

Review of the legal services market study in England and Wales

An assessment of the implementation and
impact of the CMA's market study
recommendations

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Summary

1. This report sets out the findings of a three-month review (the Review) undertaken by the Competition and Markets Authority (CMA) to assess the extent to which its recommendations in the 2016 Legal Services market study (the Market Study) have been taken forward and the impact that these changes have had to date. It follows our commitment in the final report of the Market Study to carry out such an assessment.¹
2. The Review is divided into two parts. The first assesses the impact of the Market Study recommendations aimed at increasing the transparency of price, service and quality information to enable consumers of legal services to make informed choices, the sort of choices that help to drive effective competition. The second assesses the impact of the Market Study recommendations concerning reform of the regulatory framework. For each part, the Review considers progress since the Market Study and sets out the CMA's recommendations for how the interventions may be further developed and monitored in future by the Legal Services Board (LSB), working with the regulatory bodies, and the Government.²

Improving consumer outcomes by increasing transparency

3. The Market Study found that there was not enough information available on price, quality and service to help those needing legal support to choose the best option for them. This limited transparency made it more difficult for consumers to compare providers, thereby weakening competition. This may have contributed to the large differences in the prices charged by different providers for the same services, meaning that some consumers were likely to be paying more than they should. Information shortcomings, including limited consumer understanding of the sector and the lack of transparency offered by providers, also led to some consumers believing they could not afford legal advice and resorting to doing nothing or attempting to resolve their issue themselves. In addition, the Market Study found that consumers could be losing out in the long term due to limited innovation in the provision of legal services.

¹ See CMA (2016), [Legal services market study: Final report](#). ('Market Study').

² The LSB is the oversight regulator for all approved legal services regulators in England and Wales. The regulatory arms of these other regulators are referred to as the 'regulatory bodies'. As now defined in Rule 2(1) of the LSB (2019), [Internal Governance Rules 2019](#), a regulatory body is one which has been delegated the regulatory functions of an approved regulator. The regulatory bodies are equivalent to the 'frontline regulators' referred to in the Market Study. See paragraphs 2.13 to 2.15.

4. The CMA made several recommendations to the regulatory bodies to improve transparency, including that they:
 - (a) introduce rule changes requiring legal services providers to publish information on price, service, redress and regulatory status ('price and service' information);
 - (b) promote the provision of information on quality by legal services providers and issue guidance for providers on engaging with online reviews;
 - (c) make available relevant information on legal services firms and professionals to consumers, digital comparison tools (DCTs) and other intermediaries; and
 - (d) review and develop the content of the Legal Choices website to enable consumers to navigate the sector more easily and actively promote it through effective marketing to make consumers aware of it.
5. The Market Study anticipated that these measures, taken together, would deliver a necessary step change in transparency, competition and consumer engagement in the legal services sector. However, the CMA recognised that the measures, once implemented, would take time to have an impact on sector outcomes, and might need to be refined or added to progressively over time to enable consumers to make the sorts of informed choices that drive competition.
6. Since the Market Study, all of the regulatory bodies have taken steps to introduce minimum requirements for price and service transparency, mostly through the adoption of regulatory requirements. The result has been a very substantial increase in the availability of such information. For instance, the LSB's recent prices research commissioned jointly with the CMA and Ministry of Justice (MoJ)³ shows that the proportion of providers surveyed that displayed information on prices online has increased from 11% in 2017 to 73% in 2020. There is also some evidence that more consumers are able to locate the information and are finding it useful. Recent research by the Solicitors Regulation Authority (SRA) found that 67% of recent users of solicitors looked at a provider's website before engaging a provider.⁴ However, the Legal Services Consumer Panel (LSCP)'s 2020 tracker survey

³ LSB, CMA (2020), *Prices of Individual Consumer Legal Services in England and Wales 2020: Wave 3 of a survey of prices for commonly used legal services*. ('LSB Prices Research'.)

⁴ SRA (2020), *Better Information in the Legal Services Market – Year One Evaluation of the Transparency Rules*. ('SRA Year One Evaluation'.)

found that only 6% of recent users of legal services first heard about price from the provider website.⁵

7. It is important that consumers of legal services have access to information on price, service and quality before purchase so that they can make informed choices. This information is a necessary starting point for allowing consumers to make the sort of informed choices that drive competition. Therefore, we are encouraged by the marked improvement in the availability of price and service information since the Market Study.
8. These improvements in transparency have only recently come into effect, with new rules being implemented by the regulatory bodies from late 2018 onwards. Based on the evidence to date, there has been a limited impact on the intensity of competition between providers and on sector outcomes. In particular, the recent LSB Prices Research finds no evidence yet of a significant change in the level of price dispersion since the implementation of price and service transparency measures and there is limited evidence of increased shopping around. We would expect the current measures to have greater impact over time. However, to ensure they have the best chance of success, we also believe that it is important for the LSB and the regulatory bodies to continue to build on the reforms so far. Furthermore, we believe they should address the other aspects of the transparency remedies that the CMA outlined in its Market Study that have not progressed as much as we would have liked, such as providing more information on quality.
9. First, while the regulatory bodies have all taken steps to introduce greater price and service transparency, levels of compliance with the transparency rules and guidance put in place by some regulatory bodies appear to be fairly low. It is important that regulatory bodies take action to ensure high levels of compliance.
10. Second, the current rules are generally principles-based, and therefore allow providers a significant amount of flexibility in how they provide price and service information to consumers. While this flexibility has some benefits – in terms of allowing adaptation over time or to different contexts – it may make it more difficult for consumers to compare providers. Regulators should now aim to improve the clarity and comparability of information through better promotion of best practice, developing their approaches to monitoring and compliance and through refining the rules and guidance now in place.

⁵ LSCP (2020), [How consumers are choosing legal services](#). ('LSCP Tracker Survey 2020'.) This is the most recent in a series of tracker surveys carried out annually by YouGov plc on behalf of the LSCP in two parts, on a sample of people who have used legal services in the last two years.

11. Third, several stakeholders submitted that price information alone, without corresponding information on service quality, may not be sufficient to drive effective competition. There has been limited progress by the regulatory bodies on the development of information on the quality of legal services providers in response to the Market Study recommendations. In line with our recommendations, the regulatory bodies have issued guidance to providers on engagement with online reviews. However, only a few providers have adopted their use. Similarly, and unsurprisingly given the limited engagement by providers, consumers appear to have limited trust in reviews and only engage with them to a very limited extent. The LSB is now considering a range of options on quality indicators, following roundtable discussions with the regulatory bodies, the Legal Services Consumer Panel (LSCP), the CMA and the Legal Ombudsman (LeO). This is a key area where further progress is needed, and where we think that the LSB should take the lead in coordinating action by the regulatory bodies.
12. Fourth, there is scope for further measures to enable consumers to engage with the price and quality information that is available online. Intermediaries, such as DCTs, have a key role here. To date, the growth of DCTs in the legal services sector has been very limited and surveys suggest that consumers are using them only to a limited extent. Improvements need to be made to better facilitate the role of DCTs in the sector, including to address the lack of standardised pricing information, limited information on quality indicators and limited engagement with online reviews by both providers and consumers (including the resolution of issues around consumer trust). In addition, while a number of regulatory bodies have introduced digital registers identifying regulated entities and professionals, these only cover basic regulatory information and, as yet, there is no single source for this information covering all regulated legal services as envisaged by the Market Study.
13. There has been progress with the Market Study recommendation to redevelop Legal Choices as a tool for consumers to navigate the sector more easily. In particular, there has been some success in attracting website visits through digital marketing activity and the cross-promotion of Legal Choices by other consumer organisations. However, many of the stakeholders that responded to the call for inputs (CFI) to this Review suggested that more could be done in this area and some suggested that the content on the website could be further improved.
14. Fifth, while we have provided regulators with some suggested approaches and have identified relevant considerations to take into account when developing price, service and quality information, we have not carried out a detailed review and as such we recognise that our recommendations require further development. In order to support the implementation of measures

based on our recommendations, we think that there would be significant value in regulators conducting consumer research and testing to determine what solutions are the most appropriate, and to adapt their interventions over time based on ongoing testing and trialling.

15. Finally, it is clear that material differences in the characteristics of different legal services mean that the scope for greater transparency to drive competition varies across those legal services. Some legal services, such as conveyancing, are relatively commoditised and hence particularly amenable to comparison by consumers across price and quality dimensions. For other legal services, providing clear and transparent information that is sufficient to enable a consumer to judge the likely cost and quality of that service in advance may be more difficult.⁶ In our view, there is greater scope to tailor the transparency recommendations to account for these differences across different legal services. It is, of course, important to achieve a base level of transparency across the sector and there has been very material progress towards this objective. However, we consider that it is now appropriate for the regulators to focus their efforts on enhancing transparency further on those legal services where there is scope for increased transparency to have the greatest impact on competition and sector outcomes.
16. Our recommendations aim to build on the progress made by the regulatory bodies to date and to address the factors described above which in our view have been limiting the impact of the previous recommendations on competition and sector outcomes. The aim of these recommendations is to provide a high-level framework to be overseen and developed further by the LSB and implemented by the regulatory bodies. More detail is provided in Chapter 4 of this report.

⁶ For example, because the full scope of the work required may only become apparent as the legal process evolves. An example would be contentious work, which can vary significantly in scale and complexity.

Recommendations on transparency	Specific actions
Ensure that there are high levels of compliance with the minimum standard of transparency across the legal services sector	<ul style="list-style-type: none"> • Take action to ensure compliance with the current rules on minimum standards of transparency • Review the scope of services covered by the minimum level of transparency • Review the effectiveness of a guidance approach and introduce rules if levels of transparency are low
Improve the clarity, comparability and prominence of disclosures on providers' websites in relation to price, service, redress and regulatory status	<ul style="list-style-type: none"> • More actively promote best practice in meeting the regulatory rules • Develop monitoring and compliance within the current rules • Enhance the rules for price and service transparency • Drive improvements in product standardisation and pricing
Improve the provision of information on quality of legal services providers to consumers	<ul style="list-style-type: none"> • Identify, design and implement effective quality indicators • Measures to improve engagement with customer reviews
Develop initiatives to help consumers engage actively with information on price, service and quality	<ul style="list-style-type: none"> • The introduction of triggers or prompts to encourage shopping around • Improving access to regulatory information, including through the development of a single digital register • Further development of the Legal Choices site • Encouraging participation by DCTs
Develop an ongoing programme of consumer research and testing to determine the information on price, service and quality that is most useful for consumers	<ul style="list-style-type: none"> • Testing of best practice guidance and formats for price and service transparency to consumers • Testing consumers' understanding of questions and prompts used to gather feedback • Testing to measure the impact of interventions • Testing with vulnerable consumers

Regulation

17. The Market Study also found concerns with legal services regulation, stemming from the way that the regulatory framework is structured around professional titles and reserved activities, rather than according to the risk profile of the activities being undertaken. The Market Study found that this has the potential to restrict competition unnecessarily or lead to unnecessary costs for some legal services. For others it may leave a regulatory gap, where consumers are unaware of the risks and lack of protection they face when using unauthorised providers. The Market Study also identified that the complex regulatory structure of multiple regulatory bodies overseen by the LSB may lead to practical difficulties in coordinating regulatory changes. It also highlighted residual concerns about the independence of regulation from the representation of the legal professions.
18. To address these concerns, the Market Study included a series of recommendations to target regulation at legal services activities that posed the greatest risk to consumers, rather than applying regulations solely on the basis of title and reserved activities. These included a recommendation to the MoJ to conduct a review of the regulatory framework, based on a set of principles that were articulated in the Market Study. That review would consider whether wholesale reform was necessary to ensure that regulation was targeted to risk and that issues with the complex regulatory structure were addressed. The Market Study also included more short-term recommendations for the MoJ to consider the case for extending redress to consumers using unauthorised providers; to address the evidence gap we identified by working with other bodies to build evidence on the unauthorised part of the sector; to undertake its planned review of regulatory independence; and for the regulators to take actions to reduce regulatory costs.
19. There has been little progress with these recommendations to date. The Government has acknowledged the case for reform, but a review of the Legal Services Act 2007 (the Act) has not taken place.⁷ Our recommendations to review the extension of redress or to systematically gather new evidence on the unauthorised sector have only progressed to a limited extent. The Government has not undertaken its planned review of regulatory independence, although the LSB has since undertaken work on strengthening the Internal Governance Rules (IGRs) that seek to ensure an adequate split between the regulators' regulatory and representative functions.

⁷ As the Government indicated in its response to the Market Study, it did not consider that it was the right time to consult on legislative change, and it further considered that there was scope to make more progress within the existing framework. See [CMA's Legal Services Market Study - Government Response, December 2017](#).

20. As a consequence, the issues we identified in the Market Study largely remain. In our view there remains a strong case for wholesale reform. If anything, it is stronger now than at the time of the Market Study. This is because there are signs that the unauthorised sector has continued to grow through developments in lawtech⁸ and will continue to do so in the future, potentially accelerated by the trend towards greater remote service provision driven by the coronavirus (COVID-19) pandemic. The increasing significance of the unauthorised sector exacerbates the issues arising from a regulatory framework that is aligned with professional titles rather than activities. The need to address this will become more urgent over time.
21. Since the Market Study, the UCL Centre for Ethics & Law has undertaken an independent review of legal services regulation (the IRLSR), led by Professor Stephen Mayson.⁹ The IRLSR provides a detailed assessment of how an alternative regulatory regime could work. We are broadly supportive of its proposals, which build on the concerns we identified in the Market Study.
22. In our view the main question now is how to make progress towards the goal of a more risk-based regulatory framework. Our preferred approach would be for the MoJ to carry out a wholesale review in order to reform the Act. However, we believe that in the meantime, there is merit in taking shorter-term steps which deliver reform in stages, where these are consistent with a long-term strategy of moving towards a more risk-based approach.
23. In practice, we think there are at least three actions which could be taken within the existing regime. The first is to address the regulatory gap for unauthorised providers by creating a mandatory public register of unauthorised providers for certain legal services and mandating that these providers offer redress options for consumers. Such a registration model is a relatively low cost and proportionate way of addressing the regulatory gap. It has the additional benefits of providing a framework upon which additional regulatory protections could be added if required and allowing more evidence to be gathered on the potential for harm from using unauthorised providers, which would inform the approach to further reform over time.
24. The second is that the LSB should carry out a review of the reserved activities to better align them to risk. This could reduce the restrictions and

⁸ For the purposes of this report, in line with the [IRLSR](#), lawtech is defined as '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.'

⁹ The IRLSR was undertaken by the Centre for Ethics & Law in the Faculty of Laws at University College London. It was intended to explore the longer-term and related issues raised by the CMA Market Study and its recommendations, and therefore to assist government in its reflection and assessment of the current regulatory framework.

unnecessary costs on lower-risk activities, by allowing certain activities to be removed from reservation or for their scope to be redefined to better align with risk. If this review were carried out alongside the introduction of a register, activities removed from reservation could be added to that register in order to safeguard a continued degree of redress for such activities. This review would also help in clarifying what a more risk-based system focused on activities might look like.

25. Finally, on the independence of regulation from professional representation, we understand that significant improvements have been made as a result of the revised IGRs. While we still consider that wholesale reform may be the clearest and most comprehensive way to deal with this issue, we recommend that the LSB evaluate the impact of the revised IGRs before deciding on whether further measures are required and, if so, what they might be.

Recommendations on regulation

We recommend that the MoJ should undertake the review of the current framework for legal services, as recommended in the Market Study.

As part of developing the long-term strategy for the regulation of legal services, we recommend in the short term that:

- The MoJ should create, or empower the creation of, a mandatory public register for unauthorised providers.
- The LSB should carry out a review of the reserved activities.
- The LSB should evaluate the impact of the revised IGRs before deciding on further action.

2. Introduction

- 2.1 The legal services sector is of fundamental importance in underpinning a well-functioning society and economy. Individual consumers and small businesses often use legal services providers at critical points in their lives. The advice they receive in these situations can have major personal and financial consequences. There is also a core public interest in supporting the rule of law; protecting the legal rights of individuals; enshrining the independence of the legal profession; and ensuring access to justice so that individuals may participate equally in society. Alongside this, the legal services sector makes a significant contribution to the UK economy, with a turnover of around £35.6bn in 2018.¹⁰
- 2.2 Given the importance of a well-functioning and competitive legal services sector, the CMA carried out a Market Study into the supply of legal services in England and Wales in 2016.¹¹
- 2.3 The Market Study was prompted by concerns that:
- (a) consumers were not getting a good deal from legal services providers;
 - (b) a high proportion of consumers were not seeking to purchase legal services when they had legal needs ('unmet demand'), driven in part by the high cost of legal services; and
 - (c) regulation might be dampening competition.
- 2.4 The study examined three themes:
- (a) whether consumers can access, assess and act on information about legal services so that they can make informed purchasing decisions and thereby drive competition for the supply of legal services;
 - (b) whether information failures result in consumer protection issues that are not being adequately addressed through existing regulations and/or redress mechanisms; and

¹⁰ See the Office for National Statistics (ONS) (May 2020), [Non-financial business economy, UK and regional \(Annual Business Survey\): 2018 revised results](#), 68.1 Legal activities, Section M. The wider economic contribution may be considerably higher: research commissioned by the Law Society from KPMG estimates that legal services were worth nearly £60bn gross value added to the UK economy in 2018 and accounted for 1.7% of the total UK labour force. See KPMG (2020), [Contribution of the UK legal services sector to the UK economy: A report for the Law Society](#).

¹¹ See the [Market Study case page](#).

- (c) whether regulations and the regulatory framework go beyond what is necessary to protect consumers and weaken or distort competition for the supply of legal services.

2.5 The Market Study identified a number of concerns relating to these themes, concluding that competition in the sector was not working well. The CMA recommended a package of measures to address these concerns (Figure 1), with the intention that reforms could be introduced progressively over time.

Figure 1: CMA Market Study recommendations – Making competition work through progressive improvements



Source: CMA

- 2.6 The CMA also committed to reviewing in due course the extent to which the recommendations had been taken forward and the impact that these changes had had on competition. This Review follows on from that commitment.¹²
- 2.7 In the intervening period since publication of the Market Study, in England and Wales:
- (a) The regulatory bodies have made progress particularly on the implementation of the price and service transparency recommendations by the CMA, as monitored and reported on by the LSB. A Remedies Programme Implementation Group (RPIG) was set up to take forward the CMA's recommendations to regulatory bodies.
 - (b) Professor Stephen Mayson at the UCL Centre for Ethics & Law carried out the IRLSR, an independent review of legal services reform to explore the longer-term and related issues raised by the CMA Market Study and its recommendations, and therefore to assist government in its reflection and assessment of the current regulatory framework. The final report was published in June 2020.¹³
 - (c) There has been continued evolution in the sector, for example: a rapidly increasing number of Alternative Business Structures (ABSs); signs of growth in the unauthorised sector with emerging lawtech; and progress with measures to reduce regulatory costs and other regulatory requirements, including the removal of restrictions that prevented solicitors from operating in unauthorised firms.
 - (d) Most recently, COVID-19 has created new sectoral and regulatory challenges – notably a significant shift towards remote service provision – the longer-term implications of which are still unknown.
- 2.8 While the scope of the Market Study did not include Scotland, the CMA stated its intention to use the outcome of the Market Study to inform any future consideration of similar issues in Scotland and Northern Ireland.¹⁴ The CMA consequently launched a research project examining certain aspects of the

¹² It was originally envisaged that the Review would be undertaken within three years of completion of the Market Study. However, we delayed the Review by a year given that new regulatory requirements on price transparency for certain legal services only came into force from December 2018. As price transparency formed an important part of the remedies recommended by our Market Study, we felt that a short delay to the Review would be advisable to allow more time for these regulatory changes to take effect.

¹³ See Mayson, S (2020), *Final Report of the Independent Review of Legal Services Regulation: Reforming legal services: regulation beyond the echo chambers*. This is referenced throughout this report as the IRLSR.

¹⁴ The CMA decided to limit the scope of the Market Study because of the differences in the regulatory framework between Scotland, Northern Ireland and England and Wales. Furthermore, we took into account the fact that Scotland and Northern Ireland were at different stages of regulatory reform from England and Wales.

Scottish legal services sector in June 2019 which also built on the publication in October 2018 of an independent review of the regulation of legal services in Scotland, led by Esther Roberton.¹⁵ The CMA's report, published in March 2020, made a number of recommendations to address the lack of transparency of price and quality information which, as in England and Wales, had resulted in consumers facing barriers to shopping around effectively and providers having limited incentives to compete vigorously. Other recommendations were aimed at reducing the impact of regulation on competition. The CMA supported Roberton's proposal for fully independent regulation of legal services in Scotland.¹⁶ The CMA's report aimed to provide additional evidence to inform the Scottish Government's planned consultation on Roberton's proposals. This consultation remains pending as a result of the COVID-19 pandemic.

- 2.9 The CMA's research in Scotland found some similarities in the issues experienced by consumers in Scotland and consumers in England and Wales, hence while some of the recommendations were of a similar nature, they take into account differences in the regulatory framework and stage of regulatory reform between Scotland and England and Wales. For example, there are fewer regulators in Scotland, the degree of separation between the regulatory and representative functions is more limited than in England and Wales, and transparency guidance has not yet been introduced.¹⁷ Some of the CMA's findings in this Review, for example about improvements in transparency, are therefore likely to be relevant to Scotland; less so other recommendations such as those relating to the IGRs in place in England and Wales. Conversely, much of the rationale for independent regulation described by the CMA in its Scottish research applies also in England and Wales.
- 2.10 The Review, which is limited to legal services in England and Wales, draws on:
- (a) existing evidence, including research and monitoring reports by the LSB,¹⁸ LSCP¹⁹ and regulatory bodies including via the RPIG; and

¹⁵ See Roberton, E (2018), *Fit for the Future – Report of the Independent Review of Legal Services Regulation in Scotland*.

¹⁶ See CMA (2020), *Legal Services in Scotland Research*.

¹⁷ The Law Society of Scotland has issued guidance on price transparency. However, in light of the COVID-19 pandemic, the introduction of this guidance has been postponed until 31 January 2021. See the [Law Society of Scotland website](#).

¹⁸ The LSB is the oversight regulator for all approved legal services regulators in England and Wales. The regulatory arms of these other regulators are referred to as the 'regulatory bodies'. See paragraphs 2.13 to 2.15.

¹⁹ The LSCP is an independent arm of the LSB, established to provide independent advice to the LSB about the interests of legal services consumers.

- (b) views from stakeholders including regulatory bodies, representative bodies, government departments and legal services providers, gathered via responses to the CMA's CFI published on 9 September and (virtual) meetings. The CFI responses are available on the CMA's website.²⁰

2.11 The Market Study considered competition in legal services²¹ in England and Wales²² for individual consumers and for small businesses.²³ It found that small businesses tend to act in a similar way to individual consumers when purchasing legal services and hence experience similar problems in engaging with the legal services sector. Evidence provided to this Review continues to support this view. Thus, while the Review has focused on evidence in relation to the provision of legal services for individual consumers given that this is more readily available, we expect its conclusions are also broadly applicable to small businesses.

2.12 This report is structured as follows.

- (a) The remainder of this section provides a brief explanation of the structure of legal services regulation in England and Wales.
- (b) Chapters 3 and 4 set out, respectively, our findings and recommendations regarding the need for transparency measures to improve consumer outcomes (relating to theme 1 of the Market Study).
- (c) Chapter 5 sets out our findings and recommendations regarding the impact of the regulatory framework on consumer protection and competition (relating to themes 2 and 3 of the Market Study).

The regulatory structure

2.13 In England and Wales, under the Legal Services Act 2007 (the Act) the scope of regulation in the legal services sector is determined by reference to both:

- (a) a number of regulated professional titles (such as solicitors and barristers); and

²⁰ See [Review of the legal services market study in England and Wales](#).

²¹ The scope encompassed 'legal services' in a broad sense, including services that are subject to sector-specific regulation and those that are not, and services across a range of different legal areas such as conveyancing, wills and probate, immigration, family and employment law. We excluded criminal legal services from the Market Study because the issues that we considered were less relevant to them.

²² See footnote 14. Separately, as noted in paragraph 2.8, the CMA has since published research into legal services in Scotland in March 2020. See CMA (2020), [Legal Services in Scotland Research](#).

²³ In particular, small businesses with up to ten employees.

(b) the reservation of six legal activities (the ‘reserved activities’)²⁴ to providers who possess these professional titles.

2.14 Regulation can be directed both to individuals with these professional titles and to the entities that employ them (these are collectively termed ‘authorised providers’). Authorised providers are regulated in respect of **all** of their legal activities rather than only in respect of the reserved legal activities.

2.15 There are ten approved regulators²⁵ that cover different professions among the authorised providers and are overseen by the LSB.²⁶ Under the Act, each approved regulator is obliged to establish functionally separate regulatory arms, collectively referred to as ‘regulatory bodies’.²⁷ The regulatory bodies operate independently, but with varying degrees of separation from their respective representative bodies. Table 1 lists the current approved regulators and their regulatory bodies.²⁸

Table 1: Legal services regulators and the regulated professions

Approved regulator	Regulatory body	Profession
Association of Chartered Certified Accountants (ACCA). ²⁹ No separate regulatory body; all decisions relating to legal activities are delegated to the independently chaired Regulatory Board.		Chartered Accountants
Bar Council	Bar Standards Board (BSB)	Barristers
Chartered Institute of Legal Executives (CILEx)	CILEx Regulation	Chartered Legal Executives and Legal Executives
Council for Licensed Conveyancers (CLC). No representative functions.		Licensed Conveyancers
Association of Costs Lawyers	Costs Lawyer Standards Board (CLSB)	Costs Lawyers
Chartered Institute of Patent Attorneys	Intellectual Property Regulation Board (IPReg)	Patent Attorneys
Chartered Institute of Trade Mark Attorneys		Trade Mark Attorneys
Institute of Chartered Accountants in England and Wales (ICAEW). No separate regulatory body; all decisions relating to legal activities are delegated to the independently chaired ICAEW Regulatory Board.		Chartered Accountants conducting probate
Master of the Faculties. ³⁰ No representative functions.		Notaries
Law Society	Solicitors Regulation Authority (SRA)	Solicitors

Source: CMA

2.16 The regulatory framework is discussed further in Chapter 5.

²⁴ The reserved activities comprise: the exercise of a right of audience; the conduct of litigation; reserved instrument activities (conveyancing); probate activities; notarial activities; and the administration of oaths.

²⁵ As designated under Part 1 of Schedule 4 of the Act or designated under Part 2 of Schedule 4 to the Act.

²⁶ Some of the approved regulators are also licensing authorities, which means that they can license ABSs that provide reserved activities.

²⁷ As defined in Rule 2(1) of the LSB (2019), [Internal Governance Rules 2019](#), a regulatory body is one which has been delegated the regulatory functions of an approved regulator.

²⁸ In addition to the entities listed in Table 1, the Institute of Chartered Accountants of Scotland is an approved regulator for probate activities only but does not currently authorise anyone to offer this service.

²⁹ The ACCA is in the process of de-registering as an approved legal services regulator. A proposal to transfer its members to CILEx Regulation has been consulted upon; hence the ACCA informed the CMA that it would not be providing input to this Review and we have not examined its work as part of this Review.

³⁰ The day to day regulatory functions of the Master are carried out through the Faculty Office of the Archbishop of Canterbury, of which the Master is the senior officer. See [Master of the Faculties CFI response](#).

3. Improving consumer outcomes by increasing transparency

Introduction

- 3.1 In this chapter, we discuss the implementation of the recommendations of the Market Study to improve competition in the legal services sector by helping consumers engage actively and equipping them with tools to identify their legal needs and to obtain good value for money. These recommendations focused on improving the information on price, service, redress and regulatory status made available to consumers by legal services providers; and promoting the use of review sites and the development of quality marks to help consumers understand the quality of service offered by competing providers. Collectively they were aimed at supporting consumer engagement with the legal services sector.
- 3.2 Our review has found that good progress has been made by the regulatory bodies in increasing the availability of information on price, service, redress and regulatory status. However, there has been more limited progress with regard to the other Market Study recommendations. As yet, there is limited evidence that high-level competitive outcomes in the legal services sector, such as the dispersion of prices and the proportion of consumers shopping around, have improved since the Market Study.
- 3.3 In the remainder of this chapter we:
- provide an overview of the Market Study findings in relation to competition in the legal services sector and the recommendations intended to help consumers engage actively in the legal services sector;
 - assess improvements in the provision of information on price, service, redress and regulatory status ('price and service transparency measures');
 - examine the provision of information on quality of service and quality of advice ('quality transparency measures');
 - evaluate developments in the areas of DCTs and the consumer education hub ('consumer engagement measures'); and
 - present evidence on the changes in high level sector outcomes since the Market Study.

Market Study findings and recommendations

- 3.4 The Market Study found that competition in the legal services sector was not working well for individual consumers and small businesses and that consumers generally lacked the experience and information they needed to find their way around the legal services sector and to engage confidently with providers. Consumers found it hard to make informed choices because there was very little transparency about price, service and quality.
- 3.5 The Market Study identified remedies designed to help consumers engage more actively in the legal services sector and to equip them with tools to identify their legal needs and to obtain good value for money. The recommendations to the regulatory bodies to address these issues were:
- **Action to deliver a step change in standards of transparency to help consumers (i) to understand the price and service they will receive, what redress is available and the regulatory status of their provider and (ii) to compare providers.** Regulators were asked to revise their regulatory requirements to set a new minimum standard for disclosures on price and the service provided and develop and disseminate best practice guidance. This included a requirement for providers to publish relevant information about the prices consumers are likely to pay for legal services. See Table 2.

Table 2: Minimum disclosure requirements recommended by the Market Study

Price	Service	Redress
<ul style="list-style-type: none"> • Pricing and charging model (eg fixed fee, hourly rates, capped charges, Conditional Fee Agreement/Damages-Based Agreement) • Hourly fees (where charged) by grade of staff • (Where offered) indicative fixed fees and factors that may affect these and the circumstances where additional fees may be charged • Typical range of costs for different stages of cases (where appropriate) • Scale of likely disbursements (eg searches, court fees) • Key factors that determine price (including disbursements) 	<ul style="list-style-type: none"> • A description of the services that the legal services provider provides • Mix of staff that deliver the service • Key (and discrete) stages of services • Indicative timescales of completing services and factors affecting these 	<ul style="list-style-type: none"> • Regulatory status, registration details • Complaints process & access to the LeO • PII cover

Source: CMA [Market Study](#), Table 7.1.

- **To promote the use of quality signals to help consumers to understand the quality of service offered by competing providers.** The Market Study identified two main ways that firms could demonstrate at least some aspects of their quality. The first was through reviews and personal recommendations aggregated by third parties, and the second was through the adoption of quality marks. Regulators were asked to

provide guidance to providers on how they should engage with public reviews and encourage the development of quality marks.

- **To facilitate the development of a dynamic intermediary market through making data more accessible to comparison tools and other intermediaries.** The Market Study found that intermediaries struggled to access even basic data held by regulators. Regulators were asked to make this information freely and easily accessible in one place for all authorised providers, so that intermediaries would then be better able to help consumers choose a legal services provider by combining and contextualising this data with information on price, service and quality.
- **To develop a consumer education hub.** The Legal Choices platform was to be overhauled to ensure that it could play a major role in empowering legal services consumers, particularly when they first engage with the sector. The content should reflect the purchasing journey for common legal needs, in addition to general public legal information. This improved content should also be actively promoted through effective marketing directly by regulators and consumer groups. Providers should also be encouraged to make consumers aware of it.

3.6 In addition, the CMA recommended that the LSB perform a role in providing oversight and reporting publicly on the approach and progress of the regulatory bodies individually and collectively against the relevant milestones.³¹

Price and service transparency

3.7 This section sets out our assessment of progress against the Market Study recommendation to increase the information available to consumers to help them understand the price and service they will receive as well as avenues of redress and the regulatory status of legal services providers and to be able to compare providers. It sets out:

- how transparency has been implemented through regulatory rules and guidance;
- how these rules have been monitored and enforced by the regulatory bodies;

³¹ For more information on the LSB's work following our Market Study, see the [LSB website](#).

- views of providers on how transparency measures have been implemented;
- evidence on the outcomes in terms of availability of prices and service information for consumers; and
- how consumers are engaging with price and service information.

