estimates 2015](#).

²⁵⁶ To qualify as a micro enterprise the turnover or balance sheet value should not exceed €2 million.

²⁵⁷ Some 18% of service complaints and 91% of conduct complaints were made by third parties in 2014-15. [SLCC, Annual Report 2014-15](#), p12.

²⁵⁸ See the SLCC's [Mediation](#) webpage.

Alternative Dispute Resolution

- 7.56 Under the Alternative Dispute Resolution (ADR) Directive,²⁵⁹ firms are required to name an ADR provider but are not obliged to adopt ADR.²⁶⁰ In 2015, LeO consulted on whether to become certified as an ADR approved body²⁶¹ but subsequently decided not to pursue (at that time) an application using the scheme it had consulted on.²⁶²
- 7.57 We are aware of three providers of ADR services which are accredited by the Chartered Trading Standards Institute to conduct ADR for legal services issues. We understand however that relatively few legal services providers have chosen to adopt their services.
- 7.58 We are seeking input from interested parties on whether the current requirements may confuse consumers over their options on redress, and whether standard guidance across regulated providers should be issued. Additionally we are interested in views as to whether small non-micro businesses (who do not have access to LeO) would benefit from the greater use of ADR by legal service providers.

Questions on improving client care communication and increasing access to redress

1. How can client care communication be improved to better protect consumers' interests and are there examples of client care communication that provide succinct and relevant information?
2. What would be the consumer protection benefits and impact on competition of restricting the use of the title 'lawyer'?
3. What are the barriers to using LeO and are there any benefits in amending its scope, jurisdiction or approach?
4. Are the current arrangements for ADR in legal services clear and readily understandable to consumers and is there scope for greater use of ADR?
5. Should legal services providers be provided with additional guidance on communicating redress options?

²⁵⁹ The directive was transposed by [The Alternative Dispute Resolution for Consumer Disputes \(Competent Authorities and Information\) Regulations 2015](#).

²⁶⁰ Guidance for solicitors is set out on the [Law Society's website](#).

²⁶¹ See Legal Ombudsman press release: [Legal Ombudsman launches consultation on becoming an ADR entity](#).

²⁶² See Legal Ombudsman press release: [OLC decides not to proceed with current proposal to become an ADR entity](#).

6. Do any additional redress mechanisms need to be introduced for unregulated providers?

Changes to regulation and the regulatory framework

- 7.59 In light of our findings above, our initial view is that changes to the regulatory framework are unlikely to be effective in generating greater competition unless the issues with transparency are also addressed. However, we have identified various changes to the regulatory framework for further consideration. In particular we have identified a need to ensure regulation is proportionate and risk-based.
- 7.60 We support the work that is being done to reduce the asymmetries in costs between regulated and unregulated providers and have identified potential changes to the existing regulatory framework:
- Reducing the regulatory burden on regulated providers in areas where it is not justified by consumer protection risk. We recognise and support the work currently being undertaken by the regulators in exploring ways to reduce the costs relating to PII, training and codes of conduct.
 - Focusing regulation on activities where consumer protection risk is highest. We see value in moving further towards regulation that is focused on outcomes rather than prescriptive rules, though we recognise that there are some circumstances where rules are more effective.
 - Considering the case for extending regulation to specific unregulated activities but only where there is clear evidence of detriment to consumers (for example as has occurred in immigration – see paragraph 3.24 above). In addition to this, clarifying differences in regulation across providers to consumers.
- 7.61 We also consider that there may be merit in conducting a systematic review of which legal services or activities should be regulated and how, focusing primarily on identifying where regulation is required because of consumer protection risks. This would inform both how regulation could be reduced within the current framework (in particular whether and how the scope of the reserved activities should change) and whether wholesale change to the regulatory framework was required.
- 7.62 In this regard, we have identified the following high level criteria for assessing the impact of possible regulatory changes. The criteria are focused on how regulation may affect the functioning of legal services markets and market

outcomes in practice, rather than on principles for how regulation should be implemented.

Table 1: High level criteria for assessing the impact of possible regulatory changes

Impact on competition	<p><i>Whether and how regulation affects competition among providers of legal service</i></p> <p>Supply side: does regulation result in:</p> <ul style="list-style-type: none"> • regulatory costs that favour incumbents or create barriers to entry? • reduced ability of firms to consolidate or grow? • reduced ability of firms to innovate? <p>Demand side: does regulation:</p> <ul style="list-style-type: none"> • affect the ability of consumers to assess quality of providers? • distort consumer choice between different provider types?
Direct costs of regulation	<p><i>What costs are associated with the regulatory model</i></p> <ul style="list-style-type: none"> • What regulatory costs does the new regulation impose on providers? • What are the costs of implementing changes to regulation? • What are the costs of monitoring and enforcing compliance with regulation?
Consumer protection	<p><i>Whether and how regulation provides sufficient safeguard for consumers when things go wrong</i></p> <ul style="list-style-type: none"> • What is the direct impact of regulation on the quality of services provided? • Does the regulation effectively deter providers from misconduct? • What is the impact of the regulation on enabling consumers to access redress mechanisms and obtain compensation if things go wrong?
Practicalities	<p><i>Whether regulation is practical</i></p> <ul style="list-style-type: none"> • Is regulation sufficiently flexible to allow for different types of activities to be regulated in different ways? • Is regulation easily enforceable? • Is regulation well defined in scope (for instance, how easy/difficult is to identify the activity subject to regulation)? • Is regulation sufficiently flexible to accommodate market changes and innovations?
Wider impact on society	<p><i>Whether regulation enables wider impacts to be achieved</i></p> <ul style="list-style-type: none"> • Whether regulation enables access to justice • Whether regulation ensures effective functioning of legal system • Whether regulation facilitates wider economic development

Source: CMA analysis.

