

Review of the legal services market study in England and Wales

An assessment of the implementation and
impact of the CMA's market study
recommendations

Calls for inputs document

9 September 2020

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Introduction

1. The Competition and Markets Authority (the CMA) published its final report in its market study into the supply of legal services in England and Wales in December 2016.¹ The market study was prompted by concerns that consumers were not getting a good deal from legal services providers and that there was evidence that a high proportion of consumers were not seeking to purchase legal services when they had legal needs ('unmet demand'), driven in part by the high cost of legal services; and the possibility that regulation might be dampening competition.
2. The market study found that there was not enough information available on price, quality and service to help those in need of legal support choose the best option. The CMA made recommendations to legal services regulators to improve transparency from legal firms on price, service, redress and regulatory status; to promote the use of quality signals by providers and issue guidance for providers on engaging with online reviews; and to enable customers to navigate the sector more easily and get value for money. The CMA also made recommendations as regards regulatory reform, including recommendations to the Ministry of Justice (the MoJ) to review the regulatory framework for the longer term.
3. We are now undertaking a short, focused assessment of the extent to which our market study recommendations have been taken forward and the impact that these changes have had on competition (the Review).
4. This follows our commitment in the final report of the market study (the CMA Report) to carry out such an assessment. In the CMA Report, we stated that if we were not satisfied with the progress that had been made, we would consider whether there is a need for further action by us, or further action by others.
5. Our plan is to conduct a three month Review. We intend to focus largely on reviewing existing evidence, including recent research and ongoing monitoring by the Legal Services Board (LSB),² the Legal Services Consumer Panel (LSCP)³ and other regulators.⁴ We will draw on the work done by the

¹ See the [CMA Legal Services Market Study case page](#).

² The LSB is the oversight regulator for all legal services regulators in England and Wales. These other regulators are referred to as the 'frontline' regulators (see footnote 4).

³ The LSCP is an independent arm of the LSB, established to provide independent advice to the LSB about the interests of legal services consumers.

⁴ The current frontline legal services regulators in England and Wales are:

- a. Association of Chartered Certified Accountants (ACCA) – Chartered Accountants; in process of de-registering as an approved legal services regulator
- b. Bar Standards Board (BSB) – Barristers

Remedies Programme Implementation Group (RPIG) set up to oversee the implementation of the CMA's market study recommendations to regulators.

6. We also wish to gather views from stakeholders on how the sector has evolved since we carried out our market study and whether further intervention is needed. This document represents a call for inputs (CFI) to gather such views from all interested stakeholders. We have included specific questions in the document where we would particularly welcome views (see Appendix A for a summary of questions). **We would welcome submissions and responses by email to LegalServicesReview@cma.gov.uk by 30 September 2020.**
7. Our Review will focus on developments since our market study related to the three themes we explored in it,⁵ with a primary focus on the first theme on competition in legal services.⁶ Our aim will be to assess the extent to which competition has developed in the legal services sector since the publication of the CMA Report. For this purpose we will be assessing both the progress made in implementing transparency measures and other remedies proposed by the CMA to promote competition, and their effectiveness to date. We recognise that it is likely to be too early to carry out a full assessment of the impact that the remedies have had, but we will look at initial indicators to this effect.
8. As regards the second and third themes in the market study (consumer protection⁷ and the regulatory framework⁸ respectively), the Review will focus on the case for consumer redress to be extended to users of unauthorised providers and the case for regulatory reform to the regime more broadly. This will draw upon the findings of the final report by Professor Stephen Mayson in the UCL Independent Review of Legal Services Regulation published in June 2020 (the IRLSR).⁹ Professor Mayson has made a number of short and long-

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- c. CILEx Regulation – Chartered Legal Executives and Legal Executives
 - d. Council for Licensed Conveyancers (CLC) – Licensed Conveyancers
 - e. Costs Lawyer Standards Board (CLSB) – Costs Lawyers
 - f. Intellectual Property Regulation Board (IPReg) – Trademark and Patent Attorneys
 - g. Institute of Chartered Accountants in England and Wales (ICAEW) – Chartered Accountants conducting probate
 - h. Master of the Faculties – Notaries
 - i. Solicitors Regulation Authority (SRA) – Solicitors.

⁵ See Figure 1 for a summary of these themes.

⁶ The first theme considered whether consumers can access, assess and act on information about legal services so that they can make informed purchasing decisions and thereby drive competition for the supply of legal services.

⁷ The second theme considered whether information failures result in consumer protection issues that are not being adequately addressed through existing regulations and/or redress mechanisms.

⁸ The third theme considered whether regulations and the regulatory framework go beyond what is necessary to protect consumers and weaken or distort competition for the supply of legal services.

⁹ See Mayson, S (2020), *Final Report of the Independent Review of Legal Services Regulation: Reforming legal services: regulation beyond the echo chambers*.

term recommendations aimed at creating a level playing field for legal services and enhancing consumer protection through targeted and proportionate regulation which build on the findings of our market study.

9. While our findings in the market study and those in the IRLSR make the case for a review of the Legal Services Act 2007 (the Act), consideration has also been given to the scope for potential reform within the framework of the Act. Our Review will therefore assess the extent to which a regulatory framework that addresses the concerns we identified in the market study could be developed within the current regime under the Act or whether we remain of the view that only a wholesale review of the regulatory framework will achieve effective change.
10. The CMA has engaged closely with the LSB in the lead up to this Review. This is in part because the LSB has performed a monitoring role, reviewing the progress made by the regulators in implementing our recommendations, as well as the impact that our recommendations are having on the legal services sector. It is also because the LSB is planning a programme of reform that could provide an effective vehicle for delivering any recommendations (including in relation to increasing competition) that we may make following the Review. We will therefore continue to work closely with the LSB in the development of any recommendations that result from this Review.
11. The rest of this document sets out in more detail the background and scope of this Review, including the key themes we will consider, and invites submissions from interested stakeholders in response to the key questions we will consider as part of our Review.