Rules and guidance introduced

- 3.8 Between December 2018 and July 2019, all regulatory bodies of legal services introduced rules and/or guidance for legal services providers regarding the provision of price and service information to consumers. Prior to the introduction of these rules and/or guidance, the regulators undertook a process of consultation with stakeholders and, in some cases, undertook extensive consumer research and behavioural experiments.
- 3.9 The Market Study recommended that regulators introduce rules to mandate a minimum level of transparency for legal services providers. However, as set out in Table 3 below, while most regulators – including the largest regulators, the SRA and the BSB – introduced rules, others – the CLSB, ICAEW and IPReg – introduced voluntary guidance.³² Where regulators introduced guidance rather than rules, they committed to reviewing the effectiveness of the guidance in improving the level of transparency amongst the providers they regulate. Further, the LSB ‘has set an expectation that this approach would be reviewed, and rules introduced if necessary’.³³
- 3.10 Typically, regulators did not introduce rules or guidance covering the full range of legal services offered by providers they regulate, preferring instead to focus on improving transparency for services where the benefits of doing so were likely to be greatest.³⁴
- 3.11 However, based on the number of regulators that introduced rules and the services covered by these rules, it appears that a significant proportion of

³² Reasons for doing so included that a guidance approach was considered more proportionate. Also:

- In the case of the ICAEW guidance, many of the firms it regulates operates in multiple services other than those covered by the CMA recommendations (ie probate).
- The CLSB does not regulate at an entity level. It is therefore difficult for it to make rules requiring publication of price and service details on an organisation’s website, as those would be rules directed at firms which they do not regulate.

³³ LSB (2020), Board paper (20) 06, [CMA Recommendations – Progress](#), Annex A.

³⁴ Factors involved in these assessments included whether the characteristics of the service made it suitable for price transparency, the frequency of purchase by consumers and the existing levels of price transparency for a service.

consumer purchases of legal services are now covered by some form of transparency rules.

Table 3. Implementation of price and service transparency measures by regulatory bodies

Regulator/Key documents	Coverage of rules/guidance
BSB: rules introduced in July 2019 (links to: Mandatory rules ; Public Access Rules ; and Best practice guidance)	There are mandatory rules on price, service and redress transparency for all self-employed barristers, chambers and BSB entities, but not employed barristers. There are also additional transparency rules for those undertaking Public Access work: Employment Tribunal cases (advice and representation for employers and employees); Financial disputes arising out of divorce; immigration appeals (First-tier Tribunal); Inheritance Act advices; Licensing applications in relation to business premises; Personal injury claims; Summary only motoring offences (advice and representation for defendants); and Winding-up petitions.
CILEx Regulation: rules introduced in January 2019 (links to: Transparency rules ; and Transparency Guidance)	All firms regulated by CILEx Regulation for conveyancing and probate services. Consulted on extending the transparency rules to immigration services.
CLC: rules introduced in December 2018 (Links to: Transparency rules In CLC Code of Conduct ; Informed choice guidance ; and Informed choice toolkit)	All CLC-regulated firms offering conveyancing services.
CLSB: guidance note issued May 2019 (Link to: Guidance note on cost transparency)	Covers any regulated costs lawyer who has, or works in a firm that has, a website or issues promotional material, with the exception of those working in SRA-regulated firms (where SRA requirements prevail – about 44% of regulated practitioners) or in-house lawyers (who do not engage directly with the public). The profession only advises a very small proportion of lay consumers, with the vast majority of costs lawyer instructions coming from corporates or other legal providers.
ICAEW: guidance published in May 2019 (link to: Transparency Guidance)	Aimed at ICAEW accredited probate firms only and only in relation to the legal services of probate, will-writing and lasting powers of attorney. The Guidance clarifies that ‘When offering bundled services; namely a mix of both accountancy and legal services, it follows that these best practice principles be applied to all services in the bundle.’ However, the ICAEW opted to use a guidance (as opposed to rule-based) approach, as most probate-licensed firms offer multiple services and as such the CMA’s recommendations apply to less than 0.3% of the activities of ICAEW’s regulated population.
IPReg: guidance published in May 2019 (Link to: Transparency Guidance)	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 (ie those with up to ten employees) on IP-related matters.
Master of the Faculties: rules introduced in December 2019 (Link to Transparency rules - In Notaries Practice Rules)	Covers notaries.
SRA: rules introduced in January 2019 (links to: Transparency rules ; and Transparency guidance)	All firms regulated by SRA who provide: Conveyancing (residential); Probate (uncontested); Motoring offences (summary offences); Immigration (excluding asylum); Employment tribunals (unfair/wrongful dismissal); Debt recovery (up to £100,000); Licensing applications (business premises).
ACCA - Withdrawing from legal services regulation	The ACCA is in the process of de-registering as an approved legal services regulator. A proposal to transfer its members to CILEx Regulation has been consulted upon; hence the ACCA informed the CMA that it would not be providing input to this Review and we have not examined its work as part of this Review.

Source: CMA analysis of CFI responses, regulator websites and information provided by regulators.

3.12 In addition to the measures outlined in Table 3 we also note that, following our recommendations on improving the transparency of redress and regulatory status, all regulators have tightened signposting requirements (or issued guidance) to LeO,³⁵ and several regulators have introduced the use of badges

³⁵ LSB (2020), Board paper (20) 06, [CMA Recommendations – Progress](#), Annex A.

to increase consumer awareness of regulation and protection for consumers. Examples include:

- SRA smart badge: all member firms have been required to display a clickable logo from November 2019 to inform consumers that they are regulated and to direct consumers to further information about the protection they have available to them from engaging the services of a regulated firm. The SRA has also developed a publicly available register of SRA regulated solicitors, which provides key information about individual solicitors and providers, including any disciplinary decisions.³⁶
- CILEx Regulation: all member firms are required to display either a standard or digital logo. The digital logo, if clicked, confirms that the provider is regulated by CILEx Regulation and provides details of professional indemnity insurance and contributions to compensation arrangements.³⁷
- CLC: All CLC-regulated providers are required to display the CLC secure badge, which directs customers to information on indemnity insurance, the complaints process, and access to the Legal Ombudsman.³⁸

3.13 All regulators have introduced high-level principles which permit legal services providers flexibility in how they implement them to reflect the differences in the service that they offer. The regulators have avoided an overly prescriptive approach in a deliberate attempt to avoid a 'one size fits all' solution to price and service transparency, given the often bespoke nature of legal services. In addition to the high-level principles, alongside the rules, regulators have typically produced more detailed guidance or templates to assist providers in implementing these principles.

3.14 By way of illustration, the SRA rules³⁹ on price state that providers should give information on:

- the total cost of the service or, where not practicable, the average cost or range of costs;
- the basis for the charges, including any hourly rates or fixed fees;

³⁶ From its investigation findings, the SRA can make certain disciplinary decisions and impose a sanction on a provider. This applies where it determines misconduct has taken place and that a sanction within the SRA's internal disciplinary powers is appropriate.

³⁷ CILEx Regulation (2019), *Titles, Logos and Regulatory Statement (Authorised Entities)*.

³⁸ CLC (2018), *Informed Choice Quality, Service and Price guidance*.

³⁹ SRA (2018), *SRA Transparency Rules*.

- the experience and qualifications of anyone carrying out the work, and of their supervisors;
- a description of, and the cost of, any likely disbursements, and where the actual cost of a disbursement is not known, the average cost or range of costs;
- whether any fees or disbursements attract VAT and if so the amount of VAT they attract;
- details of what services are included in the price displayed, including the key stages of the matter and likely timescales for each stage, and details of any services that might reasonably be expected to be included in the price displayed but are not; and
- if conditional fee or damages-based agreements are used, the circumstances in which clients may have to make any payments themselves for the services (including from any damages).

3.15 The SRA rules also state that ‘cost information published under this rule must be clear and accessible and in a prominent place on your website’. They also cover the service aspects of the legal matter⁴⁰ as well as consumer redress.⁴¹

3.16 In addition to the mandatory rules, the SRA also produces best practice tips and example templates for providers, but compliance with these is not mandatory.⁴²

3.17 The approach adopted by the SRA is similar to that adopted by most regulators. If anything, the SRA has been more prescriptive in what is in its rules than some other regulators. For example, the CLC rules – set out in its code of conduct⁴³ – state only that a provider ‘provide cost information in a prominent place on your website and by other reasonable means on request’. However, the CLC also publishes guidance⁴⁴ alongside the code of conduct which sets out in more detail what cost information should consist of. This takes the form of a set of principles very similar to those set out in the SRA rules and it also contains some best practice guidance and template

⁴⁰ As well as prices, the rules also require solicitors to publish information on: what services are included within the displayed price; any services not included in the price that might reasonably be expected to be included; details of the experience and qualifications of teams/individuals who will carry out the work; typical timescales; and key stages of the matter.

⁴¹ Solicitors are required to provide: information about their complaints handling procedure; details about how and when a complaint can be made to the Legal Ombudsman; and details about how and when a complaint can be made to the SRA.

⁴² SRA (2018), [Transparency in price and service](#).

⁴³ CLC (2018), [Code of Conduct](#).

⁴⁴ CLC (2018), [Informed Choice: Quality, Service and Price guidance](#).

examples. In the case of the BSB, there is a basic level of mandatory transparency that applies to all barristers – a much lower standard than the SRA rules – but also additional mandatory rules that apply to direct or public access work that are quite similar to the SRA rules. This reflects the fact that barristers are typically engaged by other legal professionals, so transparency requirements have been focused on public access work where consumers contract directly with barristers.

- 3.18 Regulators have worked together to try to ensure that providers are generally covered by broadly equivalent rules or guidance even where they are regulated by different bodies. This means that where consumers purchase the equivalent services (eg conveyancing) from providers regulated by different bodies, there is a degree of consistency in the transparency requirements for those providers.
- 3.19 Where regulators have implemented guidance rather than formal rules, the overall approach they have followed is similar to that outlined above for the SRA and CLC. For example, the ICAEW guidance⁴⁵ sets out a number of high-level ‘best practice requirements’ that are similar to the principles set out in the SRA rules alongside more detailed guidance.
- 3.20 The regulators have clearly undertaken substantial work to implement price and service transparency across the legal services sector. It appears that the process of implementing transparency has generally been robust and the rules that have been implemented are generally clear and that legal services are covered by broadly equivalent rules irrespective of which body the provider is regulated by. However, the rules and guidance allow providers a significant amount of discretion in how they provide price and service information to consumers. It is therefore possible that some providers may choose to comply with the letter of the rules rather than necessarily provide information in a way that genuinely facilitates consumers to be able to compare and choose between different providers. As the LSB submits in its response to our CFI:

‘Currently there is scope for providers to publish wide ranges of likely prices, but this does not necessarily meet the spirit of the rules and may not actually give helpful information to prospective customers.’⁴⁶

⁴⁵ ICAEW (2019), [Best Practice Guide to Price and Service Transparency](#).

⁴⁶ [LSB CFI response](#).

Monitoring and enforcement of price and service transparency measures by regulatory bodies

3.21 The monitoring of compliance with the price and service transparency rules and guidance by the regulatory bodies is ongoing. Non-compliance has resulted in feedback to firms and further development of guidance. We summarise the approach to monitoring and enforcement taken by the regulatory bodies in Table 4 below.

Table 4. Monitoring and enforcement of price and service transparency measures by regulatory bodies

Regulator	Approach to enforcement and monitoring	Evidence on implementation
BSB	<p>In January 2020, spot checked 212 sole practitioners, 34 BSB authorised entities and 193 chambers.</p> <p>Compliance with the rules was assessed via desk-based assessment. Where a website was not available, requested the transparency information in an alternative format such as a factsheet. Websites and readily available information were assessed as either compliant, partially compliant or non-compliant.</p> <p>Those who were assessed as partially compliant were given feedback and referred to the appropriate rules and guidance, in order to ensure future compliance. Those who were assessed as non-compliant have been informed and told they will be assessed again. In the event of persistent non-compliance, the BSB will take regulatory or enforcement action.</p>	<p>Reviewed 440 self-employed barristers, chambers and BSB entities. Reviewed the websites or if a website was not available (which was the case for 40% of the sample), requested the transparency information in an alternative format, such as a factsheet.</p> <p>The BSB found that: 37% were fully complying; 38% were partially complying; and 25% were not complying with the rules (see: BSB Compliance monitoring).</p>
CILEx Regulation	<p>Before rules became mandatory, CILEx Regulation carried out a baseline website sweep. After the rules became live, monitored progress and then having given firms a period of grace, contacted those which were not compliant and offered to assist if they wished. Several firms sought this support and benefitted from it.</p> <p>Developed stages for compliance should this be necessary, as follows: Stage 1 – support and guidance offered to assist a firm in complying via Consumer Officer Stage 2 – reinforcement of need to comply by Entity Officer Stage 3 – warning letter from Entity Manager on compliance Stage 4 – pass to Enforcement Team for misconduct due to non-compliance with rules.</p>	<p>All established firms are compliant and new ones are taking action to reach compliance (100%).</p>
CLC	<p>The CLC reviewed compliance with the rules immediately following their introduction and again at the start of 2020. Each new practice that comes into CLC regulation is assessed for compliance with all the CLC's rules at that time and at a follow-up inspection 12 months later. All CLC practices receive an onsite inspection on a three-yearly basis and compliance with transparency rules is also assessed as part of these inspections.</p> <p>In addition, the CLC will take action where it receives intelligence that a practice is potentially non-compliant. Where non-compliance is observed as part of a review such as the one taking place, the CLC will write to the practice outlining the nature of the non-compliance and giving a timeframe to come into compliance. If the deadline is not met, the CLC will consider whether to escalate the case for further investigation and disciplinary action.</p>	<p>The CLC reviewed practices' compliance with the informed choice rules and guidance after it came into force in 2018 and found almost 100% compliance. In February and March 2020 all practices' websites were reviewed again and a lower rate of compliance was found, primarily with regard to costs information. During this second review it was observed that although many websites offered a quote generator, a customer is required to provide personal details and contact information in order to use it. In other cases, websites offer costs information in an alternative format which is not considered compliant with the CLC's Informed Choice guidance.</p> <p>The CLC continues to work with all practices identified as having non-compliant costs information to bring them into compliance.</p>
CLSB	<p>CLSB carried out an initial sampling of regulated practitioners in 2020, but was unable to draw any conclusions as it found that very few were covered by its Guidance.</p>	<p>A more comprehensive review of compliance with the Guidance is planned for 2021.</p>

Regulator	Approach to enforcement and monitoring	Evidence on implementation
ICAEW	<p>Opted for a compromise solution by issuing guidance rather than prescribing rules so that it enabled probate accredited firms to be flexible in their approach given these firms' businesses generally covered multiple areas.</p> <p>The ICAEW's approach to monitoring compliance with transparency measures within probate services has been one of guidance and support, supplemented by periodic review of websites to assess the impact of its communications. It actively monitors accredited firms on a cyclical visit schedule and reviews their compliance with transparency guidance.</p> <p>The ICAEW has carried out an assessment of take-up of the guidance in 2020. While this has shown mixed results, in light of the challenges of COVID-19, the ICAEW intends to follow up proactively with firms (including by publishing its assessment and writing to firms) and conduct a further reassessment in 2021 before taking a decision whether the voluntary approach is likely to deliver the CMA objectives or if it is necessary to roll out the principles on a mandatory basis through embedding them into the probate regulations.</p>	<p>A benchmarking report was published in 2019 (see Transparency benchmarking report).</p> <p>The publication of results of the 2020 assessment are pending. ICAEW has informed the CMA that the results of its latest assessment show that 9% of firms are providing pricing information (although 38% provide a free consultation, fixed fee or free quote) and 70% are providing some service information.</p>
IPReg	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.	In due course, IPReg will move to the more detailed stages of its review of regulatory arrangements, and will ask providers 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.
Master of the Faculties	<p>Compliance was assessed through a random spot check of websites compared in August 2019 and March 2020, before and after the Rules came into effect. Additional work was required to follow up on some of the notaries whose websites were not wholly compliant. This was achieved by inviting voluntary amendment to the websites and no disciplinary action was needed.</p> <p>The inspections regime is another way that compliance with the Practice Rules 2019 is monitored.</p>	<p>In August 2019 only 13% of the notaries investigated were providing adequate information to consumers regarding the basis of their fees. By March 2020 that figure had increased to 70%.</p> <p>In August 2019 only 39% of the investigated notaries were considered to be providing consumers with a sufficient level of service information. By March 2020 this was 65%.</p> <p>(see: Website spot check report)</p>
SRA	<p>Conducted a programme of monitoring and engagement to encourage compliance. A major part of this has been a rolling programme of web sweeps.</p> <p>A small proportion of firms did not initially engage. In these instances, the SRA contacted them, informing them that they must come into compliance. A very small number of firms have continued not to meet their obligations and the SRA has taken regulatory action against them. In July 2020, it began a rolling programme requiring cohorts of firms to provide declarations of compliance against the transparency rules. The majority of firms have stated that they are compliant.</p> <p>Committed to one, three and five-year reviews of impact of regulations and has carried out its one-year review.</p>	<p>A websweep covering 500 firms was carried out in November 2019. 25% were fully complying; 58% were partially complying; and 17% were not complying with the rules at all; and levels of compliance vary across service types.</p> <p>The most common areas of non-compliance were a failure to: publish the required complaints information (52% did not publish); specify the amount of VAT applied to costs and disbursements; display information on key stages and/or timescales; and provide a description or costs of likely disbursements (see Websweep report).</p> <p>The SRA started a longitudinal research programme to evaluate the impact of the reform programmes undertaking reviews one year, three years and five years after implementation. It recently completed the SRA Year One Evaluation study, the findings from which are drawn on throughout this chapter.</p>
ACCA	N/A – withdrawing from legal services regulation	N/A – withdrawing from legal services regulation

Source: CMA analysis of CFI responses, regulator websites and information provided by regulators.

3.22 Overall, the regulators appear to have committed to a programme of monitoring and enforcing price and service transparency. Generally, they have employed web-sweeps and random checks followed up by feedback and advice to non-compliant providers before following up at a later date. Some regulators have also used annual regulatory returns to assess provider

compliance with the rules and guidance. Based on their CFI responses – summarised in Table 4 – it appears that the regulators have so far generally preferred to opt for an approach of advice and guidance at this relatively early stage after the implementation of price and service transparency measures, although they are prepared to undertake enforcement action in relation to persistent non-compliance in the future.

- 3.23 Monitoring by the regulatory bodies generally appears to focus on whether the elements of information required under the rules are displayed on the provider website, rather than looking more specifically at the quality and usefulness of that information. For example, the main reasons that the SRA found firms to be non-compliant was non-provision of information relating to either complaints information, the amount of VAT applied to costs and disbursements, information on key stages and/or timescales, or a description or costs of likely disbursements.
- 3.24 The available evidence suggests that even with high-level rules put in place by the regulatory bodies, there is currently only a limited level of full compliance amongst many providers. A number of regulators have yet to complete a review of compliance levels, but there is some evidence that levels of full compliance are reasonably low amongst providers covered by the largest regulators (the SRA and BSB). The most recent SRA web-sweeps, covering 500 firms, found:⁴⁷
- 25% of firms were fully complying;
 - 58% of firms were partially complying;
 - 17% were not complying with the rules at all; and
 - levels of compliance vary across service types.
- 3.25 DG Legal⁴⁸ also carried out a websweep of 400 solicitors in May 2020. It found that only 10% of these were fully complying with the SRA transparency rules.
- 3.26 The latest BSB spot check covered 440 self-employed barristers, barristers' chambers and BSB entities.⁴⁹ The BSB found that:

⁴⁷ SRA (2019), [SRA Transparency Rules: Web sweep report](#).

⁴⁸ DG Legal is a consultancy firm providing specialist services to law firms. See DG Legal (2020), [SRA's Transparency Rules – Survey of Websites](#).

⁴⁹ BSB (2020), [Compliance with the price, service and redress transparency rules](#). The BSB reviewed the websites or, if a website was not available (which was the case for 40% of the sample), requested the transparency information in an alternative format, such as a factsheet.

- 37% were fully complying;
 - 38% were partially complying; and
 - 25% were not complying with the rules.
- 3.27 We note that some of the smaller regulators – such as the CLC and CILEx Regulation – reported that their compliance monitoring indicated a nearly 100% level of compliance with their rules, though few additional details were provided.
- 3.28 From the information provided to us by the regulators, it is difficult to draw any conclusion on the effectiveness of guidance as opposed to rules in driving increased levels of transparency. IPReg and CLSB have not yet completed their reviews of the implementation of price and service transparency. ICAEW, in its soon to be published review,⁵⁰ found that in 2020 only 9% of the probate-licensed firms it regulates answered yes to the question ‘Does the firm publicise charges and how they calculate / charge them’. This suggests that there are very few probate firms regulated by the ICAEW providing price information despite the fact that the ICAEW best practice requirements include the publication of total fees and the basis on which fees are calculated. The ICAEW notes that 38% of firms do offer a free consultation, fixed fee or free quote; however, we question whether such an approach would be in keeping with the Market Study principles that consumers should be able to access pricing information before contacting a provider.⁵¹ As the levels of price transparency remain low, we support the ICAEW’s intention to consider, after a further reassessment in 2021, whether to introduce regulations in place of its guidance.
- 3.29 Some stakeholders noted that more needs to be done to improve the level of compliance with the transparency rules. The LSB stated that ‘It is important to ensure that these new rules are appropriately enforced and that regulators seek to drive improved compliance where there are apparent gaps’.⁵²
- 3.30 In addition, CFI responses suggested that regulators might want to change their approach to monitoring and enforcement, including introducing greater transparency over the process and a more robust approach to enforcement. For example, the Association of Consumer Support Organisations (ACSO)

⁵⁰ At the time of publication of this Review, the ICAEW research was not published, but this information was provided in correspondence from the ICAEW to the CMA.

⁵¹ See paragraph 3.68 of the [Market Study](#), which states: ‘Consumers should be able to find the information that they need at the time that it is relevant, ie they want to have an understanding of price, service and quality before approaching a provider so that they can make comparisons. In legal services, this means having information available at the search stage, rather than at the point of engagement’.

⁵² [LSB CFI response](#).

submitted that: 'Openness about the transparency measures themselves is essential if they are to be seen as effective and proportionate. On the one hand, it is important that there is even more robust enforcement of existing requirements, with effective sanctions as appropriate. There has been only limited evidence of such enforcement to date. On the other hand, results of regulatory audits and investigations could be published so they can receive wider scrutiny by all interested parties, helping drive greater accountability and consumer awareness.'⁵³

3.31 Similarly, the LSCP submitted:

'There is anecdotal evidence to suggest that more needs to be done around compliance and enforcement of the prescribed rules. We know that in May 2020, the consultancy firm DG Legal commissioned a survey of 422 websites and found that around 90% of firms were not fully compliant.....While regulators may debate the semantics around full or partial compliance, it is important to emphasise that the responsibility for monitoring, evaluating, and publishing the findings sits firmly with the regulators. We have not seen enough evaluations completed, or even clear and well communicated timescales for future evaluations. So far, only the SRA has been transparent with regards to its evaluation, findings, and proposals to tackle non-compliance.'⁵⁴

3.32 Overall the regulators appear to have committed to a programme of monitoring and enforcing price and service transparency. However, the available evidence suggests that even with high-level rules – which allow provider significant discretion in term of how they are implemented – put in place by the regulatory bodies, there is currently only a limited level of full compliance amongst many providers.

Provider views on implementation of transparency

3.33 In CFI responses, many stakeholders highlighted challenges in providing a standardised quote for legal services. Difficulties arise from differences in the geographic locations of the offices, in the referral routes used, or in the nature of the legal service required. For example, the Law Society conducted qualitative research consisting of six roundtable discussions with over 70 member firms. The participants highlighted a number of challenges for law firms in implementing transparency rules, including:⁵⁵

⁵³ [ACSO CFI response](#).

⁵⁴ [LSCP CFI response](#).

⁵⁵ [The Law Society CFI response](#).

- Firms found some elements of the rules confusing - for example, what 'prominent' means in terms of where the information should be placed on the website, and how many clicks it should take to land on the relevant page.
- Prices provided often include assumptions which may not apply in individual cases.
- The consumer will usually not be aware of how different costs arise, or of the impact of referral fees.
- Regional offices in different areas may have differing rates depending on location.
- Firms taking work from a panel referrer who takes a cut leading to higher prices for the consumer can find it difficult to explain the difference in price from that advertised on the website.

3.34 Similarly, Co-operative Legal Services noted 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'.⁵⁶

3.35 The SRA Year One Evaluation of its member firms reported that 65% of firms think the its rules are clear, however a significant minority of firms had some difficulty implementing price transparency, with 28% of solicitors covered by its transparency rules saying it was difficult to know how to set out the information and 26% feeling it was difficult to keep it up to date and accurate. However, based on qualitative interviews with law firms, the SRA concluded that firms did not consider there to be a large cost of complying with its transparency rules.

3.36 In addition to the challenges of implementing transparency, other problems may arise because providers do not see the benefits of increased transparency. The SRA Year One Evaluation found that that many solicitors do not think that price and service transparency is particularly beneficial for them. Only a third of solicitors (29%) agreed that they would recommend that the publication of price and service information is good for business; and that they have seen specific benefits to their firm. In addition, only around 21% of solicitors could identify at least one beneficial change for their business as a

⁵⁶ [Co-operative Legal Services CFI response](#).

result of the price and service transparency whereas 65% did not identify any beneficial change.

- 3.37 The Law Society also reported that roundtable participants suggested that evidence on benefits from the increase in price transparency was mixed. Firms noted that they had not noticed any increase in traffic to their websites in general. Members reported that despite the information being made available online, clients will typically still telephone or email the firm for a quote. However, its members identified some benefits from displaying their prices online. For example, firms have indicated that the exercise of providing pricing information has been a useful one in prompting them to take a more holistic approach to their pricing structure. Others indicated that the exercise of displaying prices has assisted support staff in firms in their understanding of the complexity of the pricing structure that is being used.
- 3.38 The BSB conducted a pilot exercise in 2017 with a number of chambers, entities and sole practitioners, to trial transparency rules prior to their introduction. It found that implementation of the BSB's minimum disclosure requirements was perceived as relatively easy by the participants. It also found that despite participants expressing a number of concerns prior to taking part in the pilot – such as the possibility of a 'race to the bottom' or a prospective client being put off by what they perceived as high prices – these did not materialise during the pilot.⁵⁷
- 3.39 In summary the evidence from providers suggests that, while they did not find there was significant cost in implementing the transparency rules, they did have some difficulties in implementing them. Particular difficulties arose around knowing what information to provide and to provide standardised cost information where they offer relatively bespoke services. In general, providers also reported that they did not feel that the implementation of transparency had been beneficial to them. However, we note that the aim of our recommendations is to benefit consumers, and ultimately only those firms which offer an attractive proposition and therefore attract more customers.

Evidence on transparency outcomes

Overall availability of information on price, service, redress and regulatory status

- 3.40 The level of price transparency has increased substantially since the Market Study. Research undertaken around the time of the Market Study suggested

⁵⁷ [BSB CFI response](#).

that only 16% of solicitors, 22% of licensed conveyancers and 28% of will writers provided pricing information on their website in 2016.⁵⁸ More recent evidence – set out below – shows that there has been an increase in the availability of price, service, redress and regulatory status information both for legal services covered by transparency rules and guidance and – albeit to a lesser extent – services not covered by transparency rules and guidance.

3.41 The LSB Prices Research found that since the Market Study price transparency had increased across a range of legal services including both services which are covered by the transparency rules and those that are not:

- For conveyancing (covered by transparency rules) – 73% of providers say they display their prices on their websites – an increase of 62 percentage points since 2017.
- For divorce (not covered by transparency rules) – 52% of providers say they display their prices on their websites – an increase of 30 percentage points since 2017.
- For wills, trust and probate (partially covered by transparency rules) – 59% of providers say they display their prices on their websites – an increase of 38 percentage points since 2017.

3.42 The SRA Year One Evaluation found that the proportion of solicitors that advertised their prices in any format had increased to 68% for those areas of law covered by the price and service information element of its transparency rules and to 28% for those areas not covered. This compares to an SRA survey from 2017 which found that only 18% of solicitors advertised their prices in any format.⁵⁹ In addition, as well as price information, solicitors report displaying a significant amount of information on service, redress and regulatory status on their websites (see Table 5 below).

⁵⁸ OMB Research (2016), *Prices of Individual Consumer Legal Services Research Report*. Commissioned by the LSB.

⁵⁹ SRA (2017), *Price transparency in the legal services market: Perspectives of legal firms*.

Table 5. SRA firm survey: Provision of service, redress and regulatory status information

	Practice areas covered by rules	Practice areas not covered by rules	Total
Service information			
The services included in the price	67%	N/A	N/A
Qualifications and experience of the staff and supervisors	76%	N/A	N/A
Key stages	50%	N/A	N/A
Typical timescales	49%	N/A	N/A
Any Service information	86%	N/A	N/A
Redress and regulatory status information			
The SRA clickable logo	N/A	N/A	92%
Information about the Compensation Fund	16%	21%	21%
Your complaints policy and procedure	63%	81%	78%
How and when a complaint can be made to the Legal Ombudsman and the SRA	61%	77%	74%

Source: [SRA Year One Evaluation](#)

3.43 In the case of barristers, the BSB reported that there has also been a significant increase in the amount of price information that is available to consumers. As part of its monitoring and compliance work, the BSB has conducted three reviews of the level of price information provided on chambers' websites since 2017. These reviews looked at all available chambers' websites, ranging from 329 websites in 2017 to 310 websites in 2020.⁶⁰ The BSB found that, in 2017, 75% of chambers had no price information on their website, whereas in 2020 only 21% of chambers' websites had no price information, showing that there had been a significant increase in the number of websites displaying price information since the implementation of its transparency rules.

3.44 Evidence from other regulators who have reviewed implementation of price and service transparency also suggests that the availability of price and service information has increased since the Market Study. A Faculty Office compliance websweep⁶¹ showed a significant increase in the availability of information on price (13% to 70%), service (39% to 65%), redress (0% to 70%), regulatory status (70% to 91%) and complaints (52% to 70%) between August 2019 (before it issued its transparency rules in December 2019) and March 2020 (three months after the rules were issued). Evidence from the CLC⁶² and CILEx Regulation⁶³ compliance programmes – outlined above – is consistent with high levels of price and service transparency given they reported almost 100% compliance. Prior to implementation of transparency

⁶⁰ BSB (2020), [Compliance with the price, service and redress transparency rules](#).

⁶¹ Faculty Office (2020), [Faculty Office Website spot check](#).

⁶² [CLC CFI response](#).

⁶³ CILEx Regulation CFI response.

CILEx Regulation report that, of firms authorised by them, only 20% provided some information on price and service.⁶⁴

- 3.45 The ICAEW found that there was only a modest increase in price transparency since it published its guidance. The ICAEW, in its soon to be published research, found that in 2019 14 firms (5%) answered yes to the question ‘Does the firm publicise charges and how they calculate / charge them’ whereas in 2020 27 firms (9%) answered yes. Similarly, there was only a small increase in the number of firms offering a free consultation, fixed fee or free quote (38% in 2020 compared to 36% in 2019). However, it found there had been a more significant improvement in the transparency of service particularly in the profiling of staff and disclosure of process (70% v 48%).⁶⁵
- 3.46 Overall, the evidence suggests that there has been a substantial increase in the availability of information on price, service, redress and regulatory status made available by providers including in some areas of law not covered by transparency rules. However, the evidence from some regulators shows that a significant minority of firms are not providing the information required under transparency rules. For example, the SRA evidence suggests that 32% of solicitors’ firms providing services covered by the transparency rules are not providing price information whilst the BSB evidence suggests that 21% of barrister websites are not doing so.

Evidence on formats used

- 3.47 As we note above, the current rules allow providers a great deal of flexibility including which formats to present to consumers as well as where to place the information on their websites. There is limited detailed evidence of *how* providers have implemented transparency in practice. However, some high-level data has been reported in the SRA Year One Evaluation and the BSB has also collected some data on how providers are implementing transparency.
- 3.48 The SRA evidence demonstrates that information provided by the solicitors varies along a number of dimensions such as the format of the pricing data (fixed fee, hourly rate, scenario based prices, quote generator, etc); the location of the data (home page, one/two/three clicks away, online form required, etc); and the supporting information provided (eg if the hourly rate is given, the estimates of required hours are sometimes provided and

⁶⁴ We do not have evidence of the availability of price and service information for the CLC prior to the implementation of price and service transparency.

