Response to Competition and Markets Authority Legal Services Market Study Interim Report

Introduction

1 The SRA is the regulator of solicitors and law firms in England and Wales. We protect consumers and support the rule of law and the administration of justice. We do this by overseeing all education and training requirements necessary to practise as a solicitor, licensing individuals and firms to practise, setting the standards of the profession and regulating and enforcing compliance against these standards. Further information is available at www.sra.org.uk.

2 We welcome your review into the legal services market, and the opportunity to comment on your interim report. We agree with your finding that this market is not functioning as effectively as it could. We also agree with your observation in relation to the regulatory framework that "...a key principle should be to ensure full independence of the regulator from the providers it regulates." It is only being free from representative influence that will allow the regulation of legal services to become fully proportionate and risk based. We strongly encourage the CMA to propose a specific remedy in its final report that tasks Government with bringing forward legislation to finally secure the independence of regulation from the professional bodies, as well as the legal profession and Government.

3 Many of the rules we enforce were inherited from the Law Society, and reflect the conflict that organisation experienced, and continues to experience, when asked to regulate and represent the same community. Overly prescriptive and restrictive rules can create unnecessary barriers to entry and inhibit competition. We are therefore undertaking a programme of regulatory reform to make sure our regulation is up to date and fit for purpose. We need to protect the public without hampering the growth and innovation that will drive a competitive and effective legal sector. The evidence of unmet need among consumers you highlight in your report makes creating a market where legal services are available through a range of means, at an affordable price, even more urgent.

4 We support the three aims of your proposed remedies:

- improving price and service transparency
- addressing barriers to comparison and search
- improving consumer information and awareness of providers.

Through our regulatory reform programme we continue to make progress in each of these areas and look forward to engagement throughout your review.

5 We want to do more to allow greater flexibility for solicitors and freedom for firms to innovate, compete and grow. We think this will help consumers access more quality legal services at affordable prices. Our 'Looking to the Future' programme, a phased review of our regulatory approach and handbook, outlines how we think we can do this. We have made significant progress but there is still more to do.

6 Liberalising the labour market in this sector is also an important part of our work. Our aim in this area is to ensure that tomorrow's lawyers can meet the standards expected of skilled legal professionals. Our policy statement 'Training for Tomorrow' provides more detail on our approach.

7 We now regulate 516 alternative business structures ('ABS'). These new business models are starting to have an impact on the market. Multidisciplinary practices ('MDPs') - ABS that provide a mixture of legal and non-legal services - are also increasing in number and have the potential to radically reshape the legal market. The initial growth in MDPs may appear to be mostly to the benefit of clients at corporate level but we think it will rapidly cascade down to small and medium sized firms as clients and to individual clients.

8 Our proposed changes to our handbook and practice framework rules[1] will also make it much easier for entities like banks, associations, insurers, and retail companies to offer legal services. We consider our reforms will unlock the potential in the legal market over next five to ten years in ways that we are currently only scratching the surface of. This work will also benefit the poorest and most excluded in society, by allowing solicitors to operate, for example, in the office of a local charity without that body needing to convert to ABS status. We note with interest your finding that there is no evidence consumers are exposed to material risks as a result of their lack of knowledge between a regulated and unregulated provider, which provides some support for our proposals for allowing solicitors to work in unauthorised firms. This does not create a 'two tier profession', rather it provides greater labour market opportunities for solicitors, new structural and service delivery opportunities for legal businesses and much greater choice for consumers.

9 The legal services market is rapidly changing and our regulation must keep pace. We believe that it is only through removing unnecessary regulation while maintaining an appropriate level of protection for those consumers that need it that we will meet the regulatory objectives in the Legal Services Act 2007 ('the Act'), which include protecting and promoting the public interest and the interests of consumers, and promoting competition.

[1] These rules set out how those we regulate can offer services

Questions on improving price and service transparency

Q1: What are the barriers to providers sharing price and service transparency information with consumers and do these vary by legal service?

10 We are currently doing a lot of work in this area on what additional information about solicitors and firms we could publish, or require firms to publish, to enable consumers to make more informed choices about legal services providers.

