

Unregulated Legal Services

**Draft guidance on consumer protection
law for unregulated providers of will
writing, online divorce, and pre-paid
probate services**

Consultation Document

30 April 2024

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1. Introduction

About the CMA

- 1.1 The Competition and Markets Authority (CMA) is an independent non-ministerial UK Government department and is the UK's primary competition and consumer protection authority. We help people, businesses and the UK economy by promoting competitive markets and tackling unfair behaviour.
- 1.2 The CMA has a range of consumer protection law powers to tackle practices and market conditions that present challenges for consumers and hinder their decision making. This includes powers to protect consumers from unfair business practices and unfair contract terms.
- 1.3 The CMA shares these enforcement powers with other bodies, such as local Trading Standards Services and sectoral regulators. The CMA also shares certain consumer functions with other agencies.
- 1.4 As part of its role, the CMA produces compliance advice and guidance for businesses to clarify their legal obligations and promote compliance.

About the consultation

- 1.5 We are consulting on draft guidance on the way we think consumer protection law applies to unregulated businesses providing legal services. The purpose of the draft guidance is to help unregulated providers of will writing, online divorce, and pre-paid probate services to consumers in the UK to understand and comply with their obligations under consumer protection law.¹
- 1.6 Unregulated providers very often offer services that are innovative and convenient for consumers, and that can be cheaper too. However, as they are unregulated, and given their significance in the current and future legal landscape, it is key that these businesses comply with consumer protection law.
- 1.7 This work aligns with the CMA's strategic ambition, as set out in our annual plans of both 2023/24 and 2024/25, of ensuring that people can be confident they are getting great choices and fair deals. In particular, this work is

¹ Regulated providers must, of course, also meet their legal obligations (and the requirements of professional regulation), but the focus of the CMA's evidence gathering and of this guidance is unregulated providers, where additional requirements of professional regulation do not apply.

focussed on protecting people from harmful practices in an area where consumers spend significant money and time.

- 1.8 It is important to note that the focus of this work is not on regulatory reform, but instead on promoting compliance with existing consumer protection law. The CMA has previously published a number of reports² and responses to consultations regarding legal services markets in England and Wales and Scotland, which have included recommendations in respect of the regulatory regimes applicable to unregulated legal services.
- 1.9 The draft guidance would not create new legal requirements, and would not be a substitute for the law itself. Ultimately, a business is responsible for ensuring that it is complying with the law. Businesses should therefore seek their own independent legal advice on the interpretation and application of the law.

The CMA's investigation into unregulated will writing, online divorce and pre-paid probate services

- 1.10 The CMA launched an [investigation into will-writing and other unregulated legal services](#) in July 2023. Since launching our investigation, we have focused on gathering information to help us understand the issues.
- 1.11 We have undertaken a range of activities including:
- analysing the submissions we received from a variety of sources, including from consumers, stakeholders and from interested parties within the sector, at the launch of the project;
 - gathering and reviewing information from unregulated providers of will writing, online divorce, and pre-paid probate services;
 - analysing complaint data;
 - meeting with individual stakeholders; and
 - engaging with local Trading Standards Services.
- 1.12 Our initial research and subsequent investigation has identified a number of practices which give rise to risk for consumers and may breach consumer protection law. We have framed the draft guidance accordingly to address

² See for example CMA (2016), [Legal services market study - final report](#), CMA (2020), [Review of the legal services market study in England and Wales - report](#), and CMA (2020), [Legal Services in Scotland](#).

these concerns. One purpose of this consultation is to invite comments on whether the draft guidance is clear about what, in the CMA's view, businesses should and should not do to make them more likely to comply with the law in the key respects.

Why are we proposing to introduce compliance guidance?