⁶⁵ At the time of writing the ICAEW research was not published, but this information was provided in correspondence from the ICAEW to the CMA.

sometimes not). In addition, within these broad categories, such as ‘fixed fees’, many different presentations of information are possible. Therefore, a multitude of possible presentations of information are possible within the SRA rules.

- 3.49 Results from the SRA Year One Evaluation are shown in Table 6 below, demonstrating that providers used a variety of formats to present pricing data on their websites.

Table 6. SRA provider survey: Format of pricing data provided on firm websites

	Price range	A fixed price	An hourly rate	Price calculator	Scenario based
Residential Conveyancing	57%	41%	13%	19%	15%
Probate	80%	23%	46%	3%	20%
Motoring Law and Offences	56%	33%	50%	0%	22%
Employment	80%	31%	58%	2%	18%
Immigration (excluding asylum)	60%	59%	36%	1%	9%
Debt Recovery	70%	36%	41%	2%	20%
Licensing Business Premises	67%	8%	58%	0%	25%
All	85%	55%	50%	13%	24%

Source: [SRA Year One Evaluation](#)

- 3.50 The SRA Year One Evaluation also showed that there was some variability in where price information was located on solicitor websites. 51% of individual consumers and 60% of small medium enterprises (SMEs) using a solicitor who looked at price information on the website found that information from a link on the homepage. However, 28% of individual consumers and 34% of SMEs had to search for it on a website, and 27% of individual consumers (21% of SMEs) who did not look at price information on the website said this was because they could not find it.
- 3.51 Recent work by the BSB found that the level of detail of the pricing information differed significantly between barristers’ chambers. The BSB has conducted three reviews of chambers’ websites, in 2017, 2019 and 2020. The reviews looked at ‘all available chambers websites, ranging from 329 websites in 2017 to 310 websites in 2020’.⁶⁶ The results from these reviews are set out in Table 7 below.

⁶⁶ [BSB Compliance with the price, service and redress transparency rules.](#)

Table 7. Results of BSB reviews of pricing information on barristers' chambers websites

Description of pricing information provided	2017	2019	2020
A. Included numerical information on fees (eg indicative hourly rates, indicative fixed fees, costs for different stages of a case, etc).	6%	4%	32%
B. More detailed information on how fees were calculated (covered two or more of the following: pricing models such as fixed fees or hourly rates; reasons costs can vary eg barrister seniority, case complexity etc; information on additional costs such as charges, expenses, etc).	8%	17%	24%
C. Basic information on how fees were calculated (covered one of the above).	11%	24%	23%
D. No information on how cost/fees are calculated.	75%	56%	21%

Source: [BSB Compliance with the price, service and redress transparency rules](#)

3.52 Although regulators have often provided best practice templates alongside the rules and guidance to guide how providers should present information to consumers, providers are not required to conform to these and there is little evidence available that they have been implemented in practice. Furthermore, there appears to have been limited consumer testing of either the templates themselves or of actual examples of how providers have implemented the rules and guidance to gauge whether consumers find the information to be clear and comparable. What evidence there is on how providers have implemented the transparency rules suggest that there is a significant amount of variation in how they have done so including the format in which they display the pricing information and where the information is located on their webpages.

How consumers are engaging with price and service information

3.53 The LSCP Tracker Survey 2020 suggests that consumers are not initially accessing price information via provider websites and that there has been little change since the implementation of the price transparency regulations. In 2020, 64% first heard of price direct from the provider (63% in 2018)) whereas in 2020, 6% first heard of price from the provider websites (unchanged from 2018). In 2020, 67% found it easy/very easy to find cost compared to 66% in 2018. (In 2020, 15% found it quite/very difficult, 13% in 2018.)⁶⁷

3.54 The LSCP Tracker Survey 2020 also suggests that consumers tend to rely on recommendations or experience when choosing a legal services provider rather than searching themselves, and that this has changed little since the implementation of price and service transparency. As set out in Table 8 below, consumers tend to go directly to the provider based on

⁶⁷ [LSCP Tracker Survey 2020](#); [LSCP Tracker Survey 2018](#).

recommendations, past experience or a referral from a third party rather than searching themselves. It is notable that for some services (conveyancing in particular), referrals from third parties such as estate agents are very important for the choice of provider.

Table 8. Responses to question from LSCP Tracker Survey 2020: Which ONE of the following BEST describes how you chose your provider?

	All		Conveyancing (residential)	Probate	Will Writing	Immigration	Employment tribunals	Debt recovery
	2016	2020				2020		
Recommendation from family/friends	12%	13%	14%	11%	11%	19%	14%	9%
I/my family member had used the provider before	23%	23%	25%	42%	27%	14%	4%	9%
Referral by another organisation (eg estate agent, insurance company etc)	14%	14%	30%	5%	6%	5%	21%	6%
Sum (recommendation/referral/experience)	49%	50%	69%	58%	45%	38%	40%	23%
Searched for provider on the internet	8%	9%	7%	6%	9%	19%	15%	23%
Price comparison / customer review website	1%	2%	3%	1%	2%	2%	3%	3%
Sum (internet searches)	9%	11%	10%	7%	11%	21%	26%	26%

Source: [LSCP Tracker Survey 2020](#).

3.55 The most recent in a series of surveys jointly commissioned by the LSB and the Law Society to examine individuals' legal needs (the Individual Legal Needs Survey 2020)⁶⁸ found that 37% of people handling a legal issue searched or obtained details of services they could use, searched reviews, used price comparison sites, asked for suggestions or searched specific services when choosing their main adviser. However, within this group, a third of people only obtained details relating to one service provider. It also found that 38% looked for or obtained information on prices of services. The rate of searching or obtaining price information is significantly higher for those people who paid for all or part of the service they received (53%) compared with those who did not pay for the service (34%). Most people (84%) found it easy to obtain price information when looking for it or to search for prices (76%). Conversely, 24% of respondents experienced difficulties in searching for price information, and this is exacerbated for those consumers with lower legal confidence.

3.56 The SRA Year One Evaluation suggests that access to website price and service information by consumers is more widespread than suggested by the

⁶⁸ YouGov (2020), [Legal Needs of Individuals in England and Wales: Technical Report 2019/20](#). A report jointly commissioned by and undertaken on behalf of the LSB and the Law Society.

LSCP Tracker Survey 2020 – at least amongst consumers who have recently used a solicitor – and found to be useful. It suggests that consumers who have recently used a solicitor are looking at websites. For example, 67% of consumers who recently used a solicitor looked at a provider’s website before engaging a provider.⁶⁹ Of these, 67% looked at prices, 15% at the logo, 34% at quality marks, 38% to see if they were regulated, 48% at customer reviews, 30% at timescales and 33% at who would do the work. When consumers look at price information, the evidence suggests that they find it useful: 77% agreed or strongly agreed that the information provided made it easy to choose their adviser; 83% were charged a similar price to the website, 10% were not.

- 3.57 The SRA Year One Evaluation also found that, while consumers were looking at prices on solicitor websites, the most common ways to find price and service information were from a telephone conversation (32% of individual consumers and 33% of SMEs) followed by visiting the adviser’s office (32% of individual consumers and 34% of SMEs), or visiting the adviser’s website (26% of individual consumers and 25% of SMEs). The SRA also reports that qualitative interviews with consumers suggest that more detailed price information is typically not collected when looking at a website but rather is provided at the next stage, when clients talk to a legal provider. Overall the SRA concluded that ‘it is direct contact with a law firm where detailed price information is given and not via the website, although prices on websites were found to be useful’.
- 3.58 The SRA Year One Evaluation showed that 51% of individual consumers and 60% of SMEs using a solicitor who looked at price information on the website found that information from a link on the homepage. However, 28% of individual consumers and 34% of SMEs had to search for it on a website, and 27% of individual consumers (21% of SMEs) who did not look at price information on the website said this was because they could not find it. The SRA concluded that this indicates that some law firms could do more to make this information more prominent and available, and in qualitative interviews the SRA stated that several law firms admitted that they had not sought to promote this type of information overtly for competitive reasons.

⁶⁹ Both the LSCP and SRA surveys cover large samples of recent legal services users and were undertaken at a similar time. The difference in findings may be explained, at least in part, by the formulation of the questions in the respective surveys and the fact that the reported SRA values only cover users of solicitors (a subset of the total number of survey participants). In addition, we note that the SRA survey was carried out between May and August 2020, overlapping with the period where social distancing measures in response to COVID-19 were introduced. This may also explain some of the difference in results between the SRA and LSCP surveys.

3.59 Qualitative research commissioned by CILEx Regulation⁷⁰ found that when choosing a legal services provider:

- For conveyancing, 62% of participants were guided by their estate agents, financial advisers, mortgage lenders, or housebuilders where a new build is being purchased, with 24% using an internet search and 14% using someone they had used previously.⁷¹
- For probate, 4% of participants were guided by a recommendation, with 27% using an internet search and 52% using someone they had used previously.
- For family law, 21% of participants were guided by a recommendation, with 25% using an internet search and 17% using someone they had used previously.

3.60 The CILEx Regulation research found that law firm websites are visited by a large number of potential clients, but individuals rarely use these sites to find technical information or detailed information on specific services. The pages browsed most often are the photographs of legal services providers (and biographies), number of offices and where they are, details of any free initial consultations and their availability. A relatively small number (27%) mentioned looking at price information on websites. The research found a majority (61%) of consumers felt that they had enough information and support to make an informed choice of legal adviser.

3.61 Overall the evidence on consumer engagement with price and service transparency information is mixed. Evidence from the LSOP Tracker Survey 2020 suggests that consumers generally rely on recommendations and referrals when choosing legal services providers rather than direct search activity, and that consumers most often find out about price and service information through direct contact with their legal services providers. However, the SRA Year One Evaluation found that many consumers are accessing price and service information on solicitor websites, and when they do, they find it useful. We note however that the same SRA survey also found that a significant minority of consumers have difficulty finding the price and service information on solicitor websites and that the most common ways for consumers to find price information are through either a telephone

⁷⁰ IRN Research (2020), *Legal Services for Consumers Qualitative Research into Client Behaviour, Use and Satisfaction Research for CILEx Regulation*. The methodology involved 146 in-depth telephone interviews with private individuals that had used a legal adviser in the last 18 months (50 for conveyancing services; 48 probate services; and 48 for family law services). Interviews were carried out between February and April 2020.

⁷¹ Their choice was usually limited to two or three options given to them by these advisers and most take one of these options. Before making the final choice, most individuals take a look at the websites of the firms, and a few checked out client reviews.

conversation or meeting with the provider. Similarly, the Individual Legal Needs Survey 2020 found that a significant minority of consumers had difficulty finding price and advice information and research for CILEx Regulation found that recent users of legal services usually do not use the website of a law firm to look at technical information, such as information on prices and services.

Transparency of quality information

3.62 In this section, we first consider the importance of having quality information alongside price and service information in order to enable consumers to make more informed decisions. We then discuss how consumers are using the information on quality that is currently available.

Why price and service transparency measures alone are insufficient

3.63 Information on the quality of legal services provision, both the quality of the service and advice received,⁷² is complementary to information on the prices of those services. Consumers require information about both price and quality in order to make informed purchasing decisions.⁷³ In the absence of clear and accurate information on both quality and price, consumers will have difficulty in selecting a legal services provider that meets both their needs and budget.

3.64 Recent research which looked at factors affecting the choice of a legal services provider supports the view that consumers value information on quality alongside information on price.

3.65 The LSCP Tracker Survey 2020 found that 80% of consumers considered reputation as either very important or important in their choice of legal services provider, compared with 72% saying the same for price.

3.66 Research undertaken by the SRA in 2018 found that the two most important pieces of information wanted by consumers prior to choosing their legal services provider were in relation to cost of service (53%) and quality (37%).⁷⁴ In addition the SRA Year One Evaluation found that experience and reputation were consistently ranked above price as a factor by consumers when choosing a provider:

- When consumers were asked if they agreed with the statements ‘experience and reputation were more important than price when

⁷² We discuss more on the distinction between the quality of service and quality of advice in paragraphs 4.45 to 4.46.

⁷³ LSCP (2019), [A Discussion paper on quality indicators in legal services](#).

⁷⁴ SRA (2018), [Better information in the legal services market](#).

choosing a legal advisor’ and ‘the price was most important’, when they make a provider choice, a higher percentage of consumers (83%) supported the view that experience/reputation was more important than price.

- Of consumers who looked at providers’ websites, 79% reported looking at any indicators of quality whereas 67% reported looking at price information.

3.67 Research by CILEx Regulation⁷⁵ found that the adviser’s experience was at least as important as price as a factor in how consumers choose their legal services provider. The research found that 15% of recent legal services users based their choice only on the lowest price offer, particularly in conveyancing, but more (17%) were persuaded by the availability of local offices and again this was their sole criterion. The experience of the adviser was a factor for 14% of consumers, whereas 28% based their choice on a combination of factors, ie usually a combination of two or three of price, location, and experience.

3.68 Some stakeholders have challenged the importance of additional quality measures on the grounds that, where providers are licensed and regulated, a basic level of quality is implicit within the service.⁷⁶ However, while the minimum standards required from regulation provides a baseline of expected competence it does not necessarily provide a means to measure the actual quality delivered by providers.

3.69 Additionally, we note the SRA Year One Evaluation indicates that the majority of consumers claimed to find it easy to make judgments about the quality of the legal services provider.⁷⁷ While this evidence suggests that many consumers feel able to make judgments on quality, it does not indicate that consumers have the information needed to compare providers based on quality in advance of selecting a provider, and the evidence on consumers shopping around – set out in the section on sector outcomes below – suggests that this is only happening to a limited extent. Instead providing consumers with useful indicators of quality has the potential to further drive consumer engagement and competition.

⁷⁵ IRN Research (2020), [Legal Services for Consumers Qualitative Research into Client Behaviour, Use and Satisfaction Research for CILEx Regulation](#).

⁷⁶ The Law Society notes that the regulatory system and minimum entry standards provide assurance around the quality of legal advice and improving awareness amongst consumers will likely be more cost-effective than developing indicators of quality at the provider level. See the [Law Society CFI response](#).

⁷⁷ Consumers found it fairly easy to make judgments about the quality of the legal services provider, with 76% of SMEs and 68% of individual consumers finding it easy or very easy to compare. See [SRA Year One Evaluation](#).

3.70 Several stakeholders suggest that quality indicators are important to drive competition, for example:

- LSB: ‘The evidence so far suggests to us that price transparency alone is not sufficient to drive increased competition, and further information ie descriptions of services and quality indicators, need to accompany the information on pricing’.⁷⁸
- LSCP: ‘the transparency measures have not [yet] begun to deliver good consumer outcomes because there is inadequate information about quality indicators. We have consistently said, even before the recommendations made by the CMA, that price transparency and information on quality are co-dependent’.⁷⁹ The LSCP also noted in its research paper on quality indicators that, ‘the debate is no longer about whether or not quality indicators should be made available. Instead, the challenge is around determining the indicators that should be gathered, the resource implications of gathering the indicators, and the best way to present such information so that it is useful for its intended purposes’.
- BSB: ‘quality indicators may help drive consumer engagement and competition’. The BSB also notes, ‘at least initially, quality indicators are likely to be easier to establish and add greater value in relation to more standardised, higher-volume legal service’.⁸⁰
- ACSO: explained that quality indicators are ‘essential’ and without them consumers must continue to rely on factors such as personal recommendations or the first legal services provider they find. ACSO also noted however that the indicators must be ‘simple, easily locatable and accessible and capable of straightforward comparison with other providers’.⁸¹

3.71 Increased consumer engagement and greater price competition depend on, among other factors, consumers having access to clear, easy to understand and meaningful indicators of quality. The fragmented nature of the legal services sector, and the inherent difficulty in measuring the quality of advice, together with the lack of a standard definition for quality, has made it challenging to develop suitable indicators to demonstrate the quality of legal services provision. Therefore, consumers find it more difficult to compare

⁷⁸ LSB CFI response.

⁷⁹ LSCP CFI response.

⁸⁰ BSB CFI response.

⁸¹ ACSO CFI response.

quality than price in the legal services sector.⁸² Additionally, studies have shown that consumer awareness of the legal services sector is low, and consumers lack the legal knowledge required to assess and compare providers effectively.⁸³

- 3.72 Consumers often rely on word of mouth recommendations and other ‘markers’ of quality, such as a professional-looking website, when choosing a legal services provider. While this may be a practical approach, it is based largely on individual experiences instead of being informed by the breadth of legal services provision across the sector. This lack of assessment of value for money undertaken by consumers softens competition as consumers are unable to shop around with ease, and providers are not incentivised to innovate.
- 3.73 The evidence set out above indicates that consumers value information on quality alongside information on price when choosing a legal services provider, and providing consumers with quality indicators that enable comparability are critical to support informed decision making. The availability of quality indicators can also raise sectoral standards, which have the potential to enhance competition as firms attempt to differentiate themselves on the quality of services they are able to provide consumers.⁸⁴ Additionally, third parties, such as DCTs, can utilise information on quality in addition to information on price. This would enable consumers to assess and compare providers on both price and quality, thus further driving competition amongst providers.

What quality information is currently available to consumers and how do they engage with it?

- 3.74 Since the conclusion of our Market Study, there has been limited progress on the development of information on the quality of legal services provision. The LSB told us that historically there had been a lack of enthusiasm on behalf of regulators to engage with the problem. However, the LSB did note that there have been more recent constructive discussions to develop some potential initiatives on quality.⁸⁵

⁸² [LSB CFI response](#); LSB (2020), *The State of Legal Services 2020*, p31.

⁸³ LSCP (2020), *Consumers feedback on quality indicators in legal services*, p2.

⁸⁴ [LSCP CFI response](#).

⁸⁵ [LSB CFI response](#).

- 3.75 Research suggests that for most consumers, seeking out a legal services provider is a rare event.⁸⁶ The limited experience that consumers have of legal services, together with their lack of legal knowledge, makes it difficult for them to assess providers. It leads consumers to attempt an assessment of quality and choose a legal services provider on the basis of factors such as:⁸⁷
- the ‘gut feel’, or the level of perceived professionalism when interacting with a provider;⁸⁸
 - a well maintained and visually appealing website;⁸⁹
 - the location and look of offices;⁹⁰
 - accessibility, including the range of communication channels;⁹¹
 - personal recommendations from family, friends or advisers;⁹² and
 - reputation and provider credentials.⁹³
- 3.76 Consumers gather this information via provider websites, office walk-ins, internet searches, and conversations with staff or family, friends and advisers for personal recommendations.⁹⁴ While some of these factors assist consumers in selecting providers which meet their individual expectations of certain service elements (such as the convenience of being able to use multiple communication channels), it does not provide consumers with a consistent or reliable means by which to assess the likely quality of service.

⁸⁶ While some have used legal services in the past, many have not, and so most have limited experience of the process. Even those that have used a legal services provider in the past may struggle to identify a specialist if their legal issue is different from before. LSCP (2020), [Consumers feedback on quality indicators in legal services](#).

⁸⁷ LSCP Tracker Survey 2020; LSCP (2020), [Consumers feedback on quality indicators in legal services](#).

⁸⁸ Factors such as the empathy and level of staff engagement help inform this view. LSCP (2020), [Consumers feedback on quality indicators in legal services](#).

⁸⁹ An example of a customer being influenced by a website stated, ‘they had a good-looking website which helped me decide’. See IRN Research (2020), [Legal Services for Consumers Qualitative Research into Client Behaviour, Use and Satisfaction Research for CILEx Regulation](#).

⁹⁰ A local office is usually the main influencing factor with regards to offices, however the look of the office, and the number of offices also influence some consumers. For example, a customer noted, ‘the law firms had decent offices so I assumed they would know what they were doing’. See IRN Research (2020), [Legal Services for Consumers Qualitative Research into Client Behaviour, Use and Satisfaction Research for CILEx Regulation](#).

⁹¹ The ability to make appointments and communicate via a range of channels such as: the telephone, in person, and via email. LSCP (2020), [Consumers feedback on quality indicators in legal services](#).

⁹² This represents one of the most influential factors in the choice of legal services provider. IRN Research (2020), [Legal Services for Consumers Qualitative Research into Client Behaviour, Use and Satisfaction Research for CILEx Regulation](#).

⁹³ Specialist knowledge and expertise as well as the length of service are seen as indicators of the quality of advice. LSCP (2020), [Consumers feedback on quality indicators in legal services](#); LSCP Tracker Survey 2020.

⁹⁴ IRN Research (2020), [Legal Services for Consumers Qualitative Research into Client Behaviour, Use and Satisfaction Research for CILEx Regulation](#).

3.77 In the Market Study we identified two main ways in which providers can demonstrate at least some aspects of quality. The first is through reviews and personal recommendations aggregated by third parties, and the second is through the adoption of quality marks. We next discuss how these are being utilised by consumers and providers.

Customer reviews

3.78 The Market Study concluded that consumers would benefit from the greater availability of customer reviews, but it did not mandate their use. It did, however, conclude that there was scope for the regulators to provide guidance to legal services providers on how to engage in collating online reviews and responding to comments publicly, which may reduce perceived barriers to their widespread adoption.⁹⁵

3.79 Since the publication of the Market Study, several regulators⁹⁶ have published guidance for providers to promote and engage with customer reviews. However, research commissioned by the SRA indicates that it is only a minority of providers who have adopted the use of online reviews.⁹⁷ According to the research, providers seem to have a cautious perception of reviews, with less than half of providers citing any benefit for themselves or consumers, and 80% citing challenges. These challenges centred around the risk of negative or inaccurate reviews and the difficulty of portraying quality accurately. Less than a third of providers cited the benefit of customer reviews as making it ‘easier’ for consumers to research options.

3.80 In terms of consumer engagement with reviews, the SRA Year One Evaluation suggests that over 50% of individual consumers and SMEs are aware of websites with customer reviews and/or ratings, with 21% of consumers and 26% of SMEs saying they have used a review site. Consumers view reviews as important when evaluating providers and are more likely to look at reviews if they are available on a provider’s website, compared to third parties’ sites.⁹⁸ However, other research suggests that customer reviews on provider websites were treated with caution as

⁹⁵ The [Market Study](#) noted that some guidance already existed (such as the Law Society’s practice note on protecting online reputation and its Transparency Toolkit) and proposed building on this to provide guidance of more general application.

⁹⁶ These include: [BSB](#), [CILEx Regulation](#), [CLC](#), [ICAEW](#), [SRA](#).

⁹⁷ A minority of firms say clients can add reviews and/or ratings of them on their own websites (22%, with 7% planning to enable this) or on third party websites (29%, with 4% planning to enable this). See the [SRA Year One Evaluation](#).

⁹⁸ IRN Research (2020), [Legal Services for Consumers Qualitative Research into Client Behaviour, Use and Satisfaction Research for CILEx Regulation](#).

consumers were of the view that these reviews were likely to have been selected by the provider.⁹⁹

3.81 In terms of consumer engagement with the posting of reviews, the SRA research notes that there is an equal split between consumers who would post reviews and those who would not. The main reasons cited among individual consumers for not wanting to post include; ‘not relevant to the legal services sector’, ‘don’t trust comparison sites’, and ‘posting reviews is not what I do’. Additionally, research commissioned by CILEx Regulation¹⁰⁰ highlights the lack of consumer engagement in recommending a provider through the posting of online reviews. Only 5%¹⁰¹ of the sampled consumers had used online review sites to recommend a provider and cited the following reasons for not publishing a review:

- Consumers are cynical about the usefulness and credibility of reviews.
- Consumers lack interest in submitting a review.
- Consumers lack knowledge on how to use a review site.
- Consumers want to complete the legal process, forget about it, and move on.

3.82 Some of the reasons cited for not posting reviews are not specific to the legal services sector but rather a reflection of general consumer behaviour. We also note the research suggests that consumers are more likely to post a review if their legal adviser asks them to do so and if it is an easy process to complete a review.¹⁰²

3.83 Finally, we note that several stakeholders and consumer studies indicate that there is clear scope to make greater use of customer reviews.¹⁰³ While the evidence suggests that consumers value reviews when evaluating providers, we recognise there are challenges in getting providers and consumers to engage with reviews. We do not consider these challenges to be insurmountable and we discuss in further detail within Chapter 4 how regulators could proceed with further measures to aid the development of

⁹⁹ IRN Research (2020), *Legal Services for Consumers: Qualitative Research into Client Behaviour, Use and Satisfaction. Research for CILEx Regulation*.

¹⁰⁰ IRN Research (2020), *Legal Services for Consumers Qualitative Research into Client Behaviour, Use and Satisfaction Research for CILEx Regulation*.

¹⁰¹ 5% of interviewees in the research used review sites or social media to recommend a legal adviser. See IRN Research (2020), *Legal Services for Consumers Qualitative Research into Client Behaviour, Use and Satisfaction Research for CILEx Regulation*, p10.

¹⁰² IRN Research (2020), *Legal Services for Consumers Qualitative Research into Client Behaviour, Use and Satisfaction Research for CILEx Regulation*.

¹⁰³ LawNet CFI response; Co-operative Legal Services CFI response; CLC CFI response; LSCP (2020), *Consumers feedback on quality indicators in legal services*; SRA Year One Evaluation.

customer reviews. We maintain our view, as identified in the Market Study, that customer reviews represent an important means by which to signal quality to consumers.

Quality marks and accreditation schemes

- 3.84 Quality marks and accreditation schemes enable providers to demonstrate to consumers that they have met and maintained specified quality standards or minimum professional standards. According to the Law Society, quality marks and accreditation schemes drive quality, excellence and client care.¹⁰⁴
- 3.85 In the Market Study,¹⁰⁵ we identified several issues with the use of quality marks or schemes:
- (a) A lack of consumer awareness of such marks or schemes;
 - (b) A lack of evidence to demonstrate that quality marks or schemes are signals of greater quality;
 - (c) Quality marks or schemes are not accessible to all legal services professionals or providers;¹⁰⁶
 - (d) Quality marks or schemes may unintentionally restrict competition when used as a filter criterion by intermediaries; and
 - (e) Some quality marks or schemes assess inputs and not outputs.¹⁰⁷
- 3.86 Despite these concerns, the Market Study concluded that quality marks and accreditation schemes may be valuable to consumers where there is strong consumer awareness and understanding of those marks or schemes; the mark or scheme is based on an assessment of outcomes; and where the mark or scheme is available to all providers that demonstrate appropriate outcomes.¹⁰⁸
- 3.87 Although, as we have discussed, consumers consider quality to be important, the SRA Year One Evaluation indicates that only around a third of consumers look at quality marks when looking at a legal provider's website, with 90% of

¹⁰⁴ [The Law Society CFI response](#).

¹⁰⁵ [Market Study](#), paragraph 7.97.

¹⁰⁶ CILEx's recent response to our Review noted that 'some of the current 'quality hallmarks' in the legal sector are administered by a single legal professional body for the benefit of their membership. These have then been adopted by other stakeholders as minimum thresholds, meaning these hallmarks have, inadvertently, become market barriers to those other legal professionals not covered by the hallmark.' See [CILEx CFI Response](#).

¹⁰⁷ For example the accreditation scheme attests that the provider has met certain minimum requirements (such as following a particular business process) but it does not attest or measure the actual quality of work delivered.

¹⁰⁸ For example, a commitment to ensure that all price and service information is displayed to consumers in the manner mandated by the scheme.

these consumers finding the information to be ‘useful’ or ‘very useful’. However, this would indicate that a majority of consumers did not look at quality marks and the research also suggests that some consumers (29%) did not look at this information because they felt that it was not important.

- 3.88 The use of quality marks more generally as a criterion to choose between providers has remained consistently low between 2013 and 2019, with only 5% of consumers considering them. We note however that 25% of consumers across all sectors said they never looked for quality marks, and another 25% said they did not use quality marks to choose between service providers.¹⁰⁹ This would suggest there is a need for regulators to consider raising consumer awareness of quality marks.
- 3.89 Even where consumer awareness is limited, consumers may still benefit from a provider’s commitment to improving its standards to meet specified accreditation criteria. This depends to a large extent on the scheme’s commitment to measuring outputs (such as the level of complaints or customer satisfaction) and using this feedback to improve service.
- 3.90 An example of an accreditation scheme is the LawNet Mark of Excellence,¹¹⁰ which is designed to help measure and improve customer service. Member firms are subject to customer surveys (linked to ReviewSolicitors),¹¹¹ experience reviews (where independent researchers act as potential clients), and benchmarking. This allows member firms to compare performance with other participating firms and use feedback and training to improve service. According to LawNet, during the first six years almost 70,000 satisfaction surveys and 5,000 anonymous experience reviews have been conducted, making this the largest client experience research project in the legal sector. The research indicated a performance gap¹¹² in overall client satisfaction in favour of LawNet firms compared to the overall sector, and 95% of clients would recommend the LawNet firm they used.
- 3.91 While some consumers may be benefitting from a provider’s commitment to improve service standards through membership of an accreditation scheme, which seeks to measure and improve service outcomes for consumers, the

¹⁰⁹ LSCP (2020), [Consumer Impact Report](#), p14.

¹¹⁰ [LawNet Mark of Excellence](#).

¹¹¹ See [ReviewSolicitors](#) website.

¹¹² According to LawNet the first benchmarked survey it conducted across all firms indicated an overall satisfaction of 89% in 2012-13. Since then targeted action by LawNet firms helped to achieve a 97% overall satisfaction level compared to an 84% overall satisfaction of the sector as a whole (according to the LCSP Tracker Survey 2018) indicating a 13% difference in performance between LawNet firms and the sector. We note that comparing the LawNet survey result to the LSCP survey result may not be a robust method of comparison. However, when comparing results of both LawNet surveys, we note an increase of 8% in overall satisfaction. See [White Paper 2019, LawNet Mark of Excellence: Lessons for law firms](#) and [LawNet CFI response](#).

majority of consumers are not considering this type of quality mark when choosing a provider.

- 3.92 Overall, with regard to quality transparency there has been some progress with regulators providing guidance to providers on how to engage with customer reviews. However, engagement by providers and consumers has been limited to date. Apart from this there has been no further developments in terms of providing consumers with additional objective indicators of quality.

Consumer engagement

- 3.93 This section sets out our assessment of progress against the Market Study recommendations to facilitate consumer engagement with the legal services sector. It sets out:

- progress on facilitating DCTs in the legal services sector;
- progress on providing access to regulatory information; and
- progress on a consumer information hub.

Facilitating DCTs

- 3.94 As we discuss above, since the Market Study there has been a significant increase in the availability of price and service information about legal services online. In addition, as we discuss in more detail below, there has also been some progress towards capturing basic regulatory information in one place. It was hoped that the increased availability of price information and the increasing collation of information in a centralised place, such as the SRA digital register and its collation of first tier complaints data, would encourage DCTs such as price comparison or review sites to enter and grow within the legal services sector.

- 3.95 However, our high-level review suggests that the growth of DCTs in the legal services sector has been very limited:

- The SRA reports that 11 parties are currently using its digital register via an application programming interface (API); however, a number of these might be classified more as directory sites rather than price comparison or review based DCTs and some are either inactive or have very little activity.¹¹³

¹¹³ [SRA CFI response](#).

