



The Law Society

Competition and Markets Authority's Interim Report on the Legal Services Market Study

The Law Society response

August 2016



PREFACE

The Law Society ('the Society') is the professional body for solicitors in England and Wales, representing over 170,000 registered legal practitioners. The Society represents the profession to parliament, government and regulatory bodies and has a public interest in the reform of the law.

The Society welcomes the opportunity to respond to the Competition and Markets Authority's Interim Report. The Society has consulted its committees in preparing this response.

FOR FURTHER INFORMATION

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The Law Society's response to the Competition and Markets Authority's Interim Report on the Legal Services Market Study

The Law Society is the professional body for over 170,000 solicitors in England and Wales. We and our members are committed to ensuring that our legal system is robust, fair and accessible by all.

The Law Society would like to thank the Competition and Markets Authority (CMA) for the time it has taken to engage constructively with staff and members of the Law Society during the early stages of the Legal Services Market Study. We have structured our response so that it forms three parts:

Part 1: the nature and role of legal services in society;

Part 2: our comments on the proposed remedies; and,

Part 3: our response to the questions asked by the CMA in the interim report.

Part 1: The nature and role of legal services in society

The inherent features of the legal services sector

The legal services sector is a complex ecosystem consisting of multiple markets, each with a diverse range of services and outcomes for numerous categories of consumer. In defining a market, one typically looks to establish the closest substitutes to products – those which are the most immediate competitive constraints on the behaviour of the suppliers of the products or services in question. In the case of the legal services sector, these services range between varied business to consumer transactions (such as high street delivered wills and probate, pro bono offered advice etc) to varied business to business transactions (such as competition and corporate law); services are also offered by a wide range of providers (solicitors, advocates etc). Although there are no doubt similarities in these markets, they are distinct in many ways – both on the supply and demand side. Market features in one market are not necessarily reflective of all other markets. Therefore it is vital that any analysis of market detriment and potential remedies takes account of differences and is cautious in extrapolating beyond the evidence that exists in the markets reviewed. Remedies should only be put in place where there is clear evidence of harm, restricted to that part of the market where the harm resides and even then, only when the full consequences of those remedies in all of the markets affected have been fully understood and evaluated.

The Law Society urges the CMA to carefully consider this when reaching any conclusions from the three case studies; it would be potentially damaging to the legal services sector and consumers to impose changes whether by way of regulations or deregulation on any markets outside those which have been subjected to comprehensive research and analysis.

The competing demands and interests of the legal services sector

Given the pivotal role of the law in society and the economy as a whole, there are a number of competing considerations that must be carefully balanced to ensure one does not override the others in a detrimental way or bring about unintended consequences. As in any ecosystem the balance is one which can be easily disrupted by seemingly small changes elsewhere in the system. The Law Society believes that there are five broad roles which society and Parliament expect legal services to deliver:

1. Protecting and promoting the interests of consumers.
2. Promoting competition within the legal services sector supported by proportionate regulation.
3. Improving access to justice.
4. Upholding the rule of law and maintaining a stable legal regime, in the interests of the wider public good and the economy as a whole.
5. Independence of the legal profession provides confidence in the justice system of England & Wales, both domestically and abroad.

Each of these roles places demands on the system which need to be carefully considered to avoid unintended consequences in the event of change. There are tensions in these roles, so whilst promoting competition can sometimes be achieved by removing regulation, this may be at the expense of protecting the consumer. Any changes to the regulatory framework risk upsetting the balance that has been achieved within the market. As is demonstrated below the legal services market not only contributes a considerable amount to the UK's GDP, it also is a driver of economic success.

1. Protecting and promoting the interests of consumers

Protection of consumers is central to markets in the legal services sector, and should play a central role in any reforms. While it is important that regulation is proportionate and does not stifle innovation, this needs to be balanced against the risk to the consumer of the lack of protections. Legal services provision for consumers can, and often does, involve highly important decision making which shapes decisions and may play out in high value transactions — for both business to consumer transactions (such as a divorce leading to sale of a matrimonial home and other assets, the purchase of a home with new and significant levels of debt, or opportunity costs in situations such as employment disputes) and business to business transactions (such as mergers and acquisitions advice, matters relating to commercial property etc). The motivators of these two groups of legal services consumer are very different and it is clear that most individual consumers (however sophisticated in normal situations) do not enter the legal market sector by choice and are not high frequency users of services. Infrequency of use means most consumers are less familiar with the issues — and as such their reliance on good quality legal advice is crucial. It is fair and equitable that all consumers should be able to expect the same level of protection, regardless of the professional regulated person from whom they acquire services. We believe that consumers would expect that if they need advice from any two different suppliers then they should be afforded the same protection. The CMA stated in the interim report that “consumers do not necessarily understand the distinction between

different types of regulated and unregulated legal services providers”¹ and “furthermore, consumers may not appreciate that some providers are unregulated.”² We do not believe that consumers should be put in a position of having to undertake detailed due diligence before purchasing services in order to understand their right to protection from poor standard of advice.

Much of the CMA’s work is focused on the individual consumer however, amongst the breadth of markets in legal services, a large proportion is providing support for businesses. Business customers account for 63% of total UK sales of legal services³. While the CMA is focusing mainly on the legal service market for individuals, the impact of any measures across the whole market, and in turn the economy as a whole, must not be ignored.

2. Promoting competition within the legal services sector supported by proportionate regulation

Regulation, applied as either an ex post or ex ante tool is in itself not bad, or inefficient. It must, however be proportionate to risks and tailored for the needs of the market — something which both the CMA and Government are cognizant of⁴.

On issues such as transparency of pricing and looking for ways to encourage greater use of business models such as fixed fees (and where regulation is not the primary driver or an effective tool) it is the market which is best placed to develop solutions and drive behaviour change in suppliers and indeed consumers. Regulation is not agile enough to keep pace with a fast changing market and therefore allow for the necessary innovation and change required for successful market development, although it should be responsive enough to reflect market developments.

Regulation should focus on seeking to prevent those issues which pose the greatest risk and for which there is evidence of significant or potential harm.

3. Improving access to justice

The Law Society believes that all consumers should have access to justice, regardless of social background or wealth. There are clearly unmet legal needs in certain sections of the population; this is a consequence of the Government removing funding for a significant number of legal services and low levels of legal literacy (eg a consumer understanding exactly when they have an issue which is legal). Whilst legal literacy must be improved across all consumer groups, it is still questionable whether certain sections of consumers would be able to obtain legal advice at any cost point. The evidence relating to other categories of unmet legal need is not sufficiently robust as to provide definitive evidence to justify changing the regulatory framework.

Some consumers do not have the means to pay the cost of legal services no matter how cheaply offered; for these consumers, there is no realistic prospect of addressing their legal needs without some restoration of publicly funded legal services. The legal services markets have faced disruptive change in the last 10 years in many areas, including cuts to legal aid and also successive rises in court and tribunal fees; both are undeniably harmful to the consumer. There are parts of England and Wales which are legal aid advice deserts, where there is no

¹ ‘Legal Services Market Study— Interim Report’, July 2016, the Competition and Markets Authority

² ‘Legal Services Market Study— Interim Report’, July 2016, the Competition and Markets Authority

³ Ibid p17

⁴ [‘Regulation and Growth’](#), May 2012, Better Regulation Delivery Office

provision at all or only one provider for large geographical areas (see Annex A). It is in the public interest that the decline in provision of publicly funded services is reversed; campaigning for access to justice for consumers is a key priority for the Law Society. However, these areas of unmet legal need, which are the most significant, are not going to be addressed by reference to regulatory changes.

4. Upholding the rule of law and maintaining a stable legal regime, in the interests of the wider public good and the economy as a whole

Stability and certainty of the legal system is vital to the healthy and continuous functioning of the legal services markets and further, the UK economy. The total value of legal services to the economy is £25.7 billion⁵. Any chilling effect as a result of disruptive reforms of the legal services markets will have a negative impact on the UK economy given that for every 1% growth in the UK legal services sector, 8,000 new jobs are created and £379 million is added to the economy⁶. The role of legal services sector in the economy is not limited to its own success, but rather it plays a central role as a key lever in the UK's overall economic success. The effect of a disruption to the market is measurable. Our research indicates that a 1% decrease in the legal sector's value would lead to a loss of £307 million in the sector's gross value added and the loss of over 5,500 jobs across the economy in the first year. Regulatory changes that cause even a small market disruption therefore have the potential to create a significant impact on employment and on economic output⁷.

In addition to the direct impact the legal services market has on the economy, the sector has a wider social value which is more difficult to measure – in basic terms, the benefits and public good derived through supporting the rule of law. The effect of a stable, independent legal regime is to encourage investment, market exchange and innovation which drives the UK economy. It is also one of the factors in making England and Wales the jurisdiction of choice for many internationally. Any instability, unwarranted change or excessive amendment to regulatory frameworks will also have a considerable impact on the perception of the UK as a choice of jurisdiction.

As such, the threshold for triggering any change within the sector should be high, based on clear and strong evidence of significant harm or inefficiencies, alongside a clear understanding of the gains to be achieved. It is also worthy of note that the current regime is less than 10 years old, in some parts only 5 years, and that the regime was developed in its current state as a result of a lengthy, in depth, expert review of the entire regulated legal services sector⁸. We agree that innovation should not be stifled and we do not accept that the regulatory framework impedes this unnecessarily. We do not believe that regulatory changes will facilitate the innovation and transparency in the market that are currently identified aims.

5. Independence of the legal profession, provides confidence in the justice system of England & Wales, both domestically and abroad

Independence in the legal services market is a multifaceted concept – from undue interference from the profession, the importance of consumers' ability to receive independent advice and importantly independence from the state. We believe that independence of the legal profession

⁵ 'Economic value of the legal services sector', March 2016, The Law Society

⁶ 'Economic value of the legal services sector', March 2016, The Law Society

⁷ Ibid p14 - 15

⁸ 'Review of the regulatory framework for legal services in England and Wales- Final report', December 2004, David Clementi

from the state is fundamentally linked to both a healthy and competitive economic landscape. Research undertaken⁹ by the International Bar Association broadly categorises regulatory frameworks, globally, as one of five distinct models:

1. Largely court regulated professions;
2. Exclusively bar regulated professions;
3. Predominantly or exclusively government regulated professions;
4. Legal professions predominantly regulated by independent or delegated authorities;

or,

5. Legal professions predominantly regulated on a mixed or shared basis by representatives of different organisations.

In many European jurisdictions, the regulation of legal services is wholly independent from the state. Examples of countries where the role of government is more prominent include Saudi Arabia, Qatar, Oman, UAE, Tajikistan, Kyrgyzstan, Taiwan, People's Republic of China and Vietnam. The Society believes that a core component of the attractiveness of the English and Welsh jurisdiction internationally is the certainty of protection from state interference, or even the perceptions of this.

At a practical level it is vital in the interests of both consumers and the wider economy, that consumers must be able to obtain advice from an independent provider who puts their interest first and acts free from undue influence or conflicts of interest. The provider of legal services should also be independent of the state, and should be able to act free from any risk that the regulatory framework is fettered by the state.

