

## **Annex A – response to Call for Inputs published on 9 September 2020**

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

This question is best answered by the providers themselves or their representative bodies.

*Q2. Are consumers engaging with the new transparency measures including the availability of price information, e.g. 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?*

IPReg does not have this information.

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

Please see our response in Annex B to supplementary question 1.

*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 regulators have drafted a Summary Report about Legal Choices covering the three-year period to October 2020. We refer the CMA to that report to see the successes and challenges of Legal Choices to date.

*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?*

Please see our response in Annex B to supplementary question 8.

*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?*

IPReg does not have information about the extent of operation of Digital Comparison Tools.

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

- New entrant ABS are likely to have a positive impact on innovation and competition. However, there remain disproportionate barriers to entry for ABS, particularly in Schedule 13 to the Legal Services Act 2007.

- In the sector regulated by IPReg, there does not appear to be significant development of the type of Lawtech that the CMA is primarily interested in (i.e. where it substitutes for a lawyer's input).
- We support the CMA's recommendation in its [Regulation and Competition Report](#) that regulators should:

“carry out strategic, forward-looking reviews of regulation. These should seek to evaluate the external factors that could have an important impact on how markets evolve in the future; to identify potential sources of disruption whether from inside or outside of those markets; and assess how regulation might need to change and adapt to accommodate such changes.”

Our forthcoming review of our regulatory arrangements will take this approach. It would be helpful if the CMA and/or LSB could conduct such a review across the entirety of the regulated legal services market. Reducing regulation is likely to be the key to innovative new entry. Further regulatory requirements relating to transparency may deter new entrants.

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

The current pandemic and the end of the Brexit transitional period both have the potential to adversely impact competition in the sector. Trade mark attorneys are facing particular uncertainty about their ability to continue to appear in European courts.

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

We do not consider that further regulatory requirements should be introduced without a full impact assessment of their likely cost. The focus on driving competition and innovation should be on identifying and removing unnecessary regulation, reducing costs and removing/lowering barriers to entry.

*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?*

IPReg does not have this information.

### **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?*

Please see our answer in Annex B to supplementary question 11.

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

Please see our answer in Annex B to supplementary question 11.

*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?*

Please see our answer in Annex B to supplementary question 12.

*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?*

Please see our answer in Annex B to supplementary question 15.

*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?*

IPReg is due to publish a Call for Evidence to start its review of its regulatory arrangements. A key part of this will be to identify where the regulatory burden can be reduced for all providers.

Any proposals to increase the regulatory burden on providers (such as requiring the publication of quality indicators) runs the risk that some firms (particularly small firms and sole practitioners) may decide to leave the regulated sector, leading to an overall reduction in consumer protection.

*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?*

IPReg does not have this information.

## Annex B – response to supplementary questions sent on 15 September 2020

### Transparency: questions supplementing Q1-Q3 of the CFI

1) *How satisfactory has progress on transparency been to date?*

The LSB's research published in September 2020 has shown that the transparency remedies have had a limited impact on competition to date. The research found a wide dispersion of prices, more indications of price increases than decreases since 2017 (although only some providers cited regulation as the reason for price increases) and that price transparency has improved in areas of law that were not covered by the new rules (e.g. divorce).

There is therefore a mixed picture, the reasons for which are unclear.

2) *What are the challenges faced in setting and enforcing transparency rules or guidance?*  
*a) What are the key learnings from the initial implementation and monitoring of transparency rules or guidance?*

IPReg decided that a proportionate and targeted approach was to introduce [Guidance](#) rather than impose rules. The Guidance has been in place since May 2019. The key challenge is to ensure that guidance is clear, relevant and understood by the providers to whom it is applies.

3) *What more could frontline regulators do to drive increased transparency?*  
*a) What further work is being planned?*  
*b) Are there any plans to review or change the rules or guidance in place?*

IPReg will reviewing all its regulatory arrangements including the transparency Guidance over the course of the next 2-3 years. This will start with a Call for Evidence in October.

