

## CMA Survey Questions – Responses from NALP

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:		
No.	CMA Question	NALP Response
Q1.	What challenges have legal service providers faced in complying with transparency measures, and how could these be addressed?	As a voluntary regulatory body for paralegals, we have issued a guidance document for our members recommending that they are transparent in all things on their website including estimated costs for work that they may undertake. The main issues that members have said could affect compliance with this is the fact that many services are based on time spent on a case which can be difficult to predict at the outset. The guidance we have provided in the Member's Handbook gives them a clear illustration of how transparency might be achieved insofar as possible, given the nature of the services. As far as we are aware, there have not been any specific challenges in being compliant, based on the guidance provided
SupA	<b>Supplementary view requested by [CMA]</b> How have levels of transparency on price, service, quality, redress and regulatory status in the unauthorised sector evolved since the market study? How does this compare with the authorised sector? What impact has this had on unauthorised providers' ability to compete?	Since the market study and the implementation of the new requirements around transparency by the SRA, NALP have sought to mirror this with the requirements for our members who are providing services directly to consumers. Initially there was a lot of confusion around how they might achieve this, but much of this was covered in the Member's handbook we issued and we have not had as many queries. One issue we do have noticed is that there are some practitioners only using social media sites, such as Facebook, rather than setting up a full website. This means that they often state that they provide details on request, rather than having price lists and policies available without a consumer having to contact them.

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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?	From information given to NALP by members, consumers are engaging with the new transparency measures and using this information in their interactions with our member providers. This does differ for the different areas of law. For example, it may depend on the complexity of any case and whether or not it warrants a fixed fee or hourly rate as a consequence.
Q3.	How effective have transparency measures been in driving competition? Does this differ across areas of law?	The evidence we have received from members infers that they are getting more work. Whether this is as a result of the transparency measures driving competition or other factors such as basic financial accessibility and lack of legal funding cannot really be confirmed. A similar pattern is seen across most areas of law.
SupB	<p><b>Supplementary view requested by [CMA]</b></p> <p>If possible, please provide examples of good and not-so-good transparency by providers to illustrate your response.</p>	<p>A good example would be where a member has a clear website including complaints policy, details of their pricing, with some indicative prices for whole bodies of work (e.g. assisting with writing a will) and an hourly rate for more complex matters, usually also with an offer for consumers to obtain a no-obligation quote or estimate.</p> <p>A not-so-good example would be where a member only has a Facebook or LinkedIn page so there is no way for a consumer to obtain details of prices, complaints policies, etc. without contacting the paralegal in question.</p>
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?	In our opinion the Legal Choices website is an absolute necessity for consumers to navigate the legal services sector. However, many consumers are unaware that this site exists. NALP believes that the site could – and should – be promoted and marketed far more by relevant stakeholders. For the Legal Choices website to be truly effective, the average consumer has to be aware that

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		<p>the website exists. This will require a more widespread approach via social and traditional media to ensure a more positive take up. In addition, we would like to see the National Paralegal Register (which can be found at <a href="http://www.nationalparalegals.co.uk">www.nationalparalegals.co.uk</a>) being included in the list of “Registers of Legal Professionals” as there are currently no registers for paralegals or, for that matter, McKenzie Friends. As Legal Choices is supposed to provide a complete picture of the legal services sector and includes Paralegals and McKenzie Friends within its pages, then it would be preferable to have the links to all of the available registers of legal service providers.</p>
Q5.	<p>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?</p>	<p>NALP believes that quality indicators are very important in order to drive consumer engagement and competition. In respect of Paralegals, NALP is of the firm opinion that they should be members of a professional membership body, such as ourselves. However, we find that the biggest barrier to this is the legal sector itself. Solicitors and Barristers, etc. do not, as a rule, encourage their paralegals to become members of a professional body. Paralegals are still often viewed as ‘wannabe solicitors’ rather than professionals in their own right, deserving of belonging to a membership body that has their interests at heart.</p> <p>These membership bodies (of which there are only two covering England and Wales – NALP and the Institute of Paralegals) should be more widely recognised by the legal sector itself. This would increase the number of paralegals that would be shown on the membership bodies’ registers (for instance the National Paralegal Register in respect of NALP members) and would show that these individuals have agreed to adhere to a code of conduct. This, in turn, would help to provide more consistent</p>