11 We are aware of some barriers to providers sharing price and service information with consumers, but need proper research in this area to ensure we have correctly identified and fully understood them. We are currently in the process of determining our research schedule for 2016/17, and our research commissioning board is considering a proposal for work in this area.

12 There are two main barriers to price transparency:

- many providers of legal services are small businesses, who find it difficult to absorb risk. This results in reluctance to offer fixed fees to consumers and accept that sometimes a matter will unexpectedly require more work than will be paid for by the fixed fee (even though the reverse will also be true, in that some matters will cost less than the fee to resolve)
- the limited extent to which consumers shop around means that firms can get away with charging different prices to different consumers.

13 In relation to service transparency, some areas of law can be very emotive and consumer feedback or complaints may be driven by the outcome of a case or behaviour of the other side as much as by the service provided. In addition, issues of client confidentiality may mean that firms are prevented from responding to negative reviews.

14 These barriers do not exist to the same extent in all areas of law. Some areas, such as will writing or conveyancing, are much more predictable in terms of the amount of time likely to be involved and this makes it much easier for firms to be transparent about their fees and agree fixed fee arrangements. This is demonstrated by the fact that fixed fee arrangements are more prevalent in these areas. Similarly, these areas tend to be less contentious and emotive, meaning that consumer feedback and complaints are more likely to be driven by the service provided.

15 We do not think these barriers are insurmountable. However, the issues they raise require careful consideration to avoid unintended market consequences and ensure that transparency achieves its aims of enabling consumers to make more informed decisions and drive competition. The information related

barriers to transparency are higher for individual and small business consumers; corporate consumers are much better placed to compare different providers or to negotiate on price. Nevertheless, our starting point in this area continues to be that the vast majority of companies employ or use a range of differently paid people and most companies are able to sell their services at a composite rate.

Q2. Is there a minimum level of information that providers should either (i) publish or (ii) provide to consumers either in advance of or on engagement? Should this be mandatory?

16 The current SRA Code of Conduct requires that solicitors provide a range of information to clients in advance of or on engagement. As Outcomes in the Code of Conduct, these requirements are mandatory. They include requirements to provide the following information:

- How a solicitor is regulated and the protections that affords [O(1.7)]
- A consumer's right to complain to the firm and how to do it [O(1.9)]
- A consumer's right to complain to the Legal Ombudsman (including timeframe for doing so and full contact details for doing so) [O(1.10)] – this must be done in writing both at the time of engagement and at the conclusion of the solicitor/firm's complaints procedure
- Outline of the likely overall cost [O(1.13)]
- Information on fee sharing arrangements [O(9.3) to O(9.5)].

17 We have retained similar requirements in our proposed new Codes of Conduct[2] for both solicitors and firms. In section 8 of the proposed Code of Conduct for Solicitors, we have included standards relating to complaints handling, client information and publicity. These requirements also apply to firms in our proposed Code of Conduct for Firms. Our approach to the proposed Codes is to create more flexible, high level and purposive standards that bring all the existing requirements together in one place.

18 Directive 2006/123/EC on services in the internal market, implemented in the UK by the Provision of Services Regulations 2009, also imposes obligations directly on providers to disclose the following to consumers:

- VAT number (regulation 8(1)(g))
- Details of compulsory professional indemnity insurance (regulation 8(1)(n))

[2] Codes of Conduct consultation available at the bottom of the hyperlinked webpage

- Details of how to access the detailed professional rules applicable to that provider (regulation 9(1)(d))
- Details of complaint resolution procedures (regulation 10(1)).

19 Some of the obligations in these Regulations are required explicitly by our Codes, some of them implicitly.

20 Our Codes contain the minimum requirements for those we regulate, all of which are mandatory. We also require diversity data to be published. We are currently considering what information about SRA regulated individuals or firms we should publish or require firms or individuals to publish, and are planning on releasing a discussion paper by the end of the year subject to decisions being taken by our Board. The areas we are looking at include regulatory action, complaints data, insurance claims data and accreditations.