7.63 We propose to continue to develop these criteria in the remainder of the market study, in particular considering their application to changes to the scope of the reserved activities. In addition, we will consider whether there are any lessons to be learned from comparisons with regulation of legal services in other jurisdictions.

Alternative regulatory frameworks

7.64 Our current focus is on incremental changes to the existing regulatory framework. However, we are at this stage open to the possibility that a move to an alternative regulatory model (for example, an activity based form of regulation, such as that proposed by the LSB),²⁶³ might lead to benefits, either

²⁶³ LSB (September 2013), A blueprint for reforming legal services regulation.

through generating greater competition in the longer term, or through facilitating a greater reduction in regulation currently faced by regulated providers where this regulation is unnecessary or disproportionate in relation to its objectives.

7.65 With regard to competition, we recognise that the emphasis on regulatory titles within the current regulatory framework may contribute indirectly to the lack of consumer awareness of legal service providers other than solicitors. It is therefore possible that an alternative regulatory model may improve competition in the longer term if it reduces the emphasis on regulatory titles.

7.66 However, we also see the following significant risks with moving to an alternative regulatory framework:

- There is a risk of harming competition, for example, if such a change results in extending, rather than reducing, the scope of regulation beyond the currently reserved activities without justification.
- It is likely that wholesale reform would result in significant design and transition costs and may result in a period of regulatory uncertainty.
- More importantly, we do not think such a change would be effective if issues with transparency are not also addressed.

7.67 In addition, at this stage it is not clear to us whether there are constraints to achieving these benefits incrementally under the current regulatory framework. In particular, we note that while the Legal Services Act 2007 requires that the reserved activities are only undertaken by regulated providers, it would allow the flexibility to reduce regulation on non-reserved activities. As we discuss above, there is scope for further ensuring that regulation is proportionate and risk based within the current framework.

Regulatory structure and independence

7.68 We are mindful of the fact that the government is planning to carry out its own consultation on regulatory independence of the regulators. At this stage we have not carried out any detailed analysis on regulatory independence or the multiplicity of regulators. We consider that a key principle should be to ensure full independence of the regulator from the providers it regulates. We also note that reducing the number of regulators may have the potential to result in benefits.

Questions on the regulatory framework

1. Are the high level criteria for assessing the regulatory framework that we have identified appropriate?
2. Does the current regulatory framework prevent, restrict or distort competition?
3. Would the potential changes to the regulatory framework we have identified promote competition?
4. Is a further review of the regulatory framework justified on the basis of competition concerns?

Other possible remedies

- 7.69 We welcome alternative remedy suggestions from interested parties that address the issues we have found.

Invitation to comment

- 7.70 Interested parties are invited to make submissions on the above possible recommendations or to make suggestions for alternative recommendations.
- 7.71 In commenting on the recommendations and in addition to the specific questions outlined we ask parties to set out their views on:
- (a) the effectiveness of the possible remedies individually and collectively in addressing the competition issues we have found;
 - (b) the appropriate recipient of any recommendation (such as MOJ, the LSB or frontline regulators);
 - (c) the cost of any possible remedy and the proportionality of those remedies; and
 - (d) any unintended consequences of our possible remedies.
- 7.72 Comments should be submitted **by 19 August 2016** by email to legal.services@cma.gsi.gov.uk or by post to Maria Rican-Sevitz, Assistant Project Director, Competition and Markets Authority, Victoria House, London, WC1B 4AD.

Case studies

1. While our market study covers a broad range of legal services, we are also carrying out three case studies. These will enable us to conduct a more detailed examination of the three themes that are the focus of our market study (as set out in paragraph 2.7).
2. Our research into each of the three case study areas is ongoing. We are currently reviewing existing research, and engaging with interested parties in order to obtain further relevant evidence for the purposes of our final report.
3. We have included any evidence from the case studies that is particularly relevant to our examination of the three themes in the main body of our interim report. In addition, the following appendices set out a high level overview of our case studies:
 - Appendix A: Wills and probate services case study
 - Appendix B: Employment law services case study
 - Appendix C: Commercial law services case study

Wills and probate services case study

1. This appendix sets out interim observations in the wills and probate case study. Where findings are incorporated into the main body of the interim report they are referenced, but not repeated in this appendix.
2. This case study has drawn on the wide range of pre-existing research and analysis in this area, including reports prepared for the LSB and LSCP. We have also engaged with providers, their representatives and intermediaries.

Scope

3. A will is a document in which a person states who should receive his or her property after his or her death. Probate is the process of verifying a person's will after their death. The process of applying for probate is a reserved activity limiting who can provide the service.²⁶⁴ The provision of will writing and probate services form the basis of this case study.
4. The two services are closely related. Writing a will can act as a gateway to higher value probate work. Many solicitors store wills for free and this may give them access to probate work; similarly some providers will be named as executors.
5. Related services often offered alongside wills and probate include estate planning, lasting powers of attorney, establishing trusts, will storage, funeral services and estate administration.

