

## **STEP response to Legal Services Market Study – interim report 8 July 2016 by Competition and Markets Authority**

### **About STEP**

STEP is the worldwide professional association for those advising families across generations. We help people understand the issues families face in this area and promote best practice, professional integrity and education to our members.

Today we have over 20,000 members across 95 countries, with over 7,000 members in the UK. Our membership is drawn from a range of professions, including lawyers, accountants and other specialists. Our members help families plan for their futures: from drafting a will or advising family businesses, to helping international families and protecting vulnerable family members.

We take a leading role in explaining our members' views and expertise to governments, tax authorities, regulators and the public. We work with governments and regulatory authorities to examine the likely impact of any proposed changes, providing technical advice and support and responding to consultations.

### **Introduction**

1.1 STEP welcomes the opportunity to respond to the interim report of the CMA into the Legal Services Market study. This response should be read in conjunction with our previous submissions dated 2 February and 4 April 2016 which can be found here, <http://www.step.org/sites/default/files/CMA-legal-services-STEP-comments-Feb%2Bfollow-up-Apr-2016.pdf>

1.2 We have restricted our response to the areas most directly relevant to the activities of our members and cross referenced the relevant sections in the Interim report.

#### **Improving price and service transparency** *(p92 of interim report)*

2.1 Consumers should have confidence in the service that will be provided to them and a clear understanding of the associated costs from the outset.

2.2 The STEP Code for Will Preparation in England & Wales sets out our expectations that members are open and transparent in their dealings with the client. Charges must be explained in a way that the client understands, outlining the hourly rate and how the fees will be calculated to provide an overall estimated cost of the service to be provided. Further cost information such as VAT or out of pocket expenses or disbursements should also be clearly identified.

2.3 Due to the complexities involved in will drafting, costs can change as the work progresses. The STEP Code for Will Preparation in England & Wales makes it very clear that any such changes must be made clear to the client at the earliest opportunity.

2.4 Costs will vary depending on the complexity, time and risk involved in drafting a will and fees will often take into account the seniority, qualifications and experience of the will drafter themselves. A fee scale would be advisable in such circumstances.

2.5 The STEP Code for Will Preparation in England & Wales illustrates our commitment to openness and transparency and we would therefore agree with your recommendation that consumers need to understand the nature of the service provided and the fees to be levied. A provisional quote should be provided at the earliest opportunity unless a fixed fee has been offered which can be provided at the outset. The provision of such basic information to the consumer should become a general requirement across the legal services sector.

2.6 Quality of legal service is difficult to determine. Deficient will drafting, for example, will often not become apparent until many years after the will has been drafted. Moreover, the problems created by deficient wills are often resolved via a deed of variation rather than recourse to the courts.

### Improving consumer information (p96)

3.1 The law is of course highly complex and any tools that could improve consumer understanding and enable them to make informed choices would be welcomed.

3.2 We agree that with sufficient marketing and promotion, an independent central hub could prove a useful resource for consumers, helping them to make a relatively well informed choice when making a decision to engage a service provider. It should complement the public facing areas of websites of professional bodies. Any independent website should provide clarity over its funding and governance structure, providing a comprehensive reflection of the entire legal services market, both the regulated and unregulated sectors. It should include a clear guide as to both practitioners' qualifications and the extent to which their activities are covered by statutory regulation or oversight by a professional body.

3.3 We consider a greater understanding of the professional titles used within the legal services sector could assist with raising levels of consumer awareness. The development of an independent competency matrix clearly articulating the professions, titles associated with those professions, tasks performed and the qualifications required could provide greater clarity for the public. Such a matrix could provide information regarding whether the professional is subject to statutory or voluntary regulation or if there is a reputable recognised professional body.

3.4 Knowing a legal services provider has met strict entry requirements and agreed to abide by an ethical code which is underpinned by a complaints process can provide a level of assurance to the public as to whether they are engaging a trustworthy individual. All reputable professional bodies which claim to have the public interest in mind should in our opinion be willing to include a link to websites such as Legal Choices and/or Citizens Advice Bureau on their website.

3.5 Redress mechanisms are a challenging issue for those market sectors not subject to regulation or reserved status, particularly if legitimate practitioners become liable for meeting the redress obligations of failed market participants. The danger is that this could have a significant impact on costs and business risks. The issue of weighing the potential benefits

of such schemes against their potential impact on costs and possible market entrants thus needs careful consideration.

#### **Client care communication and increasing access to redress (p99)**

4.1 Emphasis should be placed on the robust entry requirements of some professional bodies, where there is a focus on approved qualifications and verifiable practical application of that knowledge and understanding gained via studies. Service providers who engage in CPD also provide an extra 'quality mark'.

4.2 We have anecdotal evidence from queries to our organisation, that the term 'lawyer' is frequently misunderstood and misused, giving the impression that the individual or the service provider is guaranteed to be legally qualified. We suspect that many assume the term is interchangeable with 'solicitor'. Therefore, we would support efforts to raise awareness over the meaning of the term 'lawyer' and other similar widely used terms. We see little benefit, however, to restricting the use of any particular term. Reserving 'lawyer' to any particular group will simply see others moving to the term 'legal adviser' etc. Clearer, easily accessible information on what the public might look for seems likely to be more effective in tackling abuse.

4.3 We noted earlier the difficulties created by any attempt to extend redress mechanisms to the unregulated sector. In addition, given the rapid expansion of ABS's and others offering a range of professional services across a range of sectors, both regulated and unregulated, and often selling a bundle of such services to a client (e.g. will writing, IHT advice and investment advice) it is often far from clear who the lead ombudsman should be in such circumstances and on which sector the liability for any unpaid compensation claims should fall.

4.4 The potential for greater use of ADR schemes in line with the EU Directive is no doubt complicated by the UK's decision to leave the EU. Any such ADR scheme needs to be able to command the confidence of both consumers and the industry and operate in a way that avoids jeopardising public access to legal services by driving up costs.

4.5 A key assumption for consumers is that if things go wrong, they will be put right. If a service provider is unable or unwilling to remedy an error, the consumer needs to know what their legal recourse is.

#### **Regulatory framework (p103)**

5.1 We agree with the CMA's proposal to move regulation in the direction of focussing on outcomes rather than prescriptive rules. Whilst some rules will be necessary, it is sensible to allow practitioners to have an element of freedom and encourage sensible decision making by enabling practice which operates within the spirit of the prescriptive rules to achieve the best outcome for the individual client. With regards to the high level criteria identified by the CMA we consider the criteria for Consumer Protection should also include outcomes which are fair and reasonable.

5.2 We have reviewed the Wills and Probate case study and noted your findings at paragraph 22. Within the unregulated sector there is wide variation in the quality of service

provided and STEP has been made aware of cases where entirely unqualified salespeople are carrying out home visits.

**Response submitted by STEP Policy Team, 19 August 2016**

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