Legal services market study

Final report

15 December 2016

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Contents

Page

Executive summary 4
Overview 4
Scope of the market study 6
Background to the market study 6
Competition in the legal services sector 8
The effectiveness of consumer protection rules and regulations 11
Impact of current regulations and the regulatory framework 12
Remedies and outcomes from this market study 14
Confident and engaged consumers driving competition 15
Consumer protection 16
Regulatory framework 16
Implementation 18
1. Introduction 20
The scope of this market study 21
Purpose of this document 22
Evidence-gathering process 23
Final report structure 24
2. Overview of the legal services sector 25
Characteristics of the legal services sector 25
Regulation and regulatory framework 27
Baseline consumer protection regulation 27
Sector-specific regulation 30
Legal services providers 35
Market participants 37
3. Competition in the legal services sector 41
Introduction 41
Background 42
The legal services sector for individual consumers and small businesses 42
Consumer engagement in the legal services sector 46
Knowledge and awareness of legal services 46
Characterisation of issues as legal 48
Role of providers in diagnosing legal issues 51
Awareness and trust of different types of providers 54
Conclusion on consumer engagement in the legal services sector 57
Transparency of provider information 57
Transparency of information about price 58
Transparency of information about quality 66
Conclusion on the transparency of information made available by providers 73
The role of intermediaries 73
Overcoming consumer engagement issues 74
Overcoming transparency issues 74
Intermediaries and innovation 75
Issues with intermediaries 76
Digital comparison tools 77
Conclusion on intermediaries 79
Outcomes in the legal services sector 80
Unmet legal need and information issues 80
Price dispersion 85

Innovation 93
Barriers to entry, exit and expansion 97
The consumer approach to choosing a provider 101
Conclusion 104
4. The effectiveness of consumer protection rules and regulations 106
Introduction 106
Key issues 106
The justifications for sector-specific regulation of legal services 107
Overview of provider types by regulatory status 109
The effectiveness of different aspects of consumer protection regulations 110
Consumer awareness of the level of consumer protection afforded to them 111
Clarity of information 112
Quality of legal advice 122
Sales practices 130
Redress mechanisms 132
Overall conclusion on the effectiveness of consumer protection rules and regulations 148
5. Impact of current regulations and the regulatory framework on competition 151
Introduction 151
Key features of the current regulatory framework 152
Direct impact on competition 153
Design of the institutional structure 154
Direct impact of regulation on competition 154
The impact of regulatory costs on competition 154
The impact of the scope of the reserved legal activities 168
The impact of regulation by title 177
The impact of regulatory structure on competition 185
Horizontal separation between the frontline regulators 185
Vertical relationship between oversight regulator and frontline regulators 190
Regulatory independence 191
Conclusion on the impact of regulatory structure 193
6. Assessment of the current regulatory framework 195
Introduction 195
Regulatory principles 196
Assessment of the regulatory framework against the regulatory principles 198
A clear overall primary objective 198
Independence from government and professional bodies 199
Targeted appropriately to risk and able to balance effectively its impact in preserving wider benefits and protecting consumers with its impact on competition 200
Flexible in adapting to market changes 203
Proportionate in relation to costs it imposes on businesses and regulators 207
Clear in scope and easily enforceable 210
Consistent 211
Conclusion on the assessment of the current framework 212
Recommendations 213
The case for recommending a review of the current regulatory framework . 213
Short-term recommendations 214
Long-term vision 215
7. Remedies 218

The need for remedies 218
Engaged consumers driving stronger competition 219
Consumer protection 220
Detriment to consumers 220
Our approach to developing remedies 221
Helping consumers engage with the legal services sector 223
Changing supplier behaviour – requiring providers to provide information on price and service 224
Helping consumers navigate the market 250
Helping customers compare providers 264
Consumer protection 272
Regulatory framework 274
Implementation 274
Progressive approach to implementation 276
Our recommendations to regulators 277
Recommendations to government 282
Proportionality 282
Monitoring progress and impact of our recommendations 283
Case studies 284

Appendices

A: Wills and probate services case study
B: Employment law services case study
C: Commercial law services case study
D: Examples of real world price disclosures
E: Overview of the consumer law framework
F: Comparison of consumer protection standards required of providers by regulatory status
G: Assessment of reserved activities
H: Processes for regulatory changes
I: International comparisons
J: Stakeholder engagement

Glossary

Executive summary

Overview

1. On 13 January 2016, the Competition and Markets Authority (CMA) launched a market study into the provision of legal services in England and Wales. We published an interim report on 8 July 2016, providing an opportunity to comment on our interim findings and possible remedies.[1]

2. Overall, we have found that the legal services sector is not working well for individual consumers and small businesses.[2] These consumers generally lack the experience and information they need to find their way around the legal services sector and to engage confidently with providers. Consumers find it hard to make informed choices because there is very little transparency about price, service and quality – for example, research conducted by the Legal Services Board (LSB) found that only 17% of legal services providers publish their prices online. This lack of transparency weakens competition between providers and means that some consumers do not obtain legal advice when they would benefit from it.

3. Increasing transparency of price, service and quality is therefore essential for consumers to get a better deal. Our package of remedies is focused on helping consumers engage with the legal services sector by equipping them with tools to identify their legal needs, shop around and secure good value. The first step is to require much higher standards of transparency by legal services providers. We are recommending that the regulators develop new minimum standards for disclosures of price, service, redress and regulatory status, and require providers to adhere to them.

4. While increasing providers' standards of transparency is the necessary starting point, our package of remedies includes other remedies designed to increase consumer engagement. These include making better information available to assist consumers when they are identifying their legal needs and the types of legal services providers who can help them. Our remedies will also facilitate the development of digital comparison tools (DCTs) to help consumers compare providers of legal services, just as they do in many other markets.

5. We have also considered whether legal services regulation might be dampening competition and found that the existing regulatory framework is

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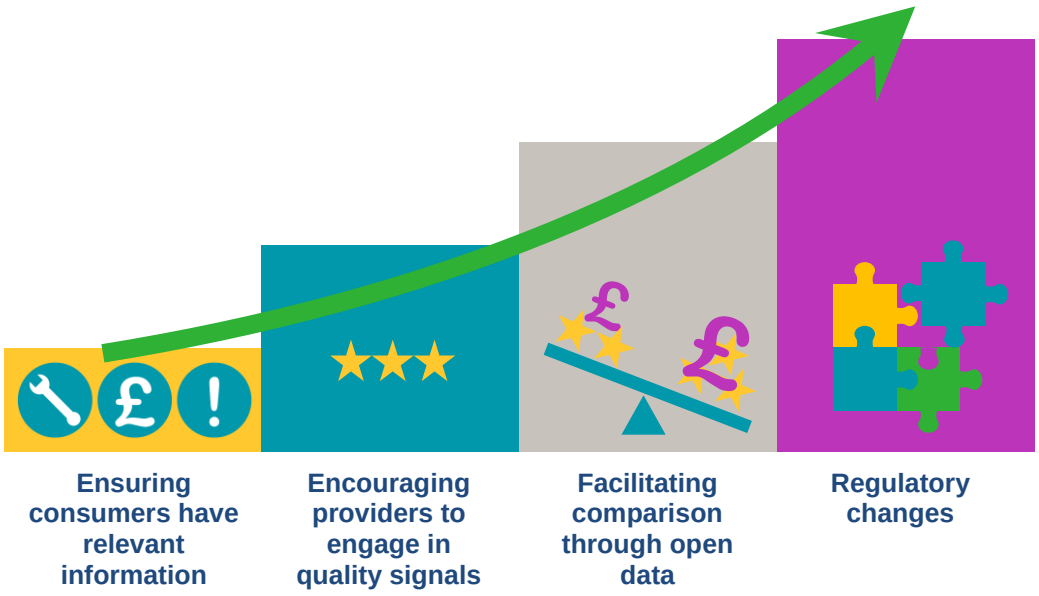
[1] Legal Services Market Study, Interim Report.
[2] For the purposes of this report, we refer collectively to individual consumers and small businesses as 'consumers'.

not currently a major barrier to competition. However, we have concerns about the sustainability and inflexibility of the current regulatory model in the long term. Our main concern is that the current, title-based model is insufficiently flexible to apply proportionate, risk-based regulation which reflects differences across legal services areas and over time. We therefore propose that the government launches a review of the regulatory framework with the aim of making the regulatory regime more flexible and risk-based in the long term. We also consider that regulators should be independent from government and representative bodies. The number of regulators should be a consequence of the regulatory structure; moving from a model that is primarily title-based to a risk-based model is likely to lead to a reduction in the number of regulators. In addition, we have made some immediate recommendations to government and regulators to help the system work more effectively.

6. We believe that these measures, taken together, will deliver a necessary step change in transparency, competition and consumer engagement and regulatory changes in the legal services sector. This is illustrated in Figure 1.

Figure 1: Making competition work through progressive improvements



Source: CMA.

7. It will be important to monitor the impact of our remedies both on the level of transparency and on competition in the sector. We are therefore recommending that the LSB monitors the progress made by the regulators in implementing our recommendations, as well as the impact that our recommendations are having on the legal services sector. Such monitoring could, for example, include repeating the LSB's research on levels of price variation and its triennial review, which evaluates a range of research

including the Legal Services Consumer Panel (LSCP) survey of legal services consumers.[3] However, given the very low levels of transparency currently in place, we recognise that there may be need for further intervention in the future to build on our package of remedies. For example, once basic levels of transparency have been established, regulators may need to issue further guidance to improve comparability of price and service in order to maximise consumer engagement. We commit to assessing after three years the extent to which our recommendations have been taken forward and the impact of these changes on competition. If we are not satisfied with the progress that has been made, we will consider whether there is a need for further action by the CMA, including the possibility of a market investigation reference (MIR), or further action by others.

Scope of the market study

8. This market study focuses on individual consumers' and small businesses'[4] experience of purchasing legal services in England and Wales. The scope encompasses '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.[5] The relevant UK legal services have a turnover of around £11–£12 billion.[6]

9. We limited this market study to the supply of legal services in England and Wales in light of both the differences in the regulatory frameworks in England and Wales, Scotland and Northern Ireland and the timings of regulatory reform in Scotland and Northern Ireland.

Background to the market study

10. 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.

11. Following a 2001 report into professional services[7] by our predecessor body, the Office of Fair Trading (OFT), and the subsequent major review of the legal

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[3] Hereinafter, the LSCP's survey is referred to as the 'tracker' survey.
[4] In particular, small businesses with up to ten employees.
[5] Criminal legal services have been excluded from this market study because the issues that we are considering are less relevant to them.
[6] CMA estimate based on data from the Law Society of England and Wales and the CMA's consumer survey (used to estimate the size of the unauthorised sector).
[7] OFT (2001), *Competition in professions,* OFT328.

services regulatory framework by Sir David Clementi in 2004, the legal services sector in England and Wales underwent significant regulatory change, implemented by the Legal Services Act 2007. In 2013, the OFT commissioned a report from Europe Economics[8] ('the 2013 report') that looked at regulatory restrictions in the legal services sector and reviewed the evolution of the sector in light of these reforms.

12. Our market study was prompted by a range of concerns raised by interested parties, including concerns relating to the affordability of legal services, the high proportion of consumers that were not seeking to purchase legal services when they had legal needs ('unmet demand') and the possibility that regulation might be dampening competition.

13. Most of these concerns can be linked to the fact that the legal services sector is characterised by incomplete or asymmetric information. Consumers are often unable to judge quality before (or sometimes even after) they choose to buy a legal service. Information asymmetries can give rise to consumer protection issues, which provides part of the rationale for sector-specific regulation.[9]

14. Competition is particularly relevant in the legal services sector given the concerns about access to legal advice and a lack of low-cost alternatives for the provision of advice. As noted by the Clementi review, 'high quality legal services are important to society, but of limited value if available only to the very rich or those paid for by the state'.[10] A lack of information may also contribute to consumers not obtaining legal services if consumers do not have the relevant information to identify their legal needs or legal services providers who can assist with their needs.

15. We focused on three issues in this market study:

    - **Theme 1** – 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.

[8] Europe Economics (2013), *Economic Research into Regulatory Restrictions in the Legal Profession, A Report for the Office of Fair Trading*, OFT1460.
[9] Wider public interest issues are commonly regarded as another important justification for sector-specific regulation within the legal services sector. These considerations include a fundamental 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.
[10] Clementi (2004), *Review of the regulatory framework for legal services in England and Wales: Final Report*.

- **Theme 2** – Whether information failures result in consumer protection issues that are not being adequately addressed through existing regulations and/or redress mechanisms.

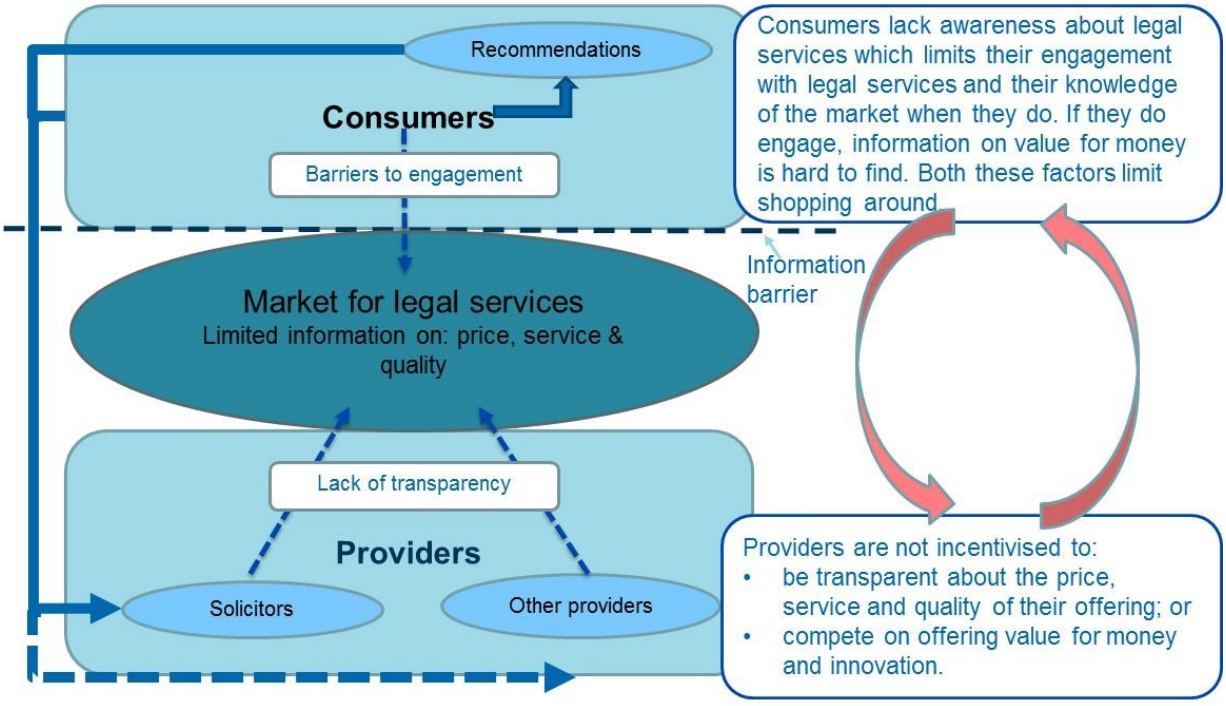
- **Theme 3** – Whether regulations and the regulatory framework go beyond what is necessary to protect consumers and weaken or distort competition for the supply of legal services.

Competition in the legal services sector

16. Information plays a direct role in driving competition, as consumers need to have access to accurate information on price, service and quality in order to make informed purchasing decisions. If this competitive process works well it can lead, for example, to lower prices, higher quality, and greater innovation.

17. We have found that competition in the legal services sector for individual consumers and small businesses is not working well. A lack of information weakens the ability of consumers to drive competition through making informed purchasing decisions. Figure 2 summarises the interaction between consumers and providers in the legal services sector.

Figure 2: The process of competition in the legal services sector



Source: CMA.

18. Studies over a number of years have shown that knowledge and awareness of the legal services sector is low, including whether issues are 'legal'; the different types of providers available to consumers; and likely costs of

services. This creates barriers to engagement. When consumers do engage, they face inherent difficulties in judging quality. A lack of accessible information[11] from providers on the price, service and quality of their offering exacerbates the information asymmetry between providers and consumers.

19. Stakeholders agree that the move towards fixed pricing in recent years, particularly in more commoditised services such as wills and conveyancing, has been positive. Fixed fees allow consumers to assess a provider's offer more easily and to make comparisons. While not all services may be amenable to a fixed price, our analysis indicates that much more could be done to aid comparability.

20. We also found that there is a role for regulators in aggregating and making available quality information such as complaints data. Making more information available would increase the ability of consumers to compare providers, and may also stimulate the growth of DCTs and other third party intermediaries for legal services.

21. Limited transparency makes it more difficult to compare providers and may contribute to a reliance on recommendations from family, friends and peers or on previous experience in order to choose a provider.[12] While this may be a practical approach, our qualitative surveys find that these recommendations are based largely on individual experience rather than being informed by a review of the market.[13] The lack of comparison softens competition, both within and between types of providers. It may also explain why there are large differences in the prices charged by providers for the same services, with the result that some consumers are likely to be paying more than they need to. The LSB's pricing research suggests the price of a standard simple will may range from around £110 to £200. The price for a specifically defined complex divorce scenario with a dispute over assets may vary from around £1,260 to £3,000.[14]

22. The lack of transparency in the legal services sector and the limited extent to which consumers compare providers (only 22% did so in the CMA's quantitative survey of individual consumers) also allows some providers to

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[11] Only 17% of providers in research commissioned by the LSB made their prices available on their website.
[12] IFF Research (2016), *Market study into the supply of legal services in England and Wales – consumer findings*, commissioned by the CMA; Research Works (2016), *CMA Legal Services, Qualitative Research Report*, commissioned by the CMA.
[13] IFF Research (2016), *Market study into the supply of legal services in England and Wales – consumer findings*, commissioned by the CMA.
[14] These ranges are based on comparisons of the lower and upper quartile prices for services defined according to specific 'scenarios' (to ensure the comparisons are 'like-for-like'). OMB Research (2016), *Prices of Individual Consumer Legal Services: Research Report*, commissioned by the LSB.

price discriminate rather than committing to standard (uniform) pricing for the same service.[15] Such price discrimination may also reduce the competitive constraint arising from the minority of consumers who do search on the prices faced by the majority of consumers who do not search.

23. Information issues, including both limited awareness of the sector and providers' lack of transparency, can also lead to consumers believing that they cannot afford legal advice and resorting to doing nothing or resolving their issues themselves, which may not be the best option.[16]

24. In addition to the adverse impacts on demand and price, consumers are also losing out in the long term. Innovation in the sector is limited, with a recent study describing the legal services sector as one of stability, rather than change.[17]

25. This is despite the introduction of the Alternative Business Structure[18] (ABS) regime which provided for more flexibility of business models and encouraged innovation. However, in practice such innovation has been limited.[19] Consumers' lack of awareness and trust of alternatives to solicitors and their resulting low share of the sector (for example, the LSB estimates that for-profit unauthorised providers account for around 3% of all legal problems where assistance was sought [20]) also contributes to this outcome.

26. We are therefore recommending a package of remedies that is designed to promote consumer engagement and to equip consumers with the tools to identify their legal needs better and to enable them to compare providers. These aim to facilitate competition both between different types of providers and within provider types (eg solicitors).

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[15] 65% of providers in the LSB's research reported pricing on a case-by-case basis.
[16] For example, for around 27% of issues where no action was taken, the main reason was thinking that nothing could be done. Further, inaction for one in 20 issues was explained by respondents' fear of costs.
[17] Enterprise Research Centre (2015), *Innovation in legal services*, a report for the SRA and the LSB.
[18] The ABS structure allows lawyers and non-lawyers to offer services covering multiple disciplines (these ABSs are called multi-disciplinary practices (MDPs)). In addition, the ABS structure allows non-lawyer ownership and for non-lawyers to be managers. The Legal Services Act 2007 gave the LSB powers to authorise the approved regulators to issue licences for the operation of an ABS.
[19] The LSB recently estimated that there were now around 700 ABSs, accounting for around 11% of the turnover made by all solicitor firms, but that the motivation was often to bring non-lawyers into senior positions in the firm rather than to apply a different business model. Source: LSB (2016), *Evaluation: Changes in the legal services market 2006/07 - 2014/15*.
[20] LSB (2016), *Mapping of for profit unregulated legal services providers*, p1.

The effectiveness of consumer protection rules and regulations

27. We explored whether consumers are being adequately protected through existing regulations and redress mechanisms.

28. Legal services providers are subject to varying degrees of regulation. The majority of providers (such as solicitors and barristers) are subject to sector-specific regulations and are 'authorised' under the Legal Services Act 2007 to undertake a narrow set of six 'reserved' legal activities[21] (hereinafter referred to as 'authorised' providers'). These authorised providers are currently regulated in respect of all of the legal activities they provide, not just those involving the provision of reserved legal activities.[22] Other providers are only subject to baseline regulations that apply across all economic sectors (for example, rules relating to unfair consumer terms). Those providers (hereinafter referred to as 'unauthorised' providers) can provide all legal services except for the reserved legal activities and certain other legal activities that are subject to special regulation.[23.] There are also unauthorised providers which have chosen to join a self-regulatory professional body and which, in addition to the baseline regulations, voluntarily comply with additional rules set by their self-regulatory body.

29. In the interim report, we found that consumers were unaware of the regulatory status of their legal services provider and the implications of that status for consumer protection. However, we did not find evidence that consumers' lack of awareness was causing them significant harm in practice. We observed that there were very few complaints made to Trading Standards (TSS) or Citizens Advice about legal services providers generally (whether authorised or unauthorised) and very few consumer protection cases brought against them.

30. In response to this interim finding, certain stakeholders raised concerns that we may be underestimating potential risks around the use of unauthorised providers. We have therefore considered this further.

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[21] There are six reserved legal activities under the Legal Services Act 2007 which may only be provided by authorised providers. The six reserved legal activities are: the exercise of a right of audience; the conduct of litigation; reserved instrument activities (conveyancing); probate activities; notarial activities; and the administration of oaths.
[22] This is referred to as 'title-based regulation', in that all activities provided by an authorised provider, such as a solicitor or barristers, must comply with the professional rules governing the holders of that professional title.
[23] There are specific regulatory regimes that cover legal activities in the areas of immigration law, insolvency and claims management. In addition, some providers, such as financial institutions which provide legal services, may also be regulated by regulators in other economic areas in relation to their other services.

31. We note that there is a lack of evidence on the unauthorised part of the sector for a number of reasons.[24] The limited evidence available suggests that issues identified with authorised providers apply to unauthorised providers to a similar extent. We are concerned that customers of unauthorised providers do not benefit from the redress mechanisms enjoyed by customers of authorised providers.

32. Consumers who use unauthorised providers do not have access to the Legal Ombudsman (LeO) and must therefore rely on public consumer law enforcement bodies or take private action themselves through the courts (which is a more costly, difficult and time-consuming means of obtaining redress for consumers). While several recent initiatives within the self-regulated part of the sector have led to the development of complaints-handling regimes, we consider that the effectiveness of such regimes is limited by their scope and enforceability. We also note that the EU Alternative Dispute Resolution (ADR) scheme has so far 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.[25]

Impact of current regulations and the regulatory framework

33. We considered whether legal services regulations and the overall regulatory framework governing the sector weakens or distorts competition for the supply of legal services. We considered whether current regulations go beyond what is necessary to protect consumers and thus impose disproportionate costs or restrictions on regulated legal services providers.

34. Legal services regulation imposes regulatory costs on authorised providers, regardless of whether they are carrying out reserved or unreserved legal activities. Most stakeholders agreed that regulatory costs for authorised providers remain high despite a series of reforms introduced since the Legal Services Act 2007. We are concerned that excessive regulatory costs may lead to higher prices for consumers. While these costs do not appear to represent a significant barrier to entry for new regulated providers given the

[24] First, there is limited data/evidence on quality of advice generally and such data/evidence that compares authorised and unauthorised providers directly is even rarer. Second, many data sources do not distinguish issues by types of providers (eg authorised or unauthorised). A third more general reason is that no public body is responsible for capturing relevant information on the unauthorised part of the sector in a comprehensive way.
[25] We note that unauthorised providers and authorised providers offering services to businesses have an incentive to consider engaging in an ADR process. In the event that they are sued by a client, if they have failed to sign up to 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.

comparable rate of entry and exit to other professional services sectors,[26] they may be a barrier to innovation and the development of new business models.

35. Overall we have not found that the scope of the reserved legal activities has a significant negative impact on competition. We note that unauthorised providers, which may be lower cost providers, are restricted from competing to some extent in the legal areas to which the reserved legal activities relate. However, there are a large number of providers in these legal areas and the scope of the reservations tends to be narrow, which allows unauthorised providers to work around them.

36. Arguments in favour of the current reservations are based on their importance in ensuring consumer protection or securing specific public interest benefits. While recognising these justifications, we are concerned that some of the current reserved legal activities are poorly aligned with the risks of providing legal services to consumers. In practice, the fact that only a very small proportion of consumers use unauthorised providers means that this poor alignment between risk and the scope of the reserved legal activities does not seem to be a major issue at the current time. However, we are concerned that this misalignment may, in time, result in greater consumer detriment as the proportion of unauthorised persons operating in the legal services sector increases.

37. In navigating the market, consumers often rely on regulated titles, such as 'solicitor' or 'barrister', as an important indicator of quality. However, they do so without a clear understanding of the significance of these titles in terms of regulatory protection. This means that consumers may avoid using unauthorised providers even in situations where they might benefit from using them. There are restrictions on the ability of unauthorised firms to employ solicitors to deliver unreserved legal work. We believe that this may reduce the ability of unauthorised firms to compete, given the importance of titles for consumer decision-making and trust. In addition, the restriction on solicitors working in unauthorised firms may unnecessarily reduce the availability of lower cost options for consumers.[27]

38. 'Approved' regulators, whose professional qualifications and standards must be met, give authorisation to carry out the reserved legal activities, awarding

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[26] A report commissioned by the LSB and the Law Society estimated the annual rate of entry and exit to be approximately 10% for firms regulated by the Solicitors Regulation Authority (SRA). This rate of entry is consistent with the average rate across the economy. Regulatory Policy Institute (RPI) (2013), *Understanding barriers to entry, exit and changes to the structure of regulated legal firms*, commissioned by the LSB and the Law Society.

[27] As part of its major Handbook review, the SRA is currently consulting on its proposal to allow solicitors to provide unreserved legal activities to the public while working in unauthorised firms. See SRA (2016), *Looking to the future – flexibility and public protection*. ('SRA Handbook review').

the relevant professional title (such as ‘solicitor’ or ‘barrister’). There are nine designated approved regulators for England and Wales (one for each legal profession). The Legal Services Act 2007 required the designated approved regulators to separate their representative functions from their regulatory functions. This has led to the creation of separate ‘frontline’ regulators which regulate the relevant legal profession. The LSB is the oversight regulator for all legal services regulators.

39. The multiplicity of frontline regulators may 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. However, multiplicity can also have positive effects in terms of specialism and competition between regulators that results in reduced regulatory costs and the development of more proportionate regulation. While we have not found evidence that the risks identified are currently having a significant impact on market outcomes, they might become more material in the future if regulation were to focus on risk to a greater extent.

40. We also note that some frontline regulators consider that representative bodies still have more influence than they should on regulation. We believe that a key principle of the regulatory structure is that it should ensure full independence of the regulator from the providers it regulates, as well as from government.

41. Since our interim report, we have extended our analysis of the regulatory framework to consider more broadly the overarching principles that should guide its design and its assessment against the principles of better regulation. While the current regulatory framework is, in principle, well suited to title-based regulation, we are concerned that the current framework also appears to be insufficiently flexible to apply targeted, proportionate, risk-based and consistent regulation to reflect differences across legal services areas and across time. The issues we have identified may indicate that the current framework is not sustainable in the long run, which may adversely affect market outcomes in the future given potential changes to the sector as a result of improved competition.

Remedies and outcomes from this market study

42. We are making a number of recommendations, primarily to frontline regulators, to ensure that consumers have the information they need to be confident navigating the legal services sector and to get a good deal from providers. We have also found concerns with the sustainability of the current regulatory framework and have identified a series of recommendations for

short-term changes as well as the need for a detailed review of the regulatory framework for the long term.

Confident and engaged consumers driving competition

43. Our objective is to facilitate consumers who are confident, well-informed and engaged when using the sector and have effective access to redress. This, in turn, will lead to increased competitive pressure being placed on providers that will have to work harder for their customers, offering lower prices, better quality and service and fair redress when things go wrong.

44. We have therefore identified remedies that are designed to help consumers engage actively in the legal services sector, equipping them with tools to identify their legal needs and to obtain good value for money.

45. Our recommendations to the frontline regulators to address these issues are:

(a) **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 should 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. Importantly, this should include a requirement for providers to publish relevant information about the prices consumers are likely to pay for legal services.

(b) **Promote the use of independent feedback platforms to help consumers to understand the quality of service offered by competing providers**. Regulators should provide guidance to providers on how they should engage with public reviews.

(c) **To facilitate the development of a dynamic intermediary market through making data more accessible to comparison tools and other intermediaries**.[28] Intermediaries have struggled to access even basic data held by regulators. By making this information freely and easily accessible in one place for all authorised providers, intermediaries will be better able to help consumers choose a legal service provider by combining and contextualising this data with information on price, service and quality.

[28] This recommendation would also apply to the LeO as well as to the regulators.

(d) **Development of a consumer education hub**. The Legal Choices platform should be overhauled to ensure that it can play a major role in empowering legal services consumers, particularly when they first engage with the sector. The redevelopment should include input from consumer and business groups, with a clear focus on the needs of consumers, to help consumers navigate and interact 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.

46. We also encourage the representative bodies to support the implementation of the various consumer engagement measures that we have identified and supplement the new regulatory requirements that the frontline regulators will adopt as a result of our recommendations through the publication of relevant guidance documents to help lead and develop best practice.

Consumer protection

47. We are recommending that the Ministry of Justice (MoJ) reviews whether there is a case for extending redress to consumers using unauthorised providers and, if so, how best to achieve that extension. This could be pursued by extending access to the LeO or through alternative arrangements such as the use of ADR or self-regulation. We note the importance of ensuring that any redress mechanism is proportionate (since any additional costs that providers incur may be passed on to consumers).

48. In addition, to address the evidence gap that we have identified,[29] we recommend that the MoJ works with certain bodies in this sector (in particular the LeO, but also self-regulatory bodies, consumer organisations, HM Courts and Tribunals Service (HMCTS) and the Probate Service) to take advantage of existing data sources to build evidence on the unauthorised part of the sector.

Regulatory framework

49. We also highlighted areas of concerns about the current regulatory framework. To the extent that information issues such as price, service and quality transparency are addressed, we expect these concerns about the

[29] See paragraph 31 above.

regulatory framework to increase over time, making the current regulatory framework unsustainable in the long run.

50. We consider that regulatory reform should complement the remedies on transparency. Specifically, we have identified a set of recommendations that can be implemented by the MoJ and the relevant regulators within the current regulatory framework, and set out a proposal for a review of the current framework in the longer term.

51. Our short-term recommendations are:

(a) **The MoJ should undertake a review of the independence of regulators**. We recommend that the MoJ carries out its planned review on independence as soon as possible. Such a review would need to consider independence of regulators both from the profession and from government.

(b) **Regulators should take action to reduce regulatory costs**. We recommend that regulators continue existing work to reduce costs relating to professional indemnity insurance (PII), training and codes of conduct.

(c) **Remove regulatory restrictions to allow solicitors to practise in unauthorised firms**. We believe that current regulatory rules that limit unauthorised providers' ability to employ solicitors to deliver unreserved legal activities may unnecessarily reduce the availability of lower cost options in the sector.

52. We also recommend that the MoJ undertakes a review of the regulatory framework in the longer term. We consider that the review should be based on the following key principles:

(a) The regime needs to be more flexible – the current reserved legal activities would preferably be replaced (or supplemented) by an ability for the regulator to introduce or remove regulation directly in legal service areas which it considers pose the highest risk to consumers.

(b) Regulation should be proportionate and its costs justified on the basis of risk assessment. This means that when regulation is reviewed it is removed when there is insufficient evidence of risk.

(c) The scope of regulation should focus on activities and risks to consumers, with a shift away from regulation attaching solely to professional titles. An implication would be that some activities of currently unauthorised providers may fall within the regulatory net.

(d) Solicitors and other professionals should be less tightly regulated than they currently are for lower risk activities, reducing the costs of regulation and encouraging different approaches and business models.

53. Although we consider that there may be a case for reducing the number of regulators, we think the appropriate structure should flow from the preferred regulatory approach, rather than being considered in isolation. We are therefore not making recommendations for the structure to be changed at this stage, but consider that it should be addressed as part of the review.

54. In carrying out the review, it is important that the MoJ considers what impact any changes to the regulatory framework would have on the legal services that are outside the scope of this market study before they were implemented.

Implementation

55. Our recommendations on improving information and transparency are directed at the frontline regulators, with the LSB providing oversight and public reporting on the approach and progress of the regulators individually and collectively against milestones. We are recommending the establishment of a programme board, with CMA support, which will lead the implementation of the cross-profession recommendations[30] and coordinate and promote consistency on recommendations that will need to be implemented by individual regulators.[31] The programme board should comprise representatives of the frontline regulators and the LSB and should actively involve relevant consumer and small business groups to provide advice and insight to support the regulators in developing their regulatory response.

56. Our primary recommendations on consumer protection and the review of the long-term regulatory framework are made to the MoJ.

Timeline

57. Consumers and small businesses should have the information that they need to make informed choices as soon as possible. It is also important that sufficient care is given to the detailed implementation of our remedies to maximise their effectiveness. In striking the right balance, we have identified the following key milestones that the frontline regulators should meet:

[30] These include Legal Choices and the publication of regulatory information.
[31] These are the revised minimum standards of transparency.

(a) By 31 January 2017 we would expect the frontline regulators to establish a programme board to facilitate both cooperation and a joined-up approach from the regulatory community and for that board to have met.

(b) By 30 June 2017 we would expect the frontline regulators to publish a detailed collective response to our recommendations, and that each frontline regulator should publish an action plan of how it will take our recommendations forward.

(c) By 30 September 2017 we would expect the frontline regulators to commence a consultation on any proposed regulatory change to drive increased transparency.

58. To encourage ambitious, collaborative and timely regulatory responses we are recommending that the LSB publishes its assessment of the regulators' action plans as soon as practicable. We are similarly recommending that the LSB reports publicly on at least an annual basis the progress of regulators in responding to our findings and recommendations. In addition, we are recommending that the LSB monitors the impact that our recommendations are having on the legal services sector through repeating previous LSB pricing research and its triennial review which considers a range of published research including the LSCP's tracker surveys.

59. On the basis of the monitoring that will have been carried out, we will assess the progress made in increasing competition in the legal services sector and determine whether further action by the CMA, including the possibility of a MIR, or further action by others, will be necessary.

1. Introduction

1.1 On 13 January 2016, the CMA launched a market study into legal services in England and Wales to examine whether they are working well for consumers.

1.2 We decided to conduct this market study in light of various concerns raised by interested parties:

- Perceptions in the sector, supported by market research, that there is 'unmet' demand for legal services (ie that consumers may not be seeking to purchase legal services when they have legal needs)[32] as well as concerns around the affordability[33] of legal services.[34]
- Concerns about service standards offered by both authorised and unauthorised providers of legal services.[35]
- Concerns about the complexity of the current regulatory framework that were identified by the MoJ in its call for evidence in 2013/14 as part of the 'red-tape challenge'.
- Concerns about specific regulatory rules aimed at provider conduct and market entry that might be dampening competition.
- Continued relatively low levels of consumer empowerment in the sector (as identified in the LSCP's Impact Reports[36]).

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[32] According to research recently commissioned by the LSB, over a three-year period about half of citizens experienced at least one legal problem, but one in three did not get the legal help they needed. Also, 54% of small and medium-sized enterprises (SMEs) see law as very important for doing business, but fewer than 20% seek legal advice when they have a problem. (See Pleasence & Balmer (2014), How People Resolve 'Legal' Problems and Pleasence & Balmer (2014), In Need of Advice? Findings of a Small Business Legal Needs Benchmarking Survey).

[33] For example, the major reason for the increase in people representing themselves in court proceedings involving family law matters has been identified as the inability to afford a lawyer. See MoJ Analytical Series (2014), *Litigants in person in private family law cases*, pp12–15. In addition, according to the LSCP, around one in five legal services transactions involves some form of unbundling (where the client undertakes some of the work rather than the lawyer). These transactions may be unbundled to enable people to afford a lawyer. See Ipsos MORI (2015), *Qualitative research exploring experiences and perceptions of unbundled legal services*. Prepared for the LSB and LSCP, pp20–21.

[34] These concerns do not necessarily imply that competition is not working effectively. In almost any market there will be some consumers whose willingness to pay is below the market price, and who therefore choose not to purchase. Our focus in this investigation has been on whether any features of the legal services market contribute to the concerns around affordability and unmet demand, for example by allowing providers to charge higher prices, provide lower levels of quality, or restrict the supply of legal services to consumers compared with a well-functioning market. We have not considered wider issues relating to affordability and access to legal services, such as whether the current provisions for legal aid are appropriate and whether there is a case for subsidising the costs of legal services for certain groups.

[35] As seen in the LeO's recent reports on complaints relating to claims management companies (LeO (2015), Complaints in focus: Claims management companies) and will writing (LeO (2015), *Complaints in focus: Wills and probate*).

[36] See, for instance, LSCP (2014), *Consumer Impact Report*.

- Concerns about how effective the redress mechanisms for legal services are and whether there are gaps in the current redress framework.

1.3 In addition, a report commissioned by our predecessor body, the OFT, in 2013 indicated that the effect of ABS entry into the sector might be reviewed once numbers grew.[37]

The scope of this market study

1.4 This market study focuses on individual consumers and small businesses'[38] experience of purchasing[39] legal services in England and Wales.

1.5 We decided to limit our market study to the supply of legal services in England and Wales due to the differences in the regulatory frameworks that operate in each of the three jurisdictions and given the timings of regulatory reform in Scotland and Northern Ireland.[40]

1.6 The scope encompasses 'legal services' in a broad sense, including services that are subject to sector-specific regulation and those that are only subject to baseline consumer protection regulations that apply across all economic sectors, and services across a range of different legal areas such as conveyancing, wills and probate, immigration, family, and employment law. However, criminal legal services were excluded from the scope of this market study. This is because we found there to be factors that distinguish criminal legal services from legal services in the areas of civil law such that the themes that we considered were less relevant to criminal legal services.[41]

1.7 This market study has examined the following issues:[42]

- **Theme 1** – 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.

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[37] Europe Economics (2013), *Economic Research into Regulatory Restrictions in the Legal Profession* (OFT1460), prepared for the OFT.
[38] In particular, small businesses with up to ten employees.
[39] We note that some legal services are provided for free (see further paragraphs 3.39–3.41 below). However, the focus of our market study is on paid-for legal services.
[40] The relevant aspects of the Legal Services (Scotland) Act 2010 which would have led to the introduction of ABSs and a regulatory regime for introducing such forms of business have not yet been implemented. Regulatory reform is anticipated in Northern Ireland as a result of the Legal Complaints and Regulation Bill, which will reform consumer complaints handling and is in the process of being adopted.
[41] In particular, in criminal legal services, there are certain prescribed processes in place that guarantee advice and representation for defendants in criminal proceedings. Furthermore, the degree of legal aid provision available for criminal as opposed to civil legal services following recent reforms, means that some of the issues that we have considered do not have the same relevance to criminal law services.
[42] See the market study statement of scope.

- **Theme 2** – Whether information failures result in consumer protection issues that are not being adequately addressed through existing regulations and/or redress mechanisms.

- **Theme 3** – 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.

1.8 We also carried out a more detailed analysis of the following legal areas in order to enable us to conduct a more detailed examination of these issues:

- Will writing and probate services to individual consumers.

- Employment law services to individual consumers and small businesses.

- Commercial law services to small businesses.

Purpose of this document

1.9 The purpose of this document is to outline:

(a) our findings; and

(b) our recommendations to address the issues we have identified.

1.10 Our interim report set out our provisional finding that there were reasonable grounds for suspecting that features[43] of this sector, including information asymmetries between providers and consumers and a lack of transparency, prevent, restrict or distort competition.[44] We decided not to make a MIR in relation to the supply of legal services in England and Wales.[45] We considered that, through the use of our other powers, we were well placed to identify effective remedies to address the issues that we had identified.

1.11 We propose to deliver the remedies outlined in Chapter 7 of this report by engaging actively with government, the regulators and industry bodies to put in place the improvements to transparency that will make a real difference to how this sector works and to adapt the regulatory framework as necessary.

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[43] See Market investigation references (OFT511), as adopted by the CMA board, at paragraph 2.1; and Market Studies and Market Investigations: Supplemental guidance on the CMA's approach (CMA3).
[44] Section 131 of the Enterprise Act 2002.
[45] See Notice of decision not to make a market investigation reference under section 131 of the Enterprise Act 2002.

Evidence-gathering process

1.12 The findings of this market study, as summarised in this document, are based in part on the information we have received from a wide range of interested parties throughout the market study.

1.13 In addition to the responses that we received to our statement of scope and interim report, we gathered evidence through the following methods:

(a) Drawing together and evaluating existing research, reports, surveys and databases on the supply of legal services to consumers.

(b) Commissioning our own survey of individual consumers and small businesses,[46] in order to understand better the purchasing experiences of those consumers. The survey comprised two strands:

(i) a quantitative consumer survey of 750 individual consumers combined with some in-depth qualitative interviews; and

(ii) 100 in-depth qualitative interviews with micro and small businesses.

(c) Meeting key interested parties including the oversight regulator the LSB, the key approved regulators and representative bodies, self-regulatory bodies, the LeO, consumer organisations and business groups, government bodies, trade associations and providers of legal services (for a full list of the stakeholders we have met, see Appendix J).

(d) Analysing responses to supplementary information requests to key parties.

(e) Conducting a limited web sweep of provider websites to provide insights into current good practice in price and service transparency.

(f) Conducting in-depth case studies on the three legal areas set out in paragraph 1.8 above.

(g) Sending online questionnaires to solicitors and self-regulated will writers providing services in the wills and probate legal area in order to better understand how competition works in those legal areas.

[46] See the market study case page.

Final report structure

1.14 This report is structured as follows:

- Chapter 2 provides an overview of the legal services sector.
- Chapter 3 assesses the role of information in driving competition.
- Chapter 4 assesses the effectiveness of consumer protection regulation.
- Chapter 5 assesses the impact of regulation on competition.
- Chapter 6 assesses the current regulatory framework.
- Chapter 7 outlines our proposed remedies.

1.15 In addition, this report also contains the following appendices:

- Appendix A: Wills and probate services case study.
- Appendix B: Employment law services case study.
- Appendix C: Commercial law services case study.
- Appendix D: Examples of real world price disclosures.
- Appendix E: Overview of the consumer law framework.
- Appendix F: Comparison of consumer protection standards required of providers by regulatory status.
- Appendix G: Assessment of reserved legal activities.
- Appendix H: Processes for regulatory changes.
- Appendix I: International comparisons.
- Appendix J: Stakeholder engagement.
- Glossary.

2. Overview of the legal services sector

2.1 This chapter provides an overview of the legal services sector in England and Wales in order to provide context for our assessment of competition and consumer protection issues in subsequent chapters.

Characteristics of the legal services sector

2.2 Legal services are of public importance. They are an essential input to the economy as a whole and an important foundation of a well-functioning society. Consumers often use legal services providers at critical moments in their lives. The advice they receive in these situations can have major personal and financial consequences, which may not be possible to reverse or remedy. For example, an individual may face deportation as a result of receiving poor-quality advice in relation to an immigration law issue. From a business perspective, if a business fails to obtain a patent for a new product as a result of receiving poor-quality advice, the income that the business can generate from that product will be drastically reduced. This distinguishes legal services from many other services that are purchased by consumers.[47]

2.3 A well-functioning market, where consumers have a choice of providers that offer services of a suitable quality and where the services offered represent value for money, is particularly important where the products or services are critical to consumers, the economy and society. There are certain key characteristics of the legal services sector, some of which can lead to market failures, which underpin the regulation of legal services:

- **Asymmetry of information** – legal services providers require expert knowledge and skills which consumers of legal services typically do not hold. As such, consumers may be unable to judge the quality of the service provided.[48] This asymmetry of information between the consumer and the legal service provider can sometimes create incentives for providers either to 'gold-plate' (in order to charge a higher price) or to cut corners in quality (in order to appear competitive on price) which can give rise to significant consumer protection issues.[49]

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[47] LSCP (2010), *Quality in Legal Services*, paragraph 3.27.
[48] For example, consumers are likely to be unable to judge the quality of legal advice, although they may be able to judge the quality of service aspects (such as whether they were kept sufficiently up to date about progress by their lawyer). In some cases, it may be possible for consumers to judge the quality of the legal service provided once it has been purchased (an 'experience good') but in other cases it may not be possible to judge quality even after its provision (a 'credence good').
[49] This is referred to as the 'moral hazard' problem.

- **Broader negative impacts** – the consequences of poor-quality legal advice can significantly affect the consumers who purchase those legal services but also unrelated third parties, who may not have an influence over which legal service provider is selected.[50] For instance, a child may suffer as a result of incompetent advocacy in the context of a family dispute, or the intended beneficiaries of a will may be disadvantaged if it is poorly drafted. Another negative impact that may arise from the poor representation of clients by lawyers is the lessening of the efficiency and effectiveness of the justice system.

2.4 In addition, wider public interest issues are commonly regarded as justifying specific regulations within the legal services sector. These considerations include a fundamental 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.[51]

2.5 There are inherent characteristics of legal services which relate to the demand side (ie to consumers' experience of such services) and the supply side (ie the behaviour of providers). These characteristics may prevent consumers from obtaining good outcomes:

- 'Legal' issues are not always clearly defined – consumers may not always be able to identify that they have a 'legal' problem, and may sometimes either ignore the issue or try to handle the matter on their own (for instance, through their own research or by seeking informal advice from a contact), rather than seek the advice of a legal service provider.

- Consumers tend to purchase legal services infrequently rather than on a repeated basis. They may therefore have a limited frame of reference from which to choose a legal service provider that meets their needs (both in terms of quality and price). Consequently, it is particularly important that they seek information that helps them to make informed purchasing decisions.

- Time pressure and distress – legal services may also be distress purchases (for example, due to an urgent need or because the situation may be upsetting, such as in the case of obtaining probate). Consumers, many of whom may be able to make sophisticated choices in other

[50] This is referred to as a 'negative externality'.
[51] These may be alternatively characterised as 'positive externalities' or the provision of 'public goods'. See Van den Bergh, R (2008), *Towards Better Regulation of the Legal Professions in the European Union*, Rotterdam Institute of Law and Economics (RILE) Working Paper Series, p5.

circumstances, may therefore find it more difficult to seek or consider alternative offers available in the legal services sector.

- Asymmetry of information – as set out above, consumers may be unable to judge the quality of legal services upfront, and may therefore face difficulties choosing a provider that meets their needs on the basis of quality (see Chapter 3 for further details).

- Signalling the quality of service that consumers can expect to receive from a particular service provider can be inherently difficult in this sector.

Regulation and regulatory framework

2.6 The following section summarises the regulatory framework for legal services. In addition to the baseline consumer protection regulations that apply to all businesses and service providers (for example, prohibitions against misleading actions and omissions as well as aggressive practices such as high-pressure selling) and that are described in more detail below,[52] certain rules apply specifically to legal services to safeguard the interests of consumers of legal services and the public interest.

2.7 The rules specify that legal services providers cannot carry out specific legal activities (known as the 'reserved' legal activities) unless they are authorised by an approved regulator under the Legal Services Act 2007.[53] Most of these reserved legal activities are narrowly defined; the majority of legal services are not reserved. However, for the majority of legal services providers authorised to provide reserved legal activities, regulation then applies to all of their activities regardless of risk, on the basis of their professional title. Unauthorised providers are subject to general consumer law and only face sector-specific regulation outside of the Legal Services Act 2007 if they undertake legal services activities in relation to immigration, claims management and insolvency, or have voluntarily joined a self-regulatory body.

Baseline consumer protection regulation

Individual consumers

2.8 The UK consumer protection legislation gives consumers certain baseline protections when purchasing goods and services, including the provision of legal services. Consumer protection laws, which are considered as part of this

[52] See also 'Appendix E: Overview of the consumer law framework'.
[53] The process of authorisation by approved regulators is explained further in paragraphs 2.19–2.20 below.

market study, apply to transactions between traders (ie legal services providers) and consumers.

2.9 A trader is a person who is acting for purposes relating to his trade, business and profession, whether acting personally or through another person acting in his name or on his behalf.[54] For these purposes, a consumer is an individual who is acting for purposes that are wholly or mainly outside his or her trade, business, craft or profession. Applying this to the legal services sector, individual consumers who are seeking advice or assistance for their trade, business or profession are not consumers for the purposes of consumer protection legislation and do not therefore have the statutory protections set out in that legislation.

2.10 The relevant consumer protection legislation applicable to the provision of legal services is set out in further detail in Appendix E: Overview of the consumer law framework. However, in summary, the key relevant provisions:

- prohibit the use of commercial practices by traders which contravene the requirements of due diligence, are misleading actions or omission, are aggressive or are banned in all circumstances;[55]
- require traders to provide consumers with certain specific pre-contract information to enable consumers to make an informed decision;[56]
- require traders to deal fairly with consumers when entering into agreements with them or seeking to impose terms through notices;[57]
- require traders to provide certain information about their business to consumers;[58]
- require traders to supply the service to consumers with reasonable care and skill;[59]
- require traders to provide a service for a reasonable price, where the price is not agreed beforehand;[60] and

[54] As legal services providers supply services in the course of their trade, business and profession, they are traders for the purposes of the consumer protection legislation outlined in this section.
[55] Consumer Protection from Unfair Commercial Practices Regulations 2008 (CPRs).
[56] Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (CCRs).
[57] Consumer Rights Act 2015 (CRA), Part 2. In addition, traders cannot unilaterally change the service as they have described it in the information they have given under the CCRs, or otherwise where the consumer has relied on that information (see CRA, Part 1, section 50).
[58] Provision of Services Regulation 2009 (PSRs).
[59] CRA, section 49.
[60] CRA, section 51.

- require traders to carry out the service in a reasonable time, where a specific time of delivery is not otherwise agreed.[61]

2.11 Where a trader breaches consumer protection legislation, the consumer may in some instances be entitled to a remedy. The type of remedy available to the consumer will depend on the type of breach committed by the trader. The remedies available include the right to unwind the contract; the right to a discount; and the right to damages, price reduction, and repeat performance.[62]

Small businesses

2.12 There is a similar, although less extensive, body of UK law which applies in business-to-business transactions and which offers protection to businesses using legal services.[63]

2.13 In summary, the legislative framework which governs business-to-business transactions:

- requires traders to provide certain information about their business, including geographic location, details by which the provider may be contacted rapidly and communicated with directly, and the price of a service where price is pre-determined by the provider for a given type of service;[64]

- prohibits advertising that misleads traders through the use of false statements of fact, concealment of important facts, promising to do something but where there is no intention to carry it out, or that creates a false impression even if everything stated in it may be true;[65]

- requires traders to carry out the service with reasonable care and skill, to do so within a reasonable time, and only make a reasonable charge if no price has been fixed in advance;[66] and

[61] CRA, section 52.
[62] These remedies are considered further in Appendix E: Overview of the consumer law framework.
[63] These are considered in Appendix E: Overview of the consumer law framework.
[64] For further details about the information that must be provided under the PSRs, see paragraph 62 of Appendix E: Overview of the consumer law framework.
[65] Business Protection from Misleading Marketing Regulations 2008 (BPRs)
[66] Supply of Goods and Services 1982. Although these requirements may be excluded by express terms of the contract, any such exclusion may be ineffective under the Common Law rules of incorporation, or as a result of a challenge under the Unfair Contract Terms Act 1977.

- imposes restrictions on the types of terms that may be used in business-to-business contracts.[67]

2.14 There are several common law remedies available to businesses which have been subject to a breach of the business protection legislation outlined above, with the main remedy being an award for damages.[68] These common law remedies are also all available to consumers.

Sector-specific regulation

2.15 Following a 2001 report into professional services[69] by one of our predecessor bodies, the OFT, and the subsequent major Clementi Review in 2004, the legal services sector in England and Wales underwent significant regulatory change, implemented by the Legal Services Act 2007.

2.16 The Legal Services Act 2007 introduced a range of reforms designed to address previous concerns about the legal services sector in England and Wales. In particular, these changes placed greater emphasis on meeting the needs of consumers than had previously been the case.[70] The most notable changes included the following:

- The creation of an independent legal services oversight regulator, the LSB, which brought an end to the complete self-regulation of the legal profession.

- An obligation on approved regulators[71] (such as the Law Society of England and Wales, hereinafter referred to as the Law Society) to establish functionally separate regulatory arms (such as the Solicitors Regulation Authority (SRA) as established by the Law Society). In addition, regulators now have lay majorities on their boards and lay Chairs.

- The introduction of eight regulatory objectives,[72] including those of promoting competition and protecting and promoting the interests of

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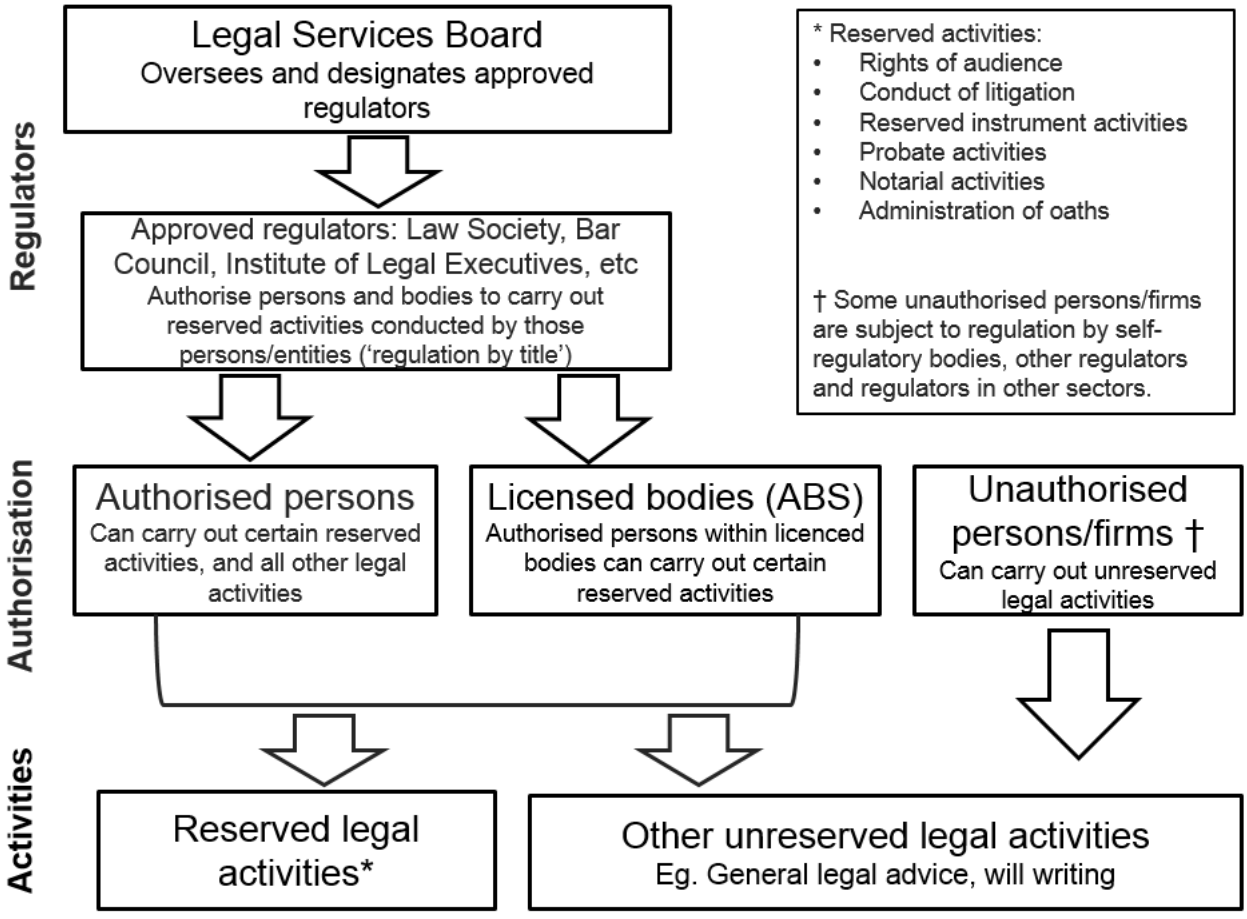
[67] Unfair Contract Terms Act 1977.
[68] Further details of these remedies are set out in the Appendix E: Overview of the consumer law framework.
[69] OFT (2001), *Competition in professions (OFT328)*.
[70] See: Department for Constitutional Affairs (2005), *The Future of Legal Services: Putting Consumers First*.
[71] These bodies directly regulate lawyers practising in England and Wales. A complete list of 'approved regulators' can be found on the LSB website.
[72] The eight regulatory objectives include: (a) protecting and promoting the public interest; (b) supporting the constitutional principle of the rule of law; (c) improving access to justice; (d) protecting and promoting the interests of consumers; (e) promoting competition in the provision of legal services; (f) encouraging an independent, strong, diverse and effective legal profession; (g) increasing public understanding of the citizen's legal rights and duties; (h) promoting and maintaining adherence to the professional principle.

consumers, which the LSB is under a duty to promote in discharging its functions.

- The creation of an independent body for handling complaints about authorised legal services providers from consumers (now the LeO).
- Reforms that allowed non-lawyers to own or manage firms that offered reserved legal activities[73] (these entities being known as ABSs). These reforms were designed to lower barriers to entry and stimulate competition and innovation for the benefit of consumers.

2.17 The diagram below summarises the sector-specific regulatory framework for legal services.

Figure 2.1: Overview of the sector-specific regulatory framework for legal services



Source: CMA.

[73] The Legal Services Act 2007 specifies six reserved legal activities (see paragraph 2.18 below).

Reserved legal activities and regulation through professional title and entity

2.18 Certain legal services are reserved to professionals who are authorised to carry out those services on the basis of the qualifications they hold. The Legal Services Act 2007 specifies six reserved legal activities, which in most cases are narrowly defined, although they involve some key areas or services which lawyers provide such as litigation and advocacy, or commonly purchased services such as conveyancing and probate.[74]

2.19 Authorisation to carry out those services is obtained from an approved regulator whose professional qualifications and standards must be met, and upon which their professional title will be awarded.[75] There are nine designated approved regulators for England and Wales which, in turn, are governed by an oversight regulator, the LSB.[76]

2.20 Since the Legal Services Act 2007, the approved regulators have been required to separate their representative functions from regulatory functions and this has led some approved regulators to establish independent regulatory bodies. The nine approved regulators and their independent regulatory bodies include the Law Society (with the SRA being the independent regulatory body which regulates solicitors and awards the title 'solicitor'), the Bar Council (with the Bar Standards Board (BSB) being the independent regulatory body which regulates barristers), and the Council of Licensed Conveyancers (which does not carry out representative functions and thus directly regulates licensed conveyancers and awards the title 'licensed conveyancer').[77]

2.21 The regulation of these professionals is not limited to the reserved legal activities but may extend to all activities undertaken by them. The approved regulators require members of their profession to adhere to rules on standards of service and conduct,[78] to hold PII and to maintain up-to-date training (see paragraphs 2.24 and 2.25). Their members are also governed by

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[74] The six reserved legal activities are: (i) the exercise of a right of audience; (ii) the conduct of litigation; (iii) reserved instrument activities (undertaken when conveyancing property); (iv) probate activities; (v) notarial activities; and (vi) the administration of oaths.
[75] Typically, qualification involves obtaining an academic diploma as well as a period of workplace training.
[76] Designated under Part I, Schedule 4 of the Legal Services Act 2007.
[77] The other approved regulators (and their independent regulatory bodies) include: the Chartered Institute of Legal Executives (CILEx Regulation); The Chartered Institute of Patent Attorneys and the Institute of Trade Mark Attorneys (with the Intellectual Property Regulation Board acting as the independent regulatory body for both these approved regulators); the Association of Costs Lawyers (Costs Lawyers Standards Board); the Master of Faculties and the Institute of Chartered Accountants in England and Wales.
[78] Codes of conduct may cover a range of aspects including complaint handling measures, protection of clients' interests where referral arrangements are entered into with third parties and client care outcomes, such as informing clients upfront as to the likely scope and costs of the work, and the availability and the means to access redress mechanisms.

a redress framework in the event that things go wrong, which includes access to the LeO.

2.22 In addition to the regulation of individuals, business entities (eg solicitor firms) are regulated so as to ensure that the risks that a legal business faces are properly addressed.[79] This is known as entity-based regulation.

2.23 There are special provisions for ABSs. These provisions enable lawyers to partner with providers of non-legal services to establish firms that offer services covering multiple disciplines or to permit non-lawyers to act in management roles and take financial interests in such firms. The Legal Services Act 2007 gave the LSB powers to authorise the approved regulators to issue licences for the operation of an ABS and established certain minimum requirements for applicants for such licences. ABSs are subjected to similar ongoing regulatory requirements to other business entities.

Sector-specific consumer protection regulation

2.24 The key existing sector-specific consumer protection regulations to which authorised providers must adhere can be categorised as follows:

- Regulations on quality standards:
  - The qualification requirements will vary by regulator but for solicitors, which represent the largest proportion of the authorised sector, this will generally[80] involve: (i) a qualifying degree in law[81] which provides an academic foundation into certain areas of law; (ii) a one-year vocational training course; and (iii) vocational training at a law firm or equivalent.
- Rules on standards of service and conduct:
  - Authorised providers' codes of conduct require that authorised providers carry out their work with care, integrity and diligence and with proper regard for the technical standards expected of them.

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[79] In 2011, the LSB developed the following four regulatory standards: effective risk assessment, outcomes focused regulation, proportionate supervision and an appropriate enforcement strategy. To achieve systematic adherence to these standards, the approved regulators have expanded the scope of entity-based regulation to include rules that require firms to have effective management processes.
[80] There are various other routes to qualifying as a solicitor in England and Wales. For example, CILEx and the new 'Apprenticeship' scheme present two different ways to qualification as a solicitor. Those undertaking these routes do not necessarily require a qualifying law degree as the schemes are based on varying criteria around practical experience and academic assessment. There is also the Qualified Lawyer Transfer Scheme for lawyers qualified abroad who wish to become a solicitor in England and Wales. The Law Society website contains more detail on the various routes to qualification as a solicitor.
[81] Or conversion diploma.

- In addition, authorised providers must adhere to certain requirements that are designed to ensure an appropriate level of service. This includes requirements on key issues such as confidentiality, the handling of client money, and the provision of key information (such as information on the work that will be carried out, fees, the relevant complaints procedure and general obligations such as professional confidence) which is usually communicated in an initial letter to the client called a client care letter. For solicitors, these requirements are set out in the SRA's Handbook.

- Redress mechanisms and financial protection arrangements:

  - Consumers of services provided by authorised providers have access to a regulated redress mechanism for any conduct or service complaints. This includes the right to complain to the LeO.

  - In terms of financial protection arrangements, authorised providers are required to have PII,[82] run-off insurance cover[83] and some regulators also maintain a compensation fund[84] that the firms which they regulate must pay into.

2.25 The level of requirements is not necessarily the same across all authorised providers (some regulators have chosen to set higher requirements for their authorised members; in part this may reflect higher risks for some authorised providers compared to others).

2.26 Unauthorised providers are not required to meet the same regulatory requirements. However, some unauthorised providers are either regulated by other bodies due to their activities outside of the legal services sector or because they undertake a legal activity that is subject to sector-specific regulation outside of the Legal Services Act (discussed in paragraphs 2.28 to 2.29), or have chosen to join a 'self-regulatory' body that requires its members to meet qualification standards, standards of service and to have financial protection arrangements. In many cases they also have redress mechanisms

[82] PII is insurance that covers civil liability claims arising from a legal professional's work. These claims will most commonly involve some form of professional negligence.
[83] PII is provided on a 'claims made' basis which means that the responsibility for paying a claim lies with the insurer 'on cover' when a claim is made and not the insurer 'on cover' at the time of the event that gave rise to the claim. Therefore, following the closure of the legal practice, PII 'run-off' cover is required. The SRA requires ceasing practices to obtain six years' insurance run-off cover from the expiry date of their existing PII policy.
[84] A compensation fund allows clients, of certain regulated providers, to make a claim if they are owed money by their regulated legal services provider and have exhausted alternative routes for making their claim (for example, through an insurance claim or the court system). However, strict rules apply about who may access the relevant compensation fund and in what circumstances. See paragraphs 4.113–4.114 for further information.

in place. However, the level of protection afforded by self-regulated providers may not always be equivalent to that afforded by authorised providers.

2.27 Further details on the differences in regulations between authorised, self-regulated and unauthorised providers are set out in Appendix F.

Sector-specific regulation outside the Legal Services Act 2007

2.28 In addition to the regulation under the Legal Services Act 2007, there is a limited set of legal services activities that are regulated separately, namely immigration, claims management and insolvency. For example, providers of immigration and asylum advice became subject to a separate regulatory scheme established by the Immigration and Asylum Act 1999, which was enacted in response to concerns about low quality and expensive provision of immigration advice to vulnerable consumers, and which is administered by the Office of the Immigration Services Commissioner (OISC).[85]

2.29 Certain authorised persons (for example, solicitors and barristers) are exempt from the regulation enforced by the regulators in those areas and are therefore free to carry out those activities without needing to comply with additional regulation (eg OISC regulation).

Legal services providers

2.30 The provision of legal services to consumers in England and Wales is estimated to generate turnover of around £11–£12 billion yearly.[86] Our quantitative survey found that the areas of law in which individual consumers most frequently sought legal help or advice (over the two-year period covered by our survey) were: conveyancing (and non-conveyancing property matters), making a will, probate/estate management, family matters, accident or injury claims, housing/tenant/landlord problems and problems at work.[87] Figure 2.2 shows the incidence of individual consumers' only/most recent legal matter within the scope of this market study.[88]

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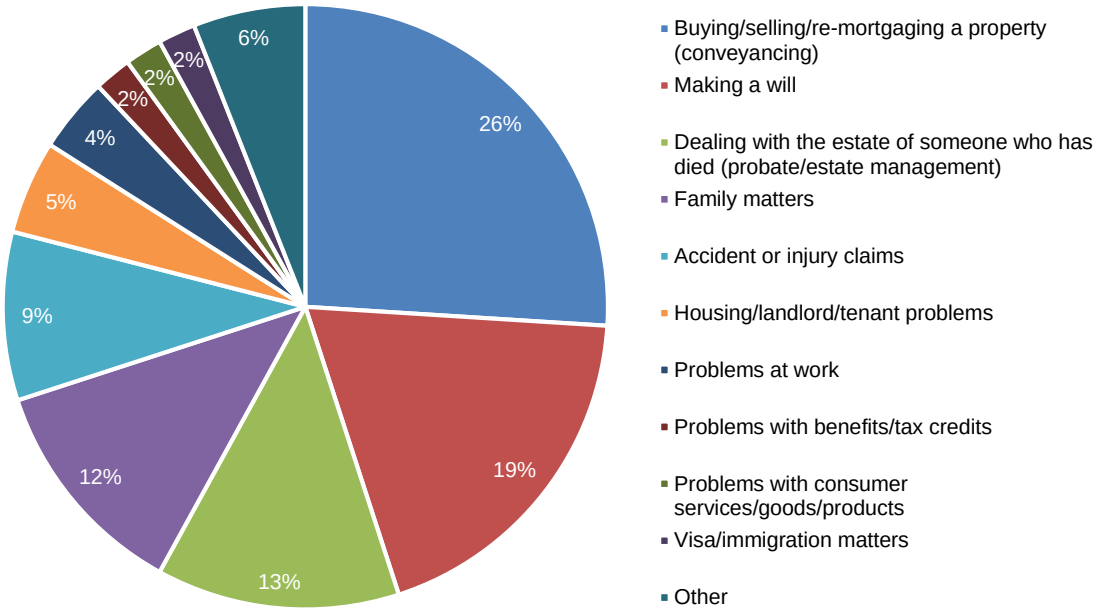
[85] In order to be regulated, providers must pass a fitness and competence test and must also show that they continue to be fit to practise as part of the annual re-registration process. Providers regulated by the OISC can be authorised to provide advice at three different levels, ranging from level 1, which covers basic immigration advice, to level 3, which covers advocacy, appearances at Tribunals and appeals.
[86] CMA estimate based on data from the Law Society and the CMA's consumer survey. The lower bound makes some adjustment for services in our survey that were not paid-for while the upper bound includes all services captured in our survey.
[87] Note that the distribution of legal matters and providers used in our survey differs from certain other surveys, including Ipsos MORI (2016), commissioned by the LSB and the Law Society, as our survey focuses on issues where legal advice was sought.
[88] Note that the survey required consumers to self-report on which provider they used and so there may be some errors in the types of providers reported.

Figure 2.2: Individual consumers' only or most recent legal matter since January 2014

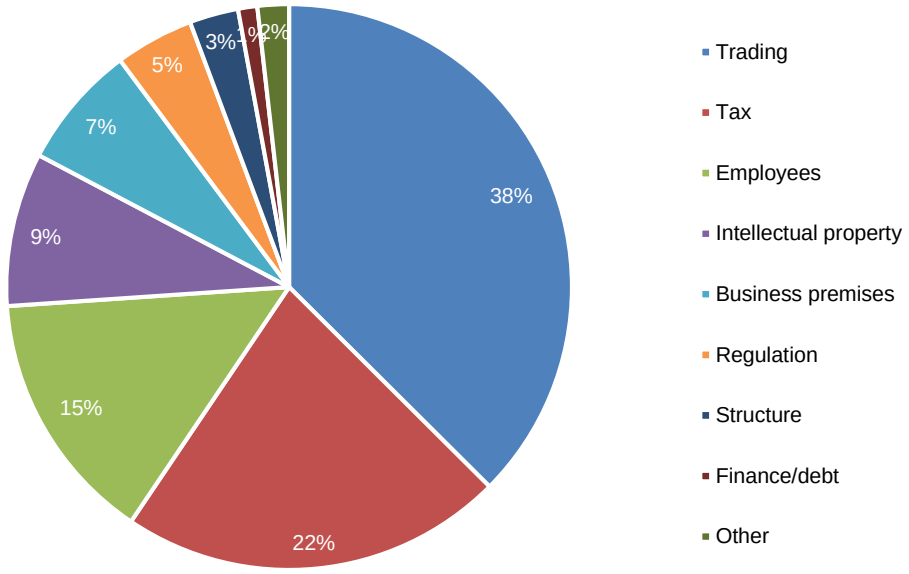


Source: CMA survey.
Note: n=750 (All with a legal matter since January 2014; only or most recent legal matter). 'Other' includes disputes with neighbours (1%), debt/hire purchase problems (1%) and another type of legal matter (4%).

2.31 For small businesses, legal needs arise from a range of problems, the most significant of which are trading (38%), tax (22%), employees (15%) and intellectual property (9%).[89] Small businesses' legal needs are shown in Figure 2.3.

[89] Blackburn R, Kitching J and Saridakis G (2015), *The legal needs of small business: An analysis of small businesses' experience of legal problems, capacity and attitudes*, for the LSB, p22. Figures presented here are for 2015.

Figure 2.3: Problems experienced in the last 12 months by small businesses, 2015



Source: Blackburn, R et al (2015).
Note: n=10,528 individuals that own or manage independent small firms.

Market participants

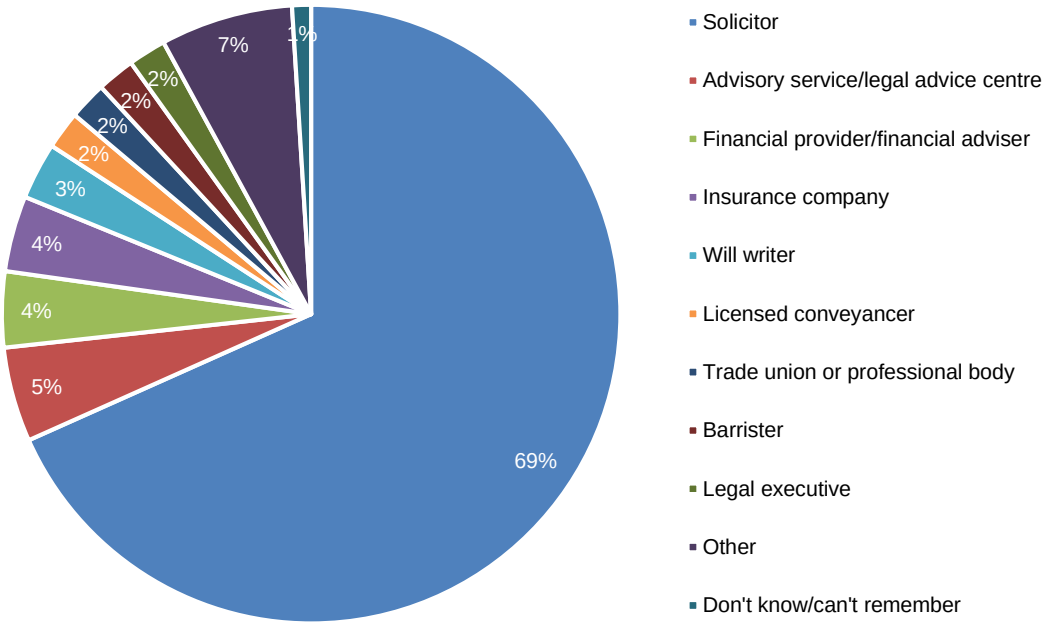
2.32 As noted in paragraph 2.7, services can be provided by authorised or unauthorised providers, depending on the particular type of advice that is sought. The majority of individual consumers will obtain such services from an authorised provider. In our quantitative survey, these providers were responsible for giving advice to over three in four individual consumers (76%);[90] with solicitors being the only or main provider used by 69% of all individual consumers.

2.33 The key role played by solicitors is highlighted in the most common legal issues where advice was sought by consumers in our survey. For example, 77% of those receiving conveyancing advice; 78% of those receiving will-writing advice; and 84% of those receiving probate/estate management advice obtained it from solicitors.[91] Further, ONS data suggests that the significant role of solicitors has been a consistent feature of the legal services sector over time.[92]

2.34 More details on individual consumers' only or main sources of legal advice from our quantitative survey are set out in Figure 2.4.