Suppliers

Wills

6. Solicitors are the most commonly used suppliers of will-writing services and were the only/main provider for 78% of consumers with this as their legal issue. There are just over 4,800 solicitor firms active in will writing, representing 46% of all solicitor firms.²⁶⁵ Although will writing is an unregulated activity, solicitors writing wills are regulated.²⁶⁶ As part of this regulation, solicitors must have PII and consumers can use the LeO.

²⁶⁴ See paragraph 3.15.

²⁶⁵ SRA data 2014

²⁶⁶ See paragraph 3.17.

7. There are an estimated 1,600 non-solicitor firms specialising in will writing.²⁶⁷ Our consumer survey found that these will writing companies were the only/main provider of legal services for 11% of consumers with this as their legal issue.
8. Many of these specialist will writers are part of a self-regulatory scheme such as the SWW or Institute of Professional Will Writers (IPW). These schemes include codes of practice with complaints mechanisms, learning requirements and a requirement for PII. These providers believe that self-regulation helps signal their credibility to consumers.
9. There are an estimated 80 DIY/automated providers who allow consumers to draft a will using a template without direct assistance. These services can range from a paper-based kit to an online interactive template. Some providers offer to provide a professional check of the self-completed will. These self-completion wills did not feature in our consumer survey. However, a 2010 survey found that they accounted for 13% of paid for wills.²⁶⁸
10. Other providers include financial services providers such as banks, building societies, accountants and independent financial advisers. Many of these providers outsource the actual provision of the will to solicitors or professional will writers. Similarly, charities, trade unions and employers may act as intermediaries between consumers and suppliers.
11. Differences in redress mechanisms and access to compensation between regulated and unregulated providers, including within will writing, are discussed in paragraphs 5.27 to 5.33.

Probate and estate administration

12. Solicitors are the main providers of probate services both in terms of number of firms and number of estates administered. Our consumer survey found that 84% of consumers used solicitors as their only/main provider for probate services. There are just over 4,000 solicitor firms active in probate and estate administration, representing 39% of all solicitor firms.²⁶⁹ Other authorised providers such as authorised accountants, authorised conveyancers, notaries and legal executives also provide probate services.

²⁶⁷ Economic Insight (2016), [Unregulated legal service providers: understanding supply side characteristics](#), prepared for the LSB.

²⁶⁸ Law society submission quoted in Legal Service Consumer Panel (2011), [Regulating will writing](#).

²⁶⁹ SRA data 2014.

13. Other providers include trust corporations, banks, charities and specialist will writers. Of specialist will writers around 1,000 out of 1,600 providers offer some form of estate administration.²⁷⁰ While the majority of these providers conduct most of the work themselves, outsourcing specific tasks to solicitors (including the tasks that involve reserved legal activities), in roughly a fifth of cases they instruct a firm of solicitors to carry out the majority of the work.²⁷¹

The experiences of consumers

14. The vast majority of firms charge fixed prices for wills.²⁷² Most firms charge fixed fees for probate (59%), but with significant numbers either giving an estimate of total cost or charging an hourly rate. A small proportion (9%) of providers charge a fixed percentage of the estate. In such cases, the percentage charged typically varied between 0.5% and 3%.
15. Half of unregulated will writers display their prices on their website.²⁷³ This compares to 16% of solicitors who display prices on their websites, although this result is not specific to wills.²⁷⁴
16. As for other legal services, it is difficult for consumers to assess the quality of providers of will writing and probate services. In many cases this will still be the case after the service has been performed. A particular problem for wills is that mistakes are unlikely to be spotted until probate (which in many cases occurs years after the will was drafted). A high proportion of consumers (79 to 94%)^{275,276} reported being satisfied with the quality of their will.
17. Paragraphs 5.17 to 5.19 discuss a 2011 shadow shopping exercise²⁷⁷ that assessed the quality of wills provided by unregulated and regulated providers. This research found that the wills it assessed showed no significant

²⁷⁰ Economic Insight (2016), [Unregulated legal service providers: understanding supply side characteristics](#), commissioned by the LSB.

²⁷¹ IFF Research (2012), [Probate and Estate Management Services Survey](#), prepared for the Legal Service Board.

²⁷² 92% of providers for standard individual wills and 85% of providers for complex individual wills. See OMB Research (2016), [Prices of Individual Consumer Legal Services: Research Report](#), commissioned by the LSB.

²⁷³ Economic Insight (2016), [Unregulated legal service providers: understanding supply side characteristics](#), commissioned by the LSB.

²⁷⁴ OMB Research (2016), [Prices of Individual Consumer Legal Services: Research Report](#), commissioned by the LSB.

²⁷⁵ IFF Research (2011), [Understanding the consumer experience of will writing services](#), commissioned for the Legal Service Board, Legal Service Consumer Panel, OFT and Solicitor Regulation Authority.

²⁷⁶ Economic Insight (2016), [Unregulated legal service providers: understanding supply side characteristics](#), commissioned by the LSB.

²⁷⁷ IFF Research (2011), [Understanding the consumer experience of will writing services](#), commissioned for the Legal Service Board, Legal Service Consumer Panel, OFT and Solicitor Regulation Authority.

differences in quality between regulated solicitors and self-regulated/unregulated specialist will writers.