Background

12. The legal services sector is of fundamental importance in underpinning both a well-functioning society and economy. Individual consumers and small businesses often use legal services providers at critical points in their lives. The advice they receive in these situations can have major personal and financial consequences. Alongside this, the rule of law allows for an orderly society and the legal services sector contributes an estimated £24 billion to the UK economy every year.¹⁰
13. Given the importance of a well-functioning and competitive legal services sector, the CMA carried out a market study into legal services in England and Wales in 2016.¹¹ The market study was prompted by concerns that

¹⁰ See [Legal Services are GREAT: join us](#), News story, Gov.UK, June 2018.

¹¹ See the [CMA Legal Services Market Study case page](#).

consumers were not getting a good deal from legal services providers and that there was evidence of substantial unmet demand for legal advice, driven in part by the high cost of legal services. Figure 1 summarises the themes explored in the market study, and its key findings.¹²

Figure 1: CMA market study themes and key findings

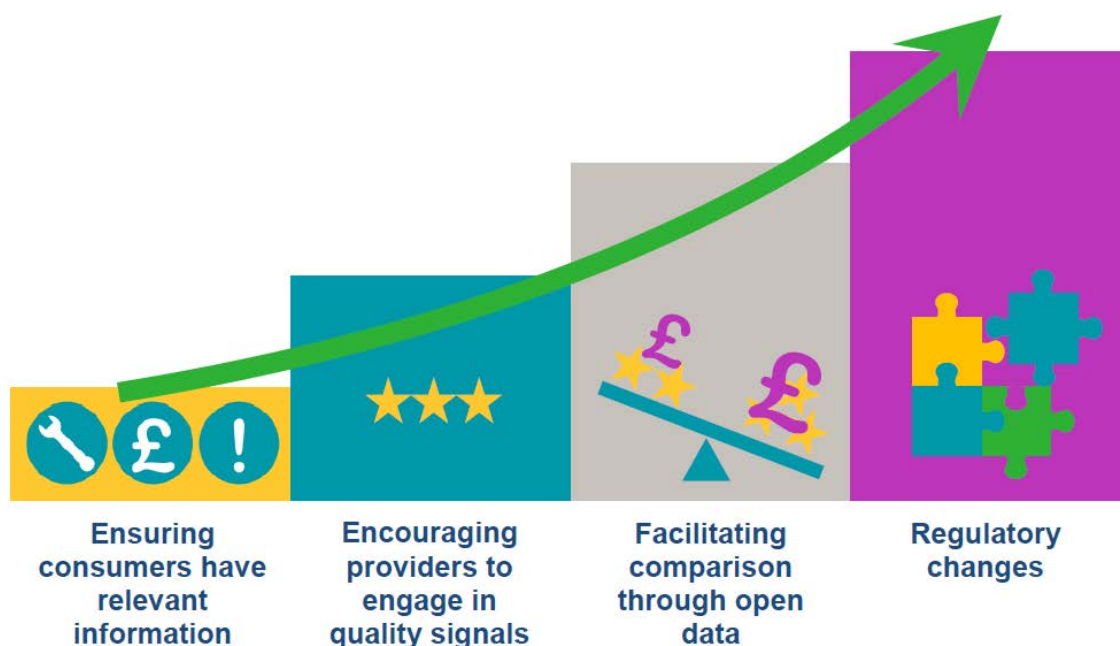
Themes	Key findings
<p>Theme 1:</p> <p>Whether consumers can access, assess and act on information about legal services so that they can make informed purchasing decisions and thereby drive competition for the supply of legal services.</p>	<ul style="list-style-type: none"> - Competition in legal services for individual consumers and small businesses (collectively, consumers) not working well, primarily from lack of transparency over price and quality, making it difficult to compare providers. - The lack of comparison softens competition, both within and between types of providers. It may also explain why there are large differences in the prices charged by providers for the same services. As a result some consumers are likely to be paying more than they need to.
<p>Theme 2:</p> <p>Whether information failures result in consumer protection issues that are not being adequately addressed through existing regulations and/or redress mechanisms</p>	<ul style="list-style-type: none"> - Consumers unaware of the regulatory status of their legal services provider, but we did not find evidence that consumers' lack of awareness was causing them significant harm in practice. - Lack of evidence on potential consumer protection issues caused by the unauthorised part of the sector. Limited evidence available suggested that issues identified with authorised providers apply to unauthorised providers to a similar extent. - However, customers of unauthorised providers do not benefit from the redress mechanisms enjoyed by customers of authorised providers.
<p>Theme 3:</p> <p>Whether regulations and the regulatory framework go beyond what is necessary to protect consumers and weaken or distort competition for the supply of legal services</p>	<ul style="list-style-type: none"> - While the current regulatory framework may, in principle, be well suited to title-based regulation, it also appears to be insufficiently flexible to apply targeted, proportionate, risk-based and consistent regulation to reflect differences across legal services areas and across time. - Issues identified may indicate current framework is not sustainable in the long run. This may adversely affect outcomes in the future given potential changes as a result of improved competition.

Source: CMA

14. The CMA proposed a package of measures, as shown in Figure 2, that we considered would, taken together, progressively deliver a necessary step change in transparency, competition and consumer engagement and regulatory changes in the legal services sector. Further details of the CMA's market study recommendations are provided in Appendix B.

¹² For more information on the market study, refer to the [CMA Report](#).