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		quality indicators as consumers get to know the levels of membership and can check if their chosen professional paralegal practitioner has been provided with a ‘Licence to Practise’ from NALP (or similar from other membership bodies) which will show that they have, for instance, suitable Professional Indemnity Insurance in place.
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?	Paralegals do not come up on comparison sites so this is not currently relevant to our members.
SupC	<p><b>Supplementary view requested by [CMA]</b></p> <p>To what extent do DCTs engage with the unauthorised sector? How can such engagement be encouraged?</p>	As far as we are aware, DCTs do not engage with the unauthorised sector at present. We are not aware of any of our members, or, indeed, any other paralegal practitioners. No comparison sites have ever approached us to include our members on their sites. This could be encouraged if paralegals were more visible on the Legal Choices website (e.g. by including paralegals on the ‘Professional Registers’ page) and also if the legal sector itself recognised the unauthorised providers. NALP have been very proactive in engaging other legal sector bodies, such as The Law Society, to ensure we are all working to the same goal, but we are still facing an uphill struggle to ensure that paralegals are no longer seen as ‘canon fodder’ for solicitors.
Q7.	What impact have ABSs and lawtech <sup>38</sup> had on driving innovation in the legal services sector? Are there any barriers deterring further innovation? <sup>38</sup> 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	Paralegals have not, so far, been affected by lawtech. Whilst all innovation that provides consumers with more cost effective access to justice. However, we have had reports from some of our members that the consumers they are in contact with have some difficulties in using, for instance, the small claims portal, “Make a Money Claim”. It should be borne in mind that the

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	<p>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.</p>	<p>consumers who usually seek the help of our members tend to be from the more vulnerable end of the spectrum and so there is still a clear need for some human assistance with such technology. However, it is also clear that this is support that could be provided by the unregulated sector, thus ensuring that the cost to the consumer is kept as low as possible.</p>
Q8.	<p>Are there other developments which have had or will have a significant impact on competition in the sector?</p>	<p>The single biggest impact on the unregulated legal sector has been the virtual removal of legal aid. This has increased the unmet legal needs which has been filled, in part, by unregulated providers, such as paralegals. This has had a positive impact in respect of the emerging role that paralegals play in offering legal services and access to justice at a reasonable cost to consumers.</p>
Q9.	<p>Are further measures needed to drive consumer engagement and competition in legal services in addition to the areas we have identified above?</p>	<p>The main thing is to ensure that consumers – particularly those who would otherwise be acting as Litigants in Person without any legal assistance, are aware that there are options available to them to receive some advice and guidance as they go through the legal process. This will need a shift in attitudes within the legal sector itself, particularly towards the unregulated providers, so that they are recognised as being complementary to the regulated sector, rather than as being an unwanted interloper.</p>
Q10.	<p>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?</p>	<p>The majority of our members serve individuals and small businesses and, in our experience, the same issues have been true for both types of consumers. Therefore the above applies equally to SMEs as it does to individuals.</p>

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Questions regarding redress and regulation		
	CMA Question	NALP Response
Q11.	<p>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?</p>	<p>Currently there is an issue that anyone can set up as ‘paralegal’ without needing to be on a register or be a member of a professional body. This means that consumers have no way to check the quality of the practitioner they are planning to employ. In addition, as mentioned previously, there is an issue with the way in which paralegals are seen by many in the regulated sector. If there were some form of directive that professional paralegal practitioners should be members of a membership body prior to providing services directly to consumers, preferably also holding a ‘licence to practise’ from that body. This would allow consumers to have at least some form of comfort in that the practitioner they are using has been through some due diligence checks regarding their qualifications and experience and that they have PII in place (if they hold a ‘licence to practise’).</p> <p>In respect of the Reserved Activities, guidance should be provided to the judiciary regarding the application of discretion in respect of the rights of audience, particularly in the lower courts. This is where you may often get a paralegal assisting a litigant in person, however, some judges do not recognise that a paralegal may provide some legal services without being part of a traditional law firm and therefore they refuse requests for the paralegal to advocate for their client, even when it is shown that</p>