18. According to a survey in 2011, the main reasons for picking a particular will provider are having used the provider in the past for other services or having a personal recommendation.²⁷⁸ Around a third of consumers compared the will writing services offered by different providers.²⁷⁹

Initial observations on competition

19. There are a large number of suppliers of wills and probate services. There is also some variation in the types of providers consumers can choose. Despite this there is some evidence that competition may not be working as well as it could be.
20. There are clear asymmetries of information between the consumers of wills and probate services and the providers. It does not appear to be easy for a consumer to assess their level of legal need or the likely price and quality of available suppliers.
21. Prices vary considerably for both wills and probate. Using specified scenarios, recent research found the difference between prices in the upper and lower quartile for a standard will is £90 (where the median price is £150) while the same difference for a grant of probate for a valid and non-contested is £450 (with a median price of £650).²⁸⁰ This suggests to us that the market may not be working as well as it could.
22. One aspect of wills and probate that we would like to understand better is the effect of the unregulated sector. There is evidence that some unregulated will writers offer more transparent pricing, lower prices and a differentiated service, for example with home visits. There is also evidence that an unregulated will writer does not produce a lower quality will.²⁸¹ However, there is also evidence that consumers lack awareness of the differences between regulated and unregulated providers and the implications of those differences.

²⁷⁸ IFF Research (2011), [Understanding the consumer experience of will writing services](#), commissioned for the Legal Service Board, Legal Service Consumer Panel, OFT and Solicitor Regulation Authority.

²⁷⁹ IFF Research (2011), [Understanding the consumer experience of will writing services](#), commissioned for the Legal Service Board, Legal Service Consumer Panel, OFT and Solicitor Regulation Authority.

²⁸⁰ OMB Research (2016), [Prices of Individual Consumer Legal Services: Research Report](#), commissioned by the LSB.

²⁸¹ IFF Research (2011), [Understanding the consumer experience of will writing services](#), commissioned for the Legal Service Board, Legal Service Consumer Panel, OFT and Solicitor Regulation Authority.

23. In relation to probate, we note that new providers have been recently granted the right to provide probate services. Specifically, the CLC can license entities to provide conveyancing and probate services.²⁸² The Chartered Institute of Legal Executives (CILEx) can license probate practitioners. Finally, the ICAEW can authorise providers, including accountants, to offer probate services.²⁸³
24. Our initial research suggests that granting the right to provide reserved activities to alternative providers has not had a major impact on competition in the probate market. This is illustrated by the fact that providers authorised by the CLC only have a very small share in the probate market. (We do not have any shares for providers authorised by the ICAEW since it only started to authorise providers recently.)
25. Moreover, as noted in paragraph 6.13, prior to ICAEW authorisation, accountants were providing estate administration services already, but were outsourcing to solicitors the probate element. As such, although the new regime now allows accountancy firms to offer a ‘one-stop’ service in relation to estate administration, our evidence so far does not indicate that the possibility to bundle probate with estate administration has had a major impact on competition in the probate market.

Next steps

26. Going forward, we intend to gather additional evidence in relation to:
- the quality of will writing services;
 - the role and impact of self-regulation;
 - the extent to which differences in redress between regulated and unregulated will writers create consumer harm; and
 - how competition works in the probate sector, including the impact of allowing providers other than solicitors to provide this service.

²⁸² The CLC was established by the Administration of Justice Act 1985 to regulate licensed conveyancers in the provision of conveyancing services. From August 2008, CLC was also authorised to regulate probate services and issued its first probate licences in December 2008. Recently, CLC has been [allowed to issue stand-alone licences](#) to probate practitioners who are not licensed conveyancers.

²⁸³ ICAEW became an approved regulator for (non-contentious) probate services in August 2014 and [issued its first probate licences](#) in September 2014. Note that, differently from SRA which can authorise only solicitors, ICAEW can authorise both members (eg accountancy firms) and non-members (eg tax institutes) to provide probate services. So far, ICAEW has authorised over 200 providers.

Employment law services case study

Scope

1. Employment law governs the rights and obligations of employers and employees. In this case study, we are looking at the supply and demand for employment law services for both individuals and small businesses. We are looking at the markets for the services offered to individuals and small businesses separately whilst recognising the overlap between suppliers.
2. The principal services for individuals we have identified for this case study are:
 - Reviews of settlement agreements²⁸⁴
 - Advice and representation in employment disputes, and principally those where an application to go to the Employment Tribunal or civil courts is made.²⁸⁵
3. The principal services for small businesses we have identified for this case study are:
 - the drafting, preparation, review and supply of employment documentation including employment contracts and employment policy documents;
 - advice on compliance with employment law; and
 - advice and representation in employment disputes, and principally those where an application to go to the Employment Tribunal or civil courts is made.

Suppliers

4. We understand that the predominant providers of employment legal services are solicitors, barristers and HR consultancies. Solicitors and barristers may

²⁸⁴ These were formerly known as compromise agreements and were renamed under the [Enterprise and Regulatory Reform Act 2013](#) which amended the [Employment Rights Act 1996](#). A compromise agreement is only valid if reviewed by an independent lawyer, who under the LSA2007 is authorised to conduct litigation or rights of audience.

²⁸⁵ Relevant matters are reserved to the Employment Tribunal, but breach of contract claims are able to be made in the civil court.

choose to focus on advising individuals or businesses and HR consultancies service businesses exclusively.