Figure 2: CMA market study recommendations – Making competition work through progressive improvements



The CMA market study recommended			
<p>That regulators:</p> <ul style="list-style-type: none"> • revise their regulatory requirements to ensure greater transparency of price, service, redress and regulatory status by legal services providers; • improve and promote the existing Legal Choices website to help customers to navigate their options. <p>That Government:</p> <ul style="list-style-type: none"> • coordinates changes to the content available on GOV.UK for consumers. 	<p>That regulators:</p> <ul style="list-style-type: none"> • promote the use of independent feedback platforms by providers to help consumers choose a provider. 	<p>That regulators:</p> <ul style="list-style-type: none"> • make more regulatory data available to facilitate the development of reliable comparison tools. 	<p>That Government reviews:</p> <ul style="list-style-type: none"> • whether and how to extend redress to customers of unauthorised providers; • ways of gathering more data on unauthorised provision; • the independence of regulators, both from the profession and from government; • the wider regulatory framework, to ensure it fosters competition and innovation in the longer term. <p>That regulators:</p> <ul style="list-style-type: none"> • continue existing work to reduce regulatory costs; • remove regulatory restrictions to allow solicitors to practise in unauthorised firms to increase the availability of lower cost options.

Source: CMA

- The market study also committed the CMA to undertake a subsequent assessment of the extent to which our market study recommendations had been taken forward and the impact of these on competition. This Review follows on from that commitment.

16. It was originally envisaged that the Review would be undertaken within three years of completion of the market study. However, we have delayed the Review by a year given that new regulatory requirements on price transparency for certain legal services only came into force from December 2018. As price transparency formed an important part of the remedies recommended by our market study, we felt that a short delay to the Review would be advisable to allow more time for these regulatory changes to take effect.

Scope of the Review and themes we propose to consider

17. The market study focused on competition in legal services¹³ in England and Wales¹⁴ for individual consumers and for small businesses.¹⁵ It found that similar competition issues arose for both these groups, with evidence that small businesses tend to act in a similar way to individual consumers when purchasing legal services and hence experience similar problems in engaging with the legal services sector.
18. The Review will likewise consider developments in regard to the provision of legal services for both individual consumers and small businesses. However, while we welcome and will seek to gather evidence in relation to small businesses, we expect much of the existing evidence available will relate to individual consumers and so this will be the focus of our analysis. Nevertheless, given the similar issues faced by small businesses, we will consider how any findings from the Review in respect of competition for individual consumers may also apply to small businesses. Throughout this document, we refer both to individual consumers and small businesses as 'consumers'.
19. The Review will draw together available research and assessment, supplemented by stakeholder views primarily via this CFI, rather than commissioning new evidence.
20. In particular, the CMA is aware of, and expects to be able to draw extensively on, research and assessment already conducted by the regulatory community. Following the market study, the RPIG was put together to oversee

¹³ The scope encompassed 'legal services' in a broad sense, including services that are subject to sector-specific regulation and those that are not and services across a range of different legal areas such as conveyancing, wills and probate, immigration, family and employment law. We excluded criminal legal services from the market study because the issues that we considered were less relevant to them.

¹⁴ We limited the market study to the supply of legal services in England and Wales in the light of both the differences in the regulatory frameworks in England and Wales, Scotland and Northern Ireland and the timings of regulatory reform in Scotland and Northern Ireland. Separately, the CMA has since published research into legal services in Scotland in March 2020. See CMA (2020), [Legal Services in Scotland Research](#).

¹⁵ In particular, small businesses with up to ten employees.

the implementation of the recommendations made by the CMA to the regulators in the final report. The CMA has since worked with and continued to liaise regularly with the RPIG. For this Review, the CMA will be closely reviewing the information that is available via the RPIG and its members on the implementation of the recommendations to date – for example analysing existing data sets, research and regulatory returns produced by frontline regulators.

21. This analysis will be supplemented by CMA desk research, (virtual) meetings with stakeholders including frontline regulators, representative bodies and government departments, and responses to this CFI.
22. Our analysis will consider particular aspects of the themes examined in the market study as outlined in the following paragraphs, with two main areas of focus:
 - (a) The ability of consumers to drive effective competition through making informed purchasing decisions (relating to theme 1 of the market study); and
 - (b) The impact of existing redress mechanisms and regulation, and of the regulatory framework, on consumer protection and competition (relating to themes 2 and 3).

The ability of consumers to drive effective competition through making informed purchasing decisions

23. Within the first focus area, we intend to assess the impact of the transparency remedies on sector outcomes and competition so far. We will look at:
 - (a) what transparency remedies have been implemented and the extent of compliance by legal service providers; and
 - (b) what impact this has had on consumer behaviour and competition.
24. We will also focus on identifying what further measures are needed (if any) to increase consumer engagement and help drive increased competition.

Implementation of transparency remedies

25. Following the market study, the frontline regulators developed action plans designed to help consumers by increasing transparency in the market. The LSB has since assessed the sufficiency of these action plans and continued

to monitor their progress, publishing a progress update in October 2018¹⁶ and updating its Board in January 2020.¹⁷ Based on this work, we will map out what has been implemented so far by regulators, accounting for the timeline, scope and nature of transparency measures that have been implemented, as well as future plans.

26. We will consider both the extent to which legal service providers have complied with the measures implemented, and also how legal service providers have complied. For example, this may include how legal service providers have chosen to present information on their websites and whether any have chosen to change their pricing structures as a result of the transparency measures. We will also consider the challenges that legal service providers have faced in complying.
27. Finally, we will consider the progress made since our market study with other recommendations such as the development of the Legal Choices website as a consumer education hub and our recommendations to facilitate comparison by making available relevant sectoral information, including by way of a single digital register that collates such information.