[90] This includes solicitors, licensed conveyancers, barristers, legal executives, accountants and costs lawyers.
[91] CMA survey.
[92] See ONS, Turnover of Legal Activities.

Figure 2.4: Only or main legal services provider



Source: CMA survey.
Note: n=750 (All with a legal matter since January 2014). 'Other' includes council/local authority advice services (1%), charity (national or local) (1%), accountant (1%), an internet-based company (1%), costs lawyer (1%), McKenzie Friend (*%) and other (1%).

2.35 Our qualitative research with small businesses, focusing on commercial and employment law issues, also indicated that solicitors were the most commonly used legal services provider, irrespective of the legal issue. The use of solicitors was supplemented by a range of other providers that depended on the type of business problem, for example, HR advisers for employment issues.

2.36 The provision of legal services to individuals and small businesses is highly fragmented. For example, there are more than 7,000 solicitor firms serving these types of consumers, ranging from firms with one partner to large national businesses.[93] The LSB has reported that concentration levels are low across all legal services areas, with levels particularly low in the residential conveyancing and family areas.[94]

Authorised providers

2.37 As noted above, we found that more than two thirds of individual consumers used solicitors as their only (or main) provider. In addition to solicitors, there are a number of other types of authorised provider, including barristers, legal

[93] The Law Society (2016), Law Society response to the Competition and Markets Authority invitation to comment on the notice on the market study into the supply of legal services in England and Wales, p8.
[94] LSB (2013), *Changes in competition in different legal markets*, p5.

executives, licensed conveyancers, patent attorneys, trademark attorneys, cost lawyers, notaries and scriveners and, more recently, accountants. In our survey of individual consumers, these other authorised providers were the only/main provider for 7% of consumers. More specifically, barristers were the main provider for around 2%; licensed conveyancers for 2%; and accountants for 1% of consumers. Legal executives and costs lawyers combined accounted for a further 2% of provision to consumers.[95]

Unauthorised providers

2.38 Unauthorised provision of legal services encompasses a wide range of provider types, including advice services such as Citizens Advice, legal helplines associated with insurance products, document providers that enable consumers to draft their own legal papers and paid-for services such as will writers, McKenzie Friends[96] and HR companies.

2.39 Unauthorised providers appear to play an important role as a starting point for consumers seeking assistance in navigating the market or potentially as a source of free advice. For example, the LSB and Law Society's recent survey of consumer legal needs found that Citizens Advice was the most commonly known source of advice (known by 81% of respondents).[97] In some cases, these advice organisations also provide legal help. In the CMA's consumer survey, the only or main legal services provider for 5% of respondents was an advisory service or legal advice centre. A very small number of respondents used charities and council advice services as their only or main provider.

2.40 In addition to advisory services and legal advice centres, other types of unauthorised providers used by respondents to our individual consumer survey included financial providers/financial advisers (4%), insurance companies (4%), trade unions (2%) and legal helplines (1%).

2.41 The focus of our market study has been on paid-for legal services. In this area, the use of for-profit unauthorised providers whose main focus is to

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[95] Note that the importance of different types of providers varies across the areas of law, for example licensed conveyancers supply 9% of consumers in conveyancing and, indicatively, accountants supply 3% of consumers in probate/estate management. Source: CMA individual consumer survey.
[96] Litigants in person may use a 'McKenzie Friend' who can provide moral support, take notes, help with case papers and quietly give advice on any aspect of the conduct of the case. McKenzie Friends have no independent right to act as advocates (ie they have no rights of audience) or to carry on the conduct of litigation. A judge may grant such rights on a case-by-case basis, but only in exceptional circumstances. Traditionally, this lay support has been provided on a voluntary basis by a family member or friend, although for some time there have been a small number of people who charge a fee for this service. However, the majority of McKenzie Friends act on a non-fee charging basis. See the Courts and Tribunals Judiciary Practice Guidance (2010), *McKenzie Friends: Civil and Family Courts*. See also paragraphs 4.77–4.78 below.
[97] Ipsos MORI (2016), *Online survey of individuals' handling of legal issues in England and Wales 2015*, p39, commissioned by the LSB and the Law Society.

provide legal services appears to be much more limited across most areas of law. In our individual consumer survey, we found that around 4% of respondents had used these kinds of providers[98] as their only or main provider. Similarly, the LSB found that for-profit unauthorised providers account for around 3% of all legal problems where assistance was sought.[99] In certain legal services areas, unauthorised providers account for a greater share of supply. For example, the LSB found that around 7% to 9% of purchased wills originate from unauthorised providers and that online divorce providers account for 10% to 13% of total divorces.[100] By contrast, 4% to 5% of employment services and 2% of conveyancing services (involving DIY and automated providers) are provided by paid-for unauthorised providers.[101]

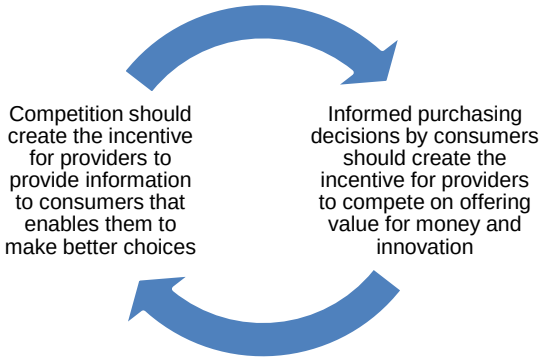
[98] Will writers were the main or only provider for 3% of respondents; while 1% used an internet-based company.
[99] LSB (2016), *Mapping of for profit unregulated legal services providers*, p1.
[100] Economic Insight (2016), *Unregulated legal service providers: Understanding supply-side characteristics,* a report for the LSB.
[101] LSB (2016), *Mapping of for profit unregulated legal services providers*, p10.

3. Competition in the legal services sector

Introduction

3.1 The legal services sector is highly fragmented and includes a large number of different providers. Discussions with stakeholders and existing research have not raised any particular barriers to entry and exit.[102] However, these factors do not necessarily imply that competition is effective. For competition to work effectively, consumers need to be engaged with the market and providers need to be transparent about what they are offering to allow consumers to make informed purchasing decisions. This process is illustrated in Figure 3.1.

Figure 3.1: The virtuous cycle of competition with informed consumers



Source: CMA.

3.2 This section focuses primarily on the role played by information in driving competition in the legal services sector. It considers evidence both on levels of consumer engagement and the extent to which legal services providers are making transparent information on prices, service and quality available to consumers.

3.3 This chapter sets out in more detail:

(a) background to the legal services sector for consumers and small businesses and the key features of the sector that are important for competition;

(b) evidence on the level of consumer engagement in the sector;

(c) evidence on the extent to which legal services firms are providing consumers with transparent information on prices, service and quality;

[102] RPI (2013), *Understanding barriers to entry, exit and changes to the structure of regulated legal firms.*

(d) the role played by intermediaries in overcoming information issues, including the potential for DCTs to improve access to information; and

(e) outcomes in the sector, including the:

(i) level of unmet legal need;

(ii) level of price dispersion;

(iii) level of innovation;

(iv) barriers to entry, exit and expansion; and

(v) consumer approach to choosing a provider.

Background

The legal services sector for individual consumers and small businesses

3.4 This section sets out background to the legal services sector, including the key features of the legal services sector that affect how competition works.

Providers in the legal services sector

3.5 As noted in paragraph 2.36, this sector is highly fragmented. There are a large number of providers overall[103] and many different types of provider.[104] We have also noted that no substantial barriers to entry and exit have been identified, either in existing research or in discussions with stakeholders.[105]

3.6 Despite there being many different types of provider, they are not all equally well-used by consumers. In particular, and as noted in paragraph 2.33, solicitors play a particularly important role in the provision of legal services to both individual consumers and small businesses.[106] Further, ONS data suggests that solicitors have played an important role in this sector for many years.[107] Other authorised providers and unauthorised providers play a more

[103] For example, there are around 7,000 solicitor firms in this sector. See Law Society response to Statement of Scope.
[104] Types of provider include, for example, solicitors, barristers, licensed conveyancers, will writers etc.
[105] RPI (2013), *Understanding barriers to entry, exit and changes to the structure of regulated legal firms.*
[106] IFF Research (2016), *Market study into the supply of legal services in England and Wales – consumer findings*, commissioned by the CMA; Research Works (2016), *CMA Legal Services, Qualitative Research Report*, commissioned by the CMA.
[107] See ONS, Turnover of Legal Activities.

limited role in the sector. We examine this issue further in paragraphs 3.217 to 3.226 to try to identify the causes of this outcome.

3.7 The legal services sector encompasses a number of different areas of law. Competition across these different areas of law and types of service share a number of common features:

- Competition tends to be based on one-off transactions rather than longer-term contracts for repeat purchases.[108]
- The key parameters of competition tend to be price,[109] quality of service (such as the timeliness of the service delivery) and the quality of the legal advice itself.[110]

3.8 There are also some key differences in the way competition operates between legal service areas:

- The legal service may be more or less commoditised. In more commoditised areas of law, services are generally less complex, more process-based and therefore more homogeneous (for example, will writing and residential conveyancing). In these areas of law it is inherently easier for providers to be more transparent about their offering and for consumers to compare these offerings.
- In certain parts of the legal services sector, intermediaries actively steer consumers towards specific legal services providers. Estate agents and mortgage brokers, for example, link consumers with providers of conveyancing. Trade unions help members to access legal services providers in employment law (and may pay for the cost of legal representation). In areas of law where intermediaries play a major role, the process of competition is often very different. Intermediaries may generate competition between providers for higher volumes of transactions through competitive bidding processes, such as competition to join a panel of advisers. Intermediaries are likely to have better information on price, service and quality than individual consumers, as they are parties to multiple transactions across consumers. While intermediaries can introduce better outcomes, their incentives may not

[108] See, for example, LSB (2011), *Research note: The legal services market*, p27.
[109] Including some notion of the service that is to be provided for that price.
[110] While as noted it is difficult to observe quality, consumers do try to use proxies for quality, for example in our consumer survey, the qualifications, experience and reputation of providers were important to consumers. However, there is a question around how consumers measure these.

always be aligned with the interests of consumers. This is discussed further in paragraph 3.148 below.

Consumers in the legal services sector

3.9 The legal services sector is characterised by information asymmetry between providers and consumers. As noted in paragraph 2.3, consumers are unlikely to be able to judge the quality of the advice provided as part of a legal service. The difficulty of observing quality directly can lead consumers to rely on recommendations to choose a provider, rather than trying to research what the sector has to offer in order to find a provider themselves. It also means that provider reputation becomes an important dimension of competition.

3.10 The difficulty in judging the quality of legal advice is related in part to difficulties in understanding what the provision of legal services involves. Consumers have a tendency to approach providers not only for the legal service itself but also for a diagnosis of what services are needed.[111] This also means that less well-known types of provider are less likely to be approached for a diagnosis and may not get an opportunity to display the value for money[112] or innovativeness of their offering.

3.11 Difficulties in judging quality may be overcome with repeat purchases or multiple interactions with providers. Knowledge and experience from repeated interactions may reveal quality over time. It may also limit the opportunistic behaviour of the provider as they face the possibility of losing future work opportunities if poor quality is revealed.[113]

3.12 However, stakeholders have told us that individual consumers and small businesses, particularly microbusinesses, only use legal services infrequently. In our quantitative individual consumer survey, around 17% of respondents said they had experienced at least one legal matter in the last two years. Only 14% had experienced a legal matter and used a legal services provider over the same period.[114] Further, 32% of respondents to our survey reported that the experience they were recounting was the first time they had used a legal services provider for an issue.[115] This demonstrates that the opportunities for consumers to learn from repeat purchases are limited.

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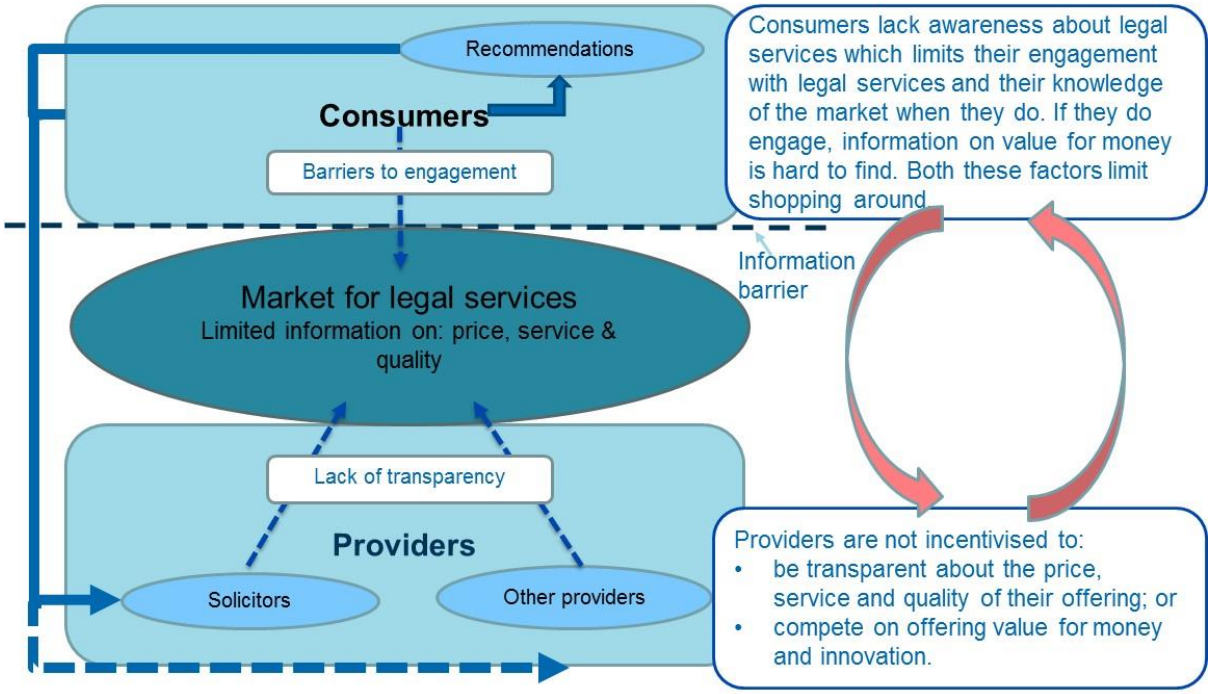
[111] Stephen, Frank H (2013), *Lawyers, markets and regulation*, p13.
[112] Considering value for money involves weighing up both the price and quality of the required service.
[113] Stephen, Frank H (2013), *Lawyers, Markets and Regulation*, pp13–14.
[114] IFF Research (2016) *Technical annex: Market study into the supply of legal services in England and Wales - consumer findings*, commissioned by the CMA, p12.
[115] IFF Research (2016) *Market study into the supply of legal services in England and Wales – consumer findings*, commissioned by the CMA, p10.

3.13 Similarly, small businesses only use legal services providers occasionally. The LSB business needs survey of 2015 found that less than a third (29%) of respondents reported one or more problems in the previous 12 months.[116] The larger the business, the greater the number of issues: for firms with one employee, the incidence of legal problems over the 12-month period was 22.9%; for firms with two to nine employees the incidence was 43.7%; and for firms with 10 to 49 employees, the incidence was 68.5%.[117] This suggests that larger firms may be more able to learn from repeat purchases.

3.14 A further issue is that consumers and small businesses often make purchases in distress situations. While they may be able to make sophisticated choices in other circumstances, they may therefore find it more difficult to seek or consider alternative offers available in the legal services sector.

3.15 Figure 3.2 summarises the interaction between consumers and providers in the legal services sector.

Figure 3.2: The process of competition in the legal services sector



Source: CMA.

3.16 We look at these interactions in more detail in the remainder of this chapter and in particular at the barriers to consumer engagement in the legal services sector and the limited transparency from providers about what they are

[116] Blackburn R, Kitching J and Saridakis G (2015), *The legal needs of small business: An analysis of small businesses' experience of legal problems, capacity and attitudes*, for the LSB, p20.
[117] ibid, p28.

offering. The analysis draws on evidence across a range of different legal service areas to highlight our key findings.

Consumer engagement in the legal services sector

3.17 A starting point for consumers to be able to make effective purchasing decisions that are capable of driving competition is for consumers to be engaged with the market. In this section, we consider the barriers to consumers engaging with the legal services sector. In particular we examine the:

(a) knowledge and awareness of legal services;

(b) characterisation of issues as legal;

(c) role of providers in diagnosing legal issues; and

(d) awareness and trust of different types of providers.

Knowledge and awareness of legal services

3.18 A number of stakeholders have suggested that consumers' limited knowledge and awareness of legal services is a key barrier to engagement. The Federation of Small Businesses (FSB) in particular flagged the knowledge gap as 'perhaps the most serious' issue facing the sector.[118]

3.19 In line with what stakeholders have told us, our qualitative survey with individual consumers found: 'a general lack of knowledge about legal services and subsequently a lack of confidence among consumers in their ability to assess the quality of legal advice'.[119]

3.20 Similarly, a qualitative survey carried out for the SRA in 2010 found that individual consumers were not well-informed or knowledgeable about legal services and were lacking in confidence about the purchase of legal services. Legal services were regarded as a: 'very technical and somewhat complex area, involving terminology, knowledge and jargon with which participants were not usually familiar and therefore would not understand'.[120]

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[118] FSB response to Interim Report, p5.
[119] IFF Research (2016), *Market study into the supply of legal services in England and Wales – consumer findings*, commissioned by the CMA, p41.
[120] GfK NOP Social Research (2010), *Research on Consumers' Attitudes towards the Purchase of Legal Services*, commissioned by the SRA, p9.

3.21 The same survey also reported an: 'acceptance that legal services would be somewhat inaccessible and incomprehensible to the lay person who was not versed in the law'.[121]

3.22 Legal processes and procedures were described as being a 'black box'. It was noted that the need to purchase legal services was as a result approached with some trepidation.[122] A more recent report commissioned by the LSB also identified a 'lack of awareness and understanding of … the law'[123] as an initial barrier to engaging in the sector.

3.23 As well as a sense that legal services are complex, there is a general perception that these types of services are expensive, which leads to concerns about cost and affordability.[124] Perceptions of cost contribute to consumers not seeking formal legal advice.[125]

3.24 The FSB noted 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.[126]

3.25 However, while individual consumers and small businesses use broadly the same approach, there are likely to be some differences between the two:

- The opportunity cost for small businesses making purchasing decisions is higher than for individual consumers.
- When taking a decision, perceptions of cost are particularly important for small businesses given the potential impact of their decision on their business.
- Larger small businesses tend to be repeat purchasers and are therefore more likely to have long-term relationships with legal services providers. They may therefore be able to overcome some of the information issues faced by their smaller counterparts.[127]

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[121] GfK NOP Social Research (2010), *Research on Consumers' Attitudes towards the Purchase of Legal Services*, commissioned by the SRA, p9.
[122] ibid, p9.
[123] Optimisa Research (2013), *Consumer use of Legal Services: Understanding consumers who don't use, don't choose or don't trust legal service providers*, commissioned by the LSB, p19.
[124] GfK NOP Social Research (2010), *Research on Consumers' Attitudes towards the Purchase of Legal Services*, commissioned by the SRA, p9.
[125] See for example, Ipsos MORI (2016) *Online survey of individual's handling of legal issues in England and Wales 2015*, commissioned by the Law Society and the LSB, p73.
[126] FSB response to Statement of Scope, p4.
[127] The LSB survey on small businesses' needs noted that there is a positive relationship between size of firm and experience of different legal problems. It is reported that firms with more than 20 employees are more likely to experience legal problems and to be repeat purchasers.

Characterisation of issues as legal

3.26 A precursor to searching for a legal service provider is recognising an issue as being legal. In this section we look at how consumers characterise the nature of their problem (all of which involve a legal issue).

Individual consumers

3.27 Consumer surveys consistently find that consumers are unlikely to describe the character of their problem as being 'legal'.[128] For example, in the English and Welsh Civil and Social Justice Panel Survey,[129] just over 10% of consumers characterised their problem as 'legal'.[130,131] By far the most common characterisation (45%) was 'bad luck/part of life'.[132] While such evidence may not predict whether consumers go on to find a legal solution to their problem, evidence referred to later suggests that this is highly correlated with whether a legal solution is sought (see paragraphs 3.177 to 3.178).

3.28 Full details of how consumers characterised their issues are set out in Table 3.1.

Table 3.1: Individual consumers' problem characterisation, 2011/12

Characterisation	*% problems*
Bad luck/part of life	44.8
Moral	15.5
Private (ie not something to involve others with)	7.2
Criminal	6.8
Legal	10.9
Social	11.9
Bureaucratic	17.8
Family/community (ie something to be dealt with within the family/community)	6.8

Source: Balmer, N (2013); Wave 2 results at p37. Question L47: 'Which, if any, of the descriptions on this card best indicates the character of [the problem]?'

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[128] See for example, Balmer, N (2013), *English and Welsh Civil and Social Justice Panel Survey: Wave 2,* commissioned by the Legal Services Commission and Ipsos MORI (2016), *Online survey of individual's handling of legal issues in England and Wales 2015*, commissioned by the Law Society and the LSB.
[129] Balmer, N (2013), *English and Welsh Civil and Social Justice Panel Survey: Wave 2.* For Wave One of this survey, respondents were found through a two-stage equal probability sample of addresses, with interviews being attempted with all adults at each address. In Wave Two, some of those interviewed in Wave One were interviewed again and then this was supplemented with freshly sampled individuals: see Wave Two Technical Report.
[130] These are the results for Wave 2 of the survey. Consumers were asked, using a card with prompts, which description best indicated the character of the problem.
[131] Note that the higher incidence of legal problems reported in paragraph 3.12 is derived from consumers' response to a question about whether they have experienced a listed problem, and does not rely on them self-reporting that they had a legal issue.
[132] Balmer, N (2013), *English and Welsh Civil and Social Justice Panel Survey: Wave 2*, p37.

3.29 The lack of characterisation of issues as being legal by consumers has been linked to their limited understanding of their legal position. The same survey found that around a third of respondents had no understanding of their legal position when they first experienced a problem.[133,134]

3.30 The most recent survey of individual legal needs commissioned by the LSB and the Law Society in 2016 similarly found that issues are not likely to be characterised by consumers as legal.[135,136] Responses to this survey suggest that only a quarter of issues were characterised as legal from the outset.[137]

3.31 The ease with which consumers recognise issues as being legal ones varies across different areas of law. In some cases, consumers have prompts which can raise their awareness. For example, a qualitative survey by the SRA found that legal needs are often identified in response to a life event, for example buying a house, or a divorce. In some cases, the identification of a need for a legal service can come from a third party (for example, a suggestion from a family member to make a will).[138]

3.32 Our wills and probate services case study (see Appendix A) found that the level of awareness around the benefit of a written will is relatively high. This high level of awareness translates into a high proportion of individual consumers who have a valid will, at least at the time it is required. The overall percentage of the population with a will has been estimated at less than 50%; however, those who are older or have more assets are more likely to have a will.[139] At the time of probate, a valid will is available in 85% of cases.[140]

Small businesses

3.33 As with individual consumers, an initial barrier to small businesses engaging with the legal services sector is recognising that the problems they face are legal. This issue was raised by the FSB which noted that barriers to small businesses resolving their legal problems start before a business is ready to

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[133] Balmer, N (2013), *English and Welsh Civil and Social Justice Panel Survey: Wave 2*, piii.
[134] Survey respondents were asked: 'Thinking about the time the problem first started, to what extent did [you/or your partner] understand [your/their] legal position – for example, what [your/their] legal rights were?'
[135] The question asked here was QB2: 'At the time the issue first arose did you think of it as a legal problem or issue?'
[136] We note that the respondents to this survey were drawn from an online panel. There are a number of caveats around the use of online panels and, therefore, the results should be read carefully.
[137] Ipsos MORI (2016), *Online survey of individual's handling of legal issues in England and Wales 2015*, commissioned by the Law Society and the LSB, p36.
[138] GfK NOP Social Research (2010), *Research on Consumers' Attitudes towards the Purchase of Legal Services*, commissioned by the SRA, p12.
[139] The Law Commission (2009), *Intestacy and Family Provision Claims on Death*, Consultation Paper n.191.
[140] LSCP (2010), *Will-writing: a whistle-stop tour of the market.*

engage with the legal services sector.[141] The FSB considers the lack of awareness among small businesses about what issues are legal and the limited capability to identify which problems would be amenable to legal resolution to be a serious problem.[142]

3.34 A recent survey commissioned by the LSB on the legal needs of small businesses confirms this awareness issue.[143,144] The survey found that fewer than one in five businesses classified their problem as legal. It was more common for a problem to be thought of as a private business matter or the result of bureaucracy. More detail on how small businesses characterised their problems is set out in Table 3.2 below. [145]

Table 3.2: Small businesses' problem characterisation, 2013 and 2015

	2013	*2015*
One or more descriptions	*84.1*	*85.3*
Bad luck	13.8	15.8
Moral	14.0	15.5
Private business matter (ie not something to involve other with)	29.1	28.9
Criminal	4.5	4.7
Legal	14.3	14.1
Bureaucratic	21.9	21.4
Social	4.7	5.4
Number of businesses reporting a problem in the past year	**3,450**	**2,999**

Source: Blackburn, R et al (2015).
Notes:
1. Question: 'Which, if any, of these descriptions best indicates the character of the problem? Please select all that apply'.
2. Base: Businesses reporting a problem in the past year. Multiple response.

3.35 There was little difference in these characterisations across respondents and business types.

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[141] FSB response to Statement of Scope, p4.
[142] FSB response to Interim Report, p4.
[143] Blackburn R, Kitching J and Saridakis G (2015), *The legal needs of small business: An analysis of small businesses' experience of legal problems, capacity and attitudes*, commissioned by LSB, p29.
[144] To determine whether firms have had a legal need, survey respondents were asked to consider whether they had experienced any one of a set of problems that diverted them or anybody else within their business from everyday work activities, for example in relation to trading, tax, employment, premises, finance/debt, intellectual property, licensing/regulation and structure. See Blackburn R, Kitching J and Saridakis G (2015), *The legal needs of small business: An analysis of small businesses' experience of legal problems, capacity and attitudes*, for the LSB, p20.
[145] ibid, pp 29–30.

Role of providers in diagnosing legal issues

3.36 In this section, we explore the sources of information and advice that consumers are aware of when they recognise their issue as being a legal one.

Individual consumers

3.37 A qualitative survey on individual consumer behaviour found that once consumers have identified that they have a legal need, the typical next step in the customer journey is to discuss their situation and the process for addressing their need with friends and family to receive advice.[146]

3.38 The English and Welsh Civil and Social Justice Panel Survey found that where individual consumers turn to more formal sources of information, these tend to include solicitors (23.7%), local councils (17.1%), trade unions/ professional bodies (12.4%) and Citizens Advice (12.0%). As can be seen in the figures above, solicitors were the most commonly used source of advice.[147,148]

3.39 The fact that individual consumers have a high level of awareness of solicitors and Citizens Advice as sources of information and advice was confirmed in the most recent survey of individual consumers' legal needs commissioned by the LSB and the Law Society. This survey found that Citizens Advice was known as a source of information or advice by 81% of respondents, while solicitors were known by 73% of respondents.[149,150] Citizens Advice and solicitors were the most well-known sources of information or advice not only in general but also for each area of law. Other sources, though significantly less well known, were ombudsman services (49%) and mediators (26%).

3.40 The follow-up question in the LSB and Law Society survey looked at whether individual consumers had contacted any of these organisations or providers. According to the survey, solicitors were most likely to have been contacted, with 54% of respondents having done so. Citizens Advice had been contacted by 45% of respondents, while ombudsman services had been contacted by

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[146] GfK NOP Social Research (2010), *Research on Consumers' Attitudes towards the Purchase of Legal Services*, commissioned by the SRA, p12.
[147] Balmer, N (2013), *English and Welsh Civil and Social Justice Panel Survey: Wave 2*, p49.
[148] Note, however, that solicitors and barristers were the only specific types of provider listed in the survey question.
[149] Ipsos MORI (2016), *Online survey of individual's handling of legal issues in England and Wales 2015*, commissioned by the Law Society and the LSB, p39.
[150] Note that respondents had to choose from a list of potential advisers and not all provider types were included, eg barristers.

16%. Licensed conveyancers had been contacted by only 8% of respondents.[151]

3.41 Again across all areas of law, solicitors and Citizens Advice were the most likely organisations to have been contacted by individual consumers.[152] This seems to confirm the important role of providers, and in particular solicitors, in diagnosing legal problems or providing information and advice, in addition to their role in providing services. The diagnostic role of solicitors is in line with comments from the Junior Lawyers Division of the Law Society which noted that:

> Consumers tend to come to legal providers with a set of circumstances which they would like assistance with, not necessarily knowing what the solution will involve, rather than with a specific request for a particular service or document to be drafted.[153]

3.42 In our employment law services case study, we found that there are sources of information that are particular to employment law that help individual consumers to diagnose their legal problem and give some prompts in relation to their options for resolving those issues.[154] These sources of information include trade unions and the Advisory, Conciliation and Arbitration Service (Acas). Specifically, that case study found that:

- One in two individuals first consult Acas when seeking advice on their employment law issue.[155] In addition, the majority of individual consumers who sought assistance from Acas actively engaged with their legal problem by either discussing their issue with management in their workplace (45%) or by seeking advice from another body, such as a trade union, solicitor or Citizens Advice (23%). Only one in five individuals did not take any action after contacting Acas.[156]

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[151] Ipsos MORI (2016), *Online survey of individual's handling of legal issues in England and Wales 2015*, commissioned by the Law Society and the LSB, p39.
[152] This relates to these organisations' role in providing information and advice. There is a separate section of the LSB and Law Society survey that looks at where advice or help was received to help resolve an individual's issue.
[153] Junior Lawyers Division of the Law Society, response to Interim Report, p1.
[154] While the sample size makes the result indicative only, we did find that of the 31 respondents to our quantitative survey who reported an employment law issue, 12 of these did compare providers. This is higher than the proportion of respondents who compared providers for will writing services.
[155] Department for Business, Innovation & Skills (2014), *Findings from the survey of employment tribunal application 2013*, p91.
[156] Acas (2015), *Research paper helpline evaluation report 2014*, p28.

- Individual consumers use these sources of information to find out what represents a legal problem at work and what options are available to pursue a claim.

- The vast majority of individuals who used the Acas Helpline thought that Acas's guidance was important in their decision to make a claim to the Employment Tribunal.[157]

3.43 Overall, this suggests an important role for advice services, such as Citizens Advice and Acas, in familiarising consumers with their legal issues, allowing them to be more engaged with the market and more likely to compare between providers.

Small businesses

3.44 The FSB said that small businesses need to be better informed about where they can obtain trusted information and better able to navigate the sector effectively and find the best solutions.[158] The FSB also noted that small businesses need to have a better idea about the range of options available to them to solve their legal problems.

3.45 Most small businesses (87%) do not have any internal or external legal capacity.[159] In a survey carried out for the LSB, 5% of firms reported in-house legal capability; 8% reported having retainers with a legal services provider; and just over 1% reported having an HR/employment retainer.[160]

3.46 Our employment law services case study found that small businesses make use of free sources of information. This was in line with the CMA's qualitative research with small businesses with employment and commercial law issues which found that organisations such as Acas and Citizens Advice were used as sounding boards to discuss legal issues. The Law Society and sector-specific forums were also cited in this context.[161] These kinds of organisations may play a role in increasing engagement, for example small businesses

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[157] Acas (2015), *Research paper helpline evaluation report 2014*.
[158] FSB response to Statement of Scope, p7.
[159] Internal legal capacity includes having a qualified lawyer, or a person trained in handling legal issues, in-house. External capacity includes ongoing retainer contracts with a legal professional or an HR/employment service.
[160] Blackburn R, Kitching J and Saridakis G (2015), *The legal needs of small business: An analysis of small businesses' experience of legal problems, capacity and attitudes*, for the LSB, pi.
[161] Research Works (2016), *CMA Legal Services, Qualitative Research Report*, commissioned by the CMA, pp18–19.

were more likely to seek external legal advice when facing employment issues than when facing trading issues.[162]

3.47 The CMA's qualitative research found that small businesses used solicitors as their main source of advice for commercial and employment law issues. A number of small business respondents to the CMA's qualitative survey also noted that, once they had invested time in explaining their issue to one legal services provider who had said they could handle the issue, they were not likely to invest much more time in finding a different provider.[163]

Awareness and trust of different types of providers

Individual consumers

3.48 The LSB and the Law Society's recent survey shows that while individual consumers' awareness of solicitors was high at 73%, the level of awareness of the next most commonly known provider group in the list, licensed conveyancers, was much lower (23%). Even less well-known providers included probate practitioners (14%), notaries (11%) and costs lawyers (6%).[164]

3.49 Trust might also be an important part of the decision about which provider to use. An SRA survey in 2010 found that there was a lot of variation in how various providers were ranked in terms of being 'trustworthy' and 'well-qualified'. There was a general lack of knowledge about different legal job titles and the associated roles. However, solicitors were 'consistently ranked highly' as being the most qualified and trustworthy professionals. Overall, solicitors were viewed as the most highly qualified of the various legal professionals.[165]

3.50 All survey respondents 'were very familiar with the term "solicitor", and there was a general tendency for recent purchasers to describe providers as solicitors, as a "catch all" term for those providing legal services'.[166]

3.51 In our wills and probate services case study, we found that specialist will writers considered that being unauthorised raised trust issues for consumers. Research carried out by IFF found that some consumers did not choose

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[162] Blackburn R, Kitching J and Saridakis G (2015), *The legal needs of small business: An analysis of small businesses' experience of legal problems, capacity and attitudes*, for the LSB.
[163] Research Works (2016), *CMA Legal Services, Qualitative Research Report*, commissioned by the CMA, p51.
[164] Ipsos MORI (2016), *Online survey of individual's handling of legal issues in England and Wales 2015*, commissioned by the Law Society and the LSB, p39.
[165] GfK NOP Social Research (2010), *Research on Consumers' Attitudes towards the Purchase of Legal Services*, commissioned by the SRA, pp22–23.
[166] ibid, p22.

unauthorised providers because they did not trust the reliability of the service or in some cases the validity of the will produced. Specifically, for 39% of customers surveyed, the main reason for deciding against a specialist will writer was that they were 'unsure about their reliability'. By contrast, only 19% of those who decided against a solicitor did so because they were unsure about their reliability. Further, 17% did not use a specialist will writer because they had doubts as to whether the will would be legally binding, whereas only 3% of those who did not use a solicitor had such doubts.[167]

3.52 The high awareness and trust in solicitors in the legal services sector is reflected in the usage of different types of providers, as can be seen from the results of our quantitative consumer survey (see paragraph 2.34).

3.53 In addition, where consumers have decided that a particular provider is trustworthy, they are likely to use that same provider where they need to make a repeat purchase, although we note that this may not occur often. Qualitative research carried out for the SRA found that: 'There is a high degree of loyalty within the market; consumers tend to go back to the same provider for subsequent purchases of legal services'.[168]

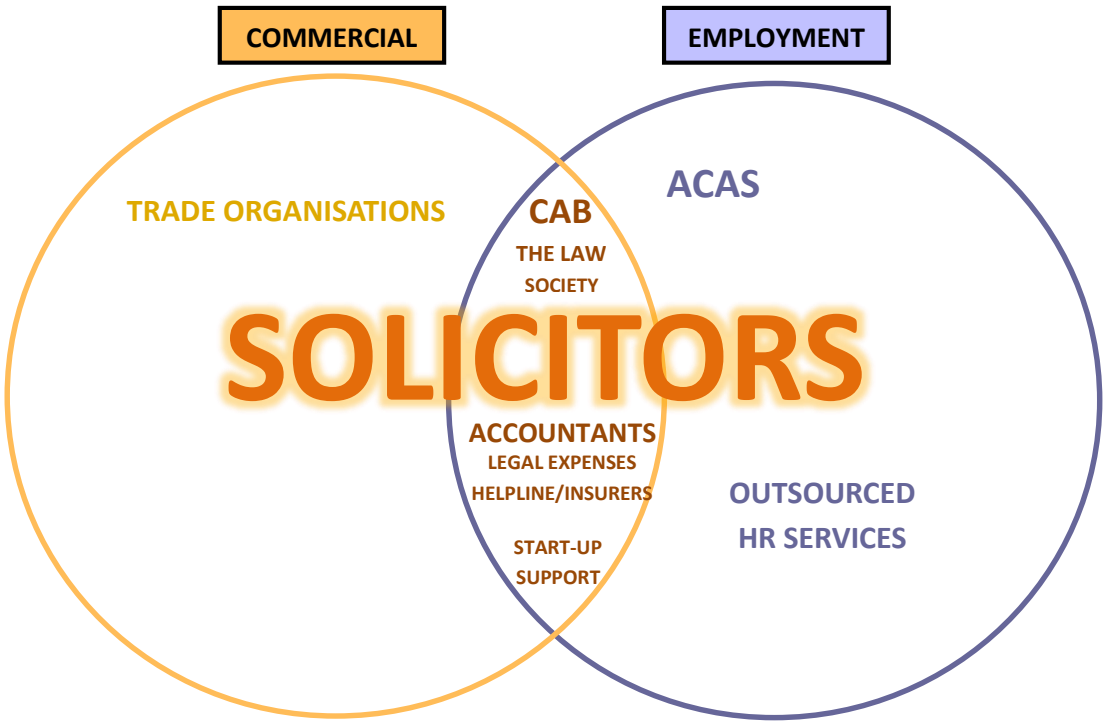
Small businesses

3.54 The CMA's qualitative research found that: 'general awareness of the range of different types of legal services providers within the marketplace was limited, and there was a strong reliance on using solicitors'.[169]

3.55 The types of provider mentioned by small businesses in the CMA's qualitative research on commercial law and employment law issues are shown in Figure 3.3.[170]

[167] IFF Research (2011), *Research report: Understanding the consumer experience of will writing services*, prepared for LSB, LSCP, OFT and SRA.
[168] GfK NOP Social Research (2010), *Research on Consumers' Attitudes towards the Purchase of Legal Services*, commissioned by the SRA, p3.
[169] Research Works (2016), *CMA Legal Services, Qualitative Research Report*, commissioned by the CMA, p17.
[170] It should be noted that this diagram may look different in other areas of law.

Figure 3.3: Types of providers used by small businesses



Source: Research Works (2016).

3.56 Overall, the number of those using legal services providers (broadly defined as anyone providing legal advice including Acas, trade organisations, insurers, Citizens Advice, outsourced HR services, accountants and support for start-ups) other than solicitors was very small.[171]

3.57 Our commercial law services case study also indicated a lack of awareness of legal services providers and ADR mechanisms for commercial disputes. The LSB's findings on the sources of help that small businesses use in relation to trading problems listed solicitors as the single largest source (70%), followed by a legal helpline (10%) and a patent/ trademark attorney/agent (8%).[172]

3.58 Some small businesses with trading issues reported that they had used a licensed conveyancer and/or a patent/trademark attorney, though it is not clear what the specific nature of the trading issues or the services provided in these instances were. The LSB research noted that this could be as 'a result of respondents not necessarily knowing whom to approach, possibly approaching trusted advisers known to them through dealing with an earlier matter'.[173]

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[171] Research Works (2016), *CMA Legal Services, Qualitative Research Report*, commissioned by the CMA, p17.
[172] Blackburn R, Kitching J and Saridakis G (2015), *The legal needs of small business: An analysis of small businesses' experience of legal problems, capacity and attitudes*, for the LSB, p50. See Table 3 in the Commercial Law case study.
[173] See note 64 in the Commercial Law case study.

Conclusion on consumer engagement in the legal services sector

3.59 We found that consumers have limited knowledge and awareness of their need for legal services. This makes it less likely that they will characterise an issue they encounter as being 'legal', and one for which they are able to seek advice from a professional. In fact, consumers are most likely to say that an issue is bad luck or part of life.[174] Small businesses are most likely to characterise their issues as private business matters or the result of bureaucracy.[175] Overall, this means that when consumers do seek advice, they are less likely to be confident in navigating the sector.

3.60 Another barrier to engagement is that consumers use providers to diagnose their issues as well as providing advice. This can be a barrier to consumers making informed comparisons of value for money between different providers because they simply use the provider who has diagnosed their issue.

3.61 A further barrier is the limited awareness of and trust in different types of providers, particularly non-solicitor providers. If consumers are less aware of certain types of providers, they are less likely to approach them for a diagnosis, or to provide services.

3.62 Overall, these barriers to engagement make it more likely that consumers will have unmet legal needs as they struggle to navigate the market. Further, it may help to perpetuate current market outcomes by entrenching certain patterns of behaviour that disincentivise competition. For example, consumers turn to recommendations or previous experience to find a provider. They are also less likely to be aware of or consider new and innovative providers. This limits the impact that these providers can have on competition. The outcomes for the legal services sector are discussed further from paragraph 3.164.

Transparency of provider information

3.63 Consumers need providers to be transparent about the price and quality of what they are offering in order to choose offers that represents the best value for money to address their legal needs. This generates a virtuous cycle for competition where providers are driven by informed consumers to compete and innovate in order to improve the value of their offering and to win custom.

3.64 In this section, we explore the information that is made available by providers to enable consumers to engage confidently in the sector. Specifically, we

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[174] Balmer, N (2013), *English and Welsh Civil and Social Justice Panel Survey: Wave 2*, p37.
[175] Blackburn R, Kitching J and Saridakis G (2015), *The legal needs of small business: An analysis of small businesses' experience of legal problems, capacity and attitudes*, for the LSB, p30.

examine the transparency of information on price, service and quality. In paragraphs 3.228 and 3.237 we examine the impact that our findings on transparency has on how consumers identify and compare providers.

Transparency of information about price

3.65 In order to evaluate current practice on price transparency in the legal services sector, we first set out what we might expect to see in terms of information provision in a sector that is working well. These principles are an extension of the OFT's 'Access, Assess, Act' framework,[176] focusing on the access and assess elements.

3.66 We then examine in turn how accessible and assessable price information is in the legal services sector.

Principles for transparent price information

3.67 First and foremost, consumers should be able to *access* key information to be able to make effective purchasing decisions. Where information can be accessed, it should be presented in a way that consumers can **assess** in order for it to be taken into account to make an informed purchasing decision.[177]

3.68 For information to be accessible to consumers it should be:

- Prominent: Information should be readily available and easy to find. Websites should similarly be easily navigable.
- Timely: 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.

3.69 Once information is made accessible, for consumers to be able to assess that information requires:

- Accuracy: As far as possible, the information provided should be complete and should allow the consumer to understand the price that is relevant to their circumstances. This may require the presentation of a number of

[176] OFT (2010), *What does Behavioural Economics Mean for Competition Policy?*, OFT1224.
[177] The requirements set out below draw on existing regulations around misleading practices and on work done in the healthcare sector in the USA. See for example: HFMA (2014), *Price Transparency in Health Care*; Helberger, N (2013), *Forms matter: informing consumers effectively*.

price permutations for variations of the same service. Price information should ultimately provide consumers with (i) an understanding of the total price of their legal service and (ii) what services are included in that price.

- Comparability: Price information should be communicated by different providers in a way that is comparable; for instance, a standardised format could be used.

3.70 In order to be able to assess value for money, consumers also need to be presented with any other information that feeds into the value of the service,[178] for example, corresponding quality information.

3.71 Where this kind of information is available, the presentation of the information becomes important.[179] For consumers, there are limits to the volume of information that can usefully be processed and hence it is important to provide information in a way that is easily digestible. It can be challenging to make sure the information is accurate and comprehensive as well as presenting it in a way that is digestible. This is because while many legal services (such as will writing and conveyancing) are fairly standardised and capable of being reduced to a limited number of fixed prices, other services (for example, those involving the resolution of a dispute) will be highly dependent on individual circumstances. For these more bespoke cases, presenting price information accurately could require a large number of permutations to be provided.

3.72 Information presentation may also depend on the intended audience. For example, while consumers may find a large number of variations in price for the same service confusing, comparison sites are likely to need more granular information about price components to allow better comparability for consumers.

3.73 In the following section, we assess the information currently available from providers against the principles set out above.

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[178] HFMA (2014), *Price Transparency in Health Care*; Helberger, N (2013) *Forms matter: informing consumers effectively*.

[179] The manner in which price information is communicated to consumers can have a significant impact on how the information is perceived. In presenting this information, providers would also need to take into account Consumer Protection Regulations (CPRs) on misleading practices. See the Consumer Protection from Unfair Trading Regulations 2008, Regulation 5, misleading practices.

Is information being made accessible by providers?

3.74 The LSB commissioned a survey[180] on pricing behaviour in a number of areas of law, including conveyancing; divorce; wills, lasting power of attorney and estate administration. As part of this research, firms were asked whether they displayed their prices on the company's website. The survey found that only 17% of firms displayed their prices online. Three-quarters of firms did not display their prices online and a further 4% did not have a website at all.[181]

3.75 The survey did not differentiate by the type of legal service so we cannot compare whether prices for more commoditised services were more likely to be provided online than prices for more complex services.[182]

3.76 However, the LSB research did provide a breakdown by provider type. The survey found that solicitors were less likely than licensed conveyancers or will writers to display their prices online, although across all provider types the numbers displaying their prices online were low.[183] The full breakdown is shown in Table 3.3.

Table 3.3: Proportion of firms displaying prices on their website, by firm type

%

	Type of firm		
	Solicitor	*Licensed conveyancer*	*Will writers**
Yes	16	22	28
No	78	73	61
Do not have a website	4	5	10
Don't know	2	0	0

Source: OMB Research (2016), *Prices of Individual Consumer Legal Services Research Report*, prepared for the LSB.
* This category includes will writers who are unauthorised (including those who have joined a self-regulatory body and those who have not).
Notes:
1. Question: E3: Does your firm display their prices on their website?
2. Base: All respondents. Solicitor 1,346; licensed conveyancer 55; will writers 67.

3.77 A limited web sweep carried out by the CMA of provider sites in the area of wills found a similar result, ie unauthorised providers (whether self-regulated or not) in our sample appeared to be more likely to display specific price

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[180] OMB Research (2016), *Prices of Individual Consumer Legal Services Research Report*, commissioned by the LSB.
[181] The remaining small percentage of firms 'didn't know' whether prices were displayed on their website. OMB Research (2016), *Prices of Individual Consumer Legal Services Research Report*, prepared for the LSB, pp43–44.
[182] The question asked in the survey was: 'Does your firm display their prices on their website?' and was not specific to the type of service.
[183] It should be noted that there are some caveats to this result. First, there are only a small number of will writers and licensed conveyancers so these results are indicative. Second, solicitors are more likely to provide services across a number of areas of law than are will writers and licensed conveyancers which generally provide more commoditised services.

details, for example, £100 for a single will. Overall, ten of the 35 solicitor firms in the sample displayed some fees online; while eight of the 11 unauthorised self-regulated firms and six of the seven unauthorised and unregulated firms did this. Most of the SRA-regulated firms in our sweep required an email or telephone contact from the consumer in order to provide price details about the service.[184]

3.78 Similarly, a web sweep carried out for our commercial law services case study found that 11 of the 12 unauthorised firms in the sample published their price structure for at least one commercial law service and also displayed some information on prices. However, only 12 of the 79 solicitor firms in the sample published any prices on their websites.

3.79 The web sweep also found that, where some price information was displayed, it was relatively easy to access (within three clicks of the homepage).[185] This indicates that when price information is included on a website it tends to be displayed prominently.

3.80 The results of our quantitative survey with individual consumers support the LSB's findings on the low levels of transparency by providers. Almost half (45%) of consumers had no idea what cost would be involved in their legal work before they made direct contact with a legal services provider. Where consumers did have an idea of cost (53%) prior to contacting the provider,[186] they were more likely to say they knew roughly what the cost would be (28%) than that they knew exactly what the cost would be (24%).[187]

3.81 This is the case even in areas of law where fixed fees are common. Our quantitative survey found that one in three consumers (33%) looking to purchase a will said they had no idea of the likely cost before they made direct contact with the legal services provider.[188]

3.82 Further, there were no significant differences in the level of pre-contact cost awareness,[189] between those consumers who sought to compare providers and those who did not. This suggests that cost information is difficult to find even where consumers are attempting to compare between providers.

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[184] We carried out a limited web sweep using the search term 'will writing + advice + price + (law OR legal). We selected those firms that appeared first in a search using Google. Fifty-five websites were reviewed. Note that the likeliness of having price information in this sample may be higher than average because we were specifically looking for how price information was displayed and hence used 'price' in the search term.
[185] This information is from the same web sweep discussed in footnote 184.
[186] 53% 'knew something'.
[187] IFF Research (2016), *Market study into the supply of legal services in England and Wales – consumer findings*, commissioned by the CMA.
[188] ibid.
[189] Including knew exactly because all their prices were already available/knew roughly because a guide to their prices was already available and no idea.

3.83 We also found there to be an issue with the timeliness of information provision. In particular, direct contact with a provider is sometimes required to obtain price information. The proportion of consumers who knew something about the cost before engaging a provider rose from 53% to 72% after they made direct contact. However, having to contact providers individually is likely to considerably increase the cost of search.

3.84 A small number of consumers[190] in our survey said that it was difficult to get cost information from some providers. Comments from those consumers included the following:

> I couldn't get proper cost information without a consultation which was charged for.
> (Female, first-time user of a legal services provider, family matters, used a solicitor.)

> Some people were prepared to speak with me without charging & others wanted to charge me for speaking with me.
> (Male, previous user of a legal services provider, conveyancing, used a solicitor.[191])

3.85 In common with individual consumers, small businesses reported problems in accessing price information on providers in the CMA's qualitative survey. Small businesses that attempted to make comparisons across providers reported that they did not find information available online to enable them to do so.[192] In order to make price comparisons, they needed to have telephone or face-to-face conversations about the specific legal need and the costs involved.[193]

3.86 In our commercial case study, we also found that solicitor firms offering services in a number of areas of law were less likely to publish information on price structure and specific price information for commercial law services compared to other services.[194] Thus, there appears to be less price information available for consumers seeking commercial law services.

3.87 Limited price transparency has been a long-standing feature of the legal services sector. Traditionally, in line with other professions, conduct rules for solicitors placed direct limits on transparency through bans on advertising. In

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[190] Sixteen consumers who responded to our survey said this.
[191] IFF Research (2016), *Market study into the supply of legal services in England and Wales – consumer findings*, commissioned by the CMA.
[192] Research Works (2016), *CMA Legal Services, Qualitative Research Report*, commissioned by the CMA, p12.
[193] ibid, p51.
[194] For example, wills, conveyancing, estate administration, divorce and employment law.

reflecting on these bans, the OFT noted that 'although various arguments were advanced to support these restrictions, it was plain that they restricted competition disproportionately'.[195] In 1984 new rules were developed by the Law Society to permit advertising by solicitors, within certain limits. Further liberalisation of the advertising rules occurred in 1987.[196] However, the LSB's 2016 pricing research suggests that the norm of limited price advertising has persisted.

Does information allow consumers to assess different providers?

3.88 For consumers to understand and compare the price that is quoted by a provider, they need to understand the service that will go along with it. In our web sweep of providers offering will-writing services, we found that the extent to which they explained the service to be provided was mixed. Unauthorised providers were more likely to provide information about what the legal service would include. By contrast, SRA-regulated firms in our sample were more likely to provide information on why a will is relevant but less likely to inform the consumer about what the service would include.[197]

3.89 In terms of how prices are presented, stakeholders agree that there has been a move towards fixed pricing in recent years, particularly in more commoditised services such as wills and conveyancing. Having a quotation or fixed price for the total price of a service makes it easier for consumers to understand and compare the price offers of different providers.

3.90 The SRA draws on consumer surveys to show that fixed-fee arrangements are now more prevalent than hourly billing in will writing, conveyancing, power of attorney and immigration work.[198] This is consistent with findings from our own quantitative survey which suggested that almost half (49%) of consumers were able to get a quotation [199] for the total price of their service, while a further 31% received an estimate of the likely cost.[200] Similarly, the LSB pricing research found that fixed fees predominate for less complex matters.[201]

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[195] OFT (2001) *Competition in Professions*, p5.
[196] Love, J & Stephen, F (1997), *Deregulation & Professional Boundaries: Evidence from the English Legal Profession,* Business & Economics History, 26(2): 792–804, p795.
[197] This information is from the same web sweep discussed in footnote 184.
[198] SRA Risk Outlook.
[199] A quotation was defined as an offer to do the work at a certain price or for a fixed fee. Once accepted by the customer, the price is binding, unless the customer seeks to vary the contract by changing the work to be done.
[200] An estimate was defined as what the supplier thinks the work will cost based on past experience, but is not a firm (or binding) offer to do the work at that price.
[201] OMB Research (2016), *Prices of Individual Consumer Legal Services Research Report*, prepared for the LSB.

3.91 Using the LSB research, our wills case study reported that the vast majority of firms charge fixed prices for wills. For a standard individual will, 92% of consumers were offered a fixed price. For more complex individual wills, this was still high with 85% of providers offering a fixed price. In both cases, hourly rates were quoted only by 2% of providers.[202]

3.92 In our individual consumer survey, where consumers had compared legal services providers,[203] most (64%) described it as easy to compare providers on cost. However, one in five consumers (20%) said it had been difficult, with one in ten (11%) saying it was very difficult. For those respondents who found it difficult the most frequently mentioned reason was because the information was not supplied in a standard/like-for-like way by the different providers.[204] For example:

> I was unsure about hourly rates and how many hours they would actually put in. Also some providers had 'no hidden fees' and some didn't, I was unsure what hidden fees there would be. (Female, first-time user of a legal services provider, problems at work, used an insurance company.)

3.93 This was also reflected in our small business survey where those who tried to review the market reported that legal services providers offered a range of pricing options and that the way in which pricing structures were presented was inconsistent, making it difficult to compare prices between different providers. They reported a lack of consistency in the information about cost provided.

> The thing is that actually it's a little bit of a minefield. Some [will give you their price] per hour, but they don't tell you how many hours it is actually going to take … Then there are others that just say 'we will do this for you and this will be the figure'. But they charge for every other phone call. None of it is like-for-like, or that's what it felt like. (Owner, financial product, SME.[205])

Difficulties in providing transparent price information

3.94 Various providers told us that it is difficult to be more transparent because legal services are often bespoke. They argued that providing a standard price is difficult because the relevant price will be dependent on the consumer's circumstances, which makes it hard to provide these prices upfront. While we

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[202] ibid.
[203] 166 respondents or 22% of those surveyed did this.
[204] This was noted by 17 respondents to our quantitative survey.
[205] Research Works (2016), *CMA Legal Services, Qualitative Research Report*, commissioned by the CMA, p45.

acknowledge this argument, for the reasons that follow, it does not seem on its own to account for the low levels of price transparency that we observe in the sector.

3.95 In our wills and probate services case study, we found that the vast majority of firms charge fixed prices, both for standard and complex wills. We also found that a number of providers price from a menu (85% of unauthorised will writers and 44% of solicitors) and therefore it would seem that the barriers to being more transparent are limited.[206]

3.96 In our commercial law services case study, several solicitors told us that the nature of commercial disputes means that it is very difficult to provide an indicative upfront price and that an initial fact finding/advice stage is needed before an indicative price can be provided. In addition, litigation strategy is driven by the strategy adopted by both sides and there is a lack of knowledge about what the other side is likely to do at the outset. However, some cost lawyers told us that it is possible to provide a detailed budget early on in litigation by using precedents from other cases or based on accumulated experience. Overall, in that case study, no major barriers or risks were identified to providing relevant upfront price information.

3.97 Our quantitative survey with individual consumers found that among consumers who were provided with cost information[207] around two in five (41%) needed to share just the legal matter itself with the provider in order to get that cost information. A further 57% said they needed to share additional information. Overall, around a quarter (25%) said they had made a detailed disclosure of background and other relevant information in order to get price information.

3.98 Further, in a limited web sweep[208] of legal services providers, across a number of different areas of law[209] we found examples of firms trying to make their offering more assessable, even for more bespoke services. More discussion on this is included in Appendix D.

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[206] OMB Research (2016), *Prices of Individual Consumer Legal Services Research Report*, prepared for the LSB.
[207] Here we are looking at consumers who did received cost information and did not receive pro bono legal services (67% of all consumers).
[208] The web sweep involved a review of sites from 100 highest organically ranked websites in Google using particular keywords, for example divorce + advice + price + (law or legal).
[209] Areas of law included will writing, divorce, conveyancing, boundary disputes, personal injury, employment, immigration and commercial law.

Transparency of information about quality

3.99 There are two elements to quality in legal services: quality of service and quality of advice. Quality of service has been defined as 'the experience that clients receive'[210] from their provider. Examples are having convenient office hours; communicating with clients in layman's terms; and offering alternatives to face-to-face meetings, for example communicating via email. Our qualitative survey with consumers found that other important elements were regular communication, the availability of the provider and being responsive to queries.[211] Quality of advice relates to technical quality, ie 'the ability to understand and apply technical law'.[212] As explained in paragraph 3.9, technical quality is largely unobservable to consumers and is therefore difficult to judge.[213]

Quality of service

3.100 The CMA's qualitative research[214] suggests that consumers attach importance to the quality of the customer service they receive from their legal services provider. Further, this is an area in which they feel confident making quality judgements. In our qualitative survey, good customer service was associated with having:

- a personable provider with whom a relationship could be built;
- regular communication, especially over the phone;
- a provider who is available and who is responsive to queries; and
- communication that is free from legal jargon.

3.101 There are some cases of firms trying to demonstrate good quality of service in advance of the consumer having used those services. For example, Quality Solicitors, a network of law firms, advertise quick response rates to calls or emails; direct contact details for the lawyer working on your case; and Saturday appointments.[215] Overall, however, such examples are limited.

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[210] Legal Services Institute (2010), *Civil Legal Aid: Squaring the (Vicious) Circle*, p4.
[211] IFF Research (2016), *Market study into the supply of legal services in England and Wales – consumer findings*, commissioned by the CMA, pp42–43.
[212] Legal Services Institute (2010), *Civil Legal Aid: Squaring the (Vicious) Circle*, p4.
[213] Consumers often link the quality of advice with the outcome of their case as the outcome can be observed. In our quantitative survey with individual consumers, 87% of respondents were satisfied with the quality of advice they received, while 88% were satisfied with the outcome.
[214] IFF Research (2016), *Market study into the supply of legal services in England and Wales – consumer findings*, commissioned by the CMA, pp41–43.
[215] See Quality Solicitors website.

3.102 One approach that is commonly used by consumers in other sectors is to review aggregated customer feedback which may try to assess both quality of service and advice. [216] This approach has not been widely adopted by providers in the legal services sector. We include more discussion on how customer feedback is currently used in paragraph 3.109.

Quality of advice

3.103 The inability to judge quality of advice is a fundamental aspect of information asymmetry in the legal services sector. Stakeholders have generally agreed that it is inherently difficult to signal this type of quality effectively as it is difficult to measure and is largely unobservable to consumers. As with quality of service, we find that there is little transparency on quality of advice.

3.104 In our wills and probate services case study, we identified quality of legal advice as including the following types of elements:

- Accurate drafting.
- Valid execution, for example being correctly signed and witnessed.
- Understanding a client's wishes and circumstances.
- Comprehensiveness.
- Ease of probate.

3.105 Despite quality of advice being difficult to judge, around 72% of individual consumers to the CMA's quantitative survey felt that they were able adequately to judge the likely quality of the help that a legal services provider would give them. However, the qualitative interviews suggested that consumers tended to draw on 'softer' indicators of quality, such as 'gut feel', a sense of trust and their interaction with the provider in making these judgements. Further, we understand that these sorts of judgements are likely to be made after having used a provider or at least after having met the provider. As expected, in the qualitative follow-ups, most individual consumers indicated that it was difficult to make quality judgements when choosing a provider.[217]

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[216] IFF Research (2016), *Market study into the supply of legal services in England and Wales – consumer findings*, commissioned by the CMA.
[217] IFF Research (2016), *Market study into the supply of legal services in England and Wales – consumer findings*, commissioned by the CMA, p41 & p48.

3.106 Consumers currently assess quality primarily through either their own personal experience or informal recommendations made by peers, family or friends. However, as these assessments tend to be limited to individual experiences rather than reviews of what is on offer in the sector, they are unlikely to be effective in driving competition on quality.[218]

3.107 More effective mechanisms for driving competition on quality in markets for 'experience' services are those which signal reputation. Reputation mechanisms enable consumers to benefit from information on the aggregated previous experience of other users when they choose their provider. These mechanisms include published consumer feedback, such as online reviews, accreditation schemes that signal a higher level of quality and the development of recognisable brands with a reputation for high quality.

3.108 As a basic signal of quality, we found that SRA-regulated firms in our web sweep[219] of will providers advertised the seniority and/or experience of their team/people, including any relevant experience or qualification. We also look in more detail in this section at some of the reputation mechanisms that are used by firms.

Customer reviews and feedback

3.109 A number of stakeholders suggested that providing access to customer reviews and feedback was a useful way to signal quality. In our qualitative research, most individual consumers said they regularly drew on customer reviews of products and services when assessing quality, such as using TripAdvisor for holiday and travel providers. When prompted, consumers said they thought that reviews would have been useful and that they would have used them in choosing a legal services provider. The main reason for not doing so was uncertainty about where to find customer reviews for legal services, other than on provider websites – which were felt to be more promotional and not a genuine assessment or testimony of customer experience. However, consumers did acknowledge that such reviews need to be interpreted with care.[220]

3.110 Small businesses also felt that searching for a provider could be made easier by having a website like TripAdvisor. However, respondents often noted that creating this type of resource would be a challenge, because of the difficulty

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[218] LSCP (2010), *Quality in Legal Services*, p8.
[219] This information is from the same web sweep discussed in footnote 184.
[220] IFF Research (2016), *Market study into the supply of legal services in England and Wales – consumer findings*, commissioned by the CMA, p47.

of commoditising legal services.[221] The FSB was overwhelmingly in favour of making reviews available, noting that it is: 'critical that small business clients are encouraged to provide post-purchase information about their experiences to help inform other future users who are searching the market'.[222]

3.111 A YouGov survey in December 2014 asked consumers for their views on consumer reviews, among other things. 44% of respondents agreed with the statement that 'consumer reviews of legal advisers on review sites would influence me'.[223]

3.112 However, legal services providers have been slow to develop client feedback mechanisms. A YouGov report on legal services found that only 20% of respondents surveyed in December 2014 had been asked to complete a client satisfaction survey.[224]

3.113 The Law Superstore highlighted that, in its experience, the majority of legal services providers are averse to consumer feedback or review mechanisms. Some stakeholders identified the risk of defamatory postings; the Law Society and the SRA also raised the issue that requirements for client confidentiality and legal privilege may make it difficult for providers to respond to client feedback, and some have suggested that client reviews may be overly influenced by the outcome of the case rather than the quality of the advice or service. We also note that some legal services providers have already successfully adopted customer review sites such as TrustPilot and Feefo. These firms did not identify any concerns with using such review sites, nor did they consider legal professional privilege to be a barrier. In addition, the BSB is working on 'improving the way in which chambers/barristers gather feedback and how they make use of that to improve services to clients'.[225]

3.114 We note that, with appropriate moderation, customer reviews have been employed in other sectors where similar issues exist, for example as part of the NHS Choices website in relation to GP practices.[226] Further discussion of the issues that have been raised in relation to customer reviews is included in our remedies discussion at paragraph 7.94.

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[221] Research Works (2016), *CMA Legal Services, Qualitative Research Report*, commissioned by the CMA, p13.
[222] FSB response to interim report.
[223] YouGov (2015), *Legal Services 2015*, p56.
[224] YouGov (2015), *Legal Services 2015*, p12.
[225] BSB response to interim report.
[226] See for example the advice on the NHS website on how to manage feedback.

Accreditation schemes

3.115 Accreditation schemes or quality marks have been developed by providers as a way of demonstrating that specific quality standards have been met or that the provider has specialist expertise. The majority of quality marks focus on specific practice areas but they commonly aim to signal that providers who have the accreditation are operating at a higher standard than others. Providers who are members of these schemes have made an active decision to participate.

3.116 The Law Society suggests that these accreditation schemes: 'promote high standards in legal service provision and ensure that clients are able to easily identify legal practitioners and firms with proven competency in specific areas of law'.[227]

3.117 However, the LSCP has previously reported that there is minimal awareness of quality marks and consumers make little use of them.[228] Our qualitative research with consumers confirmed this, finding that: 'Overall, consumers had little awareness and knowledge of formal quality indicators such as quality mark schemes. This is reflected in the fact that no such indicators were referenced by consumers'.[229]

3.118 The latest 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.[230]

3.119 Further, there are questions about whether such schemes really provide a signal of 'better' quality. The SRA notes that: 'while these schemes cost providers money to join and an annual fee, we are not aware of any evidence that they improve the quality of service. There is also the risk that they can confuse consumers or provide unwarranted assurance'.[231]

3.120 The CLC elaborates on this by explaining that: 'Such kitemarks as exist attest to certain inputs by the firms in question in terms of business processes but do not measure or attest to quality of outputs'.[232]

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[227] The Law Society of England and Wales response to Interim Report, p5.
[228] LSCP (2010), *Quality in Legal Services*, p10.
[229] IFF Research (2016), *Market study into the supply of legal services in England and Wales – consumer findings*, commissioned by the CMA, p47.
[230] Ipsos MORI (2016), *Online survey of individual's handling of legal issues in England and Wales 2015*, commissioned by the Law Society and the LSB, p84.
[231] SRA response to Interim Report, p8.
[232] CLC response to Interim Report, p2.

3.121 Despite the limited awareness from consumers, some quality marks may benefit consumers indirectly, as they are used by intermediaries who filter providers on their behalf. In principle, the use of quality marks by intermediaries can be beneficial because it can drive higher quality standards.[233] However, there is the possibility that the use of an accreditation scheme as a requirement for access to a particular part of the sector can create an issue for competition, for example where the scheme is only open to one type of provider. The CLC raised this concern in relation to the Conveyancing Quality Scheme (CQS) which is managed by the Law Society for solicitors. However, in practice this has not been an issue. This is because, although solicitor firms are often required to hold CQS membership to access lender panels, CLC-regulated firms are not.

3.122 The CLC also has concerns about the quasi-regulation that intermediaries can introduce through their requirements for quality and questioned whether the costs to providers are matched by the benefits, given their existing regulatory obligations.

Brands

3.123 The legal sector for individual consumer and small business services is still very fragmented, and national brands in this sector are rare.[234] Most providers focus on their reputation in local markets. However, YouGov surveys carried out in December 2013 and December 2014 did find an increase in awareness by consumers of some brands in the sector.

3.124 In particular, awareness of Slater & Gordon was reported to have risen from 3% in December 2013 to 15% in December 2014. Similarly, Irwin Mitchell increased its brand awareness from 17% to 26% over that period. Both of these companies have launched TV advertising campaigns in recent years. Other brands that saw an increase in awareness were Thompsons (increasing from 7% to 10%) and Fentons[235] (increasing from 25% to 28%).[236] Further, some stakeholders we spoke to said that they were trying to create a legal service brand.

3.125 However, there is still some uncertainty about whether consumers are positive about the development of legal service brands. For example, results from a YouGov survey in December 2014 found that while 36% of consumers

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[233] Subject to the caveats above that the quality mark needs to be a reflection of better quality outcomes and not just process.
[234] YouGov (2015), *Legal Services 2015*, p48.
[235] Fentons is predominantly a personal injury firm and is now part of Slater & Gordon.
[236] YouGov (2015), *Legal Services 2015*, p49.

thought advertising on TV and radio was a good way to increase awareness of legal services providers, 44% thought that advertisements by law firms were misleading and targeted the "needy".[237]

3.126 According to the same YouGov survey, consumers do not appear to be attracted to major consumer and retail brands that might offer legal services. Only 9% would be 'likely' or 'very likely' to use either consumer or retail brands, while a majority were clear that they would be 'unlikely' or 'very unlikely' to use them.[238]

Information on redress options

3.127 A further important element of comparing quality between providers is knowing what redress is available when there are problems with the service provided. Our web sweep of will providers[239] indicated that firms could do more to make this information available upfront so it could form part of the decision-making process when searching for a provider.

3.128 In particular, we found that only just over half of the SRA-regulated firms in our sample provided clear information on their complaints procedure, including information about the LeO. Around half of unauthorised but self-regulated providers offered some information on complaints, including information on the complaints procedure of their self-regulatory body. Non self-regulated unauthorised providers also gave some information on their complaints procedures. In some cases for unauthorised providers, this was just around remedies associated with general consumer law. Issues surrounding redress are discussed in some detail in Chapter 4 of this report.

A role for regulators

3.129 The SRA notes that measuring the quality of legal services is also difficult for regulators but points to a number of indicators that regulators could use which would cumulatively give an indication of quality, for example claims on the SRA Compensation Fund; professional indemnity insurance claims; and complaints data (including outcomes of disciplinary decisions). These types of indicators can inform regulators' risk profiles of the providers that they regulate. The SRA is currently consulting on what information it should publish and

[237] ibid, p55.
[238] ibid, p45.
[239] This information is from the same web sweep discussed in footnote 184.

how it would publish information on the individuals and firms it regulates.[240] This is explored further in our remedies discussion in paragraph 7.192.

Conclusion on the transparency of information made available by providers

3.130 In conclusion, there is a lack of information on price, service and quality that is available to consumers when they try to engage in the sector.

3.131 Applying the principles for transparent price information set out earlier in this section, we find that the first significant hurdle for consumers is that providers generally do not make their price information accessible, for example by displaying it on their websites. In fact, a study for the LSB reported that only around 17% of providers make their prices available on their website. Further, when price information is provided it may be set out in a way that is not easy to understand or compare, although we note the growing trend for fixed price offers.

3.132 Providing information on quality of advice is more challenging, but again there is more that providers could do to make this kind of information available. Consumers would particularly like to have access to aggregated customer feedback. These kinds of approaches have been adopted in other professional services sectors and by some in the legal services sector.

3.133 The lack of transparent information has a number of impacts. First, the difficulties in understanding what is on offer in the sector makes it less likely that consumers will compare providers. As set out in the outcomes section in paragraph 3.233, only 22% of individual consumers in our survey compared providers. Further, consumers are most likely to use recommendations or previous experience to find a provider. With limited numbers of consumers shopping around, the competitive pressures on firms from consumers that compare and from new, innovative offerings are softened. This seems to be confirmed by the substantial price dispersion observed in the LSB's research. More discussion on these outcomes is included from paragraph 3.164.

The role of intermediaries

3.134 As noted in paragraph 3.8, in certain parts of the legal services sector, providers of non-legal services may actively steer consumers towards specific legal services providers for their legal needs. For example, in conveyancing, estate agents and mortgage brokers may do this, and trade unions may do this in employment law. Given the problems that consumers have in engaging

[240] See Regulatory data and consumer choice in legal services.

directly with the legal services sector and in overcoming transparency issues, this section examines whether intermediaries can engage more effectively than consumers.

3.135 Intermediaries appear to play two important roles in the sector:

- As an information source, they can diagnose the consumer's legal issue and direct them to an appropriate provider; and
- As a purchaser, through repeated interactions they can get a good understanding of quality and also of costs and can therefore drive competition between providers.

Overcoming consumer engagement issues

3.136 Intermediaries can play an important role in diagnosing the consumer's legal issue and determining the best course of action before approaching a provider.

3.137 This is the case, for example, in relation to employment law services where, as explained further in Appendix B, trade unions typically have relevant legal expertise. Trade unions told us that they have trained representatives or in-house lawyers, such as solicitors, or paralegals, who typically deal with the legal assessment of the case and provide legal advice to members when an issue arises.

Overcoming transparency issues

3.138 Intermediaries are also likely to have better information on quality, service and price than individual consumers as they have repeated interactions with providers. Our research suggests that intermediaries can play a role in driving competition through their better understanding of price, service and quality options. In conveyancing, intermediaries have taken on increased importance in parallel with other changes, such as the move towards fixed fees.

3.139 The CLC notes that 'intermediaries have a good sense of the service levels of different providers and as such can provide useful advice in place of comparison and search by individual clients'. The BSB and Bar Council also note that intermediaries play a valuable role in supporting consumers when instructing barristers.

3.140 Stakeholders we spoke to noted that in order to be considered for inclusion on a conveyancing panel, providers are often required to bid to provide conveyancing services (for example, sales, purchases, lease extensions etc) at a fixed fee. This in turn allows mortgage lenders and estate agents to offer

fixed fee conveyancing to consumers. A report looking at the impact of referral fees, found that mortgage companies have been able to negotiate competitive rates with conveyancers.[241]

3.141 Stakeholders also noted that panel managers keep an increasingly close eye on quality, sometimes through requiring membership of accreditation schemes, for example the Law Society's CQS for solicitors or through auditing conveyancing providers.

3.142 Intermediaries in employment law also seem to have a good understanding of expected prices, service and quality. Trade unions and insurance companies typically make arrangements with legal services providers, such as solicitor firms and barristers, in order to provide legal advice and representation to their members. When competing to represent trade unions, legal services providers often participate in a tendering process to be selected for a panel of advisers.

3.143 Further, legal services providers tend to be able to agree price structures with intermediaries based on caseloads and the complexity of cases, with fixed and hourly fees typically being agreed in advance. Trade unions told us that they are able to get better deals than individual consumers as they can negotiate to receive more advantageous fees or reduced costs for their members.

3.144 In addition, they are better able to evaluate information on the likely quality of the legal services providers, for example through their experience in employment law and past cases. Trade unions also monitor the performance of external legal services providers through feedback from members and union representatives and through requesting regular updates on the progress of their cases.

Intermediaries and innovation

3.145 There is some evidence that improvements in efficiency and greater use of technology in conveyancing have been encouraged by the presence of intermediaries. One example is mortgage providers. In response to a large volume of re-mortgaging work, these companies set up panels of conveyancers. Competition for the guaranteed volume of work has been linked to efficiency improvements, such as the uptake of technology to improve processing time.

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[241] Charles River Associates (2010), *Cost benefit analysis of policy options related to referral fees in legal services*, commissioned by the LSB, p23.

3.146 Such improvements include upgrading IT systems to improve internal management by automatically flagging required searches or to check for consistency between cases. As well as allowing greater quality control, increased technology uptake has led to benefits for the quality of service that can be offered to consumers, for example being able to communicate with customers remotely and allowing them to 'track' the progress of their case. The role of intermediaries has also been related to consolidation in this area of law and to the emergence of national conveyancers.[242]

3.147 In paragraph 3.197, we look at the outcomes for innovation for the legal services sector more widely. Here we find that innovation across the sector as a whole has been more limited.

Issues with intermediaries

3.148 However, despite potentially encouraging improvements in price, service, quality and innovation, the role of intermediaries is not without issues. In particular, the interests of consumers and intermediaries are not always aligned and benefits generated by intermediaries through improved efficiency, for example, may not be passed on to the consumer.