21 We are considering the best ways to help people understand what they can expect of a solicitor and what protections are in place depending on the provider they choose. One option we are considering is a leaflet or booklet available on our website and in places like solicitors' offices, Citizens Advice bureaux and libraries, which would be similar in style to the General Dental Council's Smile Guide. We also know that it can also be difficult for consumers to establish whether or not a provider is regulated. Given the proposals we set out in Looking to the Future, to enable solicitors to deliver non-reserved legal services by practising in an unauthorised organisation, it is particularly important that we help consumers understand whether a legal services provider is regulated and the implications of that. One way this could be addressed is to enable regulated providers to use a specific logo to denote to consumers that they are regulated and potentially another logo to indicate that their clients would have access to the SRA's compensation fund. This type of branding is already in use in financial services, where the Financial Services Compensation Scheme (FSCS) logo and 'FSCS protected' badge is displayed in bank and building society windows, on all letters to customers and online.

22 Providers are able to go above our requirements and offer more information to their customers if they wish. However, overloading consumers with information they are unable to process or use is also not helpful. Research by Linstock Communications has shown the value of 'just in time' decision support techniques for consumers of legal services, which provide support at the time a decision is actually being made.

Q3. Are there examples of good practice in price and service transparency that could be shared more widely?

23 There are a range of consumer research studies available across the legal services sector that help us to look through the eyes of consumers, and to draw out evidence of good practice. For example, our research report from

January 2016 'Quality of legal services for asylum seekers' shines a light on cost and service transparency across the asylum services sector by highlighting good practice, as well as practical examples of what 'good' can look like[3].

24 Core information about legal service packages, including pricing details and customer service standards, typically form part of each lawyer's initial client care approach. The approved regulators have considered the workings of the client care stage through our Legal Regulators Forum, and as a result we have commissioned joint research in this area. The focus of the research will be good practice from different areas of the legal services market, and will help us to understand more clearly how information about price and service can be made transparent and accessible for consumers. It is anticipated that analysis and reporting will be completed by October 2016.

25 Search engines bring up a number of comparison sites for legal services. For example, Law Superstore compares providers of a range of legal services. Other sites focus on specific areas of law, such as Money Supermarket and CompareAndConvey's conveyancing comparison service.

Q4. How and when should legal service providers communicate:

1. fees and rates to clients; and anticipated or actual cost overruns (ie where the fee will exceed an estimate or quote)?

26 As outlined in our answer to Q2 above, this should be communicated both at the time of engagement and as appropriate as a matter progresses. Outcome 1.13 in the current SRA Code of Conduct 2011 states that:

> Clients receive the best possible information, both at the time of engagement and when appropriate as their matter progresses, about the likely overall cost of their matter.

27 We have redrafted this in the 'client information and publicity' section of our proposed new Codes as follows:

> You ensure that clients receive the best possible information about how their matter will be priced and, both at the time of engagement and when appropriate as their matter progresses, about the likely overall cost of the matter and any costs incurred.

[3] Other examples: '*Pathways to Justice'* by Mencap, Grapevine and the Legal Education Foundation asks people who experience learning disabilities about their view of good client care, alongside other aspects of the legal services process; Resolution's February 2016 '*Good practice for family lawyers'* guide describes a model of information and behaviours to help make lawyers and their services more transparent and less intimidating, in this case where they interact with litigants in person

28 This proposed Standard will also apply to firms.

29 Directive 2006/123/EC on services in the internal market, which was implemented in the UK by the Provision of Services Regulations 2009, also places a number of requirements on providers.

30 It is also worth bearing in mind that many retail legal services should not incur cost overruns. Work such as conveyancing, wills, basic and even more complex divorces with children or simple financial issues are predictable enough for genuine fixed fees to be possible where some of the individual consumer's risk is shared with law firm. The same is true for small business consumers and many of their basic life event legal needs (for example, taking on an employee or moving to new premises).

Q5. Are there any measures of quality that can readily be collected by regulators or government (including HM Courts and Tribunal Service in relation to civil actions or probate) on observable trends in quality of legal services?

31 Measuring the quality of legal services is something regulators (and many consumers) find difficult. The most accurate methods are the use of mystery shoppers, as seen in the Legal Services Consumer Panel's 2011 report on will-writing, estate administration and probate activities, and reviewing files (as used by our thematic review team - see paragraph 33 below). However, these are both expensive and time consuming.