The Clementi Review of legal services addressed the issue of independence, rightly highlighting how crucial the independence of regulation is – both from the profession and the state¹⁰. The review and subsequent legislation delivered a solution which addressed two issues - structural separation of regulation from the profession, and also a protected status for the regulator and the profession which prevents them being fettered by the state. The ability of any regulator to command the trust and confidence of both industry and consumers is crucial to its success. Unlike other sectors such as financial services, the legal profession is often faced with being in direct opposition to those representing another party in a dispute or with conflicting commercial interests or the state. Most obviously the latter arises in relation to criminal law but it is much wider, as individuals may face numerous legal issues in which the state has an opposing interest (eg the state's assertion of rights over property and taxation; access to benefits; immigration; employment where the state is the employer; and access to education).

The perception that the regulator or the profession may be influenced by the state poses a risk to the reputation of the UK's rule of law, and the confidence that industry, in the UK or abroad, have in it. Given the level of exports from the legal sector (£3.5bn¹¹) and the widespread use of English law in international contracts, the reputation of the English and Welsh legal system internationally is of considerable importance to the economy.

Access to legal advice from advisers who are demonstrably and clearly free of any direct or indirect relationship with the state (and are regulated under a regime free from state influence) is critical. The global success of the English legal services sector has been underpinned by the

⁹ See http://www.ibanet.org/IBA_Regulation_Directory_Home.aspx

¹⁰ Review of the regulatory framework for legal services in England and Wales- Final report', December 2004, David Clementi

¹¹ Economic value of the legal services sector', March 2016, The Law Society p18

independence of the profession from the state. Perceived independence of the profession from Government is a necessity for a competitive market and to protect individual, and broader, consumer interests. The independence of the regulator from the representative body is also a key factor in consumer confidence. The Solicitors Regulation Authority (SRA) is demonstrably independent from the Law Society, indeed we have disagreed with their approach on fundamental issues; for example, in the case of professional indemnity insurance (PII), where the SRA wished to lower the minimum level of insurance cover a firm was required to hold. We believed that this would not only lower consumer protection but would have a limited impact on the cost of PII for members. However, we only sought to influence the SRA by the means open to any body e.g. via the formal consultation initiated by the SRA. We are not afforded any special status because of our links with the SRA. Indeed, there is general agreement that regulation is independent and that if there are any issues, these relate to consumer confusion regarding the role of the SRA. As Paul Philip himself said at the Justice Select Committee: 'The reason for doing [separation] it is purely perception.' Given this, we think that the issues around perception could be better and more economically dealt with via education.

Conclusion

The Law Society believes that the CMA should be guided by the need to balance the demands and interests of the legal services sector when considering reform or change to the legal services regime. Transparency of information around pricing and quality is key in protecting and promoting the interests of consumers but this demand should always be balanced, and informed by an evidence based evaluation, against the consideration that further regulation may not be needed in order to remedy the shortfall. In Part Two of this response, and in line with these key principles, we have reviewed and responded to the CMA's proposed remedies.

The Law Society's response to the Competition and Markets Authority's Interim Report on the Legal Services Market Study

Part 2 - response to proposed remedies

The Law Society supports the CMA's desire to find mechanisms which would aid the better functioning of the legal services markets. Well functioning markets are in the best interests of consumers and support the ideals of fair access to legal services for all – a central tenet for our membership.

However, it is imperative that any remedies implemented are based on strong evidence and that the impacts of remedies are fully understood in the context of *all* the markets they may impact upon. It is equally important that they are consistent with, and take into consideration, the inherent features of the legal services market, which we set out in Part One of our response. Our contribution below sets out our support for many of the recommendations put forward but also highlights the areas of concerns and risks which we believe would need to be adequately addressed before implementation.

1. Competition, transparency and informational remedies

The Law Society supports the principles underpinning the 'Competition, transparency and informational' remedies proposed by the CMA. The desire to provide consistent consumer protection and empowerment of consumers to make informed choices is a positive move – both for the supply and demand side. We believe that the markets within the legal services sector themselves will deliver, innovate and promote these solutions better than regulatory intervention.

1.1 Improving transparency before engagement

The Law Society supports the CMA objective of ensuring useful information is provided for consumers about information relating to price and service quality. The Law Society believes that it is important to explore with consumers and those delivering the services, how such information could be presented to ensure that it enables consumers to genuinely make informed choices¹ on both price and the quality of the service delivery. Enabling consumers to have greater visibility of costs and to be able to compare offerings has been, and will continue to be, an area of interest for the Law Society. We are exploring these issues and examining what sorts of information consumers find most helpful and what information about services and quality is easily understood and relevant when making choices about providers. This may include the use of comparison websites and the role that professional accreditation approaches can offer in helping consumers differentiate between service levels. We are very aware that not all comparison tools are without risk to the consumer, or indeed well developed, and we will want to ensure that any market solutions delivered are robust against misuse. We also want to ensure that any such tools operate as a positive incentive and can be embedded in delivery. As the professional body for solicitors, the Law Society is well placed, through tools such as our guidance and training, to support firms in developing and building on the work they already have in place on how to further improve their engagement with consumers.

There are a number of ways in which pricing and quality could potentially be made clearer, more accessible and transparent. Ongoing development by the sector is more likely to allow

¹ The Law Society notes that ill designed approaches to providing consumer information could lead to unintended consequences. For instance, the sharing of pricing information in the marketplace.

innovation to take place as markets are best placed to respond quickly to the specific needs of consumers, both constant and changing. This is especially the case when there is a high number of different consumer segments (such as in the legal services markets- see Part Three, Section Three of this response: *'Are there examples of good practice in price and service transparency that could be shared more widely?'*).

There are inherent dangers in prescribing the specific ways in which the presentation of pricing and quality information should be presented and shared, particularly if prescribed through regulation which seldom keeps pace with innovation in a changing market. Most significantly, and especially, as the CMA are studying only a limited number of markets within the legal services sector, this gives rise to a range of unintended consequences as discussed in Section 1.3: *'Potential difficulties with pricing and quality transparency'*.

1.2 Transparency on pricing and quality after engagement

We agree that once consumers have commissioned the services of a solicitor, the ongoing transparency of pricing and the quality of service is important in ensuring that consumers are aware of what they are paying for. Although it is a potential area of improvement, there is limited evidence of this being a significant problem for consumers. The Legal Ombudsman's own report shows that complaints about costs were limited versus other types of complaints².

Within the current framework, there are existing regulatory requirements regarding the type of information on costs that solicitors must provide to consumers, both at the start of an engagement and throughout a retainer. This initial information is often provided in the client care letter³. There are issues regarding length and accessibility of such letters; the SRA requirements are comprehensive and require firms to be explicit in the client care letter on a range of issues designed to ensure that the client fully understands the contract being entered into. This content is also supplemented by additional requirements i.e. the Provision of Services Regulations 2009, the Consumer Contracts Regulations 2013 and data protection requirements. The need to comply with regulatory obligations makes reducing the actual breadth of content of the letter difficult. Within our existing support mechanisms, we provide information on the need to provide clarity in a client care letter. We are building on this work to help firms explore ways in which to provide this information in a more accessible manner and will be publishing guidance on this in the near future. We are also looking at how this type of information might best be provided to consumers and hope to publish work on this by the end of the year.

1.3 Potential difficulties with pricing and quality transparency

The CMA's interim report specifically asks for thoughts on why pricing and transparency may be a difficult area in legal services.⁴

We believe that there are a number of contributory factors which have limited broader comparison online tools to date. It should, however, be borne in mind that despite these challenges, the sector is nonetheless developing greater transparency on pricing. We are aware of propositions coming to market which are specifically focused on creating online price comparison tools. We are also aware of comparison tools in other jurisdictions such as www.avvo.com in the US legal services market.

² Legal Ombudsman, 'What were complaints about?', 2016 <http://www.legalombudsman.org.uk/wp-content/uploads/2014/09/What-were-the-complaints-about-2014.csv>. Accessed on 25/07/2016

³ See Annexe B

⁴ CMA Interim Report, Page 92, *Questions on improving price and service transparency*

The difficulties faced by firms in providing fixed fees relate, in the main, to the challenge of pricing a service that at the outset may be unclear – for example evaluating the degree of complexity. In areas of the law where the service can be ‘commoditised’ these difficulties occur far less frequently and can therefore be absorbed in the financial margins of a firm.

However, there are some more complex areas of the law where this does not readily apply. This can give rise to risks such as:

- Weighted fixed fees which build in a 'contingency' in case the matter being advised upon becomes more complicated than it appeared at the outset. This poses two further detrimental impacts – firstly, that some consumers are at risk of paying more than they might otherwise have done so, and secondly, potentially higher costs which deter people from seeking legal assistance.
- Firms not being able to quickly ascertain the right price to fully cover costs and, as such, finding the market uneconomical to operate in. Although risk of failure is not a sign of an ineffective market, in some geographical areas the exit of local firms may have a serious detrimental effect on consumers’ ability to access legal services. There are already areas of the country with ‘legal aid deserts’⁵. There is potential that some geographical areas could result in no or very few firms being able to provide services under regulatory pricing arrangements.
- Firms restricting their offering only to those types of services which are easily amenable to fixed fees. The impact of this would be felt most significantly by consumers who have complex cases and may struggle to find advice on an issue or would have a more limited choice of providers. Alternative Business Structure ('ABS') models have, to date, focused on the 'commoditised' end of the market. As such, a reduction in provision for complex cases would not be mitigated by new entrants from untraditional models.
- Fixed fees resulting in a detrimental effect as some firms could see certain cases as 'too risky' – meaning that these consumers would have less choice of providers. Firms also fear that the risk of complex cases would drive up the average price.
- Difficulty in predicting the cost of certain legal services in sectors of the legal services market where consumer needs are particularly complex. This is particularly the case where litigation is involved and the consumer's "legal journey" can be a long one. Early settlement of a claim (avoiding court) can significantly reduce fees, as court and tribunal fees are an additional cost to the consumer.
- An unintended negative impact on the section of the legal services sector that provides business to business ('B2B') support. Certain aspects of advice provided in a B2B setting are highly bespoke; given that the CMA's study has only looked at certain markets, the variable levels of complexity must be considered when looking at recommendations that impact the whole range of markets within the legal services sector. Legal services support growth of the economy so the chilling effect of any adverse impact on B2B should be considered carefully.

This is not to say that we do not support the use of fixed fees. Indeed, fixed fees are on the increase⁶ and we encourage their use in areas of the legal services sector where the issues are less complex and services are more easily commoditised. However, it is not for regulation to determine how and where fixed fees are most appropriate. Rather, we should encourage the market to develop better models for analysing cases and related costs and identify the solutions

⁵ See Annexe A and The Law Society, July 2016, www.lawsociety.org.uk/news/stories/lack-of-housing-legal-aid-services-is-leading-to-nationwide-advice-deserts

⁶ Legal Services Consumer Panel (2016) Tracker Survey 2016

http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/documents/Howconsumersarechoosing.pdf p2

best suited to the industry and consumer needs. A tool built around a set of comprehensive algorithms – which help to predict likely time and complexity of a case and, in turn, price points would be useful. Accuracy of pricing is the core issue, firstly to ensure that consumers are not misled and secondly, for firms to ensure financial viability.