3.149 This may explain why stakeholders report that conveyancing fees to consumers have remained flat over time[243] while the share of the fee going to conveyancers has been falling and the share to intermediaries has been increasing.

3.150 A report by the LSB examining referral fees paid to intermediaries in conveyancing concluded that:

- referral fees have resulted in the transfer of profits from conveyancers to estate agents, with conveyancing becoming less profitable over time; and

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[242] Charles River Associates (2010), *Cost benefit analysis of policy options related to referral fees in legal services*, commissioned by the LSB, pp22–23.
[243] This is supported by work done for the LSB in relation to referral fees where average fees for a property valued at £200,000 were £595 in 2003 and £630 in 2010. A more recent LSB study on the pricing of individual consumer legal services reported that the median price for the sale of a freehold property valued at £205,000 was £640. See Charles River Associates (2010), *Cost benefit analysis of policy options related to referral fees in legal services*, commissioned by the LSB, p25 and OMB Research (2016), *Prices of Individual Consumer Legal Services Research Report*, commissioned by the LSB, p8.

- cost efficiencies from new technology and more appropriate business models have made conveyancing more efficient, allowing conveyancers to afford higher referral fees.[244]

3.151 However, overall the presence of intermediaries to whom referral fees were paid was still seen to be positive. The LSB's research found that the conveyancing fee paid by customers of estate agents who do not take referral fees was higher than the conveyancing fee paid by customers of estate agents who do take referral fees (£687 versus £543), suggesting that the benefits of increased efficiency and competitive pressure on fees outweigh the cost of the referral fee.[245]

3.152 We note that only some parts of the legal services sector are likely to have 'natural' intermediaries and therefore to benefit from their presence. However, there is a nascent intermediary service in the legal services sector provided by DCTs or comparison websites. DCTs have some of the features of sector-specific intermediaries (for example, providing the opportunity for providers to win a significant volume of transactions) and consequently could be expected to drive improvements in the provision of services through increased competition. Therefore, encouraging the entry and uptake of DCTs may have benefits for consumers. In the following section we explore the role played by DCTs further.

Digital comparison tools

3.153 DCTs and comparison websites are increasingly used by consumers in other sectors, particularly for energy, insurance and communications (for example, to find broadband services or mobile phone packages). They could be particularly useful in the legal services sector in overcoming the issues of information being both hard to access and to assess by bringing together comparable information in one place. This could have significant benefits for competition between providers. Indeed, the SRA suggests that: 'increased coverage of the legal services market by comparison websites would be the single best way to enable consumers to compare legal services'.[246]

3.154 However, unlike in some other sectors, DCTs with price comparison capabilities that allow consumers to select providers directly are not widely available in legal services. MoneySuperMarket is the only one of the UK's

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[244] Charles River Associates (2010), *Cost benefit analysis of policy options related to referral fees in legal services*, commissioned by the LSB, p30.
[245] ibid, p30.
[246] SRA response to Interim Report, p10.

large price comparison websites to operate in the legal services sector and it does so only for conveyancing.

3.155 There have been some positive developments such as the launch of a comparison website the Law Superstore, in August 2016. This website covers a number of areas of law for individual consumers and small businesses and allows a number of features to be compared, including price. DCTs focusing on small businesses have also been developing, for example Lexoo.

3.156 The majority of other DCTs available are simply directories or referral websites which give leads to providers who may or may not respond with a quote.[247] The Law Society's 'Find a Solicitor' tool aims to list all authorised solicitor firms and individual solicitors and is described as being popular with consumers, averaging over half a million visits per month.[248] However, information is limited to basic details about solicitors and the different areas of law they cover. Others, such as Contact Law, email the details of a solicitor to the consumer but do not assist comparison between providers.

3.157 Other listings services have comparison features such as reviews and ratings, for example LegallyBetter.co.uk and ReviewSolicitors. However, the low levels of use[249] mean these comparison tools are less useful than they could be.

3.158 We have spoken to a number of comparison site operators who highlighted significant challenges with operating in the legal services sector. Some of the reasons cited for not entering 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, estate agents in conveyancing). The LSB also reported these kinds of concerns from discussions it has had with cross-economy DCT providers. It also reports that: 'at present the legal services market is not seen by existing economy-wide DCTs as a priority growth area'.[250]

3.159 From the provider side, similar concerns have been raised about DCTs as have been raised about increasing transparency in general. Stakeholders have argued that complex services are hard to price in a comparable manner and that customer reviews can be misleading. The LSB noted issues regarding the: 'lack of standardisation of fees and charging structures, lack of

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[247] LSCP (2012), *Comparison Websites*, p3.
[248] Law Society response to Statement of Scope, p6.
[249] LSCP, Tracker Survey 2015.
[250] LSB Response to Interim Report, p9.

standardised services in some cases and low technological sophistication in providers' websites'.[251]

3.160 Further, the SRA mentions the problem of achieving a critical mass of users: that not enough consumers make comparisons and therefore there are a lack of incentives for firms to sign up to comparison websites.[252] There may also be cultural barriers to the acceptance of DCTs. The Law Superstore submitted that, in its experience, there are considerable differences in attitudes across law firms to pricing transparency with the majority being reluctant to employ transparent pricing.[253]

3.161 The SRA notes that regulators could assist in the short term and act as a catalyst for more comparison websites by providing more accessible information on their own websites. It is currently consulting on what information it should publish, and how it would publish information, on the individuals and firms it regulates in order to help consumers make informed choices.[254]

3.162 DCTs could have a very useful impact in this sector by providing a straightforward tool that consumers could engage with to find a legal services provider that represents the best value for money for their particular legal need. This should act to stimulate competition between providers. Although currently this would likely only be between authorised providers as the DCTs we spoke to only include providers whose status can be verified with a regulatory body. If DCTs were to become more widely used, this could be a barrier to competition between authorised and unauthorised providers.

Conclusion on intermediaries

3.163 There is some evidence that intermediaries in the legal services sector have been able to improve outcomes for consumers as a result of their better knowledge of the market and their understanding of prices, service and quality. The role of DCTs in this sector has so far been limited. However, some stakeholders have suggested that they could play an important role in the sector going forward. Our transparency remedies seeking to improve the availability of information should improve the decision-making capacity of consumers but may also encourage the development of more DCTs which could be important in improving the outcomes for consumers.

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[251] LSB response to Interim Report, p9.
[252] SRA response to Interim Report.
[253] The Law Superstore further submits that this could be due to them not being able to produce a price as they do not have the internal business systems to do so.
[254] SRA (2016), *Discussion paper: Regulatory data and consumer choice in legal services.*

Outcomes in the legal services sector

3.164 Our findings set out above suggest that there are a number of information issues that prevent consumers from driving competition through making informed purchasing decisions. These information issues soften competition and lead to a number of detrimental outcomes for the sector that are outlined in this section. In particular we look at:

(a) unmet legal need and information issues;

(b) price dispersion;

(c) the level of innovation in the sector;

(d) barriers to entry, exit and expansion; and

(e) the consumer approach to choosing a provider.

Unmet legal need and information issues

3.165 Some consumers do not seek formal advice when they encounter a legal issue. This has been broadly termed 'unmet legal need'. In the following section we consider in more detail the information issues that might lead to unmet legal need. First, we set out what consumers do in response to their legal needs. Then we look at the reasons for doing nothing or resolving issues alone.

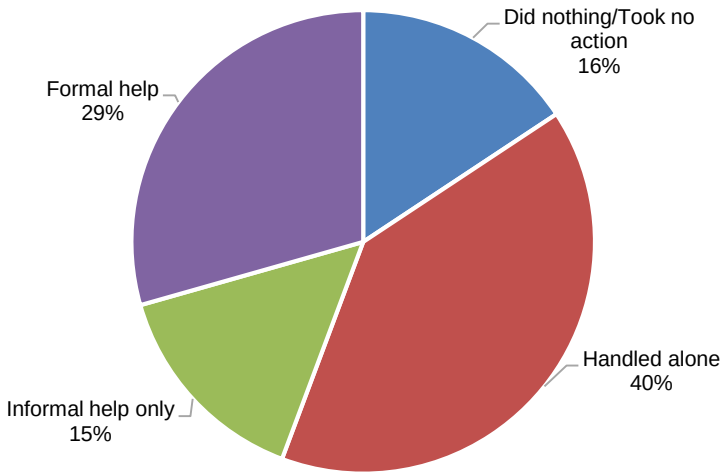
Prevalence of unmet legal need

Individual consumers

3.166 The English and Welsh Civil and Social Justice Panel Survey from 2012 found that respondents' most common response to a justiciable issue was to handle it alone (40%). 16% of respondents handled their issues by doing nothing and 15% responded to their issues by using informal help. Formal advice was used by only 29% of respondents.[255] These results are shown in Figure 3.4.

[255] Balmer, N (2013), *English and Welsh Civil and Social Justice Panel Survey: Wave 2*, p42.

Figure 3.4: Consumers' approach to dealing with legal issues



Source: CMA figure; English and Welsh Civil and Social Justice Panel Survey, Wave 2 results, p42

3.167 The most recent consumer legal needs survey commissioned by the LSB and the Law Society had similar results, although we note that this survey reports how issues were handled rather than how consumers responded to their legal problems. 34% of issues were handled by consumers alone; 16% of issues were handled by doing nothing; and 15% of issues involved informal help. Finally, 35% of issues saw consumers seek formal help, including those who sought help after having tried to solve the issue alone (5%).[256]

3.168 In our wills and probate services case study, we found that the proportion of individual consumers making their own probate applications appears to be rising. In 2015, 39% of grants were issued to private individuals, ie not professionals, while in 2007, less than 30% were issued to private individuals.[257]

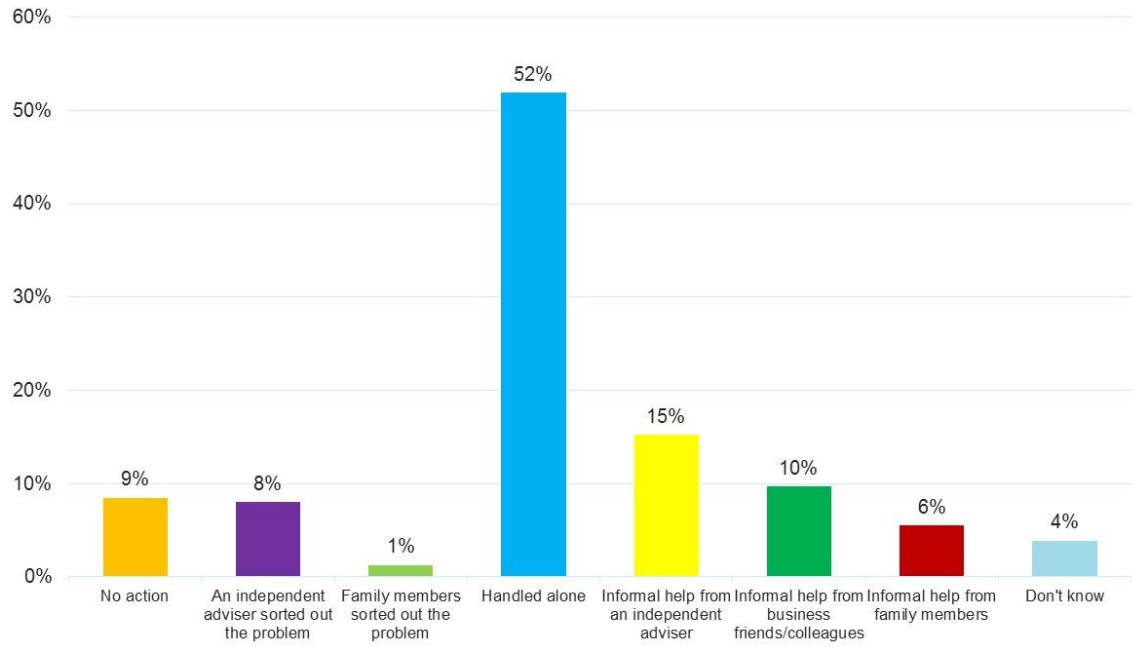
Small businesses

3.169 Small businesses have an even greater tendency than individual consumers to try to resolve legal issues themselves. They also draw on informal help from their network of business friends, colleagues and family. Around half of all issues were dealt with by respondents entirely on their own. In a further 15% of cases, problems were solved by the respondent with the informal help of business friends or family members.[258]

[256] Ipsos MORI (2016), *Survey of Legal Needs topline - Public - 230516 - Technical details*.
[257] The Probate Office and YouGov (2016), *Wills and Probate 2015.*
[258] Blackburn R, Kitching J and Saridakis G (2015), *The legal needs of small business: An analysis of small businesses' experience of legal problems, capacity and attitudes*, for the LSB, p50.

3.170 Figure 3.5 shows the different ways that small businesses deal with their legal problems.

Figure 3.5: Small businesses' approach to dealing with legal issues



Source: CMA Figure; Blackburn, R et al (2015).
Question: Which of these descriptions best indicate how your business went about sorting out the most recent problem?; Multi response

3.171 Although trading issues are the most common legal problem experienced by small businesses, the LSB small business survey found that they often deal with trading problems on their own. In fact, this was the legal issue for which they were least likely to seek independent help, when compared with other issues such as intellectual property.[259]

3.172 We note that Figure 3.5 relates to all small businesses, which are defined as businesses employing up to 50 people. However, the tendency for very small businesses (ie those businesses with one worker) to resolve issues by themselves is even higher (at 55%).[260]

3.173 Almost 50% of respondents to the survey of small business legal needs, commissioned by the LSB, strongly agreed or agreed with the statement that legal services providers are used as a last resort to solve business problems. This compares with just 14% who disagreed or strongly disagreed with the statement.

[259] ibid, pp23–25.
[260] ibid, p50.

Reasons for unmet legal need

Individual consumers

3.174 Information issues can affect whether individual consumers seek advice for their legal issues. The LSB and Law Society survey of legal needs found that for those who did nothing, the main reason was thinking that nothing could be done (around 27% of issues where no action was taken).[261] There were also a range of other reasons given where having more easily accessible information might be helpful. These included thinking that it would 'cost too much' (5%);[262] thinking 'it was not worth the hassle' (4%); not knowing where to go to get advice (3%); or not knowing that advice could be sought for the problem (1%).[263] For those issues where consumers did nothing because they thought it would cost too much, over half (57%) of these concerns related to the adviser's costs, rather than other fees, for example court fees.[264]

3.175 The most common reason for individual consumers choosing to deal with legal problems on their own was thinking that they could handle it alone (24%) or where they did not think the legal issue would be difficult to resolve (23%), while some others had handled a similar issue before (8%). For some respondents the reason given was thinking it would cost too much (9%); not knowing there was advice for the problem (5%); or not knowing where to go to get advice (4%). Again, the biggest concern in terms of potential costs was the cost of the adviser's service.[265]

3.176 An important information issue that was found to affect the approach of individual consumers to solving legal issues was their knowledge of rights. Those with a self-reported good level of knowledge (who knew 'completely or mostly' what their legal rights were) at the outset of their issue, were less likely to do nothing. By contrast, those who said they had 'no knowledge' were much more likely than average to do nothing.[266]

3.177 Similarly, the characterisation of an issue as 'legal' was found to be significantly related to the response. Limited knowledge of the legal services

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[261] In relation to not being aware anything could be done, this was most prevalent in legal problems with children and discrimination. It was least prevalent in making a will, disputes with neighbours, being involved in a road traffic accident and dealing with the estate of a deceased relative.
[262] In relation to concerns about cost, the concern was greatest in having problems with squatters, divorce and dealing with the estate of a deceased relative. Concern was more limited in problems with a landlord, problems with an employer and clinical negligence.
[263] Note that all these percentages relate to issues where no action was taken.
[264] Ipsos MORI (2016), *Survey of Legal Needs topline - Public - 230516 - Technical details*.
[265] Ipsos MORI (2016), *Survey of Legal Needs topline - Public - 230516 - Technical details*.
[266] Ipsos MORI (2016), *Online survey of individual's handling of legal issues in England and Wales 2015*, commissioned by the Law Society and the LSB, p57.

sector may mean that consumers do nothing in response to their issue because they do not characterise their issue as legal. In paragraph 3.27 we found that just over 10% of consumers characterised their problem as 'legal'.[267] Similarly, small businesses characterised 14% of their issues as legal.[268]

3.178 For issues that were characterised as 'legal', respondents were much more likely to seek help from a legal services provider. Where issues were not characterised as 'legal' this was 'associated with much higher rates of handling alone'.[269]

Small businesses

3.179 As in the case with consumers, some small businesses may choose to solve their legal issues themselves because they are confident that they can do so. In the CMA's survey of small businesses, the non-users of legal services in the sample fell into two groups:

- those who had experience of dealing with recurring legal issues specific to their business, for example updating employment contracts; and
- those who were pursuing the small claims process to chase money owed to them.[270]

3.180 The prevalence of small businesses handling legal issues themselves has been linked to their views on the cost-effectiveness of using lawyers. Existing research suggests that the cost of legal services is one of the deterrents to their use by small firms.[271] Around half of respondents (51%) to the 2015 survey of small businesses' legal needs disagreed or strongly disagreed with the statement that 'Lawyers provide a cost-effective means to resolve legal issues', while only 12% agreed or strongly agreed with the statement.[272]

3.181 The FSB noted that even where small businesses realise that their issue is legal, their first instinct is often to avoid using formal legal services. Instead, the FSB reports that they rely on informal advice, resolve it themselves or use existing trusted partners (such as accountants). Perceptions about the risks of

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[267] Balmer, N (2013), *English and Welsh Civil and Social Justice Panel Survey: Wave 2*, p37.
[268] Blackburn R, Kitching J and Saridakis G (2015), *The legal needs of small business: An analysis of small businesses' experience of legal problems, capacity and attitudes*, for the LSB, p29.
[269] Ipsos MORI (2016), *Online survey of individual's handling of legal issues in England and Wales 2015*, commissioned by the Law Society and the LSB, p58.
[270] Research Works (2016), *CMA Legal Services, Qualitative Research Report*, commissioned by the CMA, p15.
[271] Blackburn R, Kitching J and Saridakis G (2015), *The legal needs of small business: An analysis of small businesses' experience of legal problems, capacity and attitudes*, for the LSB, p67.
[272] ibid, pv.

taking a legal route often deter small businesses at this stage of the consumer journey. These perceptions include:

- high and uncertain costs which can be compounded by their open-ended nature;
- complexity and associated fear and time commitments;
- the risk of escalation;
- difficulty in identifying the right provider; and
- the perceived lack of practicality and understanding of business by lawyers.[273]

3.182 The FSB has also noted that it can be difficult to identify the return on the purchase of a legal service. This is because the benefit may be in preventing an issue rather than in generating any revenue.[274]

Conclusion on unmet legal need

3.183 A study of consumers' approaches to legal issues noted that there was general recognition that 'legal mechanisms do not always provide the most appropriate route to solving "legal" problems'.[275]

3.184 We would not expect all consumers to seek advice from a legal services provider in response to their legal problem. An informed choice to do nothing in response to a legal issue or to solve it alone may be the optimal outcome in some cases. However, the evidence set out above suggests that information issues can contribute to unmet legal need. Improving general knowledge of the sector and making information easier to access should, over time, allow consumers to make more informed choices.

Price dispersion

3.185 LSB research[276] shows substantial price dispersion for consumers who purchase similar legal services. This price dispersion coupled with the limited proportion of consumers who are comparing providers, suggests limited

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[273] FSB response to Statement of Scope, p5.
[274] FSB response to Statement of Scope, p6.
[275] Pleasance, P and Balmer, N J (2014), *How People Resolve 'Legal' Problems*, commissioned by the LSB, p2.
[276] OMB Research (2016), *Prices of Individual Consumer Legal Services: Research Report*, commissioned by the LSB, p3. The research asked providers for the price they would charge for certain scenarios ('non-mystery' shopping) in conveyancing, divorce, wills and estate administration.

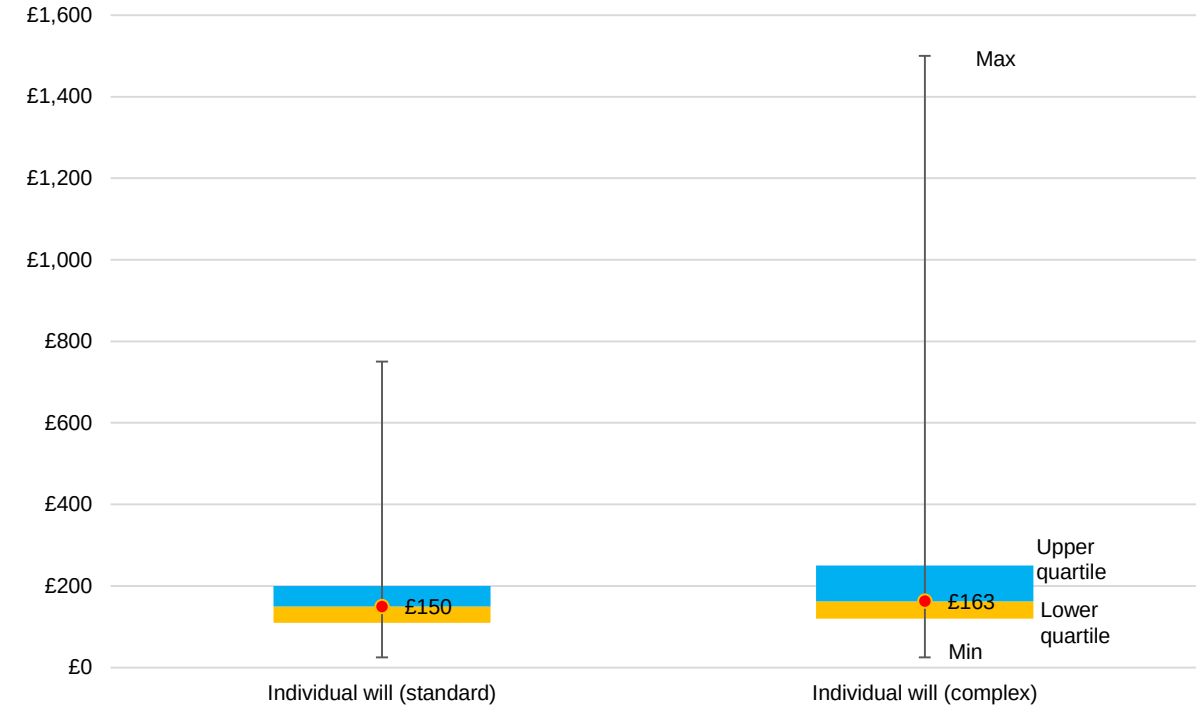
competition in the sector. As a result, it appears that some consumers are paying more than they should for their legal services.[277] The LSB research looked at prices charged by providers for legal services in three areas of law: conveyancing; divorce; and wills, power of attorney and estate administration. These were the same legal matters that around seven in ten respondents in our consumer survey reported they had needed legal advice or help with.[278]

3.186 The LSB used a set of tightly specified scenarios to compare prices across the range of services described above. This approach controls for service differentiation to a large extent by clearly defining the services required. The research showed that price dispersion across all of the legal services included is substantial, though in general it is greater for more complex services than for more straightforward services. For example, the price of a standard simple will may vary from around £110 to £200. The price for a complex divorce with a dispute over assets may vary from around £1,260 to £3,000.[279]

3.187 Results from the LSB research across all services examined are shown in Figures 3.6 to 3.9.[280] The figures demonstrate that considerable savings could be made from comparing the prices offered by different providers.

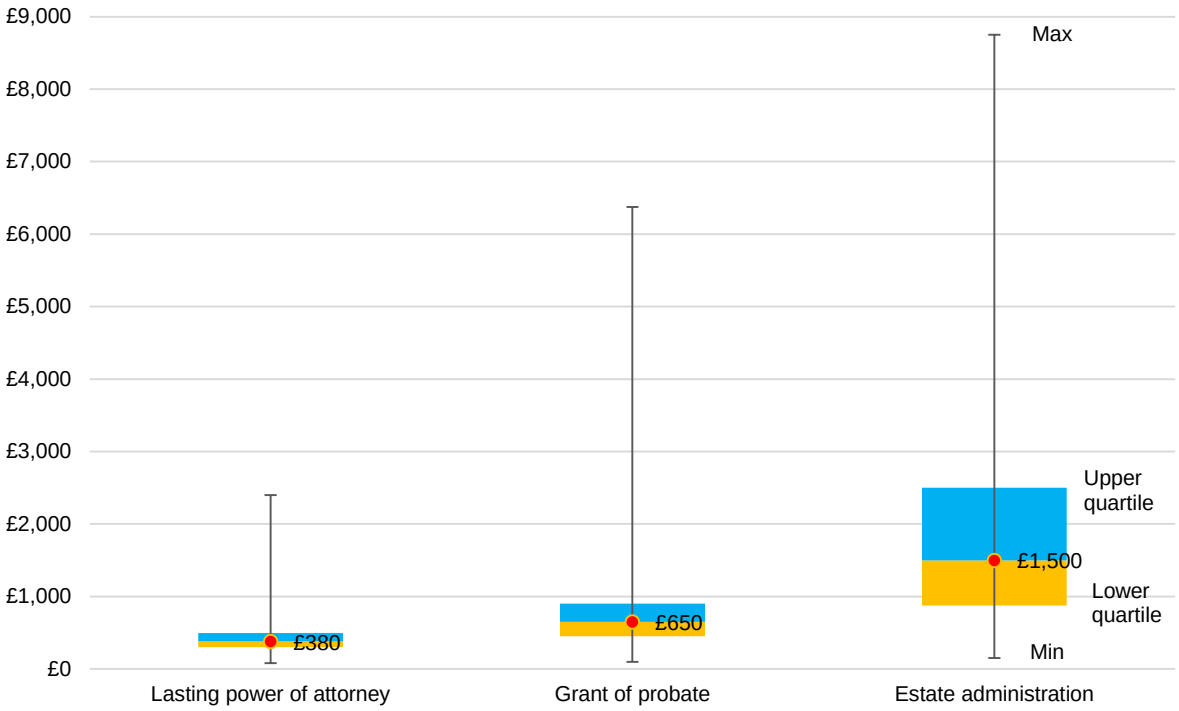
[277] In a competitive market, we would expect to see some convergence in the price for the same service
[278] IFF Research (2016), *Market study into the supply of legal services in England and Wales – consumer findings*, commissioned by the CMA.
[279] This is a comparison of the lower and upper quartile prices. OMB Research (2016), *Prices of Individual Consumer Legal Services: Research Report*, commissioned by the LSB.
[280] For wills, power of attorney, probate and estate administration, this figure shows the maximum and minimum prices offered, the upper and lower quartile prices and the median price. For divorce, the 95th percentile is shown in place of the maximum and the 5th percentile is shown in place of the minimum due to the size of the range.

Figure 3.6: Price dispersion, wills



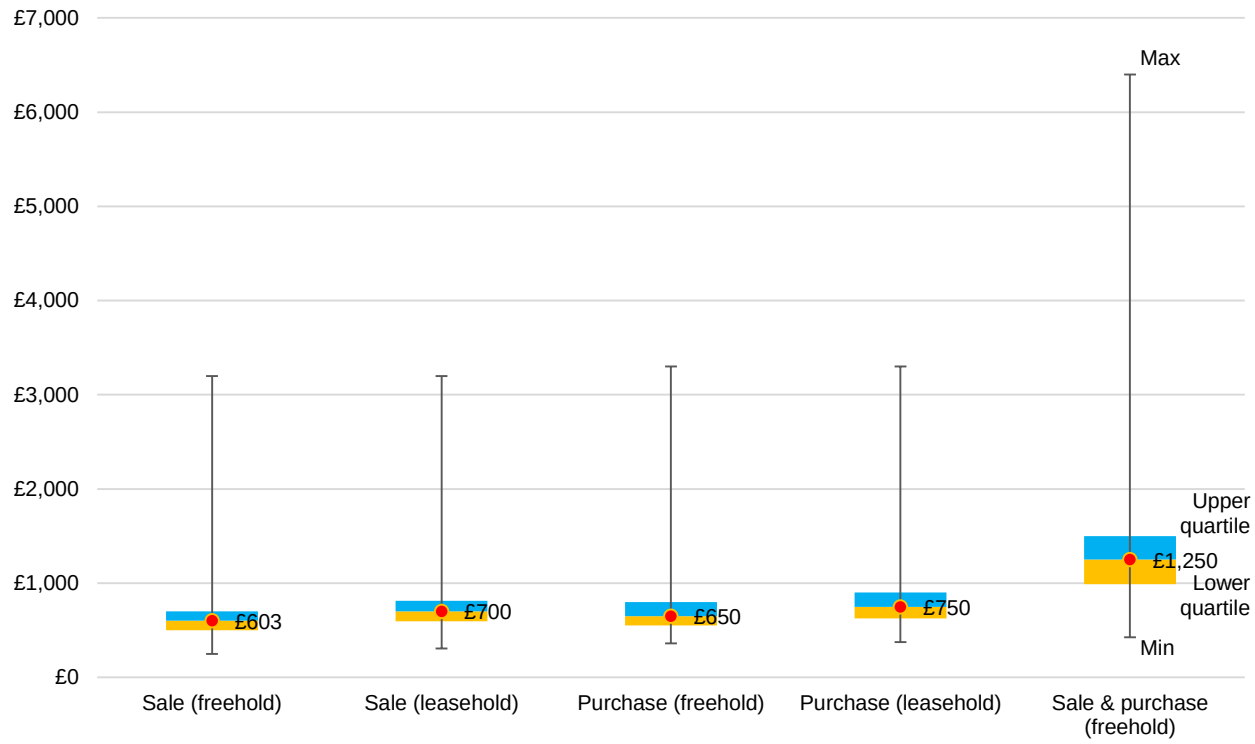
Source: OMB Research (2016); CMA Figure.

Figure 3.7: Price dispersion, power of attorney, probate and estate administration



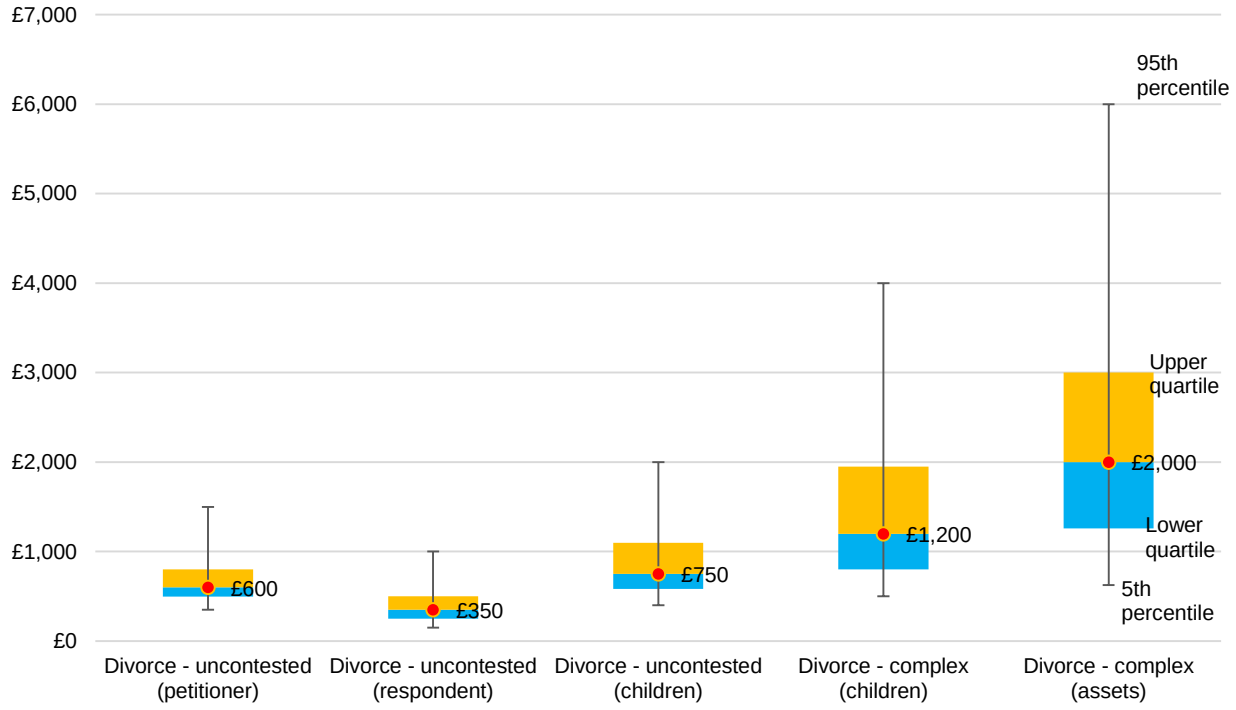
Source: OMB Research (2016); CMA Figure.

Figure 3.8: Price dispersion, conveyancing



Source: OMB Research (2016); CMA Figure.

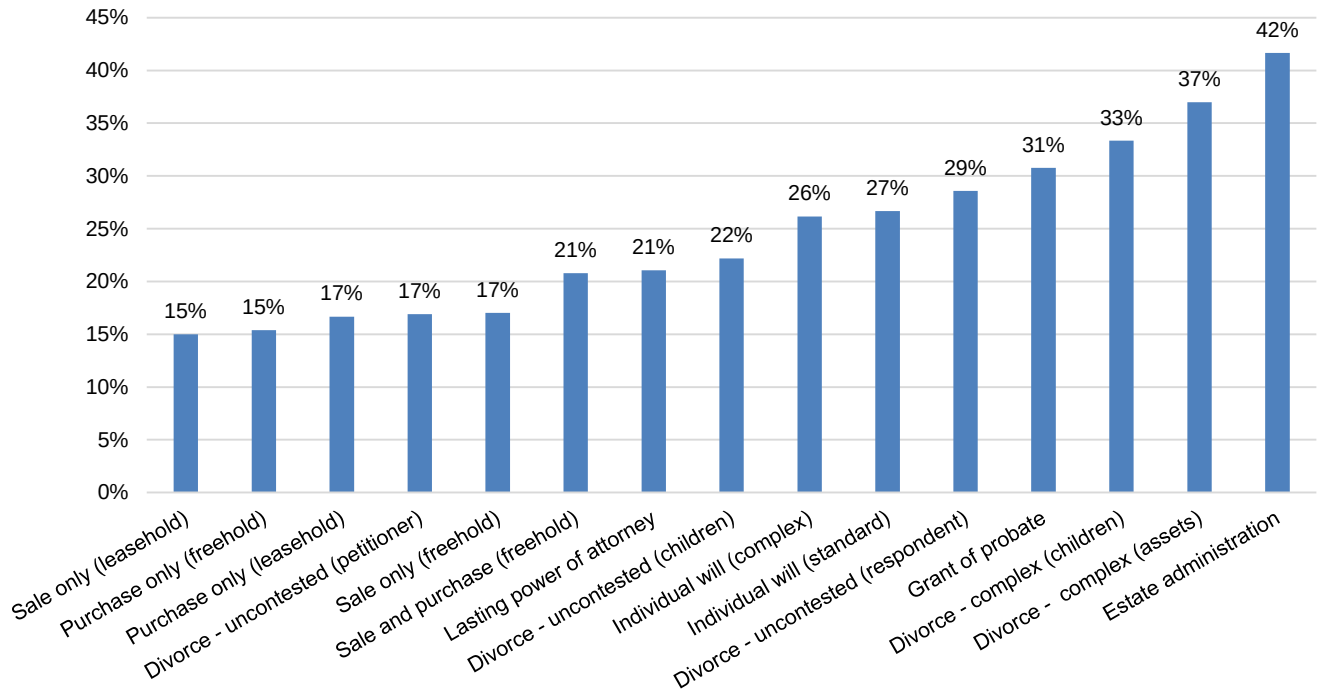
Figure 3.9: Price dispersion, divorce



Source: OMB Research (2016); CMA Figure.

3.188 Figures 3.6 to 3.9 also indicate that dispersion tends to be higher for legal services that are more complex. This is explored in more detail in Figure 3.10. In that figure we compare the median price and the lower quartile price to give an idea of the savings that consumers could make were they to compare between providers. For example, consumers currently purchasing a standard will at the median price in the LSB research would save 27% if they instead purchased the will at the lower quartile price.[281] Savings for consumers purchasing at higher than median prices or purchasing more complex products are greater. This illustration does not control for any variation in quality across services from different providers. However, while the price dispersion is substantial, as far as we are aware there is little evidence to suggest that lower priced services are in general of lower quality, particularly for more commoditised and less complex services.

Figure 3.10: Price variation, by area of law



Source: OMB Research (2016); CMA Figure showing the difference between the median price and the lower quartile price, weighted by the median price ie (Q2-Q1)/Q2.

3.189 Of the services examined by the LSB, the most complex are the divorce cases involving a dispute and estate administration. Figure 3.10 shows that price dispersion is highest for these services. The figure also shows that

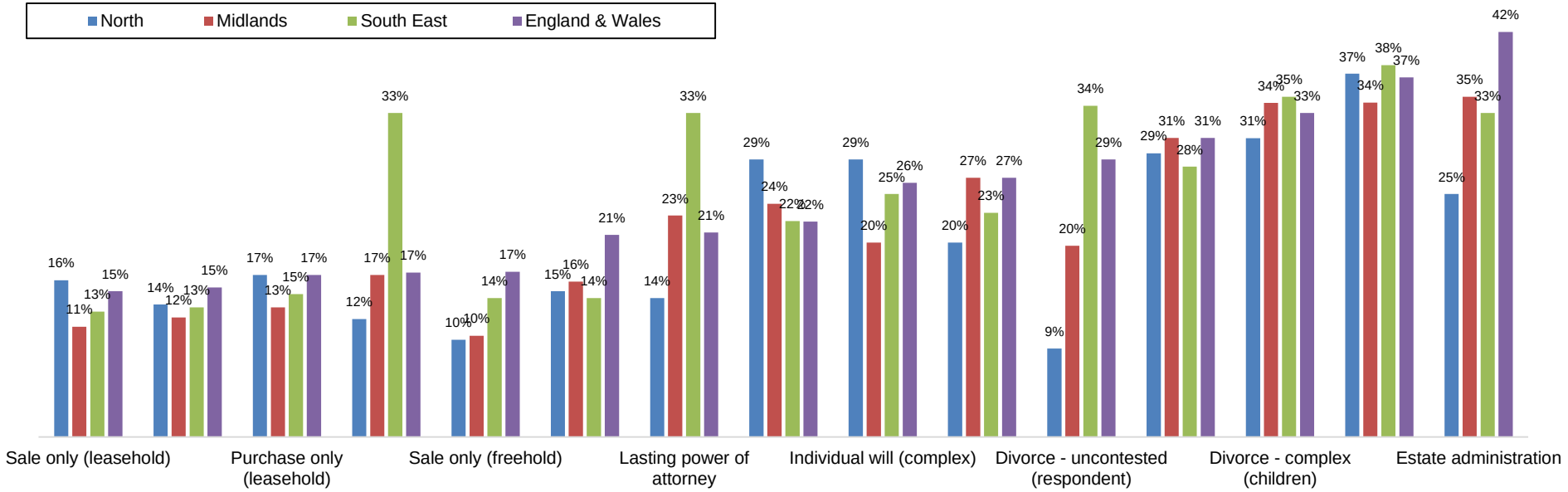
[281] These savings are reported for regions where the sample size is greater than 100 and are 20% for a consumer in the North of England, 23% in the South-East and 27% in the Midlands.

dispersion is lower for conveyancing, relative to the other services examined. Conveyancing has been reported as being a more competitive area of law.[282]

3.190 We also looked into the possibility that the dispersion could be explained by different operating costs from firms being located in different regions of England and Wales. For example, we know that prices tend to be higher in the South East than in other parts of the country. However, using the data from the LSB research we found that there was still substantial price dispersion within regions.[283] This is shown in Figure 3.11.

[282] IRN Research (2016), *UK Legal services market*, 6th edition, p16 and comments from stakeholders.
[283] We only report regions where the sample size is sufficiently robust. The groups are those defined by the LSB including North (North, North-West and Yorkshire Humberside); Midlands (including East Anglia, East Midlands and West Midlands) and the South-East.

Figure 3.11: Regional comparison of price dispersion



Source: OMB Research (2016); CMA analysis.

Price dispersion for small businesses

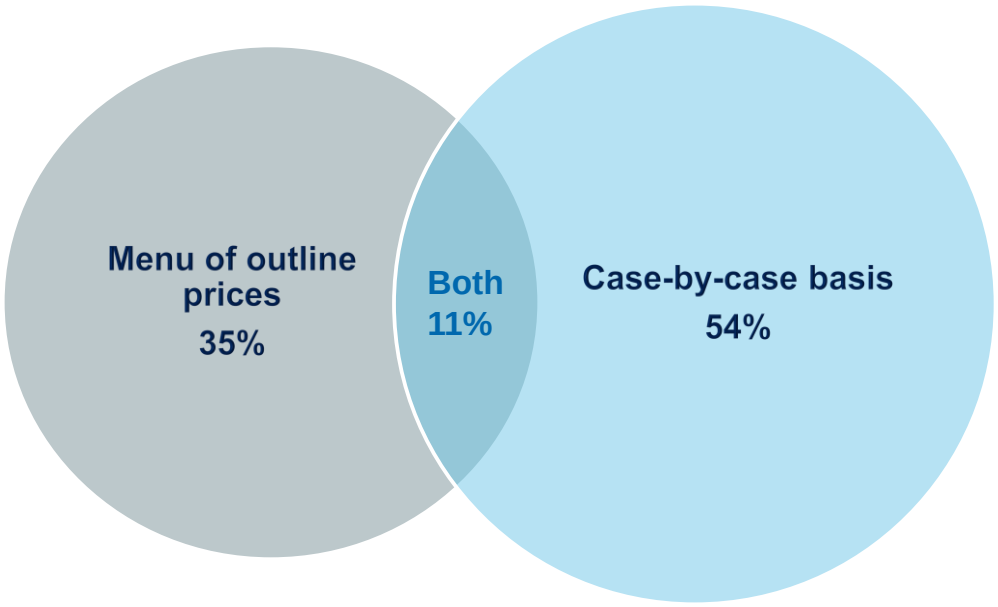
3.191 The LSB's price study focuses on a range of legal services for individual consumers but does not provide us with evidence on the level of price dispersion for small businesses. We have also not been able to establish the level of price dispersion from our in-depth case studies. In our commercial services case study, we found such limited price transparency that it was difficult to observe prices in a way that would allow dispersion to be examined. Similarly, in the employment law services case study, evidence of actual prices was difficult to observe.

Pricing on a case-by-case basis is prevalent

3.192 The LSB research on pricing looked not only at the proposed prices providers would charge consumers but also at how those prices were determined, ie whether they were from a menu of outline prices or were determined on a case-by-case basis.

3.193 The research found that most providers price on a case-by-case basis. 65% of providers in the LSB's survey reported pricing in this way. 46% of firms reported working from a menu of outline prices. These figures include 11% of firms who used a menu but also had discretion to price on a case-by-case basis.[284] This is shown in Figure 3.12.

Figure 3.12: Providers' pricing practices



Source: CMA figures; OMB Research (2016).

[284] OMB Research (2016), *Prices of Individual Consumer Legal Services Research Report*, commissioned by the LSB, p45.

3.194 Case-by-case pricing coupled with the lack of transparency may be of concern in this sector. The fact that prices are not widely available generates search costs for consumers seeking to compare different providers and therefore makes them less likely to do so. This heightens the ability for providers to engage in price discrimination by negotiating prices on a case-by-case basis. As a consequence of the lack of transparency of prices and the resulting search costs, consumers may be unaware that price discrimination is occurring or of the alternative prices that may be available to them. Consequently, price discrimination may allow providers to charge higher prices to those with greater willingness to pay. Price discrimination reduces the competitive constraint arising from the minority of consumers who do search on the prices faced by the majority of consumers who do not search.

3.195 The SRA supported this view by commenting that 'the limited extent to which consumers shop around means that firms can get away with charging different prices to different consumers'.[285]

Conclusion on pricing

3.196 Based on the LSB's study of pricing for individual legal services, we find two outcomes from the lack of transparency for the prices paid by individual consumers. First, there is considerable dispersion of prices for the same legal service. This suggests that some consumers could make considerable savings from shopping around. Second, there is evidence that many providers are pricing on a case-by-case basis. This reduces the competitive constraint arising from the minority of consumers who do search on the prices faced by the majority of consumers who do not search.

Innovation

3.197 As noted in paragraph 3.185 price dispersion, coupled with the limited proportion of consumers who are comparing providers, suggests limited competition in the sector with the result that some consumers are paying more than they should for their legal services. Over the longer term, a further outcome for the sector that is outlined below is the limited uptake of innovations by legal services providers and consumers.

3.198 In 2009, Nesta conducted a survey to examine the strength of innovation activity in nine sectors of the UK economy.[286] The survey found that there

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[285] SRA response to Interim Report, p3.
[286] NESTA (2009), *Measuring sectoral innovation capability in nine areas of the UK economy.*

were significant gaps between innovative practice and performance in legal services compared with other UK business services sectors in 2009.[287] A later, larger-scale survey carried out by the Enterprise Research Centre (ERC) in 2015 suggests that since then there has been stability in the sector, rather than significant change.[288]

3.199 Similarly, a recent report on the legal services sector found that 'the level of innovation is broadly unchanged since before the [Legal Services Act 2007] reforms were introduced'.[289] Despite limited evidence of change, some stakeholders believe that there will be significant change in the future. For example, the Law Society has reported that 'it seems inevitable that solicitors and lawyers face a future of change' and 'innovation in services and service delivery will become a key differentiating factor'.[290]

3.200 Levels of innovation appear to be affected by the nature of the legal service with less complex, more commoditised, higher volume, and more competitive areas of law appearing to be more amenable to innovation. In addition, several stakeholders have suggested that innovation may be more prevalent in larger law firms serving corporate clients which are outside the scope of our market study.

3.201 While the overall level of innovation has not been particularly high, we have found a number of examples of different types of innovation, including online service delivery, the unbundling of services and greater use of technology. The ERC's report also found different levels of innovation among different types of legal services providers. For example, unauthorised providers were more likely to report introducing a new or improved service in the previous three years (36% versus an average of 28.4%) and had the highest share of their revenue from innovative services (10.3% versus an average of 6.3%). They also found that, all other things being equal, ABSs regulated by the SRA are 13 to 15% more likely to introduce new legal services (ABSs are further discussed below).[291]

3.202 We have not received evidence of any major supply-side barriers to innovation. The ERC report on innovation in legal services found that

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[287] The conclusion reached in Enterprise Research Centre (2015), *Innovation in legal services*, a report for the SRA and the LSB.
[288] Enterprise Research Centre (2015), *Innovation in legal services*, a report for the SRA and the LSB.
[289] LSB (2016), *Evaluation: Changes in the legal services market 2006/07 - 2014/15*, p134.
[290] The Law Society (2016), *The Future of Legal Services.*
[291] Enterprise Research Centre (2015), *Innovation in legal services*, a report for the SRA and the LSB. This research standardised for a range of factors that may have an impact on firms' likelihood of choosing to become ABSs, such as firm size, age and area of law. There remains the possibility that that some unobserved characteristic of firms, such as an open culture, is making them both more innovative and more likely to become ABSs.

regulatory and legislative factors were the most commonly cited barriers to innovation. However, as the report notes, its figures also suggest that 75 to 80% of respondents did not consider these factors to be a major constraint on innovation. Other external factors identified in the ERC report included a perceived lack of market opportunities and a conservative attitude among clients. Although these were cited by a relatively small number of respondents, most participants in the ERC's in-depth qualitative interviews[292] noted that many people within the legal profession have (or at least have had until recently) a lack of incentive to change.

3.203 The report identified lack of finance and a lack of expertise in the business as important internal constraints on innovation. A conservative attitude within the profession was cited as a barrier by a relatively small number of legal organisations and has been raised during our market study by some stakeholders. There is, however, evidence that some firms within the sector are more innovative and the RPI considered that, while many firms fit the 'traditional' description, an increasing number do not.[293]

The introduction of ABSs has not yet changed the story on innovation

3.204 The introduction of ABSs was expected to increase competition in the legal services sector by facilitating entry of innovative business models. Specifically, the possibility of accessing external capital could enable ABSs to innovate, achieve efficiencies by exploiting economies of scale, develop brands and offer greater convenience for consumers seeking a one-stop shop. Furthermore, the ABS structure was expected to allow practices to retain high-performing non-solicitor employees or attract outside talent by rewarding them with a direct stake in the firm. Finally, the involvement of non-lawyers in management was expected to facilitate the entry of more 'business oriented' firms with a longer-term perspective.

3.205 There are now around 700 ABSs: around two-thirds of which are authorised by the SRA.[294,295] According to the LSB, SRA-licensed ABSs had a total

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[292] Enterprise Research Centre (2015), *Innovation in legal services: annexes.*
[293] RPI (2013), *Understanding barriers to entry, exit and changes to the structure of regulated legal firms*.
[294] Other ABSs are authorised by the following licensing bodies: the CLC, ICAEW and IPReg. For more details, see IRN Research (2016), UK Legal Services Market.
In April 2015, the Bar Council applied to become a licensing authority for ABS and, in May 2016, the LSB formally recommended to the Lord Chancellor that the application should be accepted.
[295] In addition, in 2014/15 there were still 462 Legal Disciplinary Practices (LDPs) in operation. The Legal Services Act 2007 allowed LDPs where solicitors can co-own and manage firms with other legal professionals and with up to 25% non-lawyer ownership. The first LDPs were authorised in 2009. However, after the introduction of the ABS regulations, existing LDPs became subject to a transitional regime and ultimately will have to become ABSs. A total of 59 LDPs have converted to ABS status. While SRA-regulated LDPs represented about 5% of all solicitor entities, the LSB noted that that LDPs accounted for 21% of the total

turnover of £2.29 billion in 2014/15 (11% of the total turnover of solicitor firms in that year).[296] The majority of them operated in the personal injury sector.[297]

3.206 Stakeholders have in general agreed that the impact of the ABS regime on competition has so far been limited. Many ABSs currently in the sector do not differ greatly from traditional firms that were operating in the sector prior to 2011. The motivation for many of these firms to seek ABS status has been to bring non-lawyers into senior roles within the firm, rather than to apply a fundamentally different business model or seek external capital for investment.[298]

3.207 Our research suggests that only a minority of ABSs have accessed external investment. While stock flotation and private equity investment are often the most common sources of external finance, investment from a parent firm is more typical among ABSs. Firms that have secured external financing tend to have a strategy oriented to market expansion by acquiring other firms, entering into new service areas, aggressive marketing strategies and investment in technology and other infrastructure.[299] These ABSs tend to be active in the more commoditised/high volume areas of law (mainly personal injury).

3.208 On a more positive note, there have been some examples of innovations in business models and service delivery introduced by ABSs. As discussed above, there is also some evidence that, all other things being equal, ABS solicitors are more likely to introduce new legal services. However, we have also observed that ABSs are not the sole source of innovation within the sector. In particular, a number of unauthorised providers have also sought to adopt innovative business models and technologies – including firms that have made a conscious choice not to become ABSs in order to do this.

3.209 It may be, however, that it is too early to appreciate the full impact of the ABS regime. For some time prior to the introduction of ABSs, the CLC allowed its authorised firms to operate with non-lawyer ownership and external investment (effectively ABSs). Over time this led to changes in the conveyancing sector and we now observe that over half of the firms handling

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turnover of solicitors in 2014/15. Source: LSB (2016), *Evaluation: Changes in the legal services market 2006/07 - 2014/15,* p31 and 123.

[296] LSB (2016), *Evaluation: Changes in the legal services market 2006/07 - 2014/15.*

[297] The focus on the SRA regulated ABS is due to data availability.

[298] In the past three years, about 65% of SRA-regulated ABSs were existing SRA-regulated entities, which converted to ABS. New entrants account for about 30% SRA regulated ABSs. See LSB (2016), *Evaluation: Changes in the legal services market 2006/07 - 2014/15*.

[299] Aulakh S and Kirkpatrick I (2016), *Changing Regulation and the Future of the Professional Partnership: the case of the Legal Services Act, 2007 in England and Wales*, Leeds University Business School working paper.

the largest number of conveyancing transactions (six of the top 11) are registered as ABSs. These include both CLC and SRA-regulated firms.[300]

3.210 For the past 20 years, 'the use of technology has had a significant impact on conveyancing',[301] as discussed in paragraph 3.145. However, there are specific features of the conveyancing sector that have encouraged the uptake of technology and that may not be present in other parts of the legal services sector, even allowing for the ABS regime. In particular, conveyancing is a high-volume area of law that can be commoditised. This suggests processes that are amenable to automation. Further, there are strong intermediaries in this area of law, for example estate agents, who can make a business case for investing in a well-functioning conveyancing firm to which clients can be referred and from which external investment can be recouped. Where this combination of features does not exist in other sectors, the drivers for innovation by ABSs may be more limited.

Conclusion on innovation

3.211 As well as paying higher prices, consumers may be losing out from a lack of innovation. There have been considerable changes to the potential make-up of the supply side of the legal services sector as a result of the Legal Services Act 2007 and the introduction of the ABS regime. It was hoped that this would allow businesses with different and more innovative business models to enter the sector and that this would drive innovation. To date, though, there is little evidence that the level of innovation has changed; however, the ABS regime may need more time to deliver change. There is also some evidence of unauthorised firms being more innovative than others and yet as set out in paragraph 3.201, their share of the sector remains small. This is explored further below.

Barriers to entry, exit and expansion

Barriers to entry and exit

3.212 Data in relation to entry and exit is limited and the best available data relates to solicitor firms. Here a detailed study in 2013 by RPI reported that there were 'substantial amounts of activity' in terms of entry and exit in the sector.[302]

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[300] The top 11 are based on analysis of monthly Land Registry data over a 12-month period (between August 2015 and July 2016) for the number and types of transactions for value by all account customers.
[301] Charles River Associates (2010), *Cost benefit analysis of policy options related to referral fees in legal services*, commissioned by the LSB, p22.
[302] RPI (2013), *Understanding barriers to entry, exit and changes to the structure of regulated legal firms*, p1.

For the three-year period preceding the study, entry and exit rates were around 10%. While these rates were slightly below the average entry and exit rates for business in the UK, the RPI concluded that they did not suggest any significant issues.[303] More recently, the SRA has reported that over the 12 months to end of September 2016, 885 firms opened (around 9% of all SRA-regulated firms), while 733 firms closed to the end of July 2016 (around 7% of firms).[304,305]

3.213 We note that it is clear that training and qualification requirements for entry to the profession impose a cost for new solicitors, and this in turn might increase costs for consumers. However, the evidence noted above suggests limited barriers to entry for new law firms employing already-qualified solicitors.

3.214 In terms of the success of market entrants, LSB analysis of SRA data suggests that, over the five years between 2010 and 2015, just 10% of new entrants closed within the first three years. This compares with a national rate for new businesses started in 2010 of 43%[306] (or 38% for the professional, scientific, and technical sector).[307]

3.215 For firms exiting, the LSB notes that in the past three years, there has been an increase in the proportion of firms closing through ceasing to practice (from 39% in 2013 to 47% in 2015), while the proportion of those merging and amalgamating has fallen (from 38% in 2013 to 22% in 2015).[308,309]

3.216 Beyond solicitor firms, there is limited data on entry and exit in the sector. We held a number of meetings with unauthorised and non-solicitor providers across a range of different areas of law to discuss barriers to entry. Providers did not cite any particular barriers in this area. However, some conveyancers noted difficulties in being included on the conveyancing panels of smaller banks.

Barriers to expansion

3.217 Given the fragmented nature of the sector and the potential significance of brands in signalling reputation, barriers to expansion and consolidation may

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[303] RPI (2013), *Understanding barriers to entry, exit and changes to the structure of regulated legal firms*.
[304] SRA (2016), *Regulated population statistics.*
[305] It should be noted that the LSB reported falling rates of entry since 2011/12. However, this may not be comparable to reported SRA data. The LSB noted SRA statistics suggesting that 7% of entities in 2014/15 were new entrants which was 3 percentage points higher than the data reported to the LSB. See LSB (2016), *Evaluation: Changes in the legal services market 2006/07 - 2014/15.*
[306] LSB (2016), *Evaluation: Changes in the legal services market 2006/07 - 2014/15,* p24.
[307] ONS *Business Demography*, 2015.
[308] LSB (2016), *Evaluation: Changes in the legal services market 2006/07 - 2014/15*, p24.
[309] Other reasons for firm closures include change of status and 'other'.

be more important. The SRA[310] in 2013/14 noted a 'growing trend in mergers', although as noted above, this trend may now have slowed. Further, the overall rate at which solicitors have been consolidating in the legal services areas within the scope of the market study appears to be low in most areas of law. This contrasts with other parts of the legal services sector, notably in the larger corporate and 'mid-market segments', where more consolidation has been reported.

3.218 The conveyancing sector seems to have experienced some change. Land Registry data suggests a fall in the overall number of firms providing residential conveyancing services over the past 10 years, with 7,779 active firms being recorded in 2005 but only 5,357 in 2015. Over the same period, the top 1,000 firms have seen a 24% increase in their average volume of transactions (734 in 2015 compared with 591 in 2005).[311,312]

3.219 Some possible barriers to expansion and consolidation for solicitor firms have been suggested, although none of these barriers appears to be substantial. For example, stakeholders have mentioned that insurance may be an issue in some cases where a record of frequent changes in business structure may make a practice less attractive to insurers. Stakeholders have also suggested that conflicts in referral arrangements may be an issue in some cases. Evidence from a small-scale survey cited by the SRA suggested that the great majority of practices that contemplated a merger in 2012 did not ultimately proceed with a merger.[313] However, the main concerns were not specific to the legal services sector and were around the purchase price being inadequate, issues around whether it would be a good fit with the existing management structure and the need to observe the Transfer of Undertakings (Protection of Employment) Regulations.[314]

3.220 Research from the LSB and from stakeholder discussions suggests that for-profit unauthorised providers cover only a small proportion of the sector despite the fact that they appear to bring some potential benefits to consumers in the form of:

- innovative new services;
- accessible services; and

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[310] SRA (2013), *Risk Outlook 2013: The SRA's assessment of key risks to the regulatory objectives*, p6.
[311] Search Acumen (2016), *Search Acumen Conveyancing Market Tracker Q4.*
[312] Other reasons for closures include change of status and 'other',
[313] SRA (2013), *Risk Outlook 2013: The SRA's assessment of key risks to the regulatory objectives*, p18.
[314] RPI (2013), *Understanding barriers to entry, exit and changes to the structure of regulated legal firms,* pp63–65.

- competitive pricing structures.[315]

3.221 We held a number of meetings with unauthorised and authorised non-solicitor providers across a range of different areas of law to discuss any barriers to expansion they face. An important theme raised by a number of non-solicitor providers was that limited consumer awareness and trust limited their opportunities to expand their provision of services. This lack of expansion is of concern where it means that consumers are not accessing better value for money offers and providers are not being driven to innovate.

3.222 In our wills and probate services case study, we found that despite having lower prices and apparently offering similar quality, unauthorised will writers did not appear to be growing their market share. They currently provide around one in ten wills, which is a similar proportion to that found in 2010. Similarly, in our commercial law services case study, we note LSB research suggesting that the presence of unauthorised providers in commercial law is very low (under 5%).

3.223 In our wills and probate services case study, we found that specialist will writers considered that being unauthorised raised trust issues and gave consumers the impression that their services were of lower quality. Research from IFF shows that some consumers did not choose unauthorised providers due to concerns over quality, as discussed in paragraph 3.51.

3.224 Our commercial law services case study found that it was hard for firms to attract small businesses to take up new services due to a lack of awareness and consumer engagement. One recent entrant, which had offered an initial package of free template documents and one free consultation to small businesses, found that this was not a viable approach. The cost of raising awareness made targeting larger businesses more cost-effective and productive.

3.225 HR consultancies appear to have had more success in employment law, possibly by being able to add on legal services to their HR offering and therefore not facing the same awareness issues. These types of firms have been growing in recent years and have taken business from solicitors and other authorised providers, which do consider them to be competitors. In 2015, around 15% of small businesses with 10 to 49 employees had a contract in place with an HR consultancy. This number is around 3% for microbusinesses with two to nine employees. The presence of HR companies also seems to have had an impact on innovation by authorised providers.

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[315] LSB (2016), *Mapping of for-profit unregulated legal services providers*, p1.

There are some large 'traditional' firms that have now adopted similar models to HR consultancies and online document providers, for example Irwin Mitchell and Weightmans. Unbundling in employment law has also become quite common.

3.226 Similarly, in conveyancing, CLC analysis of Land Registry transaction data from September 2015 shows that CLC-licensed practices carried out 10.3% of transactions for value.[316] CLC firms are also relatively well represented among the larger conveyancing firms, with two of the top five firms, in terms of transaction numbers, being CLC-regulated.[317] This may be the result of the intermediaries in this sector who do not have the same awareness issues as consumers. Conveyancers did report anecdotally that individual consumers lack awareness of them.

Conclusions on barriers to entry, exit and expansion

3.227 There do not appear to be any particular barriers to entry and exit in the sector. However, barriers to expansion for providers other than solicitors do appear to exist. This has been largely due to a lack of awareness and trust of these different types of provider. In paragraph 3.48 we noted the much higher awareness that consumers have of solicitors than of other providers. We also noted that solicitors were more likely to be approached for advice and to play a diagnostic role than other types of provider. These factors, together with the limited expansion by providers other than solicitors, suggest that there are some limitations to the level of competition between different types of provider which may prevent better value for money and more innovative offerings coming to the attention of consumers.

The consumer approach to choosing a provider

3.228 For individual consumers, the CMA's survey found that the most used approach for identifying a legal services provider was recommendations from family and friends (30%). While this may be a practical approach, our qualitative surveys suggest that these recommendations are based largely on individual experiences rather than being informed by a review of what is on offer in the sector.[318]

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[316] LSB (2016), *Evaluation: Changes in the legal services market 2006/07 - 2014/15*, p36.
[317] The top five has been established by looking at monthly Land Registry data over the past year.
[318] IFF Research (2016), *Market study into the supply of legal services in England and Wales – consumer findings*, commissioned by the CMA.

3.229 Use of recommendations is closely followed by personal experience of having used a provider before (29%). The next most popular approach was a recommendation from a professional third party (17%). Further, across all respondents to the survey, 82% used only one approach for identifying or comparing providers.[319] This suggests limited use of direct information from the provider on price, service and quality.

3.230 Looking at the type of information that consumers actually use in choosing a provider, direct price and quality information are not the most prevalent. Instead, the most commonly used factor is the provider's location (used by 49%), followed by feedback/recommendations from family or friends (used by 42%).[320] Direct factors relating to price and quality were less commonly used: specifically, by 34% of individual consumers in relation to costs and by 38% in relation to reputation.[321] This is despite the fact that, overall, individual consumers do not place as much importance on location as they do on price and quality; 61% said location was an important factor when they chose their legal services provider, while 62% said cost was important, and 77% said reputation was important.

3.231 For small businesses, the largest group in the CMA survey were those that 'ask a contact' to recommend a provider and then typically follow this recommendation.[322] For those who did ask a contact when they encountered a legal issue, the contact was either someone they knew with experience of working in the legal profession or a contact (such as a friend, relative, professional peer or accountant) with experience of using a particular legal services provider. Typically, once given this recommendation was followed.

3.232 The importance of recommendations has been a consistent finding over time. For example, the SRA commissioned qualitative research in 2010 which found that:

> Recommendation by word of mouth plays a key role in decision-making, and most had chosen their provider following a recommendation from a trusted source. Recommendations came

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[319] IFF Research (2016), *Market study into the supply of legal services in England and Wales – consumer findings*, commissioned by the CMA, p12.
[320] Note that a recommendation may contain estimates of price and some feedback on quality.
[321] IFF Research (2016), *Market study into the supply of legal services in England and Wales – consumer findings*, commissioned by the CMA, p19.
[322] The study identified four approaches for small businesses seeking legal advice. The first group, 'review the market' approach the market themselves and review providers (with differing levels of sophistication). The largest group were those who asked a contact to recommend a provider. Some combined these two approaches. The final group, 'make one contact', contacted a non-solicitor provider like an insurance company or trade body. Research Works (2016), *CMA Legal Services, Qualitative Research Report*, commissioned by the CMA, p25.

from either family, friends, and personal network, or alternatively from other trusted professionals.[323]

3.233 Our quantitative survey with individual consumers found that only 22% of respondents made a comparison between providers before making their choice.[324] There are some differences by area of law. For example, our wills and probate services case study reported that there were lower levels of shopping around among customers of wills, trusts and probate services compared with residential conveyancing and family law.[325] However, in general, the level of shopping around is low.

3.234 Again, this has been a consistent feature over time. The lack of shopping around by consumers was highlighted in the SRA 2010 qualitative survey which found that: 'There was no real evidence of participants choosing between two alternative providers, thus little or no evidence of consumers proactively 'shopping around' and comparing the market.'[326]

3.235 The reasons given for not comparing show the importance consumers currently place on recommendations and previous experience. The most prevalent reasons for not comparing were that the respondent trusted the recommendation given (36%) or had previous experience of using the provider (35%). Some of the other reasons noted by respondents were that they thought it would be too difficult to do (3%) or too time-consuming (3%); the legal matter was urgent (3%); or that providers were all much the same/equally competent (3%).[327]

3.236 Our qualitative survey with small businesses identified a similar pattern of behaviour. The largest group in that survey were those who asked a contact to recommend a provider.

Conclusions on the consumer approach to choosing a provider

3.237 Relying on recommendations rather than comparing providers is unlikely to drive effective competition in the sector and may make it more difficult for new providers to compete. Our wills and probate services case study reports that just one in eight consumers said value for money was their main reason for

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[323] GfK NOP Social Research (2010), *Research on Consumers' Attitudes towards the Purchase of Legal Services*, commissioned by the SRA, p3.
[324] IFF Research (2016), *Market study into the supply of legal services in England and Wales – consumer findings*, commissioned by the CMA, p11.
[325] YouGov (2016), *Legal Services Consumer Tracker 2016*, commissioned by the LSCP.
[326] GfK NOP Social Research (2010), *Research on Consumers' Attitudes towards the Purchase of Legal Services*, commissioned by the SRA, p11.
[327] IFF Research (2016), *Market study into the supply of legal services in England and Wales – consumer findings*, commissioned by the CMA, p25.

having chosen their provider.[328] It appears that consumers are therefore not disciplining providers in the sector through making informed purchasing decisions. The use of recommendations, combined with the lack of awareness of different types of provider and the diagnostic role of solicitors can also make the sector very slow to change.

Conclusion

3.238 Competition in the legal services sector for consumers and small businesses is not working well. Our findings suggest that the problems in the sector arise from information issues that weaken the ability of consumers and small businesses to drive competition through making informed purchasing decisions.

3.239 Studies over a number of years have shown that knowledge and awareness of the legal services sector, including whether issues are 'legal' and the different types of provider are low. This creates barriers to engagement. When consumers do engage, they face inherent difficulties in judging quality. In addition, a lack of upfront information[329] from providers on the price, service and quality of their offering exacerbates the information asymmetry between providers and consumers.

3.240 This makes assessment of value for money more costly[330] and may contribute to a reliance on recommendations from family, friends and peers or on previous experience to choose a provider.[331] While this may be a practical approach, our qualitative surveys suggest that these recommendations are based largely on individual experiences rather than being informed by a review of what is on offer in the sector.[332] The lack of assessment of value for money softens competition and incentives for innovation, both within and between types of provider.

3.241 Evidence outlined in paragraph 3.174 suggests that these information issues contribute to unmet legal need.[333] The lack of transparency in the legal

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[328] IFF Research (2011), *Research report: Understanding the consumer experience of will writing services*, prepared for LSB, LSCP, OFT and SRA.
[329] Only 17% of providers in research commissioned by the LSB made their prices available on their website.
[330] Our qualitative surveys with consumers and small businesses showed that in order to be able to compare providers on the value for money of their offerings time would have to be spent in seeking out relevant information.
[331] IFF Research (2016), *Market study into the supply of legal services in England and Wales – consumer findings*, commissioned by the CMA; Research Works (2016), *CMA Legal Services, Qualitative Research Report*, commissioned by the CMA.
[332] IFF Research (2016), *Market study into the supply of legal services in England and Wales – consumer findings*, commissioned by the CMA.
[333] For example, for around 27% of issues where no action was taken the main reason was thinking that nothing could be done. Further, inaction for one in 20 issues was explained by respondents' fear of costs, Ipsos MORI

services sector and the limited extent to which consumers compare between providers (only 22% did so in the CMA's quantitative survey of consumers)[334] also allows some providers to price discriminate without necessarily losing customers.[335]

3.242 The price dispersion resulting from the lack of transparency means that some consumers are paying more than they need to for services where cheaper prices are available. The LSB's pricing research suggests that the price of a standard simple will may vary from around £110 to £200. The price for a complex divorce with a dispute over assets may vary from around £1,260 to £3,000.[336]

3.243 In addition to the adverse impacts on demand and price, consumers and small businesses are also losing out in the long term. Innovation in the sector is limited, with a recent study describing the legal services sector as one of stability, rather than change.[337] This is despite making the regulatory regime more flexible in terms of the types of businesses which can operate in this sector through the introduction of the ABS regime and despite the presence of some innovative unauthorised providers.

3.244 The evidence set out in this chapter suggests that the sector is unlikely to resolve the existing information issues by itself due to the barriers to expansion that are faced by transparent and innovative providers. As discussed above, when consumers engage in the market, either for a diagnosis of their issue or to find a provider, they have limited awareness of the different types of providers and hence may not even consider their offering. This initial lack of awareness is unlikely to be overcome following engagement as a result of the limited level of shopping around and the reliance on recommendations and previous experience to choose a provider. This limits the competitive pressure that might arise from a new and innovative provider and also limits challenges to the existing norm of low transparency. We explore how to encourage greater competition in our remedies in Chapter 7.

(2016), *Online survey of individual's handling of legal issues in England and Wales 2015*, commissioned by the Law Society and the LSB, p6.

[334] IFF Research (2016), *Market study into the supply of legal services in England and Wales – consumer findings*, commissioned by the CMA.

[335] 65% of providers in the LSB's research reported pricing on a case-by-case basis.

[336] OMB Research (2016), *Prices of Individual Consumer Legal Services: Research Report*, commissioned by the LSB.

[337] Enterprise Research Centre (2015), *Innovation in legal services*, a report for the SRA and the LSB.

4. The effectiveness of consumer protection rules and regulations

Introduction

4.1 The second area of focus in our market study has been on whether information asymmetries and other features of the legal services sector lead to consumer protection concerns. In light of these concerns, we have explored whether consumer protection is being adequately delivered through existing regulations and redress mechanisms. In this section, we first set out the key issues that we have considered, before providing an overview of the justifications for sector-specific regulation of legal services. We then evaluate how effective sector-specific regulation is, where possible using evidence of outcomes for the consumers of authorised and unauthorised providers (see paragraph 4.13 below).

Key issues

4.2 In the interim report, we indicated that consumers lacked awareness about the different levels of protection offered by authorised and unauthorised providers, but did not find evidence that this was causing significant harm to consumers in practice. We observed that there were very few complaints made to Citizens Advice or TSS about legal services providers generally (whether authorised or unauthorised).

4.3 In response to our interim findings, certain stakeholders raised concerns that we may be underestimating potential risks around the use of unauthorised providers. For instance, both the LSB and the Law Society commented that an absence of evidence does not necessarily indicate that there is no problem, especially around the quality of legal advice.[338] We have considered this issue further. However, we note the lack of available evidence in relation to the unauthorised part of the sector.[339]

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[338] The LSB submitted that consumers face material risks such as defective wills when using unauthorised providers based on the evidence and analysis in the investigation into will writing in 2011. The Law Society submitted that its members have reported problems arising out of unauthorised providers' provision of will-writing services. It also noted that that there is a potential under-reporting of the risk of unauthorised providers given the limited avenues to pursue a complaint or concern.

[339] This is due to a number of reasons. A general issue is that there is limited direct data/evidence on quality of advice. As a result, regulatory bodies tend to rely on proxies such as complaints data to evaluate the quality of advice of providers. This in turn leads to two additional issues. First, data about these proxies is not typically collected in a way that distinguishes issues by types of provider (eg authorised or unauthorised). Secondly, no public body is responsible for capturing relevant information on these proxies for the unauthorised part of the sector in a comprehensive way.

4.4 In light of the above, we focused in particular on whether consumers face additional consumer protection risks when using unauthorised providers because of differences in consumer protection regulations, including redress.

4.5 To assess this issue, we have considered the effectiveness of regulation aimed at protecting consumers which relates to:

(a) the clarity of key information provided to consumers after first instructing a provider;[340]

(b) the quality of legal advice;

(c) prohibited sales/commercial practices; and

(d) redress mechanisms.

4.6 Within these areas, our analysis has focused on the effectiveness of baseline consumer legislation and the extent to which sector-specific consumer protection measures offered by authorised providers (and self-regulated providers) afford protection above and beyond baseline consumer law. Where possible, we have also looked at evidence of outcomes for authorised and unauthorised providers.

The justifications for sector-specific regulation of legal services

The role of baseline consumer legislation

4.7 General consumer protection legislation establishes a baseline level of protection for consumers of legal services providers. Key relevant aspects of this legislation include requirements for: *(a)* the provision of certain minimum price/service information; *(b)* the provision of goods and services to meet certain minimum standards; and *(c)* prohibitions against the use by providers of certain prohibited commercial practices. A more detailed explanation of the relevant consumer protection legislation is set out in Appendix E - Overview of the consumer law framework.

4.8 Individual consumers can enforce this legislation to seek redress by suing their legal services provider for breach of any applicable provisions, for instance, if the service is not provided with reasonable skill or care or the legal services provider supplies misleading information. In some instances, public enforcers such as the CMA and TSS can bring civil enforcement action against legal services providers with the aim of bringing the infringement of

[340] This includes any additional information provided to clients to update the terms of representation.

consumer protection law to an end. In serious cases, enforcers may prosecute complaints of consumer law breaches on behalf of affected individual consumers. Small businesses receive a level of protection under consumer protection legislation, but not to the same extent as individual consumers.[341]

The specific consumer protection issues that arise in the legal services sector

4.9 As described earlier in Chapter 2, there are some inherent characteristics of legal services that lead to greater potential for serious consumer protection issues and a greater imbalance between consumers and providers than in other sectors.[342] One such characteristic is that legal services are often purchased by individuals and small businesses at critical periods. For instance, an individual may seek legal representation in the context of a dispute over custody of a child, while a small business manager may seek legal advice on how to protect valuable intellectual property. If such consumers receive poor legal advice or service in these situations they can experience significant detriment, which it may not be possible to reverse or remedy in full.