32 There are a number of other indicators regulators can use, which cumulatively can give an indication of quality:

- Claims on the SRA Compensation Fund: in the year to October 2014, our compensation fund paid out over £23.8 million
- Professional indemnity insurance claims: over the period 2004-2014 there were 142,000 indemnity insurance claims notified to insurers by solicitors' firms. So far about one in five have resulted in payments, worth a total of £1.6 billion. The majority of negligence claims stem from competence issues, although some of them will be caused by dishonesty and fraud
- Complaints data: in 2014-15, over 800 complaints against solicitors were upheld by the Legal Ombudsman. This is likely to underestimate the extent of consumer dissatisfaction. Research published by the Legal Services Consumer Panel found that last year 44% of those who were dissatisfied with their solicitor did nothing. Complaints data may be further flawed as an indicator of quality because consumers can base their satisfaction on the level of service they receive and the outcome of their matter rather than quality (for example, someone who receives little effort from their solicitor but wins a relatively simple case may be

more satisfied than a person who receives excellent customer service and a lot of work from their solicitor on a difficult case that they eventually lose)

- Both the Probate Office and the Land Registry record the number of applications they either have to do further work on or return to sender due to mistakes/ omissions, giving an idea of the quality of the applications they receive
- For areas where legal services are reviewed by a third party, that third party may be able to provide an assessment of quality. For example, judges reviewing applications for judicial review have the ability to certify cases as being 'totally without merit', and the Legal Aid Agency collects success rates in certain areas of law
- Quality marks and accreditation schemes[4]. While these schemes cost providers money to join and an annual fee, we are not aware of any evidence that they improve the quality of service. There is also a risk that they can confuse consumers or provide unwarranted assurance.

33 We use a range of indicators to inform our risk profiles. We increasingly share intelligence with other bodies, and are keen to see open data in related markets so that we can reuse it, as well as consumers doing so. We also receive approximately 1000 reports a month, which we review and assess through our supervision function. We conduct thematic reviews where there are concerns of systemic problems. Our thematic review team will visit firms, ask survey type questions and review files. Our first such review completed in January 2016, and looked at quality of services legal services for asylum seekers. We have started initial work on a thematic review of personal injury, and will be undertaking work on conveyancing and criminal advocacy in the future. We can provide more detail on this future work upon request.

Questions on addressing barriers to competition and search

Q1. What are the barriers to competition and search?

34 For many consumers, purchasing legal services is a relatively rare event and comes at a time of particular emotional upset or stress, such as when moving house or during the breakdown of a relationship. This means they may not have the experience or capacity to be able to search effectively.

35 Very little information is easily accessible and available to consumers in the legal services market. For example, only 17% of firms publish price information on their website. Some consumers may be aware of a few law firms through television advertising, or through a personal recommendation. Others might be guided by quality marks or accredited provider schemes. Some may simply search online with no prior knowledge.

[4] For example, the Law Society runs a number of accreditation schemes

36 This is in sharp contrast to other markets such as insurance and other financial services. These are well served by consumer information through comparison websites and other sources. And as your report states, in medicine consultant outcomes data, primary care outcomes and patient reviews are published by the NHS. These place the consumer in a more empowered position when comparing options and choosing services that best fit their needs.

37 Search tools that do exist for legal services do not cover a sufficiently large proportion of the market to enable consumers to search and compare effectively. For example, the Law Society operates a Find a Solicitor service. This provides details of firms authorised by the SRA, but not other legal services providers, such as unregulated firms. Similarly, moneysupermarket.com provides comparison information including prices and customer satisfaction ratings, but only for conveyancing services.

38 There is a self-reinforcing cycle: there are no effective comparison tools for the whole legal services market, which makes it difficult for consumers to compare providers. This means not enough consumers make comparisons (we note your finding that only 22 percent of individual consumers compare two or more providers). This in turn does not provide sufficient incentives to firms to provide information or sign up to comparison websites. It also means comparison websites lack incentives to join the market.

Q2. Are those barriers consistent across different legal services (by area of law, activity and the extent to which a service is commoditised)?