- The main participants in the sector are effectively the same as reported as the time of the Market Study, eg: Moneysupermarket.com (the only one of the main DCTs to operate in the legal services sector, providing a conveyancing price comparison service); ReallyMoving.com (a conveyancing review/price comparison) service; Legalsuperstore.com (a price comparison site for a range of legal services); justbeagle.com (price comparison and reviews); Reviewsolicitors.co.uk (a review site); and solicitor.info (a review site).
 - We have spoken to a number of the active DCTs and although anecdotally some have reported some growth, especially in the area of reviews, it appears that the overall scale of DCT activity remains fairly low especially for price comparison services.
- 3.96 Surveys suggest there is currently limited use of DCTs by consumers. The LSCP Tracker Survey 2020 suggests only 3% of consumers used DCTs to find their legal services providers. Similarly, the Individual Legal Needs Survey 2020 found only 3% of consumers used a cost comparison site. The SRA Year One Evaluation found that 41% of consumers were aware of DCTs and 13% have used them to search for legal services.
- 3.97 There is limited appetite from legal providers to engage with DCTs, particularly for price comparison. The SRA Year One Evaluation found that only 2% of solicitors provide price information to DCTs, although based on anecdotal evidence we consider that a higher proportion will be cooperating with review sites. SRA qualitative research undertaken as part of its Year One Evaluation suggests that solicitors have reservations about engaging with DCTs, primarily because of the risks of negative or inaccurate reviews, the difficulty of portraying quality accurately as well as the challenges of how to describe and commoditise complex legal services and also of how to establish objectivity. Only 29% of solicitors reported any benefits from DCTs whereas 80% noted that there were some challenges. In addition, LSB research on technology and innovation found that in 2018 only 12% of providers used DCTs, and only a further 3% were planning to do so.¹¹⁴
- 3.98 Our review suggests that, despite the increase in the amount of information on price and service available on legal services provider webpages, the variability and quality of the information available is a problem for DCTs. DCTs are not making use of the pricing information on provider websites due to a lack of standardisation in how the information is being provided. Where DCTs do currently provide price comparison, they do so largely on the basis

¹¹⁴ LSB (2018), *Technology and Innovation in Legal Services 2018 – Main Report*.

of standardised fixed quotes for specific services (eg low, medium or high complexity conveyancing) provided in advance by a panel of legal services providers however (ie separate from the information made available through transparency rules) and only a limited number of providers are currently willing to do this.

- 3.99 Improvements in the standardisation of pricing information made available through transparency rules would be required for it to be useful for price comparison DCTs. In its Consumer Impact Report, the LSCP stated that 'DCTs can only function effectively if consumers understand that they are comparing like with like and until this information is available it will be challenging for DCTs to fulfil their full potential in the market'.¹¹⁵ Similarly, ACSO in its CFI response argued that it was necessary to 'Improve availability of data so that DCTs can compare services easily. The regulators could address this by gathering the data required or even mandating their production. ACSO would be pleased to work with LS providers to co-ordinate the data required'.¹¹⁶
- 3.100 Price is only one part of the information required by consumers. Information on quality and consumer reviews are important to inform consumer choice. Improvements could be made to provide more information in these areas. The LSCP submitted that 'limited info on key choice factors for consumers, specifically on price and quality'¹¹⁷ was a challenge for DCTs and the LSB submitted that 'increased info about service quality should allow for greater development of DCTs',¹¹⁸ whilst the Office for Legal Complaints (OLC) stated that 'if DCTs are to be successful, it is important to have access to a core group of quality indicators and info which helps consumers to contextualise and understand that data'.¹¹⁹
- 3.101 Other barriers cited for limited engagement of DCTs in the legal services sector include the one-off nature of most transactions and the presence of offline intermediaries in the high-volume legal services areas. For example ACSO noted that 'Legal services are bought infrequently and often at a time when price may be a lesser factor than speed of response or familiarity'.¹²⁰ In addition, the CLC stated that one barrier to the use of DCTs was the fact that 'Referral remains the most common route to choosing a provider of

¹¹⁵ LSCP (2020), [Consumer Impact Report](#).

¹¹⁶ [ACSO CFI response](#).

¹¹⁷ [LSCP CFI response](#).

¹¹⁸ [LSB CFI response](#).

¹¹⁹ [OLC CFI response](#).

¹²⁰ [ACSO CFI response](#).

conveyancing or probate services.’¹²¹ Similarly, the LSB submitted that barriers to participation by DCTs include the ‘unique features of legal service market: infrequent use of legal services; legal services are often taken at a moment when consumers are not inclined to shop around; offline intermediaries often guide consumers to relevant services’.¹²²

3.102 These issues are undoubtedly factors that make it more difficult for DCTs to operate in the legal services sector than they would in some other sectors. However, the DCTs we spoke to did not consider them insurmountable, especially in the more commoditised areas of law, with the issues of access to information and provider engagement thought to be more important barriers. For example, [reallymoving.com](#) noted ‘reallymoving has been providing a comparison service for conveyancers since 1999 with great success’.¹²³ In addition, the LSCP argued ‘There is potential for digital comparison tools (DCTs) to do well in the legal services sector, especially in areas that are more commoditised, such as conveyancing’.¹²⁴

3.103 Overall our review found that there has been limited growth of DCTs since the Market Study and no significant entry by new DCTs. There is limited engagement with existing DCTs by providers and consumers. DCTs are not making use of the price and service information that has been made available following the implementation of the transparency rules by providers – reporting that their services require more standardised information on price and service than is currently made available – and the limited availability of quality information is a further challenge for DCTs. Although there are some features of the legal services sector which make it less attractive to DCTs than some other markets, successful DCT services should be possible in the more commoditised areas of law such as conveyancing.

Access to regulatory information

3.104 In the Market Study, the CMA also recommended that regulators should assess the feasibility of a single digital register across authorised professionals combining relevant regulatory and customer focused information. This was explored in 2017. A data mapping exercise was undertaken across all the regulators and a joint technical piece of work proposed to build on that. However, the regulators decided that the time was not right to undertake that work.¹²⁵

¹²¹ [CLC CFI response](#).

¹²² [LSB CFI response](#).

¹²³ [Reallymoving.com CFI response](#).

¹²⁴ [LSCP CFI response](#).

¹²⁵ [SRA CFI response](#).

- 3.105 A number of regulators have introduced digital registers identifying regulated entities and professionals. For example, the SRA has introduced a digital Solicitors Register. In a January 2020 board paper, the LSB noted that ‘Professional registers are available in open data formats across the market, although intermediary markets are making limited use of these. Disciplinary information has been integrated with these registers (except for ICAEW and Master of Faculties). LeO’s data is also available in open access format.’¹²⁶
- 3.106 The SRA’s digital Solicitors Register¹²⁷ allows consumers to look up any solicitor or law firm regulated by the SRA to check their status and see whether there have been any regulatory findings against them. The register can be accessed via an API to facilitate data feeds to help support the development and use of digital comparison tools. The register includes basic regulatory and disciplinary information on nearly 200,000 solicitors. For the past two years, the SRA has also published aggregated data on complaints made to solicitors, providing an updated report annually. The LSB has encouraged other regulators to follow this example.
- 3.107 The SRA Year One Evaluation showed that awareness of the SRA Digital Register among consumers who used a solicitor was 54% for SMEs, and 38% for individual consumers responding. 36% of SMEs and 25% of consumers using a solicitor who are aware of the Register have used it (this represents 10% of the total consumer sample and 19% of the total SME sample). 59% of all law firms said they use the SRA Solicitors Register and 25% said they did not (16% could not say if they had or had not used it).
- 3.108 In addition, a ‘Registers of legal professionals’ feature has been developed and built into the Legal Choices website by the participating legal regulators. This resource allows visitors to the website to find out information about the different types of regulated legal professionals, and to then access the digital registers for those lawyers, by linking directly to individual regulator websites.¹²⁸ The Legal Choices Steering Group has also developed a ‘*help me trust my lawyer*’ product, which scans the registers of the participating regulators and provides disciplinary data to the enquirer. There are plans to develop the product further to allow it to offer single register functionality.¹²⁹

¹²⁶ LSB (2020), Board paper (20) 06, [CMA Recommendations – Progress](#), Annex A.

¹²⁷ See the [Solicitors Register](#).

¹²⁸ Eg [Find a CLC Practice or Lawyer](#); or [Find a Barrister](#).

¹²⁹ [Legal Choices summary report 2017-20](#), November 2020; [SRA CFI response](#).

Implementation of remedies around a consumer education hub

3.109 One of the recommendations that the CMA addressed to the regulators in the Market Study was the development of a consumer education hub.

Specifically, the CMA wanted to see improvements in the information available to consumers to empower them and help them navigate the legal services sector. The CMA proposed the redevelopment of the existing Legal Choices platform.

3.110 In 2017, in response to the CMA's recommendations, the regulators agreed a three-year development plan for Legal Choices. The Legal Choices Summary Report 2017-2020 issued in November 2020 shows that clear progress has been made:¹³⁰

- The regulators have invested £750,000 over the last three years.¹³¹ After the withdrawal of the BSB in 2019, the remaining regulators contributed further funds to ensure delivery of the project for the following three years;
- Based on consumer-led research, they developed four new user-centred products by collecting evidence of relevant consumer need. Three of these products are aimed at consumers ('Help me understand the process', 'Help me trust my lawyer', and 'Help me understand legal terms'), whereas the fourth one is aimed at frontline advisers ('Help me give good advice');
- As noted above, Legal Choices has been developing a digital profession-wide register of disciplinary data and has planned to expand the range of data to include non-disciplinary ones;
- The regulators have scaled up their digital marketing activity, engaged with several stakeholders, including intermediary and consumer groups, GOV.UK and organisations in Scotland and Northern Ireland.¹³²
- The Legal Choices website exceeded the target visitor numbers over the three-year period of two to three million, achieving 3.1 million visitors (up from 164,000 over the previous three-year period).

3.111 As regards next steps, funding from the remaining legal regulators has been agreed for the next three-year development programme with the objective to

¹³⁰ [Legal Choices summary report 2017-20, November 2020](#).

¹³¹ LSB (2020), Board paper 20 (23), [Legal Choices, Annex C Legal Choices governance and funding model](#).

¹³² According to the [Legal Choices summary report 2017-20, November 2020](#), a 'key element of the Legal Choices offer – explanation of the different types of legal adviser – is currently positioned on four GOV.UK web pages that, together, are viewed by more than 500 users per day on average.' Monthly referrals from GOV.UK to [legalchoices.org.uk](#) are rising, albeit from a low base.

continue marketing activities, further build stronger relationships with other providers of public legal education, review and refine the available content and products, and increase consumer traffic.

- 3.112 A challenge for Legal Choices concerns funding after the decision of the BSB in 2019 to withdraw its support. The BSB reiterated its justification also in the reply to the CMA's CFI and said that '*(i) it [Legal Choices] was not sufficiently helping consumers to navigate the legal services sector, and (ii) working with organisations directly engaged with consumers [...] would be a better, more cost effective way of helping consumers.*'¹³³
- 3.113 At the time of the BSB's decision, the CMA expressed its concerns and strongly encouraged the regulator to reconsider its position. The CMA emphasised that Legal Choices was a central recommendation made by the CMA to help legal services consumers identify their legal needs and navigate the legal services sector, particularly when they first engage with the sector. The long-term viability of Legal Choices, and the effectiveness of the recommendation, could be undermined following the BSB's decision. The CMA was also concerned that the BSB's decision to withdraw funding, and hence to step down from the Legal Choices' editorial board, might impact the coverage of barristers on the Legal Choices website.
- 3.114 In a paper published in April 2020, the LSB indicated that it shared the same concerns as the CMA, and made it clear to the BSB the consequences of its decision in terms of performance and compliance with the CMA's recommendation to improve transparency in the legal services sector.¹³⁴ Although the BSB has reconsidered the matter, its decision has remained unchanged and consequently, the remaining regulators were obliged to contribute further funds to cover the loss of the BSB's contribution.
- 3.115 Regulators expressed some concerns about future funding and governance in their replies to the CFI:
- The LSB reported that achieving the full potential of Legal Choices has been inhibited by a lack of consensus among the regulators over funding and governance and this situation has worsened after the BSB's decision in 2019. The LSB also added that only fundamental changes in the way that the initiative is supported, governed and funded will improve prospects for success;¹³⁵

¹³³ [BSB CFI response](#).

¹³⁴ LSB (2020), Board paper 20 (23), [Legal Choices](#).

¹³⁵ [LSB CFI response](#). Note that these arguments are also discussed in detail in LSB (2020), Board paper 20 (23), [Legal Choices](#) and in LSB (2020), Board Paper 20 (43), [CMA - Consumer Engagement progress](#).

- The SRA, ICAEW, IPReg and CILEx Regulation shared their concerns about the funding gap left by the BSB and reported that the COVID-19 pandemic had the potential to affect the budget. The Faculty Office added that the achievements of Legal Choices came at a significant cost for smaller regulators and questioned whether it was reasonable for Legal Choices to be solely funded by the regulators.¹³⁶
- The LSCP said ‘The structure and governance arrangement of the entity remains fragile, as evidenced by the BSB’s irresponsible withdrawal from the group in 2019.’¹³⁷
- The ICAEW raised concerns about governance in terms of liability risk.¹³⁸

3.116 In their replies to the CFI, several stakeholders also highlighted potential areas of development for Legal Choices:¹³⁹

- Passmore Consulting suggested Legal Choices ‘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’;
- ACSO, CILEx Regulation, LawNet, the National Association of Licensed Paralegals and ReviewSolicitors mentioned that many consumers are still not sufficiently informed about the existence of Legal Choices, and thus it would need much more promotion;
- The Institute of Paralegals flagged that Legal Choices does not adequately provide consumer information on unauthorised providers. This point was also emphasised by the National Association of Licensed Paralegals and the Professional Paralegal Register (PPR), who pointed out that it would be preferable to have the links to all of the available registers of legal services providers, including unauthorised providers like paralegals as well as McKenzie Friends, for Legal Choices to provide a complete picture of the legal services sector;

¹³⁶ As submitted in response to the CFI for this Review. See the published responses .

¹³⁷ [LSCP CFI response](#).

¹³⁸ The SRA also expressed its concerns about governance in a letter to the BSB in March 2020. See LSB (2020), Board paper 20 (23), [Legal Choices](#), [Annex A](#).

¹³⁹ See the [stakeholders’ CFI responses](#).

- ICAEW pointed out that the Legal Choices website continues to be lawyer-focused and does not adequately reflect the offerings of the many legal services providers other than lawyers including accountancy firms.

- 3.117 SRA Year One Evaluation research suggests that Legal Choices is recognised and used by many legal services users in England and Wales. Of recent users of legal services, 37% of consumers said they were aware of Legal Choices as ‘a way to find legal services’, and 11% said they had used it. Among small businesses, 55% said they were aware of Legal Choices, and 22% said they had used it.
- 3.118 Overall, significant progress has been made by the Legal Choices website. There has been and continues to be progress on developing the content of the site, including four new user-led products. Following significant marketing activity, user numbers have increased substantially during the last three years. The development of content and the drive to increase consumer engagement remains a work in progress. However, the Legal Choices site has suffered from some governance issues, notably around the agreement of funding for the next three years.

Impact on sector outcomes

- 3.119 In this section we discuss evidence of the impact of the implementation of the Market Study transparency recommendations on high level sector outcomes such as price levels, price dispersion and shopping around.
- 3.120 The Market Study transparency measures were intended to increase competition between legal services providers. We might expect that an increase in the intensity of competition between legal services providers would result in changes to high level sector outcomes within the legal services sector. However, these impacts might also take time to emerge, as consumers and legal services providers change their behaviour in response to the measures.
- 3.121 Since 2017, the LSB has been conducting periodic research into the level of prices and price dispersion in legal services. This research asks providers to submit prices for 12 tightly-specified standardised scenarios across a range of legal services (conveyancing, wills, divorce, and probate). The research looks at level of prices and price dispersion (effectively the range of prices quoted by providers) for each of these scenarios.
- 3.122 Given that the scenarios are tightly specified we would expect the dispersion of prices across the scenarios – allowing for legitimate factors which might explain price variations such as the location of the provider and the

experience of the staff providing the service – to be relatively limited if competition were working well. It would be an indication competition was working well if consumers were able to achieve similar prices for a similar service. Based on the LSB's study of pricing for individual legal services,¹⁴⁰ the Market Study concluded that there was considerable dispersion of prices for the same legal service. This suggested that some consumers could make considerable savings from shopping around.

3.123 The most recent iteration of the LSB pricing research undertaken in 2020¹⁴¹ found that prices have increased more than decreased since 2017, and that there is no evidence of a significant change in the level of price dispersion since the implementation of transparency measures. It found that:

- Average inflation-adjusted mean prices increased in eight scenarios and did not significantly change in the other seven, while average median prices increased in 12 scenarios, decreased in two and did not change significantly in the one other scenario.
- Providers were much more likely to have increased their prices than decreased them in the 12 months before the survey. 36% of providers in the conveyancing scenarios had increased and 4% decreased prices, 30% in the divorce scenarios had increased and 1% decreased prices; and 33% had increased prices in the wills, trusts and probate scenarios while 3% had decreased prices.
- The research found a wide dispersion of prices, indicated by the interquartile range – which measures the middle band of prices. The research found no consistent pattern on the spread of prices, as was also the case in the 2017 or 2015 waves of this research. It also found no clear trend between 2017 and 2020, with some spreads barely changing but others increasing or decreasing.

3.124 Recent consumer research suggests that the legal services sector is still characterised by relatively low levels of consumer shopping around, and this appears to have changed little since the implementation of the price transparency measures. The LSCP tracker surveys suggested that only 30% of consumers shopped around in 2020,¹⁴² and that this had increased only slightly from 27% since 2018.¹⁴³

¹⁴⁰ LSB (2017), *Prices of Individual Consumer Legal Services 2017*.

¹⁴¹ LSB Prices Research.

¹⁴² LSCP Tracker Survey 2020. We also note that the *Individual Legal Needs Survey 2020* found that 21% of recent legal services users had compared more than one provider.

¹⁴³ LSCP Tracker Survey 2018.

3.125 Based on the evidence to date, there appears to have been a limited impact on the intensity of competition between providers and on sector outcomes resulting from the transparency measures. In particular, the recent LSB Prices Research finds no evidence yet of a significant change in the level of price dispersion since the implementation of price and service transparency measures and there is limited evidence of any increase in shopping around by consumers. However, given that new rules were implemented by the regulatory bodies only from late 2018 onwards, it may be too early to pick up any changes in high level sector outcomes. Alternatively, it may be that further work, to improve how transparency has been implemented, may be required before any changes in high level sector outcomes become apparent.

3.126 In general, stakeholders agree that there has been limited impact on competition between legal services providers as a result of the implementations of transparency within the legal services sector. They have told us that although there are some promising signs, the increased availability of price and service information and the resulting improvement in consumer engagement have had a limited impact on competition in the legal services sector. Some typical views include:

- **SRA:** ‘we do not expect immediate, substantive change in the market. We agree with the CMA hypothesis of a three-stage process whereby firms introduce the changes, consumers become aware and begin using the information, which then may lead to increased competition and significant market change. Although there is evidence that consumers are engaging with the information available, it is likely that we are still in the first stage of this process.’¹⁴⁴
- **LSB:** ‘Our prices research suggests that the transparency reforms have had limited impact on competition so far in legal services sector. Where firms were behaving more competitively, we would have expected to see a narrowing of this [price] dispersion.’¹⁴⁵
- **LSCP:** ‘There is nothing to suggest that the transparency measures have been effective in driving competition in the market yet. The CMA will be well versed in the findings of the recent research commissioned by the LSB that highlighted that there is still a wide dispersion of pricing in the market; an indicator that the market is not as competitive as it ought to be.’¹⁴⁶

¹⁴⁴ [SRA CFI response.](#)

¹⁴⁵ [LSB CFI response.](#)

¹⁴⁶ [LSCP CFI response.](#)

- **Law Society:** ‘it is likely to be too early to conclusively determine how effective the transparency measures have been in driving competition – whether in general or for specific practice areas. The research conducted by the SRA [on consumer engagement] is encouraging and indicates the overall direction of travel is a positive one.’¹⁴⁷

Conclusion

3.127 Since the Market Study, all of the regulatory bodies have taken steps to introduce minimum standards for transparency, mostly through the adoption of regulatory requirements. Rules have been put in place by all regulatory bodies, which are also monitoring progress made by providers and evaluating the impact that these interventions have had on consumers. The result has been a substantial increase in the availability of information on price, service, redress and regulatory status made available by providers.

3.128 There are some positive signs that consumers are engaging with price and service transparency information, but some of the evidence is mixed. A recent SRA survey found that consumers access price and service information online reasonably often and when they do, they find it useful. However, evidence from the LSCP Tracker Survey 2020 suggests that consumers still generally rely on recommendations and referrals when choosing legal services providers and most often find out about price and service information through direct contact with their legal services providers rather than online.

3.129 The improvements in transparency have only recently come into effect, with new rules being implemented by the regulatory bodies from late 2018 onwards. Based on the evidence to date, there has been a limited impact on the intensity of competition between providers and on sector outcomes. In particular, the recent LSB Prices Research finds no evidence yet of a significant change in the level of price dispersion since the implementation of price and service transparency measures and there is limited evidence of increased shopping around.

3.130 We have identified several possible reasons for the limited impact on sector outcomes thus far, aside from the fact that the transparency measures have only been in place for a relatively short period of time and would take longer to have their full effect:

- (a) The rules and guidance put in place by the regulatory bodies are high level and allow significant discretion to providers in how they are

¹⁴⁷ [Law Society CFI response](#).

implemented. Although the rules are specified only at a high level, there is evidence that levels of full compliance with the rules and guidance by legal services providers at the moment is fairly low. There is limited evidence currently available on how providers have actually implemented the rules, but what evidence there is suggests that there is a significant amount of variability in how the information is provided (eg differences in the format of the prices displayed and the location of the information). Consequently, the rules and guidance now in place and the approach to monitoring and compliance may need refinement to be more effective.

- (b) There is much evidence to indicate that consumers value information on quality alongside information on price when choosing a legal services provider. However, there has been limited progress by the regulatory bodies on the development of information on the quality of legal services providers in response to the Market Study recommendations. While some consumers may be benefitting from a provider's commitment to improve service standards through membership of an accreditation scheme which seeks to measure and improve service outcomes for consumers, the majority of consumers are not considering this type of quality mark when choosing a provider. In line with our recommendations, the regulatory bodies have issued guidance to providers on engagement with online reviews. However, only a few providers have adopted their use. Similarly, and perhaps unsurprisingly given the limited engagement by providers, consumers appear to have limited trust in reviews and only engage with them to a very limited extent.
- (c) Consumer engagement in the sector – such as the number of consumers shopping around – remains limited. DCTs could play a key role in consumer engagement with legal services. However, to date, the growth of DCTs in the legal services sector has been very limited and surveys suggest that consumers are only using them to a limited extent. DCTs are not making use of the price and service information that have been made available following the implementation of the transparency rules by providers, reporting that their services require more standardised information on price and service than is currently made available. The SRA has introduced a digital register of law firms and solicitors, with access facilitated by an API to allow third parties to easily access the register. However, further steps are needed to better facilitate the role of DCTs in the sector, including to address the lack of standardised pricing information, limited information on quality indicators and limited engagement with online reviews by both providers and consumers (including the resolution of issues around consumer trust).

- (d) There has been progress with the Market Study recommendation to redevelop Legal Choices as a tool for consumers to navigate the sector more easily. In particular, there has been some success in attracting website visits through digital marketing activity and the cross-promotion of Legal Choices by other consumer organisations. However, many of the stakeholders that responded to the CFI suggested that more could be done to develop Legal Choices and some suggested that the content on the website could be further improved. In addition, there are concerns over the future governance, direction and participation of regulators.

4. Transparency recommendations

- 4.1 In the previous chapter, we identified that there has been a substantial improvement in the transparency of information made available to consumers by legal services providers, and evidence that some consumers are using this information. However, to date, this has had a limited impact on the intensity of competition between providers and sector outcomes. We would expect the current measures to have a greater impact over time. However, to ensure that the measures have the best chance of success, we also believe that it is important for the regulators to continue to build on the progress made so far.
- 4.2 We recommend that the LSB work together with the regulatory bodies (BSB, CILEx Regulation, CLC, CLSB, ICAEW, IPReg, the Master of the Faculties and SRA) to deliver transparency measures that build on our framework of recommendations that focus on the following five areas:
- (a) ensuring that there are high levels of compliance with the minimum standards of transparency across the legal services sector;
 - (b) improving the clarity, comparability and prominence of disclosures on providers' websites in relation to price, service, redress and regulatory status;
 - (c) improving the provision of information on the quality of legal services provided to consumers;
 - (d) developing initiatives to help consumers engage actively with information on price, service and quality; and
 - (e) developing an ongoing programme of consumer research and testing to determine the information on price, service and quality that is most useful for consumers.
- 4.3 This framework of recommendations is intended to enable the LSB to work with and coordinate the activities of the regulatory bodies, building on the good progress made by the regulatory bodies to date in taking forward the recommendations made by the CMA in its Market Study and addressing other aspects of the CMA's Market Study recommendations that have not yet been progressed. As well as enhancing the measures already in place, they aim to address the factors identified in the previous chapter, which, in our view, have been limiting the impact of the previous recommendations on competition and sector outcomes.
- 4.4 The overall objective of the further work we expect to flow from these recommendations is to ensure that consumers have access to the information

they need to make informed choices, which will, in turn, drive competition. In measuring the successful implementation of these recommendations, the LSB and the regulatory bodies should identify appropriate outcomes, including the extent to which consumers make use of the information and make informed choices and ultimately, whether competition and sector outcomes are improved.

- 4.5 Below, we first discuss the scope of our recommendations and then set out our initial thinking about how the regulators might best take forward each recommendation. In describing the more detailed actions that we have considered that underlie the recommendations, we recognise that we have carried out a relatively brief review and have not been able to consider every option in detail. Moreover, it is appropriate for the LSB and the regulatory bodies to develop their own approaches, given their specific roles and sector expertise. However, we hope that by setting out a framework of recommendations with some more detailed proposals, including reflecting suggestions that have been put to us by stakeholders in the course of our review, this will provide a starting point for the regulators' more detailed plans.

Scope of recommendations

- 4.6 The Market Study recommendations included a mandatory requirement for minimum levels of price, service, redress and regulatory status transparency across legal services provided to consumers and SMEs. Our view remains that it is important that all regulatory bodies seek to achieve these minimum levels of transparency, so that there is a base level of transparency across the sector. Such a level of transparency is what consumers in most markets would expect as a minimum. It is important that consumers understand the likely cost of legal services in advance of engaging with providers to enable them to assess how best to meet their legal needs. There has been significant progress towards this objective, though some gaps remain to be addressed (which we discuss in further detail below).
- 4.7 In looking to go beyond this base level of transparency, we recognise that different legal services can have very different characteristics and, as such, transparency measures may be more effective at improving competition when applied to certain legal services than others. We believe it is now appropriate for the LSB and the regulatory bodies to focus their efforts to enhance transparency further on those legal services where there is scope for increased transparency to have the greatest impact on competition and sector outcomes. As an initial step, in considering the recommendations below, the LSB and regulatory bodies should identify the legal services for which further enhancements to transparency are best suited, and the practice areas with

the largest consumer presence, in order to determine whether they would benefit from enhanced transparency requirements. We consider that possible areas would include conveyancing, family law, employment, wills and probate. We have set out some thoughts on how regulators might undertake analysis in order to make such an assessment in Appendix A.

- 4.8 While our recommendations are intended for the regulatory bodies, we believe that there would be benefits for consumers if unauthorised providers also adopted similar standards. We therefore encourage self-regulatory bodies to consider how they might encourage the adoption of similar standards of transparency in their respective sectors.

Ensuring that there are high levels of compliance with the minimum standard of transparency within the legal services sector

- 4.9 We recommend that the regulators continue to work to ensure that there are high levels of compliance with the minimum standard of transparency within the legal services sector. Below we consider the possible further actions that could be taken by regulators. These actions are not mutually exclusive and could be pursued in parallel with each other.

- 4.10 We have identified three sets of actions:

- (a) take action to ensure compliance with the current rules on minimum standards of transparency;
- (b) review the scope of services covered by the minimum level of transparency; and
- (c) review the effectiveness of a guidance approach and introduce rules if levels of transparency are low.

Take action to ensure compliance with the current rules on minimum standards of transparency

- 4.11 The regulatory bodies have put in place systems for the monitoring of compliance with price and service transparency rules. However, as we set out in the previous chapter, levels of compliance with the transparency rules and guidance put in place by some regulatory bodies appear to be relatively low. It is important that regulators take robust action to ensure that levels of compliance with the rules are at a high level.

Review the scope of services covered by the minimum level of transparency

- 4.12 In addition to examining the possibility of enhancing the transparency rules, regulators should consider whether there is scope to expand the legal services which are covered by the rules setting out a required minimum level of transparency. As we discuss in the previous chapter, since the introduction of transparency rules, the level of transparency has increased not only in the services that are covered by the rules but also in other legal services. However, the level of transparency for legal services that are not covered by the rules is notably lower than for services that are. Some regulators are already reviewing the scope of the legal services covered by rules – for example, CILEx Regulation has consulted on extending its rules covering conveyancing and probate to immigration.¹⁴⁸
- 4.13 Rules are effective in driving an increase in the level of transparency and more work needs to be done on considering how to extend them to services for which they were previously considered inappropriate/unnecessary. For example, in the case of wills and trusts the SRA decided to leave these out of the services covered by its rules largely on the basis that the level of price transparency (the number of firms displaying prices on their websites) in this sector tended to be higher than they were for other legal services. However, the evidence from the SRA Year One Evaluation set out in the previous chapter shows that the level of transparency for wills and trusts are now lower than they are for the services covered by the SRA rules.

Review the effectiveness of a guidance-based approach and introduce rules if levels of transparency are low

- 4.14 The Market Study recommendations included a mandatory requirement for minimum levels for price and service transparency across legal services. Mandatory rules have been adopted by most regulators covering the vast majority of legal services providers. However, some regulators have chosen to adopt an approach of introducing voluntary guidance rather than mandatory rules (CLSB, ICAEW and IPReg).
- 4.15 The regulators which introduced voluntary guidance committed to review this approach to see how well it was working. At the time of writing the outputs from these regulators' evaluations of the implementation of price and service transparency were not available, aside from the preliminary output from the ICAEW's 2020 assessment, which will be subject to further assessment in

¹⁴⁸ See CILEx Regulation, Closed consultations.

2021.¹⁴⁹ The LSB in its CFI response noted its concern about low levels of compliance with transparency guidance by firms providing probate services regulated by the ICAEW and the CMA considers this continues to be the case.¹⁵⁰ When these evaluations have been completed, the CMA is of the view that these regulators should consider the introduction of mandatory rules if the levels of compliance with the voluntary guidance are low. In line with the Market Study recommendations, our view is that rules should be put in place to establish a minimum level of transparency unless it can be clearly demonstrated that the guidance approach is working effectively.¹⁵¹

Improving the clarity, comparability and prominence of disclosures on providers' websites in relation to price, service, redress and regulatory status

4.16 We recommend that the regulators further improve the clarity, comparability and prominence of disclosures on providers' websites in relation to price, service, redress and regulatory status. This should help to increase consumer engagement with the legal services sector, encourage consumers to shop around and may facilitate the growth of DCTs. Below we consider the possible actions that could be taken by regulators. These actions are not mutually exclusive and could be pursued in parallel.

4.17 We have identified four sets of actions, to:

- (a) more actively promote best practice in meeting the regulatory rules;
- (b) develop monitoring and compliance within the current rules;
- (c) enhance the rules for price and service transparency; and
- (d) drive improvements in product standardisation and pricing

More actively promote best practice in meeting the regulatory rules

4.18 We consider that within the current rules there is scope for regulators to more actively promote best practice in the provision of price, service redress and regulatory status information. This can be achieved by undertaking work to

¹⁴⁹ See paragraph 3.28 of this report.

¹⁵⁰ See paragraph 3.28 of this report.

¹⁵¹ To the extent possible – for example, a rules-based approach may potentially not be appropriate in the case of the CLSB, which mostly regulates individuals rather than the entities who are responsible for producing and providing the information.

understand in more detail how providers have implemented the rules and developing best practice through a programme of consumer testing.

