



30 September 2020

COMPETITION AND MARKETS AUTHORITY: REVIEW OF THE LEGAL SERVICES MARKET STUDY IN ENGLAND AND WALES

1. The Co-operative Group (the Co-op) is the UK's largest consumer co-operative, with 4.6 million active members and a presence in every postal district in the country. We're a major food retailer and wholesaler; we're the largest funerals provider in the UK; the largest probate provider; and we provide life planning services and sell insurance products. In 2019, we launched a new business – Co-op Health. Our businesses are all UK-based and our main support centre is in Manchester.
2. Co-operative Legal Services Limited (CLS) is authorised and regulated by the Solicitors Regulation Authority (SRA) and has over 500 staff working in different businesses with offices in Manchester, Bristol, Stratford-upon-Avon, Sheffield and London. CLS are the largest provider of Probate and Estate administration services in England and Wales, trusted to deal with over £1.3 billion in Estates annually.
3. The Competition and Markets Authority (CMA) review of Legal Services seeks to consider progress made since the CMA published its final report in December 2016 regarding the supply of legal services in England and Wales. The primary focus is on competition within the legal services market and an emphasis on transparency and the quality of costs information to drive competition. In addition, it seeks to consider how consumer protection is affected by unregulated businesses, and whether the existing regulatory framework is sustainable.
4. CLS is pleased to respond to this request for input, however, due to the limited time granted to respond to the request for input, it has not been possible to undertake a detailed analysis of key metrics when preparing this response. Due to this limited time, we have split our response into 3 key sections where we believe we have the experience and expertise to offer to aid this inquiry:
 - Consumer access and competition (paras 5 to 14)
 - Regulated and unregulated legal service providers (paras 15 to 25)
 - Service quality and freedom of choice (paras 26 to 31)

Consumer access and competition

5. The first theme covered in the 2016 CMA Review considered how consumers can access, assess and act on information about legal services. This enables them to make informed purchasing decisions for their legal services provider which should subsequently drive competition. This concluded that the competition was not working well, “primarily from lack of transparency over price and quality, making it difficult to compare providers”.

6. With the CMA recommendations to improve transparency, the Solicitors Regulatory Authority (SRA) introduced new Transparency Rules for law firms in December 2018. With the rules requiring publication of price information in a clear and easy to understand format, including confirmation of the total costs for a service, or an average or range of costs if this is not possible. It also required confirmation of the funding arrangement, hourly rates, fixed fees, and the application of VAT. In addition, service information must explain what services are included for the quoted price, other services not included, information on key stages and typical timescales, plus the qualifications and experience of anyone carrying out the work.
7. At CLS, we know that there are a number of complexities involved in identifying the nature of legal services required for any given case. Each case is typically fact specific and, therefore, difficult to provide a standard quote. We know that the provision of costs information is often dependent upon several factors;
 - the complexity of the issue;
 - the length of time that it may take to progress the matter and;
 - the number of parties involved
8. Those key factors may not be immediately apparent and would require further investigation before a proper assessment could be made of what was required and, therefore, what the potential cost of providing those legal services may be, it would then be necessary to factor in which individual within the law firm would undertake the work. A client may not be aware of the key facts that affect the assessment of complexity which would create a further complication.
9. Where it is not possible to provide a specific quote for some legal services, it is, therefore, down to the consumer to interpret the estimations, averages or range of costs which makes it difficult to compare prices between different legal service providers.
10. As the SRA introduced the new Transparency rules, these only apply to legal service providers who are authorised and regulated by the SRA, and not to those unregulated legal service providers such as online will and estate planning services. As the focus of the 2016 CMA Review was to ensure transparency over price and quality to enable consumers to compare providers, then this can only be done by ensuring that these rules apply to all legal service providers, not just solicitors.
11. At CLS, we believe that it is possible to provide a more accurate assessment of fees for some areas of law, typically those that the Transparency Rules have required firms to provide information on their website. We have developed applications in Estate Planning and Probate to identify key components of the case at the outset which would subsequently produce a fixed fee quote for clients. The majority of our Probate cases are based on a fixed fee arrangement with the client, the exceptions are typically more complex or contentious cases. We strongly believe therefore that it should be possible for consumers to enter key criteria on a website and receive quotes from legal service providers who undertake the work.