5. So far as the provision of advice on settlement agreements is concerned, the Employment Rights Act 1996,²⁸⁶ requires any agreement to be reviewed by a qualified lawyer²⁸⁷ or a trade union official.²⁸⁸ Our understanding is that, as a result, where a fee is charged, such work is likely to be undertaken predominantly by solicitors.
6. So far as advice and representation in Employment Tribunals are concerned, we understand that individual consumers are likely to use solicitors and barristers.²⁸⁹ For small businesses, advice and representation may also be provided, to a lesser extent, by HR professionals employed by HR consultancies. However, it should be noted that around three out of five individuals and small businesses (with fewer than 25 employees)²⁹⁰ do not have representation in Employment Tribunal disputes.
7. Individuals may also be represented at the Employment Tribunal by trade union officers, but increasingly we understand that trade unions make arrangements for legal representation by a third party solicitor or barrister rather than directly representing a client. Some initial advice on an employment claim may be provided by trade union officials where a claimant is a trade union member.
8. In addition to directly engaging a legal services provider, small businesses may obtain information or advice²⁹¹ through telephone and online portals provided by government,²⁹² trade²⁹³ and employers' associations²⁹⁴ and insurance companies. This information and advice may be limited to information on procedure or process, or in the case of legal advice helplines may provide some consideration of the specific nature of a legal issue. Specific legal advice provided by such portals may be provided by a third

²⁸⁶ See the [Employment Rights Act](#).

²⁸⁷ Being a person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes the exercise of a right of audience or the conduct of litigation (within the meaning of that Act)

²⁸⁸ The individual must be declared competent by the relevant trade union.

²⁸⁹ BIS, SETA 2013. The Compensation Act 2006 requires anyone advising, investigating or providing representation [in relation to an employment claim](#) to be regulated by the claims management regulator, unless a [solicitor, barrister or Fellow of ILEX](#).

²⁹⁰ The unrepresented figure falls to around a half for businesses employing 25-49 employees.

²⁹¹ As specified in paragraphs 2 and 3 of this Appendix.

²⁹² For example, GOV.UK.

²⁹³ For example, the FSB.

²⁹⁴ For example, the [National Farmers Union](#).

party law firm. ACAS is the most commonly consulted source of public information for both employees and employers.²⁹⁵

9. There are very few legal restrictions on the supply of employment law services to businesses²⁹⁶ and there are a number of unregulated providers which supply (in combination or isolation) documents, advice and representation.²⁹⁷ Unregulated providers tend to employ a combination of HR professionals and qualified lawyers.²⁹⁸
10. HR consultancies and document providers tend to offer pricing structures based on fixed one-off or monthly charges with medium-long term contracts of one to five years, though there is variation across providers and depending on the nature of services delivered. This differs from the approach adopted by solicitors where prices are usually set on an ad hoc basis depending on the case. Solicitors do not tend to offer any medium-long term contracts and they tend to use fixed or capped pricing only for some services (such as settlement agreement review).²⁹⁹ Where representation is provided this may be either incorporated as part of an insurance backed product,³⁰⁰ as a monthly fixed fee, a one-off fixed fee or charged on an hourly basis. Several subscription based providers offer an insurance backed product that covers both legal expenses and any award that the Employment Tribunal awards. These businesses may or may not be authorised by a competent authority.
11. The document providers we are aware of provide access to documents through an online portal which allows employers to generate legal documents such as employment contracts. The service can be provided as 'pay as you go' for individual documents or alternatively users can subscribe on a monthly basis for unlimited usage or to have access to additional legal advice via the internet or telephone helpline.

The experiences of consumers

12. Individual consumers are less likely to have regular or recurring legal needs relating to employment law compared to small businesses. The mean cost of

²⁹⁵ Employers also use publically available sources of information. Our qualitative research with small businesses for example identified a business that contacted ACAS to confirm that it had followed the appropriate process for terminating an employee's employment.

²⁹⁶ With the exception of breach of contract cases in the civil courts, there are no relevant reserved activities under LSA07.

²⁹⁷ Regulated providers also provide similar services.

²⁹⁸ Due to some restrictions, these lawyers may need to surrender their practising certificate and offer their services as a non-practising solicitor or barrister.

²⁹⁹ This is likely to be the case also for other legal services providers conducting litigations such as barristers.

³⁰⁰ These typically cover both legal expenses and any award made by the Employment Tribunal.

representation of individual consumers at the Employment Tribunal was £4,825 (median £2,000) in 2013.³⁰¹

13. Small businesses are more likely to have regular or recurring needs. The number and frequency of claims that businesses face are linked to the number of staff they employ.³⁰² The mean cost of representation of small businesses at the Employment Tribunal was £4,379 (median £2,500) in 2013.³⁰³ 12% of small businesses³⁰⁴ were members of organisations that provided cover for legal costs, and a further 30 to 40% of small businesses had insurance cover.
14. The most common complaints by individuals to LeO in relation to employment law matters relate to providers either failing to advise (20%) or to follow instructions (16%).