- 4.19 In addition to rules setting out the minimum level of transparency, most regulators have produced best practice guidance or templates, which give providers direction on how they might present information to consumers in ways that go above the minimum standard. However, there is little evidence available about whether providers are utilising the best practice guidance and templates. Furthermore, there has been limited consumer testing of either the templates themselves, or of actual examples of how providers have implemented the rules and guidance, to gauge whether consumers find the information to be clear and comparable.
- 4.20 Although many regulators did undertake some research and testing prior to the introduction of price and service transparency rules and guidance, now that transparency measures have been implemented, regulators could undertake further work to understand what providers have actually implemented and how effective the information provided is in facilitating consumer choice. To be effective, price and service transparency is likely to require continuous assessment and improvement to ensure that it has a substantial impact on competition.
- 4.21 In order to improve the ways in which the regulators promote best practice, they could collect information from provider websites and test this information with consumers. In turn they could work to improve the best practice templates already in place and develop new ones. More detail on how this might work is set out at paragraphs 4.92 to 4.101 and in Appendix B.
- 4.22 An extension of this would be to introduce reputational incentives to encourage providers to produce high quality information disclosures, such as by making an example of providers that exhibit good or (potentially) bad practice. The FCA/CMA¹⁵² highlighted that using reputational concerns can pressure firms into changing their behaviour. Moreover, reputational regulation allows high performing suppliers to demonstrate this, and in doing so highlights the lesser performance of others. For example, firms may spend money actively advertising or promoting their own results which is likely to increase both the level of awareness and the impact of the remedy. There are many examples of this such as the food standards requirement sometimes

¹⁵² FCA/CMA (2018), [Helping people get a better deal: Learning lessons about consumer facing remedies](#).

referred to as ‘scores on the doors’¹⁵³ or league tables of performance in retail banking.¹⁵⁴

- 4.23 In the Market Study we highlighted the scope for a ‘transparency mark’ that could be made available to providers on the basis of an assessment of the quality of their information disclosures and to incentivise engagement with other quality signals. However, we did not make a specific recommendation to introduce a transparency mark, believing that the focus of the regulatory community at that time should have been on introducing mandatory enhanced minimum standards. Regulators should explore the feasibility of developing a transparency mark as a way of helping to ensure that the standard of information disclosures made by providers is high and conforms to best practice.

Improve monitoring of compliance with the current rules

- 4.24 Now that price and service transparency has been implemented widely, further development of the regulators’ approach to monitoring compliance with the price and service transparency rules may be desirable to help promote best practice within the legal services sector. Such development should seek to raise the bar in terms of what presentation of information is seen as compliant with the current rules.
- 4.25 A system of monitoring that incorporates an evaluation of the clarity and comparability of the information made available by providers, rather than simply marking them as compliant depending on whether the information they have provided includes certain specified elements, could improve the information disclosures made by providers. Such an evaluation should be possible within the current rules put in place by most regulators – if such an evaluation is not possible within the current rules then regulators should consider changing their rules to facilitate this (see below for more discussion). An assessment could be derived from measures to further establish best practice outlined above and could also be incorporated in more prescriptive transparency rules.
- 4.26 It may be preferable and less resource intensive to improve the standard of information disclosures made by providers through the promotion of best practice and reputational incentives such as a transparency mark. However, if these measures are not sufficiently effective in driving improvements in the

¹⁵³ [Food Hygiene Rating Scheme](#).

¹⁵⁴ See CMA (2020), [Latest banking customer satisfaction results published](#).

standard of information disclosures then an enhanced monitoring regime may be necessary.

Enhance the rules for price and service transparency

Consider potential for changes to the rules for price and service transparency

- 4.27 As we discuss in the previous chapter, the rules that have been put in place by the regulatory bodies consist largely of high level principles which permit legal services providers a great deal of flexibility in how they implement them to reflect the differences in the service that they offer. This was a sensible approach given the often bespoke and complex nature of legal services.
- 4.28 Joint work by the FCA/CMA (2018)¹⁵⁵ concluded that transparency and disclosure interventions, such as those implemented by the regulators on price and service transparency, may need to go beyond high level principles and dictate more precisely how information should be provided. However, this needs to be balanced against the potential for overly prescriptive rules that might push legal services providers to present standardised information in a way that fails to capture the nuances of complicated or bespoke services, or which limits the scope of providers to innovate in how they communicate with consumers.
- 4.29 We consider that when work to establish best practice has been completed, then current rules could be supplemented to reflect the outcome of this work. In particular, where the rules do not currently allow for an assessment of the clarity and comparability of the information made available by providers then regulators should consider changing their rules to allow them to do so. This may require regulators to introduce an element of more prescriptive transparency rules which reflect best practice.

Refine rules on the prominence of information

- 4.30 As we describe in the previous chapter, there is some evidence that a significant minority of consumers have difficulty finding price information and this may be, at least in part, because the information is not located in an easily accessible place on their website. In addition, we noted that regulators have differed, to an extent, in how specifically they have set rules and guidance for the location of this information on provider websites. Some regulators have been reasonably specific (eg the BSB states that the

¹⁵⁵ FCA/CMA (2018), [Helping people get a better deal: Learning lessons about consumer facing remedies](#).

information should either be ‘on the homepage or one or two clicks away’),¹⁵⁶ whereas others have been less so (eg the SRA states that the information ‘must be published in a prominent place on your website’).¹⁵⁷

- 4.31 The Market Study did not make a specific recommendation on the location of price, service, redress and regulatory status information saying only that it should be ‘sufficiently prominent’. However, we consider that, given the evidence that some consumers have difficulty accessing the information then where they are not already doing so, regulators should provide more explicit guidance to providers on how to provide information to consumers in a prominent manner.

Drive improvements in product standardisation and pricing

- 4.32 In addition to measures to improve the clarity and compatibility of price, service, redress and regulatory data, defining a set of standard products suited, for example, to simpler legal needs could help to improve competition in legal services, as they could enable consumers to:

- (a) better understand the product which is being offered; and
- (b) compare the price and quality of providers offering those products.

- 4.33 Defining a set of standard products could also facilitate the entry and expansion of DCTs within the sector. DCTs have told us that they currently only offer price comparison where legal services providers submit to them quotes in advance for relatively standardised legal products.¹⁵⁸
- 4.34 While some legal services providers are already offering quotes for standardised products (such as conveyancing) and fixed prices for specified legal services packages, this could be expanded to capture a larger proportion of consumer requirements. Standard products could be a limited range of products for specific legal services defined along some broad dimensions, such as product complexity (eg ‘low’, ‘medium’, ‘high’)¹⁵⁹ and service levels (eg ‘basic’, ‘standard’, ‘premium’).¹⁶⁰

¹⁵⁶ BSB (2019), [Transparency Standards Guidance – Section 1: Mandatory rules on price, service and redress transparency for everyone](#).

¹⁵⁷ SRA Transparency Rules.

¹⁵⁸ For example, a quote for a ‘low’, ‘medium’ and ‘high’ complexity conveyancing, with consumers screened as to whether they require a ‘low’, ‘medium’ or ‘high’ complexity product through a series of questions about their legal issue.

¹⁵⁹ Eg in conveyancing this might be based on the value of the house and the freehold status or in probate the value of an estate and inheritance tax status.

¹⁶⁰ The service level may reflect the scope of the services included in a package. For example, in conveyancing the service might vary depending on the amount and nature of additional services – eg searches. In probate, the

- 4.35 The introduction of a set of standard products would need to be introduced carefully, paying particular attention to the following issues:
- (a) Product definition – the products would need to be tightly defined to enable consumers to compare prices across providers. However, this is a challenge when legal services are often complicated and relatively bespoke. Products could therefore only be introduced for a limited range of legal services which best lend themselves to standardisation, as we discuss in the section on scope above. Not all consumer needs would necessarily be covered by one of the products. However, they are likely to have most impact on competition where a significant proportion of consumer needs were covered.
 - (b) Consumer awareness – educating consumers, through marketing/educational campaigns, would be important to raise awareness of the products and to support consumers in understanding whether the products would be suitable for their requirements and also to avoid consumers selecting the product when their requirements would be better served by more complex, bespoke products/services.
 - (c) Excessive focus on price – consumers and providers may tend to focus insufficiently on non-price features of these products – even if they may not necessarily be of equivalent quality – leading to a race to the bottom. However, the risk of this could be mitigated by ensuring that these products are presented alongside relevant quality indicators – we discuss the development of quality indicators in more detail below.
 - (d) Innovation – It is possible that the introduction of these products might limit the incentive for providers to innovate. However, there would still be room for innovation as many customers would continue to be likely to require more complex, bespoke products and innovation could be focused on these. Furthermore, the definitions of these products need not remain static as they can be adapted over time to reflect sector developments.
- 4.36 There was some evidence from our Review that indicated that some providers may lack the skill or knowledge to effectively define and cost fixed price services. A less interventionist measure than introducing standardised products, but one that may be effective in terms of encouraging standardised approaches to product definition and pricing, could be for regulators to lead

service might vary depending on the scope of services provided, eg ranging from a basic 'grant of probate' to an 'end to end' service including research and estate valuation and estate administration.

work to develop a greater understanding amongst legal services providers about how to define and price products. This could involve:

- Work to educate providers on how to develop a fixed cost pricing structure through developing their understanding of how to price, based on average costs over a range of consumers – including understanding how to price the risks of cost overruns – rather than relying on bespoke pricing. This could encourage more providers to adopt fixed cost pricing as an option for consumers.
- Work to understand what ‘typical’ legal products are purchased by consumers and the inputs that are required to price these. This work might involve surveying providers to understand, for example, what attributes a ‘low’, ‘medium’, and ‘high’ complexity conveyancing service might include and the associated inputs and costs, along with what proportions of consumer needs fall within these boxes.

4.37 These types of interventions could significantly benefit competition. While we recognise that there are a number of issues which need to be addressed, such as how to effectively define the products, we consider that there is merit in pursuing such interventions as they could play an important role in facilitating consumer choice and supporting the entry and expansion of DCTs. In this context, we note that work on defining standardised products is on the agenda of the LSB. In its draft strategy for legal services regulation and draft business plan 2021-22, the LSB outlines one of its proposed workstreams as ‘Simple legal products: Work with government to explore the potential for developing a suite of easy to understand and easy to compare products that meet basic legal needs.’¹⁶¹

Improving the provision of information on the quality of legal services providers to consumers

4.38 Since the publication of the Market Study there has been limited progress made in the development of quality information. In part this is not surprising, given that regulators have focused and made progress on implementing our recommendations with regards to improving the transparency of price and service information as a first step, and given that the price and service transparency measures were described in more detail in our Market Study than our recommendations on quality. However, as we have outlined in the previous chapter, information on quality is complementary to information on

¹⁶¹ LSB (2020), [Draft strategy for legal services regulation and draft business plan 2021-22](#).

price and service. Regulators should now focus on the development of quality information alongside the development of price and service transparency measures. This should result in increased consumer engagement, an improvement in sectoral standards and ultimately drive competition through an increase in consumers shopping around.

4.39 We recommend that regulators take action to improve the provision of information on quality of legal services providers to consumers. We have identified two sets of actions that regulators should pursue to further progress the development and provision of quality information.

(a) *Identify, design and implement effective quality indicators.* Regulators should design and implement a programme of consumer research and testing to identify, design and implement effective quality indicators. This should include considering which quality indicators are appropriate for each area of legal services, and what quality information could be standardised to enable consumers to assess and compare providers.

(b) *Measures to improve engagement with customer reviews.* Regulators should conduct further work to determine appropriate mechanisms to improve engagement with customer reviews. This could include considering whether to require providers to:

- (i) display reviews on their websites;
- (ii) signpost consumers to independent review platforms; and
- (iii) ask customers to leave a review following the provision of legal services.

4.40 We note that the LSB has already started a programme to consider initiatives around improving information on quality, and therefore, we consider that the LSB is well placed to lead on development of quality information.

Identify, design and implement effective quality indicators

4.41 Providing consumers with information on quality to better aid their decision-making process when choosing a legal services provider should begin by having a clear understanding of what is meant by quality. We recognise that there is no universally accepted definition of quality across the legal services sector and agreeing on a definition of quality is a natural starting point for regulators to consider in the development of quality indicators. It is however encouraging to note the various research projects already commissioned by regulators in their attempt to better understand and measure quality. We have considered the findings of these research projects during our review.

- 4.42 CILEx Regulation research on quality indicates that individual consumers perceive quality in different ways, and while a specific attribute may be important for one individual, it may be less important or irrelevant for another.¹⁶² For example, a provider which has offices that are located in close proximity to the consumer may be important for a consumer who prefers face to face meetings, compared to a consumer who is comfortable with online communication. We acknowledge that, while there may be individual preference factors to measuring quality, there are also some common factors.
- 4.43 According to the research commissioned by the SRA, consumers seem to measure quality in two broad dimensions.¹⁶³ First they measure how well the provider will satisfy their needs and the level of personal treatment in doing so; and second, how credible, competent and trustworthy the provider is perceived to be.
- 4.44 In the Market Study, we explained that quality meant both quality of service and quality of legal advice.
- 4.45 Quality of service refers to the general client experience. Examples of quality of service include convenient operating hours, clear and easy to understand communication and the availability of key staff. Consumers often use quality ‘markers’ to help them assess quality of service. Quality ‘markers’, however, tend to be subjective, based on an individual’s perceptions (such as a ‘professional-looking’ website or a conversation with empathetic staff). Customer reviews however, while on an individual basis are also subjective experiences, in aggregate may function as a bellwether of service quality.
- 4.46 Quality of advice refers to the ‘technical’ quality of the service. This could include factors such as the accuracy and comprehensiveness of advice and a well-written document free from ambiguity or factual errors. There is a general consensus that assessing quality of advice is inherently difficult, largely due to the following factors:
- (a) Consumers generally lack the legal knowledge to assess the expertise of a provider.¹⁶⁴
 - (b) In some practice areas (eg will writing) the accuracy and comprehensiveness of the legal advice may only become apparent

¹⁶² CILEx Regulation: feedback on quality indicators from attendees at a CILEx Regulation Entity Event in February 2020.

¹⁶³ [SRA Year One Evaluation](#).

¹⁶⁴ LSCP (2020), [Consumers feedback on quality indicators in legal services](#).

sometime after the service was delivered.¹⁶⁵ In the case of will writing, this will likely be upon execution of the will.

- (c) A consumer's assessment of the quality of the legal advice they receive may be influenced by the outcome of the legal matter, and the outcome may not be dependent solely on the quality of the legal advice.¹⁶⁶

4.47 While we acknowledge that there are challenges in measuring quality (particularly the quality of advice), in our view these concerns are not insurmountable and should not prevent legal services providers from providing better quality information to consumers. We note that the healthcare sector has made substantial progress in recent years in measuring quality – in this case, the quality of care and the quality of service – while facing similar challenges. For example, healthcare patients also lack the medical knowledge to assess the expertise of the practitioner. The Care Quality Commission (CQC)¹⁶⁷ has developed a rating score which is easy for consumers to understand, using a framework of five key questions¹⁶⁸ in its approach to measuring quality. The CQC also endorses the use of quality standards for individual healthcare services in order to help identify and define good quality care.¹⁶⁹ We would encourage regulators to consider the development of quality information in the healthcare sector when thinking about how to progress their ongoing work on quality.

4.48 Regulators should also bear in mind that consumers require information on quality that is comparable as well as easily accessible in order to assess providers on a like for like basis, and to facilitate shopping around. Regulators should be mindful of the need to standardise information wherever possible to enable comparability. For example, the use of DCTs can only function effectively if consumers understand that they are comparing like with like and until this information is available it will be challenging for DCTs to fulfil their full potential in the sector.¹⁷⁰

4.49 We next consider what specific types of information regulators could consider in the development of quality indicators. These include:

¹⁶⁵ [Law Society CFI Response](#)

¹⁶⁶ [BSB CFI response](#); [Law Society CFI response](#).

¹⁶⁷ The CQC is responsible for regulating, monitoring and inspecting health care services to help ensure they meet fundamental standards of quality and safety.

¹⁶⁸ The five questions used by the CQC include: effectiveness; caring; responsive; safe; and well led. See CQC, [The five key questions we ask](#).

¹⁶⁹ The National Institute for Health and Care Excellence (NICE) provides guidance on the development of quality standards. Quality standards set out the priority areas for quality improvement in health and social care. Each standard provides, a set of statements to help improve quality and information on how to measure progress.

¹⁷⁰ LSCP (2020), [Consumer Impact Report](#).

- (a) provider information;
- (b) complaints information;
- (c) success rates; and
- (d) net promoter score.

Provider Information

4.50 As explained above, it is difficult for consumers to assess the quality of advice of a provider due to the nature of legal services. It is therefore important that regulators implement measures with providers to safeguard basic competence. We note that this is already happening.¹⁷¹ However, we encourage regulators to consider whether more objective contextualised information about a provider's service could assist consumers in comparing providers and making more informed choices. For example, identifying the number of cases handled in each practice area or the number of staff practising in that area; or the description of services as bespoke or commoditised could provide such contextualisation.

Complaints Information

4.51 In addition to providing consumers with details of a provider's complaints process and explaining to consumers the role of regulators in dealing with complaints, we think that the effective use of complaints data could provide consumers with an indication of a provider's quality of service and advice. Additionally, publishing more information on complaints is likely to influence the behaviour of providers and encourage better service.¹⁷²

4.52 In developing complaints data, we note that the following issues need to be addressed:

- (a) The LSCP consumer impact research highlights that information on complaints data, and easy access to enforcement information, are limited across the sector. For instance, LeO decisions are not published in full and most regulators do not publish first tier complaints¹⁷³ data, even

¹⁷¹ The LSB, as part of its five-year policy objectives, has undertaken a project to evaluate the systems and processes in place across the sector in order to achieve this. [LSB CFI response](#).

¹⁷² [OLC CFI response](#).

¹⁷³ First tier complaints refer to consumers complaining directly to the provider first, via the provider's in-house complaints handling procedure. The SRA has since 2019 been publishing aggregated analysis of first-tier complaint trends on an annual basis. See the [SRA website](#).

though this information could provide consumers with signals about the quality of service and advice.¹⁷⁴

- (b) The publishing of complaints data however needs to be contextualised, in order to be fair to providers and meaningful to consumers. For example, the number of complaints could be measured relative to the size of the provider or the number of cases handled by that provider.¹⁷⁵
- (c) The definition of a complaint may vary amongst providers¹⁷⁶ and thus regulators should provide guidance as to how to classify complaints by the type of complaint. This will help consumers to accurately and effectively compare complaints data across providers.
- (d) The data needs to be disseminated widely to ensure that consumers have access to it. For example, it could be published on the relevant regulator's website, as well as the websites of the providers, or potentially made available to Legal Choices or other third parties such as DCTs. Alternatively, it could be used as an input into an overall ratings indicator (as described in paragraph 4.63).

Success rates

- 4.53 Success rates are a measure of a provider's performance in attaining a successful outcome. This can be measured in relation to specific situations, for example, the percentage of defendant cost orders awarded when a case is withdrawn or defended at trial.
- 4.54 Research by CILEx Regulation notes that success rates may affect the incentives of firms to act on behalf of clients with a just case but whose case may be less strong evidentially. This, in turn, may restrict access to consumers to those legal services.¹⁷⁷
- 4.55 Thus, while providing information on success rates may be useful for some consumers, careful consideration should be given as to how this information is used to support consumers in their assessment and comparison of the quality of providers. If success rates are disclosed to consumers, this information must be appropriately framed, and contextualised, making it clear that a favourable outcome may be due to a myriad of factors, which includes but is

¹⁷⁴ LSCP (2020), [Consumer Impact Report](#).

¹⁷⁵ [ACSO CFI response](#); [OLC CFI response](#).

¹⁷⁶ CILEx Regulation: feedback on quality indicators from the strategic risk committee in February 2020.

¹⁷⁷ CILEx Regulation: feedback on quality indicators from attendees at a CILEx Regulation Entity Event in February 2020.

not limited to the quality of advice provided to the client from their legal representative.

Net Promoter Score

- 4.56 Net Promoter Score (NPS) is a measure which allows providers to measure their performance by reference to the propensity of consumers to use them again and/or recommend them to others. It is a common measure used in a number of sectors to demonstrate the overall quality of a provider. The NPS can be calculated¹⁷⁸ using a single survey question (ie 'how likely is it that you would recommend a company?') and a rating of between 0 (not at all likely) and 10 (extremely likely). As an example, the NPS is used in the retail banking sector as the basis for consumer satisfaction league tables.¹⁷⁹
- 4.57 Regulators should consider whether the NPS could be used appropriately within the legal services sector either as a standalone indicator or as part of a broader ratings indicator (as discussed in paragraph 4.63).
- 4.58 We next consider how this information could be collected and presented to consumers.

Collecting and presenting quality information

- 4.59 Once regulators have defined what indicators of quality are suitable for the legal services sector, consideration needs to be given as to what are the most appropriate means of collecting and disseminating this information. During our Market Study we outlined the benefits of a single digital register which would combine data from regulators (such as first tier complaints and representative body membership information) and data from third parties (such as customer reviews and ratings) into either a single combined database or a unified method of accessing the data.¹⁸⁰ We still consider this has significant benefits by:
- (a) reducing the cost to intermediaries and firms of collecting and providing information that is already captured by regulators;
 - (b) providing meaningful information to aid the growth and development of DCTs.

¹⁷⁸ The NPS is then calculated as the percentage of customers reporting a score of 9 or 10 (ie 'promoters') less the percentage of customers reporting a score of 6 or less (the 'detractors').

¹⁷⁹ [CMA Press Release: Latest banking customer satisfaction results published](#).

¹⁸⁰ [Market Study](#), paragraph 7.195.

- 4.60 In this regard we note the work in progress by Legal Choices in the development of the 'help me trust my lawyer' product. This product is meant to search publicly available data from across the regulators' registers (including data from LeO) and provides disciplinary information to the enquirer.¹⁸¹ We consider that this tool could be developed further to include price and quality information, so that it can evolve into a single digital register.
- 4.61 Regulators should next consider what the most effective means are for consumers to access the information in a manner that will have the greatest impact in facilitating consumer engagement and incentivising providers to improve their service. For example, the publishing of a ratings score on a provider or third party website may allow consumers to compare providers more easily, and at the same time incentivise providers to improve their rating score through enhanced service levels.
- 4.62 More information will only drive consumer engagement if consumers understand this information. Additionally, in a sector that is already considered complex, it is important not to overload consumers with information. Rather regulators should be mindful of how best to present information, and who is best placed to do so. For example, it may be appropriate in some cases for regulators to make information available and then allow third parties to combine data and present information in a meaningful manner. We encourage regulators to conduct research and testing to determine the most appropriate means of presenting information to consumers.
- 4.63 Regulators could consider the development of an overall ratings indicator which combines information from a variety of sources such as customer reviews, regulatory compliance and complaints information, and presents this to consumers in a simple and easy-to-understand manner. We recognise the development of such an indicator may be a longer-term process and as such a starting point could be to gather and publish the NPS score on provider websites. We highlight two examples which display information in an accessible manner:
- (a) the Foods Standards Agency developed a traffic light labelling system for pre-packed food which enables consumers to easily understand the nutritional contents of food and make more informed purchase decisions.¹⁸²
 - (b) The CQC gives a rating for each of its five key questions on quality as well as an overall rating to the service following an inspection of a

¹⁸¹ [Legal Choices summary report 2017-20, November 2020; SRA CFI response.](#)

¹⁸² Food Standards Agency, [Check the Label.](#)

healthcare provider. Ratings are classified into categories which are: outstanding; good; requires improvement; and inadequate. Providers are then required to display ratings in the place where services are delivered and on websites where the service is described.¹⁸³

- 4.64 We also refer regulators to the research conducted by the Financial Services Consumer Panel on the presentation of information which highlighted principles¹⁸⁴ centred around impartiality, simplicity, and incorporation of information into sources that consumers already use. These principles are also relevant for the legal services sector and should be applied when presenting information to consumers.

Measures to improve engagement with customer reviews

- 4.65 In the Market Study, we noted that there was scope for regulators to provide guidance to legal services providers on how to engage in collating online reviews and responding to comments publicly, in order to reduce the perceived barriers to their widespread adoption. Although regulators have since issued guidance to providers, there has been limited consumer and provider engagement with customer reviews. In the Market Study, we noted that the apparent lack of willingness of providers to engage with comparison platforms may inhibit their widespread use and subsequent regulatory action may be necessary.
- 4.66 To build on the work undertaken by the regulators to date, we now consider that regulators need to take further action to increase consumer engagement with customer reviews.
- 4.67 We also note that the greater use of customer reviews supports the longer-term increase in the use of DCTs in the legal services sector, as consumers are able to input their requirements into a DCT, which then presents a range of providers, together with price and quality information, including customer reviews. The COVID-19 pandemic has caused legal services providers to further develop their online offering and we think that customer reviews and DCT platforms could act as key mechanisms for further driving online growth.

¹⁸³ See information on the CQC website on [ratings](#) and on [inspections](#).

¹⁸⁴ Financial Services Consumer Panel (2015), *Empowering Consumers as Co-regulators: Firm conduct information for consumers*. The following principles were cited: Information should 1) Be independently and accurately produced, drawing on up-to-date professional assessment and representative user views; 2) Be developed into a single composite index or small set of indices; 3) Be depicted in a straightforward visual way such as star ratings or similar; 4) Enable consumers to benchmark and compare providers; 5) Enable further drill-down into score/s if consumers so wish; 6) Be incorporated into existing decision-making channels such as price comparison websites; 7) Ideally be developed into a recognisable brand such as food hygiene scores on the doors or energy efficiency ratings; 8) Be included in providers' branches and general communications.

Possible challenges in the development of customer reviews

4.68 During our review, stakeholders¹⁸⁵ have raised concerns, similar to those raised during the Market Study,¹⁸⁶ about the challenges of using customer reviews within the legal services sector. We set out below these challenges and our initial thinking on how these challenges could be addressed:

- (a) Reviews may be affected by excessive emphasis on outcomes: This could be addressed by conducting reviews at different points in the process with well-defined metrics.¹⁸⁷ For example, customers could be prompted to provide a review prior to the outcome of a contentious case. Additionally, as outlined in Appendix B, regulators should consider testing on how and when to gather feedback from consumers.
- (b) Legal professional privilege might prevent providers from responding to reviews: We do not consider that legal professional privilege or client confidentiality necessarily prevents providers from responding to reviews. While providers might not be able to address specific points raised in the review, they should be able to respond to general points on the quality of service or advice. Further, this would not prevent providers from acknowledging the review publicly and contacting the client directly to deal with any confidential matters.
- (c) Providers may manipulate reviews: We recognise the desire to score highly on review platforms may provide an incentive for providers to manipulate ratings by, for example, submitting fake or misleading reviews. We consider that this challenge is not unique to the legal services sector and we note that the CMA has launched an investigation into misleading online reviews which is aimed at tackling fake and misleading online reviews.¹⁸⁸ As part of the investigation, the CMA will explore what processes are in place to detect, investigate and respond to fake and misleading reviews. We consider that as review platforms develop in sophistication, together with enforcement action by regulators, such manipulation may become more difficult and the threat of disciplinary action could act as a further deterrent to providers (and others) to submit fake or misleading reviews.

¹⁸⁵ BSB CFI response; Bar Council CFI response; LSCP (2019), *A Discussion paper on quality indicators in legal services*; SRA Year One Evaluation.

¹⁸⁶ Market Study, paragraph 7.94.

¹⁸⁷ For example, by asking clients a number of questions across a range of aspects of service quality (as opposed to quality of advice), such as speed in responding to queries, or clarity of information provided.

¹⁸⁸ CMA investigation into misleading online reviews.

(d) The inability of consumers to assess the quality of advice they have received: We recognise that the nature of legal services means that the quality of advice is not necessarily assessable for consumers. However, to the extent that customers are able to assess some aspects of the quality of service they have received, this will support consumers in making an informed decision.

4.69 We note that these concerns are not uniform across the sector, with some stakeholders and consumer studies indicating that there is clear scope to make greater use of customer reviews.¹⁸⁹ Notwithstanding these concerns, we consider that customer reviews are an effective tool in enabling consumers to make informed choices regarding a provider's service quality. Additionally, we note that research suggests over 50% of UK adults read online customer reviews, especially for one-off purchases and for the purchase of more expensive goods and services.¹⁹⁰

4.70 Some legal services providers have adopted the use of generic review platforms, such as Trustpilot and Google Reviews, as well as specialised legal services review platforms, such as ReviewSolicitors or solicitor.info. Some providers also display customer reviews or testimonials on their websites. According to the IRN research, customer reviews on providers' websites were treated with caution by consumers due to the possibility of the providers being selective on the reviews shared on their websites.¹⁹¹ However, by showcasing customer reviews, providers are able to establish a level of trust with customers due to their willingness to display such information. Even in the case of negative reviews, it may be reassuring for the customer to understand a likely worst-case scenario.¹⁹²

How to take forward our recommendation

4.71 We consider that in taking forward our recommendation, the LSB and the regulators should focus on:

- (a) providing consumers with information they trust and will find useful in helping to choose a provider; and
- (b) providing that information in an accessible manner.

¹⁸⁹ LawNet CFI response; Co-operative Legal Services CFI response; CLC CFI response; LSCP (2020), *Consumers feedback on quality indicators in legal services*; SRA Year One Evaluation.

¹⁹⁰ CMA (2017), *Online search: Consumer and firm behaviour*, paragraph 4.96.

¹⁹¹ IRN Research (2020), *Legal Services for Consumers Qualitative Research into Client Behaviour, Use and Satisfaction Research for CILEx Regulation*.

¹⁹² ReviewSolicitors CFI response.

4.72 To address these two objectives:

- (a) Regulators should consider whether the content of reviews needs to be tailored for legal services, in order for consumers to make a more meaningful assessment of a provider – for example, by focusing on elements that consumers are able to judge and are within the provider's control, such as the responsiveness of the provider. Should regulators decide that a tailored approach is necessary, they should also consider which service rating metrics (such as clarity of communication, value for money, etc) would enable consumers to most effectively compare providers.
- (b) Given the importance that consumers place on trust and impartiality, regulators should think about how to ensure that reviews are accurate. In addition to the potential of fake or misleading reviews, regulators should also be aware of the impact of selectively inviting customers to post reviews. Consideration should be given as to how the choice of mechanism to collect and present reviews affects the ability of providers to engage in these practices. For example, independent third-party review platforms may have systems and processes in place to detect fake reviews which regulators may deem as adequate protection. Additionally, regulators could outline how they intend to monitor and enforce against providers who engage in these practices.

We recognise that in accounting for these factors there are potential trade-offs that arise in the choice of mechanism by which reviews are collected:

- (i) On the one hand, the use of independent review platforms (rather than legal services providers collecting reviews), should increase consumer trust in customer reviews. However, it may be more challenging for generic independent platforms to develop a form of customer review specific to the legal services sector (should regulators deem this necessary). We note that there are specialist review platforms for the legal services sector which may be better placed to provide this bespoke service.
- (ii) Alternatively, regulators could mandate that providers collect this information in accordance with a set of guidelines determined by the regulators. This however could be costly for providers and is more susceptible to issues of consumer trust and impartiality as providers have more control of the process. We do note, however, that regardless of the mechanism used to collect reviews, regulators should consider how to encourage or make it easier for consumers to

post reviews, as consumers are more likely to leave a review if prompted to do so by the provider (see paragraph 3.81).

- (c) Regulators also need to consider where and how information on customer reviews is presented. First, we note that where providers have the flexibility to cherry pick customer reviews or present selective reviews in the form of customer testimonials, it is unlikely to be of much value as this could potentially mislead consumers by providing an incomplete picture. Secondly, as we have highlighted in paragraph 3.79, research shows that consumers are more likely to view reviews if they are available on a provider's website compared to a third party's website. We consider that this is likely influenced by the customer's journey in arriving at the providers website (for example a recommendation) and should the sector develop towards an increasing use of DCTs, consumers may just as likely engage with reviews on third party platforms.

- 4.73 We recognise that there are many considerations when designing and implementing solutions to further increase provider and consumer engagement with customer reviews and it may be the case that there are some short-term measures which regulators could implement (as we have recommended), together with a plan of action to evaluate and measure outcomes, followed by further actions over the medium and longer term.

Developing initiatives to help consumers engage actively with information on price, service and quality

- 4.74 In the previous chapter we set out evidence that indicated that the levels of shopping around in the legal sector were relatively low and had changed little since the publication of the Market Study. In addition, there is evidence which shows that consumers continue to rely heavily on factors such as a personal recommendations, referrals or personal experience when choosing a legal services provider rather than directly searching for and comparing providers.
- 4.75 In this chapter, we have also discussed measures that are primarily focused on improving the clarity and comparability of the information that is available to consumers. Improvements to the clarity and consistency of price, service and quality information made available by providers should, of themselves, encourage greater consumer engagement with the legal services sector. We also discuss measures for how regulators could increase provider engagement with review sites to improve the amount of quality information available to consumers. We consider that these measures will help give consumers the tools they need to shop around in the legal services sector as they will be more likely to engage in direct search activity and to compare

providers if they have access to better information. In this section we discuss additional measures to enhance consumer engagement, including:

- The introduction of triggers or prompts to encourage shopping around;
- Improving access to regulatory information, including through the development of a single digital register;
- Further development of the Legal Choices site; and
- Encouraging participation by DCTs.