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		<p>client is vulnerable; for instance where they have a mental health issue, or English is their second language. If professional paralegal practitioners were required to be members of a professional body, such as NALP, and be able to demonstrate that they hold a ‘licence to practise’ from that body, and then request the right of audience to advocate for their client, it would then mean that judges would have a better understanding of that paralegal’s background, credentials and competency and be able to make a more equitable decision about the request. This would mean that the Reserved Activities could stay as they are in respect of the rights of audience, but that the more vulnerable consumers would have more possibilities of being able to use the assistance of a paralegal.</p> <p>NALP would also be open to sharing our lists of paralegals so that these can be made more publicly available, such as via Legal Choices, etc.</p>
SupD	<p><b>Supplementary view requested by [CMA]</b></p> <p>To what extent do current arrangements for unauthorised providers provide consumers with sufficient consumer protection, specifically in the area of consumer redress?</p>	<p>Currently the NALP ‘Licence to Practise’ provides protection for consumers in that all members holding such a licence must have sufficient PII. To this end we have put in place an arrangement with an insurance broker who can obtain such cover, specifically for NALP paralegals and the services they provide. NALP can also take some action against members who are not compliant with our Code of Conduct by putting in place action plans, up to and including the removal of their membership. However, because membership is not mandatory for a paralegal to provide legal services, this is recognised as not being a strong enough ‘stick’. Without access to the Legal Ombudsman and/or making membership and a licence to practise (including PII) mandatory,</p>

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		consumers have little access to redress, other than to try to claim their money back via the courts.
Q12.	Would such measures above be sufficient to deliver effective change that can promote competition and optimise consumer outcomes in the longer term?	<p>We believe that the actions mentioned within our responses to this questionnaire would help with promotion of competition and in optimising consumer outcomes. These would need to include:</p> <ul style="list-style-type: none"> <li>• More knowledge of, and acceptance of, the unregulated service provision not only amongst consumers, but also amongst the regulated legal sector and the judiciary</li> <li>• Ensuring that all unregulated legal services providers are registered with a professional membership body, such as NALP, and that this register is made more easily accessible by consumers and by the LSB and Legal Ombudsman, etc.</li> <li>• Making the Legal Choices website more widely known and therefore used by consumers, including ensuring that the unregulated providers are more prominently included</li> <li>• More guidance to the regulated legal sector and the judiciary to include the unregulated sector in relevant discussions and to improve their attitude towards paralegals, etc. so that they are seen as being complementary to the regulated sector</li> </ul>
SupE	<p><b>Supplementary view requested by [CMA]</b></p> <p>To what extent do self-regulatory arrangements provide providers with sufficient incentives to comply with regulatory standards?</p>	<p>Professional Membership and self-regulatory bodies such as NALP have to incentivise their members by the provision of discounts and services that enhance their lives – both working and professional. Membership has to be seen to have a benefit. The best benefit would be that it was recognised as being a ‘badge of quality’ to be a member, however, whilst NALP is the longest established body for paralegals, and is the most well recognised badge, we find that the biggest barrier to this is others within the legal services sector. As noted previously, a lot</p>