Impact on market outcomes and competition

28. The Review will assess the extent to which transparency measures have enabled consumers of legal services to make more informed purchasing decisions. We are interested in both how consumers perceive the information available to them and whether this has led to any changes in consumer behaviour, such as increased propensity for consumers to shop around. We intend to rely on various consumer research carried out by the LSCP, LSB, frontline regulators and representative bodies in our assessment.
29. We will then look at the extent to which the transparency remedies have affected competition between providers, taking account of the views of providers and other interested stakeholders as well as evidence on the pricing behaviour of providers. The LSB, CMA and MoJ have, as a joint project managed by the LSB, recently carried out a third wave of research on the prices of legal services commonly purchased by individual consumers, that provides the first indications of how prices may have changed following new requirements on price transparency for some legal businesses that came into

¹⁶ See LSB (2018), *Increasing Market Transparency: LSB's progress update on commitments in action plans published by frontline regulators*.

¹⁷ See LSB (2020), *CMA recommendations - progress*, paper 20 (06) submitted to the LSB Board of January 2020.

effect in December 2018. As set out in the research report, the data suggest that there has been a clear increase in the publication of prices following these measures.¹⁸ However, the reforms remain relatively recent and it may be too early for them to have influenced consumer behaviour.¹⁹

30. As part of this assessment we are also interested in the impact of any other developments since our market study on competition between legal service providers, including the adoption of Alternative Business Structures (ABSs), adoption of new technology and innovation, and the development and use of Digital Comparison Tools (DCTs).

What further measures are needed to drive competition

31. In our market study, we noted that, while access to better information on price and service was a necessary first step, it may not be sufficient to drive customer engagement up to the levels needed for a fully competitive market. We will consider what further intervention may be needed to build on our previous recommendations, and would particularly welcome stakeholders' views on this issue.
32. We currently have three main areas of focus in mind: improving our understanding of consumer behaviour in response to transparency remedies to facilitate better remedy design; the development of quality indicators; and exploring any barriers to the further development of DCTs.
33. We know from our experience in other markets that the way the information is presented and the wider context can affect how consumers behave in response and consequently the effectiveness of remedies to introduce transparency. This is particularly relevant to legal services, where our market study and other research have found that consumers face various barriers to engagement, including that legal services are infrequently used and often in high pressure situations, and that consumer knowledge and awareness of the legal services sector is low.
34. Another likely area of focus for our Review is to understand whether there are barriers to DCTs operating in the legal services sector, for example due to the

¹⁸ See LSB (2020), [Prices of Individual Consumer Legal Services in England and Wales 2020: Wave 3 of a survey of prices for commonly used legal services](#).

¹⁹ For example, data from the [LSCP tracker surveys](#) published in 2020 and 2019, which monitor how consumers are choosing legal services, shows that the percentage of consumers who shop around before choosing a legal service provider remains similar (30% and 28% respectively). The [LSCP Tracker Survey 2020](#) also found that levels of ease and difficulty in comparing prices across providers are unchanged since 2018.

sector not being seen as a priority growth area for DCTs²⁰ or challenges in engaging with the sector to obtain the necessary comparable information. In particular, we will aim to understand the inputs DCTs require to operate viably across the different areas of law. For example, the market study proposed the development of a single digital register for consumer information on regulated entities and individual professionals, including third party information. It was felt that this could have potentially significant benefits by reducing the cost to intermediaries and firms of collecting and providing information that is already captured by regulators.²¹ As part of assessing the development of DCTs, the Review will consider the impact of measures taken to date to make relevant sectoral information available to facilitate comparison. We will also consider whether other measures could be taken to overcome any barriers faced by DCTs in this sector.

35. Finally, we intend to look at the use of quality indicators. While our initial recommendations focused primarily on information on price and service as a necessary first step, we recognised that information on quality is also important for consumers to make informed decisions and recommended that the regulators promote the use of independent feedback platforms to help consumers to understand the quality of service offered by competing providers. Our Review will consider what more needs to be done in this area to drive consumer engagement and competition.
36. There has already been some consideration of this issue by various stakeholders. For example, in July the LSCP published its report on legal services consumers' understanding and use of quality indicators.²² The LSCP found that consumers are struggling to make informed decisions about their choice of legal services providers, because there are few or no quality indicators available. This report also found that consumers use unreliable proxies such as longevity of service, customer service, and website design prior to deciding which provider to use. In addition, consumers would find it useful to access independent customer reviews or testimonials with caveats. On this basis the LSCP urges legal services regulators to begin to build a common quality indicator framework to ensure that it is used across the sector. This is in order to improve transparency and shopping around, and ultimately to enhance competition for the benefit of providers and consumers. We also note the work currently being undertaken by the LSB on quality indicators,²³ working with the sector, including the frontline regulators, to

²⁰ For example, due to growth prospects being limited by the infrequency of legal service purchases and the presence of offline intermediaries in the high volume legal services areas (such as estate agents in conveyancing). See paragraphs 3.153 to 3.162 of the [CMA Report](#).

²¹ See, for example, paragraph 7.196 of the [CMA Report](#).

²² LSCP (2020), [Consumers Feedback on quality indicators in legal services](#).

²³ See the LSB [Business plan 2020/21](#).

develop proposals to help consumers select providers based on signals of the quality of service.

Questions regarding information remedies and supply-side developments

We invite responses, accompanied by relevant evidence, to the following questions about the development of the sector since the CMA's 2016 market study:

- Q1. What challenges have legal service providers faced in complying with transparency measures, and how could these be addressed?
- Q2. Are consumers engaging with the new transparency measures including the availability of price information, eg by accessing the pricing information on the provider websites and/or using this information in their interactions with providers? Does this differ between different areas of law?
- Q3. How effective have transparency measures been in driving competition? Does this differ across areas of law?
- Q4. To what extent has the Legal Choices website helped consumers to navigate the legal services sector? To what extent has improved content been actively promoted by regulators, consumer/industry bodies and service providers?
- Q5. To what extent are quality indicators needed to drive consumer engagement and competition? Which further indicators are needed and what are the barriers to these indicators being developed?
- Q6. To what extent are DCTs currently operating in the legal services market? What are the main barriers to greater use of DCTs in legal services and how can they be overcome?
- Q7. What impact have ABSs and lawtech²⁴ had on driving innovation in the legal services sector? Are there any barriers deterring further innovation?