4.10 Another relevant characteristic is that the provision of legal services requires expert knowledge and skills which consumers of legal services frequently do not hold. As such, consumers may be unable to judge the quality of legal services either before or even after purchasing the service.[343] As a result of this, consumers may, unknowingly, choose a provider that offers an insufficient or poor-quality service (ie under-provision), or may receive a higher level of quality of service than is needed (ie over-provision which includes paying for a 'gold-plated' service when a more basic offering would suffice). We note that individual consumers and to a certain extent small businesses tend to purchase legal services infrequently and so have reduced opportunities to learn from past experiences of engaging with the sector.

4.11 Due to the characteristics of legal services described above, the protections afforded to consumers under baseline consumer law may be insufficient in certain circumstances.[344] This is for several reasons:

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[341] Significant differences between the level of protection afforded to individual consumers and small business are flagged in the relevant places throughout this chapter.
[342] The LSB has stated that 'consumers face different types of problems in different areas of law, which will drive the type of legal service (activity) that is needed. The severity of the consequences resulting from unjust outcomes and whether or not they are reversible will also depend on the problem and area of law', in LSB (2013), *A blueprint for reforming legal services regulation*, p17.
[343] See further paragraph 2.3 and footnote 48 above.
[344] We note that there is an additional range of public interest considerations that further justify the need for sector-specific regulation in the legal services sector. These are set out in paragraph 2.4.

(a) First, consumers may not always be able to detect whether providers have failed to meet the standards established under baseline consumer law, because they either do not know their rights or find it hard to judge whether a professional has carried out an acceptable service. As a result, even where things do go wrong they may not enforce their rights by taking subsequent action against their provider.

(b) Second, the mechanisms for redress provided under consumer law may not always be appropriate to resolve the detriment suffered by consumers following an instance of poor service by their provider.

(c) Third, consumer law places no restrictions on who (whether an individual or entity) may provide legal services. As noted above, this may become an issue where the provision of high-quality legal services requires expert knowledge and skills.

How sector-specific regulation aims to address the consumer risks that arise in the legal services sector

4.12 In the legal services sector, there is a range of sector-specific regulations (and self-regulatory requirements) that aims to enhance the protections offered under consumer law in a proportionate way.[345] Many of these regulations cover similar issues to those addressed by consumer legislation. One such example is the rules that regulators (and self-regulatory bodies) have set on the information to be given to consumers. Some regulations aim to provide an additional level of protection such as those which are designed to ensure the competency of providers (eg qualification requirements) and the availability of adequate redress for consumers (eg requirements to hold adequate insurance). In this context, redress mechanisms may have the additional function of providing a feedback loop that may incentivise providers to improve the quality of their service offering. Finally, sector-specific regulations may establish compliance and enforcement measures designed to promote desired behaviours on the part of providers.

Overview of provider types by regulatory status

4.13 The focus under the current regulatory structure on regulated titles means that there are two overarching categories of provider: authorised and unauthorised. As discussed above, the nature of the consumer protection measures offered by a given legal services provider depends mainly on its regulatory status. Set out below is an explanation of the types of provider that

[345] See Chapter 6 for an in-depth discussion of regulatory costs.

fall within these two main overarching categories (see paragraphs 2.37 to 2.41 above):

(a) **Authorised providers**: this category includes providers regulated by one of the approved regulators (ie those regulators specified under the Legal Services Act 2007) which are authorised to provide one or more of the reserved activities. These providers are therefore subject to sector-specific regulations in addition to baseline consumer legislation.

(b) **Unauthorised providers**: although there is diversity among providers in the unauthorised part of the sector, in terms of consumer protection, they are all subject to the same baseline consumer legislation. Some unauthorised providers are regulated by non-Legal Services Act legal services regulators, for example, immigration lawyers regulated by the Office of the Immigration Service Commissioner (OISC). Other unauthorised providers have chosen to join one of the self-regulatory bodies that operate within the legal services sector, such as the Institute of Professional Will writers (IPW), the Institute of Paralegals (IoP) and the Society of Professional McKenzie Friends (SPMF), and may therefore be subject to additional consumer protection requirements.[346] In addition, some unauthorised providers are subject to regulation due to their activities in other sectors such as financial services, which may have an impact on the way in which they offer legal services.

The effectiveness of different aspects of consumer protection regulations

4.14 In this section we first consider the evidence on consumers' awareness of consumer protection measures. We then assess the four key areas of regulation aimed at protecting consumers identified in paragraph 4.5 above.[347] We start by considering the clarity of key information provided to consumers; next we discuss unfair sales practices; then we consider the quality of legal advice; and we finish with a discussion of redress mechanisms.

[346] Our case study into will writing found that around half of unauthorised providers in that area were members of a self-regulatory body. Where possible we identify whether the evidence presented relates to self-regulated providers.

[347] We recognise upfront that there are additional legal and regulatory areas that could be used to compare authorised and unauthorised providers which we have not assessed in this chapter. These include, in particular, the regulatory rules around client accounts and the legal concept of legal professional privilege. We have noted where relevant how these aspects interact with the four key areas covered in this chapter.

Consumer awareness of the level of consumer protection afforded to them

4.15 Consumer awareness of consumer protections is particularly relevant when comparing authorised and unauthorised providers. We would generally be less concerned about any differences in protection if consumers were aware of the differences in regulation between authorised and unauthorised providers (and the different levels of protection that may be afforded to them) and could therefore make informed choices.

4.16 In our qualitative survey of individual consumers,[348] we found that the majority of consumers were unaware of the regulatory status of their legal services provider. Most individual consumers assumed that their legal services provider was regulated and had not checked their regulatory status before engaging them. Others did not understand what it might mean for a legal services provider to be regulated. Consistent with our survey findings, an LSB report into 'unregulated providers'[349] found that a significant proportion of individual consumers were unaware of the regulatory status of their provider, and were therefore unaware of the protection they could expect to receive. In addition, many individual consumers simply assumed that their provider was regulated.[350] Our survey of small businesses found that small businesses also simply assumed that it was possible to obtain redress if things went wrong.[351]

4.17 This suggests to us that most consumers are not making informed decisions about the level of consumer protection that they require when purchasing legal services.[352] Where consumers subsequently experience a problem with their legal services provider, this can become an issue, particularly if they find that they do not have access to adequate redress.

4.18 The SRA submitted that many consumers rely on professional titles (eg 'solicitor') to help them choose a legal services provider. Qualitative research commissioned by the SRA in 2010 indicated that many individual consumers who purchase from solicitors do so because they believe that the 'solicitor

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[348] IFF Research (2016), *Market study into the supply of legal services in England and Wales – consumer findings*, commissioned by the CMA.
[349] Defined in the study as not regulated through the Legal Services Act 2007 or other statutory legal sector specific regulation.
[350] Economic Insight (2016), *Unregulated legal service providers: understanding supply side characteristics*, commissioned by the LSB. This study used the survey data from the study Ipsos MORI (2016), *Online survey of individuals' handling of legal issues in England and Wales 2015*, commissioned by the LSB and the Law Society.
[351] Research Works (2016), *CMA Legal Services, Qualitative Research Report*, commissioned by the CMA. The FSB also told us that small businesses tend to assume that all lawyers are regulated.
[352] One of the implications of this lack of awareness on the part of consumers is that they are not aware that there are different entry routes into the market with varying degrees of quality control, as well as different degrees of protection afforded.

brand' is a proxy for high quality and trustworthiness.[353] We consider that consumers' reliance on certain professional titles to select a legal services provider is not a cause for concern provided that they understand what they are getting for the solicitor brand, and the title is an accurate proxy for high-quality advice and service delivery and the availability of redress.

Clarity of information

4.19 It is important that consumers are provided with clear information when they engage with their legal services provider, to ensure that they understand the service that will be carried out, the costs involved and the consumer protections that are in place if things go wrong.

4.20 This section covers the following issues:

(a) Differences in regulation by provider type.

(b) Whether those provisions and regulations have been effective at ensuring clarity of key information.

(c) Whether key information could be provided more clearly to consumers.

4.21 There are two main stages at which legal services providers may provide key information to consumers:

(a) the 'search' stage (for example, upfront on a website); and

(b) the 'instruction'[354] stage (ie when a client engages with a legal services provider and includes any information provided over the course of the legal matter).

4.22 As noted in our analysis of competition in Chapter 3, it is important that consumers obtain clear information during the search stage so that they can make informed comparisons between providers and drive effective competition. However, consumer protection risks are of particular concern if there is a failure to provide key information clearly at the stage of instruction. For example, if consumers do not receive clear information about the likely costs of legal advice, there is a much greater risk that consumers face costs that they did not expect to incur and, in extreme cases, are unable to meet.

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[353] See GfK NOP (2010), *Research on Consumers' Attitudes towards the Purchase of Legal Services*, commissioned by the SRA. The sample consisted of 40 in-depth interviews among recent individual purchasers and individuals who intended to purchase.
[354] We note that legal services providers such as solicitors refer to this stage as the 'engagement' stage.

We have therefore focused our analysis of how key information is provided to consumers at the instruction stage.

What consumer protection regulations are in place to ensure clarity of information on instruction?

4.23 Legal services providers are subject to different sets of requirements that relate to client care, depending on their regulatory status; these requirements are set out in further detail below.[355]

Requirements under baseline consumer law

4.24 General consumer protection law includes requirements around information on prices and the prominence of information about the service to be carried out. This applies to all legal services providers (authorised and unauthorised). However, different requirements may apply depending on whether the client is an individual consumer or a small business.

4.25 The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (CCRs)[356] require legal services providers to provide their clients (individual consumers) with certain specified pre-contract information. The purpose of this is to allow individual consumers to make informed choices. The type of pre-contract information legal services providers should supply, varies according to the type of contract, before individual consumers are bound by contract.[357] This information includes (in addition to the contact details of the legal services provider):

(a) the main characteristics of the service to be undertaken;

(b) the best possible information about the overall cost of the matter and if there are likely to be any disbursements (eg court fees);

(c) arrangements for payment, performance and the time that the legal services provider will take to perform the service; and

[355] See also Appendix F for a comparison of consumer protection standards required of providers by regulatory status.
[356] We note that these requirements only apply if the client is an individual consumer. If the client is a small business, then the Provisions of Services Regulations 2009 (PSRs) apply. The PSRs apply to both business-to-consumer transactions and business-to-business transactions. For further details about the information that must be provided under the PSRs, see paragraphs 61–65 of Appendix E: Overview of the consumer law framework.
[357] See paragraphs 35–47 of Appendix E: Overview of the consumer law framework.

(d) the length of the contract if fixed, or if the contract is of indeterminate duration or will be automatically extended, the conditions for terminating that contract.[358]

4.26 Where legal services providers have complaints-handling policies, information in relation to their complaints-handling policies should also be provided.

4.27 The Provision of Services Regulations 2009 place a similar, though less extensive, obligation on legal services providers to supply clients (including business clients) with key information about their business and the service offered, including the main features of the service and the price of the service.

Sector-specific regulations

4.28 Sector-specific regulations impose requirements[359] on authorised providers concerning how and when they should provide clients with key information during the stage of instruction. Authorised providers are required to give their clients key information on service, costs and how to complain in writing.[360] These requirements apply regardless of whether the consumer is an individual or a small business.

4.29 Providers typically comply with these regulatory requirements by giving their clients a letter that is known as a 'client care letter'.[361] Representative bodies and regulators have provided guidance notes on what information needs to be included within such letters and how best to convey relevant information. In a practice note about client care letters, the Law Society sets out the requirements for providers (see Figure 4.1).[362]

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[358] This information applies to on-premises contracts (ie when a legal services provider and a consumer enter into a contract for the provision of legal services at the legal services provider's offices). However, the information requirements vary if the contract is a distance contract or an off-premises contract (for further details about the information that must be provided in each of these situations, see paragraphs 35 – 47 of Appendix E: Overview of the consumer law framework.

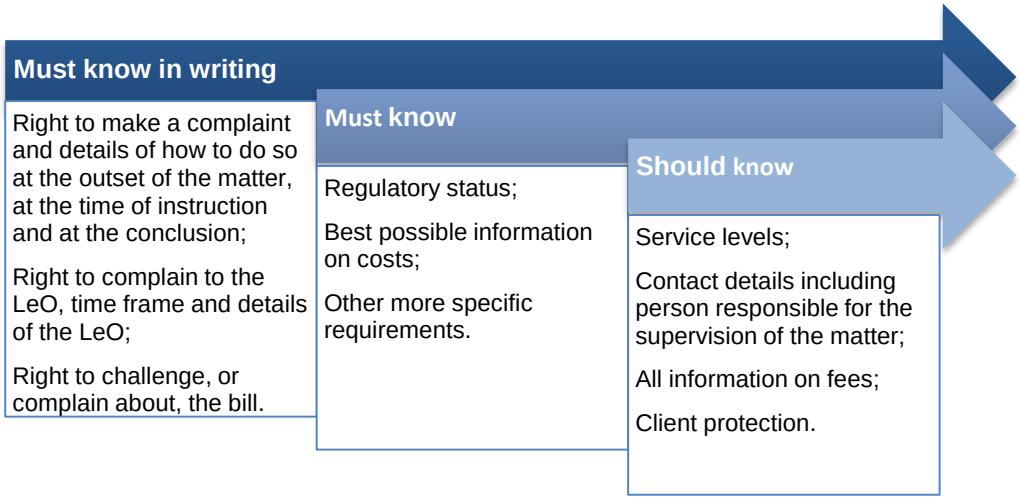
[359] Usually set out in the approved regulators' handbooks.

[360] We note that there is discretion in the way in which this information is given to clients. That is, information on how to complain does not need to be incorporated in the client care letter, but it can provided in a separate leaflet or letter.

[361] Although immigration advisers regulated by the OISC fall into our definition of unauthorised providers, we note that the OISC requires its regulated providers to provide all prospective clients with a client care letter and that the immigration adviser should ensure that the prospective client understands the contents of their client care letter before being asked to agree it. The client care letter should include similar information to that of the authorised providers.

[362] The Law Society (2016), *Practice note: Client care information*. The BSB has also published guidance on how to convey key information and a template client care letter for use by barristers representing public access clients. The template summarises the work the barrister will carry out, fees for the work and details of how to complain while the guidance serves as annex containing more detailed information on these subjects.

Figure 4.1: Information requirements, Law Society practice note on client care information



Source: CMA, based on The Law Society (2016), *Practice note: Client care information*.

4.30 Authorised providers are also under a general obligation to provide their clients with the 'best possible information' on matters relating to service, cost and how to complain. For example, in relation to information on costs, the SRA Handbook requires that clients receive the best possible information about the likely overall cost of their matter, not only when first instructed but also as appropriate as their matter progresses.[363]

4.31 The Law Society states in its practice note about client care information that giving the best possible information on costs includes:

(a) the basis for the fixed fee or the relevant hourly rates and an estimate of the time to be charged;

(b) whether rates may be increased during the period of the retainer;

(c) expected disbursements and likely time frames for those being due; and

(d) potential liability for others' costs, where relevant.

4.32 Another requirement set out in the practice note is that legal services providers agree service levels with the client; for example, the type and frequency of communications and the respective responsibilities of the provider and the client.[364] The Law Society practice note also flags that

[363] Outcome 1.13, SRA Handbook. Other examples include the CLC 'Overriding Principle 3 – Act in the best interest of clients' includes principles to achieve the outcomes. At (3J) 'You provide the Client with all relevant information relating to any fee arrangements or fee changes' and at (3M) 'You promptly advise Clients of any significant changes to projected costs, timelines and strategies'.
[364] For example, the service provider will review the matter regularly, the client should provide all documentation required to complete the transaction in a timely manner, etc.

providers should consider whether their clients are vulnerable or have any special needs and ensure that they provide information in an appropriate way.

Self-regulatory requirements

4.33 As noted in paragraph 4.13, some unauthorised providers join self-regulatory bodies which may impose requirements on their members to provide clients with relevant information on cost and service at the time of instruction. Typically, these requirements apply regardless of whether the consumer is an individual or a small business.

4.34 For example, the IPW code of practice states that letters of engagement (ie the IPW's equivalent of the client care letter) should be agreed with the client. Letters of engagement must be provided to clients in writing and must include details such as the right of the client to cancel the contract, all relevant information on fees, timescales within which the client can expect completion of any work instructed and details on how to complain.[365,366]

4.35 Some unauthorised providers are active in other sectors and may be subject to non-legal services regulations. As a result, these providers may be required to provide clients with specified information when providing activities that are ancillary to legal advice or representation. For example, in our case study into employment law services, we found that HR consultancies which offer employment legal advice to small businesses also tend to offer insurance products at the same time and, as a result, may be regulated by the Financial Conduct Authority (FCA).[367] We understand, however, that the requirements which the FCA may impose on a firm due to its activities in the financial services sector do not apply when that firm is offering legal advice.[368]

Are authorised providers better than unauthorised ones at ensuring consumers receive clear information?

4.36 Although general consumer protection overlaps significantly with sector-specific regulations in relation to individual consumers, monitoring and enforcement tools are greater for authorised providers (as noted in

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[365] IPW Code of Practice, accessed on 1 November 2016.
[366] Other examples include the PPR code of conduct that requires self-regulated providers to ensure that their clients are able to make informed decisions about the work being undertaken and the cost of the work. It also requires providers to keep their clients regularly informed as to the progress of the work.
[367] For example, Peninsula is an HR consultancy that is authorised and regulated by the FCA for the sale of non-investment insurance contracts.
[368] According to the FCA Handbook, a mainstream regulated activity under the FCA-regulation does not include will writing, estate planning, trusts, tax planning or advice, accounting or lasting power of attorney.

paragraphs 4.90 to 4.147 below). This may lead to different outcomes for clients of authorised and unauthorised providers.

4.37 We considered evidence on clarity of information from a recent survey of individual consumers commissioned by the LSB and the Law Society.[369] Our analysis of these survey findings indicated that authorised and unauthorised providers provided similar levels of cost and service information. Table shows that, although individual consumers of authorised firms appeared to be marginally more satisfied about the clarity of information received compared with those who had used unauthorised providers, this difference was small and not statistically significant.

Table 4.1: Clarity of information: authorised vs unauthorised providers

Thinking about the different aspects of service provided by your legal services provider, please say how satisfied or dissatisfied, if at all, you have been with each aspect of service.	*All**		*Issues where respondents obtained advice from authorised providers†*		*Issues where respondents obtained advice from (paid) unauthorised providers‡*	
	Satisfied	*Dissatisfied*	*Satisfied*	*Dissatisfied*	*Satisfied*	*Dissatisfied*
The clarity of information about the service you would be provided.	79	6	84	5	76	7
The clarity of information on the costs to be charged	66	5	78	6	69	4
The way in which things were explained so that they were easily understood.	78	6	83	6	78	6

Source: CMA analysis based on the survey data from Ipsos MORI (2016), *Online survey of individuals' handling of legal issues in England and Wales 2015*, commissioned by the LSB and the Law Society, questions F40 (loops 1-3).
* 'All' includes authorised and paid unauthorised providers as defined below as well as unpaid unauthorised providers such as Citizens Advice and Trading Standards and other providers such as immigration advisers and claims management companies.
† 'Authorised providers' includes: solicitor, barrister, licensed conveyancer, notary, trade mark attorney, costs lawyer, probate practitioner or a legal executive. It excludes immigration advisers and claims management companies.
‡ Paid unauthorised providers includes: specialist will writer, bank/building society, employment adviser, McKenzie Friend, online service/company for advice, business/human resources consultancy, financial adviser, Trust Corporation or other lawyer. It excludes immigration advisers and claims management companies.
Note: Satisfied includes both 'very satisfied' and 'fairly satisfied' and dissatisfied includes both 'very dissatisfied' and 'dissatisfied'. The respondents could have also answered 'neither satisfied nor dissatisfied', 'don't know', or 'not applicable'. This survey explored up to three issues experienced by each of the 8,192 respondents who had experienced at least one issue in the previous three years. Therefore, the percentages are relative to issues and not to respondents.

4.38 Table 4.2 shows that, although authorised providers appeared to be marginally better at providing information on costs to clients when first instructed, again this finding was not statistically significant. For most legal issues, individual consumers did not consider that they were told how to complain by their provider. This result may underestimate the proportion of

[369] We used the LSB survey for this purpose because the smaller sample size in our own quantitative survey of individual consumers did not allow us to distinguish between authorised and unauthorised providers. We note that the respondents of this survey were drawn from an online panel. There are a number of caveats around the use of online panels and therefore, the results should be read carefully. Source: Ipsos MORI (2016), *Online survey of individuals' handling of legal issues in England and Wales 2015*, commissioned by the LSB and the Law Society.

individual consumers who were told about how to complain as some individuals may have ignored, forgotten or failed to process such information.[370]

Table 4.2: Information received when first instructed: authorised vs unauthorised providers

%

When the professional service provider was FIRST instructed to go ahead with your matter which, if any, of the following were you told about?	*All*	*Issues where respondents obtained advice from authorised providers*	*Issues where respondents obtained advice from (paid) unauthorised providers*
The likely cost	42	62	49
Additional costs	20	29	12
How to complain if things go wrong	14	14	16

Source: CMA analysis based on the survey data from Ipsos MORI (2016), *Online survey of individuals' handling of legal issues in England and Wales 2015*, commissioned by the LSB and the Law Society, questions F26 (loops 1-3).
Notes: See Table 4.2 for the definitions of authorised and unauthorised providers. The differences are not statistically significant because the sample base for unauthorised providers are relatively smaller than for authorised providers.

4.39 Our analysis of the survey results suggests that, although authorised providers appeared to perform marginally better than unauthorised providers at providing clear information on costs, the difference is very small and not statistically significant. Furthermore, it did not translate into a higher average rate of consumer satisfaction in relation to the overall quality of service for clients of authorised providers. We found that 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.

Can key information be provided more clearly?

4.40 A review of the complaints made against authorised providers reveals that one of the most common reasons to complain is a lack of clarity around costs.[371] Approximately 8% of complaints made to the LeO were in relation to an alleged failure to provide information on costs, with another 9% of complaints relating to an allegation of excessive costs.[372] This suggests that a significant minority of individual consumers do not have a clear understanding of what their final bill might look like.

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[370] We note in this context the joint frontline regulator/LSCP study described in paragraphs 4.45–4.47 below which found that individual consumers felt that it was less important for providers to give information about complaints procedures upfront. Optimisa Research (2016), *Research into client care letters: Qualitative research report*, Prepared for: BSB, CILEx Regulation, CLSB, CLC, ICAEW, IPReg, LSCP, Master of Faculties and SRA.
[371] We analysed first-tier and second-tier complaints from a variety of bodies, including the SRA, the CILEx Regulator and the LeO.
[372] In addition to lack of clarity around costs, the most common reasons for complaints to be made to LeO in 2014/15 were: failure to advise (18%), failure to follow instructions (18%), delay (9.2%), failure to progress (8.5%), failure to keep informed (7.8%), failure to reply (6.7%), among other issues.

4.41 Evidence from our quantitative survey[373] indicates that issues around the clarity of information do not tend to relate to initial quotations. Only 7% of individual consumers in our survey reported being dissatisfied with the clarity of their initial cost estimate or quotation. In addition, the vast majority of individual consumers who had received cost information upfront and whose case had concluded (89%) reported that the final amount they paid was calculated on the same basis that they had agreed with their provider upfront (ie if the costs had been calculated as a fixed fee, the final work was also calculated as a fixed fee rather than as an hourly rate, etc).[374]

4.42 A higher proportion of individual consumers had issues with the way that their provider informed them of changes in or the progress of their legal matters, including that:

(a) 13% of individual consumers were dissatisfied with the level of explanation given by their provider about the progress of and key developments in their case;

(b) 9% were dissatisfied with the clarity of information on any changes to the service provided; and

(c) 7% were dissatisfied with the clarity of information relating to changes to the initial cost estimate or quotation they had been provided.[375]

4.43 While our survey indicates a high overall level of satisfaction with quality of service and/or advice, it also suggest that some individual consumers were not confident that their legal services provider (including a small proportion of unauthorised providers) had clearly explained:

(a) whether their provider was regulated or not (13%);

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[373] 76% of respondents in our survey used solicitors and therefore, used authorised providers.
[374] We also asked individual consumers the following question: 'Thinking about the final amount you paid for the work done by the legal services provider in relation to your legal matter, was this more than you expected to pay, the same as you expected to pay or less than you expected to pay?' In response to this question, 71% of respondents said that they paid what they expected to pay, 13% paid more than expected and 12% paid less. We note, however, that since individual consumers do not frequently purchase legal services and (as discussed in Chapter 3) may not have access to publicly available pricing information, they may not be well-placed to have a good understanding of what they should expect to be paying.
[375] Similar findings were obtained in the LSCP survey conducted of individual consumers in 2015. In addition, the LSCP survey found that 11% of the individual consumers were dissatisfied with the communication while the matter was progressing and 12% were dissatisfied with the timely way in which the matter was dealt with. The 2016 survey commissioned by the LSB and the Law Society found that, for 6% of issues, individual consumers were dissatisfied with the clarity of information about the service provided, 6% were dissatisfied with the way in which things were explained and 5% were dissatisfied with the clarity of information on the costs to be charged. Sources: YouGov (2015), *Tracker Survey 2015 – data tables for recent users* and Ipsos MORI (2016), *Online survey of individuals' handling of legal issues in England and Wales 2015*, commissioned by the LSB and the Law Society.

(b) their right to complain and how complaints can be made (18%); or

(c) the potential outcomes from complaining (23%).

4.44 To contextualise these results we have analysed whether there are any differences between areas of law. We found that respondents who purchased conveyancing or will-writing services were more likely to be satisfied than the sample average across a range of measures, including clarity of information on the initial cost estimate.[376,377]

Effectiveness of client care letters

4.45 Some stakeholders have raised concerns that the client care letters used by authorised providers to communicate key information to their clients were not working effectively. We analysed a small sample of client care letters from different providers and found that solicitors, in particular, appeared to be using such letters as a tool to fulfil regulatory compliance obligations, rather than trying to express those requirements in a user-friendly manner.[378]

4.46 A qualitative study carried out jointly by the frontline regulators and the LSCP[379] identified several issues that arise in relation to the use of client care letters, including that such letters tended to be too lengthy and legalistic and did not contain adequate signposting. That study found that client care letters were an important way for individual consumers to be informed of key information at the start of the legal matter, but that they were not achieving that objective in the best possible way. For instance, individual consumers did not consider most of the information presented in client care letters to be relevant to their needs.[380] The study also identified key questions and

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[376] Although our own survey into individual consumers has a smaller sample size, the 2016 survey commissioned by the LSB and the Law Society also found similar results in relation to the areas of law above-mentioned. The LSB and the Law Society survey also found that individual consumers whose legal issues were related to disputes with neighbours, consumer problems, problems getting the right welfare benefits, or homelessness were less likely to be given information about the costs and the service to be provided. We note, however, that those legal areas that performed worse than average were also more likely to be provided by not-for-profit providers such as CAB and other advice agencies. CMA analysis of the survey data from the study Ipsos MORI (2016), *Online survey of individuals' handling of legal issues in England and Wales 2015*, commissioned by the LSB and the Law Society.

[377] It is not clear why respondents who purchased conveyancing or will-writing services were more likely to be satisfied across these measures. One possible explanation is that providers of these services make more price information available at the search stage for these services.

[378] We note that this finding is based on a small sample size.

[379] This study involved a series of focus groups, face-to-face in-depth interviews and a workshop. Source: Optimisa Research (2016), *Research into client care letters: Qualitative research report*, Prepared for: BSB, CILEx Regulation, CLSB, CLC, ICAEW, IPReg, LSCP, Master of Faculties and SRA.

[380] The terms of business and cancellation rights, complaints information, data protection information and regulatory information were reported as less relevant information which in some cases could be provided separately. By contrast, consumers considered that the most important information contained in the client care letter was the providers' contact information, the scope of the agreed work, fees and timescales.

answers that should be covered in client care letters, which are set out in Figure 4.2.

Figure 4.2: Key information to be contained within client care letters

What is going to happen?	How much is it going to cost?	When is it going to happen?	What do I have to do?	How do I get in touch?
• Provide clear guidelines on the scope of the agreed work • Confirm what the legal services provider will and will not do	• Provide an estimated cost breakdown • Provide an explanation of potential additional costs that could be incurred	• Explain likely timescales for the case	• Provide clarity as to any information or action required by the consumer during the legal matter	• Confirm named contact details • Set the rules of engagement for contact during the legal matter

Source: CMA, based on Optimisa Research (2016), *Research into client care letters: Qualitative research report*, Prepared for: BSB, CILEx Regulation, CLSB, CLC, ICAEW, IPReg, LSCP, Master of Faculties and SRA.

4.47 The LSCP/regulator study concluded that information should be set out in plain and concise language, prioritised and personalised as appropriate, and with any consumer action points highlighted. Costs should be presented in a clear way and there should be a concise breakdown of the costs on the first pages of the letter, and if possible, costs should be presented in a table. This is in line with other studies that have been carried out on how to best present key information to consumers in other sectors.[381]

Conclusion on clarity of information

4.48 We conclude that the requirements under baseline consumer law and sector-specific regulation on the provision of information on costs and the service to be carried out overlap significantly, although sector-specific regulations include additional policies around compliance, supervision and enforcement.

4.49 Given these additional protections, we have considered whether authorised providers are better at providing key information than unauthorised providers. We found that, while general outcomes are fairly good across both authorised and unauthorised providers, there is room for all providers to improve the way in which they give key information to their clients. We found that client care letters could be improved so that the key information they contain is presented in a meaningful and accessible way. In addition, we consider that providers

[381] For example, a literature review commissioned by the FCA found that key information should be provided where consumers are expected to focus their attention (for example, at the start of a letter or front pages of letters) and a summary should be considered when a significant amount of information is provided. A different way of presenting costs is via a table, which is the approach advocated by the Chartered Institute of Management Accountants (CIMA). The CIMA client care letter template also emphasises that if any service requirements change, then a new version of the table must be agreed with the client.

could provide their clients with clearer information about the progress and key developments of the legal matter.

4.50 The frontline regulators have commissioned and published research on the information given upon engagement of a legal services provider, which is often contained in a client care letter.[382] An output from this research was the identification of eight principles on how to provide information to clients.

4.51 We welcome these initiatives led by the frontline legal regulators to address this issue and encourage self-regulatory bodies to apply the findings of this work within their respective remits. We note that the provision of information may become a concern within the unauthorised part of the legal services sector if, in the future, it increases in size and standards do not improve in line with the authorised part of the sector.

Quality[383] of legal advice

4.52 Consumers are often unable to judge the quality of legal advice until the matter is finalised. Indeed, they may not even be able to make this assessment after the service has been provided. Therefore, it is important that appropriate quality standards are satisfied and there is a set of requirements to ensure ongoing competence of providers.

4.53 In this section, we cover the following issues:

(a) differences in regulation by provider type; and

(b) indicators of quality of legal advice in the areas of will writing and immigration and in relation to the use of McKenzie Friends.

What consumer protection regulations are in place to ensure good quality of advice?

4.54 Legal services providers are subject to requirements designed to ensure consumers receive a certain level of quality of legal advice. This level differs depending on the regulatory status of the legal services provider.

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[382] The research noted that provision of a client care letter is not a regulatory requirement, but is the vehicle most commonly used for providing consumers with written information about a firm's, or the chambers', complaints process, which is a regulatory requirement. Optimisa Research (2016), *Research into client care letters: Qualitative research report*, Prepared for: BSB, CILEx Regulation, CLSB, CLC, ICAEW, IPReg, LSCP, Master of Faculties and SRA.

[383] In this section, we consider quality as it relates to technical competence (ie knowledge and application of legal concepts). This differs from our analysis above on clarity of information, which could be regarded as a dimension of service quality.

Requirements under baseline consumer law

4.55 The CRA requires service providers to perform contracted services with reasonable care and skill, within a reasonable time (where time limits are not specified) and for a reasonable price (where price is not specified).[384] The standard of a reasonably competent provider is assessed in relation to the area of law in which the service is provided.[385]

4.56 Although small businesses enjoy similar implied rights to individual consumers, some implied rights can be excluded from contracts between businesses.[386] However, some implied rights cannot be excluded from the contract. For instance, a trader cannot exclude or restrict his liability for negligence except in so far as the contractual term or notice satisfied the requirements of reasonableness.[387] Therefore, to a degree, the onus is on small businesses to protect themselves when signing contracts for legal services by ensuring that they understand the terms and are content to be bound by them (please refer to Appendix E for further information).

Sector-specific regulations

4.57 As set out in Chapter 2, a range of sector-specific regulations are in place in order to ensure that only providers who have met certain academic and professional training requirements offer certain legal services.[388]

4.58 All regulators have imposed requirements specifying the type of academic or practical experience a provider must have undertaken before starting to offer authorised legal services. For example, licensed conveyancers need to pass the CLC exams and spend at least two years in practical training with a qualified employer such as a solicitor or another licensed conveyancer.

4.59 Authorised providers should also undertake continuing professional development (CPD) appropriate to ensure their competence in relevant legal areas.[389] Since November 2016, all solicitors are required to meet the

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[384] Consumer Rights Act 2015, section 49.
[385] *Midland Bank Trust Co Ltd v Hett, Stubb & Kemp* [1979] Ch. 384; *Arthur J S Hall & Co v Simons* [2000] UKHL 38; *McFaddens v Platford* [2009] EWHC 126. An unauthorised legal services provider is in CMA's view likely to be held to the same standard of reasonable care and skill as an authorised legal services provider, particularly if they hold themselves out as providing a service of comparable quality to an authorised provider and where they employ, or claim to employ, qualified legal advisers.
[386] Sometimes providers try to exclude liability that would otherwise be imputed to them by an implied term, or a statutory term, or as a result of some express term of the contract.
[387] Unfair Contract Terms Act 1977, section 2.
[388] The question of whether these types of regulations impose excessive costs or create barriers to entry is considered in Chapter 5 on regulation.
[389] As noted by LSCP, these CPD requirements tend to be self-certified and not linked to external appraisal. LSCP (2010), *Quality in legal services sector*.

outcomes-based standard set out in the SRA competence statement. The first section of the SRA's Competence Statement states that solicitors must '[m]aintain the level of competence and legal knowledge needed to practise effectively, taking into account changes in their role and/or practice context and developments in the law' and any work beyond solicitors' personal capability should be disclosed.[390] The introduction of the outcomes-focused standard has effectively replaced the CPD requirement for solicitors.

Self-regulatory requirements

4.60 Some self-regulatory bodies impose qualification and training requirements on their members which are targeted at the specific service they typically offer. For example, the IPW and the SWW impose specific requirements for becoming a will writer which relate to understanding the law and the skills relevant to will writing.[391]

4.61 The IoP also has membership requirements that include a law degree and may include a number of years of legal practice experience. Further, the Professional Paralegal Register (PPR), which is an additional voluntary scheme for paralegals,[392] places registered providers into a 'tier' or category so that they can be mapped to the requisite standards. For example, a tier 2 paralegal must have the specified qualifications for that tier and have at least two years' qualifying experience.[393]

4.62 Some unauthorised providers that offer legal advice may also be subject to qualification/competence requirements when providing activities that are regulated in other sectors (eg accountants or banks). However, these are

[390] This is part of a wider change to introduce more flexibility in the regulatory framework. For more information see SRA, Statement of solicitor competence. The BSB also plans to implement a similarly flexible approach to CPD on 1 January 2017.
[391] For example, entry requirements as a full member of the IPW consist of successful completion of a 1.5-hour written examination paper and a role play taking will instructions and a will-drafting exercise. Similarly, the Society of Will Writers (SWW) requires members to undertake education and training and has developed a professional development body, the College of Will Writing, to assist delivering it. In particular, the SWW requires its members to achieve at least the minimum 16 hours structured hours and a further 8 hours unstructured continuing professional development each year. Source: The Society of Will Writers website.
[392] In order for a paralegal to be part of the PPR, it must first be a member of a PPR recognised body which includes, as of October 2016: The Institute of Paralegals, The National Association of Licensed Paralegals, The Chartered Institute of Arbitrators and The Association of Probate Researchers.
[393] A tier 2 paralegal can apply for a professional paralegal practising certificates if they have £1 million professional indemnity insurance.

unlikely to have an impact on the quality of any legal advice that they provide.[394,395]

Evidence on quality

4.63 We have evaluated the limited evidence available on provider quality, focusing in particular on two legal areas in which both authorised and unauthorised providers have offered services: will writing and immigration (in particular, asylum seekers). In this section, we also cover the limited evidence relating to the quality of advice provided by McKenzie Friends. We have considered in particular whether there is any evidence to suggest that different approaches to regulation may be needed to address the specific issues around quality that arise in different legal areas.

4.64 Will writing is of interest in this context because it involves an unreserved legal activity in which unauthorised (and, in particular, self-regulated) providers have established a significant and long-standing presence (for further details on the will-writing case study see Appendix A). By contrast, immigration law services were previously unregulated but, due to concerns around poor consumer outcomes, the UK government introduced a regulatory regime which required all providers in that part of the sector to be subject to sector-specific regulation. We also note that both legal areas have been subject to a review by the LSB within the last five years. In particular, the LSB has considered whether the regulatory framework adequately addressed consumer protection issues.

Will writing

4.65 In 2011, the LSB commissioned a shadow shopping exercise[396] in order to assess the quality of wills provided by authorised and unauthorised providers. The quality of 101 wills was assessed by a panel of experts selected by the

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[394] We note, however, that chartered accountants regulated by the ICAEW may provide tax advice that may involve legal advice. Further, chartered accountants must have a minimum of three years in-depth training and passed a series of examinations (including in taxation). These examinations may include some legal aspects. In addition, we note that that ICAEW has recently proposed to become an approved regulator and licensing authority under the Legal Services Act 2007 for the reserved legal activities: conduct of litigation; rights of audience; reserved instruments activities; notarial services and administration of oaths. The scope of this application is restricted to taxation services. This suggests that some of the taxation services offered by chartered accountants may include some legal advice.

[395] In addition, there are professional bodies outside of the legal services sector that may require some legal knowledge. For example, HR consultancies that offer employment law advice to small businesses may have people working for them that are part of the Chartered Institute of Personnel and Development. This is a professional body that has membership requirements that include examinations in employment law.

[396] A shadow shopping exercise is similar to a mystery shopping exercise, but it uses consumers rather than professional shoppers. This exercise comprised six stages: (i) recruitment, (ii) pre-purchase interview, (iii) progress update calls, (iv) testator questionnaire, (v) post purchase interview, and (vi) assessment.

LSB.[397] It found no significant differences in quality between solicitors and unauthorised/specialist will writers[398] in the sample, and that there were quality concerns in relation to both types of providers.[399,400]

4.66 Two stakeholders suggested that will writers specialise in the provision of will-writing services as opposed to most solicitors operating in this service area who offer will writing as part of a wider portfolio of legal services. We note, however, that some solicitor firms may also specialise in will writing.[401] Our case study into will writing and probate found that specialist will writers spend more time with clients (eg through home visits), which may improve their ability to give good advice. In addition, we found that around half of unauthorised providers had chosen to join a self-regulatory body.

Immigration

4.67 In 1999, the OISC was established to regulate immigration advisers. The OISC formed part of a specific regulatory regime for immigration that was introduced in order to address a range of concerns relating to the quality of advice and poor consumer outcomes.[402] The evidence base for these concerns was mostly anecdotal and included a blacklist of over 250 problematic companies, including 38 solicitor firms.

4.68 As a result of that legislative change, immigration advice and representation can only be provided by a qualified person.[403] A qualified person is either

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[397] Each will and testator questionnaire collected was passed on to two assessors (one solicitor and one specialist will writer) from an assessment panel of solicitors and specialist will writers recruited by the LSB. The assessors reviewed the wills alongside the completed testator questionnaires to establish *(a)* whether the wills were legally valid and *(b)* whether they met the needs and circumstances of the respondent as set out in the testator questionnaire. In the event that the outcomes of the two assessments were different, the will was passed on to three more assessors to adjudicate.
[398] The study does not provide details on whether the specialist will writers are self-regulated.
[399] One out of 41 wills written by solicitors and two out of 24 wills written by specialist will writers were deemed to be legally invalid, while nine out of 41 wills written by solicitors and five out of 24 wills written by specialist will writers were deemed not to be of sufficient quality (that is, they failed to meet the needs and circumstances of the client). We note the low sample size of this shopping exercise. In addition to the 41 solicitors and 24 specialist will-writer companies, the sample included 10 banks or affiliate groups, 8 paper self-completion and 18 online self-completion. IFF Research (2011), *Research report: Understanding the consumer experience of will-writing services,* prepared for LSB, LSCP, OFT and SRA.
[400] The same study found that self-completed wills are generally of lower quality. We consider there to be certain inherent risks in not seeking tailored legal advice but note that consumers are likely to be aware of the risks of conducting legal activities on their own behalf.
[401] From the SRA data on the turnover generated by solicitor firms, in 2015 there was 4,667 solicitor firms generating turnover in the area of wills, trusts, tax and planning and 104 solicitor firms generating 90% or more of their turnover in those same areas.
[402] The UK government consultation raised particular concerns around incomplete, inaccurate or misleading advice; unprofessional relationships with clients; deception, either of the client or of the appeal system; and unfair charging for services, and materials such as official forms. See Home Office (1998), *Control of unscrupulous immigration advisers: A Consultation Document*. Another major concern raised at the time was that a disproportionate number of vulnerable consumers purchased immigration law services.
[403] Prior to 2000 it was possible for unqualified fee-charging individuals to give immigration advice and/or represent clients in the UK.

registered with the OISC or an authorised member of the SRA, the BSB or the CILEx.[404] OISC-regulated immigration advisers must meet different requirements in relation to knowledge and skills depending on the level of complexity of advice that they would like to be authorised to provide to clients seeking immigration advice or representation.

4.69 We note in particular a recent piece of research prepared for the SRA and the LeO aiming to gain a better understanding of the quality of advice and of service delivered for asylum seekers (mostly by solicitors).[405] This research was partly driven by the LSB's consultation in 2012 into the regulation of immigration advice and services where concerns were raised about how regulators assured themselves of the quality of immigration advice.

4.70 The research found that there was some poor or outdated knowledge of the relevant framework on the part of solicitors, particularly where criminal law was involved or they represented children. In addition, some solicitors who supported asylum seekers at appeal were found to lack the ability to make a robust appeal, due to their inability to gather and present key evidence effectively.[406]

4.71 A separate report from 2012 conducted by the Coram Children's Legal Centre found that not all solicitors representing children have adequate knowledge of immigration law. It further explains that there is no mandatory training or qualification for representing separated children. Even though many solicitors meet formal requirements such as those required to be a member of the Law Society Immigration and Asylum Accreditation Scheme, the report notes that some solicitors still lack adequate knowledge on the subject.[407]

4.72 The only available evidence concerning the quality of advice of OISC-regulated providers is derived from complaints data held by OISC. The OISC has a complaints process in place whereby anyone can bring a complaint

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[404] In terms of numbers of providers regulated under each of these bodies, stakeholders have submitted that there are around 5,730 total providers offering immigration advice and/or representation, of which around 3,700 are OISC-regulated advisers, 1,300 are SRA-regulated, 700 are BSB-regulated and around 30 are CILEx-regulated. Sources: Table 2 in OISC (2015), Annual report and accounts 2014/15, p29 and Table 3.3 in MigrationWork CIC, Refugee Action and Asylum Research Consultancy (2016), *Quality of legal services for asylum seekers*, commissioned by the SRA and the LeO, p13.

[405] MigrationWork CIC, Refugee Action and Asylum Research Consultancy (2016), *Quality of legal services for asylum seekers*, commissioned by the SRA and the LeO.

[406] In this research, 123 asylum seekers were interviewed face-to-face and the case files relating to 35 of these asylum seekers were reviewed by an independent barrister. The interviews were made with asylum seekers who had made an application and received asylum advice within the previous year. All asylum seekers were asked for permission to access their case files. Solicitors were also asked to provide copies of the files which led to 35 case files being made available for review. We note that the sample size is very small and so, the results of this analysis are only indicative.

[407] CORAM Children's Legal Centre (2012), *Navigating the system: Advice provision for young refugees and migrants.*

against any provider of immigration advice and/or services. In 2014/15, the OISC investigated 195 complaints against OISC-regulated advisers and found that the majority of those complaints could be substantiated.[408] As we note in the redress mechanism section below, effective redress mechanisms can drive a feedback loop that induces providers to improve the quality of their service offerings. Therefore, we consider it likely that the presence of the OISC has improved the quality of legal advice of unauthorised providers.

4.73 Overall, the evidence we have reviewed indicates that the introduction of the regulatory regime appears to have improved the quality of unauthorised providers (ie OISC-regulated immigration advisers).[409] By contrast, concerns regarding the quality of solicitors persist and may be linked to the lack of specialised training in the area of immigration law. However, as noted in paragraph 4.59 above, the SRA has recently made significant changes to its CPD requirements aimed at ensuring that solicitors provide services competently on an ongoing basis.[410] These changes may help to ensure that solicitors have up-to-date knowledge, with the result that they are less likely to give incomplete or inaccurate immigration advice.

McKenzie Friends

4.74 Certain representative bodies have expressed concerns in relation to the services provided by fee-charging 'McKenzie Friends'.[411] Furthermore, the Judicial Executive Board is currently considering the approach that courts should take in relation to McKenzie Friends and whether there should be a prohibition on fee recovery by fee-charging McKenzie Friends.

4.75 The evidence that we have reviewed is mixed but does not suggest that there are significant quality issues relating to the use of McKenzie Friends.[412] We

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[408] In 2014/15, the OISC also received 147 complaints against unregulated providers. We further note that the OISC commenced 21 criminal prosecutions (of those 12 have resulted in convictions and nine have not yet been tried). Source: OISC (2015), *Annual Report and Accounts 2014/15*.
[409] We have not considered, however, whether the benefits associated with the reduction of consumer detriment have outweighed the associated costs introduced by the regulatory regime.
[410] The OISC is also moving its training requirements towards a more competence statement approach. The new scheme will allow advisers and organisations to be more flexible in how much or how little CPD is carried out, provided that they are able to declare and demonstrate they have properly considered their CPD requirements and show how those requirements have been met. The OISC will monitor advisers' CPD activities to ensure that immigration advisers are carrying out the effective assessment and delivery of CPD, so that advisers maintain their competence.
[411] According to the Practice Guidance for McKenzie Friends, McKenzie Friends may provide litigants in person with moral support, take notes, help with case papers, and quietly give advice on any aspect of the conduct of the case. The LSCP has classified McKenzie Friends into four types: (i) the family member or friend who gives one-off assistance; (ii) volunteer McKenzie Friends attached to an institution/charity; (iii) fee-charging McKenzie Friends offering the conventional limited service understood by this role; and (iv) fee-charging McKenzie Friends offering a wider range of services including general legal advice and speaking on behalf of clients in court.
[412] The MoJ study of McKenzie Friends found that McKenzie Friends were generally helpful to litigants in person but raised concerns around the qualification levels and motivations of fee-charging McKenzie Friends. MOJ

also note that there may only be as few as 40 to 50 fee-charging McKenzie Friends currently active in the legal services sector[413] and, as a result, we have not examined this any further.

Conclusion on quality

4.76 We compared the requirements around the quality of advice placed on different legal services providers. We found that the requirements placed on authorised providers are more extensive and specific to legal services than those which apply under general consumer law. Authorised providers (including unauthorised providers regulated by another statutory legal services regulator such as immigration advisers) are also subject to much greater regulatory supervision and monitoring than unauthorised providers.

4.77 We also considered the effectiveness of regulations that relate to quality of legal advice. The indicative evidence[414] we have reviewed on will writing shows that there are similar concerns in quality relating to both authorised and unauthorised providers. This may be because self-regulation (such as the training requirements put in place by self-regulatory bodies) has had a positive impact on the quality of unauthorised providers. Our case study into will writing found that around half of unauthorised providers had chosen to join a self-regulatory body.

4.78 In relation to immigration law, the limited available evidence does not allow us to compare the scale of consumer protection issues before and after the specific regulatory regime for immigration was introduced. Nonetheless, we found that problems related to poor or outdated knowledge still arise, primarily when solicitors provide immigration advice. This indicates that ongoing training could be improved for solicitors who provide immigration law services. We note that the SRA has recently made changes to training requirements which may help to minimise these problems.

4.79 In summary, we have found some evidence that quality of legal advice could be improved in the areas of wills and immigration but that these issues may be addressed by recent initiatives to improve training requirements. We have not been able to review sufficient evidence to identify whether there are significant concerns related to quality of advice across the legal services

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(2014), *Litigants in person in private family law cases*, pp93-96. The LSCP's report on McKenzie Friends stated that, while it had heard of McKenzie Friends who had caused detriment, there was no evidence of this occurring on any scale. LSCP (2014), *Fee-charging McKenzie Friends*. It further noted that McKenzie Friends can benefit consumers, for example by improving access to justice and enabling greater equality of arms, especially when the other side is represented.

[413] The SPMF told us that, at February 2016, it had around 30 members and estimated that there were around 40-50 fee-charging McKenzie Friends.

[414] This is due to the small sample on which it is based.

sector. We note that this absence of evidence does not equate to a finding that there are no quality concerns related to the use of unauthorised providers. This is important to acknowledge in light of the possible future expansion of the market share of the unauthorised part of the sector, which is currently quite small (for details see paragraphs 2.38 to 2.41 above).

Sales practices

4.80 It is important that sales practices are fair and enable consumers to choose the legal services provider that best meets their perceived legal need. Consumers may experience poor outcomes if they are pressured to purchase services or if the sales practices used by a provider are unfair.

4.81 This section covers the following issues:

(a) Differences in regulation by provider type.

(b) Whether there is evidence to show that sales practices are a concern in this sector.

What consumer protection regulations are in place to ensure fair sales practices?

4.82 There is a set of requirements designed to protect consumers from receiving unfair sales and marketing practices. The level of protection can differ depending on the regulatory status of the legal services provider; these requirements on sales practices are set out in detail below.

Requirements under baseline consumer law

4.83 General consumer protection provides individual consumers with legal rights to unwind contracts for services in situations where individual consumers may be subject to pressure selling, or have been misled. The Consumer Protection from Unfair Trading Regulations 2008 (CPRs) prohibit unfair commercial practices[415] which contravene the requirements of professional diligence and materially distort the economic behaviour of the average consumer with regard to the service.[416] For instance, high-pressure doorstep selling may amount to an aggressive practice contrary to the prohibition in Regulation 7 of the CPRs. Small businesses do not enjoy protections under the CPRs, but are protected against misleading advertising under other legislation.[417] In addition,

[415] Before, during and after a contract is made between a trader and an individual consumer.
[416] The general prohibition in the CPRs refer to product, rather to service. However, pursuant to the interpretation section of the regulations – 'product' means any goods or **service** and includes immovable property, rights and obligations.
[417] See Appendix E: Overview of the consumer law framework, paragraphs 66–73.

all consumers who are pressurised by legal services providers to enter into contracts for the provision of legal assistance may be able to seek a remedy for duress and undue influence.

Sector-specific regulations

4.84 Authorised providers are required to treat clients fairly and provide services in a manner which protects the clients' interests. For example, the SRA Handbook states at outcome 1.12 that 'clients are in a position to make informed decisions about the services they need, how their matter will be handled and the options available to them'. The CLC handbook states at outcome 3.1 that 'each [c]lient's best interests are served'.

Self-regulatory requirements

4.85 Self-regulated providers are subject to similar requirements to authorised providers. For example, the SWW code of practice states that, when taking instructions, its members should establish that the client is 'acting freely, without coercion, with a full understanding of the transaction'.[418] In addition, the IPW code of practice states that when 'introducing other products and services the [m]ember must hold the best interests of the [c]lient as paramount and any benefit they may derive from the introduction as ancillary and they shall make it clear to the [c]lient that there may be other suitable providers of the product or service'. [419]

Evidence on sales practices

4.86 We considered Citizens Advice's response to the LSB's consultation on will writing in 2010. This provided some examples where legal services providers sold unnecessary services to individual consumers, but was not able to quantify the overall scale of any such problems.[420] Our analysis of the complaints/issues data held by Citizens Advice[421] indicates that in recent years there have been few complaints/issues raised in relation to unfair sales practices in the legal services sector generally, and in particular in relation to high-pressure selling and the targeting of vulnerable groups. Since 2012, fewer than 60 such complaints/issues have been raised each year. This represents 2% of all complaints/issues regarding legal services made to

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[418] SWW, Code of Practice, paragraph 6.3.
[419] IPW, Code of Practice, paragraph 14.1.
[420] Citizens Advice (2010), *Investigation into will writing call for evidence: Response to LSCP from Citizens Advice*.
[421] We note that the complaints/issues data held by Citizens Advice are not categorised on the basis of whether they relate to an authorised or unauthorised provider.

Citizens Advice. In 2015, there was a total of only nine complaints/issues (2% of total) in relation to unfair sales practices regarding wills.[422]

4.87 The shadow shopping exercise into will-writing services prepared for the LSB shows little evidence of providers (whether authorised or unauthorised) using high-pressure sales tactics. The LSB's research conducted in 2012 into probate and estate administration services found that while 76% of 2,001 respondents felt they were not pressurised by the provider to purchase any additional services, those individual consumers who did feel pressured were more likely to have used a non-solicitor.[423]

4.88 According to information from the TSS, there are no reports of cases taken by the TSS against legal services providers involving breaches of legislation notifiable to the CMA.

Conclusion on sales practices

4.89 The low number of complaints about, and enforcement cases against, legal services providers suggests that the use of unfair sales practices by such providers is not an area of significant concern. Although survey evidence in the area of probate and estate administration indicates that unfair sales practices are more common among unauthorised providers, there is no clear evidence that the same applies across the sector. In any event, we note that consumer protection legislation clearly prohibits the use of unfair sales practices. This applies equally to authorised and unauthorised providers of legal services, and is enforced in individual cases by local authority TSS.

Redress mechanisms

4.90 Redress mechanisms may not always be a relevant or satisfactory way to address instances of poor consumer outcomes. This is because in some cases the negative outcome experienced by consumers is either irreversible or difficult to identify until much later. That said, in most cases, redress mechanisms can be an effective way to compensate consumers when their

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[422] By comparison, in 2015 only one issue was raised (0.3% of total) in relation to unfair sales practices regarding the category 'accountants' and 16 issues were raised (1% of total) regarding the category 'solicitors'. Source: Citizens Advice Consumer Direct database, February 2012 to December 2015. We excluded bogus selling from sales practices.

[423] That is, 81% of the respondents who used a solicitor did not feel pressurised against 41% of the respondents who used a non-solicitor and did not feel pressurised. We note, however, that differences between solicitors and non-solicitors should be read carefully because the majority of respondents used a solicitor as their legal services provider (86%) and the number of individual consumers who used a non-solicitor is small. Further, the same report found that among the 14% who were offered additional services, 31% said these were property sales or power of attorney (27%), 21% said investment advice, 20% said tax advice and 19% said life assurance. 68% of the 14% (those that were offered additional services) went on to buy these and 32% of the 14% did not buy. Source: YouGov (2012), *The use of probate and estate administration services*, prepared for the LSB.

legal services provider has acted wrongfully (eg by engaging in an unfair commercial practice), made mistakes (eg has provided poor-quality legal advice) or provided poor service (eg by not providing key information clearly). For consumers, the ability to obtain adequate redress (whether an apology, having the problem put right or compensation) increases trust and confidence and decreases perceived barriers to engagement with the sector.

4.91 Effective redress mechanisms can also improve the incentives for legal services providers to offer good quality advice and service. In addition, feedback from complaints enables providers to improve their services and helps regulators to identify systemic problems that might require intervention.

4.92 As noted above, providers offer consumers different options for accessing redress, with the effectiveness of those options depending mainly on the regulatory status of the provider.

4.93 In this section, we cover the following issues:

(a) Differences in the redress mechanisms offered by provider type.

(b) The effectiveness of redress mechanisms offered, including:

(i) consumers' awareness of redress mechanisms available to them;

(ii) whether there are perceived barriers to utilising available redress mechanisms; and

(iii) whether redress mechanisms work well in practice.

What redress mechanisms are in place in the legal services sector?

Redress under baseline consumer law

4.94 The CPRs provide individual consumers with rights of redress enforceable through court proceedings should legal services providers engage in a practice which is a misleading action or in an aggressive commercial practice in relation to the services.[424] There are three main remedies available to individual consumers. These include the right to unwind, the right to a discount and the right to damages.[425]

[424] Consumer Protection from Unfair Trading Regulations 2008, Regulations 27A to 27L. See Appendix E: Overview of the consumer law framework, paragraphs 14–34.
[425] The Consumer Protection from Unfair Trading Regulations 2008 SI 2008/1277, Part 4A.

4.95 Under the CRA, an individual consumer may be entitled to remedies (such as the right to a price reduction or repeat performance) if a legal services provider fails to perform a service with reasonable care, or within a reasonable time.

4.96 Under general consumer law, individual consumers can pursue action directly through civil proceedings against legal services providers for redress on the following bases: (i) breach of contract, (ii) negligence or lack of reasonable care and skill, (iii) unfair commercial practice, and (iv) failure to provide information as required under the CCRs.[426]

4.97 Small businesses do not have a right to redress under the CPRs or the CRA.[427] Businesses may be able to benefit from terms implied by the Supply of Goods and Services Act 1982, requiring services to be supplied with reasonable care and skill, but generally if a legal services provider has either acted negligently in providing advice to a small business or has committed a breach of contract, the small business may have no option other than to commence civil proceedings for negligence or for a breach of contract in order to seek redress.

Alternative dispute resolution

4.98 ADR involves using alternatives such as mediation and arbitration to resolve disputes without resort to litigation. Under UK law,[428] all legal services providers (whether authorised or unauthorised) are required to make their clients aware in writing of an ADR provider that operates in the legal services sector. This requirement is triggered when a dispute has arisen between a provider and an individual consumer[429] and the consumer has exhausted the provider's internal complaints-handling process. However, legal services

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[426] See Appendix E: Overview of the consumer law framework, paragraphs 35-47, for an outline of the information that must be provided to individual consumers under the CCRs.
[427] The Consumer Rights Act 2015 sets out that a consumer is an individual (a natural person rather than a legally incorporated organisation such as a company) who is acting for purposes wholly or mainly outside his or her trade, business, craft or profession. The CMA considers that the words 'wholly or mainly' clearly invite consideration of transactions that are entered into for a mixture of personal and business reasons. In any event, in cases of doubt, an individual is presumed to be a consumer until shown not to be. If a trader claims in court proceedings that an individual was not acting as a consumer, he or she has to prove this. See CMA37: Unfair contract terms guidance for further information.
[428] The Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015 and the Alternative Dispute Resolution for Consumer Disputes (Amendment) Regulations 2015 (collectively referred to as the 'ADR Regulations') implement the Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC, OJ L165/63 ('ADR Directive').
[429] The ADR provisions apply to all legal services providers that provide a legal service as part of their business to clients acting as individuals in their personal capacity.

providers are not obliged to use a certified ADR provider or, indeed, use an ADR procedure at all.

4.99 In the case of authorised legal services providers, it is a requirement of the Legal Services Act 2007 for complaints to be submitted and determined by the LeO.[430] Information concerning this should be provided on the legal services provider's website and in the general terms and conditions of the contract. Consumers should also be reminded of this once they have exhausted the legal services provider's internal complaints process.

4.100 Unauthorised legal services providers fall outside the LeO scheme. However, they may be required to use an ADR process either by rules of a trade association or a contractual term. If they are, the unauthorised legal services provider must supply details of the ADR provider on their website and in their terms and conditions of business.

4.101 The ADR provisions 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.

4.102 The three certified[431] 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. They also noted that authorised providers prefer to refer clients' complaints to the LeO and that there was a lack of awareness of the benefits of the ADR regime on the part of both providers and consumers.

Other protections potentially offered by unauthorised providers

4.103 In addition to the options to access redress under consumer law and through ADR providers set out above, some unauthorised providers (whether self-regulated or not) offer a 'first-tier' complaints process, whereby consumers would be expected to submit complaints to the provider.

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[430] We note that while the LeO technically operates as an ADR provider under the definition provided above, it is not an ADR provider for the purposes of the ADR Regulations.
[431] Small Claims Mediation, Promediate and Ombudsman Services are the three ADR providers certified for the purposes of the ADR Regulations. See paragraph 4.98.

4.104 Redress mechanisms available to providers subject to non-legal services regulation do not apply when legal advice is provided. For instance, FCA provisions in relation to redress mechanisms do not apply to an authorised professional firm in respect of expressions of dissatisfaction about its legal services activities, which are not regulated by the FCA as financial advice.[432] However, the ICAEW told us that a complaint against a chartered accountant that works in a non-legal services regulated firm in relation to tax legal advice would be covered by ICAEW regulations.

Redress under sector-specific regulation

- *Complaints handling*

4.105 Authorised providers are required to have a first-tier complaint process in place for responding to client complaints which is free of charge. Regulatory codes of conduct require that complaints are dealt with fairly and promptly. Where appropriate, authorised providers should offer a suitable remedy[433] (although this process tends not to involve a binding decision on the legal services provider). At the end of this process, authorised providers must provide clients with details for contacting the LeO and the time frame for doing so. If the complaint has not been resolved within eight weeks, individual consumers and microbusinesses have the right to raise a complaint with the LeO,[434] which administers the 'second-tier' complaints process for authorised providers.[435]

4.106 The LeO only accepts complaints that relate to an act or omission by an authorised person in relation to services provided directly or indirectly to the

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[432] We are aware that the Financial Ombudsman Services (FOS) might accept complaints outside of its jurisdiction (eg against the bodies they regulate, but regarding unregulated activities such as will-writing services). However, we are also aware of the 'Barclays complaint' that shows the FOS has no jurisdiction if the services were provided by an unauthorised legal services provider (eg an unregulated division of the bank). This issue is currently before the High Court.

[433] Suitable remedies might include: an apology; completing further work to put the matter right; a reduction or refund of fees; or compensation.

[434] In order to be able to complain to the LeO, a complainant must be one of the following: (i) an individual; (ii) a micro-business (EU definition); (iii) a charity that had an annual income net of tax of less than £1 million when it referred the complaint to the authorised person; (iv) a club/association/organisation that had an annual income net of tax of less than £1 million when it referred the complaint to the authorised person; (v) a trustee of a trust that had an asset value of less than £1 million when it referred the complaint to the authorised person; or (vi) a personal representative or beneficiary of the estate of a person who, before he/she died, had not referred the complaint to the LeO.

[435] We note that third parties currently do not have the right to complain to the LeO, with the exception of beneficiaries of estates and trusts. Although the scope of our market study only includes individuals and small businesses, we recognise that there may be benefits associated with an expansion of the LeO's current jurisdiction to encompass non-micro businesses and third party complainants in England and Wales. We note that the LeO is currently considering the benefits of such an extension to its remit. Though we welcome this initiative we believe that any analysis should consider in-depth the costs and benefits associated with such an extension.

complainant. In addition, the LeO investigates complaints falling in the following categories: (i) Costs information deficient; (ii) Costs excessive; (iii) Delay; (iv) Unreasonably refused a service to a complainant; (v) Persistently or unreasonably offered a service that the complainant does not want; (v) Failure to advise; (vi) Failure to comply with agreed remedy; (vii) Failure to follow instructions; (viii) Failure to investigate complaint internally; (ix) Failure to keep complainant informed of progress; (x) Failure to keep papers safe; (xi) Failure to progress complainant's case; (xii) Failure to release files or papers; (xiii) Failure to reply. The LeO does not investigate conduct-related aspects of complaints, instead referring these to the approved regulators. The LeO has the ability to refer a particular act/omission as a test case to the High Court for it to determine whether or not that act/omission should be considered to be a conduct or service issues.

4.107 Before reaching a formal decision, the LeO will attempt to resolve most complaints informally. However, where informal resolution has been unsuccessful, an investigator will write a recommendation report. If both parties accept the report, it becomes the LeO's final decision and is binding on the provider. Through its decisions, the LeO can, among other matters, require the legal services provider to pay the complainant compensation for loss, inconvenience or distress (up to £50,000), require that they put things right if feasible or reduce the complainant's legal fees.

4.108 Final determinations by the LeO which are accepted by a complainant are binding on the provider, which then has 14 days to fulfil the compensation award. If the provider fails to do so, the complainant is advised to contact the LeO, in which case the LeO will follow up with the provider. If the provider fails to pay the complainant even after the LeO has followed up in this way, the LeO can seek to enforce the compensation award by suing the provider in court. The award would then be enforced by means of a court order.[436] In situations in which compensation awards are made against firms which have closed, the LeO will then seek to enforce the award either against the firm's professional indemnity insurance or the individual partners themselves.

4.109 Complaints concerning a potential breach of professional conduct rules, such as in relation to dishonesty, are dealt with by the relevant regulator. For example, the SRA has established the Solicitors Disciplinary Tribunal (SDT) to hear cases involving breaches of conduct rules by providers. Decisions by the SDT can involve fines, controls such as conditions on practising certificates, regulatory settlements and agreements and, in serious cases, striking off a solicitor from the roll. We note that while most unauthorised

[436] In addition, if the provider did not comply, it could be found to be in contempt of court.

providers do not have an equivalent mechanism that is specifically designed to handle breaches of conduct, some self-regulatory bodies do handle conduct complaints.

- *Other mandatory requirements and regulatory measures*

4.110 Authorised providers are required to have professional indemnity insurance (PII) in place.[437] The PII arrangements also require law firms to have run-off cover.[438] We note that some unauthorised providers have PII in place.[439] However, unlike authorised providers, unauthorised providers are under no obligation to hold a stated minimum level of coverage.

4.111 Some regulators have also established a residual compensation fund to provide an additional layer of protection for clients of authorised providers.[440] The function of a compensation fund is to enable such clients to make a claim if they are owed money by their legal services provider and have exhausted alternative routes for making their claim (for example, through an insurance claim or the court system). Typically, regulators impose strict rules around obtaining access to the relevant compensation fund.[441]

Redress under self-regulatory bodies

4.112 Some self-regulatory bodies, such as the IPW and the SWW, prescribe in their codes of practice that their members must have a first-tier complaints handling process in place. Some self-regulatory bodies such as the IPW provide a second-tier complaints regime, which involves a free conciliation service that can award compensation to the complainant up to the fees paid. The second-tier complaints process may lead to a sanction of the member (eg informal warning and costs, expulsion from membership, etc). If the

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[437] PII is an insurance product designed for a specific professional service and to cover any claims for financial losses by a client, for example, due to negligence of the relevant service provider. The level of required PII coverage varies across the regulated sector.
[438] Run-off ensures cover when a complaint is upheld following closure of a firm. The requirement for run-off cover is not imposed by all regulators nor do regulators require the same length of cover.
[439] Based on discussions that we have had with unauthorised providers that offer commercial law services to small businesses. In addition, of the 30 unauthorised providers of will-writing services spoken to for the LSB research conducted in 2016, 27 had a formal complaints process and 29 had PII. See Economic Insight (2016), *Unregulated legal service providers: Understanding supply-side characteristics*, prepared for the LSB.
[440] Not all regulators have a compensation fund in practice. For example, the BSB does not maintain a compensation fund as it perceives the largest risk to clients to be through the handling of client monies, an activity that barristers are prohibited from undertaking.
[441] For example, the SRA scheme requires the loss to have been suffered due to dishonesty or the client to have suffered loss or hardship due to failure to account for money the provider has received (which includes failure to complete work paid for). Only individuals and businesses with a turnover of less than £2 million can access the compensation fund, and compensation is capped at £2 million. The CLC has similar access rules.

conciliation service does not provide satisfactory redress, the complaint can be escalated to a member's arbitration scheme.[442]

4.113 The PPR offers a second-tier complaints process where all complaints are referred to a dedicated complaints panel. This process may lead to a financial compensation award or suspension of the member. A complaint can also be referred to an adjudication and appeals panel where compensation is capped at £5,000 and decisions are binding upon the paralegal and the complainant. If a paralegal[443] refuses to pay, then an award of compensation can be made available from a compensation fund.

4.114 Some self-regulatory bodies require their members to have professional indemnity insurance,[444] but do not tend to require members to hold run-off cover.[445] Some self-regulatory bodies such as the SWW require members to pay into a compensation fund.[446]

How effective are the redress mechanisms offered by different provider types?

4.115 To assess the effectiveness of the redress mechanisms offered by different provider types, we first compare the key differences between the LeO and other forms of dispute resolution (in particular, other ADRs and courts). Figure 4.3 sets out the main characteristics of the three main redress mechanisms considered in this chapter: the LeO, ADR providers and court litigation.

[442] IPW: Making a complaint.
[443] A regulated paralegal is a member of the PPR who holds a valid Paralegal Practising Certificate. A registered paralegal is a member if the PPR who holds a valid tier certificate.
[444] For example, IPW and the SWW require their members to have a minimum cover of £2 million. PPR requires a minimum cover of £1 million and has developed a partnership with Insync to develop a specialist range of professional indemnity policies specifically for paralegals practitioners and practices.
[445] We were told that it is not possible for unregulated providers to obtain run-off cover at a reasonable cost. We note, however, that the SWW has a run-off cover available to all its members that amounts to one additional year's premium.
[446] Note the SWW provides a guarantee to clients of members that should they become insolvent or become ill, then the SWW will be able complete the work (subject to their terms and conditions).

Figure 4.3: Key characteristics of the LeO, ADR and court

LeO	ADR	Court
• Only available to clients of authorised providers (after complaint first raised directly with business) • Decisions binding on the provider, and can impose decisions • More accessible and flexible • Free to consumers, funded by regulated providers • Provides feedback to providers and regulators • Provides signposting • Follows set timetable for resolving complaints • Maximum compensation award: £50,000	• Open to clients from authorised and unauthorised providers • Binding decisions on the provider, cannot impose decisions (unless agreed by both parties) • Cheaper and quicker than court • Likely to be free to consumers, funded by providers • No maximum compensation award	• Open to clients from authorised and unauthorised providers • Binding decisions, can impose decisions • Strict rules of evidence and procedure • Subject to appeal by both parties and therefore length of case difficult to determine (potentially very lengthy) • Costly for litigants (eg must pay fees for legal representation) • No maximum compensation award

Source: CMA analysis based on Gill and Hirst (2016), *Defining consumer ombudsmen: A report for ombudsman services*.

4.116 Figure 4.3 shows that a common feature of the decisions of the LeO, ADR providers and courts is that they are binding to some degree and more easily accessible.

4.117 Access to the LeO or an ADR provider tends to be cheaper and quicker for both the complainant and the provider than going to court. Based on a consultation on ADR, the UK government estimates that ADR costs are between one-eighth and one-third of the cost of going to court.[447] In addition, the European Commission estimates that it only takes up to 90 days for most disputes referred to ADR to be resolved.[448]

4.118 By contrast, litigation can take much longer, due to the set steps in litigation (such as the need to get a court date) and the ability of either party to appeal. Consumers that engage in litigation are also responsible for evidence-gathering, which is likely to be burdensome, unless they engage legal representation, which can be costly.

[447] This is also supported by a study from the European Parliament that found that the total cost of mediation in the UK represents around 20% of the total cost of going to court. Source: European Parliament's Committee on Legal Affairs (2014), *'Rebooting' the Mediation Directive: Assessing the Limited Impact of its Implementation and Proposing Measures to Increase the Number of Mediations in the EU*.
[448] Department for Business Innovation & Skills (2014), *Government response to the consultation on implementing the ADR and the ODR*.

4.119 Even if a consumer is successful in suing their legal services provider, the redress obtained may be unsuitable (eg consumers are unlikely to desire repeat performance after previously receiving poor service)[449] or incomplete.

4.120 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 ombudsmen and other ADR schemes. Based on the LeO's annual report, the average cost per case in 2014/15 was £1,716 with 7,440 cases resolved.[450,451]

4.121 In some situations seeking redress through an ADR provider may be a good alternative to seeking redress through litigation for consumers who purchase services from unauthorised providers. However, a current issue is that many providers are not signed up to use the ADR providers to which they signpost. This may cause consumer confusion and be partly responsible for the low usage of ADR providers within the legal services sector.[452]

4.122 Although the LeO has a maximum compensation award of £50,000, we believe that it provides a more user-friendly and timely access to redress than the alternatives. This is for three main reasons: (i) the LeO is free at the point of use for complainants; (ii) it investigates complaints on behalf of complainants; and (iii) it has a set time frame for resolving matters.

4.123 We believe that the sector-specific redress mechanisms also offer an important feedback loop that may discipline authorised providers to improve the quality of their offering. Figure 4.4 depicts this feedback loop.

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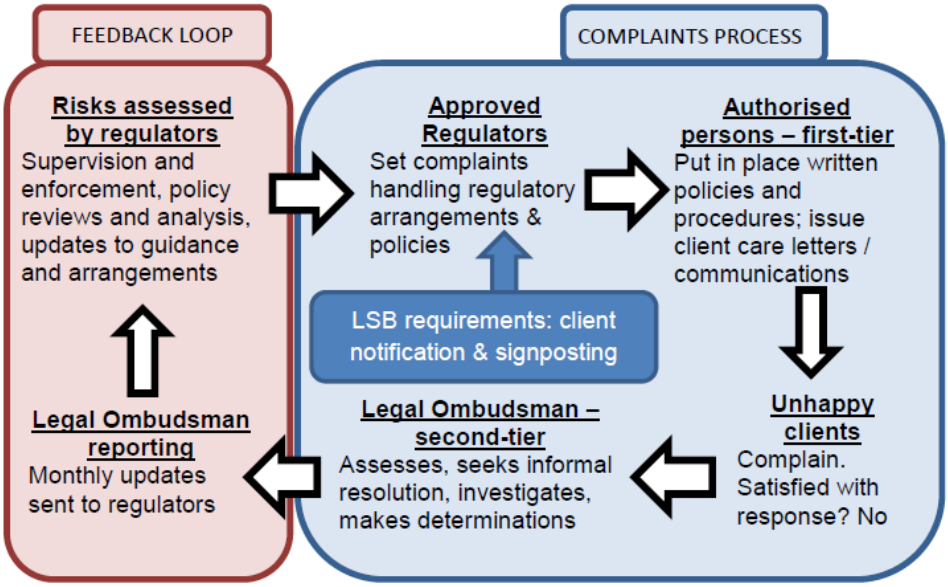
[449] We note that there is an inherent difficulty in providing adequate redress in certain areas such as wills where issues can only be fully identified many years after the relevant legal service was provided.
[450] Legal Ombudsman (2016), The Office for Legal Complaints, Annual report and accounts for the year ending 31 March 2015.
[451] The average cost per case for the FOS in 2015/16 was £590 with around 440,000 cases resolved. The Centre for Effective Dispute Resolution consumer adjudication for home builders has an average cost per case of £200 with around 8,000 cases resolved. However, this scheme involves an adjudication fee of £600 plus VAT where the claimant pays £100 and the trader pays £500. There are factors which may increase the average cost per case in the legal services sector. For example, the complexity of the disputes and the fact that the high stakes could translate into more cases not being resolved informally than in other sectors and therefore, requiring a more in-depth and formal investigation. In addition, LeO's role in redirecting contacts that fall outside its jurisdiction may increase its costs. Sources: Financial Ombudsman Services (2016), Annual report and accounts for the year ended 31 March 2016, BEIS internal analysis and Independent consumer adjudication scheme, Service rules.
[452] See also paragraph 4.102 above.