Initial observations on competition

15. Our initial observation is that employment services are provided by a wide range of suppliers, both to individuals and small businesses and that there is a significant presence of unregulated providers. However, the nature of unregulated suppliers differs for individuals and businesses:
 - For individuals, regulatory restrictions relating to settlement agreements and employment tribunals mean that the greatest source of unregulated advice and representation comes from trade union officials. Claims management companies are likely to be the largest category of 'for profit' unregulated employment advice, but are not a significant source of supply.
 - For small businesses there are far fewer restrictions on who may provide advice and representation. As a result, HR and regulatory compliance consultancies have an established presence in the market as suppliers of fixed fee, subscription based unregulated legal services. Use of HR consultancies by small businesses appears to increase with the number of employees a business has.³⁰⁵

³⁰¹ 2013 prices.

³⁰² For example 78% of businesses with fewer than 25 staff which attended the Employment Tribunal did not have experience of the Employment Tribunal in the preceding year compared to 63% of businesses with 25 to 49 employees.

³⁰³ 2013 prices, for businesses with fewer than 25 employees. The mean cost was £2,000 and median £5,634 for businesses with 25 to 49 employees.

³⁰⁴ This was the case for businesses employing both 1-24 and 25-49 employees.

³⁰⁵ The LSB found that 1.2% of all small businesses used such consultancies but the figure was 15.6% for businesses with 10-49 employees. LSB, 'Mapping of for profit unregulated legal services providers'.

16. Since the introduction of fees for employment tribunal cases in July 2013, there has been a significant reduction (in the order of 70%) in the number of cases reaching the tribunal. This has necessarily affected the demand for representation for both claimants and defendants at employment tribunals. A second driver in the reduction may be the requirement for all employment tribunal applicants to notify ACAS first before a case can proceed.³⁰⁶ It is not clear to what extent claimants may still seek initial advice before deciding not to pursue a claim. Some suppliers have as result sought to supplement revenues by offering additional services to businesses, such as training.
17. Our current understanding is that employment disputes can vary significantly in complexity, from simple wage claims to complex discrimination cases, but are broadly non-commoditised bespoke services. In contrast we consider that settlement agreements may be an example of a commoditised product. However, our research indicates that prices are often determined by the contribution an individual employer is prepared to make to an employee's costs.³⁰⁷
18. The presence of HR consultancies with extended contract periods (typically in the range of one to five years) may reduce the frequency of switching for some consumers but their presence in the market may be acting as a competitive constraint on other legal services providers and may be a source of innovation in resourcing and price models.

Next steps

19. We intend to continue our stakeholder engagement, particularly with regulated suppliers.
20. We will seek to explore the significance of intermediaries, particularly in relation to employment disputes. We will be contacting providers of legal expenses insurance and trade unions to better understand their role in both financing legal costs and the selection of legal service providers.
21. We will also reflect on any findings arising from the MOJ's review of the impact of tribunal fees.

³⁰⁶ This is so that ACAS can make an offer to the applicant and respondent to engage in ACAS' 'early conciliation' scheme. The House of Commons Justice Committee found that '[...] the timing and scale of the reduction following immediately from the introduction of fees can leave no doubt that the clear majority of the decline is attributable to fees.' [Courts and Tribunal Fees](#), House of Commons Justice Committee, HC167. A review of the impact of Employment Tribunal Fees by MOJ is currently ongoing.

³⁰⁷ We understand that it is convention (but not a requirement) that employers pay the cost of any review of a settlement agreement.

Commercial law services case study

Scope

1. Commercial law in broad terms governs the conduct of commerce and business. In its widest definition it encompasses almost all activities in which businesses engage.³⁰⁸ For our case study we have focused on the provision of legal services relating to contracts and business disputes for micro and small businesses.
2. The relevant services we have identified for this case study are:
 - legal document preparation (including advice); and
 - advice and representation in disputes.
3. We have also identified mediation and arbitration as services related to disputes.

Suppliers

4. At this stage we understand that the most commonly used suppliers of commercial legal services are firms of solicitors and barristers. We have identified that suppliers have adopted a variety of business and delivery models.
5. We have identified a number of web-based legal services providers active in the supply of legal documents with relatively well developed brands. Our current understanding is that the largest providers of web-based legal services are unregulated, but that a number of SRA regulated firms and entities are also active in supplying documents online. However, we understand that online providers account for a relatively small proportion of the market.
6. The service offering of online document providers varies by supplier, ranging from DIY templates, through to semi-bespoke and fully tailored drafting

³⁰⁸ Law firms providing 'commercial' law services may group discrete areas of the law such as company law, health and safety and regulatory compliance within their commercial service line, although we are not treating these as 'commercial law' for the purposes of our market study.

options.³⁰⁹ Some providers offer an additional document review service conducted by a qualified lawyer.

7. In addition to directly engaging a legal services provider, small businesses may obtain information or advice through telephone helplines and online portals provided by government,³¹⁰ representative bodies,³¹¹ trade³¹² and employers' associations³¹³ and insurance companies. Specific legal advice provided by helplines may be contracted out to a third party law firm.
8. We have identified a small number of unregulated or self-regulated legal services providers which are active in providing advice and to some extent, representation in disputes. The providers we have spoken to are typically single principal firms with the owner of the business having varying levels of legal education or qualifications and professional experience. Those who have chosen to be self-regulated hold practising certificates from the Professional Paralegal Register and carry PII. We have identified a small number of qualified solicitors who have chosen to act as unregulated legal services providers. For these providers, business generation is heavily focused on word-of-mouth recommendations.