39 As your report states, there are a number of intermediaries operating in this sector. They are more prevalent in some areas of law than others. For example, in conveyancing, lenders often have a limited number of firms on their panel and they will usually hold some helpful information (such as prices and customer satisfaction data) about those firms to help consumers compare and select a provider.

40 The availability of fixed fee arrangements varies widely across different services. They are much more often seen in areas such as conveyancing and will writing, making it relatively straightforward for consumers of these services to quickly compare prices of different firms.

Q3. What additional information could be made available by regulators and trade bodies?

41 We note your finding that stakeholders have had some difficulty accessing regulatory information. We are considering whether to make complaints data

and insurance claims data available as possible indicators of quality that consumers could find useful. However, there are risks in publishing this information, such as:

- how well the data could be contextualised so that consumers could understand it
- unintended market consequences
- firms not categorising complaints correctly or deterring consumers from complaining so as to report a lower number of complaints
- diversity implications.

42 Our current view is that these risks are not insurmountable, but we will need to work through them carefully and engage with our stakeholders and those we regulate before coming to a final decision.

43 We also plan to make the data that we already publish more easily accessible for consumers. For example, we already publish details of enforcement action or conditions on practising certificates. With our Board we are considering creating one single digital register of firms and individuals, which will make this data much easier for consumers to find. We can provide more information about these plans if required.

Q4. What measures would allow consumers to be better able to compare the non-price attributes of legal services providers (such as quality or consumer protections)?

44 Increased coverage of the legal services market by comparison websites would be the single best way to enable consumers to compare legal services providers. Regulators could assist in the short-term and act as a catalyst for more comparison websites by providing more accessible information on their websites. This is our aim in creating a single digital register of firms and individuals containing information that we feel acts as indicators of quality.

45 Increased use of logos could indicate to consumers whether or not an individual or firm is regulated and by whom. An example from another sector would be the Financial Services Compensation Scheme, whose logo banks are required to display in their windows, on their website and on all their literature.

Q5. How can intermediaries and those making recommendations better support consumers in selecting a legal service provider?

46 We have not conducted any work that could assist with answering this question. However, our initial view is that intermediaries could provide consumers with a range of information to assist decision making, including comparisons on price and quality. They could also explain the differences between protections available with different legal services providers.

Q6. Is there any additional information held by government or regulators that if published would assist the development of the comparison sector or assist consumers directly conducting comparisons?

47 A key issue is that there is little assistance for consumers to compare the whole of the legal market. A tool that would facilitate comparison between different legal services providers across different regulators would help address this. It may be for comparison websites to provide this type of tool but, as we have stated above (and your reports highlights), regulators could help start the process by publishing more of their data.

Questions on improving consumer information

Q1. How and what information should be provided by a central information hub?

48 You conclude in your report that:

> "Providing information to consumers on different types of legal service providers and the considerations to bear in mind when choosing a legal service provider would help consumers make more informed decisions."

49 We support this statement, and believe that it holds the key to achieving a successful central information hub. Information about different providers needs to be accessible to consumers in commercial terms (through transparent pricing and costs, service expectations, timeframes that work is completed in, etc), and much of this may be best provided by firms themselves and choice tools like comparison websites.

50 However, there are also factual information sets that consumers need to be able to access centrally, which are more 'set in stone' and can be delivered with authority and in a way that supports consumers to rely on their accuracy. They can also play a major role in helping consumers to make better informed decisions about which provider they may want to use.

51 Based on information that we already provide with our partner regulators through the Legal Choices channel, or that we intend to build, this should include:

- factual, jargon-free background information about common types of regulated providers, and providers that are not regulated by an approved legal regulator
- legal situations where a consumer is required by law to use only a regulated provider
- facilities to compare protections that are available across different providers
- opportunities to narrow-down the types of provider that can help a consumer with their specific legal problem
- links to key support services and bespoke advice available from those services (such as Advicenow, and Citizens Advice – this is discussed more below).

Q2. Should Legal Choices act as the central information hub for legal services in England and Wales or would an alternative website be more appropriate?

