



Introduction

1. The Office for Legal Complaints (OLC) welcomes the opportunity to contribute to the Competition and Markets Authority (CMA) review of the legal services market.
2. The Office for Legal Complaints (OLC) is the oversight body for the Legal Ombudsman which was established by the Legal Services Act (2007). The Ombudsman's role is two-fold: to resolve disputes between people who have received a legal service and their lawyer(s), and to share insight and learning with the profession, regulators and policymakers to allow the legal services sector to develop and improve.
3. This response will focus both on the merits of extending regulation to unauthorised providers, and how the Legal Ombudsman may be able to support this work. Since the Legal Ombudsman was created in 2010 it has consistently highlighted issues of consumer confusion about the sector, and with the publication of ombudsman decision data in 2012 took a lead in being transparent with their data and decisions. This response will therefore take the opportunity to share and draw on the transparency work that has been developed since the 2016 review.
4. Overall the OLC considers that, while the sector has taken positive steps to ensure information on price and complaints processes are now more widely available, more needs to be done to produce quality indicators for the sector, which will over time enable consumers to make more informed choices. However from our perspective it does appear that there is a lack of shared vision about where this work is going and it may be that a coordinated approach is required to take this forward. The OLC is committed to supporting this work.
5. The OLC is also committed, should funding allow, to working with others in the sector to establish how regulation and redress can be extended to those in the unauthorised sector. There is a sufficient body of work and research which establishes that the current differentiation between regulated and unregulated providers is not understood by consumers and that the sector must work to close this gap. The response below considers some practical questions and ways forward for this work.

Transparency and competition in the legal sector

Q.5 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?

6. The Legal Ombudsman is committed to using its data to support transparency and consumer choice in the legal sector.
7. Following the last CMA review the Legal Ombudsman undertook the Better Information research¹ alongside the Solicitors Regulation Authority. The aim of the research was to gain a clearer understanding of how consumers might use quality indicators and how it could influence their choice of provider.
8. As part of the research consumers² were asked to review the Legal Ombudsman decision data to see whether they understood the data and how it would influence their decision-making process.
9. The findings showed that overall consumers came to the right conclusion about a provider's service, although they may not have interpreted the data completely accurately. Across all the research methods used in the report it was found that consumers value the right information at the right time, and were willing and able to weigh up price and regulatory protections information if it was available.
10. As a result of the research the Legal Ombudsman has begun publishing its ombudsman decision data in a different format to aid consumers' understanding. This is available on the Legal Ombudsman's website³.
11. The Legal Ombudsman is committed to going further and identifying other ways that information can be shared and published. The Transparency and Reporting Impact response paper⁴ sets out the options that are being pursued, from refining existing data to publishing full ombudsman decisions.

¹ [Better Information research](#), Economic Insight, 2018

² An online complaints exercise with 1,899 consumers representative of England and Wales who were provided with ombudsman decision data and asked to rank providers.

³ <https://www.legalombudsman.org.uk/information-centre/data-centre/ombudsman-decision-data/>

⁴ [Transparency and Reporting Impact response, 2020](#)

12. It is interesting to note that through the course of this work the Legal Ombudsman's understanding of the role and use of complaints information has developed. It continues to be important to provide information about complaints as part of quality indicators, but the extent to which consumers will engage with complaints information needs to be considered. This is because the Better Information research also highlighted that access to redress was less important in a consumer's choice of service provider than factors such as reputation (55%) and costs (44%), which indicates that this information may be less valuable to consumers at the point of decision-making (though of course it becomes important when a problem occurs which is discussed in the next section).
13. However, publishing more information (ie annual reviews of firms or full decisions) is likely to influence the behaviour of legal service providers and encourage both better customer service and complaints handling. This is an area the Legal Ombudsman will continue to develop in the future.
14. A number of stakeholders' (both regulators and representative bodies) basis for concerns about the Legal Ombudsman publishing information, such as annual reviews and full ombudsman decisions, was the lack of contextual data. Alongside this there is a lack of willingness to engage and look at ways to provide this information and context.
15. Contextual information would enable consumers to interpret complaints data (and other quality indicators) in a more meaningful way, but will require a more coordinated approach to develop this further.

Q.6 To what extent are DCTs (Digital Comparison Tools) 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?

