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Competition and Markets Authority

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Dear Sirs

Access Solicitor welcomes the CMA's investigation of the legal services market. The legal services market forms the foundation upon which all commerce is transacted, and upon which individuals can have confidence that they can rely upon the rights and protections granted to them by Parliament and past judgements. An effective operating legal services market is therefore critical for both the economic prosperity of the nation and the protection of individuals' rights and access to justice.

The CMA is right to find that the legal services market currently works poorly for the clients which it is supposed to serve. There are many reasons for this, and it is acknowledged that the CMA cannot seek to address all of these. In addition to the remedies proposed by the CMA it is also necessary for the government and MoJ to look hard at the current regulatory structure of the legal profession, and through that to effectively motivate all regulators and other key stakeholders to empower the client before the self interests of some of those in the legal profession to maintain the status quo.

In the context of the CMA's scope of investigation the CMA is correct to highlight and prioritise the need for improved upfront transparency of information. Access Solicitor has actively lobbied for such transparency of information since 2013, and even in 2016 the scope of existing information accessible and the method of accessibility both need significant and immediate improvement.

Regarding the timing of publishing information to clients it is critical that the focus is on all information being published upfront to enable and empower more effective client choice. When making any proposed remedy to improve the client care letter (second bullet of 1.34) the CMA should take care that the profession do not latch onto this as their sole focus to further avoid or delay more upfront publishing of information to clients. There is no reason why everything currently published in the client care letter (and particularly fee information) shouldn't be made available to clients before they actually engage a lawyer. Given the effort for clients to engage a lawyer very few meet multiple lawyers to compare, and so any clarity of information in the post-engagement client care letter is of significantly less market impact and benefit to clients compared to that information being published transparently and earlier. The focus on publishing information upfront will also provided benefits in being able to more clearly call out and raise awareness to clients of all the options available including between (a) regulated and unregulated providers (and their related differing levels of protections balanced against different pricing), (b) ADR service options versus traditional dispute resolution, and (c) accredited and non-accredited professionals based on a wide range of independent accreditation schemes which genuinely differentiate professionals (e.g. APIL, Resolution) and are not just a badge for a fee.

Improving Current Information

Regarding the scope of current information accessible, it is critical that information about all practising lawyers is provided as well as information about firms. Clients engage individual people for their skills and experience, and the firms within which they work are largely just an operating construction of the profession the form of which will not in practice influence client choice. In this context it is critical that the SRA should provide a full export of all solicitor data to comparison websites in whatever form possible as soon as possible (as requested in March 2013, promised in 2014 would happen by December 2015, but still has not happened by August 2016). All other main legal regulators already provided such data about their legal professionals, but since solicitors represent 85% of all legal professionals the SRA's failure to deliver the same is single handedly holding up a step change improvement in market transparency [3].

Regarding the method of accessibility of data all regulators should prioritise the creation of simple database APIs from which all comparison websites can perform regular checks to ensure the accuracy of all information published. Whilst the current publishing by most regulators of spreadsheets of data about their professionals is a very simple and cheap solution for infrequent annual updates (and the minimum effort deemed necessary by most regulators to show the LSB that some steps have been taken) it is impractical for 3rd party comparison websites to use this method to ensure more regular daily, weekly or monthly updates of information to ensure accuracy of information published to clients. Despite the SRA's indicated proposal to develop such an API as part of its IT development plans between 2016 and 2020 this should be prioritised and should not prevent the SRA providing a full spreadsheet export of all its solicitors' data as soon as possible in the same way as all the other regulators to enable the further adoption of online choice tools by clients in parallel.

Focus on Price and Consumer Feedback

In addition to the regulators providing effective access to existing lawyer data that they already hold, the CMA is correct to focus on getting price and prior customer feedback published upfront. The CMA is correct that the priority is to change supplier behaviour to make more information available upfront, however the CMA should not underestimate the level of resistance from the legal profession and difficulty in achieving this.