52 Our view is that Legal Choices could be the central information hub for consumers, and in some respects it has already taken on that role. As it is steered by seven approved regulators the language and delivery of the website is impartial and arms-length from commercial interests. The information provided by the website meanwhile carries weight and authority that can help to reassure people about its authenticity, reliability and credibility.

53 Through other consumer-focused websites there is already a range of information and advice services available for people about legal services. Examples include the Citizens Advice, website which provides information about a range of legal situations, and Advice Now's website offering practical step-by-step guides to help empower people to tackle their legal problems directly. The resources available are high quality and Legal Choices already links to them from many different areas of the website. They are also powerful in helping to equip people with the knowledge they may need about legal processes, their rights, and situations where they may or may not require help from a lawyer.

54 However, these websites do not necessarily assist consumers to access tools to help them weigh up potential providers, or to understand where different providers fit in the overall market so that they can have a clearer visibility of the choices open to them. The high current levels of consumer confusion evidenced by the CMA's own research, and research elsewhere including Linstock Communication's 'Helping legal services consumers make better

decisions' report, suggest there is scope for much more to be done to help consumers in this respect. Legal Choices is a channel that is already starting to do this.

55 Despite this, we are unsure if a central hub could be any more than part of the answer. To effectively deliver 'just in time' information brands that people recognise need to offer information as well as services. Good comparison sites, such as Law Superstore, can do this. In a competitive market law firms are likely to offer more basic and free information as a way of attracting customers and in order to help consumers identify what help they need. We are already beginning to see this in areas such as unbundling.

Q3. How should any central information hub be promoted?

1. Should the front line regulators, representative bodies and self-regulatory bodies be asked to promote an information hub?

56 It would be sensible for regulators and other bodies to be asked to commit to promoting a central information hub. From our perspective there is a direct correlation here with our work to protect consumers and act in the public interest, and to help consumers access good information about legal services.

57 Through our current 'Looking to the future' reform programme we are evaluating information tools and products that can help people with their decisions, and to make sure people can easily locate the right information at the right time about lawyers and the services they provide. This will be part of a wider action plan to help empower consumers, and the availability of a central information hub that we can promote and direct consumers to is a good fit with this work.

2. Should legal services providers be obliged to link to an information hub?

58 We are open to the suggestion that providers could be obliged to link to an information hub. Another could be use of a logo, alongside that for 'regulated by the SRA' and 'SRA compensation fund' (see above at paragraph 21). However, before imposing that kind of blanket requirement research into its potential efficacy would be necessary.

Q4. Should Legal Choices include information on unregulated and self-regulated providers?

59 Yes where possible it should, and we are already heading in this direction.

60 The existing content available from Legal Choices is produced by the seven approved regulators working together, with a remit to deliver information to

consumers that is independent, non-commercial, jargon-free, and above all factual. One of the most visited areas of the website is 'Types of lawyers' which currently contains facts about providers that are regulated through the Legal Services Act 2007. However, there are no dedicated areas providing information on unregulated and self-regulated providers. This is a gap that we agree needs to be filled, in order to support consumers to understand more about the different organisations, individuals and protections they may find in the legal services market. We do not find it surprising that your findings suggest that:

> …consumers do not necessarily understand the distinction between different types of regulated and unregulated legal service providers or how to identify and compare providers.

61 Other parts of Legal Choices look from the perspective of people experiencing particular legal problems, and the different types of help that they may want to consider. This has led to the website already starting to build up some information on unregulated providers - for example, the legal problem page 'I'm due in court' discusses the role played by McKenzie Friends. This indicates that Legal Choices is a good platform to expand that information, and help to inform consumers about the broader range of providers that populate the market. The editorial group is already considering options in this area.

62 It is also worth noting that our own regulatory reform approach is considering opportunities for solicitors to work more flexibly in the future, including delivering their services from organisations that are not firms regulated by an approved regulator. These potential changes will mean that clear information about regulated, self-regulated, and non-regulated providers, and the consumer protections that may or may not apply to those providers, becomes of even higher value. Legal Choices is well positioned to help deliver that information.

Q5. What materials should be developed to aid in comparing and selecting a provider?