Figure 4.4: Feedback loop



Source: Figure 1 in LSB (2016), *First-tier complaints handling: LSB requirements for approved regulators*. A consultation issued by the LSB inviting representations on proposed updates to its requirements, outcomes and guidance, p5.

4.124 Both first-tier and second-tier complaints processes should help providers to comply with internal and external requirements and standards, and regulators (including the LSB) to identify issues and risks and address them in a timely manner. The fact that complainants can take their complaints to the LeO may also incentivise providers to offer an effective first-tier complaints process in order to reduce the risk that the complainant will escalate a complaint to the LeO.[453] This is particularly the case given that the LeO publishes information on formal ombudsman decisions.[454]

4.125 In addition, the LeO has a role in helping individual consumers and micro-businesses understand why their complaints are not upheld. In the financial year 2014/15, the LeO received around 59,000 contacts. Most of these contacts involved consumers seeking information (for example, on how to check that their lawyer is genuine or an explanation of how to assess whether

[453] We note that the LeO meets the approved regulators regularly in order to be kept informed as to how they are handling any conduct complaints referred to them by it.
[454] If the complainant or the provider disagree with the recommendation report, then it is referred to the formal process or the ombudsman that makes a decision that is binding on the provider. This decision is named the Ombudsman decision. These decisions are published on the LeO's website. The website includes information on (i) the name of each firm or lawyer where an ombudsman's decision has been made; (ii) the total number of decisions made in relation to each firm or lawyer; and (iii) the ombudsman remedy required. In cases where there is no ombudsman remedy required this indicates that the ombudsman was satisfied that the consumer service provided was adequate and/or that any remedy offered by the service provider was reasonable. See Legal Ombudsman: Data and decisions for legal. Decisions on conduct complaints referred to the SDT are also published online. We found that in 2014, 48 solicitors were made 'struck-off' compared with 56 'struck-off' solicitors in 2015. The number of solicitors and fixed period suspensions was 11 both in 2014 and 2015. See SDT sanctions data 2014 and 2015.

they have received appropriate advice) rather than making a complaint against their provider.[455] As noted above, the LeO also has roles in signposting contacts that fall outside its remit to other institutions (eg regulatory bodies, Citizens Advice, etc) and in providing some basic legal education.[456]

4.126 For the reasons given above, we consider that this feedback loop increases transparency and trust in the authorised part of the sector.

4.127 We also note that the LSB has recently amended its requirements for approved regulators in relation to complaints-handling. In particular, the LSB provided additional guidance for the approved regulators on gathering and analysing first and second-tier complaints data in order to improve monitoring and assessing the effectiveness of the complaints-handling procedures of authorised providers as well as to gain a better understanding of where complaints are upheld. We welcome this development since it improves the feedback loop and the associated benefits described above.

4.128 Finally, we note that self-regulatory bodies have attempted to replicate the sector-specific redress mechanisms. Based on our case study into will writing and probate, the number of complaints escalated to the SWW and the IPW appears to be roughly proportionate to the number of wills written by self-regulated will writers. However, as explained in the wills and probate services case study, a particular problem with self-regulation is that members can choose to leave a self-regulatory body if they wish to avoid its redress mechanisms. Although we have not been able to gather evidence on the scale of this issue, self-regulatory bodies in the area of will writing have noted difficulties in enforcing their rules as members can be expelled and continue offering their services. However, the SWW told us that these instances are extremely rare as the majority of members will act on the recommendations from the SWW.

Consumer awareness of redress mechanisms

4.129 Although the additional redress available to clients of authorised providers offers additional consumer protection, it is of limited value unless consumers are aware of these redress mechanisms and use them in practice.

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[455] In the financial year 2014/15, the LeO received 59,000 contacts, accepted 7,635 complaints for investigation and resolved 7,440 cases. At the end of January 2015, the LeO also started taking complaints about regulated claims management companies. Source: Legal Ombudsman (2016), The Office for Legal Complaints: Annual report and accounts for the year ending 31 March 2015, p10.

[456] The LeO may provide consumers with general advice about what to expect when purchasing a legal service as well as more specific advice on the avenues to redress available for consumers, for instance by explaining that they may also have a negligence claim against their legal services provider.

4.130 Our survey of individual consumers suggested that 65% of consumers were confident that their legal services provider had explained to them their right to complain and how complaints can be made. Around 18% of individual consumers were confident that their legal services provider had not explained their right to complain, and 23% said they were confident their legal services provider had not explained the potential outcomes from complaining. In addition, the qualitative research which we commissioned relating to small businesses found that the majority of businesses had simply assumed that redress mechanisms existed for all providers.[457]

4.131 Another issue in this area is that, while providers need to inform consumers about the availability of ADR and whether they are prepared to use that ADR provider, authorised providers must also signpost consumers to the LeO. This can potentially create some consumer confusion.[458] However, as noted above, we consider that there are adequate mechanisms in place within the sector to ensure that misdirected complaints are redirected to the appropriate organisation. These mechanisms lessen the impact of consumer confusion concerning where to complain.

4.132 The evidence above indicates that a minority of individual consumers appear to be poorly informed about their rights to raise complaints and about complaints procedures. This indicates that there is some room for improvement. We consider that the findings of the joint frontline regulators/LSCP work on client care letters (see paragraphs 4.45 to 4.47 above) could be applied to address these concerns around consumer awareness. In addition, we anticipate that the LSB's amendments to regulatory complaints handling will have a positive impact on consumer awareness of redress mechanisms.

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[457] A survey conducted by the LSB, which explored first-tier complaints, found that of the dissatisfied individual consumers: (i) one in five complainants said they were not told anything about the complaints procedure and timescales; (ii) around one in eight were told about the in-house complaints procedure; and (iii) around one in 12 were told about the second-tier complaints process. This study also found that about 23% (or 293) of consumers who raised a complaint prematurely did not understand the law firms' complaints procedure, which suggests that information on this issue could be further improved. This is based on an online survey of 1,275 respondents who were dissatisfied legal service users. Source: YouGov (2011), *First-tier complaints handling*, commissioned by the LSB.

[458] The LeO has put to us that the main reason that it has not become a certified ADR provider under the ADR Regulations was that doing so would have required it to make significant changes to its rules and processes.

Consumer trust in redress mechanisms and whether redress processes are working effectively

4.133 It is important that consumers believe that their complaints will be treated seriously and fairly.[459]

4.134 A study commissioned by the LeO identified that 50% of those complainants who had made premature complaints had no confidence that the law firm would resolve the complaint fairly.[460] This suggests that, even if consumers are informed of the complaints process and understand that process, some lack confidence or trust in the redress mechanisms.[461]

4.135 Our quantitative survey of individual consumers found that 10% of consumers were dissatisfied with the overall quality of service they were receiving or had received. Of those who were dissatisfied with the quality of service and/or advice (n=85), a total of 21 had made a complaint.[462]A survey commissioned by the LSB in 2015 with individual consumers showed that only 6% of the respondents were dissatisfied with the outcome of the legal matter and 9% were dissatisfied with the service they received. However, of the dissatisfied consumers only 13% made a formal complaint, and 32% raised concerns with the service provider without making a formal complaint.[463,464]

4.136 We considered examining how this proportion of complaints compares with other comparable goods or services, in order to determine whether a lower proportion of dissatisfied consumers seek redress in the legal services sector.

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[459] In this context, we note research which indicates that a consumer's perceived value of complaining and perceived likelihood of complaining successfully positively influences the intention to complain. Chulmin Kim, Sounghie Kim, Subin Im and Changhoon Shin (2003), 'The effect of attitude and perception on consumer complaint intentions', *Journal of Consumer Marketing*, Vol. 20, No. 4, pp352–371.

[460] This is based on an online survey of 1,010 premature complainants. The sample came from contact details held by the LeO of all who had made a premature complaint since October 2010 until the date of the study and for whom an email address was collected. The report defines a premature complaint as one where the complainant has not first made a complaint to the legal services provider dealing with their case or where a formal complaint has been made but the eight-week time period for the legal services provider to respond has not yet elapsed. Source: YouGov (2012), *Consumer experiences of complaint handling in the legal services market – Premature complainants*, prepared for the LeO.

[461] However, we note that, given the purpose of this LeO study, there may be a degree of selection bias because those complainants who have been selected will most likely feel that they have no confidence that the law firm would resolve the complaint fairly.

[462] Among all respondents, 5% (n=37) made a complaint about quality of service, quality of advice and/or the legal services provider's conduct. Of those 37 respondents, 21 were dissatisfied with quality of service and/or advice. There was a total of 85 respondents dissatisfied with quality of service and/or advice (of whom 64 did not complain).

[463] Based on the LSB survey commissioned to the YouGov (2015), *Tracker Survey 2015 – data tables for recent users*, with respondents drawn from an online panel.

[464] In a more recent wave of this LSB survey, of the dissatisfied consumers 15% made a formal complaint, and 45% raised concerns with the service provider without making a formal complaint. Similarly, an MoJ (2010) survey found that around 10% of legal services users whose matters had ended felt dissatisfied with their legal services provider but only 3% had in fact made a complaint. Sources: MoJ (2010), *Baseline survey to assess the impact of legal services reform*; and Legal Services Consumer Tracker (2016), Insight Report compiled by the YouGov.

However, we have not found a good benchmark.[465] Therefore, we carried out further analysis based on the results of our survey to gain a better understanding of why dissatisfied consumers do not complain.

4.137 For the purpose of assessing why individual consumers who were dissatisfied with the overall quality of service received did not complain, we analysed whether there were any differences in terms of the characteristics of those dissatisfied consumers who do and do not complain. We found that complainants tended to be dissatisfied about the quality of advice and non-complainants tended to be first-time purchasers of legal services. We note, however, that the sample size is very small and therefore, the results are only indicative.[466]

4.138 Other characteristics may also help to explain why some dissatisfied individual consumers did not complain. For example, research shows that more self-confident people and those with a more positive attitude towards complaining are more likely than others to make a complaint in the first place.[467] However, we are not able to verify this with our own survey since it did not pose questions that would enable us to measure these characteristics.

4.139 Our survey of individual consumers asked those dissatisfied consumers who did not complain what their reasons were for not complaining (64 in total). Individual consumers most often said that it was too time-consuming to pursue a complaint (16 consumers) or did not believe it would be resolved to their satisfaction (14 consumers). From the qualitative interviews, one consumer was dissatisfied with the length of time it took for the legal services provider to deal with the legal matter, but chose not to issue a complaint because the legal service was being provided on a pro bono basis.[468]

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[465] We found that in 2013 around 32.2% of dissatisfied consumers who had used a legal or accountancy service did not complain. This figure was similar to consumers who had complaints in relation to second-hand cars (another area where information asymmetries are a problem). However, its definition of 'complain' included complaining to friends and family such that it is not possible to draw direct comparisons with our own survey. European Commission, Market monitoring survey, 2013.

[466] Eighty-five respondents in total were dissatisfied with quality of service and/or advice (of whom 64 did not complain).

[467] Chulmin Kim, Sounghie Kim, Subin Im and Changhoon Shin (2003), 'The effect of attitude and perception on consumer complaint intentions', *Journal of Consumer Marketing*, Vol. 20, No. 4, pp352–371; Mike George, Professor Cosmo Graham, and Linda Lennard (2007), *Complaint handling: Principles and Best Practice*, Centre for Utility Consumer Law, University of Leicester, Report for energywatch.

[468] The survey commissioned by the LSB and the Law Society also explored the reasons for dissatisfied consumers not complaining with the service provider. In 45% of issues, respondents were dissatisfied about the delays in the amount of time the matter took to be dealt with. In 43% of issues respondents felt that they were not being kept up to date on progress. Respondents also highlighted that the service was poor or not up to scratch (38% of issues), that there were mistakes made by the provider in dealing with the matter (32% of issues) or that the person they dealt with did not seem to know what they were doing (26% of issues). Other reasons were also highlighted but to a lesser extent, such as the way they were treated by the staff. Source: Ipsos MORI (2016), *Online survey of individuals' handling of legal issues in England and Wales 2015*, commissioned by the LSB and the Law Society.

4.140 In addition, our survey of individual consumers found that of those consumers who did complain (37 in total), 18 had received some form of outcome from their complaint and similar numbers were satisfied with the outcome as dissatisfied, while five said that they were neither satisfied nor dissatisfied.

4.141 CILEx informed us that it regards redress mechanisms to be effective, but considers that the time frames for resolving complaints could be shortened. However, the LeO advised that shortening the time frame for complaints can be problematic for complainants as they need time to respond to requests for further information. The LeO also noted that delays in processing complaints can be the result of consumers not directing their complaints to the right body.[469] Where complaints contain both service and conduct complaints that too can lead to delays.

Conclusion on redress mechanisms

4.142 Our analysis shows that sector-specific redress mechanisms (and in particular the LeO) offer consumers greater access to redress. However, we recognise that the benefits of these sector-specific redress mechanisms must be considered against the costs which they impose on authorised providers.

4.143 Most clients of self-regulated providers have access to some form of redress, which may include both a first-tier and a second-tier redress mechanism. These redress mechanisms provide many of the benefits of the LeO. There may be some limits on their effectiveness due to the potential difficulties that self-regulatory bodies face in enforcing decisions against voluntary members, although this again needs to be weighed against the potentially higher cost of statutory redress schemes.

4.144 The evidence we have reviewed indicates that the LeO is a user-friendly and effective way for consumers to deal with service-related issues. We note in particular that the LeO is free at the point of use for consumers, aims to resolve issues within clear time frames and takes on the burden of investigating complaints. Absent access to the LeO, consumers either need to use an ADR provider or the court system. We note that the ADR scheme has not been taken up by many legal services providers and the court system may be more costly and time-consuming compared with the LeO (unless TSS takes action, which is only likely to occur in serious cases).

4.145 We have identified that sector-specific redress mechanisms (including the LeO) generate further benefits for clients of authorised providers by driving

[469] As noted above, regulated providers' service complaints are first investigated by the relevant provider and then by the LeO if necessary. The relevant regulator investigates conduct complaints.

feedback loops within the authorised part of the sector. In particular, the sector-specific redress mechanisms incentivise:

(a) providers to improve the quality of their service and advice (for instance, in certain cases the LeO publishes complaints data relating to providers who perform poorly); and

(b) regulators to improve the clarity of their service standards and the effectiveness of their market monitoring.

4.146 Both of these functions benefit consumers in the medium term and may improve consumers' trust and confidence in the authorised part of the sector. As noted above, some self-regulatory bodies administer complaints-handling regimes which offer similar (albeit lesser) benefits to consumers of self-regulated providers.

4.147 We have not found strong evidence that consumers are being significantly harmed by a lack of clarity around redress mechanisms. In addition, we have not found evidence that confusion about where to complain is a significant issue, in part because consumers are typically redirected if they initially complain to the wrong body. Nonetheless, we have identified recent changes from LSB that can improve the clarity around redress mechanisms and the benefits associated with the feedback loop.

Overall conclusion on the effectiveness of consumer protection rules and regulations

4.148 Consumers are generally unaware of the regulatory status of their legal services provider and the implications of that regulatory status for consumer protection. This indicates that some consumers are not making informed decisions about the level of consumer protection that they require. We have assessed whether this leads to consumer detriment in practice.

4.149 In relation to the provision of key information, we have found that while general outcomes are fairly good across both authorised and unauthorised providers, there is room for all providers to improve the way in which they give key information to their clients. In particular, we have found that the client care letters used by authorised providers could be improved so that the key information they contain is presented in a meaningful and accessible way. We welcome the ongoing initiatives led by the frontline legal regulators to address this issue and encourage self-regulatory bodies to apply the findings of this work within their respective remits.

4.150 We note that some stakeholders have submitted anecdotal evidence to us that there are quality concerns relating to the use of unauthorised providers. However, the limited indicative evidence on the quality of legal advice, which relates mainly to will writing, makes it difficult to evaluate the effectiveness of regulations in ensuring quality of advice and appears to show that there are similar minor concerns in quality relating to both authorised and unauthorised providers. One of the possible explanations for the similar performance of unauthorised and authorised providers in this area is that self-regulation (which covers around half of the unauthorised providers) has had a positive impact on the quality of unauthorised providers. We have considered the evidence available relating to immigration law but this does not allow us to compare the scale of consumer protection issues before and after the specific regulatory regime for immigration was introduced.

4.151 Finally, we have not found evidence of a significant problem in relation to unfair sales practices (relating to either authorised or unauthorised providers).

4.152 The absence of clear evidence on clarity of information, quality of legal advice and sales practices does not necessarily indicate that there is no problem in relation to the use of unauthorised providers (for instance, we have received anecdotal evidence of concerns, as noted in paragraph 4.150). Though unauthorised providers currently only have a small presence across the legal services sector (see paragraphs 2.38 to 2.41), this share may increase in the future. Self-regulatory measures which have developed (in particular in the area of will writing) to overcome the information asymmetries specific to legal services have ensured a level of consumer protection outside of statutory regulation. However, these is a risk that these measures may be undermined if there are limitations regarding scope and enforceability. Therefore, in light of the above, we consider that these issues should be revisited once there is a more robust evidence base on the unauthorised part of the sector. In order to facilitate this, we are making recommendations for more evidence on this part of the sector to be gathered by building on existing data sources (see paragraphs 7.202 to 7.207).

4.153 We are concerned that consumers of unauthorised providers do not benefit from the redress mechanisms enjoyed by clients of authorised providers. Consumers who use unauthorised providers do not have access to the LeO and must therefore use an ADR provider or take private action themselves through the courts (which is a more costly, difficult and time-consuming means of obtaining redress for consumers). Several recent initiatives within the self-regulated part of the sector have led to the development of complaints-handling regimes. However, as noted above these are limited by their scope and enforceability. We also note that the EU ADR scheme has so

far 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.

4.154 In addition, consumers of unauthorised providers do not benefit from the feedback loop that the LeO drives within the authorised part of the sector to promote better quality of advice and service. A possible implication of this is that greater differences in service levels between authorised and unauthorised providers may emerge over time, to the detriment of consumers of unauthorised providers. In light of the concerns about redress for consumers of unauthorised providers, we are recommending that the MoJ review whether and how to extend redress to such consumers (see paragraphs 7.201 to 7.202).

5. Impact of current regulations and the regulatory framework on competition

Introduction

5.1 One of the key purposes of sector-specific regulation in legal services is to provide consumer protection in this sector, which is characterised by information asymmetries that present risks for consumers when accessing these services.[470] Furthermore, regulation of legal services helps secure public interest benefits such as the fundamental public interest in supporting the rule of law. However, as with any such system of regulation,[471] there is a trade-off between protecting consumers from poor-quality provision and securing the public interest on the one hand, and allowing access to a range of lower-cost alternative providers on the other. Failures in making an appropriate trade-off between these two considerations can lead to regulations that can dampen competition, restrict entry and inhibit innovation in the market.

5.2 This chapter assesses whether the current regulatory framework appropriately balances these considerations and whether it has, overall, a negative impact on competition in the legal services sector. The chapter is comprised of three parts:

(a) First, we briefly outline some key features of the current regulatory framework which have informed our analysis and introduce the main regulatory issues.

(b) Second, we analyse the direct impact on competition from regulations under the current regulatory framework, focusing on (i) the impact of regulatory costs, (ii) the scope of regulation, and (iii) the impact of regulation 'by title'.

(c) Third, we consider the institutional structure of the current regulatory framework and assess how its design may affect competition in the sector.

5.3 Chapter 6 covers the broader effectiveness of the current regulatory framework and possible alternative approaches.

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[470] For example, see Decker, C and Yarrow, G (2010), *Understanding the economic rationale for legal services regulation*, commissioned by the LSB.
[471] See CMA (2015), Competition impact assessment guidelines – in particular, paragraphs 3.20–3.23.

Key features of the current regulatory framework

5.4 The current regulatory framework in the legal services sector is characterised by a number of key features that interact to produce a complex regulatory landscape. These key features include:

- The scope of regulation in the legal services sector is determined by reference to both:
  - a number of regulated professional titles (such as solicitors and barristers); and
  - the reservation of six legal activities (the 'reserved legal activities') to providers who possess these professional titles.
- Regulation can be directed both to individuals with these professional titles and to the entities that employ them (these are collectively termed 'authorised providers').
- Certain legal professionals, most notably solicitors, cannot provide legal services to the public (whether reserved or unreserved) while working in unauthorised entities.
- Authorised providers are regulated in respect of **all** of their legal activities rather than only in respect of the reserved legal activities.
- There are eight frontline regulators that cover different professional groups providing legal services (such as solicitors and barristers) and are overseen by the LSB. The frontline regulators operate independently, but with varying degrees of separation from their respective representative bodies.

5.5 The following sections provide a high-level overview of the main regulatory issues that might affect competition before they are considered in further detail within the next two parts of this chapter. The selection of these regulatory issues has been guided by previous work in this sector;[472] responses to our statement of scope and interim report; discussions with key stakeholders and our own research and analysis.

[472] In particular, RPI (2013), *Understanding barriers to entry, exit and changes to the structure of regulated legal firms*; and Europe Economics (2013), *Economic Research into Regulatory Restrictions in the Legal Profession*. A Report for the OFT, OFT1460; MoJ (2014), *Call for Evidence on the Legal Services Regulatory Framework: Summary of responses to the Government's call for evidence on concerns with, and ideas for reducing, regulatory burdens and simplifying the legal services regulatory framework*.

Direct impact on competition

5.6 We have considered three key regulatory issues that may be having a direct impact on competition:

- The impact of regulatory costs on competition.
- The impact of the scope of the reserved legal activities on competition.
- The impact of regulation 'by title' on competition.

Regulatory costs

5.7 Legal services regulation imposes regulatory costs on authorised providers. These costs have the potential to create an adverse impact on competition in a number of ways. For instance, they may create barriers to entry, exit or innovation in the sector, particularly if the costs fall disproportionately on new entrants or on smaller providers. Regulatory costs may also distort competition between authorised and unauthorised providers, as unauthorised providers do not face the same regulatory costs. Finally, regulatory costs are likely to be passed on to customers in the form of higher prices so it is important that they are proportionate in relation to the benefits they are intended to achieve.

Scope of the reserved legal activities

5.8 The reservation of certain activities has a potentially adverse effect on competition by restricting who can provide these services. In particular, the reservation of an activity may restrict competition from potentially lower cost unauthorised providers. However, the reservations may be justified on the basis of ensuring consumer protection and/or securing specific public interest benefits. These justifications need to be examined carefully, since we would be concerned if reservations caused disproportionate restrictions on competition that were not adequately justified by the consumer protection and/or public interest benefits.

Regulation by title

5.9 Professional titles are an important factor in consumer decision-making and can be a useful way for consumers to identify high quality or the availability of regulatory protection. However, professional titles also have the potential to distort competition if they result in consumers avoiding unauthorised providers, regardless of their quality, in providing unreserved legal activities.

Design of the institutional structure

5.10 The current regulatory structure has the potential to give rise to a number of issues:

(a) First, the horizontal separation of regulation between the frontline regulators, as explained further below, might lead to duplication of costs, inconsistency of approach, or make it difficult for new business models to emerge.

(b) Second, the vertical separation between the frontline regulators and the oversight body, the LSB, as explained further below, might lead to disagreements on the preferred approach, and might make it more difficult to achieve necessary regulatory change.

(c) Third, the lack of full independence between regulators and their representative bodies might make it more difficult for the regulators to carry out their statutory duties.

Direct impact of regulation on competition

The impact of regulatory costs on competition

Introduction

5.11 Legal services regulations impose a range of costs on authorised providers. While some costs are readily identifiable, such as the price paid for a practising certificate, others are less apparent. For instance, there might be a time cost for firms in ensuring ongoing compliance with regulations, as well as opportunity costs (ie where this time might have been better spent).

5.12 In order to obtain and maintain an authorisation to provide legal services to consumers, authorised legal services providers are likely to incur regulatory costs from:

- entering the market (for example, the costs of undergoing mandatory training);
- maintaining ongoing access to the market (for example, mandatory insurance, payment of fees to the regulator and the costs of maintaining compliance with the regulator's rulebook); and
- leaving the market (for example, mandatory run-off insurance cover and compliance with specific regulations relating to firm closure).

5.13 Whether or not these costs constitute significant barriers to entry, expansion, innovation or exit will depend on a number of potentially interrelated factors. For instance, it will be important to consider whether these costs are proportionate and necessary to the regulatory aims that they seek to achieve; whether they are recoverable or sunk; and whether they affect all authorised providers equally or are targeted only towards specific types of providers.

5.14 The following section provides an overview of evidence regarding the costs of regulation in the legal services sector followed by an assessment of two areas of regulatory costs that have previously been identified as a potential concern: (i) PII cover and (ii) regulatory costs affecting ABSs. After outlining this evidence, we then assess the potential impact of these costs on competition.

Evidence on costs of regulation

Survey evidence

5.15 Survey evidence on regulatory costs has tended to concentrate on the views of solicitors. This evidence indicates that many solicitor firms perceive their regulatory costs to be high or excessive in nature. While it is perhaps unsurprising that authorised firms would prefer the costs of regulation to be lower, we consider that the survey evidence provides a useful starting point for analysing the scope and scale of the issue. In particular, we note the following:

- A 2015 LSB survey found that 45% of SRA-regulated entities felt that annual fees paid to the SRA represented poor value for money and 47% of SRA entities thought that their compliance costs represented poor value for money.[473]

- A 2012/13 Law Society survey found that 47% of solicitor firms thought internal regulatory compliance costs were 'excessive' (with a further 33% stating that they were 'high').[474] The survey also found that only a minority of solicitors (39%) believed that the cost of their practising certificate represented value for money.

- A 2014/15 Law Society survey of solicitor firms found that around a fifth (21%) identified complying with regulations on legal services provision as

[473] LSB (2015), *The regulated communities' views on the cost of regulation*, pp24–25, based on responses by 315 solicitors.
[474] Law Society (2012), *Regulatory Performance Survey Winter 2012-13*, based on responses by 1,001 solicitor firms.

being a ‘fairly’ or ‘very’ significant problem. Furthermore, 30% of firms said that complying with regulations represented ‘a concern, but not a problem’.[475]

- A 2016 report by LexisNexis using structured interviews with individual lawyers found that compliance with regulations was identified as being the top challenge/threat to law firms.[476]

5.16 Some survey evidence also suggests that smaller solicitor firms tend to have more negative views towards regulatory compliance costs and the cost of their practising certificate.[477,478] Qualitative research from the LSB[479] suggests that such findings may reflect that there are a number of ‘fixed cost’ regulatory tasks that must be undertaken by a practice of any size. The Sole Practitioners Group told us that regulatory costs for sole practitioners can represent a major outlay – especially at the point of initial market entry given the delay in receipt of fees from legal work. We also heard from individual providers querying these regulatory costs for both small and larger firms.[480]

5.17 The LSB’s 2012 research on regulatory costs previously found that SRA-regulated entities and BSB-regulated barristers are more likely to view their regulatory compliance costs as high in comparison with other authorised providers. For instance, the LSB found that 45% of barristers thought that the compliance costs they incurred represented poor value for money, while only 22% thought they were reasonable.[481] In contrast, CLC-regulated entities were more likely to view fees paid to their regulator and costs of regulatory compliance as being reasonable than SRA-regulated entities.[482] This evidence aligns with comments made to us by several CLC-regulated entities. These comments indicated that, despite practising fees to the CLC being

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[475] Law Society Omnibus 2014 (unpublished), based on 1,000 solicitor firms.
[476] *LexisNexis Bellwether Report 2016: The riddle of perception,* based on structured interviews with 122 independent lawyers and 108 clients.
[477] See LSB (2015), *The regulated communities’ views on the cost of regulation*, pp32–33, where 31% of ‘large’ entities with 50 or more employees regarded annual fees paid to the regulators as poor value for money. In contrast, 46% of ‘small’ entities with two to ten employees regarded annual fees as poor value for money. Regarding compliance costs, 23% of ‘large’ firms indicated that they are poor value for money, whereas 50% of ‘small’ firms indicated that they are poor value for money. However, the LSB survey is based on a small sample size and may not be truly representative.
[478] The 2012/13 Law Society Firms Survey reports that a higher proportion of small firms (13%) reported that compliance costs would reduce the range of services that they provided compared to the proportion of medium-sized firms (8%) and large firms (5%) reporting the same impact.
[479] ICF International (2015*). In-depth investigation into the costs of regulation in the market for legal services: Report for the LSB,* p30.
[480] For instance, see CMA (2016), Respondent 5 in summary of certain responses from individuals to the statement of scope.
[481] This contrasts with cost lawyers (7% poor value for money versus 39% reasonable); notaries (37% poor value for money versus 27% reasonable) and patent/trade mark attorneys (34% poor value for money versus 37% reasonable) (although small sample sizes should be noted for cost lawyers and notaries in this research).
[482] Although note small sample size of CLC entities (37) versus SRA entities (316) surveyed.

higher than what CLC-regulated providers would pay to the SRA if they switched, the CLC's regulatory approach, in being more available to providers and having a greater understanding of the conveyancing sector, was preferable and thus represented better value for money.

Professional indemnity insurance

5.18 PII covers the cost of civil claims brought by consumers against services received by professional firms. All legal services regulators currently require their members to maintain a minimum level of PII cover. However, arrangements for obtaining PII can differ between the legal professions. These range from legal services providers choosing any PII provider subject to that provider abiding by a set of minimum terms and conditions (the open market system), to a mutual fund where the profession self-insures.[483]

5.19 Available survey evidence tends to concentrate on PII costs for solicitor firms under the SRA's open market system. The evidence shows that PII is consistently cited as a significant regulatory cost to providers. For instance, the 2015 LSB survey found that the requirement to have PII was rated as 'high cost' by 69% of SRA entities.[484] Furthermore, the LSB's 2015 in-depth investigation into the costs of regulation saw PII being identified as the highest category of incremental cost[485] on their businesses by participant firms to that study.[486]

5.20 There is some evidence to indicate that the cost of PII represents a greater proportion of smaller firms' turnover when compared with larger firms. The Law Society's last annual PII survey found that the average 2015/16 premium cost as a percentage of firm turnover was 4.8% for all firms, but was 7% for sole practitioners.[487]

5.21 Run-off cover is where the PII insurer pays out for successful claims made against a provider that has already exited the market.[488] The cost of PII run-off cover has previously been identified as being a key potential barrier to exit

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[483] The reasons for these different approaches are discussed in LSB (2016), *Thematic review of restrictions on choice of insurer: Analysis of the current arrangements.*
[484] LSB (2015), *The regulated communities' views on the cost of regulation*, p39.
[485] An 'incremental cost' being defined as those costs that serve only to comply with legal services regulation, including both one-off and ongoing costs. In the context of PII, for commercial reasons some firms would take some level of insurance even if the regulatory requirement was not mandatory.
[486] With PII representing, on average, 3.8% of firms total operating costs (although this finding is purely qualitative given the small number (12) of firms sampled).
[487] Mustard (2016) *Professional Indemnity Insurance Research*, commissioned by the Law Society.
[488] Under the SRA's rules, before exiting the market, firms must obtain six years' run-off cover unless they are covered by the PII of a successor firm.

and something that might delay efficient exit by firms.[489] For instance, the Law Society's *Future of Legal Services* report noted serious concerns with regard to the affordability of retiring a solicitors' practice.[490] The Law Society's last annual PII survey found that the median cost of run-off was 300% of firms' annual premium and that the joint main reason for firms delaying their exit from the market was as a result of concerns about PII run-off (this only represented seven firms, however).[491] Furthermore, we note that the CLC has recently amended its PII arrangements so that PII run-off cover is taken into account when determining regular premiums (meaning that exiting firms do not have to make an additional purchase upon exiting the market).[492]

5.22 While PII costs may be an issue for some firms (especially for some sole practitioners and smaller firms), it seems unlikely that these requirements represent significant barriers to entry or exit given the known rates of entry and exit into the legal services sector (see paragraph 3.212 of Chapter 3).[493] Furthermore, there is also some evidence to suggest that previous difficulties around obtaining insurance have lessened in recent years.[494] While seen as a key regulatory burden, only a minority of providers seem to think that regulations mandating PII should be removed.[495]

Regulatory costs on Alternative Business Structures

5.23 ABSs are subject to a specific licensing regime put in place by the Legal Services Act 2007 and implemented by the frontline regulators via their individual regulatory schemes. Many of the provisions of these regulatory schemes sought to address specific concerns over the potential risks under this regime associated with allowing greater levels of non-lawyer ownership and/or management of law firms.[496] We have considered whether the regulations that are imposed on ABSs may limit competition through being overly restrictive and/or costly.

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[489] SRA (2014), *Proportionate regulation: changes to minimum compulsory professional indemnity cover*.
[490] The Law Society (2016), *The Future of Legal Services*, p25.
[491] In response to the question 'What influenced your decision not to put your firm into run-off?', seven firms responded 'could not afford the run-off premium' compared to four firms answering the same in 2014/15. Seven firms responded 'decided to continue practising'.
[492] See LSB (2016) *LSB final decision notice 14 June 2016*.
[493] With regard to insurance, the RPI notes that: 'Our investigations support the conclusion that current insurance arrangements are a source of barriers to entry, exit and mobility. However, since entry, (gross) exit and mobility rates are reasonably high, the magnitude of the barriers created does not appear to be particularly high' See RPI (2013), *Understanding barriers to entry, exit and changes to the structure of regulated legal firms* p96.
[494] See the Law Society (2016), Law Society's response to its most recent PII survey.
[495] LSB (2015) *The regulated communities' views on the cost of regulation*.
[496] These concerns persist among some lawyers and commentators: For instance, see Lord Neubeger (2016) Speech to The Lord Slynn Memorial Lecture 2016, paragraph 47.

5.24 Previous research indicated concerns over the SRA's ABS authorisation process being costly and time-consuming for applicant firms.[497] We also note that the SRA's initial processes for handling ABS authorisations were seen as going considerably beyond the basic requirements of the Legal Services Act 2007, particularly in relation to onerous checks on non-lawyer managers, both of the entity itself and of any owner entities.[498] This subsequently led the SRA to introduce certain rule changes and engage in the increased use of waivers in order to adopt a more proportionate approach to managers that moved closer to the minimum requirements of the 2007 Act.[499] Practical changes have also been made, such as reducing the size of the application form for authorisation as an ABS and limiting the amount of supporting information requested.

5.25 While some stakeholders told us that they still perceived the authorisation process for ABSs to be complicated, ABSs generally considered that the SRA had made extensive use of waivers from regulations in order to overcome these challenges in practice. In addition, ABSs commented that the SRA's revised authorisation process represented a marked improvement in comparison with its authorisation process in 2011 (when ABSs were first introduced).[500] We understand that, in 2015, SRA ABS applications were taking 95.7 calendar days (around 13 to 14 weeks) on average. This is significantly lower than the 184 calendar days for ABS applications in 2012, the first full year of the SRA licensing ABSs. We also note that the SRA has amended its regulatory scheme in other ways that might provide more certainty to ABSs when seeking authorisation.[501]

5.26 Other regulatory requirements, such as the SRA's 'separate business rule'[502] and its approach to regulation of multidisciplinary practices (MDPs), were previously considered a major barrier to the development of ABSs in that they forced potential applicants to make uncommercial decisions regarding their

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[497] For instance, an early SRA survey in 2014 (*Research on ABS: Findings from surveys with ABSs and applicants that withdrew from the licensing process*) found that just over half (54%) of successful applicants 'disagreed' or 'strongly disagreed' with the view that their application was handled in a timely manner and that 56% of applicants said that the amount of time spent obtaining an ABS licence was significantly more costly than expected.
[498] As noted below in paragraph 5.147, the SRA contends that a number of requirements were introduced as concessions to the Law Society in order to proceed with its application to become a licensing authority for ABSs.
[499] SRA (2015) *SRA Regulatory Reform Programme, Improving Regulation: proportionate and targeted measures*.
[500] These improvements being reflected in LSB (2014) Annex B: SRA performance in ABS authorisations.
[501] For instance, the SRA no longer requires an applicant firm (including ABSs) to specify which of the reserved legal activities it seeks authorisation for. Furthermore, the rule which previously allowed the SRA to revoke a firm's (including an ABS's) authorisation for not carrying out legal activities that it specified has now been removed.
[502] The separate business rule previously prohibited solicitors from owning or managing non-regulated legal services.

business structures in order to comply with the rule. We note, however, that the SRA has recently implemented major reforms in both areas, with the aim of simplifying and reducing the regulatory burden on ABSs and MDPs in order to facilitate their entry and expansion.[503] New entrants to whom we have spoken in the course of our study have welcomed these changes.

5.27 We note that the ABS application processes of other frontline regulators have tended to take less time compared with the SRA's processes since it initially started authorising ABSs in 2012. For instance, the CLC has indicated that its ABS applications generally take around six to eight weeks to complete. The ICAEW only began processing ABS applications in August 2014, but it currently reports an average of 11 weeks (85 working days) to license its ABS probate firms.[504] These timescales can be explained by: *(a)* previous experience of dealing with non-lawyer ownership of entities;[505] *(b)* efforts to ensure that the ABS process constituted only the bare requirements of the 2007 Act and was aligned with approvals of other entities;[506] and *(c)* greater experience in relying on regulatory approvals from other regulators.[507]

5.28 Along with the SRA, both the CLC and ICEAW have indicated to us that the current ABS licensing regime, as set out in the Legal Services Act 2007, could be simplified further and made less prescriptive. Similarly, the SRA submitted that there was a considerable risk that the current level of prescription and detail set out in primary legislation could lead to overregulation, regulatory inflexibility, unjustifiable differences in treatment between ABS and non-ABS firms and the creation of disproportionate barriers to new entrants.[508]

5.29 Discussions with stakeholders and our own research has identified the following areas of concern in regard to the regulation of ABS. These concerns largely reflect points made to the MoJ by the LSB and other frontline regulators on this matter which indicated that the current rules may act as

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[503] For more details on the separate business rule, see the SRA website and the LSB website. For more details on MDPs regulation, see SRA's full policy statement.
[504] For the period July 2015 to October 2016.
[505] The CLC's regulatory scheme having already allowed a degree of non-lawyer ownership prior to the ABS regime coming into force.
[506] The CLC has recently undertaken a project to align the processes for application to become a lawyer owned firm and an ABS, recognising that the only difference in processes are the formal appointments of a Head of Legal Practice (HOLP) and a Head of Finance and Administration (HOFA) and checks on external owners/investors in the case of ABS firms.
[507] For instance, the ICAEW informed us that, prior to its ABS licensing regime, its regulatory regime already took into account 'regulatory equivalence'.
[508] See SRA submission to CMA Statement of Scope.

barriers to entry – especially for potentially innovative firms.[509] Specifically, these concerns are:

- onerous checks on non-lawyer managers/owners as set out in Schedule 13 to the 2007 Act; and
- prescriptive licensing requirements within Schedule 11 to the 2007 Act which result in disproportionate costs for legal services providers and removing regulators' flexibility in targeting regulations at identified risk.

5.30 The MoJ has subsequently launched a consultation on ABS licensing rules in July 2016[510] that addressed both Schedule 11 and Schedule 13 to the Legal Services Act 2007, while also proposing amendment to other provisions of relevance to ABSs. In summary, the MoJ's consultation proposes to amend the 2007 Act so as to:

- remove the requirement in Schedule 11 that ABSs must provide services consisting of or including reserved legal activities from a practising address in England and Wales at all times;
- amend Schedule 13 to allow frontline regulators to make their own regulatory rules around ownership of ABSs, subject to LSB approval;[511]
- repeal section 83(5)(b) of the Legal Services Act 2007 so that frontline regulators are no longer required to set out how approving an individual ABS licence will meet the regulatory objective of improving access to justice; and
- amend sections 91(1)(b) and 92(2) of the 2007 Act so that Head of Legal Practice (HOLPs) and Head of Finance and Administration (HOFAs) of an ABS are only required to report a 'material' failure to comply with licensing rules, thus aligning requirements between ABS and non-ABS firms.

5.31 As already noted, many of the additional regulatory requirements on ABSs – in particular those contained in the primary legislation – originated from concerns about new business models posing an increased risk to consumers, chiefly due to the potential conflict of interests between non-lawyer owners and the consumers of legal services. However, submissions we received from the frontline regulators in relation to ABSs have not indicated that they are any

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[509] See the front line regulators' joint submissions to the MoJ in June 2015, including proposals for minor changes to the Legal Services Act 2007.
[510] MoJ (2016), *Legal Services: removing barriers to competition: Consultation on proposals to make amendments to the Legal Services Act 2007*.
[511] Under this revised scheme, the LSB would be under a statutory duty to provide guidance on ownership.

more risky than other business models. Overall, we found broad agreement among frontline regulators and market participants that, while ABS constitutes an alternative business model, this is not an inherently more risky model and few practical issues have emerged as a result of this alternative model.[512]

5.32 On the basis of the evidence we have seen, we do not believe that the authorisation process for ABSs creates substantial barriers to entry. However, given that our evidence also does not support the idea that ABSs pose greater risks than other regulated firms,[513] we consider that there is considerable scope for the authorisation process to be further simplified and relaxed in the manner proposed by the MoJ in its current consultation. In particular, these proposals would allow frontline regulators more discretion on their ABS authorisation processes and would better align processes between ABS and non-ABS entities.

Impact of regulatory costs

5.33 We have explored whether the regulations that apply to all authorised providers (such as the requirement to obtain PII cover) create significant barriers to entry and exit, or whether regulations may be inhibiting innovation in the sector. We also considered whether some regulatory costs may be excessive and thus contribute to higher prices. Furthermore, we explored whether such costs may discourage currently unauthorised providers from becoming authorised and/or affect competition between unauthorised and authorised providers.

Regulations as a barrier to entry or exit

5.34 To the extent that regulations apply equally to all authorised providers (such as the requirement to obtain PII cover) these regulations do not seem to create significant barriers to entry or exit. As discussed in Chapter 3, we note the fragmented nature of the current legal services sector and reasonably high entry and exit rates which suggest that regulatory costs do not constitute a significant barrier to entry or exit for most authorised firms.[514]

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[512] In this respect, the SRA has stated that: 'In considering the outcomes and decisions that arose from SRA investigations into reported issues, there is no evidence at this time that ABS firms present any elevated level of risk. Reports concerning ABS firms are slightly less likely (6 percent) to be assessed as serious compared with matters reported against all firms (ABSs and non-ABSs).' *SRA 1 August 2016 response to MoJ consultation 'Legal services: removing barriers to competition'.*

[513] In connection to this, the CMA has had the benefit of internal SRA analysis of allegations against ABSs. Research and Analysis, Profiling and Risk Analysis of ABS firms. SRA internal paper, 23/02/16.

[514] RPI (2013), *Understanding barriers to entry, exit and changes to the structure of regulated legal firms*.

5.35 However, we recognise that these costs may still hinder the entry and exit of smaller firms, especially to sole practitioners.[515] Furthermore, even if they do not constitute significant barriers to entry, some regulatory costs may be excessive in nature. As such, they are likely to be passed on to consumers in the form of higher prices. We therefore consider it important to reduce regulatory costs and we support the efforts of the legal services regulators in doing this in a range of different areas as explored further below.

Regulations as a barrier to innovation

5.36 Depending on their content and implementation, regulations can have negative effects on innovation. In particular, regulations put in place to safeguard consumer protection can also chill potential entry from new and innovative business models. This concern is illustrated in the MoJ ABS consultation of July 2016[516] where the current need for ABSs to possess a practising address in England and Wales from where they deliver reserved legal activities was identified as a regulatory rule that may deter online businesses from being licensed as ABSs.[517] Furthermore, it is important to note that the cost of complying with regulations (both time and money), and especially complying with new regulatory rules, may detract from firms' ability and willingness to innovate.

5.37 *Innovation in legal services*,[518] a survey of 1500 solicitors, barristers and other legal services providers,[519] found that regulatory and legislative issues were the most commonly cited constraint on innovation. However, despite being the most identified factor, only 23.8% of respondents identified regulatory factors as being a 'significant' constraint on innovation. As the report states, this implies that 'around 75-80% of respondents did *not* consider regulation [or legislation] to be a major constraint on innovation'.[520]

5.38 In addition, the report found that solicitors tended to have more positive views on individual regulations when compared to their views on 'regulatory factors' in general. As a result, the report says that such a finding implies that:

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[515] In this context we note that a particular reason for the SRA's proposed reform of its handbook has been to consider how small firms use this regulator code. See SRA (2014), *The SRA and small firms discussion paper*. Furthermore, we note the emergence of new models of delivery – such as 'umbrella' or 'virtual' law firms – that might be related to difficulties in establishing a more traditional sole practice.
[516] MoJ (2016), *Legal Services: removing barriers to competition: Consultation on proposals to make amendments to the Legal Services Act 2007*.
[517] MoJ (2016), *Legal Services: removing barriers to competition: Consultation on proposals to make amendments to the Legal Services Act 2007,* paragraph 29.
[518] Enterprise Research Centre (2015), *Innovation in legal services*, commissioned by the SRA and the LSB.
[519] 943 solicitors; 156 barristers' chambers; 72 other regulated providers; 329 unauthorised providers.
[520] Enterprise Research Centre (2015), *Innovation in legal services*, a report for the SRA and the LSB, p52.

> if [solicitors] are asked whether regulation and legislation is a barrier to innovation, a minority will say it is: but if they are asked to judge whether individual aspects of regulation or legislation have a positive or negative effect, a somewhat more positive view of regulation generally emerges.[521]

Outcomes-focused regulations

5.39 Following the Legal Services Act 2007, a number of regulators have introduced what is commonly referred to as outcomes-focused regulation (OFR). We note that part of the rationale for introducing OFR across the legal services regulators was to move away from prescriptive regulation that previously served to inhibit innovation in the sector. A review of OFR conducted by the SRA in 2013 suggested that it had been responsible for an increase in regulatory costs[522] and a Law Society survey around the same time found that 60% of firms surveyed believed that the cost of compliance had risen since the introduction OFR.[523] However, the SRA's OFR review also found that 85% of firms would continue to undertake the same administrative practices even if all regulatory requirements by the SRA were lifted.[524]

5.40 The RPI previously queried whether the OFR reforms may have resulted in a lack of clarity for firms over what was required in order to ensure compliance. This may potentially place a greater burden on firms, and disproportionately so on new entrant firms, to work out what compliance with outcomes means in practice. As a result of this uncertainty over regulatory requirements, firms may also have become overly cautious with the result that innovation among firms may have been inhibited.[525]

5.41 With respect to the SRA's then operating rulebook, the RPI also queried whether the SRA's mandatory outcomes might, at best, be only partially linked to the eight regulatory objectives found within the 2007 Act.[526] In particular, the RPI identified an insufficient linkage between the consumer and competition regulatory objectives under the Legal Services Act 2007 and some of the SRA's mandatory outcomes. This led to a particular issue in that

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[521] Enterprise Research Centre (2015), *Innovation in legal services*, commissioned by the SRA and the LSB, p57.
[522] SRA (2013), *Measuring the impact of outcomes-focused regulation (OFR) on firms*.
[523] Law Society (2012), *Regulatory Performance Survey Winter 2012-13*.
[524] SRA (2013), *Measuring the impact of outcomes-focused regulation (OFR) on firms*, p24.
[525] The RPI describes this as 'staying under the radar'. Over the course of our market study, we have heard anecdotal evidence that some smaller solicitor firms still chose to base their practices on the older, pre-OFR rulebook given their lack of certainty about OFR.
[526] These regulatory objectives being: Protecting and promoting the public interest; Supporting the constitutional principle of the rule of law; Improving access to justice; Protecting and promoting the interests of consumers of legal services; Promoting competition in the provision of legal services; Encouraging an independent, strong, diverse and effective legal profession; Increasing public understanding of the citizen's legal rights and duties; Promoting and maintaining adherence to the professional principles.

OFR might be insufficiently focused on assessing the value for money provided to consumers (which would be an expected outcome of a competitive market and thus meeting the competition objective in the Legal Services Act 2007).

5.42 The RPI suggested that such poorly targeted regulations derived from an assumption that higher quality of service was always in the consumer interest rather than recognising that consumers may legitimately make trade-offs between quality and the price of services. To illustrate this point, the RPI suggested that mandatory outcome 1.6 in the SRA's Handbook, which currently states that 'you only enter into fee agreements with your clients that are legal, and which you consider are suitable for the client's needs and take account of the client's best interests', could be rewritten to 'say simply that fee arrangements should be such as to provide value for money, with guidance being provided on what this means in operational terms'.[527] In doing so, the outcome would better reflect the overall set of regulatory objectives under the Legal Services Act 2007 and protect consumers against a broader range of poor outcomes than just low-quality services.

5.43 We recognise such concerns regarding the way in which OFR is implemented. Specifically, we recognise the importance of the link between the design of regulations and the regulatory principles that should underpin them. However, on balance, we believe that OFR represents the best method for ensuring that regulatory rules are appropriately flexible so as to reflect changes in the market over time. Further discussion of the interaction between regulatory principles and specific regulations can be found in Chapter 6.

5.44 In reviewing the SRA's rulebook in 2013, the RPI also questioned whether many of the 'outcomes focused' rules were, in fact, still somewhat prescriptive in their format, in particular in the use of 'indicative behaviours' for firms. As part of its current proposals, the SRA seems to recognise the RPI's previous criticisms when it states that the current code is 'long, confusing and complicated' and that it is still 'detailed and prescriptive and retains a strong focus on traditional models of legal practice.'[528] In addition, the SRA now proposes to remove indicative behaviours given that some stakeholders found them confusing and/or interpreted them as rigid requirements. We support the SRA's continuing efforts to reform its code of conduct so that it is clearer to solicitors and better enables proportionate regulation.

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[527] RPI (2013), *Understanding barriers to entry, exit and changes to the structure of regulated legal firms*, p100.
[528] In particular, the SRA notes that it has had to grant more and more waivers in order to allow the code to reflect the realities of the market.

Asymmetry of regulatory costs

5.45 The Law Society submitted to us that excessive regulatory compliance costs place solicitors at a competitive disadvantage compared to unauthorised providers.[529] We agree that regulatory costs for authorised providers may be excessive. However, we have not seen strong evidence that such cost differences constitute a significant distortion between authorised and unauthorised providers. In particular, we note the limited extent to which unauthorised providers have gained market share from authorised providers.[530] Furthermore, it is likely that higher regulatory costs for solicitors are offset by other advantages these providers have as incumbent providers, such as the wide recognition of solicitors as noted in paragraph 3.48, and some specific exemptions that solicitor firms benefit from.[531]

5.46 We recognise that, in a more competitive market for legal services characterised by consumers being better able to shop around and drive competition, these differences in regulatory costs may start to put solicitors at a disadvantage in comparison to unauthorised providers. However, as discussed below, we believe that the better approach to tackling this issue in the short term is to take further steps to reduce regulatory costs on solicitors, rather than to impose regulatory costs on currently unauthorised providers.

*Actions to reduce c*osts

5.47 We found general agreement[532] among key regulatory and representative stakeholders that regulatory costs remain excessive in the legal services sector despite a series of reforms introduced since the Legal Services Act 2007.[533]

5.48 For instance, the Law Society has told us that the detail of certain areas of regulation could be simplified in order to alleviate unnecessarily burdensome regulations.[534] Furthermore, with respect to entry costs borne through academic and vocational training for lawyers, both the SRA and the BSB are in the process of considering reforms which seek to reduce training

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[529] Law Society response to CMA Interim Report. Section 3.3, p9.
[530] See paragraph 2.41.
[531] Regulation by the SRA as an entity provides exemption to immigration regulation, claims management services and FCA supervision for certain services. These exemptions represent savings to potential additional regulatory costs borne by unauthorised providers.
[532] As assessed at a roundtable on legal services regulation held at the CMA's offices in October.
[533] In this context, a research commissioned by the LSB identified 178 regulatory changes until October 2015. See Oxecon (2015), *Economic Advice on Likely Market Impacts of Changes to Regulation - 2010-2015*. The report notes that many of these changes can be 'expected to have acted as drivers for procompetitive change'.
[534] Law Society submission to the CMA (theories of harm, paragraphs 4.16, 4.21 and 4.24). See also the Law Society's work on cutting red tape.

requirements and associated costs.[535,536] At the same time, notable differences of opinion exist on the preferred approach to further reform and on specific priorities for regulatory change. This is well illustrated by the Law Society's recent opposition to the SRA's current *Looking to the Future* consultation as discussed further in paragraphs 5.105 to 5.119.[537]

SRA PII reforms

5.49 We note that the SRA has previously been unsuccessful in seeking to lower its PII minimum requirement cover from £2 million to £500,000. Such a change would have allowed SRA entities to obtain minimum levels of PII cover that would be more in line with some other legal services professionals.[538] However, in rejecting the application the LSB pointed to concerns around the robustness of the SRA's evidence for supporting this lowering in the PII minimum requirements.[539]

5.50 More recently, the SRA has published further data to support its view that minimum PII limits should be lowered. This data indicates that the largest category of insurance claims, by value of indemnity payments, relates to conveyancing services and that 98% of successful claims are for amounts under £580,000.[540]

5.51 As well as protecting consumers, PII cover provides a key self-protection measure for law firms (and therefore many unauthorised providers also take out such cover). Importantly, while solicitor firms are required to obtain a minimum level of PII cover, they are also required to obtain a level of cover that they think is appropriate to their work and many firms therefore obtain cover above the minimum limit.

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[535] For instance, as part of its 'training for tomorrow' programme, the SRA is currently consulting on a solicitors qualifying examination (SQE) that the SRA believes will be less costly for students than the Legal Practice Course.
[536] As part of its 'future bar training' programme, the BSB is currently consulting on three potential approaches to future training for barristers with the BSB's favoured option offering students greater flexibility on routes and introducing new price competition in the market for training barristers.
[537] In which the SRA notes that: 'We know (via *Feedback from external users of the Handbook November 2015*) that many that we regulate consider the current Handbook can be confusing and difficult to navigate. It is not always clear to whom particular obligations and expectations apply. This creates uncertainty adding to the cost of regulation. See SRA (2016), *Looking to the future - flexibility and public protection,* Annexes 4-6 – paragraph 34. The SRA's work in this regard follows a number of reforms that have sought to reduce regulatory burdens on solicitors. For instance, reforms to accounts rules; client money handling and reporting requirements
[538] Although it is important to note that significant differences exist between PII schemes operated by different frontline regulators. See Appendix F (Comparison of consumer protection standards required of providers by regulatory status).
[539] LSB (2014), *Decision notice*, p37.
[540] SRA (2016), *Reflecting on Solicitors Professional Indemnity Insurance: Market trends and analysis of historic claims data,* see slides 12 and 15.

5.52 As a key regulatory cost on firms which may be passed onto consumers, we believe that fuller consideration should be given to whether it is appropriate to reduce the minimum level of mandatory PII cover to reduce costs[541] 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.

Conclusion on the impact of regulatory costs on competition

5.53 We have found that regulatory costs for authorised providers remain high despite a series of reforms introduced since the Legal Services Act 2007. We are concerned that these regulatory costs may be excessive in nature and may be passed through to consumers in the form of higher prices.

5.54 Given that rates of entry and exit are comparable to other professional services sectors, we do not think that these costs represent a significant barrier to entry for new authorised providers, but we believe that they may be a barrier to innovation and to the introduction of newer business models.

5.55 In finding high regulatory costs in this sector, a particular concern is that, as a result of title-based regulation, the costs of any excessive regulation will be spread across all activities undertaken by the authorised provider – including lower risk, unreserved legal activities. As a consequence, disproportionate regulatory costs may unnecessarily raise the cost of these unreserved services to consumers. These concerns are outlined more fully in the next section when we consider the impact of the reserved legal activities and at paragraph 5.105 onwards when we consider the SRA's current proposals on regulatory reform.[542]

The impact of the scope of the reserved legal activities

5.56 As listed further in paragraph 2.18, the Legal Services Act 2007 specifies six reserved legal activities that only 'authorised persons' (or, in some cases, people supervised by an authorised person) can provide to the public for a fee.[543] An overview of the reserved legal activities and the different legal professionals who can provide them is provided in Table 5.1.

5.57 The scope of the reserved legal activities may unduly restrict competition from potentially lower cost unauthorised providers if it lacks justification on the

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[541] However, following CMA discussions with regulators and an insurance provider, it should be noted that even if minimum cover was reduced from £2 million to £500,000, PII premiums would be unlikely to reduce by a commensurate 75%.
[542] See SRA (2016), *Looking to the future – flexibility and public protection.*
[543] There is an exemption for individuals who undertake the reserved activity for no fee or gain (with the exception of the administration of oaths). In some cases consumers are allowed to undertake the reserved activity themselves in a personal capacity.

basis of ensuring consumer protection and/or securing specific public interest benefits. In the following sections we explore the impact on competition that the current reservations may be having while also outlining the consumer protection and public interests that may justify these reservations. Our analysis in these sections should be read in conjunction with Appendix G (Assessment of the reserved legal activities) which provides a more detailed examination of each reserved activity.

5.58 Before setting out our assessment of the impact on competition of the reserved legal activities, we have outlined a number of key considerations that have underpinned our overall assessment.

Key considerations in assessing the reserved legal activities

5.59 The reservation of certain legal activities allows providers to practise those activities only if they become authorised legal providers. As a result, unauthorised providers cannot in principle compete in the provision of reserved legal activities.

5.60 As outlined in the previous section, we have found that authorised providers are subject to high and potentially excessive regulatory costs which may be passed onto consumers. In contrast, unauthorised providers, by virtue of lower regulatory costs affecting their business, are likely to be able to provide legal services at a lower cost to consumers than authorised providers.[544] The current reservations potentially therefore act as a barrier to these potentially lower cost providers, particularly when the reserved activity is only part of a wider legal service. Unauthorised providers who wanted to carry out any of the reserved legal activities would need to become authorised to do so.[545]

5.61 As noted above, while reserved legal activities may restrict competition between different types of legal services provider, they may be justified on the basis of their importance in ensuring consumer protection and/or securing specific public interest benefits. In particular:

- Given the substantial risk of detriment that may be a consequence of poor-quality legal services and the difficulty a consumer faces in assessing quality and value for money, the reservation of an activity to a

[544] Unauthorised providers have consistently emphasised their lower start-up and running costs in comparison with authorised providers of the same legal services in their discussions with the CMA. See Anonymous Respondent 1 in response to CMA Statement of Scope.
[545] Although we note that some routes to becoming authorised persons for reserved legal activities, such as schemes run by CLC and CILEx Regulation for probate, are likely to incur less overall cost than becoming a solicitor or barrister.

specific authorised provider may provide an important upfront assurance of quality and/or regulatory protection.

- The reservation of an activity may help secure public interest considerations[546] such as the fundamental public interest in supporting the rule of law; protecting the legal rights of individuals and ensuring access to justice so that individuals can participate equally in society.[547]

5.62 We looked at whether the reserved legal activities cause **disproportionate** restrictions on competition in the legal services sector. In particular, we considered:

- whether the reserved legal activities are effective in protecting consumers;
- whether the reserved legal activities are effective in supporting broader public interest considerations;
- whether the scope of the reservations is appropriate and well targeted for securing either of the above two considerations;
- whether the scope of the reservations still allows sufficient entry for unauthorised providers in relevant legal areas; and
- how competition for the reserved legal activities currently operates and what the alternatives to reserving the legal activity may be (since there may be less restrictive ways to deliver consumer protection and secure the relevant public interest considerations).

5.63 Appendix G (Assessment of the reserved legal activities) provides an outline of each reserved activity, assessing them against the considerations outlined above.

Impact on competition of the reserved legal activities

5.64 The majority of the reserved legal activities are narrowly defined. The impact of reservation on competition in the sector is thus limited in practice due to *(a)* their application to only certain parts of the overall legal services sector and *(b)* their narrow scope which enables unauthorised legal services providers to work around some of them in practice.

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[546] These may be alternatively characterised as 'positive externalities' or the provision of 'public goods'. See Van den Bergh, R (2008), *Towards Better Regulation of the Legal Professions in the European Union*, Rotterdam Institute of Law and Economics (RILE) Working Paper Series, p5.
[547] See Mayson & Marley (2011), *The regulation of legal services: What is the case for reservation?*, p29.

5.65 As observed in respect of probate and litigation, outsourcing the reserved element to an authorised provider allows unauthorised providers to offer a service that, to a certain extent, may be comparable to that offered by authorised providers. Unauthorised providers can also use other means to work around the reservation – typically by having the consumer undertake the reserved element themselves.

5.66 Nevertheless, in having to undertake methods to navigate around the reserved legal activities, the reservations act as a barrier to unauthorised providers seeking to offer a complete service to consumers (ie one that includes both reserved and unreserved elements). This may create delay and increased costs for consumers.

5.67 Even where the reservation is broader in nature, such as rights of audience and notarial activities, the current rules seem to afford room for unauthorised providers legitimately to provide certain services subject to certain conditions. For instance, wide judicial discretion with respect to advocacy services allows for unauthorised providers to be granted rights of audience in certain circumstances. In the context of notarial services, a provider undertaking a service commonly provided by an authorised notary may also escape the reservation, provided that, in doing so, it is not expressly holding itself out as being a qualified and an authorised notary.

5.68 While those are examples of unauthorised providers finding ways to work around the reserved legal activities, unauthorised providers have a limited share of supply in respect of both the reserved and the unreserved legal activities. However, based on evidence reviewed over the course of this market study, we believe that the low shares of unauthorised providers for unreserved legal activities can be attributed primarily to a lack of awareness of these providers, rather than the scope of the reserved legal activities.

5.69 It is also important to note that the reservation of activities does not result in market concentration of authorised providers. Many of the legal services areas where the reservations are relevant have a large number of active authorised providers and high entry and exit rates. Overall, while solicitors still make up the overwhelming majority of the authorised providers able to conduct the reserved legal activities,[548] the number of authorised providers for several of the reserved legal activities has grown in recent years thanks to an

[548] Solicitors cannot undertake notarial activities by virtue of their solicitor title. However, the majority of notaries are also qualified solicitors.

expansion in the types of providers authorised to provide certain reserved legal activities.[549]

Table 5.1: Approved regulators and reserved legal activities

	Right of audience	*Conduct of litigation*	*Reserved Instrument Activities*	*Probate activities*	*Notarial activities*	*Administration of Oaths*
Association of Costs Lawyers*	○	○				●
Bar Council†	●	●	●	●		●
Chartered Institute of Legal Executives‡	○	○	●	●		●
Chartered Institute of Patent Attorneys and the Chartered Institute of Trademark Attorneys§	○	○	○			●
Council for Licenced Conveyancers¶			●	●		●
Institute of Chartered Accountants in England and Wales#				○		
Law Society~	●	●	●	●		●
Master of the Faculties			●	●	●	●

Source: CMA analysis of approved regulators' designations under the Legal Services Act 2007 and their respective regulatory schemes.
● = Unlimited scope.
○ = Limited scope (Under the regulatory schemes of the front line regulators, authorisation for these reserved legal activities may be restricted to specific type of legal matter or forum in which the reservation can be provided. Please consult footnotes for further details)
* Under the regulatory scheme of the Costs Lawyer Standards Board, costs lawyers are authorised to exercise a right of audience and conduct litigation in matters that relate to costs.
† Upon qualification, barristers are not automatically entitled to conduct litigation. However, provided they satisfy a number of conditions maintained by the BSB, they can apply and have conduct of litigation added to their practising certificate.
‡ Members of CILEx who obtain Chartered Legal Executive status can apply to become a Chartered Legal Executive Advocate and/or a CILEx Litigator which would authorise these members to exercise a right of audience and conduct of litigation, but only in respect to specified courts or legal areas. Prior to obtaining chartered status, CILEx members may apply and receive authorisation for stand-alone specialisms in probate and reserved instrument activities. CILEx Regulation's regulatory scheme is also open to providing these two authorisations to non-CILEx members. All Chartered Legal Executives can automatically conduct the administration of oaths after qualification.
§ Under IPREG's regulatory scheme (which covers both of these Chartered Institutes), Registered Patent Attorneys and Registered Trademark Attorneys may apply to be granted three tiers of litigation and advocacy qualifications: (i) an Intellectual Property Litigation Certificate; (ii) a Higher Courts Litigation Certificate; or (iii) a Higher Courts Advocacy Certificate. A person holding all three of these certificates would be able to conduct litigation and exercise a right of audience in respect to intellectual property matters appealable to the Supreme Court. All Registered Patent Attorneys and all Registered Trade Mark Attorneys are authorised to carry on reserved instrument activities where such instruments relate to intellectual property rights. However, the ability to administer oaths is not restricted to intellectual property rights.
¶ The CLC's regulatory scheme provides for a stand-alone probate practitioner licence.
# ICAEW's regulatory scheme authorises practitioners for non-contentious probate only. The ICAEW is currently applying to become an approved regulator and licensing authority for all the reserved legal activities (although only in respect to tax services for rights of audience; conduct of litigation and reserved instrument activities).
~ Upon qualification, solicitors are not entitled to exercise a right of audience in the higher courts. However, provided they satisfy a number of conditions maintained by the SRA, they can apply to become a 'solicitor advocate' with the ability to exercise a right of audience in the higher courts.

5.70 It is not clear whether the removal of a specific reservation would materially affect competition in certain parts of the sector. For instance, as noted in paragraph 3.135, intermediaries can play an important role in driving competition between providers. As such, the presence of strong intermediaries in the conveyancing sector (in the form of bank and estate agent panels) might still enforce a barrier to unauthorised providers even if the relevant reserved

[549] This includes Chartered Accountants offering probate activities and barristers undertaking conduct of litigation. Further details on these reforms can be found in Appendix G (Assessment of the reserved legal activities).

instrument activity ceased to be reserved. These intermediaries might prefer authorised providers for a variety of reasons including perceptions of quality.[550] Similarly, interactions with foreign jurisdictions and the importance of possessing the recognised 'notary title' suggest that authorised notaries would continue to play a significant role in the provision of these services even in the absence of the current reservation.

5.71 The entry (and potential entry) of ABSs allows for entities not owned by lawyers to be licensed to provide one or more reserved legal activities, thus allowing more non-lawyer involvement in the delivery of the reserved legal activities.

Consumer protection and public interest justifications

5.72 While reservation limits competition from lower cost unauthorised providers, individual reservations may, in practice, strike an appropriate balance whereby limits on competition enable important consumer protection or other public interest considerations to be secured.

5.73 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.[551]

5.74 Nevertheless, justifications for each of the reserved legal activities can in principle be made on the basis of consumer protection and public interest considerations. These arguments are stronger for some reservations than others and this has a direct bearing on whether any restriction on competition that may result in the reservation can be justified.

5.75 Based on our assessment in Appendix G (Assessment of the reserved legal activities), we believe that consumer protection and public interest concerns are stronger for rights of audience and conduct of litigation, but weaker for probate activities and administration of oaths.

5.76 In considering consumer protection considerations, a particular concern is that 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

[550] For instance, discussions with the CLC and some CLC-regulated firms have indicated that a few panels continue to only admit SRA-regulated firms rather than CLC-firms despite both being authorised providers.
[551] Mayson, S. and Marley O. (2010), *The regulation of legal services: Reserved legal activities – history and rationale*.

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.

5.77 In practice, poor alignment between the reservation and actual risks to consumers does not currently cause significant difficulties due to the fact that, as noted in paragraph 2.21, authorised providers are subject to regulation for all the activities they offer, both reserved and unreserved legal activities. Regulation by title therefore fills the 'regulatory gap' by extending regulation to all unreserved legal activities. For example, as noted above, the handling of client money in respect of conveyancing and estate administration is one of the riskiest types of activities, but it does not fall within the scope of reservation. However, by virtue of title-based regulation, this activity is covered under the regulatory schemes of the frontline regulators. Although unauthorised providers may currently handle client money, the limited role currently played by unauthorised providers in these areas of law means that, in practice, their ability to carry out risky activities has not yet given rise to significant detriment.

5.78 While we are not presently concerned about the current regulatory gap, we believe that increased transparency in the legal services sector may result in an increased use of unauthorised providers for unreserved legal activities. As a result of the poor alignment between the reservations and the risks involved in the provision of legal services, we believe that over time this regulatory gap may grow and may result in greater consumer detriment. This possibility has consequences for the design of the regulatory structure and for the proportionality of regulatory costs.[552]

Balancing competition and consumer protection and public interest concerns

5.79 In considering more generally the role played by reservation in ensuring consumer protection and the public interest, we believe that it is essential to give sufficient consideration to the adverse impact that reserving an activity to a select type of providers might have on consumers' ability to meet their legal needs.

5.80 While our findings suggest that the reservations are not primarily responsible for the lack of effective competition in the legal services sector and unauthorised providers can work around them to some degree, it is important to note that they still act as a barrier for unauthorised providers wishing to offer a complete service that includes undertaking both reserved and

[552] As regulation by title imposes costs on providers regardless of the risk associated with a particular activity. Furthermore these costs are likely to be passed on, at least in part, to consumers.

unreserved elements directly. This inability to offer a complete service may have the following effects:

- Unauthorised providers may find it difficult to attract and retain consumers so that these providers fail to expand and consumers do not derive the benefit of lower cost services.

- Outsourcing the reserved elements to another provider could introduce inefficiency and delay for the consumer which could result in raised costs that detracts from the unauthorised providers' market offering.

5.81 It is therefore important that the scope of the reservations constitutes an appropriate balance between securing consumer protection or public interest concerns while not unduly restricting competition. Having examined each reserved activity in Appendix G, we believe that some reservations seem to strike this balance more effectively than others.

5.82 While reservation may ensure that only competent providers are allowed to undertake the legal activity (and that consumers have access to appropriate redress should things go wrong), this may have an impact on affordability. As a result, accessing legal services may become more difficult for the most vulnerable segments of the population who may be forced to choose between not meeting their legal need or handling the matter themselves, both of which present a number of risks.

5.83 We believe that these considerations are well illustrated by the current JEB consultation which proposes to implement a ban on fee-charging McKenzie Friends. Overall, we recognise that the reservation of both rights of audience and conduct of litigation are based on strong arguments related to consumer protection and public interest grounds. Furthermore, it seems that increased competition between solicitors and barristers with respect to these reserved legal activities has increased choice for consumers in a number of legal areas.

5.84 However, unauthorised providers who operate as 'paid' McKenzie Friends may provide an important service to the vulnerable and those who cannot afford to instruct a solicitor or barrister. As not having advocacy or litigation support during legal proceedings is potentially very risky, any reforms aimed at reducing incentives for unauthorised providers to enter the market and provide these services should also take into account unmet demand considerations. Therefore, we believe that the proportionality of a blanket ban on fee-charging McKenzie Friends needs to be assessed carefully given its likely impact on consumer choice.

Conclusion on the impact of the reserved legal activities

5.85 While the reserved legal activities can only be provided by specific types of legal professionals, overall we have not found that these reservations currently have a significant adverse impact on competition. There tend to be a large number of providers that are active in providing the six reserved legal activities and the scope of the reservations is often narrow, allowing unauthorised providers the opportunity to work around them. However, we believe that the reservations may currently act as a barrier to unauthorised providers seeking to offer a complete service to consumers that includes both reserved and unreserved elements.

5.86 Arguments in favour of the current reservations are based on their importance in ensuring consumer protection and/or securing specific public interest benefits. These arguments seem to be stronger for some reservations than others meaning that any restrictions on competition will be more justifiable for some reservations and the need for reform will be stronger for others.

5.87 In considering the nature of these justifications, we are concerned that some of the current reserved legal activities are poorly aligned with the actual risks of providing legal services to consumers. In practice, the fact that authorised providers account for the vast majority of legal services coupled with the impact of title-based regulation means that this poor alignment between risk and the reservations does not seem to be a major issue at the current time. However, we are concerned that this misalignment may, in time, result in greater consumer detriment as the proportion of unauthorised persons operating in the legal services sector increases.

5.88 We have not attempted to carry out a full analysis of each of the reserved legal activities, and recognise that further work would have to be done before removing or amending the current list. Furthermore, on the basis of our analysis, we do not consider it a given that the reservation of any of these activities to a particular type of provider represents the most proportionate approach to addressing potential risks to consumer protection and the public interest connected to their delivery. However, on the basis of the information we have gathered, we consider that *(a)* the scope of some reserved legal activities seems better aligned to their proposed rationales for reservation, and *(b)* the underlying arguments in favour of reserving some of the reserved legal activities are stronger for certain activities than for others:

- **Rights of audience and the conduct of litigation**. In comparison to the other reserved legal activities, stronger arguments around public interest and consumer protection concerns can be advanced in favour of some form of restriction on who can provide these services. The scope of the

current reservations also seems better aligned to the risks of provision while still allowing scope for potentially lower cost unauthorised providers to provide services to consumers who may not be able to afford an authorised provider.

- **Probate activities and reserved instrument activities**.[553] While public interest and consumer protection arguments can be advanced in favour of some form of regulation on providers (although the public interest arguments seem weaker in relation to probate than in the case of reserved instrument activities[554]), the narrow scope of these current reserved legal activities do not seem well aligned with the riskiest activities associated with the relevant legal areas (wills/estate administration with respect to probate and conveyancing with respect to reserved instrument activities).

- **Notarial activities**. The current scope of the reservation seems unclear in nature and, unlike other reservations, the use of the regulated title of 'notary' in the reservation's definition raises further questions as to the extent to which an unauthorised provider can legitimately perform certain activities also undertaken by authorised notaries. However, in practice interactions with lawyers in foreign jurisdictions are likely to limit the ability of unauthorised providers to provide these legal services even if these activities were not reserved.

- **Administration of oaths**. The relative lack of technical difficulty involved in the delivery of this service seems to call into question the need to reserve the activity to the current limited types of provider (as a greater number of providers are likely to be capable of providing the service to the requisite quality and consumers are more able to judge whether it has been done appropriately). However, the potential consumer detriment linked to this reservation is likely to be mitigated by the presence of price regulation set at such a low level of cost. Overall, a broader licensing system that could ensure the trustworthiness and relevant training of the provider might be a more proportionate system than the current reservation.

The impact of regulation by title

5.89 This section considers whether the focus of regulation on title in legal services has an adverse impact on competition.

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[553] Where reserved instrument activities relate to conveyancing (as in paragraphs Legal Services Act 2007, 5(1)(a) and 5(1)(b) of Schedule).
[554] Mayson, S. and Marley, O. (2011), *The regulation of legal services: What is the case for reservation?*, p43.