12. As prescribed by the Transparency Rules, we adapted our website to display prices and service information for uncontested Probate matters and Employment work. We have also sought to provide similar information for Family Law, Estate Planning and Will preparation. We also provide worked examples to seek to explain the cost information, but it is not possible to provide for every eventuality.
13. It has not been possible to identify whether the additional information on our website has affected how consumers engage or interact. However, our data shows that since the Transparency Rules were implemented in December 2018, that the number of page views on our CLS website has increased gradually. Over the same period, the number of page views relating to content dealing with fees has reduced in volume.
14. This suggests that the changes implemented by the Transparency Rules has not led consumers to seek costs information or place great emphasis on costs to make an informed decision when instructing a law firm. This is a view supported by the Tracker Survey¹ undertaken by the Legal Services Consumer Panel in 2020 which found that only 30% of consumers shop around for a provider. That does not however account for those consumers who instruct unregulated legal service providers based upon lower advertised costs.

Regulated and unregulated legal service providers

15. The Government has confirmed that there are no plans to review the Legal Services Act 2007 based upon the review in July 2017 which found that the LSB is generally effective both in promoting the regulatory objectives set out in the Legal Services Act and in delivering its functions². Ultimately that only applies to regulated businesses, yet many consumers engage with unregulated legal service providers and are unaware that they do not benefit from the same oversight and protections.
16. The Independent Review of Legal Services Regulation (IRLSR) published in June 2020³ concluded that a review of the regulatory framework was necessary to account for the range of legal services provided and their relative risk to consumers. It recognised that many people assume that all providers of legal services are regulated, and that protection is available, when that is patently not the case.
17. The services offered by unregulated firms are often standardised and typically restricted to more straightforward activities which, therefore, usually cost less to deliver. This fails to recognise the needs of the client who may be provided with a service that does not meet their requirements but was instead chosen purely on price. In contrast, regulated providers are required to act in the best interest of their

¹ <https://www.legalservicesconsumerpanel.org.uk/wp-content/uploads/2020/08/lscp-infographic-choosing-2020.pdf>

² <https://qndailyreport.blob.core.windows.net/qndailyreportxml/Written-Questions-Answers-Statements-Daily-Report-Commons-2020-05-18.pdf>

³ https://www.ucl.ac.uk/ethics-law/sites/ethics-law/files/irlsr_final_report_final.pdf

clients and provide advice regarding the options available and the most appropriate to the consumer.

18. This contrast between regulated and unregulated service providers is marked and is evidenced when considering will writing services. It is the service provider that is regulated, not the service. Therefore, both regulated and unregulated providers can offer the same service but do not bear the same obligations.
19. The contrast is even more extreme when considering non-advised online will writing offered by unregulated legal service providers. These services often emphasise the speed that a will can be prepared, and the lower costs involved. The length of time it takes clearly evidences the simplicity of the approach, the lack of enquiries made regarding the consumer's needs, and the lack of any or adequate advice to the consumer. The result is a standardised template including content which fails to provide sufficient personalisation to the consumer and may therefore not be suitable. This may ultimately increase the risk of a successful challenge to the will under the Inheritance (Provision for Family & Dependents) Act 1975.
20. The issue of transparency must also recognise that solicitors are required to have professional indemnity insurance and that clients have forms of redress including the Legal Ombudsman and the regulator. There is no obligation on unregulated legal service providers to highlight this significant difference in service provision which ultimately limits the rights of the consumer and may impact on quality of service.
21. The drive for transparency of fees and service information must not be limited to regulated legal service providers. Similarly, if consumers are to be afforded the appropriate protections then there must be some form of regulation applied consistently to all. Unless the requirements are applicable to all legal service providers, it is impossible for consumers to make an informed choice and ensure that there can be true competition in the legal services industry.
22. The IRLSR noted that the current arrangement of ten front-line regulators plus an oversight regulator is cumbersome. That structure has only developed relatively recently and only serves to create unequal regulatory control which would create greater uncertainty should there be a further regulatory process for the currently unregulated legal service providers.
23. The concern that regulation may dampen competition has to be balanced against the desire to improve quality and drive competition. Any regulation or oversight will require additional compliance activity which would increase the costs to legal service providers. However, the supervision should improve the performance of firms and improve the quality of service to consumers. The level of regulation and supervision could be reduced to limit the impact on costs.
24. In order to achieve a level playing field when seeking to drive competition, the same regulatory oversight must be applied to all legal service providers. A single set of rules could be applied to all legal service providers to ensure there is clarity and certainty for consumers. The rules could be reviewed and adapted for different