*Where transparency rules have been put in place:*

4) *Is there sufficient enforcement of the transparency rules by frontline regulators?*  
*a) What levels of compliance have been observed? What do you consider to be the main drivers for non-compliance to date?*  
*b) What steps are taken to enforce compliance with transparency rules?*  
*c) What key factors have driven the enforcement strategy to date? Are changes planned for future enforcement?*

IPReg has no comment to make on this because we have not introduced rules.

*Where guidance has been provided in place of transparency rules:*

5) *Are frontline regulators sufficiently incentivising compliance with the guidance?*  
*a) What levels of compliance have been observed? What do you consider to be the main drivers for non-compliance to date?*  
*b) What steps are taken to encourage compliance with the guidance?*  
*c) What steps have been taken to evaluate the effectiveness of the guidance approach? Are changes planned in future, e.g. a move from guidance to rules?*

To incentivise compliance, IPReg's Guidance includes links to a substantial amount of research which shows that providing better information about price and services is likely to have commercial advantages for law firms. All firms and attorneys are welcome to adopt the Guidance, however it applies specifically to firms (including sole traders) that advise individual consumers and small businesses (of up to 10

employees) on IP-related matters. We have made clear that firms should analyse their client base and decide whether the Guidance applies to them. The Guidance sets out the outcomes that registrants should be seeking for individual consumers and small businesses and that information that is provided must be sufficient, reliable and presented in ways that are relevant to consumers and small businesses.

In due course, as we move to the more detailed stages of our review of regulatory arrangements, we will ask our registrants whether they have found the Guidance useful, whether it applied to them, how they have implemented it and what their views would be on moving to rules rather than Guidance. However, our current view is that it would be disproportionate to introduce rules (and therefore increase providers' costs), particularly because the LSB's research has not shown that the rules that have been introduced have had the desired effect.

- 6) *If possible, to illustrate your responses to the questions in the CFI on transparency please provide examples of good and bad implementation of transparency of price/service/quality/redress/regulatory status by providers.*

IPReg has no comment to make on this question.

#### **Legal Choices: question supplementing Q4 of the CFI**

- 7) *What are your views on the future of the Legal Choices website?*  
*a) What key challenges has this faced to date?*  
*b) What funding and governance arrangements are most appropriate going forwards?*

Given the uncertainty about the impact on our registrants of the pandemic (and therefore IPReg's main source of income from practising fees), the key challenge will be whether the current level of investment can be sustained over the next 2-3 years.

The legal regulators have drafted a Summary Report about Legal Choices covering the three-year period to October 2020. We refer the CMA to that report to see the successes and challenges of Legal Choices to date.

#### **Quality indicators: question supplementing Q5 of the CFI**

- 8) *What further analysis would be most helpful to develop an understanding of what type of quality indicators consumers find useful? What are the main barriers to the successful implementation of quality indicators?*

Further analysis/research should focus on identifying quality indicators in areas where the risk to consumers is greatest. Ideally any indicators should be general ones and common across the legal sector (e.g. responsiveness to enquiries) rather than trying to develop indicators that are specific to each of the different regulated sectors (because the latter approach is likely to take a significant amount of time). For the avoidance of doubt, we do not consider that publication of first tier complaints data at the level of an individual firm/sole trader would provide a reliable indication of quality to consumers, particularly if the number of complaints is small.

Research would also be useful to understand whether consumers would actually use/value the equivalent of Checktrade or Trustpilot when choosing an adviser. Resistance to implementing quality indicators is likely to increase if they are overly complex and/or introduce significant costs for registrants. Therefore research should also be conducted into the likely cost of introducing a legal services equivalent of these sites (which we understand are funded by the businesses themselves through subscriptions). A detailed, evidence-based impact assessment should also be carried out to evaluate whether mandating such schemes would be proportionate, particularly for small firms/sole traders.

## **DCTs: questions supplementing Q6 of the CFI**

9) *Is there more that regulators could do to encourage the development of DCTs?*

IPReg has no comment to make on this question.

10) *To what extent are providers engaging with DCTs?*

*a) Has this improved since the market study and if not, why not?*

IPReg has no comment to make on this question.