63 Our work referred to above, to create an SRA-wide approach towards consumer information, has already started with a series of focus groups with consumers and organisations that represent them in locations including London, Cardiff, Birmingham and Derby.

64 As part of this we have asked consumers to tell us about the information they feel they would like, which has included calls for clearer factual information available about protections and rights when consumers use different providers for legal services. This would seem to be a sensible package of information that usefully can help a consumer to compare different providers, and make a choice.

65 We have also asked about the formats that make the most sense to consumers in terms of accessing information and putting it to good use when the occasion arises. One page checklists (online and hard copy) and video content have been strongly supported so far by the groups we have spoken to, and there has also been enthusiasm expressed for quality marks and other symbols that can help people quickly to differentiate between providers and the different protections and packages they have on offer.

66 We are continuing with this engagement work until autumn 2016 and will be happy to share our findings with you in due course.

1. Should materials be available through channels other than a central information hub?

67 As part of the work described above we have been hearing from organisations that represent consumers, both generally but also specific vulnerable or disadvantaged groups, about ways that information can be communicated and made available.

68 With some 10% of the UK's population never having used the internet (according to the Office for National Statistics) there is a real possibility that some consumers will not access information made available through a central online hub. Some of the groups we have been speaking to have asserted the need for hard copy materials to be made available through their own organisations, but also community locations. Our work continues in this area but again we will be happy to share the outcomes from this with you in autumn 2016.

69 If Legal Choices was to be further promoted as a central information hub we would be keen for the content to be reusable wherever possible. This would mean it would be available for use by organisations such as Citizens Advice, commercial sites such as Legal Voice and specific groups such as Shelter, Women's Aid, Relate, and MIND etc that work with specific client groups. Content could be reproduced digitally or in hard copy. The work by Linstock Communications referred to above, about the importance of 'just in time' information and tools, is also relevant here.

Questions on improving client care communication and increasing access to redress

Q1. 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?

70 The LSB's March 2016 report, Lowering Barriers to Accessing Services, found that inaccessible language and communication acts as a barrier to

consumers understanding and engaging with legal services. Client care letters are often lengthy, legal documents which are often inaccessible to many consumers.

71 As referred to earlier in this document the approved regulators have commissioned joint research into the effectiveness of client care letters. This is in response to concerns that client care letters, while meeting the technical requirements (confirming client instructions, names of those involved in the matter, costs and details of complaints procedures), may not necessarily deliver good outcomes for consumers.

72 We would be happy to provide more information or to discuss the outputs of this research as it progresses. It is anticipated that analysis and reporting will be completed by October 2016.

Q2. What would be the consumer protection benefits and impact on competition of restricting the use of the title 'lawyer'?

73 'Lawyer' is simply one of many names available for use in this sector. Others include legal adviser, legal specialist or [type of law eg conveyancing] specialist. We agree with your report and do not believe that any possible consumer protection benefits would outweigh the detriment to competition caused by restricting the use of the title 'lawyer'. We are not aware of any evidence of consumer detriment being caused by its use. Protecting 'lawyer' without evidence of harm would simply extend the reach of regulation and restrict competition. It would therefore also be contrary to the Government's current deregulatory direction of travel.

Q3. What are the barriers to using LeO and are there any benefits in amending its scope, jurisdiction or approach?

74 LeO currently uses different branding for its work on complaints about claims management companies compared to all of the other complaints it receives. This could be confusing for consumers.

75 There are many potential benefits in access to LeO being made more widely available across the unregulated sector.

Q4. Are the current arrangements for ADR in legal services clear and readily understandable to consumers and is there scope for greater use of ADR?

76 Where LeO applies we consider that there is a risk of over-regulation in requiring both LeO and other ADR arrangements to exist. We are not aware of any evidence that a different ADR scheme would be better than LeO and requiring both is potentially disproportionate. However, where services are outside the scope or jurisdiction of LeO we can see that ADR may be appropriate. This may not be the case in all circumstances, for example corporate clients are well placed to handle disputes themselves.

Q5. Should legal services providers be provided with additional guidance on communicating redress options?