Historically, the 'directory' style models that have existed have been inefficient in helping consumers to diagnose their legal needs and find an appropriate legal services provider. Some directory websites did not have the needs of the consumer as their key priority and did not assist in helping the consumer identify what services they need; many of these directories no longer operate as they went no further in empowering consumers to make an informed decision⁷. The Law Society understands the role of tools to help consumers, beyond the 'directory model', provided that they support both the consumer and the market and contain features encouraging consumer literacy of that market. However, we are mindful that consumers, who view them as a completely safe and neutral space, are still vulnerable to anti-competitive behaviours whilst using tools such as these; the CMA has seen recent examples in both the motor insurance industry⁸ and the energy industry⁹, which are being investigated for anti-competitive behaviours. However, as more sophisticated models emerge across different sectors there are transferable lessons which can be learnt and applied which can assist in developing better solutions – such as the types of reviews that consumers prefer (star ratings, numerical ratings, written reviews) or the search tool framework needed to cope with the intricacies of a complex and wide ranging market.

Some of the same difficulties may also arise in relation to increasing transparency around quality. Cases vary widely from extremely complex to relatively straightforward; this could prove difficult to factor into a simple comparison tool and we discuss this further in *'What are the barriers to comparison and search?'* in Part Three of our response.

1.4 Informed consumers

The CMA remedies touch on the need to raise consumer awareness with regards to both the consumer's ability to identify when they have a legal problem and the types of services available in the legal services markets (both regulated and unregulated). This should be explored further.

In financial services, financial literacy (examples being Barclays Money Skills¹⁰ and Learn Money Week¹¹) is now regarded as a key component in preventing detriment to consumers. Financial literacy is an example where there has been a demonstrable impact on consumer behaviour; changes to behaviour have included better management of money, the ability to avoid or manage debt, increased likelihood of planning and saving for retirement and the increased demand of higher quality of services¹².

'Legal literacy' is equally important and greater public education around identifying legal problems and legal services could play a significant role in addressing the problem of

⁷ Examples include www.lawyerlocator.co.uk (provided by Lexis Nexis) and www.findlaw.co.uk (provided by Thomson Reuters)

⁸ Private motor insurance market investigation, July 2014, <https://www.gov.uk/cma-cases/private-motor-insurance-market-investigation>

⁹ CMA investigation into a suspected breach of competition law by some price comparison websites that offer energy tariff comparisons, June 2016

<https://www.gov.uk/cma-cases/energy-price-comparison-websites-suspected-anti-competitive-agreements>

¹⁰ Barclays Money Skills has created a set of financial education resources for young people, <http://www.barclaysmoneyskills.com/>

¹¹ Learn Money Week is a global event which aims to help young people manage their finances and raise awareness of the need for financial literacy in schools, <http://mybnk.org/learnmoneyweek>

¹² 'Advances in consumer education: European initiatives', Goldsmith, E. B. and Piscopo, S, International Journal of Consumer Studies, 38: 52–61, 2014

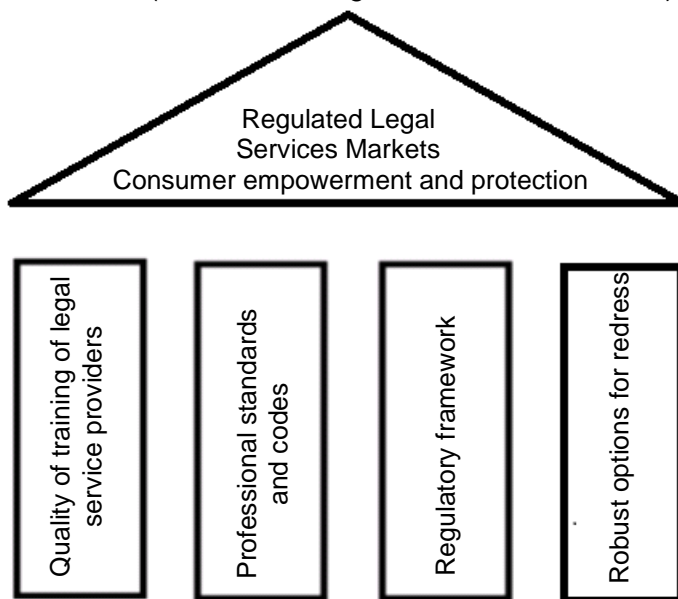
asymmetrical information in this sector. Only 11% of people experiencing a legal issue recognised their issue as legal¹³ and only 25% of people claim to know their legal position completely at the outset of a legal problem.¹⁴ Taking the example of financial literacy, and replicating this so that legal literacy is considerably improved, will enable the consumer to identify a legal problem, understand what services exist and the different types of providers available, understand when self management is plausible, and understand the basic taxonomy of commonly used legal services; these would all assist in empowering consumers to make informed choices about when to seek advice and from whom.

We believe that the market has a leading role in developing and supporting such educational programmes. The Law Society already provides a wide range of detailed information for consumers to help them identify when they have a legal problem¹⁵ and we have committed to further developing our educational programmes. We plan to launch a programme of public legal education in 2017 which includes: further promotion of the Public Legal Education¹⁶ toolkit; continuing to run roundtables with members and third sector organisations who provide volunteering opportunities; and further work with and funding for the Citizenship Foundation¹⁷. This need for increased consumer knowledge and understanding is supported by LSB research¹⁸.

2. Consumer protection and redress

Adequate protection for consumers in legal services is vital – for both individuals and the overall trust and confidence in the markets. We believe that there are four core pillars of protection for consumers of regulated legal services:

- 1) Quality of training of legal service providers (pre-engagement protection).
- 2) Professional standards and codes.
- 3) The regulatory framework.
- 4) Robust options for redress (such as the Legal Ombudsman and PII).



¹³ Legal Needs, Legal Capability and the Role of Public Legal Education: the Foundation for Public Legal Education 2015

¹⁴ Legal Needs, Legal Capability and the Role of Public Legal Education: the Foundation for Public Legal Education, 2015

¹⁵ See <http://www.lawsociety.org.uk/for-the-public/common-legal-issues/>

¹⁶ <http://www.lawsociety.org.uk/support-services/public-legal-education/>

¹⁷ See <http://www.citizenshipfoundation.org.uk/main/page.php?6>

¹⁸ Understanding Consumer Needs from Legal Information Sources, 2012, Vanilla Research; Maule, J (2013) Understanding Decision Making in Legal Services: Lessons from behavioural economics

The regulated legal services sector currently provides all four pillars of consumer empowerment and protection (whether it's through the regulatory body, the professional body, LeO or otherwise). The erosion of any of these four pillars in the regulated legal services markets poses increased risks to consumers. For example, it is only in regulated entities that legal professional privilege attaches to communications between client and lawyer. Therefore, clients of unregulated providers will benefit from this precious legal right which has been vigorously protected by our judiciary and is usually treated with the utmost respect by Parliament. The impact of these increased risks must be fully considered by the CMA when evaluating the merits of the proposed changes to the regulatory regime.

The legal services markets already have a point of weakness in that not all consumers are offered the four pillars of consumer protection and, in some parts, the CMA has rightly identified shortcomings in the current provision of protection for consumers. We are keen for this Market Study to take the opportunity to address this issue in order for consumers to be afforded, what we believe is, the minimum level of consumer protection.

2.1 Quality of training

We believe that there should be, as a minimum, a threshold which ensures that consumers receive expert and quality services based on the necessary knowledge and skills. One way in which consumers currently judge this is to use titles as proxy measures. However, in the current system this is a false proxy measure. The use of the term 'lawyer' is used freely by many who have no legal qualifications or training but many consumers¹⁹ take this to mean some form of regulated assurance or qualifications (in addition to standards and redress) despite this not being the case. This is misleading to consumers, undermines informed choice and exposes consumers to unnecessary risk.

We believe that the role of a professional body is to develop its members, to set the bar for excellence and training and to be the driving force for progressive skills and capability development. Owning and being responsible for the profession's standards and codes, including the awarding of the title 'solicitor', should be central to the role of a professional body. Developing such an approach, which frees the regulator from this wider responsibility, allowing it to focus on the core elements of a regulatory framework, is wholly consistent with the aims of both the Government and the SRA to reduce regulatory burdens.

We are disappointed that the CMA is not minded to recommend that only those who are suitably qualified and regulated are able to use the title 'lawyer'. We strongly believe that this is in the public interest, and that the concept should not be dismissed without fuller policy and economic analysis, which the CMA states it has not yet undertaken²⁰. Furthermore, ensuring clarity of titles is the most transparent way of signalling quality, at the most fundamental level, to consumers. We would be very happy to discuss our thinking on these issues with the CMA.

¹⁹ Consumer attitudes towards the purchase of legal services, 2011, SRA

²⁰ CMA Interim Report, Para 7.49, Page 97

2.2 The importance of equal standards of care and equality of access to redress

Although we do not, in principle, have an objection to the presence of unregulated legal services providers in the markets, the continued differentiation of the level of protection afforded to consumers simply reallocates the 'burden' of regulation to consumers in the form of risk. The CMA itself has noted that consumers are often unaware as to the status of their provider.²¹ As in any transaction, it is crucial that the consumer should be aware that there is a difference in the choices they face – in this case, knowingly choosing between an advice route which affords full protection and an alternative route which does not. Whilst we support the idea that providers should make these sorts of issues clearer, there is a significant risk that unregulated providers – those that pose the most potential harm to consumers as they are without the full range of mechanisms of redress – would continue to be opaque in this regard and consumers would continue to be misled and at risk.

We also believe that it is premature to say that there is no significant harm to consumers from unregulated firms; this Market Study only examined a limited part of the legal services sector, and as such it is difficult to assume the evidence in these markets is also reflective of practice in other areas. As the CMA has noted in its report²², the size of market share is still limited. In addition to this, new entrants in this field have tended to focus on more easily commoditised areas of the law - as such the results can at best be taken to be indicative, and cannot be extrapolated to other more complex areas of law. Will writing, which has been serviced fairly widely by unregulated providers for a number of years, is a service with a very long tail and the true picture of quality of service is still unknown. Anecdotally, our members report that they are addressing problems arising out of unregulated will writers' provision of services. Furthermore, we believe there is a potential under-reporting risk in this field given the limited avenues to pursue a complaint or concern, so it is difficult to assess the impact.

It has been argued by some commentators that the general consumer protection regime is sufficient to ensure that consumers using unregulated entities are sufficiently protected. Although the Consumer Rights Act 2015 made it easier for the consumer to understand their rights, there is considerable evidence to suggest that the current framework of general consumer protection law and methods of redress regulating business-to-consumer transactions contains a number of weaknesses. The Law Society produced a report in 2013²³ which highlighted specific problems in general consumer protection law and outlined a number of policy recommendations with regards to the consumer protection and redress framework.