²⁴ For the purposes of this question, we are primarily interested in lawtech that changes the consumer experience and extends the choice available to consumers, ie customer-facing lawtech that, adopting the definition used by the IRLSR, is 'technology that provides self-service direct access to legal services for consumers. As such, it substitutes for a lawyer's input, and can be experienced by the consumer without the need for any human interaction in the delivery of the service.' However, we are also interested in the extent of development and impact of 'back-office' lawtech offering efficiencies in providers' ways of working that could ultimately drive price competition and result in the passing on of cost savings to consumers.

- Q8. Are there other developments which have had or will have a significant impact on competition in the sector?
- Q9. Are further measures needed to drive consumer engagement and competition in legal services in addition to the areas we have identified above?
- Q10. Are there any issues specific to the provision of legal services for small businesses that should be considered in order to improve competition for such customers?

The impact of redress, regulations and the regulatory framework on consumer protection and competition

37. While our Review will focus primarily on assessing the developments relating to the CMA's recommendations to drive competition above, we will also consider the progress made on the issues identified by our market study in relation to redress, regulations and the regulatory framework.
38. Our market study made recommendations to the MoJ to consider the case for extending redress mechanisms for customers of unauthorised providers, including by working with the sector to build evidence on unauthorised provision, and to review the independence of regulators as well as wider regulatory reform. We were concerned that those using unauthorised providers may not have adequate redress when issues arise. We were also concerned that the current regulatory framework may be insufficiently flexible to apply targeted, proportionate, risk-based and consistent regulation to reflect differences across legal services areas and across time, and therefore may not be sustainable in the long run. We considered the independence of a regulator from the providers that it regulates, and from government, a key principle that should be taken into account in any review of the regulatory framework.
39. Our findings in the market study make the case for a review of the Act. Furthermore, since the publication of our final report, an independent review has taken place through the IRLSR. While the IRLSR argues for extensive reforms, it also gives consideration to the scope for reform that may be delivered within the framework of the existing Act.
40. However, we note the Government's response to our market study explaining why it did not consider it appropriate to review the regulatory framework at that time in favour of allowing further progress under the existing framework, as well as recent indications in response to a written parliamentary answer

indicate that the Government has ‘no plans’ to review the Legal Services Act 2007.²⁵

41. Taking the above context into account, the Review will focus primarily on the extent to which a regulatory framework that addresses the concerns we identified in the market study could be developed within the current regime under the Act. This analysis will enable us to assess whether we remain of the view that only a wholesale review of the regulatory framework by the MoJ will achieve effective change that can promote competition and optimise consumer outcomes (including the provision of appropriate protections) in the longer term. The Review will consider the findings of the IRLSR, alongside other regulatory developments and wider stakeholder views, for this purpose.
42. Our market study also made recommendations to regulators to continue to reduce regulatory costs where there is no evidence that they are necessary,²⁶ and to remove regulatory restrictions to allow solicitors to practise in unauthorised firms to increase the availability of lower cost options in the sector, which has since occurred.²⁷ The Review will consider the outcomes of this work.
43. Below we set out some of the key developments since our consumer protection and regulatory framework recommendations, and explain in more detail how these will shape our Review. For example, we outline how the Government has responded to our recommendations, the proposals and research subsequently undertaken in the IRLSR and by the LSB to mitigate some of the issues we identified in our market study, and other relevant changes that have taken place to the regulatory framework following our market study.

Consumer protection: addressing the redress gap

44. As outlined in our market study, legal services providers are subject to varying degrees of regulation. Providers who undertake a narrow set of six ‘reserved’ legal activities must be authorised under the Act to do so and for this purpose are subject to sector-specific regulations. These ‘authorised’ providers are currently regulated in respect of all of the legal activities they provide, not just those involving the provision of reserved legal activities. Other ‘unauthorised’

²⁵ See [House of Commons Written Answers and Statements – 18 May 2020](#), question 45128.

²⁶ This included, for example, work undertaken by regulators to rationalise handbooks and codes of conduct, replace prescriptive rules with Outcome Focused Regulation (OFR), reduce the costs relating to PII, and simplify training requirements.

²⁷ As of 2019 the SRA Standards and Regulations permit solicitors employed by unregulated entities to provide legal services to the public. See [SRA Guidance on unregulated organisations for employers of SRA regulated lawyers](#), SRA, July 2019 (updated November 2019).

providers that carry out only unreserved activities are not subject to the same regulations.