77 The LSB has already issued guidance on First Tier Complaint handling as it is required by the Legal Services Act 2007 (which has recently been updated). As such our rules require firms to inform clients of their right to complain and the process for doing so. They are also required to inform clients of their right to complain to the Legal Ombudsman.

78 Should the landscape for redress become more complex, for example with an increase in ADR providers, it may be that further information is needed. But as has been noted by your work so far, we also need to consider the way that information is provided to consumers in order to achieve the best outcomes.

79 We are considering these issues further through the work on client care and the development of our consumer information strategy.

Q6. Do any additional redress mechanisms need to be introduced for unregulated providers?

80 We consider that as a minimum ADR should be available for all consumers, irrespective of the regulatory status of their service provider. However, the ADR options do not need to be specific to legal services.

Questions on the regulatory framework

Q1. Are the high level criteria for assessing the regulatory framework that we have identified appropriate?

81 We agree that the criteria you have identified are appropriate. However, the approved regulators are also bound to act in a way that is compatible with the

regulatory objectives (and better regulation principles), which extend beyond the areas covered in your criteria.

Q2. Does the current regulatory framework prevent, restrict or distort competition?

82 We agree with your analysis that the market for legal services is not functioning as well as it could be, and that transparency has a key role to play in enabling consumers to drive greater competition. We also agree that there is a need to ensure regulation is proportionate and risk based and that regulators should be independent from those they regulate. We would go further and argue that independence would be a key driver for proportionate and risk based regulation, as regulation would then be free from any protectionist influences.

83 If, hypothetically, there was the opportunity to design a regulatory framework from scratch a single regulator of legal services has many potential benefits. However, we do not consider the single regulator model to be desirable now due to the potential risks of planning blight, and a significant distraction away from implementing fundamental regulatory reforms. Further, the single regulator model is contrary to the approach taken in other sectors, such as OfCom and FCA, where certain functions have been split off. A single legal regulator would also not address the growing issue of cross professional services being provided by multi-disciplinary practices.

84 In our view, a single legal regulator is likely to be more expensive, and represents an unnecessary battle given the emerging market shape. Given independent regulation could be achieved through relatively simple legislative changes, we suggest that securing independence in the shortest period possible while maintaining the focus and pace of our regulatory reform programme is the most effective route to securing a more competitive market.

Q3. Would the potential changes to the regulatory framework we have identified promote competition?

85 We agree that both reducing the regulatory burden in areas where it is not justified by consumer protection risk, and focusing regulation on activities where consumer protection risk is highest, would promote competition. This is in line with our current direction of travel and regulatory reform programme. In addition, giving better information to consumers about what the differences in regulation across providers actually mean would empower them to make better choices and also enhance competition.

86 We are in favour of each of the three changes you suggest. However, we believe that the third change is most convincingly based on consumer protection grounds[5] rather than solely on the grounds of promoting competition.

Q4. Is a further review of the regulatory framework justified on the basis of competition concerns?

87 A review of the regulatory framework that covered the relationship between the regulatory and representative arms of the approved regulators would be justified on competition concerns. We agree with you that "...a key principle should be to ensure full independence of the regulator from the providers it regulates."

88 There is a fundamental and irreconcilable conflict in self-regulation. This market shows that those who represent a party cannot also regulate it. Measures that regulators could take to open up the market to competition are resisted by their representative arms, who naturally seek to protect the interests of their members. This situation leads to public confidence and trust in regulated providers being undermined. Separation would free up the professional bodies to become the voice of their members, without the restrictions of also acting as the regulator. It would also allow more flexibility for law firms and solicitors to decide how specific industry bodies (such as APIL or the City of London Law Society) can work alongside professional bodies to best meet their needs.

89 Public polling shows that independent regulation would boost trust in solicitors. In addition, an open and competitive market is in the long term interest of solicitors and firms - not least because it is good for UK plc and our future in the international legal market place. Independent regulation would reduce costs; and access to justice would improve as regulators could do much more, much faster to open up a competitive market so that people get better access to justice at affordable prices. A professional closed shop is outdated and serves the public and the economy poorly.

[5] And consumers who feel confident in the protections available to them may be more able to make better choices in the market, and drive competition themselves