One of the key weaknesses identified by the report was a lack of methods of redress under general consumer protection law. The consequences of this failure of consumer protection law were: significant numbers of consumers not getting the redress they deserve; reduced confidence in consumer markets resulting in consumers purchasing less and making more risk-averse decisions; an uneven playing field for those business that are trying to compete fairly (with good business being undermined); and, most worryingly, a chilling effect on the competitiveness of the markets. The report identified that public enforcement authorities are unlikely to be able to tackle all infringements and remedy all detriment that consumers experience, resulting in a continuing enforcement gap. The Law Society recommended that consumers should be empowered to bring their own actions through a range of different mechanisms, and should be encouraged to use both consumer Alternative Dispute Resolution ('ADR') mechanisms and the courts system, in order to achieve redress. Access to these

²¹ CMA Interim Report, Para 5.8, Page 59

²² CMA Interim Report, Para 1.30, Page 12

²³ '21st Century Consumer Markets- A new framework for consumer protection', The Law Society, 2013

choices is fundamental to ensuring effective access to justice. These concerns regarding redress mechanisms for consumers still remain.

ADR

We are aware that the current ADR arrangements are difficult to understand for consumers. The implementation of the EU Directive on Consumer ADR²⁴ ('the Directive') does mean that consumer ADR (that follows minimum standards) is now available in all sectors, whether unregulated or regulated, if they wish to use it. However, the outcome of this consumer protection mechanism is not necessarily binding on those who offer it and statutory complaints schemes, such as the Legal Ombudsman ('LeO'), have more extensive powers. We are aware that many solicitors have not signed up to an approved ADR provider which would try to resolve the complaint before it is escalated to LeO. We surmise that this is because many firms:

- have processes in place which are able to successfully resolve the issues themselves;
- believe that the service provided by LeO is adequate; and,
- believe that adding a further stage to the complaints process would be unnecessary and expensive.

3. Changes to regulation and the regulatory framework

3.1 Reducing the burden of regulation

As set out in Part One of our response, we agree that regulation should be proportionate. We have previously submitted to the SRA²⁵ a list of regulations which we believe are unnecessarily burdensome on the legal services markets and could be considered for removal or dilution without compromising consumer protection. However, we urge caution and careful consideration as to how and where the regulatory requirements are relaxed. In an attempt to level the playing field with regards to regulatory 'burdens' we believe it is vital to ensure that there is not a 'drive to the bottom'. Regulation is in place which provides consumers with crucial protection and access to redress should things go wrong; this is important in the legal services markets, where consumers are making decisions with significant, long-term impact and can be engaging in high value transactions. Although it is positive that regulators such as the SRA are considering how to deliver de-regulation, if the SRA and Government are committed to delivering a significant shift in the regulatory burden this requires a more in depth analysis of the 'regulatory definition'. It is our view, in line with the Clementi Review, that regulation should be tightly defined, focusing on the core elements, with professional standards being owned and delivered by the profession. Crucially, any changes should be carefully examined and the balance between the reduced burden on firms and the increased risk for consumers thoroughly studied and consulted upon.

PII is another vital component of consumer protection, enabling consumers to gain effective and reliable redress post-engagement if things go wrong. The cost of PII places financial burdens on firms in the regulated parts of the legal services markets. Reducing or removing the requirements to have PII in place would no doubt reduce the regulatory costs to firms. However, the resulting decrease in protection and increase of risk for consumers is not in the public or consumer interest. Nor do firms or solicitors want to take this risk. While the LSB's research found that PII was perceived to be one of the highest cost areas of regulation, PII was also the highest ranked area of regulation to keep. Furthermore, removing PII protection would create a

²⁴ 'Directive 2013/11/EU of the European Parliament and of the Council on alternative dispute resolution for consumer disputes' <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:165:0063:0079:EN:PDF>

²⁵ See <http://www.lawsociety.org.uk/policy-campaigns/articles/cutting-regulatory-red-tape/>

two-tier market of consumer protection, dependent on who provides the legal service and what PII cover they may or may not choose to have in place. As the CMA itself reports, this is an opaque area for consumers already, and further asymmetry would only serve to increase confusion about the differences between regulated and unregulated legal services providers. Although we consider compulsory PII to be an essential element in allowing the markets to appropriately protect consumers, front-line regulators should be encouraged to develop PII arrangements that reflect regulatory risk and allow insurance providers to develop cost effective PII products, in order to reduce any unnecessary regulatory burden and associated costs. In the solicitors' PII market, we believe that current SRA-mandated minimum terms and conditions of insurance are appropriate and necessary to protect both firms and consumers. It is encouraging to note that average PII premium costs appear to have fallen from the 2014-15 to 2015-16 indemnity year, for all sizes of firm²⁶.

3.2 Sandboxing

Changes to regulatory arrangements and their full effects are complex and difficult to model at the policy development level. However, there are mechanisms by which changes can be safely 'tested'. Lessons can be drawn from the Financial Conduct Authority's 'sandbox' which has demonstrated the value of taking a methodical approach to relaxation of regulatory requirements.²⁷ We welcome the SRA's innovation zone, as a mechanism for feedback around those regulations which legal services providers deem a barrier to innovation and a forum for the sharing of ideas and information around new business models. The Law Society believes that a full 'sandbox' programme, as a 'safe zone' in which innovation can be tested and monitored, would be an appropriate approach to test the changes currently being proposed. Building such approaches into the remedies proposed by the CMA would be a robust way to encourage changes to be explored, whilst also ensuring that there was a method through which impact, cost and outcomes could be measured and assessed before full scale adoption.

3.3 Increasing oversight and regulation of the unregulated providers

As the CMA highlights²⁸, there is an asymmetry between the regulated and unregulated providers which we believe should be addressed. We are pleased to see the CMA supporting the view that in some cases this may require an increase in oversight to ensure that consumers are sufficiently protected in higher risk areas²⁹.

Although there are the four pillars of consumer protection for consumers who use regulated legal service providers, consumers can choose to use unregulated providers. Unregulated legal services providers do not offer the same levels of consumer protection, giving rise to high levels of risk for consumers should something go wrong and a lack of an equal playing field for regulated providers. The Law Society disagrees with the conclusion of the CMA that this differentiation is not significant. We recognise that the role of these providers in the legal services markets is still emerging, the number of consumers exposed is relatively low and there is a lack of insight about consumer experiences and we understand that this may not currently meet a 'significant detriment' threshold at this point in time. However, we believe that there is significant potential for this to be a longer-term issue and the CMA should seek to find further evidence of the effect of unregulated legal service providers on consumers. A lack of evidence does not mean that there is no issue for consumer, nor that in the future there will be no issue, and the CMA should look to proactively address this before it becomes a large scale problem.

²⁶ Law Society annual PII survey 2015-16 <http://www.lawsociety.org.uk/support-services/risk-compliance/pii/surveys/>

²⁷ Project Innovate and Innovation Hub <https://www.the-fca.org.uk/firms/project-innovate-innovation-hub>

²⁸ CMA Interim Report, Para. 3.22, Page 31

²⁹ CMA Interim Report, Para. 7.60, Page 100

4. Alternative models of regulation

The Law Society believes that there is room to review the scope of the definition of 'regulation'. An effective and efficient independent regulator, which delivers the core, and tightly defined, aspects of a regulatory framework; this should be dovetailed with the profession developing and delivering the standards which build upon it, would both deliver the essence of the Clementi Review and the policy intentions of proportionate regulation.

The recent SRA proposals, propose the possibility that solicitors could work for unregulated entities providing unreserved legal activities to the public. Such solicitors would be subject to a new Code of Conduct for Solicitors but the firms they work for would not be subject to the SRA's proposed new Code of Conduct for Firms, which would continue to uphold a range of current protections for clients and consumers. Whilst we wholly support the intent to reduce regulatory burden, we believe that these proposals are an example of where the balance between deregulation and consumers facing unacceptable risks needs to err on the side of the consumer. The proposals will mean that a consumer instructing a solicitor in a regulated firm will benefit from comprehensive PII, the compensation fund, surety about benefiting from legal professional privilege and a clear redress pathway. A consumer instructing a solicitor in an unregulated firm will not have any access to these protections e.g. the unregulated entity may hold some PII but it will not be as comprehensive as that held by a regulated firm. Effectively this creates a two tier system which is likely to be opaque to consumers and cause further confusion and require consumers to carry out significant due diligence. We believe that regulatory reform could address the specific regulatory burdens found to be most onerous and costly by solicitors, but do not believe that the proposals do this. We are currently carrying out an extensive engagement with members and stakeholders and would be very willing to share our findings with the CMA. As mentioned above, there are many alternative approaches and models to regulation, all of which should built around the objectives which specific regulation is intended to deliver. In this way, focusing on the core elements of what a regulatory framework needs to have in place would allow elements which are not necessary to the regulatory framework to be stripped away. This recognises that aspects, such as standards, may be better delivered by the markets or the profession itself.

4.1 Merits of reform

The CMA report poses legitimate questions about the most appropriate models of regulation – rules-based, outcomes-based, activity-based or hybrids. However there are two important factors which should be noted.

Firstly, the current regime, a result of the extensive Clementi review³⁰ is less than ten years old³¹ and in significant parts, less than five years old.³² This Market Study has taken into account just a few of the legal services markets and could not possibly replicate the in-depth policy consultation and debate processes that should take place during a review such as Clementi's.

Secondly, the report does not justify regulatory reform. As the CMA notes, reform is destabilising and costly,³³ any regulatory reform is likely to have a negative effect on the overall legal services economy which, in the current economic climate and in consideration of the fact

³⁰ Report of the Review of the Regulatory Framework for Legal Services in England and Wales (2004) <http://webarchive.nationalarchives.gov.uk/+http://www.legal-services-review.org.uk/content/report/index.htm>

³¹ The SRA was formed in January 2007, see https://en.wikipedia.org/wiki/Solicitors_Regulation_Authority

³² The SRA Handbook was released in October 2011, see <http://www.sra.org.uk/solicitors/handbook/release-notes/release-notes-v1.page>

³³ CMA Interim Report, Para 7.66, Page 102

that the CMA have not identified serious market failures, does not seem to be justified.

Alternative regulatory frameworks could not plausibly be proposed in reaction to the CMA's study which has found there is no significant harm to consumers. Any alternative regulatory frameworks should be proposed as part of an in-depth and detailed review of the legal services markets. Wholesale regulatory reform is inappropriate where the aspects of the market that do not fully work are limited and discrete. This is the case here.

The Law Society wholeheartedly supports independent regulation but, as the Clementi review stated,³⁴ this is of equal importance in relation to the state and the profession. The current systems delivers this and, despite perceptions of the overall structure, the reality should be judged on the, outcomes and evidence. As a representative organisation, the Law Society has a duty to voice the concerns of the profession and express reservations if changes might negatively impact solicitors. However, opposition should not be regarded as constituting interference with the SRA's independence. On a number of occasions, the Law Society has voiced concerns relating to the SRA's proposed policy positions, such as proposed changes to training contracts,³⁵ but we firmly believe that this was undertaken transparently and legitimately and in no way compromised the SRA's independence.

