

## **Questions regarding information remedies and supply-side developments**

### **Q1. What challenges have legal service providers faced in complying with transparency measures, and how could these be addressed?**

*The major challenge is that many firms appear not to be committed to this and seek to hide information in plain sight. Too few lead with this information. Too few have meaningful data on their websites with very wide ranges quoted for likely prices.*

*Loans and credit cards are required to provide meaningful data on interest rates and costs. Perhaps law firms should be required to provide the average (mean and median) price paid in the previous 12 months, the mean for the middle 80% of cases, and the volume of cases compelled for each category of work. Then it would be up to them to provide additional information that explains or provides context for the data.*

*The LSB may need to be required to provide the data and technological infrastructure for a comparison site in core legal services so that commercial comparison site providers are incentivised to operate in this area. I prefer market solutions but they have yet to appear. Perhaps the single most significant shift would come if more unregulated firms were allowed into greater parts of the market – ie remove reservation from conveyancing (reserved instrument activities) and probate in particular but also oaths and notarial activity. I recognise this might take time.*

*All solicitors should also be immediately allowed to do notarial work – they have the core legal knowledge and are bound not to act beyond their competence so can be trusted to add this area where they have right support and training without the imposition of additional qualification obligations. That would increase supply and help grow access and reduce prices. This may be important in a post Brexit economy where trade across Europe may change.*

### **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?**

*A sample of law firms should be invited to provide confidential data to the CMA on visits to relevant website pages over an agreed period, including contextual information and rates of conversion where possible. This would facilitate some analysis of actual consumer use.*

*My sense is that the availability of price information is starting to lead to some larger firms to move towards national pricing as opposed to local pricing strategies, and that this can over time reduce the range of prices for any given service. But the evidence suggests this is far from a significant impact at this stage. Tackling the geographical variation in prices – facilitating a shift from local to national legal services market would help narrow price differentials. Consumers do use national firms for conveyancing where they are ‘steered’ and for on line services.*

*Regulators need to do much more to promote consumer choice – using behavioural sciences for example. At present most regulators accept responsibility to make supply side interventions to improve competition but use a market narrative on limiting interventions to justify failure to take*

*active steps to support consumer power and choice within the legal market. There is not yet a narrative of imposing obligations to promote competition.*

**Q3. How effective have transparency measures been in driving competition? Does this differ across areas of law?**

*Limited impact at this stage according to LSB evidence. The absence of the major commercial comparison sites is something should be explored with those businesses.*

**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?**

*The Legal Choices website is underpowered and unimaginative. It is not focused on helping people navigate the legal market. It has made the mistake of trying to focus on helping people understand their legal issues rather than helping them make choices about where and how to get assistance, or how to engage confidently with lawyers when choosing. Citizens Advice and various others are better at this provision of information and Legal Choices should leave that to them.*

*There is little evidence that public legal education (PLE) has any positive impact. There is no evidence that it has shifted the needle on the public's understanding of their rights and responsibilities. If we consider financial services education, after decades of major investment a recent [meta-study](#)<sup>1</sup> found that financial education counted for less than 0.1% of any shift. PLE appears to be money down the drain but it is grasped at by professional bodies and regulators because it creates a neat narrative about helping consumers. What should be asked is why the legal market requires consumers to be specifically educated to engage with it?*

*The content should focus on how to choose and use a solicitor or lawyer. So how to negotiate a fee, how to test quality, ten questions to ask before choosing a conveyancing lawyer etc.*

*This should be linked to the idea for a comparison site above.*

**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?**

*Quality broadly splits into technical and service, though they are linked.*

*Technical quality is over provided in the legal market – gold plated and expensive solutions offered by over-regulated providers for simple issues. Liberalisation is best route to deal with that in my view.*

*Consumers are able to judge technical quality by a mix of title and information provided by firms/individuals. We can test this by looking at how consumers with serious issues navigate the market. Those with serious litigation, criminal, family and commercial issues do all tend to find their way to expert advisers with relevant technical skills. Regulators are good at tackling poor quality in isolated issues - such as in asylum advocacy for example.*

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<sup>1</sup> <https://www.researchgate.net/publication/259763070> Financial Literacy Financial Education and Downstream Financial Behaviors