5.90 As set out in the introduction, regulation in legal services is focused primarily on professional titles. The scope of regulation in legal services is determined by regulated professional titles and the reservation of certain activities to providers with these titles. In addition, certain regulated professional titles, in particular solicitors, can only provide legal activities from within entities that have also been authorised to carry out reserved legal activities.[555]

5.91 Professional titles have the potential to distort consumer decision-making. Given their inability to observe quality directly, consumers may choose to rely on title (eg 'solicitor') when navigating the market as an indicator of quality. While title can be a useful and practical way for consumers to ensure at least a minimum level of quality, it may distort competition if it results in consumers avoiding unauthorised providers completely, regardless of the level of quality and consumer protection these providers may offer and the value for money that could be obtained by the consumer. This consumer behaviour may result in a barrier to entry for unauthorised providers.

5.92 While professional titles have the potential to distort consumer decision-making, the link between regulation and professional titles is not straightforward. As a starting point it is important to note that titles may be self-regulated and would be highly likely to continue to exist independently of regulation. This means that professional titles would continue to be a factor in consumer decision-making even if statutory regulation did not focus on title. However, the current regulatory framework also restricts the entities within which certain professional titles can be employed. In particular this means that unauthorised providers are restricted in their ability to employ solicitors. We have therefore focused on the impact of these restrictions in particular.

5.93 Finally, we have considered SRA proposals to remove restrictions requiring solicitors to work exclusively in authorised entities,[556] also taking account of the impact this may have on consumer protection.

5.94 In the paragraphs below we consider:

- the impact of regulated titles on consumer decision-making;
- regulatory restrictions on professional titles; and

[555] See SRA Practice Framework Rules 2011, although note that exceptions exist (for example, as specified in Rule 4).
[556] Solicitors are restricted to work in entities that are either authorised by the SRA or an approved regulator. For more information see the SRA Practice Framework Rules. Exceptions, such as those specified in Rule 4 (In-house practice), apply.

- the SRA proposal to remove restrictions requiring solicitors to exclusively work in authorised entities.[557]

The impact of regulated titles on decision-making

5.95 We have considered evidence on how consumers use regulated titles and in particular whether this results in a lack of trust of unauthorised providers and contributes to their low market share across legal services.

5.96 As noted in Chapter 3, we have found that competition from unauthorised providers is currently restricted due to a lack of consumer awareness of their existence, coupled with the fact that the majority of consumers tend to rely on recommendations or their previous experience to choose a suitable provider. This lack of awareness means that it is difficult to know whether consumers would trust unauthorised providers if they were aware of them.

5.97 In addition, our consumer survey[558] found that the majority of consumers currently assume that all legal services providers would be regulated and do not check whether this is the case. This is corroborated by qualitative research by the SRA which found that consumers were not aware of how to tell the difference between an authorised and unauthorised provider.[559] This evidence suggests a general lack of understanding of the significance of regulatory titles.

5.98 Despite this lack of understanding, consumers appear to rely to some extent on regulatory titles to navigate the market. The SRA research found general familiarity and confidence in the term 'solicitor', and that solicitors were generally regarded as better qualified than other providers within the sector. Similarly, in our consumer survey, consumers expressed a preference in principle for using authorised providers because of the higher quality and adherence to minimum standards this might imply. While this evidence does not directly indicate a lack of trust in unauthorised providers,[560] it suggests that there is some preference for solicitors, and that trust in quality standards is a relevant factor in consumer decision-making. This evidence suggests that consumers rely on regulatory titles to some extent without having a clear understanding of the significance of these titles. As a result, there is the

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[557] SRA (2016), *Looking to the future – flexibility and public protection.*
[558] IFF Research (2016), *Market study into the supply of legal services in England and Wales – consumer findings*, commissioned by the CMA.
[559] SRA (2011), *Consumer attitudes towards the purchase of legal services*.
[560] It does not directly consider to what extent consumers lack trust in the ability of unauthorised providers to adhere to minimum standards. Also it does not account for how possible price differences across provider types would affect consumer decisions. It is possible that these consumers would prefer an unauthorised provider if for a particular legal service it offered a lower price.

potential for consumers to avoid using unauthorised providers even in situations where they might benefit from using them.

5.99 There is also some evidence that lack of trust can be an issue for certain unauthorised providers. For instance, in will-writing research commissioned by the LSB,[561] one third of respondents who considered but decided against using an unauthorised will-writing firm cited concerns over its reliability. In addition, 'a further fifth (19%) were unsure as to how qualified will writing firms were to write wills and 15% had doubts whether their wills would be legally binding'.[562] Furthermore, we are aware that some self-regulated will-writing providers aspire to be subject to statutory regulation in order to signal trust to consumers (see paragraph 140 of Appendix A- wills and probate services case study). However, we also note that those will writers who have participated in our market study have suggested that they do not consider themselves to be at a competitive disadvantage as a result of not holding the title 'solicitor'.

Relationship between regulation and professional titles

5.100 The links between regulation and professional titles are somewhat complex. At a high level the current regulatory framework is focused on title, in particular in that certain legal activities are reserved to those with titles. However, even without this focus, professional titles would be highly likely to be self-regulated and continue to exist independently of regulation.[563] This means that professional titles would continue to be a factor in consumer decision-making even if statutory regulation did not focus on title.

5.101 Nevertheless, it is possible that the focus of regulation on title may have a more indirect impact in the longer term. The LSB submits that competition in legal services is limited in part due to 'the legacy of strong professional identities (supported by regulation that is not risk-based but is instead structured around professional groups and focused in part on professional titles). This in turn fosters collective norms and behaviours within professional groups.'[564] In addition, it is possible that a focus on regulation of title may indirectly contribute to greater consumer reliance on professional titles in the longer term. We are not able to assess whether a different regulatory structure, for example, one based on activities, would have such effects. In

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[561] IFF Research (2011), *Research report: Understanding the consumer experience of will-writing services*, prepared for the LSB, LSCP, OFT and the SRA.
[562] IFF Research (2011), *Research report: Understanding the consumer experience of will-writing services*, prepared for the LSB, LSCP, OFT and the SRA, p22.
[563] The LSB advocates self-regulation of titles, such as the development of professional standards, by professional bodies in the long run. LSB (2013), *A blueprint for reforming legal services regulation*.
[564] LSB response to CMA interim report, paragraph 23.

any event, as discussed in paragraph 6.87, we believe it is important for regulation to continue to focus on title in the short to medium term given the high market shares of solicitors currently.

5.102 In addition to its focus on title, the current regulatory framework also restricts the entities within which certain professional titles can be employed. This is the case particularly for solicitors, who are restricted from working in unauthorised firms, even when carrying out only unreserved legal activities.[565,566]

5.103 We consider that a lack of access to regulated titles may restrict the ability of unauthorised firms to compete given the impact that these titles have on consumer decision-making and trust, as set out in the previous section.

5.104 Another more direct consequence of the restriction is that unauthorised firms may be less able to harness the expertise of solicitors.[567] This may directly affect the services that unauthorised firms can offer and reduce their ability to compete. This is relevant as unauthorised firms may employ different innovative business models or may be able to offer the same services that solicitors offer in relation to unreserved legal activities more cheaply than authorised firms. As a result, we consider the restriction may unnecessarily reduce the availability of lower cost options in the market.

Current SRA proposals on 'individual solicitors'

5.105 As part of its Handbook review,[568] the SRA proposes to allow solicitors to provide unreserved legal activities to the public while working in unauthorised firms. These 'individual solicitors' would operate under different regulation than would be the case if employed within an SRA-regulated firm. In particular, they would not be subject to mandatory PII, legal professional privilege would not apply to their communications and complainants would not have access to the SRA compensation fund. The reforms would also establish

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[565] Barristers have similar restrictions to solicitors. By contrast, individuals who hold titles awarded by ICAEW, the CLC or CILEx do not have similar restrictions on the use of regulated titles.
[566] There are some situations where unauthorised firms can employ solicitors and promote their activities to the public. 'Non-practising solicitors' have long been a part of the current legal services sector. Non-practising solicitors do not possess a practising certificate and are thus unable to offer reserved legal activities to consumers. However, these solicitors remain on the roll and, as a result, are within the SRA's regulatory scope and subject to disciplinary action. There are roughly 30,000 non-practising solicitors in England and Wales. While some non-practising solicitors are retired, others may still actively provide non-reserved legal activities to consumers as part of an unauthorised entity or as a sole practitioner. In addition, certain non-SRA regulated businesses (for example Peninsula and Which? Legal) employ solicitors to provide legal advice to consumers via phone. This is permitted via Rule 4.14 of the Practice Framework Rules 2011, a rule which also enables the sending of a 'follow up letter' to the enquirer when necessary.
[567] Unauthorised firms are only able to employ non-practising solicitors, exceptions apply.
[568] SRA (2016), *Looking to the future – flexibility and public protection.* ('SRA Handbook review')

a greater distinction between the personal regulation of solicitors based on their individual title alone and entity regulation of solicitor firms. The SRA is proposing that this distinction be reflected in two separate codes of conduct. The SRA proposal follows a series of reforms that have progressively liberalised the business structures within which solicitors can be employed.[569]

5.106 The SRA proposal would address the competition concerns raised in the previous section. We consider that access to regulated titles would improve the ability of unauthorised providers to compete in two ways:

(a) Through the impact that these titles have on consumer decision-making and trust. This means that consumers may be more willing to use unauthorised providers which employ practising solicitors, in situations where they might benefit from using them; and

(b) Through the ability of unauthorised firms to harness the expertise of solicitors in innovative and lower costs business models.

5.107 This is likely to have a positive impact on consumers by generating greater competitive pressure on price, and creating new routes and choice for consumers to access advice from qualified solicitors.

5.108 However, at the same time, there might be risks to consumer protection if the change led to consumers using providers which offered lesser regulatory protection on an uninformed basis.

5.109 In the following paragraphs we consider the possible effects of the SRA proposal and the risks that consumer protection concerns might arise. The implications of the SRA proposal for consumers who chose to use solicitors working in unauthorised firms would depend on whether they would have otherwise used an unauthorised provider or an authorised provider.

5.110 Consumers who would have purchased legal services from an unauthorised firm would benefit from additional protection. As a result of the changes, they would have access to the LeO.[570] In addition, solicitors working in unauthorised firms would need to follow the minimum standards and ethical codes in the 'Code of Conduct for Solicitors'.

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[569] In particular, liberalisation in the legal services market has already led to multi-disciplinary practices that allow for ABSs and reforms to the 'separate business rule' allowing other new business models to emerge.
[570] While we recognise that potential difficulties can be envisaged in determining whether conduct is attributable to the individual solicitor or the unauthorised entity, the extension of the LeO's remit, through the activities of 'individual solicitors', to the legal services provided by unauthorised providers is potentially significant development and one that aligns with the CMA's overall recommendations on the availability of redress.

5.111 Consumers who would have purchased from an authorised firm but, as a result of the changes, now chose to use a solicitor working in an unauthorised provider would have less protection. As noted above, unauthorised providers who employ solicitors will not be subject to mandatory PII and consumers would not benefit from legal professional privilege. Consumers using solicitors in unauthorised providers would also not have access to the SRA compensation fund.

5.112 The differences in regulatory protection between providers are of concern if they are unknown to consumers when they choose a provider, as it is important that consumers are able to choose providers which offer protection appropriate to their needs. As noted above, consumers rely on titles to some extent but often do not understand differences in regulatory protection. It is therefore possible that consumers who decide to use solicitors in unauthorised firms might suffer harm in certain situations as a result of the more limited regulatory protections. In addition, there is a possibility that those consumers who are more aware of regulatory protections might assume that solicitors working in unauthorised firms would have in place the same protections that apply to solicitors working in authorised firms.

5.113 The benefits to consumers from these additional regulatory protections can be important, but are limited to certain situations. We note that many unauthorised providers already elect to have PII without a regulatory obligation to do so. Access to the compensation fund becomes relevant when an SRA-regulated firm owes money to a consumer in circumstances where the provider misappropriated funds or did not have PII.[571] This leaves potential for consumers to be exposed to greater risks from using solicitors in unauthorised firms particularly in situations involving the handling of client money. As noted in paragraph 5.76, the scope of the reserved legal activities in conveyancing and probate may not effectively cover the handling of client money resulting in the potential for regulatory gaps.

5.114 We similarly recognise that the lack of legal professional privilege for 'individual solicitors' working within an unauthorised entity is a potentially significant factor that might in certain situations have an influence on the consumer's purchasing decision, if known to the consumer in advance.

5.115 For these reasons, we believe it would be important for consumers to be advised of differences in regulatory protection immediately prior to purchasing legal services from an 'individual solicitor' within an unauthorised firm. In this

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[571] For more information about the SRA Compensation Fund please see the SRA Compensation Fund Rules 2011.

regard, we note that the SRA proposal contains provisions that are aimed at enabling consumers to make informed choices, such as the obligation on 'individual solicitors' to inform consumers about differences in regulatory protection.[572] We consider that these provisions may be important in mitigating the consumer protection concerns identified and that their effectiveness should be monitored.

5.116 Overall, on the basis of the evidence set out above and provided that the measures that the SRA puts in place to mitigate the consumer protection risks are effective, we believe that the benefits to competition of removing the restriction would be likely to outweigh the consumer protection concerns identified.

Conclusion on the impact of 'regulation by title'

5.117 We found that consumers rely on regulatory titles to some extent without a clear understanding of the significance of these titles. This means that consumers avoid using unauthorised providers even in situations where they might benefit from using them. Although there is not strong evidence to suggest that a lack of trust is currently a major barrier for unauthorised providers, particularly given low awareness of these providers, we believe that this would be likely to emerge as more of an issue if awareness of unauthorised providers increased.

5.118 The current regulatory framework restricts the entities within which certain professional titles can be employed. In particular this means that unauthorised providers are restricted in their ability to employ solicitors to deliver unreserved legal work. We believe that this restriction may reduce the ability of unauthorised firms to compete, given the importance of titles for consumer decision-making and trust. In addition, the restriction on solicitors working in unauthorised firms may unnecessarily reduce the availability of lower cost options in the market.

5.119 As explained above, the current system of title-based regulation has a number of advantages, but also a number of disadvantages. In Chapter 6, we discuss possible reforms to the regulatory system that would involve a shift away from title-based regulation.

[572] SRA (2016) *SRA Handbook Review,* paragraphs 109, 114 and 115.

The impact of regulatory structure on competition

5.120 In this second part of the chapter, we consider the structure of the current regulatory framework and assess how its design may affect competition in the sector.

5.121 In principle, we consider that there are three main groups of structural issues that might affect regulatory outcomes:

- The **horizontal separation** of regulation between eight different frontline bodies might lead to duplication of costs, inconsistency of approach, or make it difficult for new business models to emerge.
- The **vertical separation** between the frontline regulators and the oversight body (the LSB) might lead to disagreements on the preferred approach, and might make it more difficult to achieve necessary regulatory change.
- The **lack of full independence** between regulators and their representative bodies might make it more difficult for the regulators to carry out their statutory duties.

5.122 In the following section we set out our findings on these three potential issues. As part of this analysis, we refer to comparisons with regulatory structures in other sectors.

Horizontal separation between the frontline regulators

5.123 The first set of issues we have considered relates to the separation between the eight frontline regulatory bodies. The large number of regulators reflects the fact that regulation is largely organised by professional grouping, and the regulators have generally been established from pre-existing professional and regulatory bodies that were in existence prior to the Legal Services Act 2007, such as the Law Society and the Bar Council.

5.124 We have considered the potential for this high degree of horizontal separation to lead to:

- potential duplication of fixed costs;
- a focus on professional titles which may adversely affect the ability of regulators to regulate according to risk; and
- overlaps between regulators potentially resulting in:

- duplication of regulatory costs for providers should they be regulated by more than one regulator;
- competition between regulators to reduce regulation or regulatory costs; and
- inconsistency in approaches taken by different regulators.

Duplication of fixed costs

5.125 Multiple frontline regulators performing similar tasks for different professional groupings may unnecessarily duplicate regulators' fixed costs. This could be passed on through practising fees and licensing fees that professionals and legal firms have to incur. These excessive fees may ultimately be passed on to consumers in the prices they pay for legal services.

5.126 There may therefore be scope for reducing costs by merging multiple regulators. This scope for cost savings is illustrated in the communications sector. An evaluation by the National Audit Office following the creation of Ofcom suggested that the merger had successfully reduced operating costs of the previous legacy regulators by some 13%.[573] However, the same report also noted that there were significant one-off costs associated with creating the new organisation.[574]

5.127 The eight frontline regulators in legal services differ significantly in size and scope. For example, the SRA employs 541 (full-time equivalent) employees, whereas the Cost Lawyers Standards Board has just one employee. These stark differences in size are also reflected in markedly different operating costs as shown in Table 5.2.

Table 5.2: Operating costs of the frontline regulators

Frontline regulator	*Total expenditure (in millions of £s) in 2013*
SRA	64.9
BSB	7.02
CLC	2.83
CILEx	2.06
IPReg	0.424
Faculty Office	0.33
CLSB	0.12

Source: Based on LSB (2016), *Cost of Regulation: transparency of reporting*, prepared for the Law Society and the SRA.

[573] National Audit Office (2006), *The creation of Ofcom: Wider lessons for public sector mergers or regulatory agencies*, paragraph 3.12.
[574] National Audit Office (2006), *The creation of Ofcom: Wider lessons for public sector mergers or regulatory agencies*, paragraph 1.10.

5.128 The very large difference in scale of operating cost between the SRA, BSB and the smaller regulators suggests that reducing the number of regulators may result in eliminating certain inefficiently duplicated fixed costs. However, we note that the small scale of the smaller regulators also indicates that such cost savings may be limited.

Focus on professional titles

5.129 Over the course of our market study we have received submissions indicating that the current model of regulatory specialisation has considerable benefits to its authorised providers.[575] Discussions with certain authorised providers have also indicated a number of perceived benefits associated with the present model of specialised regulators.[576] Stakeholders submitted that separate frontline regulators better understand the particular needs of their regulated individuals. In particular, having separate regulators may allow regulators to be more effective in (i) tailoring of regulations to tackle risk in an appropriate manner; (ii) supervision of compliance with those regulations with a sharper understanding of their regulated communities' business models; and (iii) enforcement of those rules with greater precision.

5.130 However, it is not clear to us the extent to which these benefits would be lost with fewer regulators, in particular if there were specialised departments within a smaller number of regulators dedicated to each professional grouping.

5.131 In addition, we consider that the current structure may not be best suited to employ risk-based regulation which would be focused to a lesser extent on titles. Fewer regulators may be better placed to prioritise time and financial resources according to risk. As discussed above, risks may arise from a number of sources which do not directly relate to professional groupings. In addition, horizontal coordination and information exchange between frontline regulators may be easier with fewer regulators.[577]

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[575] The Bar Council stated that: 'We consider that there is a strong case for a specialist regulator for barristers and entities focused on advocacy and litigation. As neither BSB-regulated entities nor individual barristers hold client money, they present a lower regulatory risk than SRA-regulated entities. It follows that the associated regulation and its cost should be lower. A specialist regulator that is tailored to the activities that barristers undertake has the expertise, buy-in from the profession and is likely to regulate more effectively. This in itself exerts downward pressure on the cost of regulation, a saving that can be passed on to the lay client' (Bar Council's response to the Statement of Scope, February 2016).

[576] For instance, CLC members have indicated that they were willing to pay more to the CLC in practising fees than switch to the SRA and save on this cost. This was because they valued the CLC's understanding of their business models and conveyancing market.

[577] Part of the rationale for consolidating regulators in the communications sector was to eliminate inefficiencies in relation to horizontal coordination. More information can be found in paragraph 1.3, bullet 2 in National Audit Office (2006), *The creation of Ofcom: Wider lessons for public sector mergers or regulatory agencies*.

5.132 These benefits were part of the rationale for structural changes in other sectors. A major part of the rationale to create the Financial Services Authority was that it facilitated a more 'consistent and coherent approach to risk-based supervision across the financial services industry, enabling supervisory resources and the burdens placed on authorised firms to be allocated efficiently on the basis of the risks facing consumers of financial services […]', while recognising that different types of businesses require different kinds of regulation.[578] Simplification facilitates the transition to a more risk-based approach and was supported by HM Treasury, stating that the ultimate intention of the proposal was to move towards a more risk-based regime.

Overlaps between regulators

5.133 We have considered whether overlaps between multiple regulators may ultimately result in consumer harm.

5.134 One way they may do so is if they result in duplicated compliance costs for providers. Businesses and individuals that are regulated by more than one regulator may incur greater costs in complying with regulation. Inconsistencies in standards may require businesses to spend more time and financial resources to comply with regulation.

5.135 However, in contrast to other sectors where regulatory consolidation has occurred,[579] the focus of the current regulatory structure on separate professional groupings implies that these providers are not typically regulated by multiple legal regulators at the same time. However, due to the interactions between entity regulation and title-based regulation, firms authorised by one frontline regulator, for example the SRA, may employ individual legal professionals who are regulated by a different frontline regulator, for example the CLC.[580] We understand that these situations do not pose significant additional compliance costs. There is a clear understanding between approved regulators and the LSB about potential tensions between individual and entity-level regulation, supported by a framework Memorandum of Understanding.[581] In addition, we are not aware that tensions between

[578] Briault C, (1999), *The Rationale for a Single National Financial Services Regulator*, p19 footnote 11.
[579] Among other reasons, both Ofcom and the FSA were created as a single regulator for their respective sectors to avoid businesses having to be regulated by more than one regulator.
[580] For instance, analysis of the CLC's last regulatory returns showed that 14% of CLC entities had solicitor managers and solicitors made up 7.7% of the overall workforce within CLC entities.
[581] For example, see list of SRA memoranda of understanding.

individual and entity regulation lead to excessive compliance costs in practice.[582]

5.136 While the current structure appears largely to avoid duplicating compliance costs for providers, it risks imposing inconsistent standards on providers performing similar activities. This may have the potential to distort competition between different types of providers. In addition, from a consumer's perspective, it may be confusing that similar entities are regulated by different regulators and are subject to different regulatory conditions.[583] Consumer harm may materialise when consumers assume that a particular level of regulation applies to a legal services provider that is perceived to be identical to any other provider, when it does not. In addition, low consumer understanding of regulatory protections, coupled with inconsistent regulations across regulators, might over time reduce consumer engagement in the sector by adversely affecting confidence in both regulation and legal services as a whole.

5.137 However, we note that the LSB's oversight role, in accordance with the Better Regulation Principles set out in paragraph 6.10, may reduce the risk of inconsistent regulatory standards.[584] Furthermore, we are not aware of evidence that inconsistent regulation has directly led to poor outcomes for consumers.[585]

5.138 Overlaps may also result in competition between regulators to reduce regulation and compliance costs. There is a risk that competition between regulators may incentivise regulators to reduce regulation to an inappropriate degree in seeking to grow the number of their authorised providers. This may lead to a 'race to the bottom' whereby standards and regulations are reduced to a level that is below the socially optimal point in terms of consumer protection.

5.139 On the other hand, competition between regulators can have positive effects on regulatory rules through encouraging frontline regulators to become more efficient, implement best practice and develop more proportionate regulation

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[582] No significant issues relating to individual and entity regulation have been raised during the CMA's continuous engagement with stakeholders.
[583] The potential risk of consumer confusion due to inconsistent standards is acknowledged by various stakeholders. For example, SRA (2013), Response to MoJ Call for Evidence, paragraph 7.6 and LSB (2013), *A blueprint for reforming legal services regulation*, paragraph 162.
[584] However, we note that the LSB's ability to ensure consistency is limited. The LSB states that it has no power to 'call in' existing regulatory arrangements and is restricted to ensure consistency of regulatory changes, rather than existing regulation. LSB (2013), *A blueprint for reforming legal services regulation*.
[585] We note that stakeholders have stated that issues relating to inconsistencies are likely to become acute in the future, particularly as more front line regulators become licensing authorities. For example, see SRA (2013) Response to MoJ Call for Evidence, paragraph 7.6.

for their providers. This process may incentivise best practice among the regulators as they strive to obtain a strong 'regulated brand'[586] that may even attract unauthorised providers.[587]

Vertical relationship between oversight regulator and frontline regulators

5.140 As set out in paragraph 5.4, the eight frontline regulators are overseen by the LSB. One important part of the LSB's oversight role is to evaluate applications to change regulatory rules and arrangements submitted by front line regulators.[588] We believe that this vertical relationship has the potential to create inefficiency due to the risk that the LSB may refuse applications submitted by front line regulators.

5.141 The risk of refusal may result in delays to regulatory changes. The uncertainty created by the risk of refusal also has the potential to discourage front line regulators from submitting applications for certain changes to regulation or may create incentives to 'gold plate' applications.

5.142 While most applications submitted to the LSB have been accepted, a significant minority have been refused. Research by Oxecon[589] conducted on behalf of the LSB shows that in the period from 2010 to 2015 there have been 195[590] applications by frontline regulators to change regulatory arrangements,[591] of which 178 became changes to regulation.[592] For

[586] Since regulators are organised by professional grouping, it may be in the interest of a frontline regulator to establish good reputation for the brand it regulates.
[587] Over the course of our market study, the CMA has been made aware of certain providers that have sought regulated status despite not needing it due to the fact that these providers only operate in the unreserved legal activities.
[588] For a more detailed description about the LSB's oversight role see Appendix H (Processes for regulatory changes).
[589] Oxecon (2015), *Economic Advice on Likely Market Impacts of Changes to Regulation – 2010-2015*, research commissioned by the LSB, paragraph 9.
[590] The 195 applications include 13 applications that were first considered as an application to change regulation and then separately as an exemption, and are therefore double counted in the total number of applications. Furthermore, three applications were submitted by LeO and the SDT and three applications were withdrawn.
[591] This includes applications for changes to regulation as well as designation applications. For more information see Appendix H (Processes for regulatory changes).
[592] We note that the 178 changes to regulation include applications that were refused (or granted) in part. Information available on the LSB website shows that nine applications were refused in part. In addition, the LSB, after evaluating the application submitted by the CLC to become an approved regulator to award rights of audience and conduct of litigation, decided not to make an order to the Lord Chancellor (which we consider a refusal for the purposes of this section).

example, the SRA submitted an application[593] to change its PII requirements from £2 million to £500,000 which was ultimately refused.[594,595]

5.143 Some stakeholders' submissions consider that the way the LSB exercises its oversight of rule changes may introduce excessive costs. For example, the Law Society[596] and BSB[597] argue that the LSB is too active in its approach to oversight and seeks to micro-manage frontline regulators. The Faculty Office[598] submits that oversight of minor rule changes is unnecessary and results in additional costs and over bureaucratisation. In addition, the BSB states that it is 'unnecessary for an oversight regulator to substitute its views for that of the frontline regulator or be unduly prescriptive in how it expects regulation to then be carried out'.[599]

5.144 While it appears that the performance of the LSB's oversight role may lead to some unnecessary costs, several stakeholders have noted that this role serves an important function to ensure that regulatory changes do not conflict with the regulatory objectives set out in the Legal Services Act 2007. This is particularly relevant in the context of ensuring that there is independence of regulation from the representative interests of the profession. However, we believe that there may be scope to ensure independence without the need for a separation between frontline and oversight regulators.

Regulatory independence

5.145 As a general matter, we consider that independence of a regulator from the providers that it regulates is a key principle that should be taken into account in any review of a regulatory framework. We also recognise that an independent legal profession is important for securing many of the public interest concerns outlined in paragraph 5.61. As such, preserving the profession's independence from government is also a key consideration in assessing any potential changes to the current regulatory structure.

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[593] We note that the application consisted of two parts. First, the change the minimum PII cover; secondly, to add the 'outcome' to the SRA Handbook that firms are required to obtain appropriate PII cover, given their level risk. SRA (2014), Application to change PII requirements.
[594] The change to the minimum PII cover was refused, while the new outcome was accepted and subsequently added to the SRA Handbook. LSB (2014), Decision Notice.
[595] The initial application was submitted in July 2014. The SRA will open a new consultation in 2017 which implies potential delay of more than 2.5 years.
[596] The Law Society submits that the LSB's remit should be reduced to 'extreme' cases where changes to rules are clearly inappropriate. Law Society (2013), Response to MoJ Call for Evidence, p5.
[597] The BSB submits that the LSB has served its purpose and is no longer need. BSB (2013), Response to MoJ Call for Evidence, paragraph 18).
[598] The Faculty Office (2013), Response to MoJ Call for Evidence, p5.
[599] BSB (2013), Response to MoJ Call for Evidence, paragraph 5.

5.146 Over the course of our market study, we received mixed views on the extent to which regulatory independence is in practice a problem under the current arrangements whereby a number of approved regulators have established separate regulatory arms. These views largely reflect the current ongoing debate among approved regulators and market participants over the degree of influence that representative interests might be having on regulation. For instance, the CLC's initial submission to us queried whether current relationships between approved regulators that are also representative bodies and their frontline regulatory bodies were serving to deliver 'truly independent regulation'.[600] We also note that in 2013, the LSB investigated whether there had been undue influence on the part of the Bar Council over the BSB and found that the Bar Council had not complied with the principles of independent regulation.[601]

5.147 The SRA's initial submission stated that despite 'functional separation', the Law Society can, and has, impeded pro-competitive initiatives in relation to the ABS licensing rules. In contrast, the Law Society told us that the SRA acts independently of the Law Society and that it does not have any greater influence over the SRA than any other third party.[602] Furthermore, and in direct reference to the SRA's ABS licensing rules, the Law Society told us that the issues which arose related to project management issues regarding compliance with the General Regulations,[603] approved by the LSB, rather than any lack of regulatory independence.

5.148 In contrast to the SRA, submissions and meetings with other approved regulators and their frontline regulators, such as CILEx/CILEx Regulation, Bar Council/BSB and the ICAEW, have indicated general satisfaction with the current system of functional separation as supported by their specific internal governance arrangements.

5.149 We note that the LSB's *Vision for Legislative Reform* document makes achieving regulatory independence a key plank of future reforms to the regulatory structure. This includes securing better independence from government via a new regulator that would be made accountable to Parliament rather than government. The LSB argues that the current lack of full independence between the approved regulators and their frontline

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[600] Council for Licensed Conveyancers Response to CMA statement of scope, 2 February 2016.
[601] See LSB (2013), Bar Council Investigation Report, paragraphs 2.96, 2.97, 3.7 and 3.8. In this context, we note that the LSB's most recent regulatory standards report on the BSB has noted that 'changes made to its operational governance structure should improve the BSB's ability to make decisions without the perception or otherwise of undue influence from the regulated community.' See: LSB (2016), The Bar Standards Board's Regulatory Standards Report 2015/16, paragraph 40.
[602] Law Society response to the CMA's interim report, August 2016, p8.
[603] See Law Society (2010), General Regulations.

regulatory bodies is unlikely to be sustainable in the future for a range of reasons, but in particular includes the potential scope for representative bodies to delay reforms that would benefit competition and consumers and thus creating regulatory uncertainty.

5.150 We note that government has announced its intention to review issues around regulatory independence of the frontline regulators.[604] We support the launch of such a consultation. Given the serious concerns being raised with us about the current arrangements, we believe that there is a strong rationale to assess the degree to which frontline regulators can operate free from the influence of representative bodies. In doing so, we believe that the MoJ should take into particular consideration the LSB's concerns about the future sustainability of the current arrangements.

Conclusion on the impact of regulatory structure

5.151 We identified a number of potential issues arising from the regulatory structure. These relate to the multiplicity of frontline regulators, the vertical relationship between the LSB and the frontline regulators and regulatory independence.

5.152 We consider that regulatory independence is a fundamental principle for the regulatory framework and consequently that a review of regulatory independence is a priority.

5.153 The multiplicity of frontline regulators may 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. However, multiplicity can also have positive effects in terms of specialism and competition between regulators that results in reduced regulatory costs and the development of more proportionate regulation. While we have not found evidence that the risks that we have identified are currently having a significant impact on market outcomes, we consider that they might become more material in the future if regulation were to focus on risk to a greater extent.

5.154 The vertical relationship between LSB and frontline regulators may result in lengthy and inefficient decision-making in certain cases. In the present context of legal services regulation, in particular relating to the lack of full independence, the LSB plays an important role to ensure that regulation serves the regulatory objectives and benefits consumers. However, we

[604] See HM Treasury (2015), *A better deal: boosting competition to bring down bills for families and firms*.

believe that there may be scope to ensure independence without the need for a separation between frontline and oversight regulators.

6. Assessment of the current regulatory framework

Introduction

6.1 In the interim report we focused our analysis on the impact of the regulatory framework on competition and in particular whether regulation has caused unnecessary barriers for unauthorised providers. As a result, our focus was on whether there was a need for incremental changes to the existing regulatory framework, but we remained open to the possibility that moving to an alternative regulatory model might generate longer-term benefits to competition.

6.2 Since the interim report, we have extended our analysis on regulation. We have considered more broadly the overarching principles that should guide the design of the regulatory framework for legal services, and have considered whether there is a case for moving away from the current regulatory model. It should be noted that our assessment of the regulatory framework is limited by the scope of the market study and so does not consider the regulation of criminal law and legal services other than to small businesses and consumers. This means that it would be important to consider how any changes to the regulatory framework would be likely to impact the legal services sector outside of the scope of this market study before they were implemented.

6.3 As part of our further analysis, we have also compared the regulatory framework in England and Wales with those currently in place in other international jurisdictions to see whether there are any lessons that can be learned from other regulatory systems. As discussed in detail in Appendix I (International Comparisons), we have found that the regulatory framework in England and Wales appears to be relatively liberalised compared with most other jurisdictions, where the legal services sector is often subject to tighter regulation. As a result, we consider that it is difficult to draw clear comparisons with the approach to regulation in England and Wales given the disparity between different jurisdictions. Moreover, it also appears difficult to assess the impact of the regulatory reforms recently undertaken in other jurisdictions, given that some of these reforms are highly specific to particular issues arising in that country's sector.

6.4 This chapter builds on our analysis of the impact of the regulation on competition developed in Chapter 5 and considers the effectiveness of the

regulatory framework when assessed against better regulation principles as set out in the government's Better Regulation framework.[605]

6.5 The main concern we have identified is that the current framework is insufficiently flexible to apply proportionate, risk-based regulation to reflect differences across legal services markets and across time. These issues may indicate that the current framework is not sustainable in the long term. As such, we consider that a review of the current regulatory framework is warranted, and such review should be focused on introducing more long-term flexibility into the framework.

6.6 The structure of the chapter is as follows: we first set out how the Better Regulation Framework can be applied to regulation in the legal services sector. Then, we assess the current framework against these principles. Finally, we set out our recommendations in relation to the regulatory framework that should complement the remedies on transparency described in detail in Chapter 7. Specifically, we first describe a set of recommendations that can be implemented in the short-term by the MoJ and the relevant frontline regulators within the current regulatory framework. Then we set out a proposal for a review of the current framework in the longer term and describe the key features that should characterise an alternative framework for legal services regulation.

Regulatory principles

6.7 The starting point of our assessment is that, in most markets, effective competition is the best way of ensuring consumer protection. Therefore, regulation should be introduced only in circumstances where there is clear evidence of a market failure.

6.8 As discussed in paragraph 5.1, legal services are characterised by asymmetric information between providers and consumers and externalities from public interest considerations. These two features suggest that, in principle, there is a need for specific regulation in the legal services sector. However, legal services regulation should align with the Better Regulation

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[605] The Better Regulation framework identifies five principles as the basic test of whether regulation is fit for purpose:

- Accountability – Regulators should be able to justify decisions and be subject to public scrutiny.
- Consistency – Government rules and standards must be joined up and implemented fairly.
- Proportionality – Regulators should intervene only when necessary; regulation should be appropriate to the risk posed, and costs should be identified and minimised.
- Transparency – Regulators should be open and keep regulations simple and user-friendly.
- Targeting – Regulation should be focused on the problem and minimise side effects.

See Better Regulation Task Force (1997), *Principles of good regulation*, Department for Business Innovation & Skills (2014), *Regulators' Code* and Department for Business Innovation & Skills (2015), *Better regulation framework manual.*

framework. Section 3(3) of the Legal Services Act 2007 requires the LSB, when undertaking its regulatory activities, to have regard to:

- the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed, and
- any other principle appearing to it to represent the best regulatory practice.

6.9 We have considered whether the Better Regulation principles can be adapted to take into account the particular features of the legal services sector. Although we consider that all five of the principles are relevant for legal services regulation, we have focused on those we consider a key priority.

6.10 We consider that an optimal regulatory framework that met the better regulation principles would have the following characteristics:[606]

- **A clear overall objective**: regulation should have a clear primary objective to maximise benefits to consumers and society as a whole, balancing the impact of regulation in preserving wider externalities and protecting consumers with its impact on competition.
- **Independent**: regulation should operate independently from government and the legal professions.[607]
- **Targeted**: regulation needs to respond appropriately to risks associated with a legal activity and allow for different activities to be regulated in different ways if they pose different risks. Regulation should be evidence-based and focused primarily on the activities that give rise to the most serious risks.
- **Flexible**: the framework should be sufficiently flexible to adapt to market changes, including changes in the degree of risk associated with a legal activity, technological changes, the emergence of new business models and change in consumers' characteristics or behaviour. The evidentiary bar that needs to be met in order to change regulation should be appropriately set, and should be based on the assumption that legal

[606] These principles broadly align with those set out in the LSB's blueprint for regulatory reform and follow-up policy work by the LSB. See LSB (2013), *A blueprint for reforming legal services regulation*; LSB (2015), *Legislative Options Beyond The Legal Services Act 2007* and LSB (2016), *A vision for legislative reform of the regulatory framework for legal services in England and Wales*.
[607] In our view, the principle of accountability, in the context of legal services, is best met by a regulatory framework that is independent from both professional bodies and the government.

activities involve different levels of risk. Regulation should be systematically reviewed to ensure that rules and regulations are still necessary and effective. If this is not the case, regulation should be modified or eliminated.[608]

- **Proportionate**: regulation should be introduced only when its benefits outweigh the costs imposed on providers and regulators, which are likely to be passed on to consumers. In addition, costs should be identified and minimised.

- **Clear in scope and enforceable**: regulation should be clear in scope and should be easily enforceable.[609]

- **Consistent**: regulation should be consistent across the legal services sector, so that similar legal activities (ie activities carrying out the same level of risk) should be regulated in a similar way.

6.11 In the next section, we describe in turn each of the principles and we assess the current framework against them.

Assessment of the regulatory framework against the regulatory principles

A clear overall primary objective

The principle

6.12 Legal services regulation should be founded on a simple and clear primary objective. We agree with the LSB that regulation should focus on outcomes for consumers and society as a whole, taking account of the balance between wider public interests and consumer protection.[610]

6.13 In addition, we believe that the impact of regulation on competition should be part of the balance and should not considered as a separate, potentially secondary, objective to be achieved in isolation from consumer protection and public interest considerations. Regulation should be designed balancing public interests, consumer protection and its impact on competition. This is because,

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[608] This additional principle explicitly considers that the regulatory framework, in order to be properly targeted, should also ensure flexibility over time.
[609] In our view, the principle of transparency, in the context of legal services, is best met by a regulatory framework that is clear in scope, easily enforceable and with a with a clear overall objective.
[610] LSB (2016), *A vision for legislative reform of the regulatory framework for legal services in England and Wales*.

in many circumstances, a competitive market and not necessarily regulation might be the best way of ensuring consumer protection.[611]

Assessment

6.14 The Legal Services Act 2007 defines eight regulatory objectives[612] for the LSB, the approved regulators and the Office for Legal Complaints.

6.15 As noted by the LSB in its paper on regulatory options beyond the Legal Services Act 2007,[613] the current list of objectives appears to be very broad, may impose excessive obligations on regulators (for instance, the objectives of increasing public understanding of the citizen's legal rights and duties), or can be difficult to implement in practice. For instance, it may be difficult for regulators to have a direct influence in improving access to justice. Furthermore, there is neither an overarching objective nor an explicit hierarchy of the objectives, and it may be challenging for regulators to achieve the right balance between different objectives (such as balancing between public interest, consumer interest and competition).

6.16 Other regulatory objectives currently set out in the Legal Services Act 2007, such as ensuring public legal education or improving access to justice, remain extremely relevant but might be considered to be part of the primary objective.

Independence from government and professional bodies

The principle

6.17 The regulatory framework needs to be independent both from the government and the profession. While it is important that representative bodies can provide input to regulatory decision-making, a lack of full independence may compromise the ability of regulation to meet its objective.

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[611] See paragraphs 6.26–6.29.
[612] The eight regulatory objectives are (Legal Services Act 2007, section 1):
- protecting and promoting the public interest;
- supporting the constitutional principle of the rule of law;
- improving access to justice;
- protecting and promoting the interests of consumers;
- promoting competition in the provision of legal services;
- encouraging an independent, strong, diverse and effective legal profession;
- increasing public understanding of the citizen's legal rights and duties; and
- promoting and maintaining adherence to the professional principle.

[613] LSB (2015), *Legislative options beyond the Legal Services Act 2007*.

Assessment

6.18 We noted in paragraphs 5.145 to 5.150 the concerns that had been raised with us about the current arrangements failing to ensure that frontline regulators can operate free from the influence of their representative bodies.

6.19 We have not received evidence showing that the current framework is not securing the independence of the legal services sector from government. However, as noted in paragraph 5.149, we understand that the LSB's Vision for Legislative Reform document makes securing better independence from government (via a new regulator which is accountable to Parliament rather than government) a key aspect of their vision for legal services regulation.

Targeted appropriately to risk and able to balance effectively its impact in preserving wider benefits and protecting consumers with its impact on competition

The principle

6.20 Regulation needs be targeted to the risks posed to achieving its primary objective and should be designed to ensure that the right balance between consumer protection, wider public interest and competition is achieved.

Targeting regulation to risk

6.21 We noted above that the presence of market failures justifies, in principle, some form of regulation of legal services. However, the extent of these market failures depends on many factors including:

- the type of legal services provided and the level of risk associated to it;[614]
- the competence of providers;
- the capability of consumers (for example repeated buyers, such as large businesses, typically have more experience in purchasing legal services than individual consumers, for which legal services are generally a one-off, often distress, purchase);
- the nature and the size of the detriment that may arise from poor provision; and

[614] For some activities, for instance advocacy, it is very difficult for consumers to judge the quality of the service provided. For others, such as the production of simple legal documents or simple advice in relation to consumer matters, it might be easier for the consumer to judge the quality of the service.

- other features inherent to the activity (for example, the extent of the public interest considerations for regulating certain activities).

6.22 These considerations suggest that an optimal regulatory framework should not try to regulate all legal activities uniformly, but should have a targeted approach, where different activities are regulated differently according to the risk(s) they pose rather than regulating on the basis of the professional title of the provider undertaking it.

6.23 Adapting regulation to the level of risk means that the form of regulation might differ in practice across legal activities. For instance, regulation could:

(a) set entry standards that providers (individuals or entities) are required to meet before they are entitled to provide certain legal activities, for instance through licensing of certain activities ('before-the-event regulation'*)*;

(b) set training requirements to ensure that providers continue their professional development ('during-the-event regulation'); and

(c) allow consumers to have access to specific redress mechanisms (for instance, access to the LeO, mandatory PII, and access to compensation funds) ('after-the-event regulation').

6.24 Regulations setting entry requirements on providers appear to be more appropriate for the activities that pose the highest risk to the primary objective. By contrast, during-the-event or after-the-event regulations are likely to be more appropriate for low-risk activities, although they may also be made available as an additional protection for higher risk ones.

6.25 Finally, targeted regulation should balance regulation on entities and regulation on individuals, depending on whether the source of risk is identified at the individual or firm level (see also paragraph 6.51).

Balance between consumer protection, public interest and competition

6.26 The objective of regulation is to ensure that consumers are protected primarily from the worst consequences of poor-quality delivery, rather than seek to remove all risks that consumers or society may potentially face. When establishing whether regulation should be introduced to ensure additional protection above this minimal level, a targeted regulatory framework should balance the benefits of increased protection with its costs (direct and indirect, for instance in the form of reduced competition) that are likely to be passed on to consumers in the form of higher prices.

6.27 High prices are likely to make access to justice more difficult and create unmet demand, particularly for the most vulnerable who, when experiencing a legal issue, may decide either to do nothing or to handle the issue by themselves. While sometimes these might be the most appropriate and cost effective strategies for handling a legal problem, for the most serious issues (for instance those involving litigation), the risk of detriment might be very high if the person decides to not involve a professional.

6.28 In a legal sector where competition works effectively, legal services providers have the incentive to provide consumers with additional protections where there is market demand for this. Therefore, a competitive legal services sector would ideally offer differentiated services (in terms of prices, quality of advice and consumer protection), and consumers would be able, within reason, to make their own judgements on the best way to balance these three aspects.

6.29 Clearly, in order for a competitive legal sector to work effectively, consumers need to be informed about the alternatives available in the sector (provider type, the services they offer and what protections are available) in order to choose the option that best meets their needs. Furthermore, consumers should have access to accurate information on prices and providers' quality in order to make an informed choice. As such, an important role of regulation is to ensure that consumers have access to the relevant information.

Assessment

6.30 As discussed in more detail in Chapter 2,[615] the current framework relies principally on the authorisation and licensing of titles and the reservation of certain activities. We have identified several examples showing how the current framework does not meet the principle of targeted regulation.

6.31 First, as noted in paragraphs 5.72 to 5.78, some of the current reservations do not seem to be well targeted to the potential consumer detriment that might be suffered through poor provision. For instance, consumer protection and public interest concerns appear to be less strong in relation to probate activities, reserved instrument activities and administration of oaths. As a result of the lack of targeted regulation, the least risky reserved legal activities are likely to be over-regulated. This has the potential to exclude low-cost and high-quality unauthorised providers from the sector. By contrast, other high-risk activities, for instance those involving handling of clients' money (for instance, estate administration), are unreserved and thus in principle are under-regulated, so

[615] See paragraphs 2.17–2.27.

that consumers might not receive sufficiently protection when using unauthorised providers.

6.32 Second, targeting regulation on professional titles rather than risks has an impact on consumers' ability to access redress. As discussed in detail in Chapter 4 (see paragraphs 4.142 to 4.147), consumer access to redress is currently uneven: the LeO can only consider complaints in relation to legal services provided by authorised persons. However, it cannot consider complaints provided by unauthorised providers, although they are both allowed to undertake the same (unreserved) activities. As a consequence, consumers of unauthorised providers are prevented from accessing the LeO, which is a more effective way for consumers to deal with service-related issues. Absent access to the LeO, consumers need to use an ADR provider (when, as noted in Chapter 4 above,[616] the ADR scheme has not been taken up by many providers and does not apply to business-to-business transactions) or sue their legal services provider through the courts (which is typically more costly and time-consuming than the LeO, unless Trading Standards intervenes).

6.33 Third, as discussed in paragraph 5.102, unauthorised entities are prevented from employing those with professional titles such as solicitors even if carrying out activities that carry low risks. This restriction does not appear to be fully targeted to risks, and may have an adverse impact on competition as it reduces the availability of low-cost but potentially high-quality alternatives to authorised providers.

6.34 Finally, as discussed in paragraph 5.129, the current regulatory structure with multiple regulators focused on professional titles may be less able to prioritise resources on regulation where there is higher risk.

Flexible in adapting to market changes

The principle

6.35 A flexible regulatory framework is important because it allows regulation to:

(a) Target more effectively activities that carry more risks. As discussed in paragraph 6.21, risk is not an absolute concept, but varies over time depending on the type of service provided, the type of consumer served and other general market dynamics.

[616] See paragraphs 4.101–4.102.

(b) Respond to market changes, such as the growth of new business models (eg ABSs, MDPs or innovative unauthorised providers). New business models are transforming the way traditional legal firms operate. For instance, they have introduced more integrated services that redefine the boundary between the different branches of the legal profession, and between legal services and other professional services.

(c) Respond to the technological changes that the legal services sector is likely to experience in the near future (ie automation, artificial intelligence – see paragraphs 3.197 to 3.203).

6.36 These changes are likely to vary the level of risk associated with legal activities: for instance, new ways of delivering legal services or new technologies may either pose new risks, or may help to reduce the level of risk associated currently with certain legal activities. Similarly, more informed consumers might reduce the level of risk associated with certain legal activities.

6.37 These considerations suggest that the regulatory framework should be flexible enough to allow regulators to change the form and scope of regulation to respond to changes in the legal services sector. This flexibility is particularly important when reforms need to be implemented incrementally over time.

6.38 A flexible framework alone, however, is not sufficient to ensure that there are no regulatory gaps. To achieve that, two additional requirements are necessary:

- Regulators need to conduct periodic reviews of whether regulation that applies to a specific area of law remains justified on the basis of risk. To do so, regulators should be required to gather evidence on how risk has evolved in different legal areas. The information gathered would allow regulators to identify priority areas on which the review should focus.

- The evidentiary threshold for making changes to regulation should strike the right balance between the need to ensure that reforms are implemented only when there is evidence of a change in the risk factor and the need for flexibility in the framework.

Assessment

6.39 We have identified a number of areas where the current framework lacks flexibility.

Flexibility to change scope of regulation

6.40 The scope of regulation is determined under the Legal Services Act 2007 by the reserved legal activities but, as discussed in detail in 5.56 to 5.88, the scope of the reservations is not always fully aligned with consumer protection or public interest justifications. Although it is possible in principle for the LSB to apply for the scope of reserved legal activities to be changed by a variation of primary legislation, in practice the process appears to be inflexible, resource intensive and requires a high evidentiary standard – attempts to change in the past have not been successful.[617]

6.41 As a result of the inflexibility of the current regime to change scope, there are risks both that regulatory gaps may emerge or that lower cost providers may be unduly restricted from competing for services related to the reserved legal activities. These risks are currently low, given the limited role played by unauthorised providers, but may be amplified as awareness of unauthorised providers increases over time, potentially driven by increased transparency of prices and quality.[618]

Flexibility for frontline regulators to implement risk-based regulation and to reduce regulation when there is no evidence of risk

6.42 The current model focuses primarily on the authorisation of providers. For most professions, the regulatory requirements to which authorised providers are subject tend to be uniform across all the activities they undertake. Moreover, the same activity can be subject to different regulation depending on the provider that undertakes it and who regulates the provider.

6.43 In principle, the current framework allows frontline regulators to vary the regulatory requirements of the profession they regulate by submitting a request to the LSB.[619]

6.44 However, the process appears complex and is likely to impose a high evidential threshold to remove regulation, rather than requiring existing regulation to be justified. In particular, we believe that some of the criteria set

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[617] The process for varying the list of reserved legal activities in described in paragraphs 13 to 16 of Appendix H (Processes for regulatory changes). LSB's investigations into will writing, probate activities and estate administration are discussed in paragraphs 108 to 201 of the Wills and probate services case study (Appendix A).
[618] The current framework allows for some flexibility since it allows new bodies to be designated in relation to the reserved legal activities, thus increasing the number and the type of authorised providers. There are quite a few bodies which have undertaken this process. Although this process guarantees some flexibility in increasing entry, the burden it imposes on bodies seeking designation may be disproportionate. See paragraph 6.58.
[619] Appendix H (Processes for regulatory changes), paragraphs 2–6, describes in detail the process for regulators to make changes to regulatory arrangements.

out in the Legal Services Act 2007 (Part 3 of Schedule 4) according to which the LSB may approve or reject regulatory changes proposed by the regulators may reduce regulators' ability to implement significant reforms.[620]

6.45 In particular, the possibility for the LSB to reject regulatory changes on the basis of a potential prejudice to either the eight regulatory objectives or to the 'public interest' (not defined in the Act) suggests that, in principle, reforms aimed at targeting regulation to the most significant risks associated with a legal activity may be rejected on the basis that there is a small probability that other minor risks could have an adverse effect on the objectives and/or the public interest.

6.46 As a result, there may be a strong bias towards the status quo. That being so, regulators may have reduced incentives to invest resources in undertaking the process of making changes to their regulatory arrangements.

6.47 We appreciate the fact that, from 2010 until 2015, 178 regulatory changes proposed by regulators have been approved by the LSB. As noted by a report by Oxecon,[621] however, just 11 of these changes (not involving designation) could be considered as 'important' and 28 of them as 'intermediate' in terms of their likely impact on the sector.[622] It is obviously very difficult to establish a link of causality between the low number of significant regulatory reforms and the complexity and high evidential bar for changing rules set out in the Act. However, given that there is agreement among key regulators and representative bodies that regulatory costs are high and there is room for regulatory simplification within the current framework (as discussed in paragraphs 5.15 to 5.55), one would have expected a higher number of reforms being introduced.

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[620] The criteria allowing LSB to reject an application for implementing a regulatory change include (for more details, see Appendix H - Processes for regulatory changes):
- granting the application would be prejudicial to the regulatory objectives;
- granting the application would be contrary to any provision made by or by virtue of this Act or any other enactment or would result in any of the designation requirements ceasing to be satisfied in relation to the approved regulator; or
- granting the application would be contrary to the public interest.

The LSB may approve an application with an exemption, and is thus not subject the stringent conditions specified in Schedule 4 of the Act.

[621] Oxecon (2015), *Economic Advice on Likely Market Impacts of Changes to Regulation – 2010-2015*, research commissioned by the LSB.

[622] Of the important changes to regulation, five involved solicitors and four barristers. The effects of the important changes include:
- increasing the range of business models that are permitted within regulation;
- removing existing regulations for incumbents;
- increasing professional standards;
- increasing the range of services that can be offered within regulation.

6.48 As discussed in paragraphs 5.49 to 5.52, the SRA's application for approval of changes to its regulatory arrangements in relation to PII represents a good example of this lack of flexibility. The SRA's intention was to reduce minimum PII requirements and its associated costs (which are likely to be passed on to consumers) to reflect the fact that risks are generally concentrated in few specific areas of law (for instance, conveyancing[623]). An implication of the reform would have been that, in principle, a customer's claim might be lower than providers' insurance. The SRA, on balance, considered that the benefits of reducing the cost of PII across the sector were greater than the increased level of risk that might have occurred in certain areas of law and only in limited circumstances. The LSB, in rejecting the application, pointed to concerns around the robustness of the SRA's evidence for supporting this lowering in the PII minimum requirements. The LSB's assessment, in line with the requirements of the Legal Services Act 2007, hence focused on the potential risks of such reform for the achievement of the regulatory objectives (specifically in this case, consumer protection).

6.49 We are not best placed to comment on whether the LSB's decision was appropriate in this specific case on the basis of the evidence produced by the SRA. However, we consider that this situation illustrates how, in the current framework, the burden of proof is on regulators applying for a regulatory change to show that there is evidence that a rule should be removed, rather than imposing a requirement to justify the retention of a rule by demonstrating evidence of a risk that continues to deserve regulatory intervention. In other words, we believe that the current regime imposes a high bar for reducing regulation, which may lead to a bias toward keeping the status quo.

Flexibility and regulatory structure

6.50 As discussed in detail in paragraph 5.136, the current oversight model may not have sufficient flexibility to implement changes in a timely way as it creates the potential for conflict between the oversight regulator and frontline regulators.

Proportionate in relation to costs it imposes on businesses and regulators

The principle

6.51 Legal services regulation imposes regulatory costs on providers and regulators. Such costs are ultimately likely to be passed on to consumers in

[623] Providers are also required to obtain a level of cover that they think is appropriate to their work and many firms in conveyancing therefore obtain cover above the minimum limit.

the form of higher prices. Given that, regulation should be imposed on market participants only on the basis of an impact assessment that balances the benefits of regulation with these costs.

6.52 To achieve that, the regulatory framework should:

(a) Focus, where appropriate, on outcomes and principles, rather than prescriptive rules, to give legal services providers the responsibility to decide how best to align their business decisions with the outcomes specified.

(b) Have mechanisms in place such that rules are removed when, on balance, there is evidence that regulatory costs are likely to be greater than the benefits of additional protections, rather than being kept because there is evidence of some risk. As noted above, regulation needs to prioritise the most significant risks.

(c) Not impose undue restrictions on entry by new providers or business model, provided that the potential entrants satisfy the requirements imposed by regulation, if any.

(d) Strike the right balance between individual and entity regulation. Individual-based regulation would be necessary when high risks are identified that can only be addressed by ensuring that the individual is competent to provide the service and should be personally responsible for it. When such high risks do not materialise, entity-based regulation (where entities can set the necessary obligations on their employees) appears to be more proportionate.

Assessment

6.53 As discussed in paragraphs 5.15 to 5.55, we consider that the regulatory costs imposed by the current regulatory regime on authorised providers may be disproportionate to its objectives. Regulation tends to be based on burdensome and overly prescriptive rules, which impose high compliance costs on providers.

6.54 In particular, as discussed in detail in Chapter 2,[624] regulation by title extends regulation and its costs to all activities they undertake, including those which carry a low level of risk. As a consequence, authorised providers may be subject to excessive and disproportionate regulatory costs when undertaking low risk activities. Examples of such costs include PII and run-off insurance

[624] See paragraphs 2.17–2.27.

(see paragraphs 5.18 to 5.22). This lack of proportionality in regulatory costs is likely to place authorised providers in a competitive disadvantage relative to unauthorised providers when both undertake the same, low-risk, unreserved activity. This is not a major issue at the moment, given the low shares gained by unauthorised providers, but may be become a greater concern over time.

6.55 As noted in paragraphs 5.39 to 5.44, legal services regulation is gradually moving from prescriptive rules to OFR. We recognised that the change has raised some concerns about the uncertainty that OFR may create for firms over what is required in order to maintain their compliance. However, we believe that the current issues are likely to relate to the implementation and the design of the current regulation (particularly the link between the design of the outcomes and the regulatory principles) rather than an inherent problem with OFR. Moreover, a more effective OFR could be achieved by defining a clear overall primary objective for legal services regulation.

6.56 As discussed in paragraphs 5.125 to 5.128, a framework with multiple regulators, some of which are very small, may duplicate fixed costs.

6.57 Finally, we note that the process to become an approved regulator in relation to the reserved legal activities is complex, time-consuming and ultimately requires changes to legislation.[625]

6.58 In principle, new designations are likely to have a positive impact on the market: they increase the number of providers offering a reserved legal activities, which potentially could put competitive pressure on existing providers (in terms of price, quality and innovation) and broaden access to justice. As such, the process for allowing new authorised providers should be kept as streamlined as possible, and should be focused on verifying that the regulatory arrangements that the applicant intends to put in place to ensure that the professionals that would be authorised are appropriately qualified and that consumers will receive sufficient protections (ie comparable to those offered already undertaking the activity).

6.59 However, as currently designed, the process is likely to impose excessive costs on organisations willing to be designated as approved regulators and may discourage other bodies to undertake the designation process. This may

[625] The process for designating new bodies in relation to the reserved legal activities is described in paragraphs 7 to 12 of Appendix H (Processes for regulatory changes).

limit the extent to which new, and potentially more efficient, providers enter the market.[626]

Clear in scope and easily enforceable

The principle

6.60 The scope of regulation should be clear to providers, regulators and (where relevant) to consumers. The services and activities to which regulation relates and applies should be clearly defined and easy to understand.

6.61 As noted above, the scope of regulation should provide sufficient protection; therefore, the scope should ensure that consumers do not need to understand differences in risk and redress as there will be a minimal level. That is not to say that there is no need for informed consumers. As noted in paragraphs 3.100 to 3.133, it will still be important for consumers to understand the differences in quality between different providers in order to drive competition on quality above this minimal level of protection.

Assessment

6.62 In the current model, the focus on professional titles ensures that, to a certain extent, the scope of regulation is clear (professionals with titles are subject to regulation). However, there are other aspects of the current regime that make the scope of regulation unclear:

- As discussed in paragraphs 5.64 to 5.71, the narrow scope of the majority of the reserved legal activities allows unauthorised providers to work around many of them in order to provide a service that is as close as possible to that offered by authorised providers. This has to potential to create confusion among consumers as to who can undertake these activities and the extent of redress that is available if things go wrong.

- The scope of regulation in relation to unreserved legal activities is also unclear, because these activities may or may not fall under the regulatory umbrella depending on the professional who undertakes them, with

[626] In relation to probate activities, approved regulators that have recently undertaken the designation process, noted the length and the complexity of the process, although they appreciate that the aim of the long approval process was to ensure that the bodies had the capacity and capability to regulate probate activities. Furthermore, we understand that Association of Chartered Certified Accountants (ACCA), despite being an approved regulator for probate has not yet put in place regulatory arrangements that would permit it to start authorising individuals to provide probate services. ACCA has, thus far, considered that the potential costs associated with regulatory oversight present a risk, and regulatory oversight could impose a disproportionate regulatory burden on ACCA and, therefore, its members. ACCA's response to the CMA's Interim Report.

different implications in relation to consumer protection and availability of redress, which are difficult for consumers to understand.

- The focus on regulation of professional titles may reinforce the value of the title itself, which in turn reinforces consumers' perception that all legal services providers are regulated for all the activities undertaken.

6.63 In relation to enforceability, we note that unauthorised providers undertaking reserved legal activities commit a criminal offence. However, some stakeholders noted a lack of clarity as to which body is responsible for enforcing the provision.[627] Although we have not found evidence of unauthorised providers systematically undertaking the reserved legal activities, we note that the narrow reservations combined with consumers' belief that all providers are regulated would make it difficult to detect and sanction such offences.

Consistent

Principle

6.64 A consistent regulatory framework can be achieved if legal services carrying the same level of risk are subject to the same level of regulation. Where regulation differs, this should be based on evidence-based risk assessment. Regulation includes not only sector-specific requirements on legal services providers, but also protections afforded to consumers.

Assessment

6.65 In the previous chapter, we highlighted several concerns in relation to the ability of the current regulatory framework to ensure consistent regulation.

6.66 First, as noted in Chapter 2, regulation by title is such that unreserved legal activities are regulated differently depending on the title of the provider who undertakes it (which gives rise to the regulatory gap). We stressed that the regulatory gap emerges not only in relation to the regulatory requirements to

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[627] The Society of Scrivener Notaries told us that there is uncertainty as to which bodies are responsible for enforcing the provisions of the Legal Services Act 2007. It has raised the enforcement issue with both the MoJ and the LSB in the past. The MoJ considers that such offences are part of the general criminal law and any abuse should be reported to the police who will investigate with the Crown Prosecution Services whether to decide whether to prosecute. The LSB also noted that the issue may be the responsibility of the Trading Standards and/or the frontline regulators. However, and suggested that offences relating to a specific title would be dealt more appropriately by the frontline regulator responsible for that title. However, the Society of Scrivener Notaries told us that, with the exception of the SRA, frontline regulators have no powers of prosecution against unauthorised providers.

which providers are subject, but also in relation to access to redress mechanisms (ie only consumers using authorised providers can access the LeO).

6.67 Second, as noted in paragraph 5.136 the current regulatory structure with multiple regulators risks imposing inconsistent standards on providers performing similar activities, which may have the potential to distort competition between different types of providers and to generate confusion among consumers.[628]

6.68 Finally, there are instances where regulation differs on the basis of perceived risk, but there is actually limited evidence of such differences in risk. For instance, as discussed in paragraphs 5.23 to 5.32, ABSs have been subject to more stringent requirements than non-ABS entities because these new business models are perceived to pose more risk to consumers. However, the available evidence suggests that ABSs are not an inherently more risky model and few practical issues have emerged as a result of these alternative models.[629,630]

Conclusion on the assessment of the current framework

6.69 Our analysis has highlighted concerns with the sustainability of the current regulatory model for legal services over the long term. While the current framework works in the current title-based model of regulation, our main concern is that it is insufficiently flexible to apply targeted, proportionate, consistent and risk-based regulation to reflect differences across legal services markets and across time.

6.70 To the extent that information issues such as price and quality transparency are addressed, and unauthorised providers play a more significant role in the legal services sector, we expect these concerns may increase over time, thus making the current regulatory framework unsustainable in the long term.

6.71 In the next section, we first explain why we consider that there is a case for conducting a review to assess whether and how to change the current

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[628] An example is given by minimum PII requirements and compensation funds that may vary across professions.
[629] Examples of different regulatory requirement include the requirement for an ABS to report 'any' failure to comply with rules. Equivalent post holders in a non-ABS firm are only required to report 'material' failures to comply with, or breach of, licensing rules. Moreover, the SRA-regulated ABSs are in principle subject to penalties of up to £250 million on the entity and £50 million on an individual, using the civil standard of proof. By way of contrast, the penalty imposed by the SRA on a traditional law firm can be up to £2,000 and anything larger has to be decided by the Solicitors Disciplinary Tribunal, which uses the criminal standard of proof.
[630] We note, however, that some of these requirements may be relaxed as a result of the current MoJ consultation on ABSs. See paragraph 5.30.

regulatory framework. Then, we set out our recommendations for short-term steps to be taken as well as the key features of an alternative framework.

Recommendations

The case for recommending a review of the current regulatory framework

6.72 Stakeholders who responded to our interim report expressed very mixed views on the impact of the current regulatory framework and the need for regulatory reforms. A first group of stakeholders considered that the current framework is having an adverse impact on competition in the sector, and therefore welcomed a major review of the framework. A second group of stakeholders was content for a review to take place but warned against its unintended consequences (for example, costs of the review, uncertainty in the sector). Finally, a third group of stakeholders did not consider a major reform of the framework to be a priority, given the limited evidence of regulation being a barrier to competition.

6.73 We remain of the view that significant improvements could be achieved through incremental changes to the current regime, particularly through interventions that promote price and quality transparency. However, the assessment of the current regulatory regime against the better regulation principles undertaken in the previous section has identified several issues which may indicate that the current framework is insufficiently flexible to apply targeted, proportionate, consistent and risk-based regulation.

6.74 Although we have identified a series of short-term reforms that regulators and MoJ can implement within the current framework, we consider that the majority of the issues cannot be addressed by tweaking the current framework but would be better addressed through legislative and/or structural changes by the government.

6.75 As such, we consider that there is the case for the MoJ to undertake a review of the current regulatory framework for legal services. While the existing regulatory structure works in the current title-based model of regulation, it appears less well-suited to a more flexible risk-based regime.

6.76 We appreciate that a wholesale reform of the regulatory framework may be risky and that the detail of any alternative model would be important. We note in this context that concerns have been raised in a couple of jurisdictions, where the framework is liberalised, that have resulted in more restrictive forms of regulation being contemplated (see Appendix I for further details). We are also aware that the scope of our market study only covers services provided to individual consumers and small businesses. Any change to the regulatory

framework would need to consider the impact on the sector as a whole in order to avoid unintended consequences.

6.77 The rest of the section is organised as follows. Paragraphs 6.79 to 6.86 describe a series of short-term recommendations that MoJ and regulators should consider to increase the effectiveness of the current regulatory framework. These short-run remedies should be considered as a priority and can be implemented independently of any more significant change to the overall regulatory framework.

6.78 To inform an MoJ review of the regulatory framework, paragraphs 6.87 to 6.88 set out the key features that would make the regulatory regime for legal services more consistent with the better regulation principles set out in the previous section. We also highlight the practical questions that the MoJ should consider when undertaking the review.

Short-term recommendations

MoJ to undertake the review of independence of regulators

6.79 As discussed in paragraph 5.145, we believe strongly in the principle and importance of independence of regulators. This is because insufficient independence may compromise their effectiveness in meeting their objectives. This is a fundamental principle to ensure further changes to regulation are effective.

6.80 The MoJ was planning to announce a consultation and review on independence during the course of our study, but it has been delayed. We recommend that MoJ carry out the review on independence as soon as possible. Such a review would need to consider independence both from the profession and from government.

Regulators to take steps to reduce regulatory burden in areas where not justified by consumer protection risk or public interest

6.81 We believe strongly that regulation should be proportionate and introduced only when there is a clear need. As such, we recommend regulators to continue the work they have been undertaking to reduce regulations when there is no evidence that they are necessary.

6.82 We support the work undertaken by regulators to rationalise handbooks and codes of conduct, replacing prescriptive rules with OFR, reducing the costs relating to PII, and simplifying training requirements.

6.83 However, for reasons explained in paragraphs 6.42 to 6.49, we recognise that the lack of flexibility of the current framework might potentially limit regulators' incentive to implement major reforms.

SRA to remove regulatory restrictions to allow solicitors to practise in unauthorised firms

6.84 As discussed in detail in paragraph 5.102, we believe that current regulatory rules that limit unauthorised providers' ability to employ solicitors to deliver unreserved legal work may restrict the ability of unauthorised firms to compete through the impact that these titles have on consumer decision-making and trust. They may also unnecessarily reduce the availability of lower cost options in the market.

6.85 At the same time, we note that there might be risks to consumer protection if the SRA proposal led to consumers using providers with lesser regulatory protections on an uninformed basis. We consider that SRA provisions to inform consumers of the key differences in regulatory protection immediately prior to purchasing services from solicitors in unauthorised firms may be important in mitigating the consumer protection risks identified. We consider that it is important to monitor the effectiveness of these provisions on an ongoing basis.

6.86 Overall, we therefore consider that the benefits to competition of removing the restriction would be likely to outweigh the consumer protection concerns identified.

Long-term vision

6.87 In this chapter, we have described how a risk-based model of regulation may meet the better regulation principles. We have considered what the key features should be of an alternative framework. Our recommendations for that alternative framework are as follows:

- **Clear objective**: legal services regulation should focus on outcomes for consumers and society as a whole, taking account of the balance between wider public interests and consumer protection and competition.
- **Independence**: this would be addressed by one of our short-term recommendations (see paragraph 6.79).
- **Flexibility**: this could be achieved by replacing (or supplementing) the current reserved legal activities (which are defined in primary legislation and thus require substantial time and resource to be varied) by a

provision that allows the regulators to direct regulation at areas which it considers pose the highest risk to consumers.

- **Targeted and proportionate regulation**: this may have the following implications:

  (i) Providers that are currently unauthorised would come into the regulatory net, if they undertake activities considered as risky. By contrast, the regulatory burden on solicitors and others might be lower than currently for lower risk activities. This would allow providers to compete on a level playing field and allow lower cost unauthorised providers to compete where the authorisation of titles is not necessary.

  (ii) Some of the activities that are currently reserved may cease to be reserved. Furthermore, reservation may be replaced with other type of regulation, if this would better match regulation with risk.

  (iii) Access to redress mechanisms, such as the LeO, could be extended more widely for the services that fall within the scope of regulation. In other words, access to redress would depend on the risk of detriment faced by the consumer (or the public interest), and not on the professional title of the provider. More targeted access to redress is likely to reduce the 'regulatory gaps' that consumers currently face in certain area of law.

  (iv) Low-risk activities would not be subject to sector-specific regulation and would not give access to specific forms of redress. However, consumers would be able to rely on private and public enforcement of general consumer law, and alternatives to regulation such as voluntary schemes, where available.

- **Fewer regulators***:* over time, there is a case for consolidation of regulators. A framework with fewer regulators may allow for better prioritisation over risk factors as these risk factors relate more to the relevant types of consumer, activity and legal services rather than types of provider. However, we also consider that the appropriate structure should ultimately depend on the preferred regulatory approach, rather than structure being something that should be considered in isolation.

- **Role of title**: we consider that, in a more competitive legal sector, with appropriately scoped risk-based regulation, title might cease to be subject to statutory regulation. Instead, relevant professions could be responsible for the title. However, in the short to medium term, it would be preferable

that titles continue to remain subject to regulation. This is because, as noted in paragraphs 5.95 to 5.99, professional titles play an important role in the current market: the majority of legal services are provided by authorised legal providers, mainly solicitors.

6.88 We recognise that more work needs to be done to translate the key features set out above into fuller proposals for regulation of specific legal services areas. There are also practical questions to consider in the review, including:

(a) **Assessing risk**: the review needs to identify how to assess and identify risk across many legal services areas, and how to define the scope of regulation on the basis of this risk assessment.

(b) **Implementing flexibility**: the review needs to identify what legislative changes should be implemented to achieve flexibility of the regulatory framework.

(c) **Effective prioritisation**: the review should ensure that the new framework allows regulators to prioritise effectively regulatory changes.

(d) **Evidentiary standards**: the review should set an appropriate evidentiary threshold for making changes to regulation, by ensuring that it strikes the right balance between the need to ensure that changes are made only when there is evidence of a change in the risk factor and the need for flexibility in the framework.

(e) **Impact on the wider market**: the review needs to consider how changes to the framework are likely to impact the legal services sector outside of the scope of this market study (ie criminal legal services and legal services other than to small businesses and consumers).

(f) **Regulatory structure**: the review needs to identify whether the current structure is appropriate under the new framework, particularly in relation to its ability to deliver risk-based regulation.

(g) **Transition costs**: the review should determine the most effective way to transition between the current and the new framework models without introducing excessive regulation, creating uncertainty for businesses or chilling current liberalising initiatives.

7. Remedies

7.1 We have found that competition in the legal services sector for consumers and small businesses is not working well. In this chapter we set out how we propose to remedy the problems we have found. We discuss in turn:

(a) the need for remedies;

(b) our approach to developing remedies;

(c) our remedies in relation to:

- helping consumers engage with the legal services sector, through:
  - requiring providers to provide information on price, service, redress and regulatory status;
  - measures to help consumers understand the quality they will receive;
  - helping consumers navigate the market;
  - measures to facilitate the development of comparison tools (including rating and review sites) and intermediaries;
- making sure there is appropriate consumer protection across the sector;
- identifying steps to improve the regulatory framework;

- implementation issues; and
- assessing the impact of our recommendations.

7.2 Additional detail on real world disclosures have been included in Appendix D.

The need for remedies

7.3 The main problems in this sector arise because individual consumers and small businesses generally lack the experience and information they need to drive competition through making informed purchasing decisions.[631] We have also identified issues in relation to access to redress for customers of

[631] See Chapter 3.

unauthorised providers.[632] Finally, we have identified a number of issues with the regulatory framework.[633] We discuss these in turn and then outline our assessment of detriment arising from the problems we have identified.

Engaged consumers driving stronger competition

7.4 Our findings in Chapter 3 identified a series of information shortcomings that weaken the ability of individual consumers and small businesses to drive competition through making informed purchasing decisions. Knowledge and awareness of the legal services sector, including whether issues are legal, the different types of providers available and likely costs of service, are low, creating barriers to engagement. When consumers are able to engage, they face difficulties in judging quality, some of which are inherent. A lack of upfront information[634] from providers on the price, service and quality of their offering exacerbates the information asymmetry between providers and consumers.

7.5 These features make assessments of value for money more difficult and costly[635] and may contribute to a reliance on recommendations from family, friends and peers or on previous experience to choose a provider.[636] While this may be a practical approach, it relies largely on any one individual experience rather than a review of what the sector has to offer.

7.6 The lack of transparency in the sector and the limited extent to which consumers compare providers (only 22% of consumers in our survey compared providers), softens competition and incentives for innovation both between different types of provider (eg authorised and unauthorised) and within provider type (eg solicitors).