In the interim report the CMA cite the process of the SRA seeking to become an approved licensor for ABSs. This decision was not hindered by the Law Society, the issues which arose in that situation were not due a lack of independence but rather project management issues. On that occasion the SRA were aware of the process required, as set out in the General Regulations, approved by the LSB, but failed to factor this into their project plan, causing a slight delay.

Neither the research to date, nor the CMA's interim report, indicates any evidence of the Law Society inappropriately interfering with the SRA's decision-making or policy. Furthermore, Paul Philip, SRA CEO, confirmed to the Justice Select Committee when he appeared there on 28 June 2016 that the SRA operates with independence.

There are, however, important questions about the role of regulators and professional bodies in delivering the most efficient and effective regime. A focus on the scope and role of the regulator, based on the core aspects which require regulatory oversight, alongside the market driving professional excellence, should guide any future analysis of the regime. This is in addition to the criteria set out in the CMA report.³⁶

5. Conclusion

In a sector where the advice that consumers receive can have a huge impact on their lives, it is crucial that consumer protection is central in both the approach and the remedies proposed. The Law Society agrees that there is more work to be done with regards to improving transparency in the legal services markets; supporting our members in doing this and encouraging the markets to innovate is a focus for us as in the coming year.

We believe that market-driven solutions can and will plug the transparency of information gap, and that it would neither be wise, nor consistent with Government policy, to seek to impose regulatory responses to the information issues which the Market Study has identified. It is

³⁴ 'Review of the regulatory framework for legal services in England and Wales- Final report', Sir David Clementi, December 2004, Para. 5, Page 3

³⁵ See <http://www.lawgazette.co.uk/news/ditching-training-contract-could-undermine-uk-law/5050076.fullarticle>

³⁶ CMA Interim Report, Table 1, Page 101

important for the remedies proposed to look for ways in which the market can bring about the solutions sought – thereby supporting the desire for deregulation, balanced with consumer protection.

Wholesale change to the regulatory regime has high costs for both the sector and for the economy as a whole. This report has not provided a theory of harm supported by evidence of actual material harm to consumers, the legal services sector or the economy. In the absence of evidence, we do not believe that a case has been made for revisiting the design of the regime so soon after the last root and branch review undertaken by the Clementi Review.

The Law Society's response to the Competition and Markets Authority's Interim Report on the Legal Services Market Study

Part 3- response to questions

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?

The most significant barrier to improving transparency around price and services is that, intrinsically, the markets are discrete and, whilst they share many similarities, there are key differences with each, and within each. This is evidenced in the many different types of price structure available and the variation in level of information immediately available to consumers (such as on a website) on those structures.

The legal services market is based on providers, such as solicitors, selling their time and expertise. The cost of an expert's time is likely to be greater where their expertise is more specialised and niche, and thus scarce. Recent research demonstrates that 48% of consumers now pay for legal services via a fixed fee¹ and fixed fees are much more prevalent in areas where work can be commoditised. For example, in conveyancing, 68% of consumers had work carried out under a fixed fee arrangement. There is a similar trend in other practice areas, with fixed fee arrangements in wills (60%), powers of attorney (64%) and immigration matters (64%).² In other areas of the legal services markets, they are less prevalent. This is due to the following reasons:

1. the work is complex and it is difficult to predict the likely level of work required or how far work might progress. For example, disputes with neighbours and family law³; and
2. there are other means of funding. For example, advice on debt and benefits is often provided free of charge which means fixed fees are of limited use.

In the case of 1, the difficulty in predicting the costs and thus providing fixed prices relates back to the very nature of the work used within the legal services market. The cost relates to the amount of time that a case may take, which can be difficult to predict⁴, and also the amount of time and input a client wants from the solicitor which may vary from client to client. This can make providing fixed costs difficult and also limit flexibility for the client in relation to additional input from their solicitor.

¹ Legal Services Consumer Panel, 2016, Legal Services Consumer Tracker 2016 Insight report, p.35

(http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/documents/LegalServiceBoardReportbyYouGovV4.pdf)

² Legal Services Consumer Panel, 2015, Full data tables from the 2015 Tracker Survey - a sample of recent users of legal services

(http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/documents/Tracker_Users_15_000.xlsx)

³ Ibid

⁴ Cases can vary in length and depth depending on the issues, the other parties involved and the consumers own appetite for how to approach the case.

There are obvious difficulties in predicting the cost of certain legal services, particularly where certain types of litigation are involved⁵. Early settlement of a claim, as occurs in many cases managed by a solicitor, as opposed to going to court, can have a significant impact on the level of fees a client might pay, (as court and tribunal fees are an additional cost to the consumer), and also the costs to the wider public, as it prevents the case coming to court. A solicitor is likely to provide estimates of the approximate cost of each potential stage of the process because an overall fixed fee under these circumstances would be extremely difficult to calculate before receiving the full facts. Fixed fee arrangements are not necessarily beneficial to consumers. In some cases they could, for example, result in a consumer paying more than necessary if a case was to settle early.

There is evidence to show that only a very small percentage of consumers were dissatisfied with the costs information provided to them (7%)⁶. The difference between levels of consumer dissatisfaction relating to costs information is relatively small when comparing those areas of legal services where the majority of work is carried out under a fixed fee arrangement and where it is not. For example, dissatisfaction in relation to costs in conveyancing is 4%, whilst dissatisfaction relating to costs in family law (where only 35% of work is carried out under a fixed fee) was 9%. This is a good indication that clients are clear about the cost of their legal services at the start of an engagement with a legal services provider⁷, no matter what structure is used to share information on costs with the consumer upfront.

Within the CMA report, the argument is made that fixed fees are not used as widely as they might be because they place the risk on the firm. It is important to understand that fixed fees may not present good value to the consumer as they do not usually represent the lowest cost for which a firm could undertake a case if no unexpected issues arise. Instead, firms may use a higher price as a contingency to reflect that some cases may cost considerably more than the minimum price. This may result in some clients paying more for their case than they could have done: predictability is traded off against cost-minimisation, which is a perfectly rational choice for some consumers to make. However, it does mean that fixed fees do in fact transfer some risk to the consumer.

2. Is there a minimum level of information that providers should either (i) publish or (ii) or provide to consumers either in advance or on engagement? Should this be mandatory?

The Law Society agrees that there could be improvement in the levels of information made available for consumers. Providers in the regulated legal services markets are already required to provide cost information on engagement, a current requirement which provides consumer

⁵ It should be noted for certain types of litigation fixed costs are in place e.g. personal injury cases for claims up to the value of £25,000.

⁶ Legal Services Consumer Panel (2015) Full data tables from the 2015 Tracker Survey - a sample of recent users of legal services (http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/documents/Tracker_Users_15_000.xlsx)

⁷ Legal Services Consumer Panel (2015) Full data tables from the 2015 Tracker Survey - a sample of recent users of legal services (http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/documents/Tracker_Users_15_000.xlsx)

protection⁸ and its level of importance and standing should remain.

One of the options considered by the CMA is the publication of price models. Given that most regulated legal service providers have to assess each case individually⁹, it is not clear how the consumer panel's suggestion of the publication of average prices would work for uncommoditised work and even in the case of commoditised work there may be complexities. The data on average prices could be called into question when, for example, there are low levels of work being undertaken or a high level of variation in prices due to bespoke requests. In areas such as clinical negligence, where the value of a claim can carry from the thousands of pounds to the millions, which is likely to be reflected in the complexity of the case, it is not clear how an average cost would be helpful to consumers or reflective of what they might pay. Care also needs to be taken that this does not result simply in similar prices being offered across the market.

Any mandatory requirement on providers to publish pricing information would add further burden to regulated legal services providers. We believe that the legal services markets are best placed to consider how to improve transparency and services for consumers to meet their demands and needs. We intend to make recommendations of best practice to our members in the form of a practice note which will provide guidance on transparency of pricing and services. Law Society practice notes are widely used and recognised as providing best practice guidance for the profession.

We also recognise that research has indicated that unregulated providers are slightly more likely to publish fixed fee prices than regulated legal services providers¹⁰. It is necessary to consider this data in the context that unregulated legal services providers, such as a specialist will writer are likely to provide a limited range of services, whereas regulated legal services providers tend to offer a range of overlapping, more complex services. This makes the publication of providing published prices more complex.

3. Are there examples of good practice in price and service transparency that could be shared more widely?

There are many varied examples of innovation, benefitting both consumers and the legal services markets, being produced by legal service providers. Examples of innovations include:

- document automation systems which replicate the face to face question and answer session a solicitor would normally have with a consumer when drafting a legal document. This provides documentation at a fixed cost;
- bundles of legal services at fixed cost; and,

⁸ SRA Code of Conduct, Outcome 1.13 ('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', <http://www.sra.org.uk/solicitors/handbook/code/part2/content.page>)

⁹ Legal Services Board, 2016, Prices of Individual Consumer Legal Services, p.45, (<https://research.legalservicesboard.org.uk/wp-content/media/Prices-of-Individual-Consumer-Legal-Services.pdf>)

¹⁰ Legal Services Board, 2016, Prices of Individual Consumer Legal Services, p.43, (<https://research.legalservicesboard.org.uk/wp-content/media/Prices-of-Individual-Consumer-Legal-Services.pdf>)

- ready to purchase documents online¹¹.

The Law Society recently hosted a highly successful event on the future of legal services. 'Robots and Lawyers'¹² examined emerging innovations in the delivery of legal services and was attended by over 200 delegates; Law Society members have shown an ongoing and keen interest in this area, which we as an organisation have a role in further supporting.

4. How and when should legal service providers communicate: fees and rates to clients and anticipated or actual cost overruns (i.e. where fee will exceed estimate or quote)?

The current regulatory arrangements mean that there are a number of pre-existing requirements when providing information relating to costs. Chapter 1 of the SRA Code of Conduct, (the Code), requires solicitors to provide clients with "information they need to make informed decisions about the services they need, how these will be delivered and how much they will cost." This includes the requirement that consumers are made aware of how fees will be charged and the likely cost of the matter when they instruct a solicitor. The current iteration lists various outcomes and indicative behaviours that solicitors must meet¹³.

The current rules require legal services providers to communicate thorough costs information to the consumer upon and throughout engagement, whilst also enabling them to operate flexibly. The Law Society does not believe that there is need for further regulatory requirements in this respect. In keeping with the key principle of proportionate regulation, we believe that the current provisions satisfy the need to communicate both relevant and sensible levels of costs information to consumers in a variety of circumstances.

The Law Society will produce best practice guidance and further support to our members in this complex area. Our Practice Note on Price and Service delivery will provide for clear and simple information regarding providing services both before and after the legal services provider has been instructed.

5. Are there measures of quality that could be readily collected by regulators or Government (including HMCTS on probate and civil matters) on observable trends in the quality of legal services?

The Law Society believes that it is in the interests of consumers that legal services providers are able to distinguish the quality of their work with a mark of excellence; we are committed to creating and developing tools to help consumers determine which legal services providers provide a high level of service to consumers and maintain high standards in the industry. There are a number of mechanisms which could be used to collect measures of quality on observable trends in quality; however, these measures do have weaknesses and these must be considered when assessing the overall usefulness to consumers.