The experiences of consumers

9. Trading problems are the most common legal problem experienced by small businesses.³¹⁴ For a number of commercial and business reasons, small businesses may either choose not to pursue disputes or are unable to identify an appropriate route to resolve that dispute. This can be because small businesses face similar difficulties to those experienced by individual consumers in accessing legal services. In contrast, larger businesses are more likely to be repeat purchasers of legal services and may have in-house legal advice which may either service the business's legal needs or act in engaging third party expertise.

³⁰⁹ Some websites sell consumers a standard template as an electronic text document, whereas other providers offering 'semi-bespoke' documents use web forms that lead consumers through a series of questions that generate relevant clauses and automatically populate the document with relevant details.

³¹⁰ For example the Ministry of Justice.

³¹¹ For example the Law Society.

³¹² For example the FSB.

³¹³ For example the [National Farmers Union](#).

³¹⁴ Blackburn, Kitching & Saridakis (2015), [The legal needs of small businesses: An analysis of small businesses' experience of legal problems, capacity and attitudes, commissioned by the LSB](#). The definition of trading problem includes all those goods or services provided to the business's customers or purchased by the business that were not as described, unacceptably late delivery or payment, distance selling consumer rights, contract problems or disputes, supplier insolvency, fraudulent or wrongful trading, unfair operation of a public tender and legal/regulatory issues relating to international trading.

10. Our research found that, where possible, small businesses will try to solve their legal problems themselves, particularly where they have accumulated experience of dealing with similar issues. Additionally, small businesses are more likely to tackle trading issues without external assistance than they are with other legal issues such as intellectual property and employment law.³¹⁵
11. Our qualitative research found that solicitors were the predominant source of legal advice but that some small businesses choose to pursue commercial disputes without external legal representation in the small claims court. Whilst some small businesses are comfortable with handling their cases without assistance, they would not have been aware of this route without being informed by third parties. We also found that businesses often rely on recommendations from third parties to select a provider. Where businesses seek to review the market, the sophistication of comparison varies.

Initial observations on competition

12. Our findings to date suggest that solicitors are the predominant suppliers of legal services to small businesses, particularly for document drafting and small disputes.³¹⁶
13. Pricing models vary across different legal services. Document drafting and review, for example, are typically offered on a fixed fee basis and those fees are more likely to be published on supplier websites. Online document providers may provide monthly subscriptions providing unlimited access to document template libraries.
14. Our current view is that pricing is significantly less transparent in commercial disputes, where fees tend to be based on hourly rates. Given the uncertain nature of disputes, providers appear to be less willing or able to provide firm estimates or fixed fees.
15. Our qualitative research found that some small businesses were unaware of how to seek redress, or perceived the cost of making a complaint to be greater than the expected benefit and would be a distraction for the business. For some businesses, switching provider was an alternative to seeking redress.

³¹⁵ Pleasence & Balmer (2013), [In Need of Advice? Findings of a Small Business Legal Needs Benchmarking Survey, commissioned by the LSB](#). This report uses the same definition of trading problems as Blackburn et al. (2015).

³¹⁶ We understand that in more complex cases and in particular those reaching the higher courts that the use of barristers will be more prevalent.

16. Our engagement with stakeholders has so far identified a number of potential barriers to seeking redress, including the limited scope of the LeO with respect to small non-microbusinesses,³¹⁷ the use of unregulated legal services providers,³¹⁸ and the commercial decisions relating to the opportunity cost of management time and a desire to maintain a relationship with their legal service provider.³¹⁹

Next steps

17. We will be seeking to develop our understanding of innovation and barriers to entry, expansion and exit in the market.
18. We intend to continue our stakeholder engagement with suppliers of commercial legal services to small businesses, with a particular focus on innovative services and both regulated and unregulated providers.

³¹⁷ A micro business is one with fewer than 10 employees and turnover or a 'total balance sheet value' of less than €2 million.

³¹⁸ Consumers of legal services provided by unregulated providers are unable to access LeO and depending on the provider, may use a provider that does not hold PII. Consumers of legal services provided by unregulated providers that are members of self-regulatory bodies may have additional opportunities to receive redress. As noted in Chapter 5, it is not clear how significant in practice it is that small businesses who use unregulated providers benefit from fewer redress and financial protection arrangements.

³¹⁹ Our qualitative research found that small businesses tended to take what they felt was a business decision, weighing up the time and effort they envisaged they would need to spend pursuing an issue with the expected outcome which, it was typically assumed, would be of little consequence.