7.7 We have therefore identified a clear need to increase transparency of price, service and quality to improve consumer engagement and to enable consumers to get a better deal. In addition, our package of remedies is designed to promote consumer engagement, by equipping consumers with the tools to identify their legal needs and to enable them to shop around in the legal services sector, which will facilitate competition.

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[632] See Chapter 4.
[633] See Chapters 5 and 6.
[634] Only 17% of providers in research commissioned by the LSB made their prices available on their website.
[635] Our qualitative surveys with consumers and small businesses showed that in order to be able to compare providers on the value for money of their offerings time would have to be spent in seeking out relevant information.
[636] IFF Research (2016), *Market study into the supply of legal services in England and Wales – consumer findings*, commissioned by the CMA; Research Works (2016), *CMA Legal Services, Qualitative Research Report*, commissioned by the CMA.

7.8 We believe that the starting point for achieving this is for the regulators to require legal services providers to disclose useful information. We want to create the incentive for providers to compete more strongly, including by being more transparent about price and quality, but we consider that direct regulatory intervention is needed in order to shift the sector away from its current low levels of transparency.

Consumer protection

7.9 In our assessment of consumer protection,[637] we have identified that customers of unauthorised providers do not benefit from as effective redress mechanisms as those that customers of authorised providers enjoy. We also found that consumers lacked awareness and understanding of the status of their chosen provider and the implications of that status for consumer protection.

7.10 We have therefore identified a need to assess this risk and whether to extend redress to consumers using unauthorised providers further. We have also identified that there is a general lack of data on the scale of unauthorised providers and data/evidence that would enable a comparison of authorised and unauthorised providers directly. We have therefore developed recommendations for evidence to be gathered in order to address this lack of data.

Detriment to consumers

7.11 We consider that remedies aimed at making the legal services sector more competitive could lead to significant long-term benefits for consumers. The provision of legal services to individual consumers and small businesses generates turnover of around £11–£12 billion annually. The size of the sector in combination with the issues we have identified with consumer engagement and the limited competitive pressure on providers, suggests that consumers in this sector currently experience substantial detriment.

7.12 For some consumers, this detriment arises because they do not get appropriate help with their legal issue (or in some cases any help). For others it arises from them paying too much for the services they do get.

7.13 Although affordability of legal services is beyond the scope of this market study, our findings of low levels of transparency and weak price competition

[637] When referring to consumer protection we refer to all protections afforded to both individual consumers and small businesses.

suggest that effective remedial action to enhance competition would improve access to legal services for less well-off consumers.[638]

7.14 The LSB's work on the pricing of legal services found that across all the legal services examined in that study, the average level of variation between the median price and the cheaper prices on offer was 25%.[639,640] The legal services considered in this research cover a large portion of the relevant market for individual consumers – around seven in ten of the only or most recent legal matters reported by respondents to our quantitative survey.[641] In the long term, the detrimental impact on consumers is likely to be even higher as providers are not driven to innovate the way in which they provide legal services to this sector.

7.15 We have considered whether the sector might resolve these issues by itself, as more transparent and innovative providers are able to win a greater share. However, in legal services we have found that there are some significant barriers to transparency, meaning that providers do not have a strong incentive to compete by giving consumers more information. In particular, when consumers engage in the market, either for a diagnosis of their issue or to find a provider, they have limited awareness of the different types of providers and hence may not even consider their offering. This initial lack of awareness is unlikely to be overcome as a result of the limited level of shopping around and the reliance on recommendations and previous experience to choose a provider. This limits the competitive pressure that might arise from a new and innovative provider and also limits challenges to the existing norm of low transparency.

Our approach to developing remedies

7.16 We have sought to develop a package of measures which will be effective at addressing the problems we have found in the legal services sector and are also proportionate.[642] Some of the key issues we have considered in our remedies design are illustrated in Figure 7.1.

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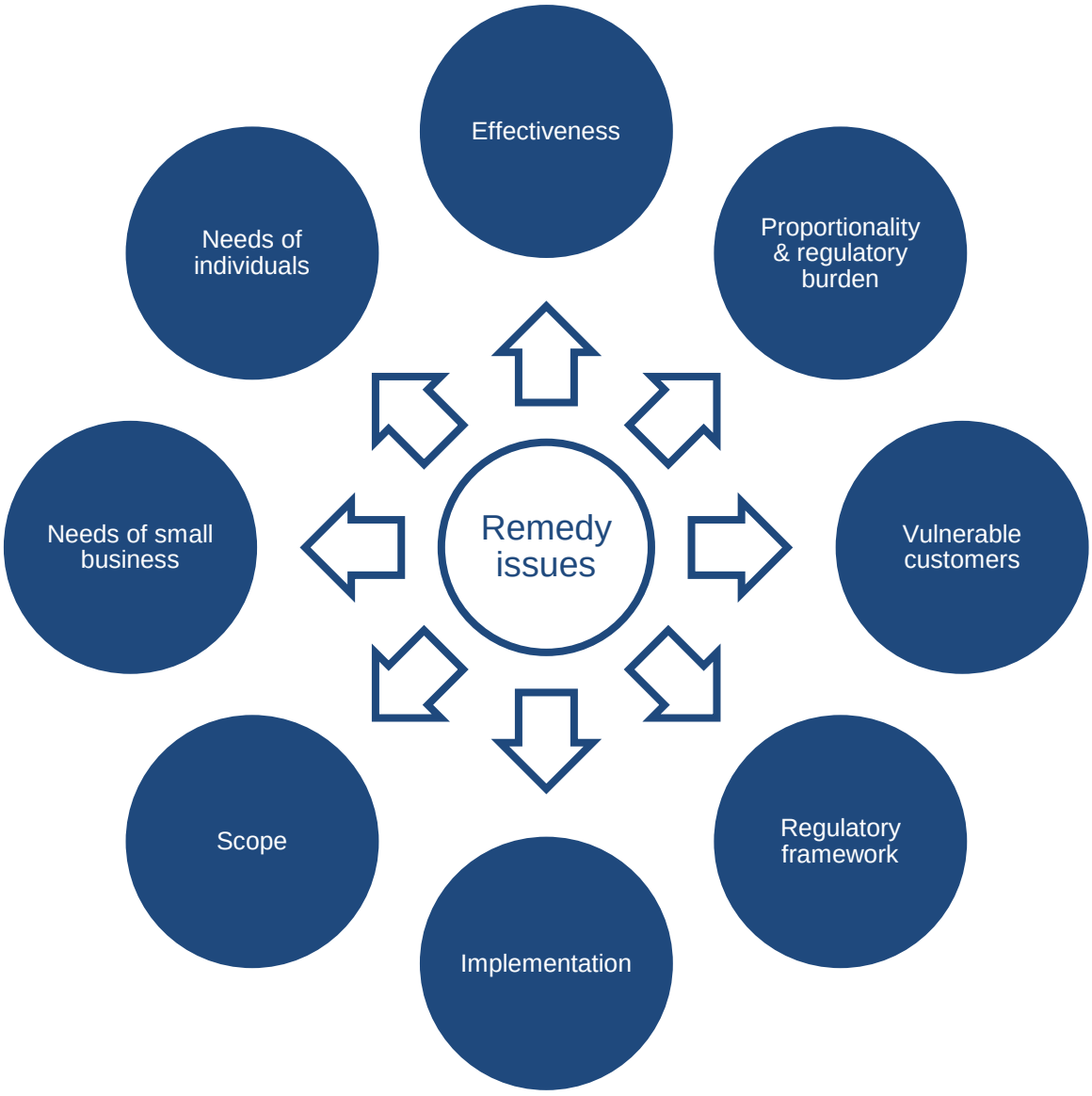
[638] For example, if current levels of price dispersion were reduced (and potentially combined with greater levels of shopping around) some legal services might become more affordable.
[639] This is an average across all the legal services examined in the LSB's pricing research using the variation between the median price (Q2) offered and the lower quartile price.
[640] OMB Research (2016), *Prices of Individual Consumer Legal Services Research Report*, prepared for the LSB, p43.
[641] This 70% figure includes buying/selling/re-mortgaging a property (conveyancing) (26%); making a will (19%); dealing with the estate of someone who has died (probate estate management) (13%); and family matters (12%), although note that the LSB research only looked at divorce.
[642] Our approach to ensuring effectiveness and proportionality is set out in our guidance (*Market Studies and Market Investigations: Supplemental guidance on the CMA's approach*, CMA3, September 2015).

Figure 7.1: Remedy issues



Source: CMA.

7.17 We discuss these design issues throughout this chapter, both when setting out our recommendations and in our discussion of implementation.

7.18 Stakeholder engagement has been central to our approach and we have sought views over the course of our study in meetings, telephone calls, roundtable events, workshops, and through public consultation.

7.19 In our interim report we asked a number of questions about possible remedies. We received approximately 35 submissions in response to that report, almost all of which discussed remedies. We have reviewed these

submissions and have published some 30 individual responses and a summary of three further responses from individuals on our website.[643]

7.20 Since publication of our interim report we have continued to hold discussions with individual stakeholders and have also held two roundtable events:[644]

- The first event was attended by representatives from 28 different organisations (including regulators, representative bodies, consumer and small business groups and legal services providers). It focused on the information needed by purchasers of legal services when identifying a legal need and looking for a legal services provider.
- The second event focused on the regulatory framework and included 20 participants from the regulatory community, representative bodies, academia and government.

7.21 As our remedies have developed, we have sought to test these with stakeholders including regulators, representative bodies and consumer groups.

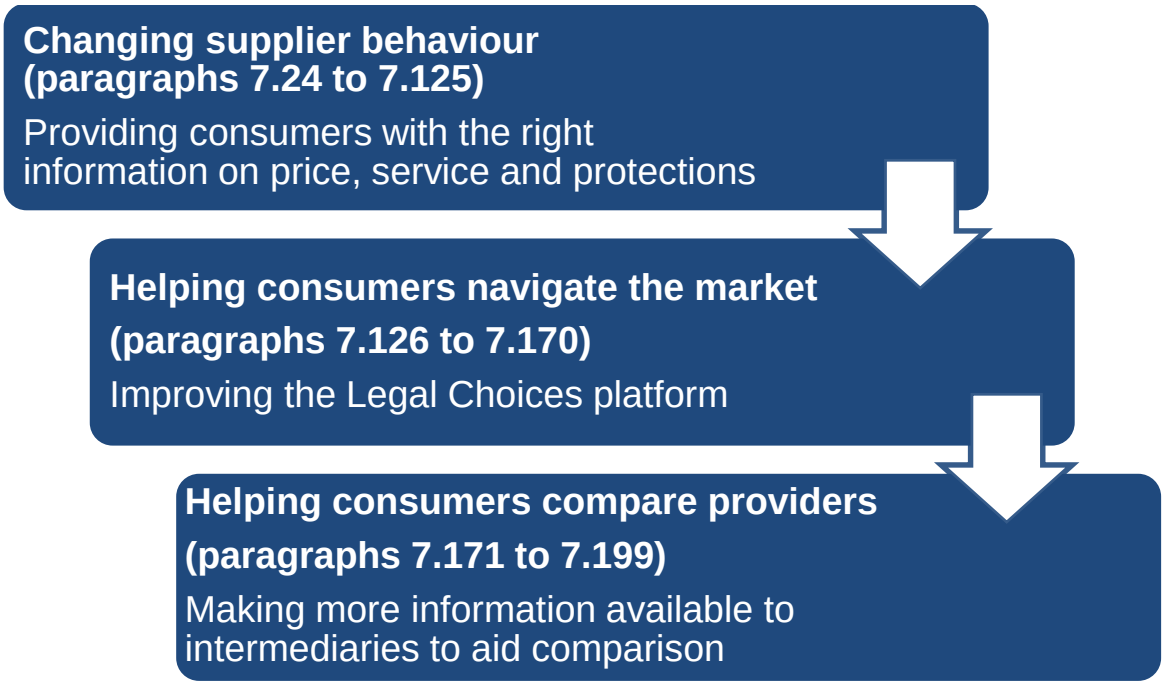
Helping consumers engage with the legal services sector

7.22 We want to enable consumers who are confident, well-informed and engaged when using legal services providers and have effective access to redress. This, in turn, will lead to increased competitive pressure being placed on providers who will have to work harder to attract and retain customers, offering lower prices, better service and fair redress when things go wrong.

7.23 We have therefore identified remedies that are designed to help consumers engage actively in the legal services sector, equipping them with tools to identify their legal needs and to obtain good value for money. We have identified the key steps that need to be taken to achieve our desired outcome in Figure 7.2.

[643] We have not summarised individual submissions, but have incorporated points that we considered material to our thinking on remedies.
[644] We have also held a third roundtable in Scotland to share our findings with key Scottish stakeholders and to gain a better understanding of the differences between the legal services markets sectors in England & Wales and Scotland and whether the issues that we have identified in England & Wales are likely to apply in Scotland.

Figure 7.2: Remedies to address consumer engagement



Source: CMA.

Changing supplier behaviour – requiring providers to provide information on price and service

7.24 In this section we set out our recommendations to frontline regulators to address the low levels of transparency about the terms on which legal services are offered to consumers. Our recommendations are set out in the box below.

Recommendations on changing supplier behaviour on transparency

We recommend that the **BSB**, **CILEX Regulation**, **CLC**, **CLSB**, **ICAEW**, **IPREG**, **The Master of the Faculties** and **SRA** should individually and collectively:

- Act to improve the quality, utility and prominence of disclosures on providers' websites in relation to price, service, redress and regulatory status.
- Develop and consult on an enhanced regulatory minimum level of transparency for legal services providers, supported with guidance on implementation.
- Introduce guidance or regulatory requirements as necessary to improve information provided on engagement such as through the client care letter.
- Promote the use of quality signals by providers and issue guidance for providers on engaging with online reviews.

7.25 Given our finding that a lack of information weakens the ability of consumers to drive competition through making informed purchasing decisions, it is clear that legal services providers need to improve the quality of information for prospective clients.

7.26 In this section we first discuss the information that consumers need and why we consider that regulatory intervention is needed.

7.27 We then set out a discussion of the relevant information required in relation to each of:

- price;
- service; and
- protections and regulatory status.

7.28 We then outline:

- what a regulatory baseline for standards in transparency could look like;
- regulators' action on client care communication;
- possible approaches to promoting quality signals; and
- our conclusions on changing supplier behaviour.

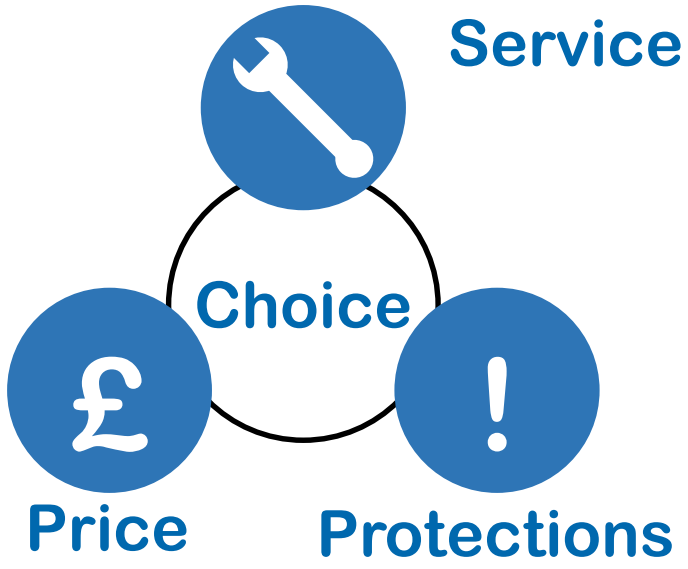
The information needs of customers

7.29 We address the information needs of consumers when they recognise a legal problem below. In this section, we focus on the information needs of consumers whilst exploring the market, in comparing offers and on engagement of a provider.

7.30 To make informed decisions and to compare providers' offers, legal services consumers need clear information to help them understand the price and service offering of individual providers. This information needs to be available before consumers choose a provider. It is also important for consumers to be aware of the regulatory status of a provider, particularly in relation to the protections that are afforded to consumers as a result.[645] These inputs for informed choice are illustrated in Figure 7.3.

[645] These protections include both access to redress and more general 'ex ante' regulation such as required standards of training and conduct. In legal services, the presence of authorised and unauthorised providers (as

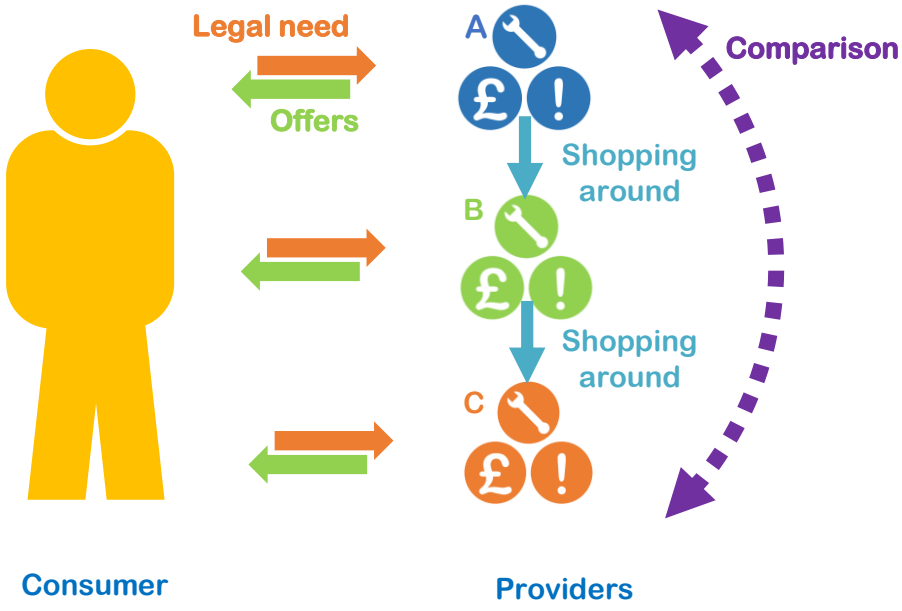
Figure 7.3: The inputs for informed choice



Source: CMA.

7.31 In considering price, service and consumer protection, it is essential that consumers have sufficient, reliable information, presented in ways that are relevant to them, so that all three dimensions can be taken into account 'in the round' when assessing offers. The importance of this information in supporting consumer engagement is illustrated in Figure 7.4.

Figure 7.4: Consumer engagement and information needs



Source: CMA.

well as regulation outside of the Legal Services Act 2007) means that there is a potentially significant variation in available redress. It is important that customers take account of the availability of redress in comparing offers.

7.32 Our review of evidence indicates that information shortfalls in respect of publicly available information are greatest in advance of engagement. More information is currently provided on engagement through the client care letter or on request. We discuss the regulators' joint response to issues around the accessibility of client care letters below in paragraphs 7.117 to 7.119.

The need for an enhanced regulatory baseline

7.33 There is a pressing need to address the lack of information readily available to customers. There is not currently sufficient incentive for providers in the sector as a whole to make this information available.

7.34 We are aware of the role that non-mandatory practice notes can play in both assisting providers to comply with regulation and also to achieve best practice in a range of areas of practice management. However, while such notes and guidance may have a significant role to play in implementing change, the scale of the information deficit is such that regulatory intervention is necessary. We do, however, see significant potential for their use in translating regulatory requirements into disclosures.

7.35 While information gaps in relation to price are easier to identify objectively, we wish to ensure that information to support consumers' choice more generally is also available.

7.36 Individual regulators' transparency requirements differ to varying degrees in different areas and we are conscious that some pieces of information in the following sections may already be required by one or more regulators.

What a regulatory baseline for standards in transparency could look like

7.37 We now set out our view on the regulatory baseline for standards of transparency that legal service consumers should be able to expect across all aspects of service provision.

7.38 In considering the baseline standard of information disclosures, we have considered what information consumers would find useful, the information that providers should be readily able to disclose and the ability of regulators to monitor compliance effectively.

7.39 Table 7.1 sets out our view of the minimum levels of transparency that consumers should be able to expect from legal services providers. In some areas these requirements may be consistent with existing regulation, though additional guidance to providers on how to provide information with sufficient clarity and prominence may be necessary. This list is not exhaustive and has

not been subject to consumer testing. It has, however, been discussed with a range of stakeholders to ensure that it includes information that is likely to be useful for consumers and which can easily be provided by providers.

Table 7.1: Minimum disclosure requirements

Price	Service	Redress
• 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)	• 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	• Regulatory status, registration details • Complaints process & access to the LeO • PII cover

Source: CMA.

7.40 It will be for individual regulators to assess their own current regulatory requirements and the relevance of our recommendations to the services that their regulated professionals offer. As discussed in paragraphs 7.225 to 7.228, we believe that consumer testing of disclosures would be useful as a guide to what additional requirements should be implemented to achieve desirable outcomes. Any specific regulatory requirements could further be supported by general principles as outlined in Chapter 4 and Appendix D and guidance.

7.41 In concluding on the need for enhanced standards, we are clear that 'one size does not fit all', in respect of the disclosures that are appropriate for individual legal services or different professions. We see these requirements applying particularly for the benefit of individual consumers, we believe that such requirements would assist small businesses and particularly microbusinesses if imposed more broadly.

7.42 Our recommendation on transparency is targeted to frontline regulators. We believe that there would be benefits in the adoption of similar standards by unauthorised providers. We therefore considered making a similar recommendation to the self-regulatory and membership bodies we are aware of. However, each body's approach to membership requirements varies and in some cases, such as The Society of Trust and Estate Practioners, its membership comprises both authorised and unauthorised members.[646] We had further concerns about the ability of such bodies to monitor and enforce members' disclosures as a barrier to introducing such standards.

7.43 In light of these challenges, we are not making a specific recommendation to self-regulatory bodies to impose enhanced standards. However, we are keen that unauthorised as well as authorised providers are transparent and would encourage self-regulatory bodies to consider how they might encourage similar standards of enhanced transparency.

7.44 In the following sections, we set out in detail our consideration of issues of information in relation to price, service and, protections and regulatory status.

Relevant information on price

7.45 In this section we set out our consideration of three aspects of price transparency. We discuss in turn:

- key considerations in developing price disclosures;
- how to translate regulatory requirements into disclosures; and
- mandating fixed fees

Developing engaging price disclosures

7.46 Given the currently very low levels of price transparency – which appear to have persisted over a long period, and in a mature sector – we consider that provider behaviour needs to be changed before effective price competition can occur and that regulatory action is the most effective and timely way of making this happen.

7.47 Given the number of pricing/charging models used in delivering different types of legal services, it is apparent that a prescriptive 'one size fits all' approach would not work in every instance and is neither a realistic nor desirable goal.

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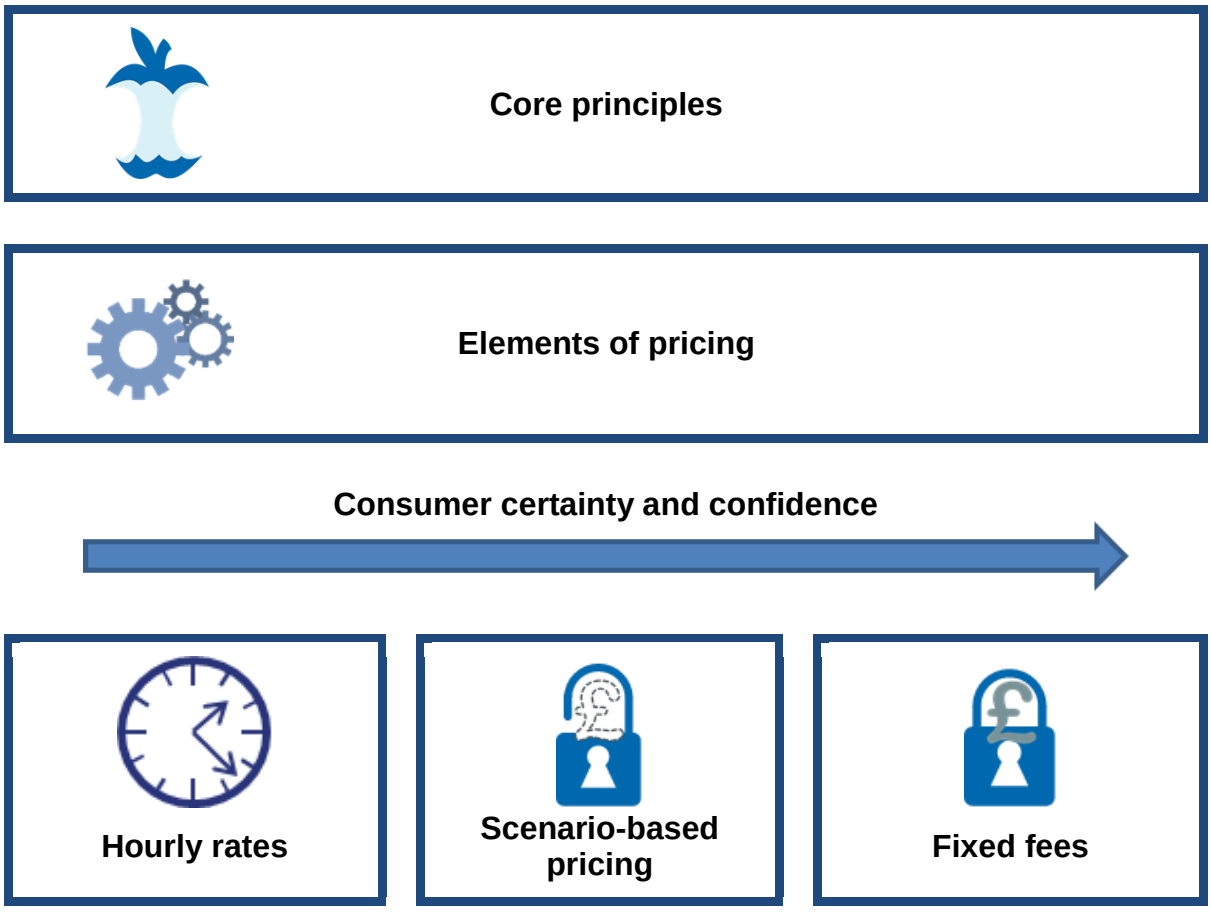
[646] We would not wish to recommend the introduction of standards by membership bodies which contradict those of frontline regulators.

Similarly, while in certain circumstances adopting a fixed-fee model might be appropriate from the perspective of both provider and consumer, this will clearly not always be the case.[647]

7.48 In response to our interim report, it was matters of price transparency that received greatest attention from stakeholders, both in respect of improving transparency and identifying the barriers to transparency. Responses identifying barriers to transparency focused predominantly on price rather than any other aspect. We have therefore given significant consideration on how to deliver greater price transparency. Our consideration of how relevant price information can be provided, and the possible impact of different approaches to pricing is summarised in Figure 7.5 below.

Figure 7.5: Developing price disclosures



Source: CMA.

7.49 This approach can be explained as follows:

[647] For example, in contentious matters, a requirement to offer fixed fees may simply lead to an inflated fee to reflect the financial risk to the provider. Similarly, providers should not be unnecessarily penalised for the behaviour of third parties, such as when a court or tribunal date is rescheduled at short notice.

(a) First, the key principle of any information disclosure (whether price or service) is that it should be sufficiently prominent and understandable. Consumers need to be able to 'access' the information, and also 'assess' it, in order to compare different providers (paragraph 7.51).[648]

(b) Secondly, sufficient information should be provided on 'elements of pricing', specifically the pricing/charging model and the key inputs and determinants of price (paragraphs 7.52 to 7.55).

7.50 Finally, in providing price information providers should consider the likely impact that their approach (both in terms of the choice of pricing model and the level of disclosure) has on customer certainty and confidence on price (paragraphs 7.56 to 7.62).

- *Core principles*

7.51 In Chapter 3 we identified a number of principles that disclosures should adhere to. These are framed on the ability of consumers to be able to both access and assess information. These principles could provide a framework that, if adopted by providers, would help to improve the content and presentation of price information by emphasising the needs to consumers.

- *Elements of pricing*

7.52 In reviewing providers' disclosures, we identified a number of key pieces of information on price that were fundamental to understanding any other price information. Most crucial of these is the pricing model adopted by the provider for different services, followed by information on the determinants of pricing.

7.53 There are a number of different approaches to pricing, such as charging based on units of time, fixed fees for specific services or elements of a service.[649] The usefulness of any such disclosure is subject to either the provision of a specific price, or the determinants of the total charge incurred. For example, if a provider charges on an hourly rate, then a customer needs to know first what the rate is for the relevant member(s) of staff and secondly the likely amount of time recorded for a typical case.

7.54 For engagements where fixed fees are not offered, an explanation of the key drivers for complexity and/or time might be necessary to provide suitable detail to allow a consumer to understand likely price.

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[648] In outlining our principles in Chapter 3, we have referred to accessibility and assessability.
[649] For example in litigation standard letters might be drafted for a standard amount, while other advice and support might be charged on the basis of time.

7.55 In our web review, we found a number of providers that advertised fixed fees for certain services but then did not disclose a specific fee. Customers would benefit from a requirement that, where fixed fees are offered, these should similarly be disclosed.

- *Impact of pricing model on consumer certainty*

7.56 The utility of price information will depend on the extent to which a consumer can anticipate the ultimate cost of a given legal service. Consumers' ability to anticipate the cost of legal services will be determined both by the pricing model adopted by a provider and the disclosures that the provider makes.

7.57 Returning to the framework set out in Figure 7.5, a well-drafted fixed-fee disclosure will give consumers the greatest level of certainty. This certainty will decrease with the use of hourly rates. However, when accompanied by well-considered disclosures, potentially using scenarios, consumers can get a greater sense of likely charging.

7.58 Certainty on pricing decreases with complexity and any element of contested dispute, but again, with appropriate consideration, consumers can be given a sense of the potential scale of costs.

7.59 Providers are not limited to a binary choice between hourly rates and fixed fees in delivering services. Providers may offer variations such as through conditional fee agreements[650] and damages-based agreements.[651] Where services are unbundled, separate elements may be offered under both fixed fee and hourly based charging arrangements. In addition, the use of scenarios can make potentially complicated information easy to engage with.

7.60 There are concerns around the affordability of legal services and the barriers to justice that this can cause. For this reason we see particular importance in the level of certainty that consumers have about the likely total cost. Some stakeholders told us that for this reason, providers should be required to offer fixed fees by default or that there should be a strong tendency to expect fixed fees. While we recognise many benefits from fixed price services, we are conscious that the incentives of a provider vary depending on the pricing model adopted and that it is important not to distort these incentives. For example, in a fixed fee service that is more complex than anticipated, there is

[650] Also referred to as 'no win no fee' and in addition to a standard fee will typically include a success fee to reflect the risk taken on by the provider.
[651] Damages-based agreements are structured on the fee being based on a percentage of any award of damages.

a greater incentive for a lawyer to devote less time than would otherwise be needed, which may result in a worse outcome.

7.61 To a large extent, the pricing model adopted by providers for different services is likely to reflect the provider's appetite for sharing financial risk with a client. For fixed fee arrangements, the risk sits predominantly with the provider, while for hourly rates the risk sits with the consumer.[652] We note however that, while the provider is often able to spread that risk over a portfolio of repeat engagements, an individual is not. This increases a supplier's ability to bear the risk.

7.62 We further note in relation to certainty and confidence around pricing that the LeO previously published its view on good practice on providing price information.[653] Our approach and consideration echoes that set out by the LeO when it stated:

> A customer should never be surprised by the bill he or she receives from a lawyer. However, it is clear that some customers who come to the Legal Ombudsman have failed to understand the basis on which they were billed. This is not helped by the different sorts of charging structures lawyers currently offer: fixed fee, hourly rate, conditional fee and so on. Each of these is different and each has advantages and disadvantages from the customer (and lawyer) perspective. Whatever charging structure a lawyer uses, we would expect the lawyer to explain how it works and what it does and doesn't include. It must be crystal clear.

Translating regulatory requirements into specific disclosures

7.63 We noted that some stakeholders identified barriers to greater transparency and particular concerns as to how meaningful and non-misleading disclosures can be developed. In this section we outline some ways that fixed fees for a range of services can be presented and how scenarios can be used to provide additional context to services charged on an hourly rate. We also consider some of the residual challenges to providing this information.

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[652] The actual risk will vary by service, with relatively low levels of risk in some circumstances, particularly in non-contentious services such as wills where the potential for additional complexity is small and where more complex requirements can be charged at a different rate.
[653] LeO, An ombudsman's view of good costs service.

- *Different approaches to presenting fixed fees*

7.64 Figure 7.6 sets out a 'menu' approach whereby a core basic service is offered for a fixed fee with added extras charged at an additional standard rate. Such an approach sets out the relevant factors that might determine overall cost, but does not require a provider to explicitly set out the cost of every possible combination of services at the start of an engagement.

Figure 7.6: A menu approach to fixed fees

	Inc VAT
Our will writing services	
Basic Wills	
Standard wills	£X
For mirror image	£X
Extra clauses (per will)	
Discretionary trust clause (includes note to trustees)	£X
Hotchpot/guardianship or similar	£X
Business clauses	£X
Legacies (up to 4)	£X
Life interest	£X
Codicil – with one change to the will	£X
For mirror image	£X
Extra clause	£X
General advice	
On how your assets are set up and whether there is anything that can be done with those assets that could be of advantage to your beneficiaries, discussing assets held outside the UK:	Hourly Rate
Severance of Tenancy and RX1 to register at HM Land Registry	£X
Instructions to Trustees/Chattels Notes	£X
For second instruction	£X

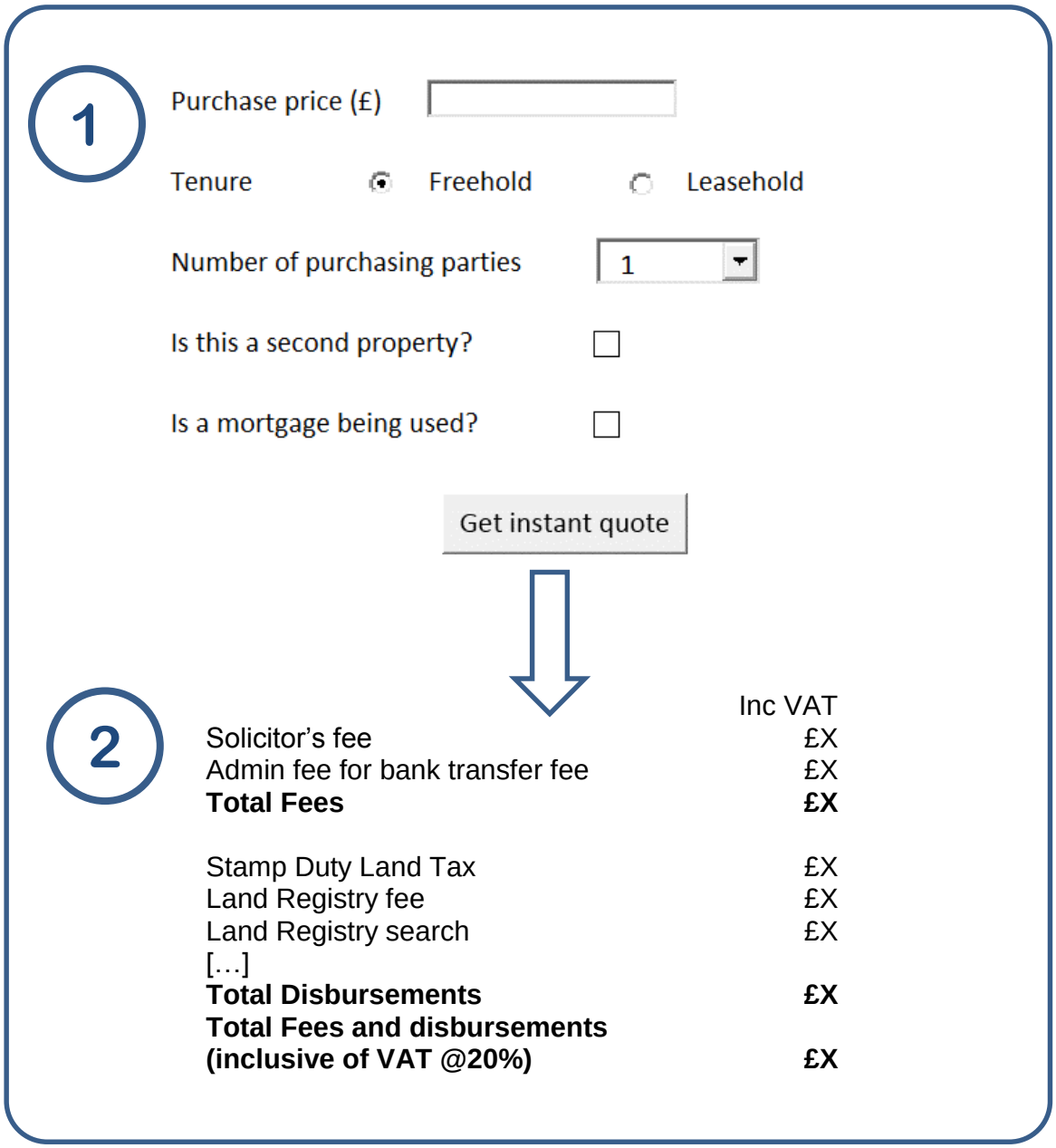
7.65 Such an approach is likely to be particularly helpful where there are discrete individual elements driving costs that do not interact to escalate overall complexity (for example where additional tasks such as drafting a letter might

be undertaken) and a consumer is able to understand and articulate their needs. [654]

7.66 Figure 7.7 sets out an example of an online quote calculator that uses a questionnaire to generate an indicative price for conveyancing. Such calculators allow a price to be generated for a potentially complex service without relying on the consumer to calculate the cost arithmetically and can potentially accommodate the interaction of different factors that affect complexity.

[654] That is in contrast to a situation where an additional aspect or element increases the overall complexity of the matter (such as the inclusion of an additional party in a dispute) rather than involving a discrete additional piece of work.

Figure 7.7: Online quote calculator approach to fixed fees (conveyancing)



7.67 As with menu-based pricing, online calculators are dependent on consumers being aware of their legal needs. Using such online calculators would therefore be supported by our recommendations for action to promote general customer awareness and confidence, for example, through enhancing the Legal Choices website (paragraphs 7.126 to 7.170).

7.68 Providers may feel that by giving a determinative total, they may be committed to providing a service based on a quote that may be underspecified. However, with appropriate framing this should not be an issue.

7.69 The use of 'calculators' represents a promising approach for certain types of legal services, particularly commoditised services with a finite number of

pricing variables. Our review of provider websites found some relatively small providers are using such calculators which would suggest that there are not significant technological barriers to widespread use in some areas of law.

- *Scenario-based pricing*

7.70 The inherent difficulty of providing meaningful price information when using hourly rates is discussed above. We therefore considered the potential use of scenarios to present price information based on hourly rates in a more useful way.

7.71 For services where fixed pricing is impracticable, or where there are a large number of factors that affect price,[655] the use of illustrative scenarios may assist providers in providing useful and accessible information for both commoditised and non-commoditised services. An example is shown in Figure 7.8 below.

Figure 7.8: Illustrative example of scenario based price disclosures

Claims valued at less than £10,000 are normally handled in the small claims court and parties tend to represent themselves. Even if you are successful in your claim you will not be able to recover our fees.

For claims of this amount we support our clients along the way:

- For £XXX a solicitor will provide an hour's advice on the merits of your case and the procedure for pursuing a claim.
- Before making a claim in court you are required to send a 'letter before action' to the other party. We can draft this for a fixed fee of £XXX or provide a template letter for £XXX. Further correspondence will be charged at £XXX per letter.
- Once you have a court date we can provide further advice at a cost of £XXX.

Please note that there may be a 30–35 week wait from issuing a claim until your matter is heard in court.

In addition to our fees, you will need to pay court fees of £XXX.

Source: CMA.

7.72 As with other approaches to pricing, the usefulness of scenarios in aiding shopping around may at least in part be determined by how consistently

[655] The following subsection on mandating fixed fees provides further explanation of where there are difficulties associated with pricing on a fixed-fee basis.

providers of the same service adopt the same approach. However, even where the scenarios used are not identical they will give an indication of a supplier's likely prices, which can help consumers decide whether to use that supplier.

7.73 For services which are more bespoke, or are delivered in stages, alternative forms of disclosure may be possible, such as setting out the likely costs of each stage under certain circumstances.

7.74 Further real-life examples are included in Appendix D.

Mandating fixed fees

7.75 Since our interim report we have received a range of views on whether regulatory action on pricing/charging models is appropriate, and particularly on the merit of requiring, for example, providers to offer fixed fees.

7.76 Fixed fees provide certainty of price to consumers and they also facilitate comparisons with other providers' fees. This reduces the perceived risks of engaging in the legal services sector and transfers some of the financial risk to providers, who are often better placed to manage this risk. They are most common in standard process-based services, or where the likely amount of time needed to deliver a service is known in advance.

7.77 The elements of financial risk and the relative benefit of fixed fees vary with the nature of the service. In more commoditised legal services, providers know much more about how much work a particular type of job is likely to involve because they have repeated experience of delivering the service and have greater capacity to control costs by anticipating complications and resourcing appropriately. Further, the financial exposure is likely to be proportionately less for firms than for most consumers.

7.78 In some cases, and particularly in certain types of services, the customer might drive costs (for example, as a result of changing requirements or failure to supply relevant information) and in these cases customers may be better placed to bear the risk, because it is their actions which drive the cost. In these cases, a fixed fee may not work as well.

7.79 In contentious legal work, where the actions of a third party may have a significant impact on costs, the balance of financial risk might be better shared between the parties to reflect the provider's ability to anticipate a range of possible outcomes.

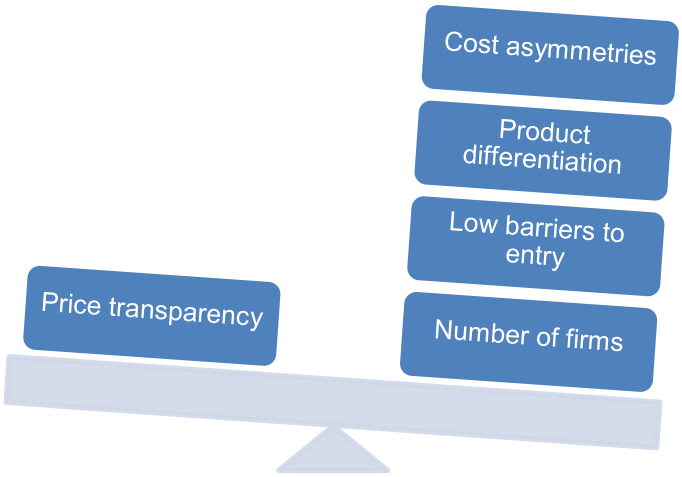
7.80 On balance, we see significant benefits in providers offering fixed fees but we also see significant risks in mandating their use across all services. Any such

regulatory requirement, either universal or for specific services should be for the regulators to consider. However, given the issues raised and our recognition that 'one size doesn't fit all', we are not recommending that regulators should require fixed prices. We would expect that in making more price information available, providers will gravitate to providing fixed or scenario based prices where possible as a simple way of presenting prices.

The risks of greater price transparency

7.81 Following our interim report, some stakeholders identified the risk of collusion and coordination by suppliers arising from the publication of fees. We considered whether this risk was likely to manifest itself in practice. We concluded that this risk was low, particularly given the fragmented nature of the sector. We note that in areas of law where there is greater transparency such as conveyancing, no parties provided evidence or suggested that such practices occur. We set out the key factors we considered in this assessment in Figure 7.9.[656]

Figure 7.9: The factors affecting the risk of collusion and coordination



Source: CMA.

The nature of service provided

7.82 In addition to price, when purchasing a legal service, consumers also need to understand what the service is that providers are offering, how it will be delivered and the quality of service. Any disclosure on the service should therefore essentially explain what the 'problem' is that the service addresses and how the service addresses that problem or need. In setting out how the

[656] We noted in particular The Economics of Tacit Collusion, Final Report for DG Competition, European Commission, 2003 by Marc Ivaldi, Bruno Jullien, Patrick Rey, Paul Seabright, Jean Tirole.

service will be delivered, information on the anticipated stages and timeline of delivery allows consumers to understand how quickly a service will be delivered (and what it is contingent upon) and information on those delivering the service provides some insight into expertise.

7.83 We first discuss information on the stages and timeline of a service, then information on the qualifications and experience of those delivering a service and finally information signalling the quality of service provided.

Stages and timeline of a service

7.84 Legal services consumers need to understand, where relevant, the stages involved in delivering a service and the likely timing.[657]

7.85 The nature of this information can vary significantly across different services. For example, in a property purchase this might simply include the timing of different elements (such as conducting searches, the delay between exchange and completion). However, the timetable will largely depend on the complexity of any 'chain' and the timeliness of other parties in providing relevant information. In contrast, in a commercial dispute a provider might set out the stages of a claim, from an initial letter, through to pre-action correspondence and filing a claim with the court as well as typical waiting periods for a court date and phases of a court hearing (such as case management).

7.86 In a number of legal services, the duration of the service may be determined by the actions of another party (for example litigation). Where this is the case, appropriate contextual information may need to be provided to manage clients' expectations.

7.87 When presenting the legal services they offer, providers need to provide enough information to enable a consumer to understand what is included in the scope of the proposed offering. There are a number of dimensions to this, which we set out below.

Staff qualifications and experience

7.88 In assessing the nature and quality of an offering, consumers should have an understanding of the people and processes delivering a service. Such information might include the experience and qualifications of staff that

[657] For example, in a commercial dispute, a claim will potentially go through stages of initial correspondence, sending a 'letter before action', filing a claim with the court, receiving a court date, case management, disclosure, the eventual hearing and costs judgements.

undertake the work, the primary point of contact and the seniority of staff supervising the work, though the timing of such information may vary on a case by case basis. Consumers may, for example, place particular value on having a more experienced member of staff delivering their legal service (at a greater price) than a cheaper service with less experienced staff.

7.89 Smaller providers might be expected to include details of named individuals. This may not always be straightforward for larger providers, which nonetheless might be expected to provide an indication of the broad level of experience or typical qualifications of staff carrying out the work.[658]

Signalling quality of service

7.90 The nature of legal services means that it is difficult to assess the quality of the service either in advance, or in retrospect.[659] This is a significant issue, as without an understanding of quality, assessing the relative value of a service, with reference only to price, is difficult.[660] We therefore see a significant benefit to consumers of the sector developing and promoting appropriate quality signals.

7.91 We have identified two main ways that firms can demonstrate at least some aspects of their quality. The first is through reviews and personal recommendations aggregated by third parties, and the second is through the adoption of quality marks.

7.92 There are multiple dimensions of quality, most notably service quality[661] and quality of legal advice and representation.[662] The quality of information provided in advance and on engagement can similarly be seen to be an aspect of service quality.

- *Reviews and ratings*

7.93 At present, personal recommendations play a significant role in consumers' choice of provider. However, the nature of legal services and the inherent difficulty in objectively judging quality means that these recommendations may not be sufficient in driving informed choice. Individual personal recommendations may be of limited value, as the person making the recommendation may themselves be a one-off purchaser of legal services.

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[658] For example, a statement such as 'a Licensed Conveyancer with ten years' experience' or 'a trainee solicitor supervised by one of our partners who specialises in property law'.
[659] See Chapter 3.
[660] This was also identified by the LSCP in its report on opening up regulatory data.
[661] That is, the way that providers engage and communicate with customers and the timeliness of delivery.
[662] This is discussed in Chapter 3.

Such recommendations are therefore not based on a review of what the sector has to offer. An alternative to individual personal recommendations are aggregated online reviews and ratings. Each individual review is itself a subjective experience, but in aggregate may function as a bellwether of service quality.

7.94 In developing our thinking on the use of online reviews, we identified a number of potential barriers to their adoption by legal services providers. However, we considered that these barriers could be overcome and that, if implemented thoughtfully, online reviews could perform a valuable function in legal services as they do in other markets. These were:

- **Reviews may be affected by an excessive emphasis on outcomes**. We considered that this would be an issue for those legal services which included an element of dispute (such as employment tribunal claims, ancillary relief and money claims). For such services, providers would be able to solicit feedback from clients at different stages of an engagement or by using a platform that captures feedback across a number of metrics.[663]

- **Legal professional privilege/client confidentiality might prevent providers from responding to reviews**. We do not consider that legal professional privilege or client confidentiality necessarily prevented providers from responding to negative reviews. While providers might not be able to respond directly to specific criticisms by disclosing details of the client's case, there would be nothing that would prevent a provider from acknowledging the review and contacting the client directly. Similarly, Law Society guidance says that 'responding to criticism in a prompt, polite manner will assist in building credibility'.[664]

- **Potential for manipulation by providers**. We recognise that a desire to be rated relatively highly on review platforms may provide an incentive to providers to manipulate ratings by submitting fake reviews (or to engage a reputation management company).[665] We consider that as review platforms develop in sophistication, such manipulation may become more difficult and the threat of disciplinary action by a regulator or the CMA should prove a further deterrent.

[663] 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.
[664] The Law Society: Protecting your online reputation.
[665] The CMA has undertaken a number of consumer law enforcement actions in relation to online reviews.

- **Inability of reviewers to assess quality of advice**. The nature of legal services means that the quality of advice is not necessarily assessable either at the point of delivery or subsequently. We recognise this as a limitation of review platforms, but customers are nonetheless able to assess some aspects of service quality, and customer feedback therefore has a role to play in informing other consumers.

7.95 While consumers would benefit from the greater availability of customer reviews, we are not proposing to mandate their use, at this stage, as we are keen to see how the comparison sector develops.[666] We are cautious that the apparent lack of willingness to engage with comparison platforms may inhibit their widespread use and subsequent regulatory action may be necessary. There is, however, 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. We are aware that some guidance already exists (such as the Law Society's practice note on protecting online reputation and its Transparency Toolkit)[667] and would propose building on this to provide guidance of more general application.

7.96 In promoting the use of online reviews, regulators should also make it clear that engaging with online review platforms offers providers a potential competitive benefit with ratings generated by some review platforms integrated into search result 'snippets' to provide more prominent presentation.[668] An example of this is shown in Figure 7.10 below.

Figure 7.10: Integrating reviews into search results

Source: Google.co.uk, organic search result for 'employment tribunal claim', retrieved 30 November 2016.

- *Quality marks*

7.97 In Chapter 3 we set out a number of issues in respect of quality marks, such as:

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[666] Whilst there are a number of online review and feedback platforms, we would not wish to stagnate the development of existing and emerging comparison tools incorporating price and quality.
[667] The Law Society: Protecting your online reputation.; Toolkit on Transparency.
[668] A snippet is the information provided by a search engine in addition to the hyperlink.

- the lack of consumer awareness of quality marks;
- the lack of evidence that quality marks are signals of greater quality;
- that quality marks are not accessible to all professionals;
- that quality marks may unintentionally restrict competition when used as a filter criteria by intermediaries;
- that quality marks assess inputs and not outputs.

7.98 We recognise the concerns raised by stakeholders, however, we consider that quality marks can have benefit where:

(a) there is a strong consumer awareness of the mark or that the mark is easily understood;

(b) the mark is based on an assessment of outcomes; and

(c) the mark is available to all providers that demonstrate appropriate outcomes.

7.99 Given that (i) legal services are not repeat or regular purchases for many individual consumers and small businesses; and (ii) the inherent difficulties in assessing outcomes, developing a quality mark for legal services that meets the three criteria may be difficult.

7.100 However, where marks are developed, these three principles should be considered.

7.101 We further identified that there was scope for a 'transparency mark' that could be made available to providers on the basis of an assessment of the quality of their disclosures and to incentivise engagement with other quality signals. We discuss this below.

- *Transparency mark*

7.102 A transparency mark could be used as a flexible way of promoting enhanced standards of transparency across professions and could be designed in a way that was broadly consistent with the three criteria identified in paragraph 7.98.

(a) Consumer awareness of such a mark would be unlikely to be significant (unless it was part of another established mark), but it would be easy to understand.

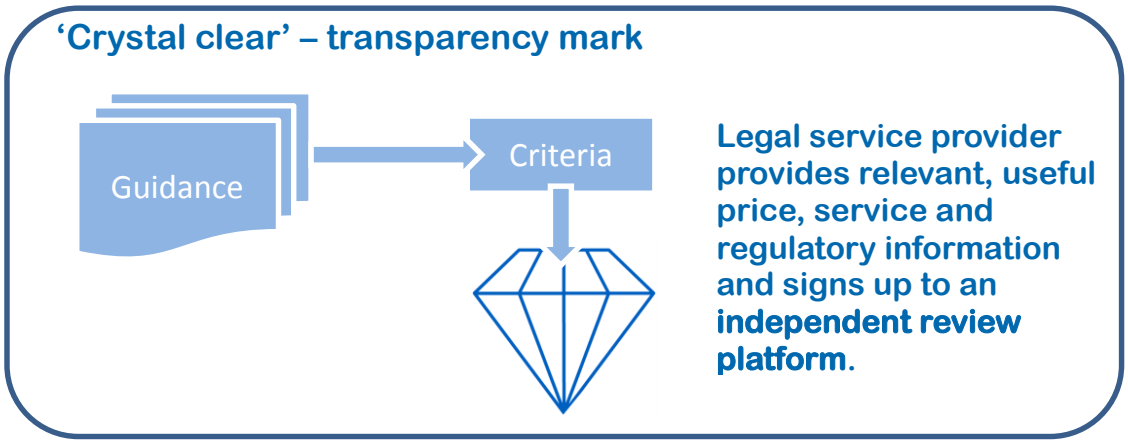
(b) The award of the mark would be on the basis of public disclosures assessed against best practice guidance.

(c) The mark would be available to all legal services providers regardless of their regulatory status.

7.103 Unlike other quality marks, a scheme as set out above would support the development of intermediaries and comparison tools (including rating and review sites) without restricting competition. This is because it would be available to all professionals that demonstrated appropriate transparency and would therefore incentivise the publication of the sort of information needed by customers. As a result, providers might be perceived by intermediaries and comparison tools to be more open to engaging with comparison and providing information upfront.

7.104 Qualifying criteria for receiving a transparency mark could, for example, include demonstrating clear and transparent information on service and price and the systematic collection of feedback and publication of ratings through an independent third party platform. An illustration of such a scheme, with simple branding and messaging, is set out in Figure 7.11.

Figure 7.11: Transparency mark



Source: CMA.

7.105 As with similar schemes operated in other sectors, we anticipate that the assessment of a provider's transparency would be repeated periodically to ensure that providers maintained standards after qualifying for the transparency mark. To reduce the administrative cost of the scheme, providers might make a self-assessment declaration between formal assessments that information provision is consistent or enhanced since last assessed.

7.106 At present, a large number of quality marks are restricted to certain authorised professionals. This reduces their utility in making comparisons across providers. Given that we would expect the transparency mark to involve the publication of price, service and regulatory status, we would not be concerned about allowing unauthorised providers from also being able to qualify.[669]

7.107 We are aware of the concerns expressed by some stakeholders about appearing to promote or legitimise the use of unauthorised providers from a consumer protection perspective. We do not share these concerns, provided consumers understand the nature of the service provided and the protections afforded to them. In our view, any scheme that encourages unauthorised providers to commit to transparency is likely to be strongly in consumers' interests.[670]

7.108 A list of holders of the transparency mark should be freely available to third party intermediaries (see also our discussion of open data below) and to consumers through regulatory databases and potentially the Legal Choices website.

7.109 We are not, however, making a specific recommendation to introduce a transparency mark as we believe that at present the priority of the regulatory community should be in introducing mandatory enhanced minimum standards. On adoption of such standards, we consider that further thought should be given to additional action and use of regulatory tools, such as transparency marks, in order to promote customer friendly disclosures.

Information on protections and regulatory status

7.110 As set out in Chapters 4, 5 and 6, the regulatory structures relating to legal services are complex. Given this complexity, consumers may be confused about the regulatory status (and associated protections) of a particular provider or may wrongly assume that all providers offer the same protections.[671]

7.111 Providing consumers with information on the key elements of a provider's regulatory status – such as whether they hold a relevant PII policy and the nature of the cover offered as well as whether they have access to the LeO – would help consumers understand the level of consumer protection available

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[669] As holders would necessarily be presenting relevant information on available consumer protections and the firm's regulatory status, we see relatively little consumer risk.
[670] Inclusion of unauthorised providers would need to be on a cost reflective basis to ensure that authorised providers were not subsidising their inclusion (and vice versa).
[671] This is particularly a risk in the case of customers that engage an unauthorised provider.

to them. Consumer awareness and confidence would thereby be improved and could act as a spur to shopping around.

7.112 Such information is required to be provided by regulators to varying extents in different ways. Many providers do state their regulatory status, but this tends to be relegated to the footer of a webpage with more detailed information only available in a client care letter, received once a provider has been engaged. There is therefore scope that where such disclosures are made they are appropriately accessible and prominent.

7.113 We have concluded that legal services consumers would benefit from providers presenting information on their regulatory status in a prominent, accessible location.[672] Similarly, including information on access to the LeO on the provider's website rather than solely in client care communications will make that information more accessible[673] and will enable consumers to take it account at the stage when they are choosing a legal services provider. Additionally, while authorised providers may be required to hold PII, the nature and extent of the cover may vary by individual regulators' requirements and the provider's choices.[674] We therefore see benefit in providers making this information available to consumers.

7.114 In addition there would be considerable value in providers directing consumers to the relevant section of a revamped Legal Choices platform to explain the key differences in consumer protection available when engaging different types of providers.

7.115 There are a range of ways that consumers might be encouraged to engage with regulatory information. This might be driven by prominence or disclosure of messaging could also be driven through some form of badge that could develop increased consumer awareness over time[675] in a similar form to the Financial Services Compensation Scheme badge for deposit protection (Figure 7.12) or a link to a regulatory database, as currently operated for online pharmacies (Figure 7.13).[676]

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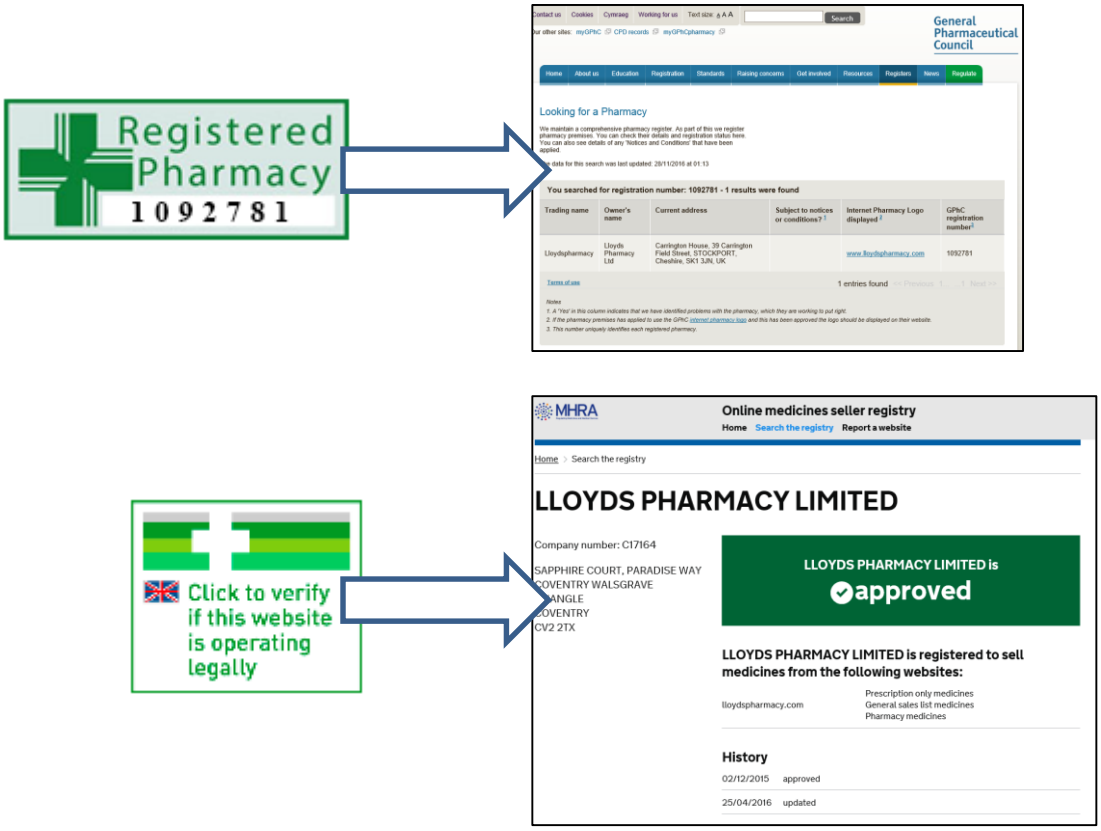
[672] At present, information on regulation tends to be clustered at the bottom of websites alongside privacy policies and other declarations.
[673] Information shared only in a client care document may be not be readily accessible (as it requires physical access) and the significance of the content of the client care letter may not be evident to the client.
[674] In some cases there may be a minimum absolute level of PII cover and an additional requirement to ensure that the level of cover is appropriate.
[675] This might need to be supported by some form of campaign to drive awareness, or a regulatory requirement to use the branding to ensure more passive awareness.
[676] By linking through the regulatory database customers can also confirm that the owner of the website is regulated.

Figure 7.12: Financial Services Compensation Scheme

Source: Financial Services Compensation Scheme.

Figure 7.13: Online pharmacy badges



Source: www.lloydspharmacy.com/, General Pharmaceutical Council and Medicines and Healthcare products Regulatory Agency.

7.116 Should a single digital register be developed as discussed below,[677] such badges could link through to a providers details to confirm relevant matters such as regulatory status, PII and access to the LeO.

[677] See paragraphs 7.195–7.197.

Regulators' action on client care communication

7.117 As well as considering information that consumers need in order to compare providers, we have also considered the information that is provided once a consumer contracts with a provider. Authorised providers are required to make a variety of information available to customers. However, the presentation of this information can be inaccessible. The frontline regulators commissioned and published research on the information given upon engagement of a legal services provider, which is often contained in a client care letter.[678] An output from this research was the identification of eight principles on how to provide information to clients.

7.118 We see significant merit in this project but regulators must support and encourage providers to adhere to these principles and translate them into real-life documents. This may require additional regulatory standards or alternatively developing guidance. We see merit in the regulators periodically reviewing trends in how client care letters develop across the sector.

7.119 We note, however, that significant elements of client care letters are boilerplate (standard text) and relate to general policies and procedures of the firm. We therefore believe that such information could be made available to customers through providers' websites before engagement. At a minimum, this could be a regulatory requirement to publish the standard client care letter, but a more useful requirement would be to translate the letter into accessible client facing disclosures embedded appropriately into the content of a provider's website. The existing availability of this information should therefore feed into any consideration of proportionality and regulatory burden in relation to our recommendation on introducing enhanced minimum standards on providers.

Conclusions on changing supplier behaviour

7.120 We have identified the general need for information to aid consumer engagement. There are additional factors that make improvements in price information particularly important. The ongoing and significant public concerns

[678] Optimisa Research (2016), *Research into client care letters: Qualitative research report*, prepared for: BSB, CILEx Regulation, CLSB, CLC, ICAEW, IPReg, LSCP, Master of Faculties and SRA. The research noted that provision of a client care letter is not a regulatory requirement, but is the vehicle most commonly used for providing consumers with written information about a firm's, or the chambers', complaints process, which is a regulatory requirement.

about the affordability of legal services and the barrier to access to justice that this creates,[679] contributes to the level of unmet legal need.[680]

7.121 Facilitating price competition is therefore a crucial outcome of this study, and the presentation of accessible price information will help ensure consumers are able to choose the best value[681] service for them. We are therefore recommending that regulators introduce an enhanced regulatory minimum level of transparency. This need is particularly acute for individual consumers, but we see benefits of the regulators identifying how to address the information needs of small businesses. We discuss the relevant scope of these requirements in paragraphs 7.229 to 7.232.

7.122 We believe that there is greater scope for providers to engage with quality signals and particularly online reviews and ratings. At this time we do not believe that a regulatory requirement to engage with quality signals is necessary but believe frontline regulators will have a key role in supporting and encouraging providers to engage with published feedback.

7.123 Should regulators implement our recommendations on regulatory data, this facilitation and possible development of a mature comparison sector may lead to more providers engaging with ratings and reviews as part of being listed on DCTs. However, providers may need guidance and support on how to engage with online reviews, both from a business and regulatory perspective.

7.124 We note the progress made by regulators in seeking to address issues in relation to client care letters and recommend that the regulators seek to translate this research into more accessible information.

7.125 Finally, we see a role for the representative bodies to support the implementation of the various measures designed to change supplier behaviour that are described above. We encourage them to supplement the new regulatory requirements that the frontline regulators will impose through the publication of relevant guidance documents to help lead and develop best practice.

Helping consumers navigate the market

7.126 In this section we discuss the possible improvements to information available to individuals and small businesses to aid their navigation of the legal services sector, with a particular focus on the existing platform, Legal Choices. Our recommendations to frontline regulators are set out in the box below.

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[679] See for example the Law Society's work on affordability.
[680] See paragraphs 3.165–3.184.
[681] We consider value to be a combination of price and service and not simply the service with the lowest price.

Recommendations on helping consumers navigate the sector

We recommend to the **BSB**, **CILEX Regulation**, **CLC**, **CLSB**, **IPREG**, **The Master of the Faculties** and **SRA** that they should:

- Review and further develop the content of the Legal Choices website to:
    - present a comprehensive **whole of market overview** of different types of provider including those not regulated by frontline regulators;
    - provide information and practical guides on comparing and choosing a legal services provider; and
    - provide guidance on what information consumers and small businesses should reasonably expect from legal services providers on engagement and during the course of ongoing cases.
- **Identify how best to support the vulnerable** and those who are either unable or do not have confidence to access the Legal Choices website.
- **Actively consult** the LeO, the LSCP, the LSB, relevant consumer and small business groups such as Which?, Citizens Advice, and the FSB, ICAEW and self-regulatory bodies on content and focus. Furthermore, the frontline regulators should consider how to meet ongoing consumer and business needs in future changes to editorial content.
- **Engage with government** including the MoJ, BEIS and the Government Digital Service to improve signposting to Legal Choices and consistency of content between Legal Choices and GOV.UK.
- **Engage with relevant bodies in Northern Ireland and Scotland** to consider how to ensure individual consumers and small businesses across the UK can be signposted to appropriate information.

We recommend to the **BSB**, **CILEX Regulation**, **CLC**, **CLSB**, **ICAEW, IPREG**, **The Master of the Faculties** and **SRA** to:

- **Actively promote Legal Choices** from their websites and on published materials.
- **Encourage legal services providers** to make consumers aware of Legal Choices.
- **Explore other channels** to promote awareness of the Legal Choices website including paid search.

We recommend to the **MoJ** that it coordinates changes to content on GOV.UK and introduces signposting to the Legal Choices website across its content.

7.127 We have found that consumers lack awareness about when they have legal issues that might benefit from advice, and have a limited understanding of the different types of legal provider that might be able to help them. An effective information hub that helps consumers find their way through the legal services sector is an essential first step for tackling this problem and empowering consumers to make good decisions. Although some relevant information is made available to consumers through the Legal Choices website, it does not currently perform its role effectively. Our evidence shows that Legal Choices is not widely used by consumers, lacks important information particularly on alternative providers and is not sufficiently focused on customers' experience of legal services.

7.128 We discuss in turn: *(a)* an appropriate host, *(b)* promotion, *(c)* content and *(d)* signposting for the Legal Choices platform.

Choosing an appropriate host for an information hub

7.129 In our interim report we asked whether the Legal Choices website was the right platform to provide general information about using the legal services sector to customers, or whether an alternative approach was needed. We received a range of views in response to this question, including views on the role of representative bodies, consumer groups and commercial operators in potentially providing that information.

7.130 In our remedies workshop, attendees broadly agreed that an information hub needed to be neutral, authoritative and comprehensive. Our consideration of the most appropriate host for an information hub has been based on meeting these three criteria.

7.131 Any information hub operated by a commercial party (such as a DCT providing general legal information to users of its services) could potentially drive customer engagement by virtue of promotion of the site's commercial activities. However, customers might be wary of the nature of the information provided if it is perceived that the operator might not be neutral. Consequently, while we are proposing measures to encourage commercial third party intermediaries in this sector (paragraphs 7.171 to 7.199), we also see a benefit of an 'official' information hub – to which commercial sites could link – which would help customers orientate themselves when they first engage with the legal services sector and which provides a neutral guide to the different types of legal services providers that are available.

7.132 We considered whether one or more representative bodies would be best placed to operate an information hub.[682] However, we considered that this might give rise to a perceived bias towards the professionals whose representative bodies operated the platform. We also noted concerns raised by some parties over the inclusion of information on legal services providers that were not contributing to the funding of the site – and thought that representative bodies would have reduced incentive for the platform to offer the comprehensive advice that customers need.

Conclusions on an appropriate host

7.133 We concluded that a revamped Legal Choices website would be the best way of taking forward this remedy. The current governance arrangements for Legal Choices – in which the frontline regulators operate and fund the Legal Choices website, with the SRA being responsible for the day-to-day management of the site – provide a reasonable basis for running a legal services hub which customers would consider to be both neutral and authoritative.

7.134 As noted in our interim report, the Legal Choices platform is in need of an overhaul, in order to make it more accessible, comprehensive and customer-friendly.

Promotion of the Legal Choices website

7.135 For the Legal Choices website to be an effective source of customer information, it needs to be widely used by prospective and current customers of legal services. This requires customers to be aware of the website before or during their search for a provider. We set out briefly some background on the current usage of Legal Choices before discussing the current promotion of the platform by the regulators.

Current usage of the Legal Choices website

7.136 Between its launch in January 2014 and November 2016, Legal Choices received a total of 72,000 visits from 58,000 users. In the first 11 months of 2016, visits were up 80% year on year.[683] Traffic has recently increased but we consider the overall level of traffic to be lower than it could be, given the

[682] For example, in an equivalent arrangement to that currently adopted by the regulators in overseeing the Legal Choices website.
[683] As of June 2016. These users viewed 114,000 pages, with an average site visit lasting just over 4 minutes.

size of the market and the low level of customer understanding of legal services.[684,685]

7.137 Around a quarter of visits (27%) to the Legal Choices website since it launched in 2014 have come from organic search[686] with 'legal choices' and 'types of lawyer' being common terms used to find the site.

7.138 The two most common referring websites are the SRA's website and Citizens Advice's private adviser extranet.[687] Legal Choices is promoted through both social media activity and paid search. Social media activity has grown in significance: in 2016 social media accounted for around half of traffic to the site.[688] More than a third (37%) of all traffic has been generated from Facebook, and the significance of Facebook as a source of traffic has increased as targeted advertising campaigns have been developed.[689]

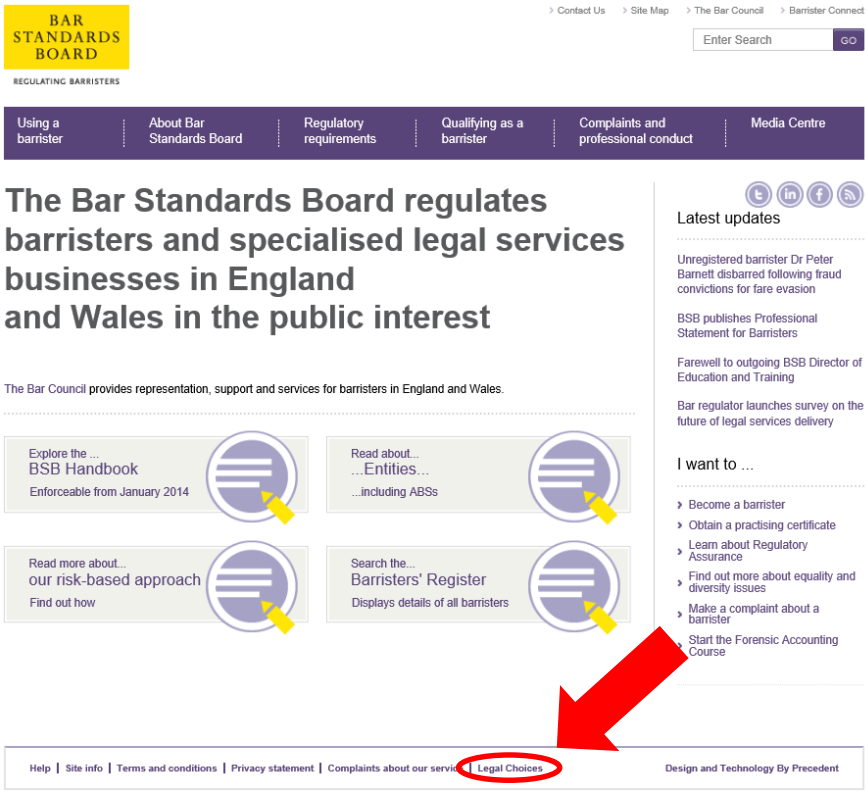
7.139 Recent targeted, paid-for, promotion campaigns have increased site traffic. Some customer research into likely search behaviours has been conducted in 2016 in order to develop targeted paid search campaigns.

Direct promotion by regulators and government

7.140 For a platform that is operated and funded by the regulators, Legal Choices receives very little prominence on the regulators' respective websites (Figure 7.14 shows the prominence of the link to the Legal Choices website on the BSB's website) and does not appear to be referenced to from anywhere on GOV.UK.

[684] For example, traffic in the first four months of 2016 was up 100% year on year.
[685] In 2014 it was reported that there are 2 million legal searches performed on Google every day in the UK.
[686] That is, search results from search engines which have not received additional prominence through paid-for advertising (which is referred to as paid search).
[687] Citizens Advice's Advisernet is a web portal accessible by advisers in bureaux and contains information and guidance to assist advisers. Legal Choices has also been promoted at Citizens Advice's annual conferences.
[688] It has accounts on Twitter (around 500 followers, as of November 2016) and Facebook (around 2,100 'likes')
[689] Advertisers on Facebook are able to target groups of users based on demographic and other information captured in those users' profile.