16. The Legal Ombudsman is aware that there are a number of DCTs for the legal services market. While these have not been reviewed in detail, over the years a number have stated that they use ombudsman decision data. It is unclear how this data is used to rank providers.
17. While consumers decision-making focuses on areas such as price and reputation of service providers, if DCTs are to be successful it is important to have access to a core group of quality indicators and information which helps consumers to contextualise and understand that data. For example the ombudsman decision data does not necessarily point to poor service, and even when it does one complaint for a firm that is undertaking thousands of transactions per year may not be cause for concern.

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

18. The Legal Ombudsman is not in a position to comment on the effectiveness of the transparency measures as a driver of competition. However it is noted that complaints about costs have consistently remained around 15% of overall complaints made over the last three years. Therefore they do not appear to have been affected by recent price transparency changes.

Extending redress and regulation

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?

19. In its 2016 review of the market the CMA already concluded that consumers are unaware of the regulatory status of their provider, however it is worth briefly setting out the recent research on this point.
- a. In the Better Information research⁵ noted above, researchers undertook a literature review highlighting that 57% of consumers thought that all lawyers are regulated. The survey of consumers showed that access to redress was less important in consumer's choice of service provider than factors such as reputation (55%) and costs (44%).
 - b. This is supported by the Legal Service Consumer Panel's (LSCP) annual tracker surveys. In 2018⁶ the tracker survey showed that 49% of the general population were confident that consumer rights would be protected if something went wrong, and ongoing surveys have highlighted that reputation (81% in 2020) and cost (72% in 2020) are the most important factors in choosing a provider.
 - c. Finally, the LSCP research on quality indicators in 2020⁷ again highlighted that consumers assumed their provider was regulated.
20. There is therefore a significant body of research which supports the argument that consumers assume that all legal providers are regulated and that they are therefore protected.

⁵ [Better Information Research](#), Economic Insight, 2018

⁶ [Legal Services Consumer Panel tracker survey](#), 2018

⁷ [Consumers feedback on quality indicators in legal services](#), 2020

21. In the experience of the Legal Ombudsman this may be because the services for which someone would employ a legal service provider (such as purchasing a property, administering an estate, or bringing a claim) require some interaction with the state and/or court system. This therefore seems to mean that people view the legal sector and the provision of legal services as a quasi-state function, and therefore assume protections must exist.
22. There is therefore a question as to whether the sector should aim to address or minimise consumers' knowledge gap, or whether more proactive steps should be taken to ensure the safety net of regulation and redress exists for all users of legal services.
23. Some have argued recently for greater investment in public legal education as a way to build consumer understanding of legal services⁸. While the Legal Ombudsman supports initiatives to raise consumer awareness of the sector and provide more information about protections and quality indicators, it does not consider that reducing the knowledge gap will provide consumers with sufficient protections, particularly if their choice of legal provider continues to be based on cost and reputation.
24. Taking this further it is important to think about the current regulatory and redress system from a consumer and public interest perspective.
25. Access to the ombudsman is currently determined through professional title and those who are allowed to undertake the reserved activities which are set out in the Legal Services Act. However, as has been set out in detail in the UCL review⁹ this is arguably addressing the problem from the wrong perspective, and the level of risk, and impact on public interest should be the determining factor for access to redress.
26. If redress is considered from this viewpoint then it becomes difficult to argue for the distinction between regulated and unregulated providers to be maintained. If sufficient risk exists for a solicitor who is writing a will, administering an estate, or providing immigration or employment advice then arguably the same risks exist for those unregulated providers, and the same protections should be in place.

⁸ [Legal Needs survey, January 2020](#)

⁹ <https://www.ucl.ac.uk/ethics-law/publications/2018/sep/independent-review-legal-services-regulation>

Understanding the nature and size of the risk

27. The Legal Ombudsman considers that the focus should be on the nature of the risk, not the size of the risk. It is of course vital to fully understand the number of unauthorised providers operating in the market and potential complaint levels. But if there is risk, even to a small group of consumers the principle remains and access to redress should be extended to these areas.
28. Extending redress to the unregulated sector is a move which is likely to be supported by many of the professional bodies. These are bodies which approached the Legal Ombudsman in its early days of operation to discuss setting up a voluntary jurisdiction, as they saw the merits of their members being treated comparably to other parts of the legal sector. On this basis data is available which looks at the size of the unregulated market although it dates from a number of years ago.
29. It is also important to consider which areas of the unregulated sector might fall under an extended regulatory and redress framework: will-writing, paralegals and immigration are often considered, however there may be merit in looking more broadly (which would encompass general legal advice and special bodies such as law centres and trade unions) to gain a full understanding of the extent and nature of possible detriment which exists.