45. In our market study, we were concerned that consumers who use unauthorised providers face a 'redress gap' as they do not benefit from the same extent of protections as authorised, regulated providers. In particular, they do not have access to the Legal Ombudsman (LeO) and must therefore rely on public consumer law enforcement bodies or take private action themselves through the courts (which is a more costly, difficult and time-consuming means of obtaining redress for consumers).
46. The Government agreed that it would review whether there is a case for extending redress to consumers using unauthorised providers, and if so, how best to achieve this (for instance, by extending access to the LeO or through alternative arrangements such as the use of alternative dispute resolution (ADR) or self-regulation). At the same time, the Government noted that under the EU Alternative Dispute Resolution Directive, all providers of services must signpost available ADR schemes recognised under the Directive, indicate to consumers whether or not they are a member of a particular scheme, and if they are, whether the scheme they are a member of is one that is recognised. The Government outlined that it would work with the Department for Business, Energy and Industrial Strategy (BEIS), to review existing provisions and consider whether further steps are necessary and proportionate.²⁸
47. Furthermore, the Government agreed that it would work with the LeO, self-regulatory bodies, Citizens Advice, HM Courts and Tribunals Service and the Probate Service in order to consider whether there is scope to adapt existing data sources to collect additional information relating to the unauthorised part of the sector. This was to address the gap in evidence that we had identified in relation to the unauthorised part of the sector.
48. More recently, the IRLSR has noted that while unregulated providers currently represent only a small proportion of the overall sector, they are nevertheless increasing, potentially increasing the vulnerability of consumers.²⁹ One of the reasons cited for this increase is growing evidence of the legal needs of citizens going unmet or under-served, giving rise to no action at all, more 'self lawyering' or the use of unregulated providers, online services and lawtech. The IRLSR therefore recommends that all legal services that are offered to the public commercially or for reward should be brought within the regulatory framework and thereby the LeO's remit, irrespective of who provides them.

²⁸ See [CMA's Legal Services Market Study - Government Response, December 2017](#).

²⁹ See, for example, paragraph 4.3.5 of the [IRLSR](#), p89-91.

Different legal services would be treated proportionately under a reformed framework based on their relative risk.

49. In the short term, and in advance of the longer term reform that it recommends, the IRLSR indicates that the issues and risks consumers face as a result of the regulatory gap are increasing, for example as a consequence of the coronavirus pandemic. As a result, the IRLSR recommends that currently unregulated providers of non-reserved legal activities should be brought within the scope of existing regulation. This would be achieved through empowering the LSB to create a public register of providers³⁰ of a non-reserved legal activity to consumers whether for reward or as part of a commercial activity. Furthermore the IRLSR recommends extending the LeO's jurisdiction to include the wider group of regulated providers who would fall within the scope of legal services regulation as a consequence of the registration process.
50. During the course of the Review, we will assess whether, in principle, the IRLSR recommendations would remedy the redress gap we identified in our market study.³¹ We will also continue to engage with the Government, regulators and other stakeholders on the evidence available regarding the unauthorised segment of the sector, as well as examining any developments that might make the alternative proposals for addressing the redress gap that we identified (ie the use of ADR or self-regulatory schemes) viable options.

The wider regulatory framework

51. In its response to the CMA's market study recommendations for:
 - (a) A review of regulatory independence – The Government considered that the sector itself could do more within the existing framework, that there was scope for the LSB to progress its work on Internal Governance Rules (IGRs)³² and that it would closely monitor developments in this area and keep the case for further action under review.
 - (b) A long term review of the regulatory framework for legal services – The Government agreed with the view that significant improvements to the current regulatory framework could be achieved through incremental change and noted the concern that this framework may not be sustainable in the longer term. While the Government did not commit to a formal

³⁰ Who are not otherwise authorised persons under the Legal Services Act 2007.

³¹ We will also take into account (as outlined earlier in this document) the progress made with recommendations in our market study to increase transparency of the availability of redress and the effect to date.

³² The IGRs, set by the LSB, outline the requirements for separation between regulatory and representative bodies.

review of the regulatory framework at the time, it said that it would continue to reflect on the potential need for such a review, particularly as the sector develops following the steps taken by regulators to address the transparency and consumer knowledge issues our report identified.

52. Since then:

- (a) in July 2019,³³ the LSB published its revised IGRs and new accompanying statutory guidance, setting out the requirements for the approved regulators of legal services to ensure the separation of regulatory and representative functions. The LSB amended the IGRs to enhance regulatory independence within the framework provided by the Act. The intention of the new IGRs is to provide more clarity, which the LSB considers should lead to fewer independence-related disputes and speedier resolution of issues.³⁴
- (b) In June of this year, the IRLSR proposed – consistent with our market study³⁵ – that legal services regulation should be targeted and distributed more appropriately to the risks of the activities actually undertaken by providers. It also recommended that regulation should be undertaken by a single, independent, new body (the Legal Services Regulation Authority), irrespective of the provider of the service, with the requirements for title remaining in the hands of representative bodies.

53. Alongside the above, the LSB is considering a review of the reserved activities beginning in 2021-22.³⁶ As outlined in a paper submitted to the LSB Board, these proposals are set in the context of the Government’s limited plans for major legislative reform to the legal services regulatory framework. However, it was noted that any future review of the reserved activities should be approached as part of a broader vision of change that can be achieved within the parameters of the Act. Options on how the LSB might approach a possible review are being developed.

³³ See [LSB updates rules to enhance regulatory independence](#), LSB, July 2019.

³⁴ The LSB began to monitor compliance through its regulatory performance framework from July 2020. See the LSB [Business plan 2020/21](#). Certifications of compliance with the IGR 2019 were required by the end of the transition period on 24 July 2020 by approved regulators and regulatory bodies and all such certificates were received by this deadline.

³⁵ In our market study we considered that an optimal regulatory framework should not try to regulate all legal activities uniformly, but should have a targeted approach, where different activities are regulated differently according to the risk(s) they pose.

³⁶ See initial proposals put to the LSB Board for consideration, set out at LSB (2020), [Reserved Activities](#), paper (20) 30 submitted to the LSB Board of June 2020.

54. The LSB is also preparing a report on the state of the legal sector, to inform a future strategy for the sector.³⁷ This report is scheduled to be published in autumn.
55. We will consider the work and proposals of the LSB as part of our Review. We will assess whether these or other shorter term initiatives may be able to remedy the issues we identified in our market study regarding the sustainability and flexibility of the Act, or whether there continues to be a case for wholesale review, for example as recommended by the IRLSR.