## **The regulatory framework: questions supplementing Q11-Q13 of the CFI**

11) *What are the main options for short-term regulatory reform that requires no, or limited, legislative amendment?*

*a) What are the key advantages and disadvantages of each?*

*b) What issues would remain without longer term reform?*

This is a very important issue and one which would undoubtedly benefit from further discussion between the CMA and the regulators (individually and collectively). In the very limited time available to respond, our initial thoughts are:

- We do not consider that a review of the reserved legal activities by the LSB can be conducted in a short period of time and therefore question whether this proposal is useful. When the LSB previously tried to introduce a new reserved legal activity, the project took a very long time (not least because of the process set out in the Legal Services Act 2007) and was ultimately unsuccessful. There is nothing to suggest that a review of all the reserved activities can be conducted at speed. In our view, it would be preferable for the LSB to act on the CMA's recommendation in its [Regulation and Competition Report](#) that regulators should:

*"carry out strategic, forward-looking reviews of regulation. These should seek to evaluate the external factors that could have an important impact on how markets evolve in the future; to identify potential sources of disruption whether from inside or outside of those markets; and, assess how regulation might need to change and adapt to accommodate such changes."*

- If the LSB is unable to conduct this analysis, we consider that it would be beneficial for the CMA to do so as part of its current review, extending the timescale for its completion if necessary.
- Conducting this type of review is likely to identify measures that can be removed/changed/introduced to deliver effective change that can promote competition and optimise consumer outcomes in the longer term. We consider that this is more likely to lead to successful outcomes for competition and consumers than an inevitably lengthy process of reviewing the reserved legal activities.

12) *What are your views on the options for extending redress to customers of unauthorised providers, such as extending access to LeO, or industry run 'kite schemes' requiring that providers direct consumers to ADR schemes?*

We suggest that any proposal to extend redress should be targeted at activities that pose the greatest risk to consumers, rather than a blanket requirement on all unauthorised providers for all activities. The analysis of risk in this context must be evidence-based. There must also be a full analysis of the cost of introducing new requirements.

We note recent [press reports](#) about the Legal Ombudsman's caseload and therefore question whether it has the capacity to take on additional sectors at the moment.

- 13) *What are the key emerging regulatory challenges, for example with respect to Lawtech?  
a) To what extent can these be addressed under the existing regulatory framework?*

Key challenges seem to be:

- The extent to which the underlying algorithms are understood, correct and do not introduce bias;
- Whether regulation can keep pace with developments in Lawtech in order to assess the potential for consumer detriment;
- The absence of an agreed approach to (or framework for) assessing potential consumer detriment (i.e. identifying if regulation may be needed);
- If regulation is needed, how it can be introduced without stifling innovation and disruption.

- 14) *What evidence is available on the experiences of consumers of unauthorised providers?*

IPReg has no comment to make on this question.

#### **Question supplementing Q14 of the CFI**

- 15) *Is there any more work that can be done within the existing regulatory framework to strengthen regulatory independence?*

We suggest that the new IGRs should be given another 2-3 years to see whether they have been successful in practice before this issue is re-visited.

#### **Question supplementing Q15 of the CFI**

- 16) *Are there remaining areas where there is scope to significantly reduce regulatory costs?  
a) If so, what plans are in place to tackle these?*

IPReg is concerned that a number of measures that the LSB is considering (such as more statutory guidance, new statutory rules and/or statements of policy) are likely to increase regulatory costs. In addition, the extent of this additional regulation reduces significantly the ability for front line regulators to remove or reduce regulation and for legal services firms to innovate in the way they provide their services.

In addition to our suggestion for a strategic, forward-looking review of regulation across the sector, we would encourage the CMA to consider whether it should recommend repealing the additional requirements that the Legal Services Act 2007 (the Act) imposes on ABS firms. In particular the requirements in Schedule 13 to the Act impose significant costs on new entrants and may be deterring some entry altogether.

The CMA may also wish to consider whether the current market for PII is also having a deterrent effect on potential new entrants. These entrants may have business models that 'traditional' PII insurers are not familiar with and their premia may therefore be higher than those for incumbent providers with more familiar structures. The CMA may also wish to consider what changes legal regulators could make to their PII requirements in order to reduce costs without significantly impacting consumer protection.