Understanding the preferred model

30. The Legal Ombudsman's jurisdiction is set out in the Legal Services Act 2007 and confers a range of powers on the ombudsman and requirements on service providers.
31. Regulated service providers are required to have a first-tier complaints process, signpost to the service and cooperate with Legal Ombudsman investigations and decisions. Failure to undertake these requirements gives the ombudsman the power to make misconduct referrals or take enforcement action (whether to obtain evidence or to ensure a remedy is complied with).
32. These requirements and powers ensure a viable complaints process and one which has a positive impact for both consumers and the wider sector.
33. However, there should not be an assumption that the current ombudsman model and powers are appropriate for the unregulated sector. It is important to understand the nature and complexity of the likely complaints in order to design an appropriate model that works for both consumers and service providers. It is important for a review of existing complaints to be undertaken in order to assist this and the Legal Ombudsman would be happy to work alongside relevant bodies and providers to do this work.

34. Developing an appropriate model would also require a consideration of the appropriate compensation fund and professional indemnity insurance models. The Legal Ombudsman has spoken recently about the gaps which exist in the current redress scheme, and where differing standards and rules between providers mean that some consumers ultimately do not get the redress they should. For example a refund of fees is not part of the minimum terms and conditions for solicitor's indemnity insurance and will usually fall outside the compensation fund unless it is a situation of dishonesty. Or a remedy which should be due to a consumer may fall outside the insurance excesses for one regulator but may not have done if their provider was under a different regime. It is important that lessons are learned which can be applied to any future arrangements for unauthorised providers.

Single register

35. Earlier we noted that there are two ways to address the gap in consumer protection, either by building the knowledge of consumers or providing additional protections.
36. If the decision is made to extend regulation and redress to the unregulated sector then there is merit in developing a single register as part of this work. This would have the benefit, for those interested consumers, of providing certainty for consumers about the level of regulation, and protection available to them.
37. Over time, this could build up to a resource which draws together quality indicator information and general resources about using legal services.

Information gateway for the sector

38. Finally, in considering the experience of consumers using legal services it would be useful to review the suggestion of an information gateway for the sector which has been raised in the UCL review.
39. The Legal Ombudsman deals with a high level of contacts at the front-end of its service each year which is disproportionate to the level of cases accepted for investigation. It usually accepts 6-7,000 cases per year and the level of contacts in recent years have been between 70,000 and 110,000.
40. It is known that within these contact figures a significant level will be referrals to other regulators or bodies such as the Citizens Advice Bureau. It is also known that regulators undertake a similar function, and that there are situations where consumers are bounced around the system because organisations aren't always sure who is best placed to deal with something.

41. It would be interesting to establish whether this is a significant issue, and whether there are efficiencies that can be gained from a streamlined approach. Again the Legal Ombudsman would be willing to support this work, whilst noting that its jurisdiction and funding will limit the time and effort that can appropriately be committed to this..

Conclusion

42. The legal sector has taken important steps in recent years to take forward the transparency agenda. However, going forward, there needs to be a common agreement about the final end point for this work and the OLC would support a more coordinated approach to this.
43. The OLC recognises that the Legal Ombudsman has much to do itself to support this work, within the limits of its current resources. The ombudsman is working within a standstill budget this year, and aspects of its service have been significantly affected by Covid-19 in recent months. These are challenges that will have to be at the forefront of future work going forward.
44. The OLC has previously been concerned about the lack of redress available to consumers of unauthorised providers and welcomes the suggestions in the UCL review and a shift in the sector to acknowledge the importance of this work. The OLC is committed to the Legal Ombudsman working with the CMA and other bodies to understand how it can support this going forward, should funding allow this.

For any questions about this response please contact [REDACTED], External Affairs Team at support@legalombudsman.org.uk