Questions regarding redress and regulation

We invite responses to the following questions:

- Q11. What measures can be taken to develop a more flexible and proportionate regulatory framework within the Legal Services Act 2007 without requiring any, or only light touch, further legislative change, for example a review of the reserved activities as being considered by the LSB?
- Q12. Would such measures above be sufficient to deliver effective change that can promote competition and optimise consumer outcomes in the longer term?
- Q13. To what extent is there merit in extending the regulatory framework to include unauthorised providers? What evidence is there of consumer detriment from unregulated providers, or other rationale, to warrant this?
- Q14. We recommended a review of the independence of regulators both from the profession and from government, to the MoJ in the CMA market study. Is that review still merited, taking into account, for example, the work that has been undertaken by the LSB on IGRs and the arguments put forward by the IRLSR?
- Q15. What work has been undertaken by regulators to reduce the regulatory burden on providers of legal services for individual consumers and small businesses? What impact has this had?
- Q16. What impact has the removal of restrictions to allow solicitors to practise in unauthorised firms had on the availability of lower cost options in the sector?

³⁷ See LSB, [Developing a strategy for legal services](#).

Next steps and outcomes

56. The CMA has now launched its Review as described above, and aims to publish its findings by the end of 2020.
57. The CMA intends the Review to contribute to the body of evidence available to the MoJ and LSB in considering the appropriate next steps in the sector. The findings of the Review will assist the CMA to determine whether further action by the CMA, or by others, is necessary.
58. The CMA may, for example, decide to make new recommendations to the Government, the LSB, frontline regulators, trade associations, providers or other stakeholders for future action, or to undertake further research as a result of this Review. As noted above, any recommendations that we make, particularly those that relate to increasing competition, are likely to be directed to the LSB as it is planning a programme of reform that would provide an effective vehicle for delivering such recommendations. However, as regards the reform of the regulatory framework, any recommendations that require changes to the regulatory framework, will ultimately need the MoJ to take legislative action.

Responding to our CFI

59. The CMA welcomes responses from interested parties to the specific questions identified above. For ease of reference, these questions are collated in Appendix A.
60. **To respond to these questions, please email your submission to:**

LegalServicesReview@cma.gov.uk

by no later than Wednesday 30 September 2020.
61. In your response:
 - Please say whether you are an individual or a business (or represent consumer or business interests) and supply a brief summary of the interests or organisations you represent, where appropriate.
 - The CMA may publish non-confidential versions of responses it receives on its website. Please consider whether you are providing any material that you consider to be confidential, and explain why this is the case. Please provide both a confidential version and a non-confidential version of your response.

62. Appendix C sets out how the CMA may use information provided to it during the course of this Review.

Appendix A: Summary of questions

Questions regarding information remedies and supply-side developments

We invite responses, accompanied by relevant evidence, to the following questions about the development of the sector since the CMA's 2016 market study:

- Q1. What challenges have legal service providers faced in complying with transparency measures, and how could these be addressed?
- Q2. Are consumers engaging with the new transparency measures including the availability of price information, eg by accessing the pricing information on the provider websites and/or using this information in their interactions with providers? Does this differ between different areas of law?
- Q3. How effective have transparency measures been in driving competition? Does this differ across areas of law?
- Q4. To what extent has the Legal Choices website helped consumers to navigate the legal services sector? To what extent has improved content been actively promoted by regulators, consumer/industry bodies and service providers?
- Q5. To what extent are quality indicators needed to drive consumer engagement and competition? Which further indicators are needed and what are the barriers to these indicators being developed?
- Q6. To what extent are DCTs currently operating in the legal services market? What are the main barriers to greater use of DCTs in legal services and how can they be overcome?
- Q7. What impact have ABSs and lawtech³⁸ had on driving innovation in the legal services sector? Are there any barriers deterring further innovation?

³⁸ For the purposes of this question, we are primarily interested in lawtech that changes the consumer experience and extends the choice available to consumers, ie customer-facing lawtech that, adopting the definition used by the IRLSR, is 'technology that provides self-service direct access to legal services for consumers. As such, it substitutes for a lawyer's input, and can be experienced by the consumer without the need for any human interaction in the delivery of the service.' However, we are also interested in the extent of development and impact of 'back-office' lawtech offering efficiencies in providers' ways of working that could ultimately drive price competition and result in the passing on of cost savings to consumers.

- Q8. Are there other developments which have had or will have a significant impact on competition in the sector?
- Q9. Are further measures needed to drive consumer engagement and competition in legal services in addition to the areas we have identified above?
- Q10. Are there any issues specific to the provision of legal services for small businesses that should be considered in order to improve competition for such customers?

Questions regarding redress and regulation

We invite responses to the following questions:

- Q11. What measures can be taken to develop a more flexible and proportionate regulatory framework within the Legal Services Act 2007 without requiring any, or only light touch, further legislative change, for example a review of the reserved activities as being considered by the LSB?
- Q12. Would such measures above be sufficient to deliver effective change that can promote competition and optimise consumer outcomes in the longer term?
- Q13. To what extent is there merit in extending the regulatory framework to include unauthorised providers? What evidence is there of consumer detriment from unregulated providers, or other rationale, to warrant this?
- Q14. We recommended a review of the independence of regulators both from the profession and from government, to the MoJ in the CMA market study. Is that review still merited, taking into account, for example, the work that has been undertaken by the LSB on IGRs and the arguments put forward by the IRLSR?
- Q15. What work has been undertaken by regulators to reduce the regulatory burden on providers of legal services for individual consumers and small businesses? What impact has this had?
- Q16. What impact has the removal of restrictions to allow solicitors to practise in unauthorised firms had on the availability of lower cost options in the sector?