The introduction of triggers or prompts to encourage shopping around

- 4.76 One additional measure that regulators might consider is the introduction of ‘triggers’ or ‘prompts’ which encourage customers to shop around or visit a DCT. In a number of other markets, remedies have been introduced to prompt consumers to shop around, for example, by introducing triggers into the consumer journey or pointing them towards information or services (such as review sites or DCTs) to help them to do so.¹⁹³
- 4.77 This type of measure seeks to overcome consumer inattention or inertia and may include consumer awareness campaigns or personalised reminders which highlight the gains to be made from shopping around as well as how to do it. It includes sending alerts or reminders to consumers at timely moments in their product use or purchase or directing them to relevant sources of information or tools which encourage and help them to compare alternative providers. Measures like these have had some success in other markets.¹⁹⁴
- 4.78 One significant challenge in introducing a trigger is ensuring that it appears at an appropriate point in the consumer journey. One of the key findings of the Market Study was that timely intervention was more likely to have benefits for competition. In legal services this means before the point at which a provider is engaged. Once a consumer has made contact with a legal services provider and held a discussion or exchanged information with them, then measures such as triggers or prompts may come too late to encourage them to shop around. Signposting on the provider website, or perhaps information provided at the time a consumer is being referred to legal services provider by

¹⁹³ FCA/CMA (2018), [Helping people get a better deal: Learning lessons about consumer facing remedies](#).

¹⁹⁴ For example, the FCA introduced a requirement on suppliers of general insurance to include last year’s premium when sending out renewal letters which was found to have a significant impact in triggering customers to switch to better offers, with 11-18% more customers switching or renegotiating their policies as a result. See: FCA (2015), [Encouraging consumers to act at renewal: Evidence from field trials in the home and motor insurance markets](#).

a third party, are options for points in the consumer journey where triggers might be effective.

- 4.79 Triggers are often more effective when they do not require consumers to ‘do all the work’ as this may impose costs on consumers, in terms of time or cognitive bandwidth. For example, they can be more effective when they direct consumers to useful sources of information or tools which facilitate shopping around such as a centralised information hub or DCT.

Improving access to regulatory information

- 4.80 One potential source of information that consumers could be pointed to might be a single digital register combining relevant regulatory and customer focused information. Assessing the feasibility of such a register was one of the Market Study recommendations. As we outlined in the previous chapter there have been some developments in this regard, with the introduction of the SRA digital register which contains basic regulatory information about SRA regulated firms and solicitors. Furthermore, there have been discussions between regulators about a single digital register including what form it might take and what it might contain and some progress around access to basic regulator information via the Legal Choices website. We would urge the regulatory bodies, under oversight of the LSB, to continue this work and look to introduce a single digital register. Our view is that this would be most useful to consumers if it enabled them to access at least some price, service and quality information, even if that were simply keeping in place direct links to the relevant information pages of provider websites.

Further development of the Legal Choices site

- 4.81 Continuing to develop the Legal Choices website through better promotion, marketing and content, and forging better links with other providers of public legal education as well as continuing to gather evidence on the effectiveness of the site is an important part of facilitating improvements in consumer engagement with the legal services sector.
- 4.82 In terms of improving the website content, in line with the feedback we have received from stakeholders, we consider that over the longer term there are opportunities to develop its role further. In particular, in addition to services currently offered, the Legal Choices site could also serve as a tool to encourage consumers to shop around, which would include helping them to find and compare providers and also serving as an access point for various types of relevant information or for review sites and DCTs. One feature that would help with this would be the hosting of a centralised information hub

such as a single digital register on the Legal Choices website, building on progress already made in making regulatory information available.

- 4.83 Some stakeholders have expressed concern about the quality of content on the site and suggested that it might be improved by more direct involvement of groups beyond the regulators, such as consumer groups, in the editorial decision making or by delegating more of the editorial decision making to a third party. While we are not in a position to comment in detail on these proposals, and note that a range of organisations already sits on the Legal Choices Advisory Panel,¹⁹⁵ we would suggest that these options are kept under review.
- 4.84 In order to keep improving the Legal Choices site it is important that continued funding is secured and that it has in place an effective governance process. While we are pleased that funding has been agreed for the next three years, we do not consider that it is acceptable that the BSB has decided to withdraw from funding the site. We urge the BSB to reconsider reinstating its funding and encourage it to continue providing appropriate input on content more generally.
- 4.85 Since the withdrawal of the BSB, there have been further discussions regarding the future governance of the Legal Choices website. We note that the preference of regulators is to continue as it is for now, with a recent LSB board paper stating that 'subject to agreeing funding, there is general accord among the regulators that Legal Choices should continue to be chaired by one of the regulators, rather than independently.'¹⁹⁶ Since the board paper was published the regulators did agree a funding and development plan for the next three years, albeit without funding from the BSB. However, we understand that the process of getting to this agreement was far from straightforward; and we note the LSB's view that 'It seems likely that only fundamental changes in the way that the initiative is supported, governed and funded will improve prospects for success.'¹⁹⁷
- 4.86 Concern about the governance of Legal Choices is not limited to the LSB. As we note in the previous chapter, in addition to the LSB a number of stakeholders have expressed concern about the governance and funding model of Legal Choices. A background of uncertainty caused by some disagreements amongst the regulators is not the best for continued development of the site's potential. A number of options for the governance of

¹⁹⁵ See the [Legal Choices website](#).

¹⁹⁶ LSB (2020), Board Paper 20 (43), [CMA - Consumer Engagement progress](#).

¹⁹⁷ [LSB CFI response](#).

the site – including more direct involvement by the LSB – are set out in the LSB’s April 2020 Board Paper.¹⁹⁸ We consider that this is an issue that the LSB should keep under review given the difficulties there have been in coordinating progress and putting in place a plan for the site for the next three years.

- 4.87 The development of Legal Choices fits within regulatory and public interest objectives to promote public legal education (PLE). There are many ways in which PLE can effectively be delivered; for example, we note the Government’s PLE vision statement published in 2018¹⁹⁹ and ongoing work by the LSB.²⁰⁰ Consumer-facing organisations, such as Citizens Advice, can equally play an important role in driving PLE.²⁰¹ It is worth emphasising that the CMA’s recommendations to develop Legal Choices are not intended to crowd other options out. However, we see Legal Choices as being an important part of PLE that has made a positive contribution to date.

Encouraging participation by DCTs

- 4.88 In the long term these measures to improve the standard of price, service and quality information and access to regulatory information might encourage more DCTs to operate in the legal services sector. As we describe in the previous chapter, there has been limited entry or expansion from DCTs in the legal services sector since the Market Study. One of the reasons for this is a lack of consistency and standardisation in the price, service and quality data that is available. Our view is that as the clarity and comparability and standardisation of this information improves then it should become increasingly useful for DCTs to use in their services. We urge regulators to consider how the measures they take forward to improve the clarity and consistency of price, service and quality information will impact on the ability of DCTs to offer price comparison services.
- 4.89 A more radical intervention to facilitate consumer engagement would be for regulators to work together to set up a centralised DCT service that would cover some legal services, ie the ones that are most amenable to the standardisation of price, service, and quality information. As well as a lack of access to standardised price, service and quality data, DCTs also reported to

¹⁹⁸ LSB (2020), Board paper 20 (23), [Legal Choices](#).

¹⁹⁹ [GOV.UK press release – Our vision for legal education](#).

²⁰⁰ The LSB has the objective of increasing public knowledge about the legal system and legal rights and responsibilities to encourage citizens’ active participation in society. The LSB’s plan for the year 2019/2020 was to understand the range of organisations active in PLE and engage with possible partners. In addition, they aimed to identify key gaps in public knowledge and to establish a baseline of legal capability to allow impact monitoring in future years. See the [LSB website](#).

²⁰¹ This point has been raised also in the replies to the CMA’s CFI by the Bar Council, the BSB and Passmore Consulting. See [CFI responses](#).

us that limited engagement by both consumers and legal services providers with DCTs is a significant barrier to their growth.

- 4.90 A regulator-organised or sponsored DCT might help to encourage providers to engage with a DCT as they may be more confident to engage with a service that is seen as commercially 'neutral'. Alternatively, regulators may feel more comfortable requiring providers to engage with a DCT that is commercially neutral. A regulator-established DCT may also represent a useful informational tool that, when consumers are directed to it via an appropriate trigger, could encourage greater shopping around by consumers.
- 4.91 At this stage we consider that an intervention of this kind is unnecessary as it would require significant resources for the regulators to set up and maintain and also because the benefits of them doing so would be uncertain. Work by the FCA/CMA (2018)²⁰² based on lessons learned from other sectors concludes that market-led solutions are often better than regulator-designed tools as commercial organisations have strong incentives to market their sites effectively and to make them as user-friendly as possible. Our view is that improvements in the availability and standardisation of information on price service and quality would ideally encourage DCTs. However, if an organic, commercial solution does not present itself then a regulator-sponsored solution is something that should be given consideration in the future.

Developing an ongoing programme of consumer research and testing to determine the information on price, service and quality that is most useful for consumers

- 4.92 While we have provided regulators with some suggested approaches and have identified relevant considerations to take into account when developing price, service and quality information, we have not carried out a detailed review and as such we recognise that our recommendations require further development. Therefore, in order to support the implementation of measures based on our recommendations, regulators should conduct research and testing to determine what solutions are the most appropriate to take forward.
- 4.93 There are various factors which regulators should have in mind when designing and implementing interventions. These include those identified by

²⁰² FCA/CMA (2018), [Helping people get a better deal: Learning lessons about consumer facing remedies](#).

the LSCP framework²⁰³ for the development of information remedies in the legal services sector.

- 4.94 As a starting point, regulators should have a clear view of the purpose of any intervention. This purpose might primarily be to increase shopping around between legal services providers, but other purposes might be to assist consumers to make active decisions; to enable comparability between legal providers; and/or to raise sectoral standards. A clearly defined purpose will assist in the evaluation of whether the intervention will achieve the desired outcomes. Additionally, at the outset of developing any intervention, regulators should give consideration as to the level of risk, the cost of the intervention and the ability of consumers to understand and benefit from the intervention.
- 4.95 This process may result in several options for regulators to consider. In order to aid regulators in deciding which solutions to pursue, research and testing should be conducted to measure how different options perform relative to each other. Research and testing are important tools which can also assist regulators to determine how interventions might perform in relation to intended outcomes.²⁰⁴
- 4.96 A CMA/FCA paper²⁰⁵ sets out the potential types of research and testing approaches that can be applied to consumer-facing remedies. More information on the various methods of testing is set out in Appendix B.
- 4.97 There are several testing methods that regulators could adopt individually or in combination when deciding what to test. The choice of method would depend on:
- (a) what is practical or possible given the available resources and cost;
 - (b) whether there are any ethical considerations (in recruiting research participants); and
 - (c) the degree of risk in designing and implementing the interventions without the use of research and testing.
- 4.98 We recognise that resource constraints may limit the testing that could be conducted by individual regulators. We therefore encourage regulators to

²⁰³ These include: appropriateness; testing, consumer awareness, prescriptive disclosure; segmentation and targeting, monitoring; and evaluation. See LSCP (2017), [The development of information remedies in legal services](#).

²⁰⁴ To note testing and user centred design in some areas overlap with some definitions of evaluation. For example, user testing may be considered a tool to underpin 'formative evaluation' or 'process evaluation'.

²⁰⁵ FCA/CMA (2018), [Helping people get a better deal: Learning lessons about consumer facing remedies](#).

adopt a coordinated approach towards testing, and to the extent possible share lessons learnt. It is also critical that when conducting research or testing, ethical and safeguarding issues are considered. Where any third parties (eg research agencies, academics) are utilised to conduct testing or wider research, ethical consideration should be a contractual requirement and considered as part of any tendering process.

4.99 We refer regulators to Appendix B which provides more information on how testing and research could:

- (a) be applied in implementing some of our recommendations on best practice guidance and formats;
- (b) test the questions and prompts used to gather feedback from consumers;
- (c) take the needs and circumstances of vulnerable consumers into account; and
- (d) be conducted to measure the impact of interventions as they are implemented by legal services providers.

4.100 Regulators should also build into the design and delivery process an evaluation stage which reviews the effectiveness of any intervention. The results of such evaluations can then be used to redesign the intervention as required in order to maximise its effectiveness. Regulators to date have drawn on surveys in large part as their primary evaluation tool. The UK Government's Magenta Book however provides a guide to a wider range of evaluation approaches which we encourage regulators to consider as part of their evaluation process.²⁰⁶

4.101 We recommend that regulators consider these approaches to evaluation and utilise the feedback to make improvements (where necessary) in order to achieve the desired outcomes of any intervention.

²⁰⁶ HM Treasury (2020), [Magenta Book: Central Government guidance on evaluation](#).

5. The regulatory framework for legal services

- 5.1 Our Market Study identified a number of concerns connected to the regulatory framework for legal services in England and Wales. These concerns stem from the way that the regulatory framework is structured around professional titles and reserved activities rather than according to the risk of the activities being undertaken.
- 5.2 In our Market Study we concluded that the regulatory framework was insufficiently flexible to apply targeted, proportionate, risk-based and consistent regulation reflecting differences between legal service areas and across time, and may not be sustainable in the long term. As a result of our findings (which are discussed in more detail below), we made a series of short-term recommendations and a recommendation that in the longer term a wholesale review of the Act take place.
- 5.3 To date these recommendations, including a wholesale review of the Act, have not been taken forward.²⁰⁷ In our view the main question now is how to make progress towards the goal of a more risk-based regulatory framework that would address the concerns identified in our Market Study. Our preferred approach would be for the MoJ to carry out a wholesale review in order to reform the Act. However, we believe that there is also merit in taking shorter-term steps which deliver reform in stages, where these are consistent with a long-term strategy of moving towards a more risk-based approach. These shorter-term steps are discussed further in paragraphs 5.88 to 5.122.
- 5.4 The rest of this section is structured accordingly. First, we outline in detail the Market Study conclusions and recommendations; second, we assess what has happened since our Market Study; and lastly, we consider the next steps and recommendations as a result of this Review.

Our Market Study conclusions and recommendations

- 5.5 As outlined in Chapter 2, legal services regulation developed around the professions²⁰⁸ and is organised on professional lines. The scope of regulation is defined by a historical list of six ‘reserved activities’, which can only be carried out by those providers who hold a professional ‘title’ and are

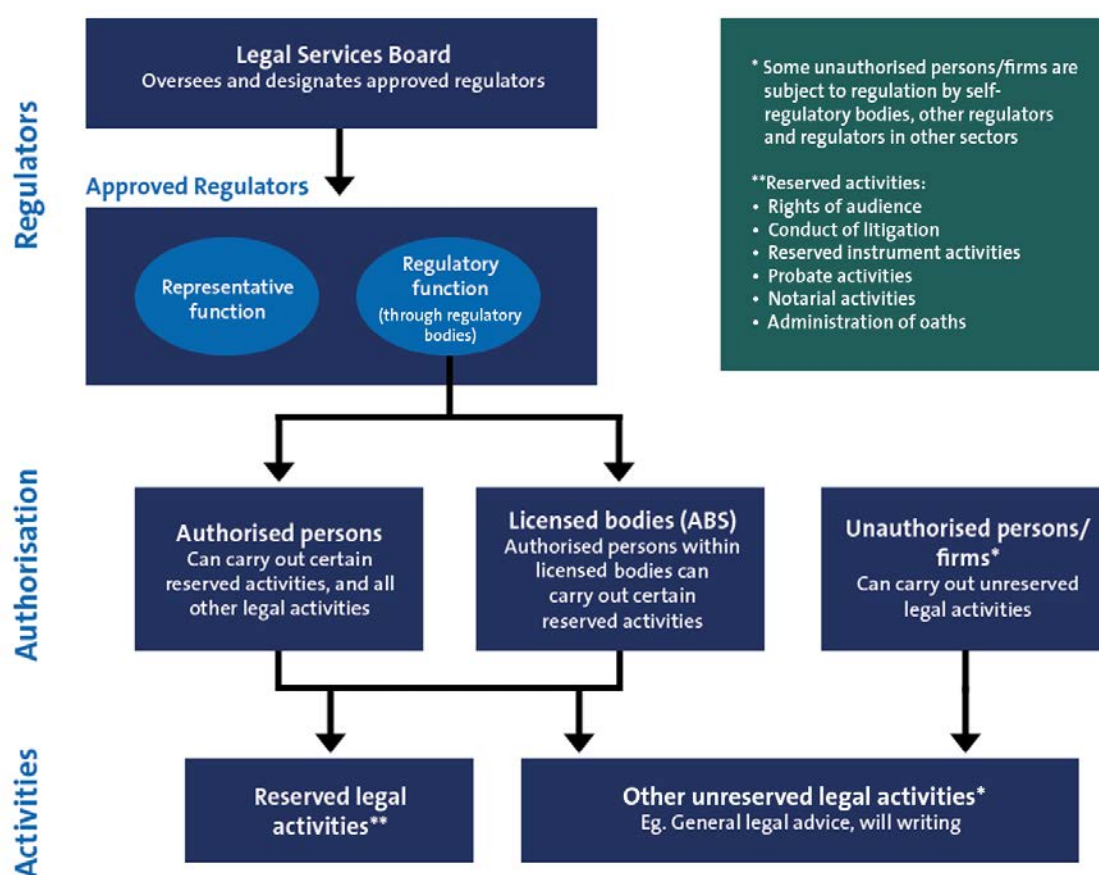
²⁰⁷ As noted in footnote 7 above, the Government indicated in its response to the Market Study that it did not consider that it was the right time to consult on legislative change, and it further considered that there was scope to make more progress within the existing framework.

²⁰⁸ With the earliest notion of a legal profession appearing to have emerged during the reign of Edward I (1272-1307). Rose (1998) provides a detailed review of the history of regulation of the legal profession in medieval England. See Rose, J (1998), *Legal Profession in Medieval England: A History of Regulation*.

authorised to do so by an approved regulator. Regulatory rules attach to providers ('title-based regulation') rather than the specific legal services ('activity') provided to consumers.

- 5.6 This approach has led to the introduction of ten approved regulators, each representing a specific profession authorised to deliver reserved activities.²⁰⁹ Since the Act, each approved regulator has been required to separate its representative functions from its regulatory functions and they and the bodies performing regulatory functions ('regulatory bodies') have been overseen by the LSB.
- 5.7 This regulatory framework (as depicted in Figure 2) creates a series of issues which we identified in our Market Study. These issues are summarised below in Box 1 and explained in more detail in paragraphs 5.8 to 5.25.

Figure 2: Overview of the regulatory framework for legal services in England and Wales



Source: CMA

²⁰⁹ See Table 1.

Our Market Study found that the regulatory framework....

- **Is not well targeted to risk:**
 - The scope of the current reserved legal activities may not be well aligned with the risk of providing particular services;
 - Regulation is attached to title and thus applies to all activities (both reserved and unreserved) delivered by authorised professionals, even those which carry a low level of risk.
- **Leads to an inconsistent treatment of providers and a regulatory 'gap':**
 - Title-based regulation also leads to:
 - differences in regulation of the same activities by different authorised professions;
 - for unreserved activities that can also be provided by unauthorised providers, a 'regulatory gap' depending on the provider, as unauthorised providers do not hold title and are therefore not subject to legal services regulation (including access to redress).
- **May have an adverse impact on competition, raising barriers to competition and innovation, and risk of over-regulation of some lower-risk activities:**
 - Regulatory costs that are not necessary and proportionate may be a barrier to innovation and the introduction of new business models;
 - The scope of reserved activities may unjustifiably restrict entry if not sufficiently aligned with risk;
 - Under title-based regulation:
 - A focus on title may lead consumers to choose authorised providers even where an unauthorised provider would be a better choice for their circumstances.
 - The costs of any excessive regulation will be spread across activities undertaken by the authorised provider – including lower risk, unreserved activities – resulting in costs that may be passed on to consumers or inhibit competition with unauthorised providers.
- **Raises issues with respect to the regulatory structure:**
 - Including, the complex multiplicity of regulators leading to potential inefficiencies and difficulties coordinating regulatory changes; and
 - A lack of full independence between the regulatory and representative functions.

The regulatory framework is not well targeted to risk

- 5.8 As noted in our Market Study, there is a broad agreement that the reserved legal activities represent ‘an accident of history’ and that there has not been a rigorous assessment of their potential justifications on public interest and consumer protection grounds.²¹⁰ Reservation is effectively ‘before-the-event’ regulation, ie of the type that is most intrusive, and in our Market Study we considered that such regulation was more appropriate for the riskiest activities.
- 5.9 Our Market Study found that some of the current reserved legal activities are poorly aligned with the actual risks of providing legal services to consumers.²¹¹
- (a) First, the justification for maintaining reservation varies among the existing reserved activities. In particular, we considered that consumer protection and public interest concerns were stronger for rights of audience and conduct of litigation but were weaker for probate activities and administration of oaths.
 - (b) Secondly, some of the current reservations do not seem to be well targeted to the potential consumer detriment that might be suffered through poor provision. This is particularly the case with respect to probate activities (given that the current reservation is not targeted to the riskiest element of the wider estate administration process) and reserved instrument activities (which do not encompass key risks in the overall conveyancing process). In both cases, the reservations do not target the handling of clients’ money which is where the greatest risks are likely to arise in both activities.
- 5.10 We also found that the current model of legal services regulation focuses on the authorisation of providers who have ‘title’, raising several concerns:
- (a) For most professions who have ‘title’, the regulatory requirements to which authorised providers are subject tend to be uniform across all the activities they undertake, even those which are deemed to carry a low level of risk (including unreserved legal activities). We considered that an optimal regulatory framework should not regulate all legal activities uniformly, but should have a targeted approach, where different activities are regulated differently according to the risk they pose to consumers,

²¹⁰ Mayson, S. and Marley O. (2010), [The regulation of legal services: Reserved legal activities – history and rationale](#).

²¹¹ For an assessment of the reserved activities see Appendix G to the [Market Study](#).

rather than regulating on the basis of the professional title of the provider undertaking it.

- (b) Those without title are excluded from all forms of legal services regulation – even lighter touch ‘during the event’ and ‘after the event’ regulation that may be proportionate to less risky unreserved activities. This results in a ‘regulatory gap’, as discussed further below.

Inconsistent treatment of providers and the ‘regulatory gap’

5.11 Given its focus on reserved activities, the current regulatory framework leads to a ‘regulatory gap’ for unreserved services – which is exacerbated by the poor alignment of the current reserved services to risks to consumers, as observed above.

- (a) Regulation by title addresses this regulatory gap when unreserved services are delivered by authorised providers, but leads potentially to excess regulatory costs for such services as previously described.
- (b) Furthermore, given that unreserved activities may also be provided by unauthorised providers (ie those legal services providers not holding title and therefore not covered by the Act), a regulatory gap still remains, as consumers can purchase services from these providers and not receive regulatory protection under the Act. This leads to risks of different standards and levels of protection depending on who the provider is. For example, while customers of authorised providers have access to LeO in the event that things go wrong and redress is required, customers of unauthorised providers do not.²¹²

5.12 In our Market Study, we found that consumers are generally unaware of the regulatory status of their providers and the implications for consumer protection. As a consequence, many use unauthorised providers without understanding the limited consumer protections that are offered by these providers. The limited evidence available to us at the time of the Market Study did not indicate that this lack of awareness was causing significant harm.²¹³ However, we noted that the absence of clear evidence did not necessarily indicate that there was no problem.

²¹² While self-regulatory bodies may have redress regimes in place, complaint processes may be less effective because providers that are self-regulated can choose to leave a self-regulatory body if they wish to avoid its redress mechanisms.

²¹³ In our [Market Study](#) we observed, based on limited evidence, that there were very few complaints made to Trading Standards or Citizens Advice about legal services providers generally (whether authorised or unauthorised) and very few consumer protection cases brought against them.

- 5.13 In practice, the fact that authorised providers accounted for a significant majority of legal services meant that the regulatory gap did not seem to be a major concern at the time of the study. However, we were concerned that the regulatory gap may grow over time and result in greater consumer detriment as the use of unauthorised providers increases.

An adverse impact on competition

- 5.14 First, given that a system of reservation excludes unauthorised providers from reserved activities, we considered that the misalignment between the scope of the reserved activities and the actual risk of providing legal services to consumers may be harmful to competition. While acknowledging that there were arguments in favour of the current reservations based on consumer protection and public interest benefits, we found that these arguments are stronger for some areas than others, meaning that restrictions on competition will be more justifiable for some reserved activities while the need for reform will be stronger for others.²¹⁴
- 5.15 Overall, we did not consider that these reservations had a significant adverse impact on competition at the time of the Market Study as we found that the scope of reservation is often narrow, allowing unauthorised providers to work around it. However, the reservations may act as a barrier to unauthorised providers offering a complete service that includes reserved and unreserved elements. As with the regulatory gap (paragraphs 5.11 to 5.13), there could be greater scope for consumer detriment arising as the proportion of unauthorised persons operating in the legal services sector increases.
- 5.16 Secondly, we found that the focus of regulation on regulatory title may distort competition. We found that consumers relied on titles to some extent, without a clear understanding of their significance and might therefore avoid using unauthorised providers even in situations where they might benefit from using them. In addition, we found that unauthorised providers were restricted in their ability to employ solicitors to deliver unreserved legal work which might reduce the ability of unauthorised providers to compete, given the importance of title. Furthermore, the restriction on solicitors working in unauthorised firms

²¹⁴ See Appendix G of the [Market Study](#). We found that, on the basis of public interest and consumer protection concerns, there may be scope for the activities that are reserved to align more closely to risks. In particular, a) we found that among the reserved legal activities there is a stronger case for reservation for some activities than others – notably, activities relating to rights of audience and the conduct of litigation; and b) in respect of probate activities and reserved instrument activities, which are currently reserved, we found these did not appear to be the riskiest aspects of the relevant legal areas (wills/estate administration with respect to probate, and conveyancing with respect to reserved instrument activities) and hence these reservations may be too narrowly scoped.

(which has since been removed) reduced the availability of lower cost options in the sector.

- 5.17 Thirdly, we found that regulatory costs remained high, despite a series of reforms introduced since the Act. We were concerned that these regulatory costs may be excessive and were likely to be passed through to consumers in the form of higher prices. While we did not consider that regulatory costs were a significant barrier to entry for new authorised providers, we found that these may be a potential barrier to innovation and to the introduction of new business models.
- 5.18 In finding high regulatory costs in this sector, a particular concern was that as a result of title-based regulation, the costs of any excessive regulation would be spread across activities undertaken by the authorised provider – including lower risk, unreserved activities. As a consequence, disproportionate regulatory costs might unnecessarily raise the cost of these unreserved services to consumers as well as potentially impairing authorised providers' ability to compete with unauthorised providers.

Issues with the regulatory structure

- 5.19 We also identified potential issues arising from the regulatory structure. These relate to:
- (a) the multiplicity of regulatory bodies;
 - (b) the vertical relationship between the LSB and the regulatory bodies; and
 - (c) a lack of full regulatory independence.
- 5.20 The current regulatory structure is a complex patchwork, with the oversight regulator (the LSB) overseeing ten approved regulators, many of whom have separated their representative and regulatory functions by delegating the latter to regulatory bodies. We found that the multiplicity of regulatory bodies might lead to unnecessary duplication of fixed costs, inconsistencies in regulation across regulators, competition between regulators that results in a 'race to the bottom' and a reduced ability to prioritise resources according to risk. While we did not find evidence that the risks that we identified were currently having a significant impact on sector outcomes, they might become more material in the future if regulation were to focus on risk to a greater extent.
- 5.21 Furthermore, we found that the vertical relationship between the LSB and the regulatory bodies could result in lengthy, inefficient decision-making in certain areas and difficulty in coordinating regulatory changes.

- 5.22 Finally, we highlighted that regulatory independence of regulation from representation of the legal professions is a fundamental principle for regulatory best practice.
- 5.23 In our Market Study, we received mixed views on the extent to which a lack of full regulatory independence was in practice a problem under the current arrangements whereby a number of approved regulators had established separate regulatory arms.
- (a) Concern was expressed by stakeholders regarding the scope for representative bodies to delay reforms that could benefit competition and consumers and therefore create regulatory uncertainty.
 - (b) Furthermore, stakeholders also queried whether the current relationship between approved regulators that are also representative bodies and their regulatory bodies was serving to deliver truly independent regulation.

Our Market Study recommendations

- 5.24 As a result of our findings, we concluded that the current framework was insufficiently flexible to apply targeted, proportionate, risk-based and consistent regulation that reflects differences across legal service areas and over time. We therefore recommended that the MoJ undertake a wholesale review in order to reform the Act.
- (a) This review would be based on the following key principles: that the regime be more flexible, proportionate and aligned to risk; and that the scope of regulation should be focused on activities and risks to consumers, with a shift away from regulation attached solely to professional titles.
 - (b) We considered that this review would address all the issues we had with the regulatory framework, including making sure that regulation was targeted to risk (addressing the regulatory gap and the implications of the regulatory framework on competition) and the issues with the regulatory structure (including coordinating regulatory changes and ensuring regulatory independence).
- 5.25 In addition to the above recommendation, the following short-term recommendations were made:
- (a) In relation to the regulatory gap, we recommended that the MoJ:
 - (i) review whether there was a case for extending redress to consumers using unauthorised providers and if so, how best to achieve this (for

example through extending access to LeO, alternative dispute resolution (ADR) or self-regulation);

- (ii) address the evidence gap we identified by working with other bodies to build evidence on the unauthorised part of the sector;

(b) In relation to the adverse impact of regulation on competition, we:

- (i) endorsed the SRA's proposal to remove regulatory restrictions on solicitors working in unauthorised firms;
- (ii) recommended that regulators take action to reduce regulatory costs – in particular, to continue existing work to reduce costs relating to professional indemnity insurance (PII), training and codes of conduct;

(c) In relation to regulatory independence, we recommended that the MoJ undertake its planned review of the independence of regulators. We considered that such a review would need to consider the independence of regulators both from the profession and from government.

Developments since our Market Study

5.26 In this section we outline the progress made by the Government and regulators since our Market Study with respect to our recommendations. In addition, we revisit developments in the unauthorised sector.

Long term wholesale review

5.27 To date a wholesale review of the Act has not taken place. In response to our market study the Government noted the concern that this framework might not be sustainable in the longer term.²¹⁵ The Government did not commit to a formal review of the regulatory framework at the time as it did not think it was the right time to consult on legislative change, and it further considered that there was scope to make more progress within the existing framework. However, it said that it would continue to reflect on the potential need for such a review, particularly as the sector developed following the steps taken by regulators to address the transparency and consumer knowledge issues the Market Study identified. More recent statements in response to a written parliamentary answer indicate that the Government has 'no plans' to review the Act.²¹⁶

²¹⁵ See [CMA's Legal Services Market Study - Government Response, December 2017](#).

²¹⁶ See [House of Commons Written Answers and Statements – 18 May 2020, question 45128](#).

- 5.28 The major development in the area of wholesale reform has come from the IRLSR which, led by Professor Stephen Mayson, builds upon our Market Study findings. The IRLSR makes a number of long-term recommendations aimed at creating a level playing field for legal services and enhancing consumer protection through targeted and proportionate regulation that takes account of risk, burden and cost. As part of this proposal, all providers of legal services, whether qualified or not, would be subject to registration and regulation on the basis of risk. The report also recommends that the primary objective for the regulation of legal services should be promoting and protecting the public interest and that there should be an independent, single, sector-wide regulator of legal services.²¹⁷
- 5.29 In the short-term, the IRLSR recommends unregulated providers be brought within a form of registration, with access to LeO investigation and redress. This is discussed later at paragraphs 5.89 to 5.107.