The parameters of how pricing is published should be guided first by what clients want, subject only to the constraints of the type of legal service (e.g. some litigation may only ever be predictable sufficient to publish a likely range of fee rather than a fixed fee). The role of the regulator in the context of pricing should be to have the power to collect and publish a range of pricing information (both to motivate the lawyers to publish prices themselves and also to significantly increase the accessibility of that information). Publishing some things are obvious (e.g. include and specify all known disbursements, and VAT). Starting in October 2016 all regulators could easily collect and republish the current hourly charge rate of every lawyer, which information is already required to be provided in the client engagement letter. This would provide clients some simple and immediate comparability of pricing alongside the existing availability of data on a lawyer's length of qualification/experience. The regulators should also offer to collect other formats of pricing data (e.g. fixed fees where appropriate, or fee ranges for litigation) as a service to support those lawyers who wish to republish that information broadly but do not have the resources/skills to engage with all comparison

websites directly. Regulators should recognise that there is no single suitable common form for pricing all types of legal service and there is no single correct way to collect this data. The immediate collection of inconsistent pricing data should not be delayed - these different data types should form the basis of tests to establish a future consistent approach by regulators to collaborate and develop a client driven structure for collection of pricing data. Lawyers can eventually be guided by the structure of fee information collected when publishing their pricing information directly to clients (e.g. via their own websites). In the event that few lawyers engage with a voluntary service to publish fixed fees and fee ranges then the regulators should ultimately have the power to compel the collection of certain pricing information to republish it for the benefit of consumers. The one off annual collection of this additional pricing information (and with the ability for lawyers to update their pricing information directly through the regulatory databases) should present little additional burden or cost on either regulators or lawyers and would provide significant benefits to clients.

In relation to customer feedback there are many online tools already available commercially. It should not be unreasonable to compel all regulated lawyers to use these tools immediately as part of their regulatory obligations to maintain a minimum quality of service, and such an obligation would cost lawyers as little as a few pence to collect client feedback after each matter is completed. Use of such tools, however, is not sufficient if the feedback is not effectively reacted to, and the most effective way to make the weakest lawyers react to poor feedback (or pro-actively take more steps to avoid poor feedback in the first place) is to ensure it is published as widely as possible and easily accessible to future clients. Feedback on lawyers should not be taken on a lawyer's professional ability (which clients are ill qualified to judge, and which should be assumed for all regulated professionals anyway), but should be taken on customer service metrics that clients can reasonably judge such as regularity of information, speed of response, accuracy of fees quoted, and value for money. The final two metrics also provide an effective checking mechanism to encourage lawyers to provide accurate pricing upfront (including reasonable ranges of fees for litigation) since failure to do so will lead to poorer feedback for missed targets at the end of matters. Lawyers in some sectors of the legal profession (e.g. criminal law and other legal aid areas) have legitimate concerns about the publishing of unfair feedback, but this should not eliminate the need to collect feedback nor publish feedback in some more controlled form (e.g. lawyer elected positive feedback only). Client confidentiality can be easily addressed because the subject of the feedback is not confidential except by associating the feedback with the client by name. It would be simple to enabling the client to elect either to be named or remain anonymous (the option to be named may be important for future clients to trust info provided), and also provide the option for the client to elect out of the broad publishing of feedback (although the default position should be for broad publishing to ensure maximum accessibility of that feedback to future clients).

It should also be considered whether regulators should provide all their regulated members with access to an online tool to collect client feedback (N.B. recommend the regulators identify a preferred commercial tool already available and not seek to develop their own inferior solution themselves). The regulator's access to such client feedback directly will enable the regulator to significantly improve its understand of the market that it regulates, and enable it to focus its limited resources on those lawyers in most need of further support.

By comparison, the publishing of regulatory complaints data of the nature of LeO or other regulatory judgements or adjudications are likely to be of much more limited use to customers. This data only highlights those few lawyers which incur the most severe sanctions, and so would add very little when these lawyers would very likely be highlighted already (and statistically more accurately) from much higher volumes of general client feedback data much earlier in the process. In fact, the publishing of both client feedback and LeO complaints data could actually just confuse customers through information overload if both are not necessary to communicate the same single point about quality. By focussing on the analysis of client feedback in much higher volumes much earlier in the complaint process this should encourage the actions required from lawyers to minimise complaints in the first place, and where complaints do still occur then lawyers will be better motivated to resolve those complaints sooner to avoid poor feedback. The fact that the CMA's own research suggests only 25% of dissatisfied consumers went on to complain raises a very important and unanswered question of why 75% of dissatisfied customers do not complain. Empowering customers through providing simple and quick customer feedback is critical and if self-fulfilling, then in the longer term many less referrals should be made to LeO and for other regulatory adjudication, making that data of even less relevance in future and significantly reducing regulatory costs in this area as well.