*Regulators provide entry controls to parts of the market – ie risk based regulation rather than title based – such as higher courts rights for solicitors, asylum work in legal aid (vulnerable consumers) etc.*

*Any attempt to provide indicators on technical quality, including reaccreditation, would be expensive and poorly targeted. There is almost no evidence of poor technical quality in legal services. The economic incentives among regulated lawyers is to increase quality – to gold plate and charge more. Often charges are disproportionate to the legal issue at stake. The model is built for too much quality rather than the proportionate advice that people and business are failing to get. That applies across the market – hence corporate clients increasingly using alternative providers to reduce costs and get appropriate quality.*

*Service quality is increasingly focused on by forward looking firms and legal businesses: net promoter scores, trustpilot, google reviews etc. That should be encouraged and perhaps be part fo the data that an LSB data warehouse collects compulsorily from firms.*

*Prof Pascoe Pleasance did some research more than ten years ago that suggested that service quality may actually be a good proxy indicator for technical quality. I do not think that research was published.*

**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?**

*Very limited use of them because useful data is hard to come by. I also have doubts that the market is large enough to attract commercial comparison sites – this should be tested by CMA with them directly.*

**Q7. What impact have ABSs and lawtech had on driving innovation in the legal services sector? Are there any barriers deterring further innovation?**

*Reservation of probate and conveyancing deters investment because of the regulatory barriers. I work with a range of businesses that look across the legal market and see their expansion and growth as limited by regulation – it is perceived as a step that most do not want. That is partly because investors are very wary of regulated industries.*

*Similarly, the need to structure the business around regulation – i.e. creating a separate vehicle for regulated part of the service – also deters investment. That is because investors consider it to add complexity; creates additional risk through poor lines of sight; looks like off balance sheet activity to main business being invested in. Removing reservation from as many activities as possible would aid investment. Investment and scale are the prerequisites for serious technology in the legal market.*

*Farewill, Legal Zoom (including the Formations Company) and Rocket Lawyer all show what can be achieved with technology. They are also examples of ABS, quality signals/customer reviews etc.*

**Q8. Are there other developments which have had or will have a significant impact on competition in the sector?**

*Many of the reforms of the last 9 years (it is often forgotten that the SRA only authorised its first ABS – The Co-Operative – in 2012) are still having an impact. Subsequent reforms – such as multi disciplinary practices, solicitors in unregulated firms, freelance solicitors – are recent and unlikely to have impact instantly. Reform of a market like this is likely to take 10 -20 years in my view. The SRA should be given credit for what is achieving and its ongoing commitment to regulatory reform.*

*But more is needed to reduce costs – the failure of the SRA to reduce the scope and costs of professional indemnity insurance (as recommended by the CMA) is hitting home this year as costs are rising and supply being constrained unnecessarily. New small firms undertaking low risk activity with expected turnover unlikely to rise above even £100k are being quoted PII premia in excess of 10% of turnover. That fails the legal obligation on regulators for their regulatory requirements to be proportionate and targeted.*

*My sense is that the SRA was not confident that it could get reform past the LSB given its illiberal commentary on the subject. The LSB consistently holds the SRA too a less liberal and more intrusive standard than other regulators – compare for example the refusal of reduction in PII limit to £500k at SRA with approval of similar limits at other regulators with lower level of scrutiny. Similarly the LSB scrutiny of SRA on SQE has been more intrusive. This undermines regulatory confidence in reform, slows down liberalisation and damages the market for consumers. Removal of the LSB power to approve rules would tackle this, as would stronger leadership by LSB so that it is more pro-competition and pro-consumer. In my view it draws too heavily on health regulation which is not actually a good comparator market.*

**Q9. Are further measures needed to drive consumer engagement and competition in legal services in addition to the areas we have identified above?**

*See my blogs for further thoughts on reform:*

<https://www.passmoreconsulting.co.uk/a-star-is-born>

<https://www.passmoreconsulting.co.uk/an-impooverished-law-society>

<https://www.passmoreconsulting.co.uk/rethinking-regulation-in-the-uk>

<https://www.passmoreconsulting.co.uk/independent-review-of-legal-services-regulation>