Inconsistent treatment of providers and the regulatory ‘gap’

- 5.30 Limited progress on our recommendations to Government has been made since the Market Study, either in reviewing the case for extending redress to consumers using unauthorised providers or addressing the gap in evidence we identified in relation to the extent of consumer harm.
- 5.31 In response to our Market Study, the Government agreed that it would review whether there is a case for extending redress to consumers using unauthorised providers, and if so, how best to achieve this (for instance, by extending access to the LeO or via ADR or self-regulation). At the same time, the Government noted that under the EU Alternative Dispute Resolution Directive,²¹⁸ all providers of services must signpost available ADR schemes recognised under the Directive, indicate to consumers whether or not they are a member of a particular scheme, and if they are, whether the scheme they are a member of is one that is recognised. The Government outlined that it would work with the Department for Business, Energy and Industrial Strategy (BEIS), to review existing ADR provisions and consider whether further steps are necessary and proportionate.
- 5.32 To date the position remains that legal services providers are required to signpost yet not submit to ADR, which we consider is a disadvantage of this

²¹⁷ For a full list of long term recommendations, see pages 16-22 of the [IRLSR](#).

²¹⁸ This will be replaced by the Cross-Border Mediation (EU Directive) (EU Exit) Regulations 2019 following the end of the Brexit transition period.

option.²¹⁹ The Government continues to consider the scope for making ADR compulsory for legal services, but is not yet in a position to publish a decision.

- 5.33 Furthermore, the Government agreed that it would work with the LeO, self-regulatory bodies, Citizens Advice, HM Courts and Tribunals Service and the Probate Service in order to consider whether there is scope to adapt existing data sources to collect additional information relating to the unauthorised part of the sector. This was to address the gap in evidence that we had identified in relation to the unauthorised part of the sector.²²⁰
- 5.34 To date, while our understanding is that the MoJ has explored some of the issues above with the relevant parties, our recommendations to review the extension of redress or to systematically gather new evidence on the unauthorised sector have progressed only to a limited extent. We understand that discussions remain in progress between the MoJ, Citizens Advice, HM Courts and Tribunals Service and the Probate Service; and the MoJ remains interested in the issue of consumer redress.
- 5.35 While it is not straightforward to assess the current state of the unauthorised sector in the absence of further detailed evidence, for the purposes of this Review we have reviewed available indicators of developing trends in the unauthorised sector. We set these out below, before considering what this may imply for the next steps.

Developments in the unauthorised sector

- 5.36 Below we have revisited key indicators in the unauthorised sector since our Market Study. These indicators include the size of the unauthorised sector; consumer quality and satisfaction with the unauthorised sector; and consumer awareness of the regulatory status of their providers. As will be discussed below in the section on 'Next steps and recommendations', these indicators suggest an increasing need to address the regulatory gap and undertake reform of the regulatory framework.

Size of the unauthorised sector

- 5.37 As the LSB has noted, the size of the unauthorised sector is difficult to calculate with precision: in the absence of official statistics, consumer surveys provide some information, but may under-report usage of the unauthorised

²¹⁹ In our [Market Study](#) we explained that the EU Alternative Dispute Resolution (ADR) scheme had a limited impact on the sector as it has not been taken up by many providers and does not apply to business-to-business transactions.

²²⁰ See [CMA's Legal Services Market Study - Government Response](#), December 2017.

sector since many consumers are unaware of the regulatory status of their providers.²²¹

5.38 Estimates of the use of for-profit unauthorised providers range from 1% to around 5.5% on aggregate, with substantially higher figures in certain areas of law.

- (a) In the Individual Legal Needs Survey 2020, 1% of respondents reported using a for-profit unregulated provider as their main adviser.
- (b) However, a detailed mapping exercise undertaken for the LSB in 2016 found that unregulated firms were used in 4.5-5.5% of cases in which individual consumers paid for advice or representation.²²² Similarly, a survey undertaken for the CMA's Market Study suggested that for-profit unauthorised provision accounted for around 4% of consumer cases.
- (c) Estimated use also varies by practice area. The LSB's mapping exercise undertaken in 2016 also suggested that in family law and property law, unregulated providers command a larger market share of for-profit providers, around 10% in each area.²²³

5.39 However, when considering how legal needs are met more generally, it becomes apparent that the majority of consumers draw on sources of help that lie outside the reach of legal services regulation. As reported by the Individual Legal Needs Survey 2020, regulated lawyers represent around a third of all sources of help used by individuals who faced a legal issue.²²⁴ This compares to around 59% in the Individual Legal Needs Survey 2016, although the questions/categories of providers used may differ slightly.²²⁵

5.40 ONS data on the legal services sector offers another possible indicator of the overall reach of unauthorised providers. In 2018, the number of authorised entities in England and Wales represented around a third of the number of UK

²²¹ LSB (2020), [The State of Legal Services 2020 Evidence Compendium](#).

²²² LSB (2016), [Unregulated Legal Services Providers: Research Summary](#).

²²³ LSB (2020), [The State of Legal Services 2020 Evidence Compendium](#). The LSB's mapping exercise estimated that market shares by service area could be as high as 13% for divorce, 11% for property, construction and planning, 9% for wills, trusts and probate and 8% for intellectual property. See LSB (2016), [Unregulated Legal Services Providers: Research Summary](#).

²²⁴ See the [Individual Legal Needs Survey 2020](#), p44 for further detail. Figure 22 shows that 22% of respondents obtained help from solicitors, 4% from licensed conveyancers, 3% from barristers and 3% from 'other lawyers'. The question covers a varied range of alternative sources of help, with for example 40% of respondents using sources of help which include: 'other advice service', Citizens Advice Bureau, local council, insurance companies, Council advice service/trading standards, financial advisers, trade union/professional body, law centre, accountant.

²²⁵ See Ipsos Mori (2016), [Online survey of individuals' handling of legal issues in England and Wales 2015](#), commissioned by the Law Society and the LSB, p82. In response to QF1: 'Please select which of the following advisers or representatives you got help from', Figure 7.1 shows that 49% of respondents obtained help from solicitors and 10% from other reserved providers.

enterprises recorded by the ONS in the legal services sector.²²⁶ We stress that this data is not like-for like, for example given the different geographical scope and differences in the entities captured. Furthermore, we would expect to find that authorised entities, on average, carry out a higher value and volume of cases than unauthorised entities. Therefore, relying on numbers of firms alone is likely to overestimate the contribution of unauthorised entities. Nevertheless, this figure highlights that their participation may be significant.

5.41 Alongside the above data, there is other anecdotal evidence that the size of the unauthorised sector may have increased and may be set to increase further:

- (a) The increasing focus on lawtech as a growth area suggests that use of such unauthorised provision may be likely to grow if it is not already increasing. There has been a significant increase in UK lawtech start-up investment (from £22m in 2017 to £62m in 2019).²²⁷ Consumer-facing legal services have seen the highest levels of concentration of such start-ups,²²⁸ and, as noted in paragraph 5.41(c) below, innovation in public-facing legal technology is mainly coming from unregulated organisations. For example, Farewill (a 15 minute online will provider) claims to be the largest provider of wills in the UK,²²⁹ producing one in 10 wills.²³⁰
- (b) Furthermore, the size of the unauthorised sector may be set to increase as a result of COVID-19 which, as in other sectors, has seen a substantial change in working practices and may accelerate a permanent shift to new business models, including more remote delivery of legal services. Given that many unauthorised providers operate online,²³¹ unauthorised firms are well positioned to grow market share as a result.²³²
- (c) In addition, unauthorised providers are often more innovative and cheaper indicating there may be scope for future growth. For example, research

²²⁶ This is based on LSB estimates of 11,288 regulated entities in England and Wales in 2018/2019, and ONS estimates of a total number of 33,519 enterprises in the UK legal services market in 2018. See LSB (2020), [The State of Legal Services 2020](#) evidence compendium, Figure 7.3, and [ONS data](#) (referring to SIC code 69.1), respectively. The scope of the services captured by these estimates will differ, with the ONS definition likely to be broader. For example, LSB estimates exclude claims management companies and immigration advisors that provide legal services but are regulated by other bodies.

²²⁷ Thomson Reuters (2019), [Legaltech Startup Report 2019](#), [Press release](#). However, we note that such estimates are likely to capture a wider range of legal technology (including for example, back-office technologies that aim to enhance efficiencies) than the consumer-facing aspects of lawtech our Review is primarily concerned with, as set out in footnote 8.

²²⁸ Thomson Reuters/Legal Geek (2019), [Legaltech Startup Report 2019: A Maturing Market](#), p9 and p13.

²²⁹ [IRLSR](#).

²³⁰ Legal Futures: [Farewill raises £20m to fuel exponential growth](#).

²³¹ Economic Insight (2016), [Unregulated legal service providers: Understanding supply-side characteristics](#). Commissioned by the LSB.

²³² [IRLSR](#).

indicates that the highest levels of radical service innovation were among unregulated businesses (12%), double that of solicitors (6%) and three times higher than barristers (4%).²³³ Furthermore, Nesta's report on its work with the Legal Access Challenge suggests that innovation in public-facing legal technology is mainly coming from unregulated organisations.²³⁴

Consumer lack of awareness regarding regulatory status

- 5.42 Notwithstanding positive work undertaken by the regulatory bodies to increase the transparency of redress and regulatory status,²³⁵ there is still a lack of consumer awareness regarding the regulatory status of their providers. Recent figures from the Individual Legal Needs Survey 2020 show that, of those using a main adviser (either authorised or unauthorised) to help handle a legal issue, two-fifths (42%) reported that they already knew that the adviser they were using was regulated. Of the remainder, one-fifth (23%) checked whether their main adviser was regulated. However, that left a third (35%) of people who did not know or check whether their adviser was regulated.²³⁶ This means there is still a significant proportion of consumers that may not be aware of the consequences of using unauthorised providers for their level of protection and rights of redress.
- 5.43 As highlighted by the OLC,²³⁷ other recent research supports the findings above:
- (a) Research by Economic Insight in 2018 highlighted that 57% of recent users of legal services surveyed thought that all lawyers are regulated.²³⁸
 - (b) The LSCP tracker survey showed that in 2018, 49% of the general population were confident that consumer rights would be protected if something went wrong.²³⁹

²³³ LSB (2018), *Technology and Innovation in Legal Services – Main Report*.

²³⁴ Nesta Challenges/SRA (2020), *The Legal Access Challenge: Closing the legal gap through technology innovation*. The Legal Access Challenge, delivered in partnership by the SRA and Nesta Challenges, was a £500,000 challenge prize which sought out early stage digital technology solutions that could directly help individuals and SMEs better understand and resolve their legal problems. The Challenge was made possible by a grant made to the SRA from the £10m Regulators' Pioneer Fund launched by BEIS and administered by Innovate UK.

²³⁵ For more information see paragraphs 3.40 to 3.52 of this report.

²³⁶ With regards to data from similar research in 2015, when consumers were asked whether they checked if their main provider was regulated: 48% said yes; 38% said no; 14% said don't know. See Ipsos Mori (2016), *Online survey of individuals' handling of legal issues in England and Wales 2015*, commissioned by the Law Society and the LSB.

²³⁷ OLC CFI response.

²³⁸ Economic Insight (2018), *Better Information in the Legal Services Market*. A report for the SRA and the LeO.

²³⁹ LSCP Tracker Survey 2018.

- (c) Qualitative research by the LSCP in 2020 observed that many consumers assumed their provider was regulated.²⁴⁰

Consumer satisfaction with unauthorised providers

- 5.44 In terms of quality and satisfaction, our Market Study reported that consumers were broadly satisfied with the service they receive, with relatively low levels of concern across both the authorised and unauthorised sector.²⁴¹ In contrast, more recent evidence from the Individual Legal Needs Survey 2020 indicates substantially lower satisfaction for unauthorised providers compared to solicitors and other professional advisers.²⁴²

Impact of regulation on competition

- 5.45 To date the MoJ has not carried out a review of the regulatory framework, and we continue to believe that the concerns we identified in the Market Study persist. Notably, the scope of the reserved activities is not well aligned to the actual risks of the legal services used by consumers. In addition to the potential consumer protection concerns that this raises, the existing framework can also raise barriers to competition.²⁴³
- 5.46 However, developments to allow more flexibility in the way solicitors can practise, and to reduce regulatory costs, have been more positive.

Consideration of the scope of the reserved activities

- 5.47 The LSB has been considering the possibility of carrying out a review of the reserved legal activities. It is currently minded not to undertake such a review in the 2021/22 financial year, but is consulting on this view as part of its ongoing business plan consultation. However, the LSB is proposing to undertake work to build its understanding of the unregulated sector²⁴⁴ and to

²⁴⁰ LSCP (2020), [Consumers feedback on quality indicators in legal services](#).

²⁴¹ Individual consumers were satisfied with the overall quality of service for 86% of the issues where help was obtained from authorised providers and 5% were dissatisfied. The comparable figures for advice obtained from unauthorised providers, were 89% satisfied and 3% dissatisfied. See the Market Study, paragraph 4.39.

²⁴² The [Individual Legal Needs Survey 2020](#) reports that consumers are most satisfied with the service they receive from solicitors (90%) and other professional advisers (88%) and least satisfied with the service from unregulated providers (20%). Note that this figure covers only part of the unregulated sector - 'unregulated providers' is defined in the survey as 'Business/Human resources consultancy' - and is based on a relatively small sample of 64 respondents.

²⁴³ For example, there is continuing evidence that unauthorised providers are limited in their ability to provide a complete service that includes both reserved and unreserved elements of a legal service. See for example the case study on Farewill group where Mayson demonstrates the inefficiencies of moving customers from an unregulated part of the business to a regulated part when providing reserved activities ([IRSLR](#), case study 2: MDPs and structural contortion, p154).

²⁴⁴ This would be based on and informed by the 'mapping exercise' the LSB has proposed. See LSB (2020), [Draft strategy for legal services regulation and draft business plan 2021-22](#).

consider the implications of technology for the scope of regulation; and it considers that the knowledge it would develop through this work could support a possible review of the reserved legal activities in future.²⁴⁵

Changes in regulatory costs

5.48 In November 2019, the SRA introduced new Standards and Regulations (STaRs), which replaced its previous regulatory handbook and are shorter and simpler. The STaRs implemented rules²⁴⁶ which:

- (a) removed regulatory restrictions on solicitors practising in unauthorised firms, meaning solicitors can now provide unreserved legal activities to the public from unauthorised firms. This is an important change as unauthorised firms can now harness the expertise of solicitors, which may increase their ability to compete given the importance of title to consumer decision making and trust.²⁴⁷ Stakeholders such as Hybrid Legal have explained that the ability to employ solicitors is a benefit given that the title of ‘solicitor’ is an important brand for legal services in the UK.²⁴⁸ Furthermore, one stakeholder considered that the entry and expansion of new legal services firms had partly been as a result of these reforms.²⁴⁹ While it may be too early to evaluate the full impact of this change, we consider that these early signs are positive. Furthermore, we welcome the SRA’s plans to continue to monitor developments closely, including the impacts (positive and negative) on consumers,²⁵⁰ given the potential consumer protection concerns we identified in our Market Study.²⁵¹ We note that in response to our CFI, no evidence of consumer protection concerns have been raised in relation to allowing solicitors to practice in unauthorised firms;
- (b) allow solicitors to work as freelancers,²⁵² with potentially lower overheads and under lighter regulatory requirements. For example, in contrast to firms regulated by the SRA, minimum levels of PII do not apply to

²⁴⁵ The LSB adds that it would also propose to explore use of its ‘voluntary arrangements’ powers, although it considers the need to do so depends on any proposals that government might bring forward to create a mandatory registration scheme for unregulated providers

²⁴⁶ SRA Standards and Regulations introduced in November 2019. For more detail see the SRA website [here](#).

²⁴⁷ As indicated above in paragraph 5.16.

²⁴⁸ [Hybrid Legal CFI response](#).

²⁴⁹ [Passmore Consulting CFI response](#). This cites, for example, the entry of firms like Farewill, Hybrid Legal, Aria-Grace Law and LOD.

²⁵⁰ [SRA CFI response](#).

²⁵¹ See paragraph 5.108-5.116 of the [Market Study](#) for further detail.

²⁵² 229 have registered with the SRA as freelance solicitors, 59 of whom are providing reserved legal activities. See [SRA CFI response](#).

freelance solicitors. Instead 'adequate and appropriate insurance'²⁵³ is required when providing reserved services and there are no PII requirements for non-reserved work. The Law Society has noted an increased interest from the profession in working as freelance solicitors and as consultants.²⁵⁴ We consider that this may allow for greater operational flexibility for solicitors and potentially provide lower cost options to consumers – though we note that, while the obligation to have adequate and appropriate insurance only arises if the provider provides reserved legal services to the public, once the obligation has arisen it applies to **all** services to clients whether reserved or non-reserved. This limits the degree to which levels of PII can be varied in accordance to levels of risk in the service provided.²⁵⁵

5.49 Other regulatory bodies have also taken positive steps to reduce regulatory costs. For example:

- (a) In 2020 the CLC reduced practice fee rates by 30%. This was in addition to a 20% cut made in 2016 and 10% in 2018. At the same time, the CLC made a 60% cut in Compensation Fund contribution rates. We welcome the suggestion by the CLC that it considers that it could safely consider reducing the cost of practising further while maintaining high standards of consumer protection.²⁵⁶
- (b) The BSB has reported the removal of prescriptive regulation in favour of more outcome-focused requirements. Furthermore, the BSB is currently reviewing its Code of Conduct, which will simplify the obligations on barristers and remove unnecessary rules.²⁵⁷
- (c) The ICAEW has streamlined and automated its annual return programme for its regulated firms to make it easier and quicker for firms to complete, which it suggests allows for a cheaper and more accurate data collection system.²⁵⁸

²⁵³ When assessing whether the professional indemnity insurance a freelancer has in place is 'adequate and appropriate' the SRA will require evidence that a freelancer has made a reasonable and rational assessment of the appropriate level and wider terms of professional indemnity insurance cover required.

²⁵⁴ [Law Society CFI response](#).

²⁵⁵ See SRA (2019), [Adequate and appropriate indemnity insurance](#).

²⁵⁶ [CLC CFI response](#).

²⁵⁷ [BSB CFI response](#).

²⁵⁸ [ICAEW CFI response](#). The data gathered informs the risk assessment for quality inspection programmes.

- 5.50 While it is difficult to quantify the overall impact of measures to reduce regulatory costs, very few providers cite regulation as a reason for increasing their prices in the recent LSB Prices Research.²⁵⁹
- 5.51 Having said this, one area of concern raised by stakeholders is the cost of PII. This was raised as a significant cost at the time of our Market Study, where the CMA had indicated that fuller consideration should be given to whether it is appropriate to reduce the minimum level of mandatory PII cover to reduce costs on providers and allow these firms more scope to assess the risks involved in providing their legal services and take out the appropriate level of PII.²⁶⁰
- 5.52 The SRA has since sought to remove the ‘one-size-fits-all’ rules on PII so that firms could take out cover that better reflected the work they do, consulting in 2018 on proposals to do so. However, ultimately the SRA decided not to introduce any of the proposed changes, as it seemed unlikely that firms or insurers would respond to the proposals that would lead to the intended benefit materialising in the foreseeable future.²⁶¹ The SRA has, however, introduced the option for solicitors to freelance with reduced PII requirements that reflect the risk of their activities, as discussed in paragraph 5.48(b).
- 5.53 Alongside the developments above, anecdotal evidence suggests the costs of premiums for PII have risen since 2018/19, with the SRA reporting average increases of 15-20% for minimum levels of cover.²⁶² In addition, the Law Society raised concerns regarding the lack of competitive insurance products available that would meet the SRA’s ‘adequate and appropriate’ insurance requirements as well as the cost of run-off cover when closing down a practice in order to switch to working on a freelance basis,²⁶³ which may potentially reduce the ability of solicitors to benefit from freelancing.
- 5.54 We therefore expect that the potential impact of PII as a regulatory cost remains at least as significant as at the time of our Market Study, since the SRA has not been able in the circumstances to introduce significant reforms, while costs have significantly increased. In response to our CFI, the LSB has

²⁵⁹ As evidenced in the [LSB Prices Research](#). 3 of 173 providers identified regulatory reasons for increasing their prices.

²⁶⁰ See, for example, paragraphs 5.18-5.22 and 5.49-5.52 of the [Market Study](#).

²⁶¹ See SRA News release [here](#) for further detail. The SRA sought to reduce the minimum level of cover for firms from £2 million to £500,000 to ensure firms were providing consumers with appropriate protection, while enabling firms to take out cover that better reflected the degree of risk in the work they did, thereby potentially reducing costs for some firms, particularly small firms. However, in response to the SRA’s proposal, insurers indicated that they might not lower premiums and firms may not take the opportunity to lower their cover. Furthermore, even if costs were lowered, some stakeholders considered that overall consumer protection would be reduced.

²⁶² [LSB CFI response](#)

²⁶³ [Law Society CFI response](#).

indicated that it might be helpful for a market review of PII to be undertaken. We consider that there would be merit in the LSB exploring this work further.

Impact of regulation on innovation

- 5.55 As previously noted, our Market Study also identified concerns that high regulatory costs could deter entry and innovation.
- 5.56 The LSB's recent State of Legal Services Report²⁶⁴ indicates that overall levels of innovation are static despite deregulatory reforms that have removed restrictions on businesses. The LSB considered that prevailing culture appears to be a more significant impediment to innovation than regulation. In particular, it noted that the fact that lawyers typically occupy roles that involve mitigating risks for their clients does not foster a natural innovation mindset that encourages them to try delivering legal services in new ways. The LSB suggested that the traditional partnership model contributes to risk aversion and slow decision-making.²⁶⁵
- 5.57 Notwithstanding this, there have been developments in innovation and an increased diversity of providers entering the legal services sector in recent years.
- (a) For example, there has been a trebling in the number of ABS licences in the last five years,²⁶⁶ with some indication that ABSs are correlated with higher levels of innovation.²⁶⁷ The LSB has also noted that 'available data shows that ABSs have no worse a disciplinary record than other types of law firm, which suggests they have not lowered standards as was feared'.²⁶⁸
- (b) In addition, the sector has seen an increase in lawtech growth, with the highest levels of concentration of law-tech start-ups in the 'consumer services' area.²⁶⁹ However, as noted above, the Legal Access Challenge report suggests that innovation in public facing legal technology is mainly

²⁶⁴ LSB (2020), [The State of Legal Services 2020](#).

²⁶⁵ A similar finding was identified in the [Market Study](#) at paragraph 122.

²⁶⁶ LSB (2020), [The State of Legal Services 2020 Evidence Compendium](#), paragraph 372.

²⁶⁷ For example, the LSB noted that ABSs were significantly more likely to have introduced service innovation (38%) compared to non-ABS firms (25%). More generally, research commissioned by the LSB indicates that ABSs and non-lawyer involvement are important in fostering innovation. See LSB (2020), [The State of Legal Services 2020 Evidence Compendium](#), paragraphs 112-113.

²⁶⁸ LSB (2020), [The State of Legal Services 2020](#).

²⁶⁹ Thomson Reuters/Legal Geek (2019), [Legaltech Startup Report 2019: A Maturing Market](#).

coming from unregulated organisations,²⁷⁰ albeit with some consumers wary of using these services.

- (c) Most recently, the pandemic has forced significant and rapid adaptation to new ways of working, although the longer-term impact of this remains to be seen.

5.58 LSB research indicates that between 2015-2018, the proportion of providers citing regulation or legislation as constraints on innovation has decreased by 10% and 7% respectively. While the direction of travel is encouraging, 34% still identified legal services regulation as constraining their adoption of emerging technologies.

5.59 In its State of Legal Services report, the LSB noted work by Nesta on the Legal Access Challenge programme which identified a series of barriers to lawtech innovation, such as the lack of access to relevant data (for example from courts or standardised customer data), low awareness and trust of digital legal services by consumers, and the fragmented nature of the sector meaning entities have lower capacity to invest in new services. Where there are regulatory barriers, Nesta considered these to be soft (for example, comprehension of the regulatory framework) rather than hard rules that explicitly blocked innovation.²⁷¹

5.60 The LSB concurred that the main regulatory barriers that do exist tend to be 'soft' barriers, identifying a number of challenges resulting from the regulatory framework. Examples include technology developers and overseas-based providers falling outside the scope of regulation, the focus on title-based regulation as opposed to activity-based regulation, the complexity involved in navigating the regulatory framework and the potential for different standards as a result of multiple regulators in the sector.²⁷² These factors are identified as having the potential to disincentivise innovators from entering the sector.²⁷³ Likewise, Passmore Consulting also submitted that the costs and complexities of legal services regulation are a major disincentive to investment.²⁷⁴

²⁷⁰ Nesta Challenges/SRA (2020), [The Legal Access Challenge: Closing the legal gap through technology innovation](#).

²⁷¹ LSB (2020), [The State of Legal Services 2020 Evidence Compendium](#).

²⁷² LSB (2020), [The State of Legal Services 2020](#). Regulatory framework concerns were also identified by CILEx Regulation, who stated in its CFI response that one major barrier that it has observed in terms of deterring further innovation and the uptake of technology in the sector is the poor interoperability between regulatory regimes, both within legal services and between other sectors.

²⁷³ LSB (2020), [The State of Legal Services 2020](#).

²⁷⁴ [Passmore Consulting CFI response](#). Passmore Consulting also suggests the need to justify maintaining regulations rather than justify removing them; and that the requirement for LSB to approve rule changes should be removed to enable more agile and more significant deregulatory reforms. As an alternative, Passmore Consulting proposed that the LSB could be given powers to require the regulators to review their rule changes

5.61 Alongside this, the fast-changing and sometimes complex nature of lawtech is recognised as posing regulatory challenges as well as critical opportunities for customer benefits and sector growth.²⁷⁵ Regulators have a duty to manage potential risks as well as facilitate entry and innovation and much work is ongoing to seek to be proactive in achieving the right balance – for example, the LSB notes the creation of sandboxes by LawtechUK and some regulatory bodies in support of innovation.²⁷⁶ However, it is unclear whether the current regulatory framework can strike the right balance between encouraging innovation and providing consumers with sufficient protection. For example, CILEx suggests a concern that the existing framework will be unable to effectively scrutinise and regulate emerging technologies, due to the narrow gateway of entry to legal services regulation.²⁷⁷

Regulatory structure

5.62 Since our Market Study, the Government has not undertaken its planned review of regulatory independence on the basis that more could be done within the existing framework – in particular that there was scope for the LSB to progress its work on IGRs.²⁷⁸ The LSB has since undertaken this work, as set out in more detail in paragraphs 5.67 to 5.70.

5.63 In the Market Study, we concluded that there may be a case for reducing the number of regulators. We found that the complex regulatory structure, with its multiplicity of regulators alongside an oversight regulator, risks difficulty in coordinating action as well as lengthy, inefficient and inconsistent decision making in certain areas. We considered that a simplified structure would allow for better prioritisation across relevant types of consumer, activity and legal service, and a reduction in duplication. However, we thought that the appropriate structure should flow from the preferred regulatory approach, rather than being considered in isolation. As a result, we did not make any recommendations for the structure to be changed at that stage, but argued that it should be addressed as part of the wholesale review we recommended.

5.64 In the absence of the review having taken place, it is therefore not surprising that there has not been a change to the regulatory structure as set out in the Act.²⁷⁹ However, we consider that the potential inefficiencies of the regulatory

three years after changes have been put in place, and a subsequent power of the LSB to use its existing powers to demand change.

²⁷⁵ See for example LSB (2020), [Perspectives on lawtech and regulation](#); LSB (2020), [The State of Legal Services 2020](#); and regulators' CFI responses.

²⁷⁶ LSB (2020), [The State of Legal Services 2020](#). See also the LawtechUK website.

²⁷⁷ CILEx CFI Response.

²⁷⁸ The Government further added that it would closely monitor developments in this area and keep the case for further action under review.

²⁷⁹ With the exception that the ACCA is intending to withdraw from legal services regulation.

structure identified in our Market Study are likely to remain, and indeed have been further demonstrated by the difficulties of coordinating regulatory progress on our Market Study recommendations in the past years.

- (a) The LSB, for example, has noted that demands on the regulatory bodies continue to grow across disparate and increasingly complex areas, from designing price transparency remedies to grappling with the implications of artificial intelligence. Given this, and the resources available to the smaller regulatory bodies, the LSB is increasingly concerned about their capacity to deliver high-quality regulation that commands public confidence.²⁸⁰
- (b) Furthermore, it considers that the current fragmentation of the sector with multiple regulators operating across different practice areas is not conducive to good outcomes for consumers. As examples of this the LSB cites lack of traction on issues requiring cross-sector collaboration, such as Legal Choices, and a reluctance by the regulatory bodies to pursue individual approaches to issues such as quality indicators.²⁸¹

5.65 The LSB considers that a radical reassessment of the regulatory framework could simplify the existing structures, which in turn would be more easily comprehensible to consumers, supporting improved consumer awareness and engagement, and would promote better consumer outcomes.²⁸²

5.66 These concerns echo those raised in our Market Study and, as stated there, we would welcome a wholesale review of the regulatory framework in order to consider these issues properly alongside the issue of regulatory independence. Recent developments in relation to regulatory independence are discussed further in the following paragraphs. In the meantime, as discussed in Chapter 4, to mitigate the challenges of coordination across the existing regulatory structure, we see the LSB as having an important role to play in overseeing work by the regulatory bodies to drive competition in the sector. In this context, the use of statutory policy statements by the LSB to set overall sector direction could serve as an effective tool to ensure a consistent and coordinated approach within the current framework.

²⁸⁰ [LSB CFI Response](#).

²⁸¹ As identified by the LSB, the full potential of Legal Choices has been limited by a persistent lack of consensus among the regulatory bodies over funding and governance, and there has been variability in the contribution across the regulatory bodies ([LSB CFI response](#)). Furthermore, with respect to quality indicators, where progress by the regulatory bodies has been limited, the LSCP has indicated that a shared understanding and definition of quality is needed among the regulatory bodies combined with clear direction from the oversight regulator ([LSCP CFI response](#)).

²⁸² [LSB CFI Response](#).

Developments with regard to regulatory independence

- 5.67 Following our Market Study and the Government response above, the LSB has introduced a revised set of internal governance rules or IGRs.
- 5.68 The IGRs were put in place by the LSB in 2009²⁸³ to comply with the LSB's duty under Section 30 of the Act to make IGRs which set out requirements for the approved regulator to ensure the separation of its regulatory and representative functions. These requirements must ensure that:
- (a) the exercise of regulatory functions by an approved regulator²⁸⁴ is not prejudiced by its representative functions; and
 - (b) decisions relating to the exercise of the regulatory functions by an approved regulator are, so far as reasonably practicable, taken independently from decisions relating to representative functions.
- 5.69 The IGRs aim to balance the interest of the approved regulators in ensuring that its regulatory body is accountable. However, there is an inherent tension for approved regulators. This is because approved regulators have both representative and regulatory functions and are required to separate their regulatory functions whilst remaining responsible for assuring compliance by their regulatory body with Section 28 of the Act (which sets out the approved regulator's duty to promote the regulatory objectives).²⁸⁵ The Act does not allow for complete separation or complete independence. Furthermore, the LSB cannot compel full independence for regulatory bodies, nor their legal separation from the approved regulators whose regulatory functions have been delegated to them.²⁸⁶ The Act thus creates a structural relationship that leads, as noted in the IRLSR, to 'tension ... After all, the 'approved regulator' – which remains, formally, the professional body (such as the Law Society or the Bar Council) – is named in the Act, with no reference to the name of the regulatory bodies (respectively, the Solicitors Regulation Authority and the Bar Standards Board).'
- 5.70 A review of the IGRs was undertaken between November 2017 and July 2019, following which new rules and accompanying statutory guidance were published in July 2019.²⁸⁷ The amendments were aimed at making the IGRs

²⁸³ The IGRs were then amended in 2014 to update the rules on Board appointments and reappointments.

²⁸⁴ Defined by Schedule 4 to the Act.

²⁸⁵ The regulatory objectives include, amongst others: promoting and maintain adherence to the professional principles; protecting and promoting the public interest; protecting and promoting the interest of consumers.

²⁸⁶ LSB (2018), *Reviewing the Internal Governance Rules: Enhancing regulatory independence within the current legal framework, Analysis of submissions received, The LSB's response and decision on its approach*.