Regarding the quality of information published, there is no doubt that trust in the information published is critical. It is for this reason that Access Solicitor has always sought to obtain as much information as possible through verification against data on regulatory databases, or at source from accreditation providers directly. Where information such as pricing and customer feedback might be provided directly by lawyers or law firms and not via regulators then to ensure quality of information the regulators should place significant and meaningful sanctions on their regulated professionals for publishing information that is untrue or outdated and misleading (with the clear onus on lawyers to ensure compliance). In practice, and despite all efforts to verify data against multiple sources, it will be impossible for comparison websites to guarantee 100% accuracy all of the time and so to the extent possible it is important that comparison websites can rely on the accuracy of information sources. That said it is for commercial comparison websites to carry their own commercial risk derived from data accuracy and it is not necessary for regulators to guarantee data quality or have complete oversight of all data sources related to lawyers that comparison websites might incorporate on their services, and it is reasonable for comparison websites themselves to assess the value of information provided by other 3rd parties, for example independent accreditation providers (e.g. APIL, Resolution) and legal publishers (e.g. Legal 500/Chambers), since the comparison websites have a self interest to ensure trust by their users in all information published.

Accessibility of Data

Regarding the process of publishing information to clients it is absolutely critical that all the above information is made available not just to regulators, but also made easily and promptly updated to commercially operating comparison website operators. This information should be made available to all of Access Solicitor's commercial competitors too.

The internet is highly fragmented so quite simply the more widely that information is distributed then the more likely consumers are going to find it. Each commercial comparison website will promote its own service, further increasing customer awareness.

The CMA suggests that regulators might implement solutions around the publishing of pricing and consumer feedback. I would strongly question whether regulators have the requisite skills to effectively build and operate a consumer facing lawyer comparison service. Even if they could do it, I would also strongly question whether the significant marketing spend required for such a consumer facing service is the correct use of taxpayer funds and/or regulatory budget when the commercial sector could provide this as a commercial marketing service for lawyers in a manner that also remains unbiased for customers. I would suggest that regulators would play the most effective role by guiding, supporting and even compelling lawyers to publish all the information referred to above. As the collector, co-ordinator, and subsequent re-publisher of significant lawyer data the regulator can still provide some level of quality control without restricting the broadest possible distribution of that information to customers.

Regulatory Environment

Whilst Access Solicitor agrees that the CMA's priority should be the effective upfront publishing of lawyer data, including pricing and client feedback, it is equally important that the MoJ and the government consider the effectiveness of the overall regulatory framework. It is also critical that the regulators and MoJ are willing to challenge the historical status quo and to ensure that future regulation should be proportionate and risk based too.

Outside the scope of the CMA's immediate study, but critical for the MoJ and government to be aware of is the lack of proportionality of the SRA's rule 9.6 which provides a disproportionate absolute ban on referral fees for criminal and legal aid work. The SRA consulted during 2015 but ultimately made no change in the rule because the Legal Aid Agency continues to apply the rule in a misplaced believe that it is protecting vulnerable clients when its restrictive side effect is actually doing the opposite by preventing the widest possible promotion online of the best legal aid lawyers to those most in need and trying to find them. Access Solicitor submitted evidence to the SRA during 2014 and 2015 about how the absolute nature of that rule significantly restricts the ability for good legal aid lawyers to promote themselves to clients effectively online; and the SRA rule also fails to qualify the absolute ban for services like Access Solicitor which refer based on merit and not fees (when such qualification is already provided by BSB guidance for barristers). The MoJ should consider the proportionality of this absolute referral fee ban with the Legal Aid Agency as a matter of priority, and Access Solicitor would welcome the opportunity to share again the evidence previously presented to the SRA.

Access Solicitor agrees with the CMA that there should be full independence of the regulator from the providers it regulates. In this respect the SRA should be made totally independent of the Law Society as soon as possible. [3<]

Access Solicitor also agrees that there would be merit in a systematic review of which legal services or activities should be regulated and how, focussing on where regulation is required because of consumer protection risks.

Access Solicitor also agrees that the emphasis on regulatory titles within the current regulatory framework may contribute indirectly to lack of consumer awareness of lawyers other than solicitors. Additionally the numerous branches of the profession, and the numerous

regulatory titles, may also be a source of confusion and contribute to clients' reluctance to engage lawyers. [✂]

Whilst there is always a risk that change to the regulatory framework may create unnecessary distraction, the fact that there are 9 different regulators within the legal profession would appear excessive and unnecessary relative to other professional service sectors. Having so many different regulators makes the task for comparison websites to aggregate data about all types of lawyers significantly more difficult. If no immediate streamlining of the regulatory framework is likely then it is even more important that these various regulators are adequately funded and effectively motivated to provide all the data about their regulated members through APIs and in the form necessary for comparison websites to operate efficiently.

Yours sincerely,

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