The Law Society's accreditation schemes cover a range of legal services markets and include,

¹¹ We are happy to provide the named examples of these services if the CMA would like this information

¹² See <http://www.lawsociety.org.uk/support-services/events-training/past-events/robots-and-lawyers-partnership-of-the-future/>

¹³ <http://www.sra.org.uk/solicitors/handbook/code/content.page>

as examples, the Conveyancing Quality Scheme and the Wills and Inheritance Quality Scheme.¹⁴ The accreditation schemes promote high standards in legal service provision and ensure that clients are able to easily identify legal practitioners and firms with proven competency in specific areas of law. Consumers are able to find out what each accreditation scheme means on the Law Society website¹⁵ and can identify which legal services providers hold the Law Society's mark of excellence through the Find a Solicitor search tool (further detail on the Find a Solicitor search tool is in *Questions on addressing barriers to comparison and search* below). With consumer protection and empowerment a key priority, the Law Society is committed to further developing the accreditation schemes and we would welcome the opportunity to discuss the offerings that we are currently developing.

Data on complaints collected by the Legal Ombudsman ('LeO') and front line regulators may act as a proxy for quality of legal services but they do not provide a full picture. The Legal Ombudsman's data in particular tends to reflect the quality of service rather than the quality of work; for example, service issues may include whether there were delays or where the lawyer failed to follow instructions. The LeO publishes basic information on all decisions on its website including firm names, anonymous case studies and very occasionally, where the LeO deems it to be in the public interest, detailed information about a firm..

Claims on providers' PII in relation to negligent work could also give some indication as to quality of legal services, assuming that claims data can be acquired and analysed in a form enabling extraction of trends. However, the nature of many legal services e.g. conveyancing and will writing, means that mistakes often do not become apparent until some time after the work has been completed; this lag in the system makes the data difficult to rely upon.

Questions on addressing barriers to comparison and search

1. What are the barriers to comparison and search?

Data indicates that only a small percentage of those consumers shopping around for legal service providers found it difficult to do so (15%).¹⁶ However, we recognise that as the legal services markets are made up of a large number of players and consumer issues do vary in scope complexity and urgency; it is essential to make it possible for any consumer to make an easy search and comparison by searching for the details of firms and obtaining services and cost information.

An important factor in this sector is the range of services in each market and the complexity of the services provided. In some areas, the easy commoditisation of the services makes pricing easier to determine and therefore provide up front and in a clearly understood way. There are however areas of the law where advice and progress is less easily predictable in advance - and in some cases wholly unique to the case in hand. In these situations, the issue to be dealt with

¹⁴ A full list of Law Society accreditation schemes is available here: <http://www.lawsociety.org.uk/support-services/accreditation>

¹⁵ <http://www.lawsociety.org.uk/for-the-public/using-a-solicitor/accredited-specialists/>

¹⁶ Legal Services Consumer Panel (2016) Legal Services Consumer Tracker 2016 Insight report, p.35

http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/documents/LegalServiceBoardReportbyYouGovV4.pdf

is how these complex variables can be managed in such a way that any price proposals offered are meaningful and not misleading.

In relation to comparisons of quality, legal services are subject to many variables - the outcome of any given case may be the combination of the service by the provider, the court system's efficiency, the involvement of any third parties etc. In addition, given such low levels of consumer legal literacy¹⁷ customers may not know if the service they had was 'good' or 'bad' until some time after the transaction or ever. These issues are not complete barriers to some form of quality comparisons or indicators, but any remedies should be mindful of these factors. It should be noted, however, that the CMA's survey evidence already indicates that 72% of customers felt able to judge quality before choosing a provider - as such there appears not to be a great degree of discontent amongst consumers on this issue.

As the CMA's report indicates¹⁸, there is a generic difficulty across all sectors in the goods and services market in the relatively low uptake of quality comparison tools. To the extent tools are or could be useful, they need to be *trusted*.

2. Are those barriers consistent across legal services?

The challenges identified are relevant to most markets within legal services - although to differing degrees. As mentioned above, where the services are more predictable or capable of commoditization, the fewer the barriers. The greater the degree of complexity the less scope there is for comparison tools to work easily.

3. What additional information could be made available by regulators and trade bodies?

Consideration needs to be given to what additional information would be relevant and valuable to each audience (e.g. consumers, lending panels, SMEs). Providing context and how this information is displayed is key to helping consumers understand the information and to help them gain real value from it. Providing more information is not always the best approach; information overload can cause confusion rather than the levels of transparency hoped for. The key to consumer empowerment and protection is to have the right information provided. Confidentiality and legal professional privilege are also constraints that would have to be addressed.

4. What measures would allow consumers to be better able to compare non-price attributes of legal services providers (such as quality or consumer protections)?

Most individuals (over 70%¹⁹) would use online reviews to find a solicitor or law firm if they did not have a personal recommendation, and these reviews are very likely to be influential in the choice made by consumers. Reviews are likely to reflect both the quality of service and to an

¹⁷ Law for life (2015) Legal Needs, Legal Capability and the Role of Public Legal Education <http://www.lawforlife.org.uk/wp-content/uploads/Legal-needs-Legal-capability-and-the-role-of-Public-Legal-Education.pdf>

¹⁸ CMA interim report on Legal service market para 4.29

¹⁹ The Law Society, online reviews research, May 2015

extent the value for money provided. As well as the ratings scores themselves, information on what kinds of services are provided and the date of the review would be considered important²⁰. While some might be sceptical about the reason for the lack of reviews, other responses by consumers suggested a neutral reaction and a preparedness to accept a legitimate explanation such as the newness of the firm.

When looking at scores/ratings to help measure the service received, consumers prefer to reference non-price indicators to help them compare providers. Figure 1 shows the rank order of ratings/reviews that consumers would like to refer to in deciding to choose a law firm. Understanding needs and quality of service share the top position, followed by keeping them informed and explaining the process and options clearly.

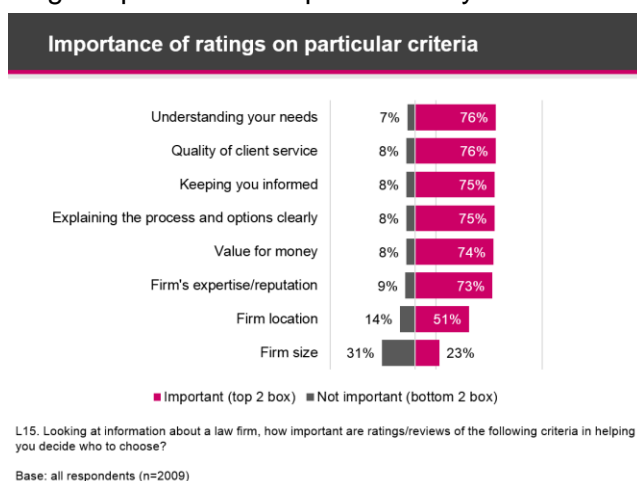


Figure 1

As discussed earlier in this response, the Law Society has developed a full range of accreditation schemes. This is an ideal mark of quality for consumers to be able to differentiate between legal services providers' levels of quality. The Law Society's Find a Solicitor service allows for consumers to search for a legal service provider by area of practice and location. The results show the consumer the number of and type of accreditations held, if any, by the legal services provider. The Find a Solicitor service also allows consumers to filter the results by showing only legal service providers who have achieved the relevant accredited status in the practice area they are searching in. Again, the Law Society is open to sharing further details with the CMA of the current and continuing development of our Find a Solicitor service.

Legal literacy has a major role to play in helping consumers compare legal services providers. As the CMA have pointed out, many consumers automatically assume that they have guaranteed consumer protections and methods of redress whichever legal services provider they use, which is not true. Legal literacy around the different types of providers and protections for consumers is a key step in helping consumers to compare legal service providers.

²⁰ The Law Society, online reviews research, May 2015

5. How can intermediaries and those making recommendations better support consumers in selecting a legal service provider?

Intermediaries and those making recommendations can better support consumers in selecting a legal service provider by contributing to the legal literacy programme. Increased knowledge helps protect consumers, in that the consumer has a full understanding of the facts (price, unregulated v regulated, the protections available) when making their choice of provider. Intermediaries must lay out the terms in simple language or explain fully what a certain label or phrase might mean.

It is also necessary for intermediaries and third parties to make their position clear and transparent with regards to independence and commission. Consumers are not always aware of how much they have paid to a comparison site in commission, if it charges it, for its services.

6. Is there any additional information held by Government or Regulators that if published would assist in the development of the comparison sector or assist consumers directly in making comparisons?

See 'What additional information could be made available by regulators and trade bodies?' answered earlier in Part Three.

Questions on improving consumer information

1. How and what information should be provided by a central hub?

To be an effective channel which helps consumers to compare providers, a central information hub should enable consumers to identify and validate their legal needs and to select a legal provider.

In order to empower and inform the consumer, the Law Society considers that the following information options might be relevant:

Consumer need	Functionality
Identify: Understand whether they have a legal issue and how legal services can help them	Practical Guidance content including video, practice notes, etc. to provide consumers with a greater understanding of their requirements
Validate: Diagnosis of legal need and options	Online questionnaire / decision tree designed to: <ul style="list-style-type: none"> • Confirm whether they have an addressable legal need • Categorise their legal services (triage) and provide a scope against which firms can quote • An online discussion forum to enable consumers and legal service providers to submit and answer initial/enquiries questions
Select: Make an informed choice from a wide selection of legal service providers	Market listing including for each firm including: <ul style="list-style-type: none"> • Firm profile • Trust indicators – accreditations, customer review and ratings • Cost of services

The CMA should also consider that research carried out by the Law Society²¹ found that online reviews offered by the Law Society would receive a high level of trust, with potential use of its website higher than any other provider asked about. Two thirds of people who would use online reviews to research law firms said that they would use Law Society online reviews either as their only source or as one of only a couple of sources. People who named more than one website that they would trust were asked which one they would trust the most: the Law Society ranked as the highest (see Figure 2). Only 2% said that they would not use Law Society reviews at all²².

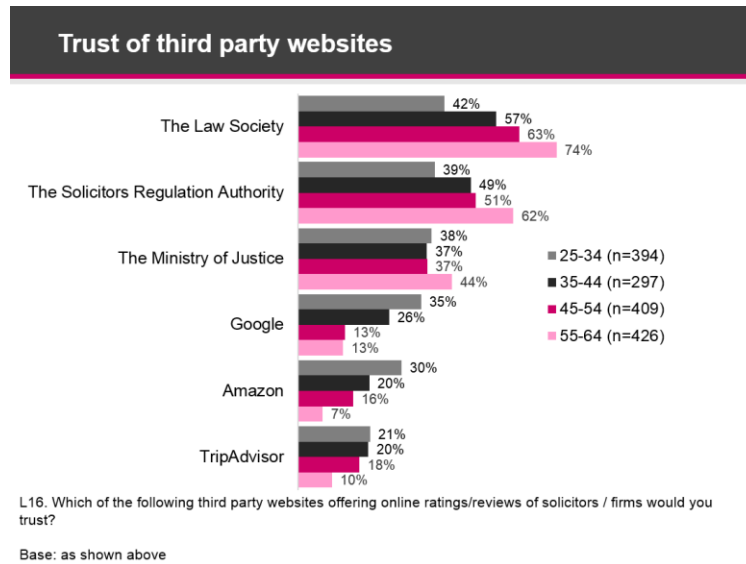


Figure 2

2. Should Legal Choices act as central information hub for legal services in England and Wales or is another website be more suitable?