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		of this has to do with the attitudes held by many in the regulated sector towards Paralegals and seeing them as being ‘canon fodder’ and not as being a profession in their own right.
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?	<p>Whilst NALP is not adverse to paralegals being caught within the regulated framework, our major concern would be the increase in cost to our members which, in turn, will increase costs to the consumer and reduce access to justice at a reasonable cost. This will again make the unmet needs gap far larger than any of us would like to see.</p> <p>In our experience, the main issue with unregulated providers is with those who are not members of a self-regulatory, professional membership body such as NALP. The consumer has no way of knowing whether the person they are dealing with has any experience or qualifications, or if they hold a ‘licence to practice’ and, as such, holds sufficient PII to give them some form of comfort should things go wrong.</p>
SupF	<p><b>Supplementary view requested by [CMA]</b></p> <p>Should unauthorised providers become subject to statutory regulation and, if so, in what form? What benefits, if any, would this offer your members?</p>	<p>If unauthorised providers, such as paralegals, are to be subject to statutory regulation, it needs to be proportionate to the services they are providing and be at a minimal cost to ensure the knock-on effect to consumers is reduced insofar as possible.</p> <p>It would, in our opinion, be better if self-regulatory bodies, such as NALP were more recognised within the Sector. This would help our members in being able to show that they are qualified and experienced to a certain level (dependent upon the level of membership they have) and having a requirement to have a ‘licence to practise’ from a recognised body, such as NALP, would also allow them to easily demonstrate to prospective customers that they are experienced, qualified and have suitable PII in</p>

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		place. This, we believe, would help consumers as well as our members, but with the least impact on costs for our members. Another benefit could be derived from being able to escalate matters to the Ombudsman (see SupG below)
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?	Whether the review is still merited or not will, in NALP’s opinion, be dependant on the outcomes and actions taken following the recommendations of the IRLSR.
SupG	<p><b>Supplementary view requested by [CMA]</b></p> <p>What are your views on the proposals in the final report of the Independent Review of Legal Services Regulation for a registration scheme and the extension of the Legal Ombudsman’s remit to unauthorised providers? Would such or other measures (eg kitemarks obliging providers to participate in an ADR scheme) be of interest on a voluntary basis?</p>	<p>We have provided a full response to the IRLSR which can be found on our website at <a href="http://www.nationalparalegals.co.uk">www.nationalparalegals.co.uk</a>.</p> <p>In summary, we agree with the overall principal that the protection of the consumer is paramount, however, our main concern is the cost to the currently unregulated sector, which would then affect the cost to the consumer of the services currently supplied. We are aware that many of the consumers our members provide services to may already struggle with the fees charged by our members, but also be part of the most vulnerable groups in our society. Any increase in costs could affect this balance and either make provision of those services financially unviable for our members, or payment of the increased fees unaffordable for their customers.</p>
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?	We have not seen any difference as our members are not part of the regulated legal sector.
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?	We know that many of our members work collaboratively with solicitors, though it is not known if this has increased since the change in the regulations

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SupH.	<p>Supplementary view requested by [CMA] [REDACTED]</p> <p>What evidence can you provide regarding the consumer experience of using unauthorised providers?</p>	<p>We can only provide some anecdotal evidence as we do not collect evidence on consumer experiences (other than if we deal with complaints).</p> <p>We do have a number of examples – such as:</p> <ul style="list-style-type: none"><li>• An unmarried couple wanted to put in place joint wills to ensure everything was covered for their adult son. They initially contacted a “Will for £19” service operated through one of the discount websites, such as Groupon. They were eventually quoted over £1000 for joint wills, despite the original offer being for £19, being told that their case was too complex for anything else. They went to a NALP member who helped them set up their wills, including provisions for if they later married, as well as all the other ‘complex issues’, and charged them less than £200. They then got a will in place for their parents from the same member because they were so pleased with the service.</li><li>• A member was helping a couple with a relatively simple small claims case, but they did not speak very good English. As he was of their community, he was able to translate for them, however, the court refused his request for audience based on the opposing side’s barrister’s objection, leaving our member unable to do anything to assist their client once they got to court. Whilst the customer was happy with our member, they were upset at the attitude of the court which ultimately, they felt, contributed to the loss of their case.</li></ul>
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