<https://www.passmoreconsulting.co.uk/cma-announces-review-of-england-wales-legal-market>

<https://www.passmoreconsulting.co.uk/nothing-has-changed-and-everything-has-changed>

**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?**

*All of above applies equally to small business and individual consumers.*

**Questions regarding redress and regulation**

**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?**

*As above – removal of most reserved activities is a crucial step.*

*I would remove power of LSB to approve regulators rule changes. That could be replaced by a power for LSB to ask regulators to review the impact three years after changes are put in place and a subsequent power of LSB to use its existing powers to demand change. In one of my blogs I talk about a duty to reduce regulatory burdens and a focused, independent star chamber run by LSB to challenge regulators to justify specific regulatory burdens with evidence or remove within two years.*

*Regulators need to be more independent of professional bodies. My view remains that they negotiate with professional bodies. This is sometimes explicit but it is often implied and behind the scenes – ie the power of professional bodies over regulators has a chilling effect on their independence and zeal*

*for reform. I think that the SRA would find it hard to do things that are deeply unpopular with the Law Society when it might need to persuade its parent body on internal issues – such as creating a subsidiary legal vehicle for the SRA.*

*If proper independence cannot be secured then I would put an obligation on professional bodies/regulators that all communication between them – whether e-mail, letters or oral – be made public within 14 days. That would ensure that the special relationships are not used against the public interest. No other lobbyist (and in particular no consumer or pro consumer lobbyist) has access and power over regulators in the same way as professional bodies do. That power must be used transparently if it cannot be removed.*

*Radical reform is required that creates a single legal regulator for most legal services in the longer term. I would not include the referral bar because they are not part of the same competitive landscape; because their status in UK exports is significant; because they provide the core of our expert judiciary; and, because they are powerful enough to slow down such reforms. The price for their exclusion would be changes to make it easier for barristers to train in law firms and for solicitors to become barristers at a later stage of their career – ie making the solicitor route the most common route to the elite bar.*

**Q12. Would such measures above be sufficient to deliver effective change that can promote competition and optimise consumer outcomes in the longer term?**

*There is no endgame in pursuit of competition. In my view there is a need for a never ending focus on anti competitive rules, behaviours and culture that must be addressed. It is hard to predict behaviour of lawyers, firms or consumers of different sorts and thus we need to keep working to improve competition and consumer engagement.*

**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?**

*I see very little evidence that the unregulated sectors cause harm that warrants regulation. Such a move would likely lead to a ten year debate about the boundary of legal services – I cannot see how that would get through Parliament without ever more bizarre exemptions (trade unions, MPs, GPs, social landlords, counsellors, arbitrators etc etc) that would lead to a mix of absurdity and prescription that are expensive and unfocused.*

*I would rather see the SRA (or preferably a single regulator) given the power to enforce consumer law against the unregulated market. That would bring sector expertise to the market without giving the regulator the power to write more rules and prescriptions. It would give the SRA Trading Standards style powers without some of the risks of introducing more regulatory restrictions.*

*I am not against the extension of the Ombudsman to cover unregulated firms but have little confidence in the existing Ombudsman. It appears to be taking over a year to handle simple complaints. That is not a meaningful improvement on the Law Society performance that led to the creation of the Ombudsman in the first place. Consumers are better placed using existing rights in consumer law.*

**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?**

*Yes – as mentioned and detailed above.*

**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?**

*The regulatory reform programmes across regulators have been positive. But the failure on PII is significant as detailed above.*

*More is needed to prevent costs drifting upwards.*

*But the most significant cost in the practice fee of regulated firms and solicitors is the £30m tax on them to fund a lobbying organisation that resists pro-consumer, pro-competition reform at every stage. It is hard to criticise the SRA and other regulators over marginal costs when they are dwarfed by this tax from the Law Society. I can see no justification or parallel for it in our economy and the CMA must call that out rather than obfuscate.*

**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?**

*See Farewill, Rocket Lawyer, Hybrid Legal, Aria-Grace Law, LOD as examples of this in practice in less than one year. Reform and impact take time but these are all fast growing business that are at least in part built on these reforms. There is no evidence of harm and plenty of evidence of increased supply and access for individual consumers, small business and corporate clients.*