In principle, although technically Legal Choices could act as a single hub for information on unregulated, as well as regulated legal service providers, it is funded by regulated providers and it would be inappropriate for the regulated providers to subsidise information for consumers relating to the unregulated sector. We suggest that this should be a market driven commercial activity.

²¹ The Law Society, online reviews research, May 2015

²² The Law Society, online reviews research, May 2015

3. How should a central hub be promoted?

- **Should frontline regulators, representative bodies and self-regulatory bodies be asked to promote an information hub?**

Should legal service providers be obliged to link to an information hub?

All front-line regulators, professional bodies and the LeO could promote a central hub through websites and via advice to legal service providers

Many different information hubs are already in existence. Those that struggle to develop their own content (smaller organisations) may welcome the ability to be able to signpost to a central hub; however, third party commercial providers will have more of an interest to direct traffic to their own site to generate more leads for subscribers of that particular site.

In the interests of the key principle of proportionate regulation, legal services providers should not be subject to additional regulation in this area which will add to the pre-existing administrative burden and cost on regulated firms. The administrative burden of complying with regulatory requirements is already problematic for small firms and sole practitioners and the time taken cumulatively to undertake these prescriptive, regulated tasks could ultimately be reflected in increased prices for consumers. The regulated market should not be more heavily regulated in this regard than the unregulated market.

Practically, it is also hard to envisage how a requirement on unregulated providers to link to an information hub would be binding without legislation. This may not be feasible given the Government's commitment to cutting red tape and regulation for businesses. The CMA should carefully consider these implications before suggesting any further regulatory requirements.

4. Should Legal Choices include information on unregulated and self-regulated legal service providers?

In order for equal protection to be extended to all consumers it would be necessary to include information on unregulated legal services providers in order to completely inform and empower the consumer. However, as stated before, it is difficult to envisage how this would be funded. It would be unacceptable and unfair for the regulated profession to subsidise the provision of information about the unregulated legal services providers.

5. What material should be prepared to aid comparing and selecting a provider?

- **Should materials be made available through channels other than a central information hub (such as Citizens Advice)?**

The Law Society believes that Citizens' Advice is a more suitable organisation as a hub for materials which aid the comparison and selection of a legal services provider given that it already has a firmly established neutral and trusted role in the consumer advice landscape; it could take an active part in improving consumer legal literacy, vital to consumer protection and

empowerment. Information could be provided on the types of service that consumers may expect to see packaged in a commoditised fashion (for example, will writing or conveyancing) and other services which are usually priced on a case by case basis. It would also be helpful to provide consumers with information on the best way to engage and interact with legal services providers. Materials could include the questions they should ask, the information they should try and provide etc. Although much of this information is already available through organisations such as Citizens' Advice and the LeO, consumers must be aware of its existence in order for it to make a difference when comparing and selecting 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?

As previously referred to earlier in this response, requirements already exist to ensure that consumers receive clear information on costs when they use a regulated legal services provider. The number of complaints referred to the LeO relating to legal service providers has declined over the last few years as the client care requirements have become embedded in the service provided to consumers.

The CMA has stated that "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." The amount of information that solicitors need to provide at the start of a retainer means clients care letters are often long and complex and difficult for consumers to navigate. In addition the requirements for what should be included in the client care letter change on a regular basis. This makes it incredibly difficult for regulated legal service providers, (particularly small firms or sole practitioners), to keep informed of and abreast of any changes. (for instance, the recent implementation of the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 in 2014 which require solicitors to provide certain information dependent on where a contract is agreed). Stability and consistency in the information that solicitors are required to provide would benefit both consumers and practitioners. We envisage that our work on developing a practice note in this area will help support and enable providers to navigate this better and thereby make it easier for consumers.

2. What would be the consumer protection benefits and impact on competition of restricting the use of the title lawyer?

Anyone can call themselves a lawyer or offer legal services as a lawyer (irrespective of whether they have any legal training or qualifications). This is confusing for consumers and in some cases misleading. The Legal Services Consumer Panel considered that 'lawyers' are more trusted than any other profession except for teachers and doctors²³. Consumers felt their rights

²³ Legal Services Consumer Panel (2016) Legal Services Consumer Tracker 2016 Insight report (http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/documents/LegalServiceBoardReportbyYouGovV4.pdf)

would be best protected in their dealings with lawyers and consumers appear to think it is reasonable to place their trust in those holding a regulated title.

The principle of equal protection of all consumers must be supported by a professional title which is overseen by a professional body. Professional titles are an important hallmark of quality and provide reassurance and guarantees to consumers. Professional titles such as 'solicitor' or 'barrister' are hallmarks of quality, easily understood by consumers. Even when the services provided by solicitors are not providing reserved activities, the professional principles still apply and key principles such as solicitors' integrity and confidentiality are engaged. This underpins the quality of service received by consumers.

As noted in Part 2 of our response, the SRA are consulting on changes to the regulatory system which may change the position described above and create a two tier system, where solicitors working in regulated firms will continue to offer a full range of consumer protections but those working in unregulated firms will not. We believe this is likely to be opaque to consumers, cause further confusion and require consumers to carry out significant due diligence.

3. What are the barriers to using the LeO and are there any benefits in amending its scope, jurisdiction or approach?

An issue around the extension of access to LeO for third parties is that regulated legal service providers could increasingly find themselves in a situation of conflict where their duty to respect client confidentiality and their duty to comply with the LeO come head to head. Cases of conflict already arise although on a relatively small scale. For example, under the existing rules, beneficiaries of estates and trusts are able to complain to the LeO. This can be problematic for a legal services provider if, for example, the executor of a will refuses to waive client privilege. The solicitor is placed in a position where they have to negotiate the difficult ground between complying with information requests from the LeO whilst not taking action which would interfere with responsibilities to their client. These problems are likely to increase if there is any amendment to the LeO's jurisdiction, and would have to be addressed.

Extension of the LeO's jurisdiction could result in a disproportionate level of regulation and further burden on regulated legal services providers. A high proportion of the cases that are brought to the LeO are resolved in favour of the solicitor; however, the administrative burden of having a complaint referred to the LeO is highly significant even if the decision is made in favour of the solicitor. Any extension to the LeO's jurisdiction for solicitors should first involve a thorough financial and economic impact assessment forecasting the likely cost to the regulated legal services markets.

Paragraph 7.54 of the CMA's interim report compares the LeO's jurisdiction with the Scottish Legal Complaints Commission (SLCC). The LeO will only accept complaints from micro-enterprises (small charities, trusts, small businesses) and the SLCC will accept complaints from businesses, regardless of size. However, it is not the case that redress is not available for larger companies; larger companies are more than likely to have the means to negotiate a settlement or in rare cases to be able to use the court system as a route to gaining access to justice.

New Zealand may be a jurisdiction from which provides an alternative model. The New Zealand Law Society conducts an initial triaging and resolution service, which is open to anyone to bring a complaint. Either party is then able to apply to the Legal Complaints Review Officer (LCRO) to review the decision the New Zealand Law Society (or New Zealand Society of Conveyancers) makes. The LCRO is the main adjudication body, although they will pass more serious cases on to a separate Disciplinary Tribunal. The Annual Report of the LCRO provides evidence that allowing third party complaints has led to significant delays²⁴.

4. Are the current arrangements for ADR in legal services market clear and readily understandable to consumers and is there scope for greater use of ADR?

The Law Society believes that the current ADR arrangements are potentially difficult for consumers to understand. The implementation of the EU Directive on Consumer ADR, (the Directive), means that consumer ADR, (which abides by minimum standards), is now available in all sectors and is a method of redress if the unregulated sector wishes to use it. However, as discussed in Part Two of our response, the use of this method of redress is not necessarily binding on those who use it.

The Directive was brought in to ensure a minimum level of consumer ADR across all EU member states. Where ADR was already a feature of the consumer landscape, the intention was that existing bodies would be able to qualify as approved ADR entities for the purposes of the Directive. Many complaints bodies applied and were granted status as an approved ADR entity. The LeO submitted an application to become an approved ADR entity but later withdrew it.

The key issue for the LeO, as the Law Society understands it, was in relation to time limits and the binding nature of its decisions. The LeO would not have been able to maintain most of its time limits and the mandatory nature of the decisions and by becoming an approved entity, would have unjustifiably increased the burden on regulated legal service providers. We understand that the LeO is looking again at whether it would be possible to become an approved ADR entity without having to remove these time limits.

Paragraph 5.62 of the CMA's interim report states that the CMA "would be interested to hear why there is a general reluctance to use ADR as an alternative means for handling complaints." We do not believe that there is a general reluctance to use ADR. Solicitors are required to provide information about an approved ADR entity despite the fact that arguably better consumer protections are available through the LeO. There are some changes which could be made to the system to improve consumer understanding.

The Law Society would like to see the LeO become an approved ADR entity without having to make sacrifices in its scheme that reduce the current high standards of protection for

²⁴ Annual Report of the Legal Complaints Review Officer (2015)
<http://www.justice.govt.nz/assets/Documents/Publications/LCRO-2015-annual-report.pdf> p2

consumers.

5. Should legal services providers be provided with additional guidance on communicating redress options?

Solicitors are already required to provide sufficient information to clients on methods of redress which are available in addition to the LeO. In addition, all legal services providers, whether regulated or unregulated, are required to provide information on whether they are prepared to use an approved ADR entity. We also operate an advice line for solicitors that covers this area. The Law Society plans to provide best practice guidance covering clearer, simpler and additional communication on redress.

The CMA states in paragraph 5.69 that "while we note that awareness of redress mechanisms is generally high, further work can be done to improve clarity around redress mechanisms." Consumer awareness and clarity around redress mechanisms will become even more important than currently, as the SRA has proposed to allow solicitors to work in unregulated firms (see 'Question on the regulatory framework- 1. Are the high level criteria for assessing the regulatory framework that we have identified appropriate?'). Currently, if a consumer is aware of the difference, they can make an informed choice between a regulated and unregulated provider; they understand that the use of a regulated individual in a regulated provider abides by the four pillars of consumer protection, including heightened redress mechanisms, and the unregulated provider does not. If the SRA's proposals are adopted, consumers will be unable to assume that the use of a regulated individual will mean that they benefit from the four pillars of consumer protection. Given the consumer confusion already apparent and as recognised by the CMA, the Law Society believes that these proposals will simply increase consumer risk and weaken consumer protection.

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

The EU consumer ADR Directive has ensured that redress mechanisms are in place for unregulated legal services providers should they choose to use them. However, approved ADR entities do not necessarily have the same powers as the LeO and their decisions are less likely to be binding.