- 1.13 Through our stakeholder engagement we have received widespread support for our proposal to issue specific CMA compliance guidance for unregulated businesses providing will writing, online divorce, and pre-paid probate services.
- 1.14 While there is already general guidance available on compliance with consumer law (which we signpost within the draft guidance), we agree that we can add value by providing more specific guidance on complying with consumer protection law to unregulated providers.
- 1.15 We have prepared a set of practical guidelines, including 'do and don't' checklists and illustrative examples that will help enable businesses to ensure that their dealings with consumers are fair and in accordance with their obligations under consumer protection law.
- 1.16 We have also heard from stakeholders that they would support the publication of a consumer advice document to help consumers of unregulated legal services to understand their rights. This is something we are considering and seeking views on as part of this consultation.
- 1.17 Our view is that compliance guidance for business is the most appropriate way, in the first instance, to improve levels of compliance among providers of unregulated legal services at this time.
- 1.18 The CMA knows that most businesses want to do the right thing. Our intention is that, subject to the responses to the consultation, we would issue the compliance guidance in final form. We hope that the final compliance guidance would help businesses to determine whether any changes are needed to their practices and compliance procedures.
- 1.19 After the final compliance guidance is issued, the CMA intends to conduct a compliance review to assess compliance levels across the sector. If the review shows that problems are continuing, the CMA will consider whether enforcement action may be necessary to raise compliance levels and protect consumers.
- 1.20 At present, the CMA can only enforce consumer protection law through the courts. The UK government, through the Digital Markets, Competition and

Consumers (DMCC) Bill, is seeking to give the CMA additional powers. In future, if the DMCC Bill receives Royal Assent, the CMA will also be able to determine whether consumer protection law breaches have occurred, and to impose penalties for such breaches.

2. Scope of the proposed compliance guidance

- 2.1 The draft guidance is intended for unregulated providers of will writing, online divorce and pre-paid probate services in the UK. In this context, ‘unregulated’ businesses are those not regulated by an approved legal regulator.
- 2.2 Although all service providers, whether regulated or unregulated, are obliged to comply with consumer protection law, our investigation has focused specifically on unregulated providers of will writing, online divorce and pre-paid probate services, where we identified a number of concerns. The evidence gathered during our investigation, as well as the lack of formal oversight and consumer redress available in these areas, has led us to propose that guidance to providers of these services, in the form set out in the draft, would be beneficial. It would, we think, help both fair dealing businesses and the consumers who purchase these services.
- 2.3 The draft guidance may also be of relevance to:
- unregulated businesses offering other legal services to consumers;
 - self-regulatory trade bodies who operate in the sector;
 - fellow enforcers of consumer protection law within the UK (including local Trading Standards Services) and consumer advisory groups; and
 - regulated legal service providers active in the will writing, divorce and probate sectors (and their regulators).
- 2.4 The draft guidance outlines our views on the most important consumer protection law requirements which apply to providers of unregulated legal services. It explains how we think businesses can make it more likely that:
- consumers have the information they need to make informed decisions;
 - terms and conditions between providers of unregulated legal services and consumers are fair;
 - services are performed with reasonable care and skill; and
 - sales practices are not misleading or aggressive, or otherwise contrary to statutory obligations.
- 2.5 The draft guidance also has chapters on specific issues for will writing and online divorce service providers. These take the form of a series of ‘do and don’t’ checklists to assist businesses in ensuring their terms and conditions and their business practices comply with consumer protection law. There are

also some case studies within these chapters which illustrate the points being raised. Finally, there is a chapter on pre-paid probate services, which sets out the CMA's concerns regarding these products.

- 2.6 While each case will depend on the particular facts, businesses which fail to adhere to this compliance guidance would, in our view, be more likely to break the law. That said, and as set out above, the draft guidance does not create new legal requirements for businesses and would not be a substitute for the law itself.

3. Questions for consideration

- 3.1 We are seeking feedback on the following questions. Please provide your reasoning, any relevant information, and examples or evidence to support your response.

Scope and content

- 3.2 Does the draft guidance cover the most important consumer protection law issues relating to unregulated will writing, online divorce and pre-paid probate services? If not, what additional issues should the compliance guidance address and why?
- 3.3 Is the draft guidance clear and helpful on the relevant legal principles and the issues of concern the CMA has identified? If not, how could it provide guidance on those principles and issues more clearly and helpfully?
- 3.4 The draft guidance sets out a number of 'do and don't' checklists for businesses to follow. Are these the right ones? If not, what others would help businesses comply with consumer protection law and why?
- 3.5 In any event, are the 'do and don't' checklists clear and easy to follow? If not, how can they be improved?

Case studies

- 3.6 To help businesses engage with the compliance guidance and with consumer protection law compliance more generally, we have included a range of case studies. Are the illustrative examples provided in the draft guidance helpful? If not, why not? How could they be improved?
- 3.7 Are there any additional or different illustrative examples that would help businesses to understand how to comply with their obligations under consumer protection law? If so, what would these cover and why? If possible, provide examples of when these issues would arise.