Appendix B: Recommendations of the CMA market study

Recommendations to facilitate confident and engaged consumers driving competition

1. Our recommendations to frontline regulators to facilitate confident and engaged consumers driving competition were:
 - (a) Action to deliver a step change in standards of transparency to help consumers (i) to understand the price and service they will receive, what redress is available and the regulatory status of their provider and (ii) to compare providers. We recommended that regulators revise regulatory requirements to set a minimum standard for disclosures on price and service, and develop and disseminate best practice guidance, including a requirement for suppliers to publish relevant price information (the nature of which may vary by service).
 - (b) Steps to promote the use of independent feedback platforms by providers and the provision of guidance on collecting and responding to public reviews.
 - (c) Steps to facilitate the development of a dynamic intermediary market through making data more accessible to comparison tools and other intermediaries. We recommended that, at a minimum, regulators should individually make their respective data available and liaise with relevant third parties (such as representative bodies), as well as seeking to develop a unified sector-wide approach, with the aim that this information could more easily be integrated into digital comparison tools.
 - (d) The redevelopment of the Legal Choices website, with input from consumer and business groups, to focus on individual consumer and small business legal needs to aid navigation and interaction with the sector. This improved content should also be actively promoted by the regulators, consumer bodies and potentially, service providers.
2. We recommended that Government should coordinate changes to the content of GOV.UK to reflect the variety of legal services providers operating in the legal services sector (beside solicitors and barristers) and incorporate links to the Legal Choices website.

Recommendations to address our consumer protection concerns

3. To address our consumer protection concerns, we recommended to Government to:

- (a) Undertake a review on whether there was a case for extending redress to consumers using unauthorised providers and, if so, how best to achieve that extension (for instance, by extending access to the LeO or through alternative arrangements such as the use of ADR or self-regulation).
- (b) Work with certain bodies (eg the LeO, the Probate Service, HM Courts and Tribunals Service, consumer organisations and self-regulatory bodies) to address the evidence gap that we had identified by taking advantage of existing data sources to build evidence on the unauthorised part of the sector.

Recommendations on the regulatory framework

- 4. We made several short-term recommendations addressed to both the government and regulators:
 - (a) The MoJ to undertake its planned review of independence. The review would need to consider independence of regulators both from the profession and from government.
 - (b) The regulators to continue existing work to reduce regulatory costs relating to professional indemnity insurance (PII), training and codes of conduct.
 - (c) The regulators to remove regulatory restrictions to allow solicitors to practise in unauthorised firms to increase the availability of lower cost options in the sector.
- 5. In addition, we recommended to government to undertake a review of the regulatory framework in the longer term. We considered that the review should be based on key principles:
 - (a) The regime needed to be more flexible.
 - (b) Regulation should be proportionate, and its costs justified on the basis of risk assessment.
 - (c) The scope of regulation should focus on activities and risks to consumers rather than regulation attaching to professional titles.
 - (d) Solicitors and other professionals should be less tightly regulated than they are currently are for lower risk activities.
- 6. Although we considered there may be a case for reducing the number of regulators, we thought that the appropriate structure should flow from the preferred regulatory approach rather than being considered in isolation.

Appendix C: Use of information provided to the CMA

1. This Appendix sets out how the CMA may use information provided to it during the course of this Review.

Why is the CMA asking for information?

2. The information you provide will help us to assess the impact of our market study final report recommendations to increase competition in the legal services sector and to determine whether further action by the CMA, or by others, is necessary.

What will the CMA do with the information I provide?

3. Your information will inform our Review and recommendations. The report will set out our findings and any proposed recommendations.
4. The CMA may disclose any information provided by you for the purposes set out in section 170 and 240 to 243 of the Enterprise Act 2002, where it considers such disclosure to be appropriate. In particular, the CMA may choose to put information provided by you to third parties, such as other government departments and other parties providing information to the CMA for the purpose of facilitating any further related work.
5. We may only publish or share specified information in specific circumstances set out in legislation (principally Part 9 of the Enterprise Act 2002). In particular, prior to publication or any such disclosure, we must have regard to (among other considerations) the need for excluding, so far as is practicable:
 - (a) Any information relating to the private affairs of an individual where we think such disclosure might significantly harm the individual's interests; or
 - (b) Any commercial information which, if published or shared, we think might significantly harm the legitimate business interests of the undertaking to which it relates.
6. We will redact, summarise or aggregate information in published reports where this is appropriate to ensure transparency whilst protecting legitimate consumer or business interests.
7. If you wish to submit information either in writing or verbally that you consider to be confidential, this should be indicated to us clearly at the time it is provided, and an explanation given as to why you consider it to be confidential. In the event that the CMA proposes to include any sensitive commercial or personal information in a document that will be published it will,

save in exceptional circumstances, contact the relevant persons prior to publication to give them the opportunity to explain why disclosure would cause significant harm and to request excision (or aggregation or generalisation) of any such information.

8. The CMA is also bound by the Freedom of Information Act 2000 (the FoIA). Under the FoIA, where a person makes a request in accordance with the requirements of the FoIA, the CMA may have to disclose whether it holds the information sought and may be under a duty to disclose it, unless an exemption applies. If you consider that any information you provide may be exempt from such disclosure you should say so and explain why.
9. Any personal data you provide to us will be handled in accordance with our obligations under the Data Protection Act 2018 and the General Data Protection Regulation. For more information about how the CMA processes personal data, your rights in relation to that personal data (including how to complain), how to contact us, details of the CMA's Data Protection Officer, and how long we retain personal data, see our [Personal Information Charter](#).
10. Further details of the CMA's approach can be found in [Transparency and Disclosure: Statement of the CMA's Policy and Approach \(CMA6\)](#).