practice areas and legal services, to account for the relative risk in each area. We would suggest oversight by a single independent regulator and/or ombudsman should lead to an overall cost reduction whilst ensuring a consistent approach so that all legal service providers meet the same standards and face the same redress.

25. We recognise that smaller businesses may struggle to absorb the additional costs of regulatory reforms which seek to drive competition. We believe that it would, however, be counterproductive to have a two-tier system which absolves smaller or currently unregulated business of these requirements. The CMA and LSB desire for greater transparency to inform and assist consumers and ultimately drive competition must apply to all legal service providers so there is a level playing field and a real comparison can be made by consumers.

Service Quality and Freedom of Choice

26. The CMA report in 2016 made recommendations to promote the use of quality signals by providers and issue guidance for providers on engaging with online reviews. Several quality marks and ratings already exist for consumers to consider when selecting a legal services provider. Development of other quality indicators may only serve to dilute any benefit if legal service providers use different systems, as consumers would be unable to make a direct comparison.
27. At CLS, we publish feedback and ratings using Trustpilot which is an existing free service utilised by businesses in a range of industries which incorporates a straightforward rating system (maximum score of 5) and allows consumers to provide a score and feedback based upon their experience of the legal services received. We also publish reviews on our website received in response to customer satisfaction surveys.
28. The Legal Services Consumer Panel 2020 Tracker Survey⁴ noted that price is the most important factor for 86% of consumers choosing a licensed conveyancer and 72% for legal services generally which suggests that quality indicators may hold less significance to consumers. However, it also found that only 30% of consumers shop around for a provider which implies that the majority of consumers merely chose the cheapest provider and do not explore any assessment of quality. The survey also showed that reputation is the most significant factor (81%) for those consumers who do shop around.
29. As one of the first law firms to be authorised as an Alternative Business Structure (ABS), we have sought to develop a digital presence in order to provide information and assistance to consumers to increase understanding of their particular legal issue. This is intended to educate the consumer about the legal services that are available and to help them recognise what service or services they may need. This approach promotes a greater understanding so that it enables us to engage with clients and where possible agree a fixed fee for the services they require, so that

⁴ <https://www.legalservicesconsumerpanel.org.uk/wp-content/uploads/2020/08/lscp-infographic-choosing-2020.pdf>

they have certainty on price. It also speeds up the fact-finding process and therefore ensures that services can be delivered more promptly.

30. We believe that the development cost of Lawtech could be substantial. Therefore, whilst further innovation will occur in the legal services industry, this may act as a differentiator between service providers rather than leading directly to price competition.
31. We believe that the availability of Legal Expenses Insurance (LEI) can be a constraining factor on legal service provision. LEI providers typically have arrangements with a panel of legal service providers and the consumers are then directed to one of these firms from the panel. The LEI providers impose terms and conditions relating to their policy of insurance which we believe prevents freedom of choice to the consumer. Publication of costs and service information by other legal service providers who are not on the LEI panel is, therefore, largely meaningless. The restriction to one legal service provider on the LEI panel is restrictive not only in relation to cost but is also a constraining factor to quality of service.