General and additional issues

- 3.8 Are there any aspects of the draft guidance that you consider need further clarification or explanation, and why? In responding, please specify which section of the draft guidance (and, where appropriate, the issue) each of your comments relates to.
- 3.9 Overall, is the draft guidance sufficiently clear and helpful for the intended audience? Is the language and terminology helpful? In particular, we are

mindful that the majority of businesses in the unregulated legal services sector are small and medium enterprises (SMEs), many of which are micro-businesses.

- 3.10 Are there any other comments that you wish to make on the draft guidance?
- 3.11 The CMA is also considering publishing a consumer advice document at the same time as the final compliance guidance. Do you think that a consumer advice document is required in this market, and do you think the CMA would be the best placed body to provide such advice? If so, what should the scope and content of such a document be: for example, is there a need to help consumers better understand their rights and the steps they can take to address problems?

4. Consultation Process

- 4.1 We are publishing this consultation on our case page and sharing it with a range of interested parties to seek views on the questions set out in section 3 of this document.

Duration

- 4.2 The consultation will run for a period of six weeks, from 30 April 2024 to 13 June 2024.³ Responses should be submitted by email to UnregulatedLegalServicesTeam@cma.gov.uk by no later than 5pm on 13 June 2024.

How to respond

- 4.3 Please respond to as many of the questions as you can and support your answers with any evidence or examples you may have.
- 4.4 When responding to this consultation, please state whether you are responding as an individual or are representing the views of a business, group or organisation (including those representing consumer or business interests). If the latter, please make clear who you are representing and their role.

Use of information provided to the CMA

- 4.5 This section sets out how the CMA may use information provided to it as part of this consultation.
- 4.6 The information you provide will help inform the CMA's final compliance guidance for businesses in the unregulated legal services sector providing will writing, online divorce and pre-paid probate services.
- 4.7 We may wish to refer to comments received in response to this consultation in future publications. Where appropriate, we may also use the information you provide when carrying out the CMA's other functions, for example, when using our consumer law enforcement powers, or when sharing information with another regulator or public authority (such as local Trading Standards Services).
- 4.8 However, we may only publish or share information in specific and limited circumstances set out in legislation (principally, Part 9 of the Enterprise Act

³ The consultation deadline has been extended by two days to account for the May bank holidays.

2002). In particular, prior to any publication or disclosure, we must have regard to (among other considerations) the need for excluding, so far as is practicable:

- a) any information relating to the private affairs of an individual which might, in our opinion, significantly harm the individual's interests; and
- b) any commercial information relating to a business which, if published or shared, might, in our opinion, significantly harm the legitimate business interests of that business.

4.9 If you consider that your response contains such information, that information should be marked as 'confidential information' and an explanation given as to why you consider it is confidential.

4.10 'Personal data' is information which relates to a living individual who may be identifiable from it.

4.11 Any personal data you provide to us will be handled in accordance with our obligations under the Data Protection Act 2018. For more information about how the CMA processes personal data, your rights in relation to that personal data, how to contact us, details of the CMA's Data Protection Officer, and how long we retain personal data, see our [Privacy Notice](#).

4.12 The CMA is also bound by the Freedom of Information Act (the FoIA). Under the FoIA, where a person makes a request in accordance with the requirements of the FoIA, the CMA may have to disclose whether it holds the information sought. The CMA may also be under a duty to disclose the information itself unless an exemption applies. If you consider that any information you provide may be exempt from such disclosure you should say so and explain why.

4.13 This statement overrides any standard confidentiality disclaimer that may be generated by your organisation's IT system.

4.14 Further details of the CMA's approach can be found in the [Transparency and Disclosure: Statement of the CMA's Policy and Approach \(CMA6\)](#).

Compliance with the Cabinet Office Consultation Principles

4.15 This consultation is compliant with the latest Cabinet Office Consultation Principles. The Cabinet Office Consultation Principles criteria can be found at <http://www.gov.uk/government/publications/consultation-principles-guidance>.

After the Consultation

- 4.16 We will collate and analyse the responses to the consultation and amend the draft guidance as appropriate. We will publish an anonymised summary of the responses that fall within the scope of the consultation together with a list of all respondents (save for individuals).
- 4.17 We intend to publish the final version of the compliance guidance later in 2024. This will be available on our webpage at www.gov.uk/cma and respondents will be notified when it is available.