²⁸⁷ The approved regulators have a duty to implement arrangements for securing independence in line with the IGRs, and to update these arrangements in accordance with amendments made by the LSB. With the publication

more outcome-focused²⁸⁸ and set out principles that approved regulators must follow. They offer greater clarity on the oversight role of an approved regulator that has both regulatory and representative functions. In addition, the IGRs also set out how the LSB expects an approved regulator to discharge its residual role so that it can be assured that the regulatory body is functioning appropriately, whilst ensuring it does not infringe the separation of regulatory functions or duplicate the LSB's oversight role. This includes limiting the ways approved regulators can seek assurances and information from regulatory bodies which may undermine the independence or effectiveness of the regulatory body.²⁸⁹ In response to the IGRs the SRA is in the process of being established as a distinct legal entity within the Law Society Group.²⁹⁰ Furthermore, most other regulatory bodies are separate legal entities from their approved regulators, with few exceptions.²⁹¹

- 5.71 The LSB is of the view that the IGRs have delivered greater structural independence than has previously been achieved within the approved regulators. The LSB told us that, in effect, its review and development of the IGRs constituted a review of the structural independence of the regulators such that a further review at this time is unlikely to be productive. However, the LSB has cautioned that a culture of independence may lag behind formal operational separation and it has therefore committed to ongoing monitoring, which we welcome, via its regulatory performance framework.²⁹²
- 5.72 In responding to our CFI, stakeholders were broadly supportive of the IGRs measures. Others, such as the LSCP, considered that there are more pressing priorities than such a review, particularly given the progress that the LSB has made with IGRs in this area.²⁹³ In contrast the IRLSR considers that the IGRs are insufficient and states: 'the nature of the separation and independence of regulatory functions from representative functions remains unsatisfactory [and that] the current approach and requirements of regulation

of the new internal governance rules and accompanying statutory guidance, a 12 month transition period commenced. The approved regulators were given a deadline of 24 July 2020 to demonstrate their compliance with these rules.

²⁸⁸ Outcomes-focused regulation (OFR) sets out what should be achieved rather than how it should be achieved. OFR gives those regulated freedom to design and deliver the process or mechanism needed to best meet a given outcome according to their own circumstances.

²⁸⁹ Examples of requirements for information which would undermine the regulatory body's *independence* would include requirements targeted at issues in dispute between the parties relating to the IGRs or other matters affecting their separation, eg disputes between the parties about the IGRs which have been referred to the LSB for clarification under Rule 14(2). Examples of requirements for information which would undermine the regulatory body's *effectiveness* would include overly onerous, repetitive or duplicative requirements which would impair the regulatory body's ability to carry out its duties on a day-to-day basis, unduly divert it away from pursuing its legitimate strategy or otherwise require the regulatory body to allocate resources to the detriment of effective regulation.

²⁹⁰ [The Law Society CFI response](#). See also the announcement in April 2020 on the [SRA website](#).

²⁹¹ For example the Bar Council is not a separate legal entity from the BSB.

²⁹² [LSB CFI response](#).

²⁹³ [LSCP CFI response](#).

and the internal governance rules make the desirable cooperation and collaboration between regulatory and representative functions problematic to achieve’.

- 5.73 The IRLSR has called for a single overarching regulator to be created with a focus on minimum necessary requirements attached to activities and services. The proposal envisages that, with no institutional connection with any professional or representative bodies, the question of regulatory independence would be settled; and while representative bodies would no longer have a formal role to play, they would nonetheless have a separate role in constructive engagement on behalf of members, free of assertions of possible ‘influence’. Likewise, paragraphs 5.64 to 5.65 have outlined some reasons why the LSB also supports the establishment of a single overarching regulator of legal services.
- 5.74 As will be discussed in the next sections, we consider that wholesale reform is warranted, as part of which the regulatory structure should be reconsidered. We see considerable merits in greater simplification, alongside the introduction of full separation between the representative and regulatory functions to settle the issue of regulatory independence. In the meantime, we endorse the LSB’s proposals to continue to monitor the success of the IGRs, which will inform any further actions that may be warranted within the constraints of the Act.

Conclusion on the regulatory framework

- 5.75 As discussed above, while there have been some developments²⁹⁴ in response to our regulatory recommendations since our Market Study, the concerns identified at that time that the framework is not appropriately aligned with best practice regulatory principles largely remain. In particular, this gives rise to the following issues:
- (a) Regulation is not well targeted to risk;
 - (b) A regulatory gap exists that leads to consumer protection risks for users of unauthorised providers;
 - (c) On the other hand, regulation creates barriers to competition and innovation, and risks the over-regulation of some lower-risk activities by authorised firms;

²⁹⁴ For example on regulatory costs and the removal of restrictions on solicitors operating in unauthorised firms.

- (d) The complex regulatory structure (involving multiple regulators) makes coordination of regulatory action difficult to achieve and leaves scope for inconsistency in approach and status quo bias.

5.76 We are therefore of the view that there remains a strong case for wholesale reform. If anything, this case is stronger now than at the time of the Market Study. In particular:

- (a) As noted in paragraphs 5.37 to 5.41, there are signs that the unauthorised sector has continued to grow through developments in lawtech and will continue to do so in the future, potentially accelerated by the trend towards greater remote service provision driven by the COVID-19 pandemic. This has two potential consequences:
 - (i) The need to address the regulatory gap and remove restrictions on competition between authorised and unauthorised providers is likely to become more urgent over time. Increasing interest in the reforms introduced by the new STaRs, allowing solicitors to work as freelancers and in unregulated entities, have also demonstrated an appetite for greater flexibility in how services can be provided, including within unauthorised firms.
 - (ii) With lawtech set to increase in prominence, the LSB noted in its CFI response that 'It is not clear whether the Act provides sufficient flexibility for regulators to take appropriate account of the impacts of legal tech' and considered that such impacts might increase the case for major legislative change.
- (b) Overall levels of innovation in the legal services sector appear to be static, with innovation in public-facing legal technology mainly coming from unauthorised providers. Given the importance of enabling lawtech to prosper, particularly as the sector recovers and adapts to changing legal services usage post COVID-19, reforms could help drive further innovation by increasing confidence in the use of unauthorised providers, encouraging investment and minimising distortions in competition. A simpler regulatory framework more clearly targeted at risk could also increase confidence to innovate within the authorised sector.
- (c) The challenges that have emerged in the process of tackling the CMA's recommendations, in driving sector change in a consistent manner across a number of regulatory bodies and professions, illustrate the need for greater consolidation and simplification of the regulatory structure.

5.77 We believe that progress needs to be made towards wholesale reform of the Act in order to achieve a more activity-based regulatory model that is

appropriately targeted at risk and which has a more streamlined regulatory structure. The IRLSR has explored in detail how an alternative activity-focused and risk-based regime would work, and we are broadly supportive of these proposals. It remains the case that our preferred option in order to lay the foundation for a more flexible, proportionate and activity-based reform to the legal services framework is for the MoJ to undertake wholesale reform of the Act.²⁹⁵

- 5.78 At the same time as the need for reform appears increasingly pressing, we recognise that the prospects of such a review in the near future are limited.²⁹⁶ We therefore believe that there is also merit in taking shorter-term steps which deliver reform in stages, where these are consistent with a long-term strategy of moving towards a more risk-based approach.
- 5.79 In particular, we consider that it is important to start to close the regulatory gap. Where protections are necessary given the risk of a particular activity, all consumers of that activity should benefit from such protections regardless of provider. It is therefore clearly problematic that customers of unauthorised providers can receive no redress compared to customers of authorised providers for the same service, and unreasonable to expect that customers (particularly those in vulnerable circumstances) should have to be aware of these differences in order to manage such risks within a complex regulatory framework.²⁹⁷ As recently noted by MoJ officials, such differences in redress do not ‘seem to make sense at a fundamental level’.²⁹⁸
- 5.80 While in response to our CFI some stakeholders²⁹⁹ considered that there was little evidence that the unauthorised sector caused harm that warranted further regulation, there are some indications that consumers may be more dissatisfied with unauthorised providers. Furthermore, we consider that the risks inherent to a service are likely to be broadly comparable regardless of provider. Indeed, in the Market Study, while there was limited evidence on provider quality, the limited evidence that we examined indicated that there were similar concerns in quality relating to both authorised and unauthorised providers.³⁰⁰

²⁹⁵ For a full description of the long-term vision and recommendations for an alternative framework see paragraph 6.87 of the [Market Study](#).

²⁹⁶ See [House of Commons Written Answers and Statements – 18 May 2020, question 45128](#).

²⁹⁷ This is particularly concerning given consumers’ lack of awareness regarding the regulatory status of their providers, as identified above (paragraphs 5.42 to 5.43).

²⁹⁸ [Legal Futures](#): Government eyes regulating the law’s unregulated providers, accessed 23 November 2020.

²⁹⁹ For example, the LSB, Bar Council and Passmore Consulting. See [CFI responses](#) from the LSB, Bar Council and Passmore Consulting respectively.

³⁰⁰ See paragraph 4.77 of the [Market Study](#).

- 5.81 Other stakeholders supported the view that protection should be based on the risk of a service,³⁰¹ or noted that extending redress could potentially improve trust and confidence in the use of unauthorised providers.³⁰²
- 5.82 Respondents to the CFI suggested a number of shorter-term options that could introduce a degree of reform or mitigate concerns within the existing regime, including activity-based licences for reserved activities proposed by the SRA, granting consumer enforcement powers to the LSB and improving public legal education. Three such options have been more extensively discussed and, in our view, merit further consideration:
- (a) A registration model for unauthorised providers. This could be used to mandate access to redress, and would establish a framework for additional regulatory protections if required;
 - (b) A review of the reserved activities in order to align reservation more closely to risk, including by reducing regulatory burdens and restrictions on lower risk activities;
 - (c) Further monitoring and evaluation of the impact of the IGRs, to ensure regulatory independence is maximised to the extent possible while the existing framework remains in place and to consider whether further measures may be required and, if so, what they might be.
- 5.83 In the next section we outline our proposed recommendations, given our conclusion on the regulatory framework and the case for reform stated above.

Next steps and recommendations

- 5.84 Our preferred recommendation is that the MoJ should undertake the review of the current framework for legal services, as set out in the Market Study.
- 5.85 However, as we recognise that the prospects of such a review in the near future are limited, the main question now is how to make progress towards the goal of a more risk-based regulatory framework. We believe that there is also merit in taking shorter-term steps which deliver reform in stages, where these are consistent with a long-term strategy of moving towards a more risk-based approach. Therefore, we recommend in the short term that:
- The MoJ should create, or empower the creation of, a mandatory public register for unauthorised providers;

³⁰¹ See, for example, [CFI responses](#) from the LSCP and OLC.

³⁰² See, for example, [CFI responses](#) from the IoP, LSB and PPR.

- The LSB should undertake a review of the reserved activities.
 - The LSB should evaluate the impact of the revised IGRs before deciding on further action.
- 5.86 We consider that these would be desirable steps towards a long-term strategy for the regulation of legal services, with each measure being aligned with the end goals of reform as well as complementary in effect.
- 5.87 For example, a registration scheme would bridge the regulatory gap for unauthorised providers, allowing greater flexibility to adopt an approach commensurate to activity risk. It would also have the benefit of enabling further information about the unauthorised sector to be gathered. As a result, it would then become easier to design an effective longer-term regulatory framework whose implementation would not necessitate as great an immediate change from the current system – particularly if in the shorter term, the current set of reserved activities were updated to ensure they are proportionate to existing risks and any distortion to competition were minimised. Careful monitoring and evaluation of the IGRs alongside would ensure that, until such time as the Act was fully reformed, regulation would adhere to best practice principles of independence to the extent possible within the confines of the existing Act.
- 5.88 The next sections discuss each recommendation in greater detail, explaining our views on the rationale for each while noting some of the challenges that will need to be considered. Further analysis and evaluation will be required to develop and design these interventions, and it is likely that their implementation would require legislation, though these legislative changes would be more limited than the changes that wholesale reform would entail.

A registration model for unauthorised providers

- 5.89 To address the regulatory gap, the IRLSR has proposed that a mandatory register of unauthorised providers providing a defined set of legal services be created. Under the IRLSR's proposal:
- (a) The register would include providers who are not otherwise authorised persons under the Act and who provide non-reserved legal services to consumers whether for reward or as part of a commercial activity.

- (b) The LSB would be empowered to create the register and decide if any regulatory arrangements (within the meaning of section 21 of the Act³⁰³) should attach to those who are registered.
- (c) The jurisdiction of LeO under the ombudsman scheme rules should be extended to complaints by consumers against registrants on the same basis as if registrants were authorised persons.

5.90 In principle, the CMA considers that a registration model would have a number of benefits, including:

- (a) Evidence collection: By identifying the relevant participants in the unauthorised sector, the register would enable a proper understanding of the sector to be developed. Key information, for example about the services each provider supplies and the complaints received, would allow evaluation of the size and nature of the sector and whether there is any consumer detriment for consumers who use such providers. Such data could then inform the approach to further reform over time. The requirement for formal registration would also deter any rogue providers from participating in the sector.
- (b) Providing a framework for applying proportionate redress and regulatory requirements to unauthorised providers: By identifying the relevant providers, a register is a means by which unauthorised providers could come within the regulatory 'net', enabling redress and/or other requirements to be attached to unauthorised provision to the extent appropriate and necessary. Ideally a risk-based approach would be applied to such requirements, in line with the type of service provided, and consistent with the longer-term goal of a move to activity-based regulation.
- (c) Limited change, as it would not affect the current regulatory provisions and title holders already within the authorised sector.

5.91 We are therefore recommending that the MoJ should create, or empower the creation of, a mandatory public register for unauthorised providers.

5.92 The design and implementation of such a model clearly raises a number of questions such as those discussed in the IRLSR – for example:

³⁰³ Section 21 sets out the meaning of 'regulatory arrangements' of a body, which include but is not limited to: practice rules; conduct rules; disciplinary arrangements in relation to regulated persons; qualification regulations; indemnification arrangements; compensation arrangements.

- (a) who or what services would be in scope for the register;
- (b) whether it would be mandatory;
- (c) who would create the register and set its requirements, including;
 - (i) what redress options might be attached;
 - (ii) what other regulations and costs might be attached;
- (d) who would operate the register, and what processes would attach to its day-to-day operations – for example in the event of sanctions or removal from the register;
- (e) how the register would be funded; and
- (f) how it would be communicated to consumers.

5.93 Such factors will have an impact on the proportionality and therefore viability of such a proposal and require careful consideration. Stakeholder views reflected these concerns as they suggested that extending redress could be unaffordable to unauthorised providers, impact their relative cost advantage (gained as a result of current lower regulatory requirements) and result in higher prices being passed onto consumers. Furthermore, they noted that a register may introduce new risks as consumers may expect more consumer protections from registrants than in fact available.

5.94 While the detailed assessment of these aspects is for the MoJ to carry out with the sector, we provide our high-level views on some of these aspects below. In particular, we consider that it is important to:

- (a) Ensure the scope of the register is sufficiently wide and flexible;
- (b) Implement the register on a mandatory basis; and
- (c) Mandate redress that is proportionate to risk and consumer detriment, yet also cost-effective.

Scope of the register

5.95 A key consideration is the definition of legal services for inclusion within a register. We consider that a carefully balanced approach should be taken by the MoJ that is not so narrow as to fail to capture a sufficient range of legal services and providers that are a risk to consumers, but equally, not so wide that it imposes disproportionate and unnecessary obligations on providers.

5.96 The IRLSR suggests the important factors would be that: (a) the provider was, in some way, holding out the prospect of knowledge or experience relevant to the consumer's legal issue, either for reward or otherwise on a commercial basis (or both); and (b) that the consumer could reasonably infer that a relationship of client and legal adviser was being created. Such a proposal would have the benefits of including providers of consumer facing lawtech, allowing flexibility to monitor and adapt to the regulatory complexities likely to be posed as this segment continues to evolve, while supporting its continued growth and potential to drive innovation.

Mandatory vs voluntary register

5.97 While the IRLSR has proposed a mandatory register, we note that under section 163 of the Act the LSB has powers to improve standards of service and promote best practice in connection with legal services through voluntary arrangements, which could include the development of a voluntary register.³⁰⁴ We also note that there are voluntary registers that exist in this and other sectors. For example:

- (a) The PPR already exists as one model of registration for practitioners who do not hold a legal professional title but who provide non-reserved legal activities.³⁰⁵
- (b) In the healthcare sector, the Professional Standards Authority (PSA) independently assesses and accredits organisations which register practitioners who are not regulated by law. Registers that pass the PSA's assessment can use the PSA's quality marks and appear in 'Find A Register', a portal with all accredited registers dedicated to specific services, such as acupuncturists and counselling.

5.98 Were the register to be voluntary, its uptake would likely depend on the extent to which providers see it as beneficial to their business. In turn, this hinges on the degree to which consumers see registration as an indicator of quality or trustworthiness when selecting providers, offset against the cost of registration and other requirements (including redress) of a register. However, evidence collected in the Market Study suggested that consumers are generally unaware of quality marks. This casts doubt on the degree to which firms will be sufficiently incentivised to voluntarily participate and would make

³⁰⁴ As part of its business plan consultation for 2021-2022, the LSB will consult on the use of its s163 (voluntary arrangement) powers. See LSB (2020), [Draft strategy for legal services regulation and draft business plan 2021-22](#).

³⁰⁵ There is already demand for such paralegal registration (approaching 2,000 registrants). See [IRLSR](#), p131.

it necessary to expend significant time and cost in building strong consumer awareness (such as ATOL protection for the travel industry).³⁰⁶ A mandatory register reduces the risk of non-compliance given that enforcement mechanisms could be attached.

- 5.99 We also note that a voluntary register would not address the problem that consumers are not aware of their reduced regulatory protections when using unauthorised providers. Increasing consumer awareness of this issue would also depend on the extent to which the register and regulatory status are promoted.
- 5.100 We are therefore of the view that a register would need to be established on a mandatory basis in order to achieve effective change in the sector.
- 5.101 There are different registers that currently exist across the sector which could be adapted for the unauthorised sector. For example the PPR could be extended and made compulsory for all unauthorised providers of legal services.³⁰⁷ An alternative is to extend one of the registers already in use in the authorised sector – for example, the SRA register, which is the largest and might have the appropriate infrastructure, resourcing and expertise for the development of a large-scale register already in place. However, one stakeholder also queried whether this may cause consumer confusion (for example, consumers may assume that unauthorised providers on a SRA-operated register are also solicitors), or challenges in ringfencing the SRA's costs in operating the register to avoid the risk that authorised providers may subsidise those costs. Regardless of the approach taken, it is important that the communication around the register is clear to consumers, and consumers are aware of the degree of protection offered when using registered providers.

Options for extending redress and regulation

- 5.102 A specified body would need to be empowered to set, maintain, monitor and enforce the requirements of the register. Its identity would be a matter for the MoJ, however the LSB is an obvious candidate as may be other regulatory bodies who already have experience of administering a register. Further options for consideration may include delegation of the operation of the register to a third party.

³⁰⁶ Furthermore, as reported in the [Market Study](#), consumer research by the LSB and the Law Society also showed that when choosing a main adviser, consumers only looked for services which had quality marks or other standards for 4% of issues.

³⁰⁷ Although voluntary and based on different criteria to the IRLSR register proposal, as an indicative comparator the PPR costs less than £300 for full registration (a proportion of which is paid into a compensation fund), plus the cost of professional indemnity insurance for £2 million. See [IRLSR](#), p131.

5.103 It would be possible to mandate, as a condition of registration, a mechanism whereby customers of unauthorised providers could access redress in the event that things go wrong with the service provided; and/or to attach certain regulatory requirements. Further regulatory protections could be included in the future to the extent that they are necessary and proportionate. Such additional measures could be introduced over time based on an evidence-based assessment of the consumer concerns raised by particular legal services. For this reason, it is important that the legislation that introduces the register establishes a flexible regulatory framework that could be adapted as necessary. At present however, this section considers the options for extending redress alone.

5.104 There are a range of options by which redress could be made available: for example, widening access to LeO to unauthorised providers (as suggested by the IRLSR) or mandating access to ADR. Each has advantages and disadvantages that would need to be weighed up, in particular in relation to costs which (as noted in paragraph 5.93) were of significant concern to stakeholders and, in our view, need to be proportionate:

- (a) While LeO is an obvious option, and one which was suggested by the IRLSR, respondents to our CFI raised concerns regarding costs and about whether LeO would be operationally able to take on a significant increase in cases. Any increase in workload would require increased funding, hence establishing these costs and their allocation will be an important part of developing the register. Stakeholders expressed concern regarding the overall cost of LeO, which had a unit cost in Q4 2019/20 of £1,934 and is currently largely funded through an industry levy to approved regulators and a case fee which stands at £400.³⁰⁸ The cost of extending access to LeO for unauthorised provision will depend on factors including the number and complexity of cases and complaint handling models used, which are yet to be established, making it difficult to estimate the envisaged cost of such an extension.
- (b) ADR offers a possible cheaper alternative option to LeO.³⁰⁹ This involves using mediation or arbitration to resolve disputes without resort to litigation. All legal services providers (whether authorised or unauthorised) are required to make their clients aware in writing of an ADR provider that

³⁰⁸ Unit cost is the total cost of the ombudsman scheme divided by total number of cases resolved during the year. The case fee is paid by the law firm which has a consumer dispute.

³⁰⁹ Our [Market Study](#) reported that although the LeO and ADR schemes are likely to be cheaper and quicker for the complainant and the provider than courts, the LeO scheme is more expensive than other ombudsman and other ADR schemes.

operates in the legal services sector.³¹⁰ However, to ensure ADR is effective as a redress mechanism, registrants may need to be required to submit to its use and findings.³¹¹

5.105 While we are in full support of the principle that access to redress be mandated via a register, we believe that a flexible approach on the form of such redress, balancing risk and cost, should be considered given the concerns expressed above. There is scope to apply a tiered and escalating approach depending on the nature, severity, complexity and value of the complaint raised by a consumer against a provider.

5.106 As part of the mandatory conditions of the register, all unauthorised providers could be required to have in place internal dispute protocols and escalation procedures³¹² as a first stage in dealing with complaints. This would have the benefit of ensuring a consistency in the self-regulatory regimes that already exist. In the event of an impasse, for medium value and less complex complaints, providers could potentially be mandated to submit to ADR and accept the decision, subject to appeal conditions. This would leave the remit of LeO reserved to high complexity high risk complaints. However, a simpler alternative would be to modify the LeO model to offer different types of dispute resolution depending on the complexity and value of the complaint.³¹³ We believe that these approaches would strike the right balance in providing consumers with effective redress mechanisms while ensuring that the obligations and cost on providers is proportionate.

5.107 The exact nature of any redress or regulatory requirements and processes should be addressed by the MoJ when designing the register. Ideally the register could be established in such a way as to maintain flexibility for requirements to adapt as information is gained from the operation of the register and/or as consumer needs and the nature of legal services provision evolve going forward.

³¹⁰ This requirement is triggered when a dispute has arisen between a provider and an individual consumer and the consumer has exhausted the provider's internal complaints-handling process.

³¹¹ Providers are not obliged to submit to a certified ADR provider, or, indeed, use an ADR procedure at all. The ADR provisions also do not apply in business-to-business scenarios. However, it is worth noting that there is an incentive for both unauthorised and authorised providers offering services to businesses to consider engaging in an ADR process. If they are sued by a client and have failed to submit to a form of ADR without good reason, a court may penalise them (even if they are successful in court) when deciding who is responsible for paying the legal costs of the case. In our [Market Study](#), ADR providers for the legal services sector told us that there appeared to be little appetite to engage in ADR for dealing with client complaints within the legal profession. Furthermore, importantly, and in contrast to LeO, binding decisions cannot be made on the provider under ADR and decisions cannot be imposed unless agreed by both parties.

³¹² The CMA notes that many self-regulatory bodies already have these requirements in place.

³¹³ We note also the [OLC CFI Response](#), which commented that the current ombudsman model and powers may not be appropriate for the unregulated sector and stressed that it would be 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.

A review of the reserved activities

- 5.108 Alongside the introduction of a registration model for unauthorised providers, it is also important to ensure that the regulatory framework for authorised providers is not excessive and is targeted at areas where the risk to consumers is greatest. Within the framework of the Act, this could be best achieved by reviewing (and if necessary, amending) the scope of the reserved activities. A review of the reserved activities would ensure that activities are reserved to authorised providers only to the extent necessary and proportionate on consumer protection and/or public interest grounds, in light of the costs as well as benefits of such reservation.
- 5.109 There is broad agreement that the current set of reserved activities appears largely an ‘accident of history’ and does not reflect those activities that are today likely to create the highest risk for consumers. As explained in paragraph 5.9 above, our Market Study considered the current set of reserved activities and found that there was variation in the extent to which a case could be made out for their inclusion, hence suggesting some scope for amendment.
- 5.110 The Act includes provision for the list of reserved activities to be added to over time. Under section 24 the Lord Chancellor may, by order, add legal activities, but only on the LSB’s recommendation. This process requires secondary legislation. The LSB Board may under section 26 make a recommendation to the Lord Chancellor for the removal of a reserved legal activity. However, the Lord Chancellor cannot remove an activity by order. Instead he would need to pursue this via primary legislation.³¹⁴
- 5.111 In general, we would be cautious about extending reservation except where there is a clear justification to do so given its potential impact on competition and cost. However, we are supportive of reservation being removed from those less risky activities for which it may not be justified³¹⁵ – particularly if accompanied by some alternative form of risk-based regulation to avoid creating new regulatory gaps. This could be achieved through adding

³¹⁴ In 2013 the LSB undertook a s24 and s26 investigation in relation to the related legal activities of will-writing, probate and estate administration. The then Lord Chancellor did not accept the LSB’s recommendation that will-writing be added to the list of reserved activities. While accepting evidence of consumer detriment, he concluded that self-regulatory solutions had not been exhausted. For further detail see LSB (2020), Board paper (20) 30, [Reserved Activities](#).

³¹⁵ Finland have a highly liberalised system in which reservation of activities is kept at a minimum (eg just representation of clients in court is reserved). Only members of the Finnish Bar association can use the protected title of Advokat and particular standards must be met and examinations passed to be granted this title. However, anybody can advise on legal matters with the exception of the one reservation. See, for example, the [European Union website](#) and the [Finnish Bar Association website](#).

activities removed from reservation to the register proposed above, in order to safeguard a continued degree of redress for such activities.

- 5.112 Stakeholder views on a review of the reserved activities was mixed.³¹⁶ Some considered that a review was necessary in order to better align the activities to the degree of risk in their provision. Others queried whether it would be an effective exercise given the potential time it could take and the need for government to act on recommendations.
- 5.113 The LSB is currently testing the appetite of stakeholders for a review of the reserved legal activities as part of its ongoing draft business plan consultation. It is currently minded not to undertake such a review in financial year 2021-22 and is seeking views on this approach. Consideration of a review of the reserved activities is included in its draft strategy for 2021-24. The LSB has noted that a review would not be insignificant in terms of staff time and investment and has suggested that such a review could not be undertaken in a comprehensive form within its current budget proposals.³¹⁷
- 5.114 However, the LSB is proposing to update³¹⁸ its work on the unregulated sector through a mapping exercise. This would allow further insight into the types of firm providing unregulated services and the sectors in which they operate as well as the risks and benefits associated with them. The LSB considers that this would assist in targeting parts of the sector where unregulated providers have gained market share and/or where there is evidence of consumer harm.³¹⁹ The LSB is also proposing work to consider the implications of technology for the scope of regulation. The LSB considers that the knowledge it would develop through this work could support a possible review of the reserved legal activities in future.³²⁰
- 5.115 We are in agreement that both these initiatives would provide valuable information and consider that it would be beneficial for them to be carried out as soon as possible in order to feed into the parallel design of a register as discussed in paragraphs 5.89 to 5.107. However, we do not consider that these initiatives should necessarily hold up a review of the reserved activities.

³¹⁶ For example, the BSB considered that the reserved activities should be reviewed, with consumer impact being a key consideration in determining whether legal services should be reserved or unreserved (see [BSB CFI Response](#)). In addition the CLC considered that a review of the reserved activities could be very useful (see [CLC CFI Response](#))., IPReg questioned whether a review of the reserved legal activities by the LSB could be conducted in a short period of time and queried whether such a proposal was useful (see [IPReg CFI Response](#)).

³¹⁷ LSB (2020), Board paper (20) 57, [Scope of regulation](#).

³¹⁸ The LSB last mapped the unregulated sector in 2016. See LSB (2016), [Mapping of for profit unregulated legal service providers](#).

³¹⁹ LSB (2020), Board paper (20) 57, [Scope of regulation](#).

5.116 We note the LSB's initial view – subject to consultation – that now is not the right time for such a review. We recognise that there are some issues of timing to consider. As a tool, a review of the reserved activities has some limitations in that it represents an intervention at a given point in time rather than allowing long-term flexibility to adapt and target regulation as the sector and consumer needs evolve. Furthermore, the statutory process (which would require either primary or secondary legislation) is such that it could be many years before any changes recommended by the LSB come into effect.³²¹ This context limits the frequency of such interventions and exposes any review to certain timing risks as the sector will rarely, if ever, be in a completely steady state (and indeed should not be if competition is working well to promote innovation and growth). Nevertheless, we consider that there are benefits to undertaking a review of the reserved activities in the near future.

5.117 The alternative would be to tackle these issues via wholesale reform of the Act. However, to the extent that such a review is not imminent, undertaking a review based on a thorough assessment of the evidence of the risks posed by the activities offers a much-needed opportunity, in the shorter term, to update the existing framework to the current risk of providing certain services and would help clarify what a more risk-based system focused on activities might look like in the future.

5.118 We therefore consider that a review of the reserved activities would be beneficial at this stage and are recommending that the LSB undertakes such a review. We would also urge the MoJ to ensure the LSB is funded to carry out a review given that it would need to be a comprehensive review, as modifying reserved activities cannot be undertaken on a frequent basis.

Continued monitoring and evaluation of the IGRs

5.119 As the CMA has previously stated in our research report on the Scottish legal services sector, a regulatory framework in which the regulatory and representative roles operate wholly independently of each other is, in our view, the best way to ensure that regulation can protect consumer interests, including by promoting competition among providers leading to improved choice and innovation, as well as wider public interest issues. It is furthermore consistent with better regulation principles, including the clear objectives and accountability that underpin best practice in regulation. It also avoids the risk

³²¹ LSB (2020), Board paper (20) 57, [Scope of regulation](#), Annex A – Consideration of statutory review of reserved legal activities.

that regulatory decision-making may be compromised by the potentially opposing interests of the profession.³²²

- 5.120 We continue to support the principle of full regulatory independence. We acknowledge that under the confines of the Act, the statutory requirements unavoidably link the representative and regulatory functions.³²³ Nonetheless, we understand that within these limitations, significant improvements have already been made as a result of the revisions to the IGRs. Given that the revised IGRs have only been in place since July 2019,³²⁴ we consider further time is needed to evaluate and assess their impact before deciding on what, if any, further measures and action (that could be required within the existing Act) may still be appropriate.
- 5.121 While dependent on the ultimate longer-term framework, there also remains a case for fewer regulators, as discussed in paragraphs 5.63 to 5.65. As part of a wholesale review of the Act, we would therefore support consolidation of the regulators and full independence from the representative functions. We consider that a simplified structure would help address co-ordination issues and the associated risks of inconsistencies and inefficiencies, while simplifying how providers and consumers engage with the regulatory framework. This would result in greater regulatory effectiveness. The wholesale review would also give the opportunity to consider the case for full independence between the regulatory and representative functions – an approach that, in our view, would most comprehensively minimise any risk of conflicts of interest, cement public trust and facilitate more transparent and effective engagement on regulatory matters.
- 5.122 We therefore recommend that the LSB should evaluate the impact of the revised IGRs before deciding on whether any further action is required to reinforce regulatory independence within the Act. We also continue to endorse the simplification of the regulatory framework that wholesale reform to the Act might bring about.

³²² As set out in CMA (2020), [Legal Services in Scotland Research Report](#).

³²³ In particular, as identified in paragraph 5.69, the fact that approved regulators have both representative and regulatory functions and are required to separate their regulatory functions whilst remaining responsible for assuring compliance by their regulatory body under Section 28 of the Act.

³²⁴ Further, approved regulators and regulatory bodies have had a transition period of up to 12 months in which to comply with the new rules.