Overview of standards required of providers by regulatory status

	<i>Regulated provider (under the LSA07)</i>	<i>Self-regulated provider</i>	<i>Unregulated provider</i>
Information	<ul style="list-style-type: none"> Regulated providers must keep confidentiality and in particular their communications attracts legal professional privilege, protecting communication with the client Regulated persons should have a written file retention/ destruction policy available to the client on request 	<ul style="list-style-type: none"> Their communications are not subject to legal professional privilege. Are not specifically regulated around their handling of confidential business information. Requirements under the Data Protection Act 1998 apply 	
Standards/Codes of conduct	<ul style="list-style-type: none"> Requirements under the Data Protection Act 1998 apply Standards of conduct are designed to ensure that regulated providers (individuals or entities) should carry out their work with care, integrity and diligence and with proper regard for the technical standards expected of them A regulated person should only undertake work within his expertise or competence 	<ul style="list-style-type: none"> The majority of the self-regulatory bodies have a code of conduct. <p>Although the regulators' codes of conduct covers technical competence, they also cover treating consumers fairly and information type issues. This is generally covered by the Consumer Rights Act.</p>	<ul style="list-style-type: none"> Only a requirement if the unregulated provider is member of an association that has a code of conduct. <p>Although the regulators' codes of conduct cover technical competence, they also cover treating consumers fairly and information type issues. This is generally covered by the Consumer Rights Act.</p>
Advertising	<ul style="list-style-type: none"> Codes of conduct include specific and general conduct rules when advertising their services (including on websites) Subject to advertising codes administered by the Advertising Standards Authority 	<ul style="list-style-type: none"> Subject to advertising codes administered by the Advertising Standards Authority. 	
Financial protections arrangements that include:	<ul style="list-style-type: none"> Financial protection arrangements generally aim to protect clients from loss due to dishonesty, fraud, negligence, insolvency or failure to account. 	<ul style="list-style-type: none"> Only a requirement if the unregulated provider is member of an association that requires PII (however, stakeholders have informed us that most unregulated businesses will have this in place for their clients protection as well as their own) 	<ul style="list-style-type: none"> Not a requirement, although indemnity insurance may be a relevant financial protection and therefore, unregulated might have this in place
<ul style="list-style-type: none"> PII compensation fund 	<ul style="list-style-type: none"> All regulators require professionals to have an indemnity insurance. Based on different regulators' codes of conduct, an entity or individual will be unable to practise a reserved activity until they have PII in place. Not all regulators have a compensation fund in practice. 		

Complaints handling, including Legal Ombudsman (LeO)	<ul style="list-style-type: none"> Regulated providers must have a complaints procedure. Written details of the procedure should be available whenever the client requests and should be given in writing in the initial client care letter Complaints can be taken to the LeO free of charge for the consumer (a case management fee is payable by the lawyer) Also need to sign post an approved ADR entity in accordance with the ADR Directive³²⁰ Complaints redress procedure must be informed in the client care letter (initial information) and must also be made publicly available in the regulators' website 	<ul style="list-style-type: none"> The self-regulatory body might have a complaints procedure in place No access to the LeO ADR Directive signposting rules are relevant. The Directive doesn't require participation to be mandatory but is stated to be 'without prejudice' to national legislation making it mandatory. The UK has implemented the Directive such that businesses are not mandatorily required to participate. Some trade associations will have independent redress mechanisms 	<ul style="list-style-type: none"> No access to the LeO ADR Directive signposting rules are relevant although of course the UK has implemented the Directive such that businesses are not required to participate. Some trade associations will have independent redress mechanisms
Sanctioning	<ul style="list-style-type: none"> Regulated providers may be investigated for breaches of rules and sanctioned with penalties starting at reprimands and escalating to fines, suspension and ultimately 'striking off', the equivalent to a prohibition on trading in reserved activity areas 	<ul style="list-style-type: none"> Trade associations may have a range of penalties at their disposal including expulsion, although this doesn't amount to a prohibition on trading. General consumer law is subject to a mixture of private and public enforcement 	
Closure	<ul style="list-style-type: none"> Regulatory arrangements are designed to ensure continuity of service for clients in case of a law firm closing down, eg transfer of files to another firm 	<ul style="list-style-type: none"> Trade associations may have mechanisms to protect consumer prepayments. Insolvency law applies 	

³²⁰ The Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015 is the main UK implementing measure of the ADR Directive and came into force in October 2015. This provides that where a trader has exhausted its internal complaints procedure, it must inform the consumer of the name and website address of the approved 'ADR entity' which would be competent to deal with the complaint. It should also state whether is obliged to use the 'ADR entity' (ie by virtue of any rules or regulations) or whether it is prepared to do so. The Directive and implementing Regulations apply only to consumers who are individuals and acting 'wholly or mainly' outside their business or profession. Therefore, they do not in general cover consumers who are SMEs.

Stakeholder engagement

The table below provides a list of organisations with which we have engaged since the market study was launched in January 2016. We have also met a wide range of regulated, self-regulated and unregulated suppliers (including ABS providers), various price comparison websites, and a number of academics and other commentators on the legal services market.

<i>Type of organisation</i>	<i>Organisation</i>
Oversight regulator	Legal Services Board
Approved regulators	Solicitors Regulation Authority Bar Standards Board CILEx Regulation Council for Licensed Conveyancers Immigration Services Commissioner Institute of Chartered Accountants in England and Wales
Representative bodies	Law Society of England and Wales Law Society of Scotland Bar Council Institute of Chartered Accountants Representative Arm Chartered Institute of Legal Executives
Self-regulatory bodies	Society of Professional McKenzie Friends Institute of Paralegals Society of Will Writers Institute of Professional Willwriters
Consumer organisations	Legal Ombudsman Legal Services Consumer Panel Providers of alternative dispute resolution services Citizens Advice Bureau Which? Chartered Trading Standards Institute
Government bodies	Ministry of Justice HM Treasury Department for Business Innovation & Skills HM Courts and Tribunal Service - Probate Registry Advisory, Conciliation and Arbitration Service (Acas)
Judicial	President of the Employment Tribunal
Trade associations	Federation of Small Businesses Society of Trust and Estate Practitioners Society of Licensed Conveyancers ABS and New Law Advisory Council Employment Lawyers Association Commercial Litigation Association