The use of the LeO establishing a voluntary scheme for resolving complaints has been suggested in recent years as a solution for raising standards amongst unregulated legal services providers. However, the Law Society has not supported this as a solution for two key reasons:

- The vast majority of the LeO's costs are paid for through the practising certificate fee and it would be extremely unfair to require the regulated legal services markets to subsidise unregulated legal services providers' use of this redress mechanism; and,

- The LeO's core jurisdiction is mandatory and binding but a voluntary scheme for unregulated legal service providers would not be. This could be misleading for consumers and a potential waste of the LeO's resources.

Paragraph 5.67 of the CMA's interim report welcomes views as to "whether, in practice, it is a material issue that consumers who use unregulated providers benefit from fewer such consumer protection mechanisms." The Law Society believes that it is a both serious and material issue that consumers who use unregulated legal service providers benefit from fewer consumer protection mechanisms. For example, if a regulated legal services provider drafts a will incorrectly, it could have significantly negative repercussions for the intended beneficiaries. However, the beneficiaries of a poorly drafted will have access to the LeO who can order a legal services provider to pay compensation, claim against their PII providers and depending on the details of the case, use the Compensation Fund or 'run off cover'. If it is an unregulated legal services provider who has drafted this will incorrectly, the consumer benefits from none of these protections. This is just one example of how, if things go wrong, the use of an unregulated legal services provider can result in a lack of consumer redress.

Questions on the regulatory framework

1. Are the high level criteria for assessing the regulatory framework that we have identified appropriate?

We agree with the high level criteria set out in the CMA's interim report and we would support the criteria as a mechanism for assessing any potential regulatory change. However, as the CMA will be aware, sometimes the supply side outcomes are in conflict with the demand side outcomes when an attempt is made to apply the criteria to a real life example. For example, the SRA is currently consulting on proposals that would allow a solicitor to perform as a solicitor, providing services to someone who is not his/her employer, in an unregulated entity. On the supply side, it could be argued that this allows solicitors and unregulated firms to innovate. However, the proposal also needs to be balanced against the demand side. Under these proposals, the consumer will no longer be able to safely assume that, because they are dealing with a solicitor, the four pillars of protection are in place.

We support the inclusion of criteria on the direct costs of regulation. The cost of regulation is borne solely by the profession and constitutes a major expense for firms. It is important that where new requirements are being considered, the impact on the legal services markets is thoroughly assessed.

2. Does the current regulatory framework prevent, restrict or distort competition?

The four pillars of consumer protection, in the regulated legal service providers markets, are crucial in order for the public to have confidence in the legal profession. The existence of unregulated providers in the market who are able to operate without having to abide by the four pillars of protection creates a wide range of consumer and competition issues. The existence of

competing regulators can have a detrimental impact on the market if practitioners are able, in effect, to 'shop around' for a regulator. There may be benefits to this in theory if it encourages regulators to engage in manner that is more attractive to legal practitioners but the big danger is that it eventually contributes to a 'race to the bottom'. The cost of regulation would be cheaper but professional standards would be significantly eroded. Regulation in the legal sector requires these considerations to be balanced against one another.

3. Would the potential changes to the regulatory framework we have identified promote competition?

We agree with the CMA that changes to the regulatory framework are unlikely to have the effect of encouraging competition in the legal services markets. Some of the potential changes suggested by the CMA and SRA will either weaken or eliminate the four pillars of consumer protection in areas of high consumer risk or create further and unjustified burden on regulated legal service providers. We have laid out our reasoning in Part 2 of this response.

4. Is a further review of the regulatory framework justified on the basis of competition concerns?

No, a further review of the regulatory framework is not justified on the basis of competition concerns. The current regulatory framework has been brought in gradually since the Legal Services Act was passed in 2007: the LeO went live in October 2010, the applications for ABS licenses were accepted in 2011, and some regulators are still making applications to extend their remits to cover new services. The effects of the Legal Services Act have not played out fully yet and it would be premature to push towards a second Legal Services Act. We believe that issues around transparency can be better addressed by enhancing the services and information already provided by professional bodies.

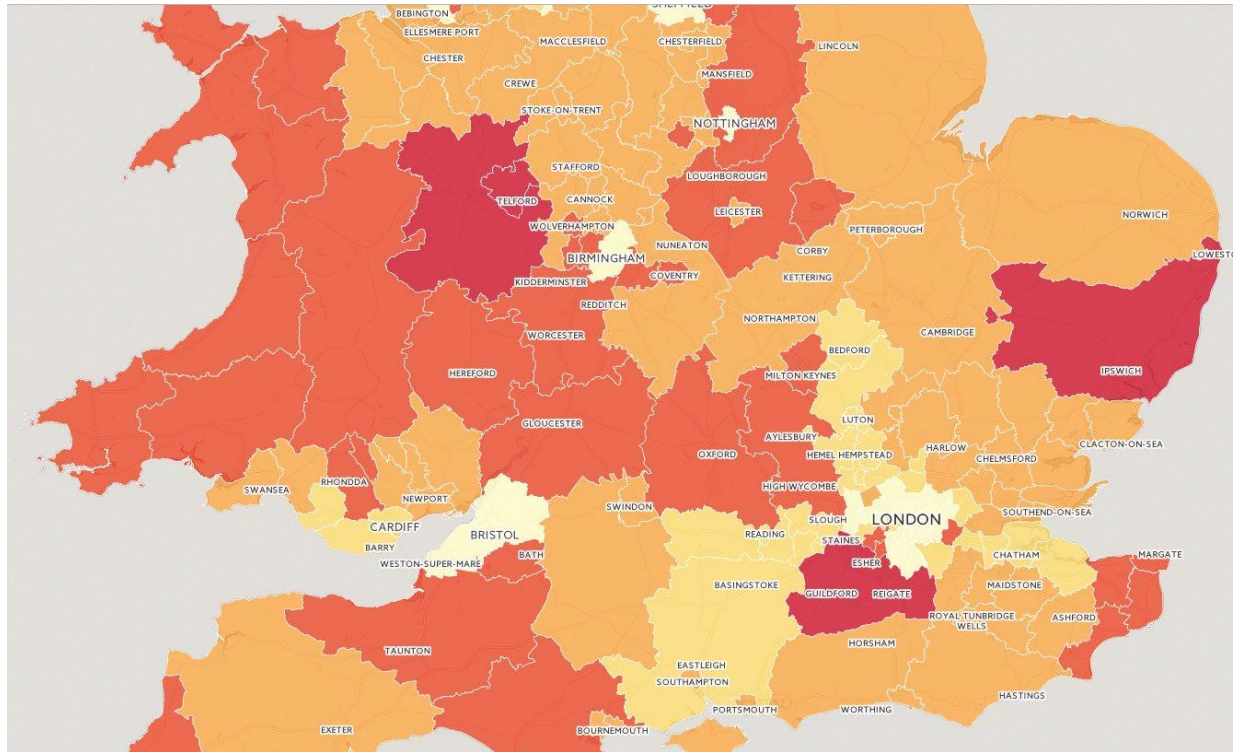
The legal profession is currently undergoing a great deal of change: the UK's decision to withdraw from the EU is likely to have implications for the legal services markets and it is a key priority that that England and Wales remain the jurisdiction of choice for legal services.

In addition to this, the SRA is proposing to significantly alter its Handbook containing the rules that solicitors must follow and allow solicitors to practise in new ways. The proposals could result in two tiers of solicitors - those working in a regulated entity and those who are not - with different rules and protections applying to consumers, depending on where the solicitor is working. The regulated sector would continue to operate with full consumer protection, including full PII, offering clear redress in the event of things going wrong. Advice from solicitors in unregulated entities may not be legally privileged – which means vital protections for consumers, that keep what passes between them and their solicitor confidential, would be under threat. Furthermore, the proposals will mean that a consumer instructing solicitor in an unregulated firm will not benefit from fully comprehensive PII, the compensation fund, or a clear redress pathway. We believe that these proposals are an example of where the balance between deregulation and consumers facing unacceptable risks needs to err on the side of the

consumer. We also fear that the consumer confusion created by this new two tier system will distort competition in the market.

We believe it would be impossible to be able to measure the impacts of any changes given that so much is occurring elsewhere in the sector and it would not be appropriate at this time to create further instability in the market without conducting a full and in-depth review of the entire legal services sector. This holistic review would provide the evidence needed to base any proposals on changes to regulation in the legal services sector. The Law Society has been considering the future of regulation in the legal services sector and have looked at various models.

Annexe A – Legal aid advice deserts.



The map shows the number of providers with housing contracts from the Legal Aid Agency. Darker areas indicate low or no providers. An interactive version of the map is available at <http://www.lawsociety.org.uk/policy-campaigns/campaigns/access-to-justice/end-legal-aid-deserts/>

Annexe B- Information solicitors must provide

The current regulatory arrangements mean that there are already a number of pre-existing requirements which solicitors must abide by when providing information relating to complaints and costs.

Chapter 1 of the SRA Code of Conduct (the Code) requires solicitors to provide consumers with "information they need to make informed decisions about the services they need, how these will be delivered and how much they will cost." This includes the requirement that consumers are made aware of how fees will be charged and the likely cost of the matter when they instruct a legal services provider. The current iteration of the Code lists various outcomes ('O') that legal services providers must meet, including the following relating to costs:

- **O(1.6)** *you only enter into fee agreements with your clients that are legal, and which you consider are suitable for the client's needs and take account of the client's best interests;*
- **O(1.12)** *clients are in a position to make informed decisions about the services they need, how their matter will be handled and the options available to them;*
- **O(1.13)** *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;*

The Code also includes indicative behaviours ('IB') that may be demonstrated by practitioners who are compliant with the rules. Indicative behaviours 1.13 to 1.21 all relate to fee arrangements:

- **IB(1.13)** *discussing whether the potential outcomes of the client's matter are likely to justify the expense or risk involved, including any risk of having to pay someone else's legal fees;*
- **IB(1.14)** *clearly explaining your fees and if and when they are likely to change;*
- **IB(1.15)** *warning about any other payments for which the client may be responsible;*
- **IB(1.16)** *discussing how the client will pay, including whether public funding may be available, whether the client has insurance that might cover the fees, and whether the fees may be paid by someone else such as a trade union;*
- **IB(1.17)** *where you are acting for a client under a fee arrangement governed by statute, such as a conditional fee agreement, giving the client all relevant information relating to that arrangement;*
- **IB(1.18)** *where you are acting for a publicly funded client, explaining how their publicly funded status affects the costs;*
IB(1.19) *providing the information in a clear and accessible form which is appropriate to the needs and circumstances of the client.*

Under the current arrangements, solicitors are also required to provide the consumer with the following information:

- The consumer's right to make a complaint and details of how to do so.
- The consumer's right to complain to the Legal Ombudsman, the time frame for doing so and how to contact the Legal Ombudsman.
- The consumer's right to challenge or complain about a bill.
- Circumstances where a consumer might be liable to pay interest on an unpaid bill.