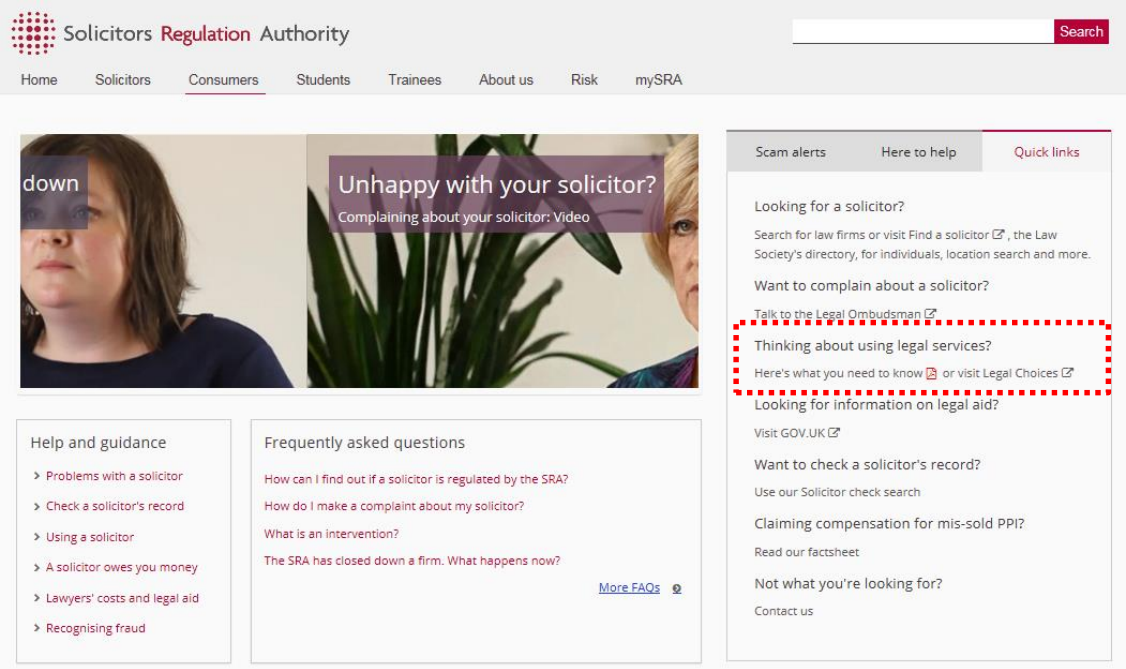
Figure 7.14: Promotion of the Legal Choices website on the BSB website



Source: www.barstandardsboard.org.uk/.

7.141 Several regulators do refer to the Legal Choices website on 'consumer' sections of their websites but this typically competes with materials provided by the individual regulators which tend to focus on that specific regulator's activities. An example of this is the SRA's consumer pages (Figure 7.15) which exclusively focus on using a solicitor. Legal Choices is only referenced in a list of 'quick links' (which are not shown by default) under the heading 'Thinking of using legal services' as the second option after the SRA's guide of the same name (which is hyperlinked using the text 'here's what you need to know').

Figure 7.15: Promotion of the Legal Choices website on the SRA's website



Source: www.sra.org.uk/.

Conclusions on promotion

7.142 The regulators are increasingly using targeted promotion of the Legal Choices website through social media and paid search. This appears to be a sensible marketing approach that should be continued and developed but may require an increased budget to improve the site's reach.

7.143 There are also a number of simple, low-cost approaches to promotion that might increase traffic to the website that should be pursued in addition to existing paid search and advertising campaigns. Promotion on regulators' websites, for example, would be a useful first step to improving the visibility of Legal Choices for prospective and current customers.[690]

7.144 We appreciate that independent regulators may wish to develop and maintain their websites as they believe appropriate. However, from the perspective of

[690] This is of note as the SRA's website produces a significant proportion of referred visitors, despite the Legal Choices website having relatively little prominence on the SRA's website. A more prominent position would therefore likely increase traffic.

the legal services sector as a whole, there is insufficient signposting to information that will help customers understand their full range of options.[691]

7.145 At a minimum, individual regulators should be including a prominent link to the site on their websites. However, by itself, that is unlikely to be sufficient to drive the increase in engagement that is needed[692] and further promotion of the Legal Choices website will be necessary.

7.146 Regulators should therefore also consider how to encourage providers to promote the site, including whether providers should be required to include a link on their websites. Similarly, regulators should engage with government through the MoJ and the Government Digital Service to ensure that Legal Choices is appropriately signposted.

7.147 The promotion of the Legal Choices website is likely to be most effective when it is accessible by consumers at the key points when they are engaging with the market and seeking to diagnose and solve their legal problems. Continued research into search behaviour may assist in both tailoring content to be more relevant to customers as well as supporting effective search engine optimisation.[693] Such an approach would complement that advocated by us in how information is presented on Legal Choices in the next section.

Content of the Legal Choices website

7.148 Legal Choices provides a wide range of content on helping those with legal needs engage with the market which includes information on types of providers as well as some 'how-to' guides and checklists.

7.149 In the course of our review of the platform and our engagement with stakeholders we have identified three elements where further development of content would benefit those with legal needs. The first is the overall presentation and whether the answers to key questions are easily found, the second is the nature of content targeting small businesses and the third is the extent of information provided on unauthorised providers.[694] We discuss these in turn.

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[691] For example, by only focusing on a single profession, a lack of customer awareness of legal titles and the regulatory framework may lead customers to assume all providers offer the same protections or standards of conduct.
[692] This is because we would not expect a significant proportion of customers of legal services to visit a regulator's website in advance of choosing a legal services provider.
[693] For example, if customers are searching for answers to questions such as 'how do I…', then content providing the answer to that question should be developed.
[694] These last two points were both areas where our analysis suggested a particular lack of awareness from customers.

Presentation and framing of content

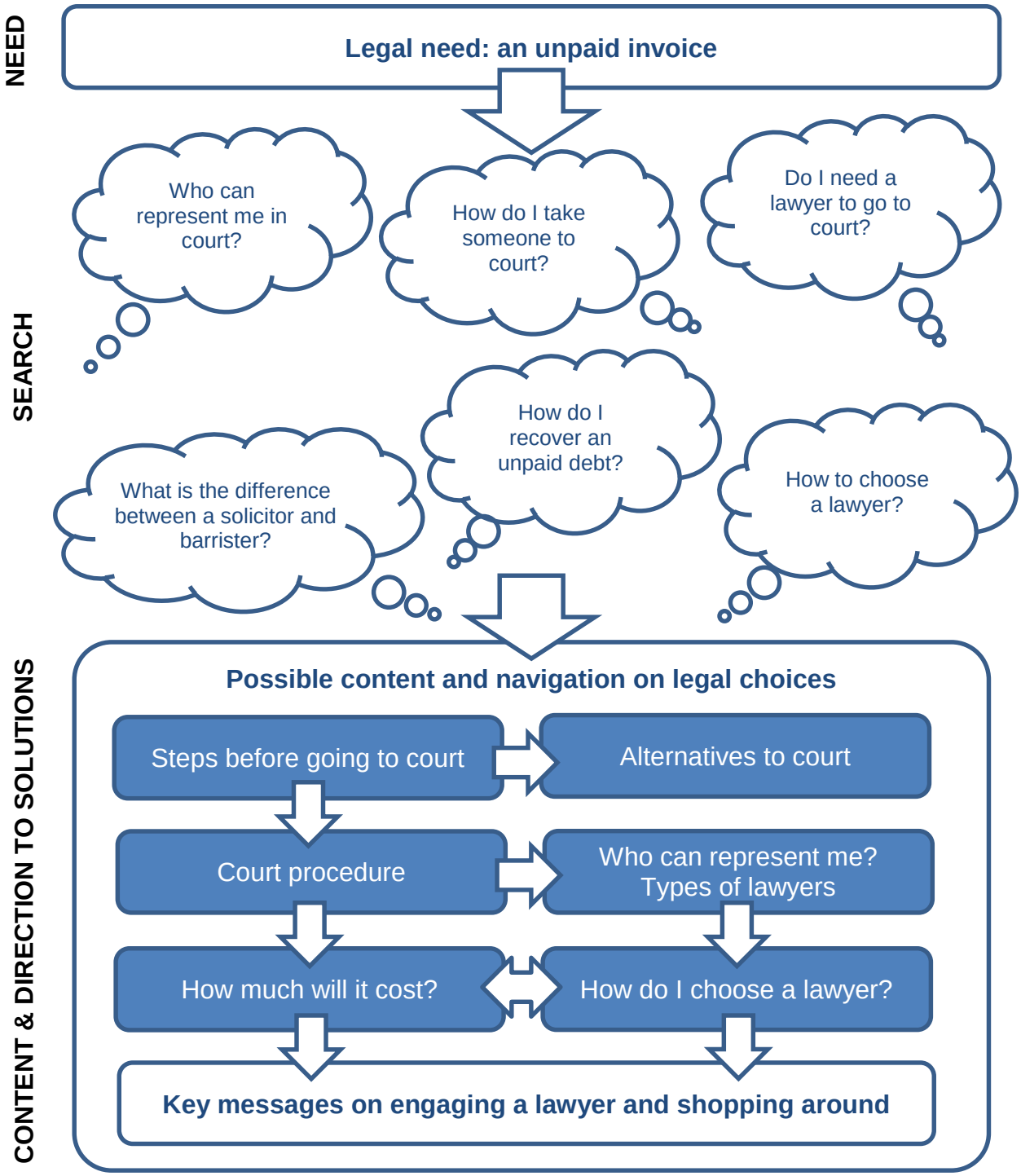
7.150 In discussing the Legal Choices website with a number of stakeholders we identified that the current structure and presentation of the site's content do not reflect how consumers with legal needs seek to find answers to their problems. At present the site sets out a range of information on the legal services sector, but is presented as a general outline of the sector with some guidance. In part this is reflected in the most common search terms that drive traffic to the site.[695]

7.151 We received feedback from stakeholders that, in order for the site to be more responsive to those with legal needs, the site's content should address the 'who/what/how/why' questions that individuals and small businesses are likely to have when they consider engaging with the sector. More generally, we were told that the site should better reflect the customer 'journey' from initial engagement and exploration of the market through to comparing and engaging a provider.

7.152 This challenge is illustrated in Figure 7.16 which uses the case of a small business that has an unpaid invoice. While the legal need of seeking payment may be evident, the small business's search behaviour may focus on specific aspects and may take a number of different approaches when conducting its research. Appropriate content therefore needs to address those questions, either directly by providing specific answer to common questions or by directing visitors to the relevant information either on the Legal Choices website or elsewhere.

[695] See paragraphs 7.136–7.139.

Figure 7.16: Providing relevant information to address a legal need



Source: CMA.

7.153 In further developing the presentation and framing of material on the Legal Choices website, we see particular opportunity to consider the application of

behavioural insights to framing key messages such as using 'simple heuristics'[696] to convey approaches to, for example, shopping around.

7.154 As noted in our discussion on promotion,[697] research has been commissioned in relation to the Legal Choices platform to better understand the search behaviour of those with legal needs. Such research is valuable both in planning paid search campaigns and also in conducting search engine optimisation of content to drive traffic organically.

Small business content

7.155 Legal Choices currently provides some information relevant for both individual consumers and small business. The way that microbusinesses, in particular, interact with the legal services sector may be similar to individual customers, but their legal needs may be very different. The Legal Choices website has addressed this in part by creating a distinct section devoted to small businesses.

7.156 The small business section provides some useful material, but is relatively under developed. Furthermore, the site's structure means that information useful to both small businesses and individuals may be less accessible. Some pages within Legal Choices' small business section are dominated by external links to other sources of information with little additional material.[698] The curation and provision of relevant links is a useful resource, particularly for those already confident to address their own business and legal needs, but as a result provides less focus on helping users to engage with the legal services sector.

7.157 The current signposting to relevant third party (and in particular government) websites is a low-cost way of directing visitors to information, but the information to which customers are directed may not itself be presented in a format that is engaging and accessible for small businesses. There is therefore considerable scope for promoting business engagement with the site through stronger content.

7.158 We would like to see the Legal Choices platform develop accessible content to assist in signposting which in turn aid small business users in having greater confidence in their actions.

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[696] Or 'rules of thumb'.
[697] Paragraph 7.139.
[698] For example, there is scope to develop more materials that focus on issues around engaging a provider on a retainer or using a number of providers for different types of legal work, which would make the site more relevant to small businesses.

Unauthorised providers

7.159 The Legal Choices website has a particularly important role to play in raising awareness and understanding of different types of providers, and particularly unauthorised providers given our finding that consumers were generally reluctant to use these firms, and often misunderstood differences in regulatory protections between authorised and unauthorised providers. We similarly note that Legal Choices does not include reference to Chartered Accountants authorised by the ICAEW to conduct probate.

7.160 Legal Choices also presents some areas of law where self-regulatory bodies are active, such as will writing, but does not reflect the overall range of activities that unauthorised providers supply. Additional content should also be developed on specific questions for consumers to consider on regulatory status, such as whether a provider holds PII and the level of cover.

7.161 Some stakeholders raised concerns about any action that promoted the unauthorised sector, either on consumer protection grounds (and 'legitimising' the unauthorised sector) or on the basis that unauthorised providers should not be promoted on a site solely financed by authorised providers.

7.162 The purpose of the Legal Choices website is to inform customers, not to promote the interests of the firms who indirectly fund it. We recognise there will be some cost to developing content on unauthorised providers, but we believe that this will be relatively small. We do not believe that improving content on the unauthorised sector should be seen as actively promoting unauthorised providers, or that this would be harmful to customers' interests. Rather, we believe that customers should be made aware that unauthorised providers do exist and may offer a different type of service with different levels of consumer protections. We also consider that consumers should be equipped with the right questions to ask if they are considering using alternative providers.

Conclusions on the content of the Legal Choices website

7.163 Having reviewed the current content of the Legal Choices website, we believe that a number are necessary. Specifically, the scope and comprehensiveness of the platform's content in relation to unauthorised providers and directed at small businesses needs to be developed.

7.164 In addition to any expansion of content, we believe that the platform needs to be better aligned to the ways in which individuals and small businesses are likely to search for information. To this end, we consider it important to involve relevant consumer and business organisations, such as the LSCP, Citizens

Advice, Which? and the FSB, in ensuring that the content is useful for such consumers.

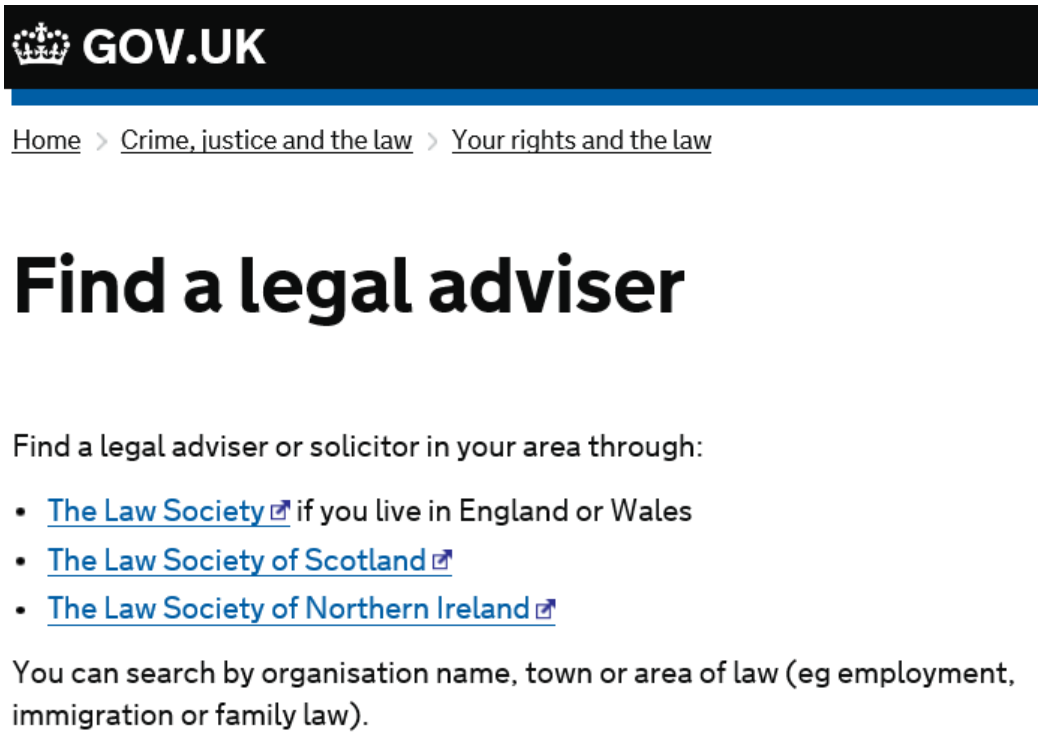
Signposting to and from the Legal Choices website

7.165 There are a number of trusted sources of information that customers with legal needs may visit directly or as a result of searching and which complement Legal Choices.[699] However, additional signposting to and from the Legal Choices website may help customers better find the most appropriate source of information.

7.166 In developing our understanding of information currently available to customers, we have reviewed a range of websites operated by government, and consumer and business groups. GOV.UK for example, is the UK government's principal website and is largely focused on providing information about government services. GOV.UK also includes a range of information on legal services, including links to renewing solicitors' practising certificates and how to challenge a solicitor's fees. In a number of areas GOV.UK does not reflect the diversity of the legal services sector and may be giving undue prominence to solicitors over other authorised (and, potentially, unauthorised) legal professionals.[700] Figure 7.17 below for example shows the limited scope of information on how to find a legal adviser. We recommend that the regulators engage with government to improve legal services-related content on GOV.UK and introducing signposting to the Legal Choices website. We further recommend that the MoJ coordinate this approach across GOV.UK.

[699] For example Citizens Advice, GOV.UK and ACAS.
[700] For example, on a page 'find a lawyer of legal adviser' the only links are to the Law Societies of England & Wales, Scotland and Northern Ireland. Similarly, information on how to write a will refers only to solicitors.

Figure 7.17: GOV.UK information on finding a legal adviser



Source: www.gov.uk/find-a-legal-adviser.

7.167 In addition to signposting to appropriate content, the need for consumers to find relevant content for both their legal need and the appropriate jurisdiction within the UK creates additional complexity. Consumers may be unaware that the UK comprises three legal jurisdictions, a point that was raised as an issue in our Scottish stakeholder meetings, in particular. Legal Choices needs to ensure that customers are receiving relevant information; English and Welsh customers need confirmation that the site is relevant to them and Scottish and Northern Irish customers need appropriate signposting to relevant materials to avoid confusion.

7.168 During our roundtable in Scotland, a number of participants noted the difficulty in ensuring that when individuals and small businesses were researching legal services they were provided with information on the relevant legal system. In further promoting the Legal Choices website, there may be a need for the regulators in England and Wales to work with their counterparts in Scotland and Northern Ireland to better signpost to relevant materials, or at a minimum to make clear to which jurisdiction information relates.

Conclusions on the Legal Choices website

7.169 We have reviewed how best to provide information on the legal services sector to individuals and small businesses. Based on the evidence we have reviewed and the discussions we have held with stakeholders we consider

that with further development, Legal Choices could be a key source of information for those engaging with the legal services sector.

7.170 We have identified that the framing of content, the scope of content and the promotion of the platform could be improved as outlined above. There is also considerable scope for the regulators to seek input from a wider group of stakeholders – particularly consumer and business groups – to develop meaningful and engaging content. If such content is appropriately developed through engaging with stakeholders these stakeholders are themselves more likely to promote the platform.

Helping customers compare providers

7.171 In this section we outline the role that data captured by regulators can potentially play in facilitating comparison tools and other intermediaries. We set out our recommendations in the box below.

Recommendations on facilitating comparison

We recommend to the **BSB**, **CILEX Regulation**, **CLC**, **CLSB**, **ICAEW, IPREG**, **The Master of the Faculties** and **SRA** that they should:

- Identify and publish relevant information on entities and professionals which can be made available to customers, DCTs and other third party intermediaries under an 'open data' licence.
- Publish relevant regulatory data in a standard format across all regulators and with consistent frequency.
- Assess the feasibility a single digital register across authorised professionals combining relevant regulatory and customer focused information.

7.172 In this section we discuss issues relating to the potential role of intermediaries and how they can be facilitated to help consumers compare providers and shop around. We see intermediaries and comparison tools as having an important and more significant role in the future and we want to facilitate their development to support shopping around. We discuss in turn:

- the role of third party intermediaries;
- relevant data that could be made available by regulators;
- the collation of price information;
- information currently made available;

- a single digital register; and
- our conclusions on facilitating comparison.

The role of third party intermediaries

7.173 Third party intermediaries operate in the legal services sector using a number of different models. Regardless of model, they seek to match a customer directly or indirectly with an offer from one or more legal services providers. This relationship is shown graphically in Figure 7.18. In practice, however, the role of the intermediary in assessing and comparing different offers will vary.

Figure 7.18: The role of third party intermediaries

Source: CMA.

7.174 In our analysis of the sector,[701] we found that some intermediaries were already playing an important role in driving competition in some parts of the legal services sector – for example, trade unions often procure employment law services on behalf of individual consumers. However, we also found that very few comparison tools had developed in the legal services sector to date, and that this, in part, reflected the reluctance of legal services providers to sign up to comparison sites as well as the difficulty experienced by intermediaries in accessing data. Therefore, we have considered how

[701] See Chapter 3.

regulators might facilitate the growth of third party intermediaries where these could help customers navigate the legal services sector.

7.175 The models adopted by intermediaries in the legal services sector vary significantly and include price comparison websites,[702] review platforms,[703] quote generation,[704] simple directories and panels operated by providers of other services,[705] and lead generation.[706] Intermediaries can provide useful and relevant filters to choosing a legal services provider (such as vetting qualifications or experience to appear on a panel) and importantly can facilitate comparisons on a number of dimensions and particularly in relation to quality.

7.176 Given the large number of providers in the legal services sector, there may be significant costs to intermediaries in establishing a panel, from the identification of a list of providers through to verifying regulatory status and other information. A significant amount of this information is already captured by regulators as part of the regulatory returns that entities produce.

7.177 Similarly, a significant amount of relevant data may already be captured by regulators regarding individual professionals. Regulators may also hold a wide range of information relating to complaints and restrictions on practising certificates (following disciplinary actions) that might be relevant when choosing a legal services provider.

7.178 Our engagement with stakeholders has suggested that access to even basic regulatory information, which is otherwise publicly available, in a machine readable format has been problematic.

7.179 We therefore see significant benefit in making more regulatory information available in a machine readable format, either through a regularly updated data table published on a regulator's website, or a database accessible through an open API.[707] Such data should, to the extent possible, be published under an open data licence to allow it to be used for commercial purposes.

7.180 For informed and engaged customers, making more information available can assist in their purchasing decisions. However, we see the principal benefit

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[702] Websites that capture a series of fixed prices for different legal services from a number of providers.
[703] Websites that allow customers to leave a rating and feedback on firms.
[704] Services which capture a description of a legal need from a prospective customer, share this information with a panel and then provide quotes (typically fixed price) from a number of providers.
[705] For example, mortgage lenders, where the legal service is ancillary to the mortgage product.
[706] Whereby the intermediary collects a customer's details and sells the lead to a provider.
[707] An API (application program interface) allows a third party to access data remotely.

arising through intermediaries processing this data and contextualising it for their users.

Relevant data that could be made available by regulators

7.181 The range of data that each regulator holds varies but broadly we have identified the following types of data that could potentially be made more widely available and accessible:

- Basic contact details of authorised entities including both trading and legal names.
- Areas of law in which entities provide services.
- Regulatory/membership status.
- Level of PII cover held and PII claims.
- Service/conduct complaints including first tier[708] complaints.
- Individuals employed in providing legal advice and for those individuals:
  - The status of their practising certificate.
  - Relevant disciplinary actions including restrictions on practising.

7.182 This data could be extended to include some form of price information, either capturing prices of common key services or hourly rates. However, we recognise this is not something currently captured and would need further consideration. However, the collation of even basic price indicators could have a significant beneficial impact on the information available to both customers and intermediaries.

7.183 Given that a number of individuals may be authorised by one regulator, but work in an entity authorised by another regulator, we see clear benefits of combining data holdings, or allowing easy matching between regulators' data holdings.

7.184 Other relevant data, which might not currently be held by the regulators includes:

- LeO complaints data;

[708] That is, those complaints made by customers directly to the firm.

- authorisation data relating to parallel regulatory frameworks such as the OISC; and

- holders of relevant quality marks operated by representative bodies.

7.185 There would therefore be further benefit accruing to customers if the frontline regulators combined this data with their holdings so that intermediaries (and customers) were able to use a richer seam of information to inform choices.

7.186 Separately, there is an additional issue of whether price information should be captured by regulators. We discuss this in the following section.

Collation of price information

7.187 In addition to collating the information outlined above, regulators could collect price information from providers and make it available to customers, intermediaries and comparison tools.

7.188 There are a number of significant issues as to how meaningful comprehensive price information could be collected in a format suitable for use by intermediaries that would require extensive consultation and engagement with both providers and intermediaries.[709]

7.189 A less ambitious approach might be to collect limited price information, using a small number of scenarios for commonly purchased services. Capturing and providing basic price information in a suitable format for use by comparison tools might still however prove problematic.[710] Similarly, the collection of information on a voluntary basis would ensure that firms could choose whether to incur the regulatory burden of providing such information.

7.190 Given the issues identified, we are not making a specific short-term recommendation on the collation of price information, but note that any collation and dissemination of price information, even if on a voluntary basis, would benefit customers. This is an area where we would like to see further work once minimum standards of transparency have been established in the sector.

[709] These include the comparability of services offered and an entity's staffing structure and related hourly billing rates.
[710] For example, if the services compared by a comparison tool or intermediary did not directly map to the services for which price information is available.

Information currently made available

7.191 The LSCP reviewed the information published by regulators as part of its review of regulatory data. The LSCP found that a significant amount of information is currently available but is not made available on a consistent basis, either content, format or frequency of publication.

7.192 The SRA in October 2016 issued a discussion paper titled 'Regulatory data and consumer choice in legal services' that set out its initial consideration of the information that it could make available to aid customer awareness. In the paper,, the SRA outlined the information that it currently provides in separate sources which includes:

- a law firm search containing basic contact information;
- an online tool for checking the disciplinary record of individual solicitors;
- a register of licensed bodies; and
- a database for data 're-users' of regulatory information refreshed daily.[711]

7.193 In its discussion paper, the SRA also set out the types of information that might be collected and published on a mandatory (which it describes as 'core data') and voluntary basis (which it describes as 'additional data'). This information is set out in Table 7.2.

Table 7.2: SRA initial proposals for publication of data

Category of data	*Core data*	*Additional data*
Basic regulatory	x	
Enforcement action	x	
Complaint data	x	
Insurance claims data	x	
Quality information		x
Specialism		x
Price information		x
Service delivery		x

Source: SRA, Regulatory data and consumer choice in legal services.

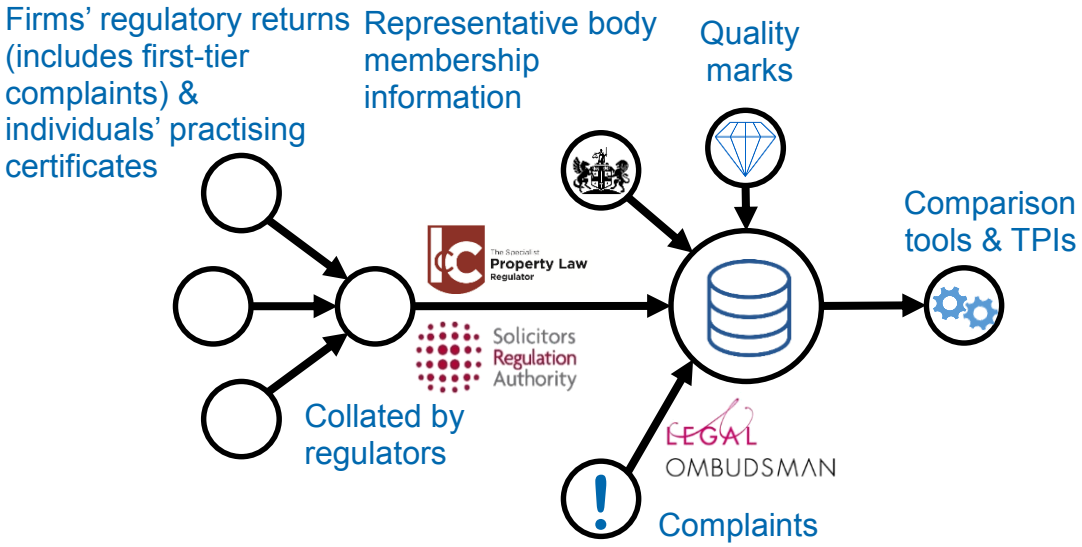
7.194 We support the SRA's initiative to improve the access to information. We are keen to ensure that, in seeking to provide more information in a more accessible format, the SRA considers the potential for combining information with other regulators (such as in the case of professionals regulated by one regulator working for an entity regulated by another).

[711] This replaced a weekly emailed excel file.

A single digital register

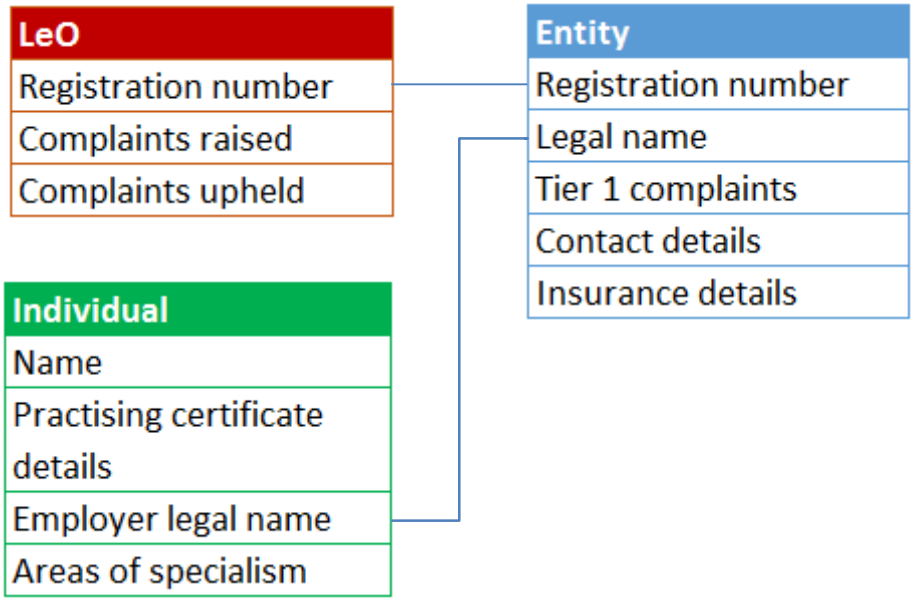
7.195 Given the disparate way in which data is currently held and published, we see significant benefits arising from combining the data holdings of the regulators and relevant third parties to create a single digital register. This could be achieved through either a single combined database, or an interface that sits above each regulator's data and provides a unified method of accessing data. The potential structure of a single digital register is shown below in Figure 7.19 and a simplified and non-exhaustive structure of the combined data holdings in Figure 7.20.

Figure 7.19: Potential structure of a single digital register



Source: CMA.

Figure 7.20: Example combination of regulator and LeO databases



Source: CMA.

7.196 We believe that a single digital register would have potentially significant benefits by reducing the cost to intermediaries and firms of collecting and providing information that is already captured by regulators. This in turn may have a significant impact in facilitating competition between professions and to encourage intermediaries to include a wider range of providers.[712]

7.197 If regulators do not pursue a single digital register, efforts should be focused on regulators providing comparable data under an open data licence in a machine readable format or through an API. We note, however, that the SRA has told us that the proposed structure of its planned regulatory database has scope to incorporate data from other regulators and could act as a single digital register and that the SRA would be willing to make this available.

Conclusions on facilitating comparison

7.198 We are recommending that regulators explore the potential for developing a single register that would provide a single accessible source of information on regulated entities and individual professionals including third party information.

7.199 We recognise that the combination of a number of regulatory databases and development of appropriate interfaces will have an associated development cost. Should regulators consider that the development of a single digital

[712] Many current intermediaries and comparison tools restrict their panels to solicitors.

register is not a proportionate solution at this point in time, we recommend that individual regulators at a minimum seek to publish their respective data holdings in a format that is as consistent as possible between regulators.

Consumer protection

7.200 As explained in Chapter 4, we have found that there may be important gaps in redress when using unauthorised providers. We have also identified a general concern about the lack of available evidence in relation to the unauthorised part of the sector as this makes it difficult to evaluate unauthorised providers.

7.201 We set out our recommendations on consumer protection in the box below.

Summary of our recommendations on consumer protection

We recommend to the **MoJ** that it should **review whether and how to extend redress** to consumers using unauthorised providers.

We recommend to the MoJ to work with LeO, the self-regulatory bodies, Citizens Advice, HMCTS 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.

7.202 To address our concern regarding redress, we are recommending that the MoJ review whether to extend redress to consumers using unauthorised providers. As part of this review, we recommend that the MoJ carry out further analysis of the extent to which there is a gap in redress for customers of unauthorised providers by comparison with that available to customers of authorised providers. Depending on the outcome of that analysis, we recommend that the MoJ consider possible ways to address the gap. We have identified extending the scope of the LeO or considering alternative arrangements using ADR and self-regulation as possible solutions. We acknowledge the importance of ensuring that any extension to redress mechanisms is proportionate, considering the costs that providers will incur through such an extension, which in turn would likely be passed on to consumers.

7.203 To address the evidence gap that we have described above, we propose to recommend that the MoJ coordinate work by certain bodies in this sector (in particular the LeO, but also self-regulatory bodies, consumer organisations, HMCTS and the Probate Service) to assess the scope for taking advantage of existing data sources to build evidence on the unauthorised part of the sector. The purpose of collecting this information is to ensure that future policies relating to the unauthorised part of the sector are appropriately evidence-based.

7.204 To implement this recommendation we expect that, as a minimum, the following bodies would take the following action:

- The LeO should consider whether it could generate a range of information (provider name, area of law, reason for complaint, etc) from the contacts it receives from consumers who have used unauthorised providers.
- Self-regulatory bodies such as the IPW and the PPR should consider whether they could collect a greater range of first-tier complaints data (for example, reason for complaint, etc).
- Citizens Advice should consider whether it could capture information about traders complained about in a more consistent way and distinguish between authorised and unauthorised providers where possible.
- HMCTS should consider whether it could collect information on the regulatory status of representatives and advocates in the courts and tribunal system. Furthermore, the Probate Service should consider whether it could capture information on wills stored at the Principal Probate Service[713] and the number of failed wills by type of provider (whether authorised or unauthorised) when applications for grants of probate are made.

7.205 As the government department responsible for legal services, we see the MoJ as having a key role in supporting these recommendations and in identifying the evidence that would support it in policy making and coordinating the approaches of different bodies.

7.206 We are keen to ensure that gathering additional information does not create a disproportionate burden on bodies. Our approach has been to identify simple indicators which are both easily collected and analysed. We also suggest, wherever possible, that data collection should supplement data that is already being gathered. In coordinating any collection of data, the MoJ may wish to begin with an initial trial with certain bodies over a limited period of time to identify if evidence is able to be captured in a usable format.[714]

7.207 In the event of ongoing digitisation of the courts and tribunal system and justice system more generally, the MoJ should consider whether data collection can be inbuilt at the design stage of any reforms.

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[713] When testators store a will at the Principal Probate Registry, they must request and complete a safe custody will envelope pack, which is provided by regional probate registries. A minor amendment to the pack would facilitate capture of this information. Details on the administration of this scheme are set out in leaflet PA7.
[714] For example, in collecting data relating to cases in courts, it may be that such data is collected only from a small number of courts to provide a sample on an ongoing basis or as a trial to understand data quality.

Regulatory framework

7.208 As we explain in Chapter 6, we are making a number of recommendations to government in relation to the regulatory framework. These are set out in the box below.

Summary of our recommendations on regulation

Short-term recommendations

- We recommend to the MoJ that it should undertake the review of independence of regulators
- We recommend to approved and frontline regulators to take steps to reduce regulatory burden in areas where not justified by consumer protection risk or public interest
- We recommend to the SRA to remove regulatory restrictions to allow solicitors to practise in unauthorised firms.

Long-term review

- We recommend to the MoJ that it should review the current regulatory framework for legal services.

Implementation

7.209 In this section we discuss our proposals for implementation of our recommendations and some additional issues raised by parties that we have taken into consideration. We set out our recommendations on implementation below.

Recommendations on implementation

We recommend to the **BSB**, **CILEX Regulation**, **CLC**, **CLSB**, **ICAEW**, **IPREG**, **The Master of the Faculties** and **SRA** that:

- **By 31 January 2017** an implementation group is established and has met to coordinate and deliver a sector wide response to our recommendations.
- **By 30 June 2017** both the implementation group and the individual regulators should publish their respective action plans stating the actions that they are pursuing and anticipated milestones in delivering those actions.
- **By 30 September 2017**:
    - the individual regulators commence a public consultation on any proposed amendments to their regulation and guidance; and
    - the Legal Choices website is relaunched with revised content and expanded scope.
- To make sure that customers are best able to engage with information and act on it, they consider conducting consumer research and testing to understand how individuals and small businesses interact with and respond to different styles and formats of presentation of information.
- Consumer and business groups should be appropriately consulted during the implementation of our recommendations.

We recommend to the **LSB** that it:

- Monitors and engages with the frontline regulators on their progress.
- Reports publicly, at appropriate intervals, on the sufficiency of action plans published by regulators individually and collectively and the progress in delivering those action plans.
- Takes appropriate action where regulators fail to address information gaps.

7.210 This section sets out our detailed thinking about the following issues:

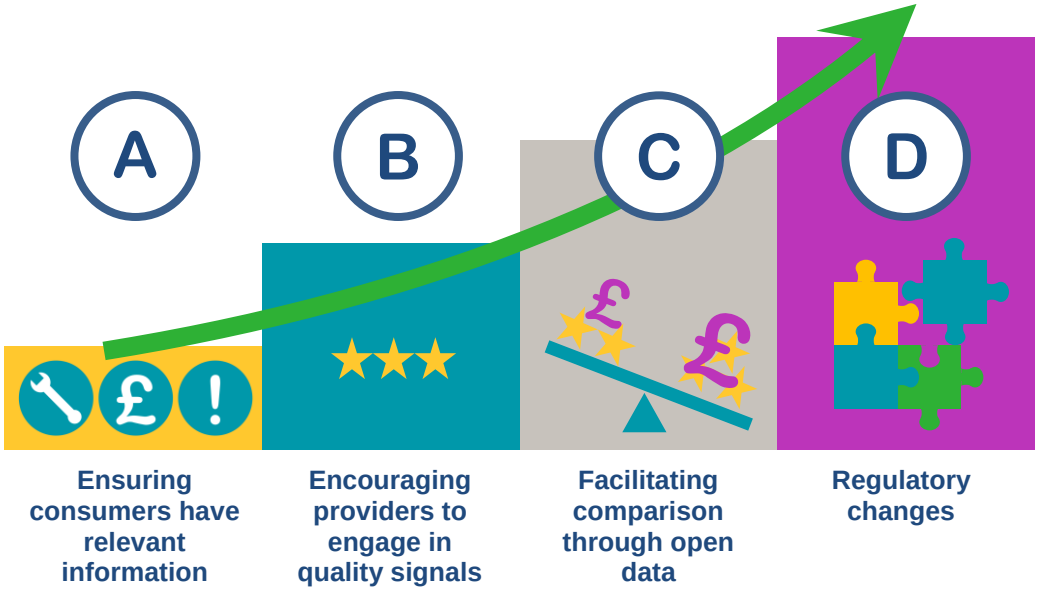
- Progressive approach to implementation.
- Our recommendations to regulators.
- Our recommendations to government.
- The proportionality of our remedies.

Progressive approach to implementation

7.211 As set out in Chapter 3, levels of transparency currently provided to customers are very low. This is a major barrier to customer engagement and to the effective operation of competition in this sector.

7.212 Our aim is to deliver a set of individual recommendations that in combination will progressively improve the way in which competition works in this sector and thereby deliver better outcomes for customers. This is illustrated below in Figure 7.21.

Figure 7.21: Making competition work through progressive improvements



Source: CMA.

7.213 This progressive approach to implementation and subsequent impact can be set out as follows:

(a) **Step A**: our recommendations relating to the introduction of a minimum standard of provider transparency about price and service,[715] together with improved information about legal choices,[716] will have a significant effect on the market as soon as they are implemented by the regulators.

(b) **Step B**: measures by the regulators to encourage greater use of quality signals will require a change in provider behaviour, the speed of which will be determined by the speed in which both providers and customer engage with these signals.

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[715] See paragraphs 7.24–7.125.
[716] See paragraphs 7.126–7.170.

(c) **Step C**: improving access to regulatory data will provide the building blocks for a greater role for DCTs and intermediaries in encouraging customer engagement. The significance of intermediaries will increase over time with increased entry and more sophisticated models, which will build on the increased levels of information available. As customer awareness of intermediaries increases, engagement is likely to increase, leading to better outcomes.

(d) **Step D:** reform and refinement of regulatory requirements and the regulatory framework as a whole will support competition in the medium to long term as any subsequent changes are put in place.

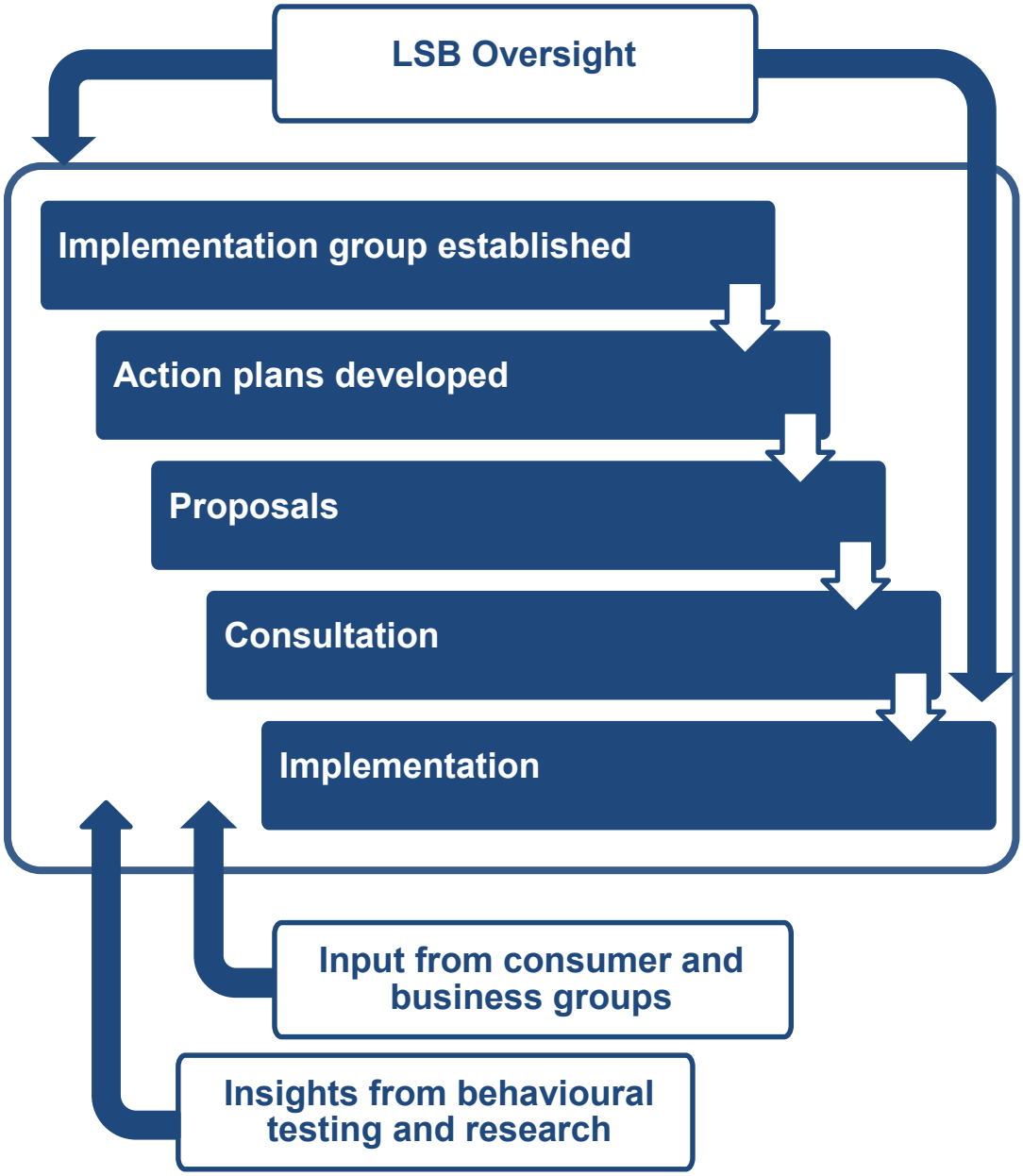
7.214 We believe that these measures, taken together, will deliver a necessary step change in transparency, competition and customer engagement in the legal services sector. Given the current low levels of information available to customers, we expect that the implementation of our recommendations will lead to a significant increase in the amount and quality of information on price and service. We are cautious, however, because access to better information is a necessary first step, but it may not be sufficient to drive customer engagement up to the levels needed for a fully competitive market.

7.215 We therefore recognise that there may be need for further intervention in the future to build on our package of remedies. For example, once basic levels of transparency have been established, regulators may need to issue further guidance to improve comparability of price and service in order to maximise customer engagement. Given this, we regard the research programmes of the LSB and LSCP as being crucial in providing evidence on changes in the sector. The output of these programmes will form a basis of future assessments of the need for further CMA or regulatory intervention. We discuss this further in paragraphs 7.243 to 7.244.

Our recommendations to regulators

7.216 The effectiveness and timeliness of our recommendations will be driven by their implementation. We have therefore outlined an approach that can be adopted by the regulators which is illustrated in Figure 7.22. We discuss this approach and some additional design and implementation issues in this subsection.

Figure 7.22: Implementation process



Source: CMA.

Cross-profession cooperation

7.217 We are making recommendations to the frontline regulators and each regulator will need to introduce changes to their respective regulatory requirements. We want our recommendations to be implemented promptly, but with a degree of consistency across the sector to ensure consumers benefit regardless of which regulator their provider is regulated by. To ensure that there is a 'joined-up' approach we are recommending that the frontline regulators should convene an implementation group.

7.218 The form and governance of the implementation group will be determined in discussion with the frontline regulators and the LSB. We note that at present, the frontline regulators convene a quarterly joint regulators' forum and the implementation group could either be established alongside this forum or be convened as a separate structure.

Communicating progress

7.219 To promote transparency and to encourage the frontline regulators to deliver meaningful improvements quickly, we are recommending that the frontline regulators publish action plans by 30 June 2017. [717]

7.220 These action plans should outline what actions the regulators are pursuing and key milestones that they have identified in implementing those recommendations.

7.221 The regulators should similarly report on their progress in meeting the identified milestones.

Oversight of implementation

7.222 We want regulators to be ambitious in response to our recommendations, both in their approach to improving regulatory standards and their speed of action.

7.223 We are recommending that the LSB should monitor and report publicly on the progress made by regulators, both individually and collectively, in implementing our recommendations.

7.224 We are also recommending to the LSB that it takes appropriate action where it considers regulators individually or collectively have not taken appropriate or sufficient action to address our findings.

Consumer research and testing

7.225 In framing our recommendations to the regulators, we have sought to allow them flexibility as to how best to deliver substantial improvements in the quality and nature of information provided to consumers.

7.226 Regulators and competition agencies such as the CMA are increasingly using consumer research and testing in designing remedies and regulatory

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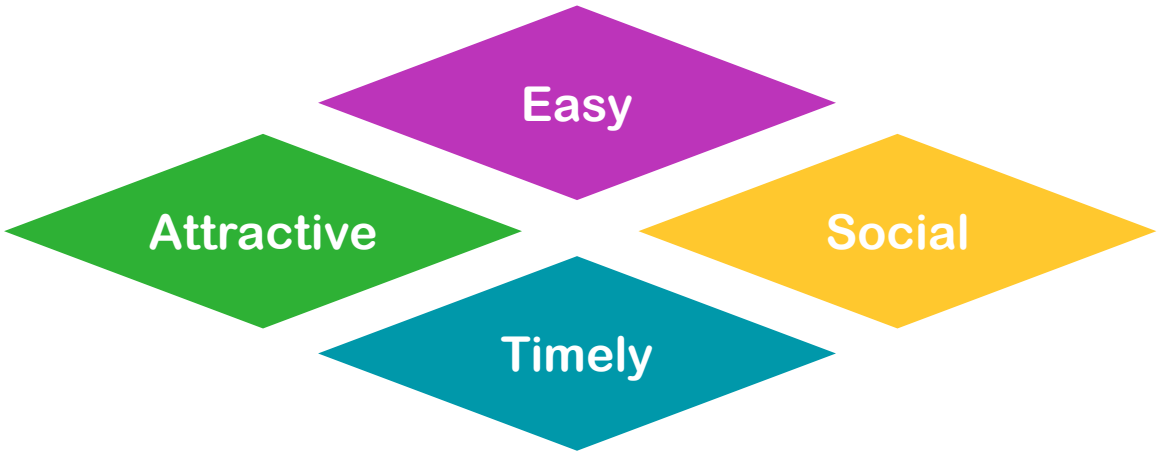
[717] To the extent that regulators collaborate in delivering our recommendations (particularly in relation to the Legal Choices website or commissioning joint research) there may be benefit in producing a joint action plan.

responses. Such research can provide significant insights into how customers are likely to respond to the information presented.[718] One such approach, which was used in the research on client care letters,[719] is the EAST framework developed by The Behavioural Insights Team as set out in Figure 7.23.

Figure 7.23: The EAST framework



Source: Based on 'EAST: Four Simple Ways to Apply Behavioural Insights' by The Behavioural Insights Team.

7.227 To make sure that customers are best able to engage with information and act on it, we are therefore additionally recommending to regulators that they consider conducting consumer research and testing[720] when considering proposed changes in order to understand how individuals and small businesses interact with and respond to different styles and formats of presentation of information.[721]

7.228 We are further recommending that regulators, when designing their approach, should engage with consumer and business groups to gain a better understanding of the information needs of customers.

Scope and focus of regulatory changes

7.229 The scope of this study is the supply of legal services to individuals and small businesses. In developing our remedies package we have sought to address

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[718] One example is the FCA's work with a financial services provider, using randomised controlled trials, to understand how the design of letters notifying customers of possible mis-selling affected whether customers sought redress. FCA, Occasional Paper 2: Encouraging consumers to claim redress: evidence from a field trial
[719] See paragraphs 7.117–7.119.
[720] We recognise that regulators may not be in a position to conduct field trials. However, a range of approaches are possible, such as that adopted by the CMA in using qualitative research to understand how customers engaged with features of price comparison websites in payday lending.
[721] We note that this approach has recently been adopted by the regulators' work on client care letters. Optimisa Research (2016), *Research into client care letters: Qualitative research report*, Prepared for: BSB, CILEx Regulation, CLSB, CLC, ICAEW, IPReg, LSCP, Master of Faculties and SRA.

the issues that we have identified as they apply to those consumers within our scope.

7.230 A number of stakeholders raised concerns over potential unintended consequences of introducing any additional disclosure requirements that might affect law firms which do not service individuals or small businesses. We think that the regulators are best placed to decide how to introduce new rules and to which providers in what circumstances.

7.231 We believe that improvements in transparency will have greatest impact where they are required of providers that are engaged directly by consumers or small businesses in a client capacity. For example, in the case of barristers, increased public transparency will be most relevant and beneficial to customers engaging a barrister through the public access scheme rather than issuing instructions via a solicitor. However, we note that the solicitors' role as intermediaries instructing barristers on behalf of clients will be strengthened if there is a general improvement in the level of transparency in the sector.

7.232 With respect to the scope of our recommendations, regulators should individually and collectively reflect on the appropriate target of improved transparency and the scope of any additional regulatory requirements.

Compliance monitoring and enforcement

7.233 Regulators are responsible for determining their approach to enforcement of regulatory requirements. On adoption of any additional transparency requirements we would however suggest that regulators undertake a review of providers' websites and written materials. This could be on either a random or targeted basis according to what makes most sense for each sector. The outcome of such a review should then be used to refine or produce additional guidance.

7.234 If regulators undertake such an exercise on an annual basis it may be possible to identify any trends in transparency and to respond to these trends by revisiting regulatory requirements.

Digital divide and the most vulnerable

7.235 Our remedies seek to make use of the technology which is now available to help providers, intermediaries and regulators inform and communicate with customers of legal services.

7.236 A number of stakeholders have rightly raised the issue of those customers who do not have internet access, are not confident in using the internet to identify providers, or who are otherwise vulnerable.[722]

7.237 Although internet access and use is widespread (including through smartphones),[723] we recognise this concern and are recommending that regulators consider how best to reach the digitally excluded (such as by making some information available in hard copy) when taking forward our recommendations.[724] We also note the role that intermediaries, consumer groups and advice charities can provide in supporting those who are less confident in accessing the internet and information online.

7.238 In redesigning and developing the content on the Legal Choices platform, we note the increasing importance of mobile devices as a way of viewing web content and would suggest that any review should ensure that information is easily accessible regardless of device.[725]

Recommendations to government

7.239 Our recommendations on content on GOV.UK, consumer protection and the regulatory framework are directed to the MoJ.

7.240 In its strategic steer to the CMA, the government has stated that there will be a presumption that the government will accept all of the CMA's published recommendations unless there are strong policy reasons not to do so. The government also committed to responding to the CMA's recommendations within 90 days, indicating the steps that it will take in response or the reasons that it is unable to take forward recommendations.[726]

7.241 Any changes to consumer protection and the regulatory framework as a result of any MoJ review are likely to occur over the medium-term.

Proportionality

7.242 All regulation comes at a cost to both the regulator and the regulated party. In responding to our recommendations, individual regulators, in particular, will

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[722] The lack of internet access was particularly noted in our engagement with Welsh and Scottish stakeholders.
[723] Some 89% of households have internet access and 82% of adults access the internet daily or almost daily. Internet usage is linked to both age and disability. Only 38.7% of those aged 75 or over had used the internet in the last three months and some 25% of disabled adults have never used the internet. (ONS Internet Access Survey 2016).
[724] We note that whilst around 92% of adults are confident of finding information on the internet, this falls to 82% for those aged over 65. Ofcom Adult's media use and attitudes 2015.
[725] This is also the case in presenting information on providers' websites.
[726] Government's response to the Consultation on the Strategic Steer to the Competition and Markets Authority, December 2015.

necessarily consider the regulatory burden placed on authorised providers. However, this burden should be placed in the context of the serious problems we have identified and the benefits to both customers and those who currently experience unmet legal needs.

Monitoring progress and impact of our recommendations

7.243 The CMA has made a commitment to assess at the end of three years whether there is evidence that the actions of regulators have or will address the issues we have found in this sector.[727]

7.244 If we determine that there has been insufficient improvement, we will decide the most appropriate course of action for us to take. One potential option would be a market investigation which would enable us to use our statutory Order making powers if we decided that that was necessary in order to drive change in the sector.

[727] We expect the LSB and LSCP's ongoing programme of research to be key inputs that we will take into account when assessing progress.

Case studies

1. Our market study covered a broad range of legal services. However, in order to conduct a more detailed examination of the three themes that are the focus of our market study (as set out in paragraph 1.8), we have carried out three case studies. We have reviewed existing research and engaged with interested parties in order to obtain further relevant evidence on each of the three legal areas that are the subject of our case studies.

2. We have included any evidence from the case studies that is particularly relevant to our examination of the three themes in the main body of our final report. In addition, the following appendices set out our findings in the case studies areas:

    - Appendix A: Wills and probate services case study
    - Appendix B: Employment law services case study
    - Appendix C: Commercial law services case study

Wills and probate services case study

Introduction 2
Key findings 3
Will writing services 3
Probate and estate administration services 5
Background to will writing and probate services 7
Will writing services 7
Probate and estate administration services 7
Will writing services 10
Regulatory framework 10
Providers 10
Process of competition 17
The role of regulation in will writing 28
Probate and estate administration services 42
Providers 42
Process of competition 48
The role of regulation in probate 58

Introduction

1. The provision of wills and probate services to individual consumers forms the basis of this case study. Wills and probate are two closely associated areas of law as they both relate to dealing with the affairs of someone who has died. A will sets out testators' wishes regarding what happens to their property after they die. Probate is the process of verifying the will after a person's death and is the gateway enabling an executor to access the testator's assets. Where relevant, this case study also covers services related to these areas of law, such as will storage and estate administration.

2. While we have not sought to conduct a comprehensive market analysis, we have been able to draw on the extensive work undertaken in recent years by other organisations.[1] We have also drawn on the CMA's quantitative and qualitative survey,[2] and discussion with relevant stakeholders.[3]

3. The key issues we consider in this case study are:

    - **How well consumers use information to drive competition**. This is related to the market study's wider theme of whether consumers can use information to make informed purchasing decisions and thereby drive competition. We particularly consider consumers' ability to access and assess information on price and quality, where available, both for wills and probate services.

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[1] This includes the LSB, the Legal Services Consumer Panel (LSCP), the SRA and the Law Society.
[2] IFF Research (2016), *Market study into the supply of legal services in England and Wales – consumer findings*, commissioned by the CMA.
[3] To inform our understanding of how competition works in the wills and probate sectors, the CMA prepared an online questionnaire to seek the experiences and views of legal professionals working in these areas of law.

- A link to the CMA's online questionnaire was sent to all members of the Institute of Professional Willwriters (IPW) and the Society of Will Writers (SWW) who had agreed to be contacted by third parties and for whom an email address was available. In total, 201 of the c.500 will writers who received a link to the online questionnaire completed it (in May and June 2016). This equates to around one in eight of all specialist will writers (see paragraph 48).
- In an article in its weekly email newsletter for members, the Law Society included a link to the CMA's online questionnaire. In total, 53 recipients of the email newsletter completed the questionnaire (in August 2016). This equates to around one in 90 of all solicitor firms in England and Wales that provide will writing (see paragraph 43).
- The Law Society also included a link to the CMA's online questionnaire in a targeted email sent to 620 solicitor firms that specialise either in probate and estate administration or in wills, trusts and tax planning (that is, these services account for more than 30% of their turnover) for which it held email contact details. In total, 30 recipients of the targeted email (or around one in 20 of solicitor firms specialising in these areas of law) completed the online questionnaire (in August and September 2016).

Please note that the evidence provided by those who completed questionnaires cannot be said to be representative of all professionals working in these areas of law. This is because our means of contacting members of the target audience necessarily excluded a large proportion (for example, members who declined to be contacted by third parties, members for whom a current email address was unavailable, and so on). Similarly, the numbers who chose to complete the online questionnaire were small and relative to all who provide will writing and probate services. Notwithstanding these caveats, we consider that the evidence provided by these respondents, taken in combination with other evidence sources, has contributed to the CMA's better understanding of probate and will writing services.

- **The role of regulation in will writing**. There is no sector-specific regulation that covers will writing and no-one is legally prevented from offering will writing. As such, there are a number of providers that operate outside of the scope of the legal services regulation in addition to authorised providers such as solicitors. We consider the differences between different types of provider both in terms of the impact on consumer protection and what impact they have for competition. In particular, we consider whether self-regulation is able to provide effective protection to consumers choosing unauthorised providers.

- **The role of regulation in probate and estate administration**: The provision of probate activities is a reserved activity. This means that only certain types of provider can undertake such services. By contrast, estate administration is not reserved and can be undertaken by unauthorised providers. We consider whether the current reservation is justified on consumer protection and public interest grounds, and we consider the impact of the reservation on competition in both the probate and the estate administration areas of law, given the close link between these two services.

Key findings

Will writing services

How well consumers use information to drive competition

4. Unlike some other areas of law, consumers tend to be aware that they have a legal need, particularly among those most in need of a will. While less than half of the adult population in the UK have wills, elderly people and those with more assets are much more likely to have one.

5. As in other areas of law, there is a lack of information to help consumers choose providers. Prices are rarely accessible without having to contact the provider, although many of them could publish more information as providers in this area of law generally use menus of outline prices for internal purposes. As in other areas of law, the information providers give to assist consumers to judge quality tends to be limited to testimonials and highlighting experience and qualifications. Very few use tools that could more clearly signal quality, such as independent reviews and quality marks.

6. Consumers' ability to assess the information from providers is mixed. Consumers are more able to judge prices than in other areas of law as fixed fees are offered by almost all providers. However, quality in this area of law is

particularly difficult to assess for consumers, as problems with their wills may not be discovered until many years later.

7. Given the problems consumers face in accessing and assessing information, they often choose providers that they have previously used or rely on personal recommendations, in a way similar to the one in which consumers choose providers in other areas of law. Only a minority of consumers make comparisons, mainly because information on price and quality is not readily available. Prices vary widely and the limited available evidence suggests there are problems with poor quality wills.

The role of regulation in will writing

8. We have considered whether the lack of sector-specific regulation in will writing creates consumer protection issues. Both authorised and unauthorised providers act as will writers. Around half of unauthorised providers have signed up to be regulated by voluntary bodies, such as the Society of Will Writers (SWW) and the Institution of Professional Willwriters (IPW).

9. While all providers are subject to baseline consumer law, authorised providers are subject to additional requirements that protect consumers, including access to the Legal Ombudsman (LeO), mandatory Professional Indemnity Insurance (PII), training requirements, and codes of conduct. Self-regulatory bodies have attempted to replicate these levels of consumer protection. However, the effectiveness may be limited by the fact that providers are not obliged to join and are free to leave these bodies and cease being subject to voluntary regulation.

10. We have found a range of consumer protection issues. Although the limited evidence on quality suggests similar problems among both authorised and unauthorised providers, other consumer protection concerns are more prevalent among unauthorised providers. However, due to the general lack of evidence, we have not been able to identify the scale of any consumer detriment.

11. Despite having lower prices and apparently offering similar quality, unauthorised will writers have gained a low share of supply in this area of law. Unauthorised providers are potentially held back by consumers' lack of trust in the unauthorised sector. In addition, consumers' difficulty in accessing prices and assessing quality may mean that when unauthorised will writers have the best offering, consumers do not realise that this is the case. However, their limited growth may reflect a limited number of people who value the alternative they offer in comparison to solicitors.

12. We have found that the nature of will writing, particularly consumers' difficulty in assessing quality and the potentially long delay before the will is used, means there is potentially a role for ex-ante regulation, such as training and entry requirements. However, there is not clear evidence on how widespread consumer protection problems are and therefore the extent to which further regulation would be beneficial.

Probate and estate administration services

How well consumers use information to drive competition

13. Probate and estate administration services are distress purchases for an executor of the will, and often consumers decide to use a professional for probate for the reassurance that it gives in a moment of stress.

14. Consumers typically use professionals for probate and estate administration when the value of the estate is relatively high or when the estate is considered to be complex to administer. In all other cases, consumers are likely to carry out the services themselves or to use a professional only for some specific aspects of the service.

15. Providers of probate and estate administration tend not to advertise or display their prices, thus making it difficult for consumers to compare alternatives. Firms are less likely to display prices for probate services than for will writing services. The majority of probate providers price their work on a fixed fee basis, but hourly rates are common. In estate administration, fixed pricing is even less common.

16. Very few consumers – even fewer than in other areas of law – compare providers. The distressed nature of the probate process, combined with the low levels of price transparency, are likely to reduce the incentives to shop for the best probate deal and may induce consumers to go with a local provider, typically a solicitor, who is familiar to them or recommended by friends.

17. Providers other than solicitors make up only small percentages of this service area. These are a mix of authorised providers (eg authorised accountants) that can carry out the reserved part of the process, and unauthorised providers that cannot, although they may still offer services in this area by outsourcing the reserved element of the process.

18. Other factors may limit a consumer's choice of the provider undertaking probate and estate administration, such as the use of professional executors and prepaid probate and estate administration, but their use appears relatively

rare. Storing a will with a professional is another factor that in practice reduces the likelihood of consumers actively shopping around.

The role of regulation in probate

19. The scope of the reservation of probate activities is very narrow and only includes the submission of the probate application to the Probate Service. While some stakeholders consider there are 'public interest' and consumer protection reasons for reserving this specific element of probate, there is no significant evidence that this particular form of regulation is the most proportionate one, particularly given that consumers are allowed to submit a probate application in a personal capacity if they want.

20. Reservation does not extend to other services related to the administration of a testator's estate. From a consumer protection perspective, this creates a regulatory gap because the administration of an estate can be a more significant source of consumer detriment as it involves handling of clients' money.

21. While this risk is mitigated for customers of authorised providers, which are subject to strict requirements in relation to handling clients' money, this is not necessarily the case for customers of unauthorised providers. Moreover, customers of authorised providers benefit from greater redress mechanisms should things go wrong.

22. Currently, the impact of this regulatory gap is limited, given the small share of supply gained by unauthorised providers. However, it may become a more significant issue in the future if consumers become more aware of alternative providers, potentially because of the increased price transparency that our remedies seek to achieve, but they continue to assume that all legal services providers are regulated in the same way.

23. The narrow scope of the probate reservation does not appear to be a major entry barrier for unauthorised providers wishing to offer an estate administration service that is similar to the one offered by authorised providers. In fact, reservation can be easily worked around by unauthorised providers and typically the reserved element is outsourced to authorised providers.

24. However, unauthorised providers play a limited role at the moment in the areas of probate and estate administration. Although outsourcing the reserved element may create extra costs and delays for consumers and may be the source of inefficiencies, the main reasons for their limited impact is likely to be related to the same trust and awareness issue mentioned for will writing.

Background to will writing and probate services

Will writing services

25. Wills are legal documents that set out testators' wishes regarding what happens to their property after they die. As well as property, wills may appoint guardians to look after any minor children. Wills also specify executors who will be responsible for carrying out the instructions in the will.[4]

26. If someone dies without a valid will they are said to have died intestate. Around 15% of probate cases are of this nature.[5] This typically occurs where a will has not been written, it cannot be found or it is not valid. In this situation, the property of the deceased is allocated according to the rules of intestacy, which specify the order of priority amongst surviving relatives.[6]

27. Wills vary in complexity and not all providers will offer wills where there are particularly complex circumstances or wishes. Circumstances that can make wills more complicated include where there are assets above the inheritance tax threshold; particular types of family relationships, for example, children from previous marriages; and particular types of property, for example, overseas property, businesses and agricultural land.[7] In addition, making complicated bequests or excluding particular relations is likely to make a will more complicated.

28. There are a number of services that are related to will writing. These include lasting powers of attorney, establishing trusts, will storage, and funeral services. Research indicates that around a third of consumers buy additional services when buying a will, with will storage and power of attorney being the most commonly bought services.[8]

Probate and estate administration services

29. The process known as the 'administration of the estate' (or 'distribution of the estate') takes place after someone dies. If there is a will, the 'executor' named

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[4] This scope of this section is to give a broad overview of what wills do; it does not attempt to go into every detail, for example, claims under the Inheritance (Provision for Family and Dependants) Act 1975 or the impact of marriage on wills.
[5] Based on family court statistics. See MoJ (2016), *Family court statistics quarterly, England and Wales*.
[6] See GOV.UK, *If the person didn't leave a will*. Under intestacy rules, partners who are not married or in a registered civil partnership do not inherit and if there are no surviving relatives the estate passes to the Crown. It is also possible for the intestacy rules to apply to just part of the estate where there is a valid will that does not dispose of the whole estate.
[7] See for example IFF Research (2011), *Understanding the consumer experience of will writing services*, commissioned by the LSB, LSCP, OFT and the SRA.
[8] IFF Research (2011), *Understanding the consumer experience of will writing services*, commissioned by the LSB, LSCP, OFT and the SRA.

in it[9] is responsible for: ensuring that the estate of the deceased is secure, assessing its value and paying any inheritance tax. The executor has responsibility for gathering and valuing all the assets, paying any outstanding debts and then distributing what is left according to the will.

30. Before the administration of the estate can take place, executors or administrators need to apply for the right to deal with the deceased person's possessions and affairs. Such authorisation, known as 'the grant of representation' or 'grant of probate',[10] is given by the Probate Service[11] and there is a £215 fee for estates over £5,000.[12]

31. In order to obtain the grant of probate, there are a number of tasks which will have to be carried out by the executor:

(a) Obtaining the death certificate.

(b) Establishing authority as the executor of estate.

(c) Valuing the person's estate.

(d) Calculating whether or not the estate is liable for inheritance tax.

(e) Submitting completed probate forms to the Probate Service.

(f) Attending a Probate Service interview and swearing an executor's oath.

(g) Paying any inheritance tax.

32. Of all the steps set out in the paragraph above, only the submission of the probate application to the Probate Service (point e) is subject to sector-specific regulation – this is the scope of the reservation of 'probate activities'. It is therefore the only element of the wider estate administration process where provision is restricted to authorised persons. It follows that other

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[9] If the person has died intestate, the 'administrator' is responsible for distributing the estate.
[10] If there is no will, the administrator is authorised by a legal document called Letter of Administration. The probate process is called 'confirmation' in Scotland and 'grant of probate' in Northern Ireland.
[11] The Probate Service is currently made up of:
- Principal Registry of the Family Division in London;
- 11 District Probate Registries; and
- 18 Probate Sub-Registries located throughout England and Wales.

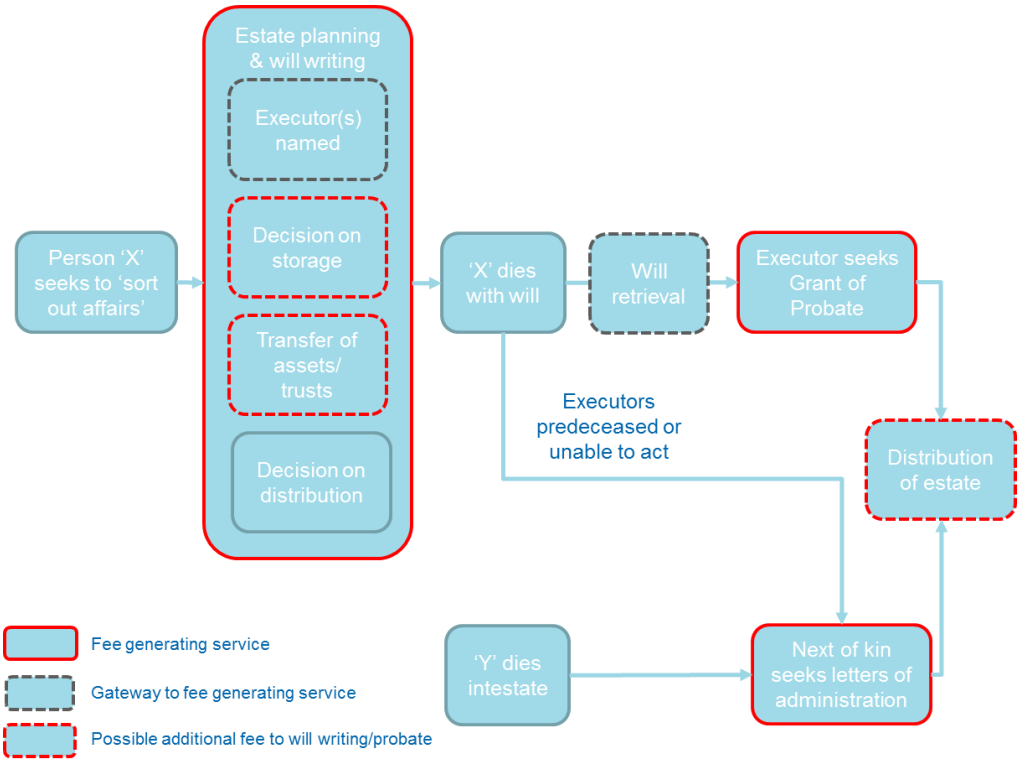
[12] A grant of probate is not always needed. In fact, in England and Wales, only around 50% of deaths lead to an application for a grant of probate. Specifically, a grant of probate is not needed if the estate either:
- passes to the surviving spouse/civil partner because it was held in joint names (eg a savings account); or
- does not include land, property or shares.

For more details, see GOV.UK, *Applying for a grant of representation.* In February 2016, the MoJ launched a consultation setting out government's proposals for reforming the fee payable for an application for a grant of probate. See MoJ (2016), *Fee proposals for grants of probate*.

aspects of the estate administration process, including the distribution of the deceased's assets, can be undertaken by unauthorised providers.

33. Will writing, probate and estate administration services interact in a number of ways, as shown in Figure 1. Most obviously wills form the starting point for probate, even if just to ascertain whether there is a valid will. The way probate works also affects how wills are written, with will providers considering how a will might be interpreted during probate.

Figure 1: The will writing and probate process



Source: CMA

Will writing services

34. In this section we consider will writing services. First, we discuss the context, ie which providers operate in this area of law and how the process of competition works. Second, we analyse whether and how consumers use information when choosing their will writer and how this has an impact on market outcomes (price, quality and innovation). Finally, we analyse whether the lack of sector-specific regulation in will writing has an impact on consumer protection. In particular, we consider whether self-regulation is able to provide effective protection for consumers of unauthorised providers.

Regulatory framework

35. There is no sector-specific regulation that covers will writing. The requirements for a legally valid will are for it to be correctly signed and witnessed and made voluntarily by someone of sound mind. Therefore, it follows that no-one is legally prevented from offering will writing services and there are no additional will specific requirements on those who do offer such a service.

36. As noted in Chapter 2 of the main report, however, authorised providers such as solicitors are covered by their wider professional regulation and regulated for all the activities they undertake, including the provision of wills.[13]

37. Unauthorised providers may decide to be regulated by voluntary bodies. Around half of unauthorised providers have signed up to voluntary bodies.[14] The main self-regulatory bodies are the Society of Will Writers (SWW) and the Institution of Professional Willwriters (IPW).[15]

38. Other unauthorised providers are subject to general consumer law only, although many also choose to meet some of the requirements that apply to other providers.[16]

Providers

39. According to the LSB research on individual consumers' legal needs in 2015, c.20% of the adult population in England and Wales had made a will in the

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[13] See paragraphs 2.15–2.27 of the main report.
[14] Economic Insight (2016), *Unregulated legal service providers: Understanding supply-side characteristics,* commissioned by the LSB.
[15] Other such bodies include the Institute of Paralegals, New Leaf Will writers Federation and the Trust and Security Network. Some unauthorised providers are also members of the Society of Trust and Estate Practitioners (STEP), an international professional association.
[16] The impact of the regulatory framework on consumer protection in will writing is analysed in detail in paragraph 107.

previous three years.[17] Of these, just under half had paid for advice. This gives a rough estimate of 700,000 wills being paid-for each year. In terms of the value of area of law, other research undertaken by the LSB[18] estimated that the average price of a standard individual will was £168 (see paragraph 99). On the basis of that average price, we estimate the size of this area of law to be around £120 million per annum.[19]

40. There are a large number of providers of wills and a range of different types. While different surveys have found different levels of paid-for will writing and slight differences in the share of the different types of provider, overall a fairly consistent picture emerges. Solicitors are by far the most common providers, writing between two-thirds to three-quarters of wills. Unauthorised will writers account for around one in ten wills. Document providers assisting consumers to write their wills themselves account for around the same share. Other types of organisation, including banks, independent financial advisers (IFAs), charities and trade unions either directly provide, or act as intermediaries, for small proportions (less than 5%) of this area of law.

41. The breakdown of providers from the CMA's survey is set out in Figure 2.[20] Differences between types of provider in terms of pricing, quality and wider impact on this area of law are considered further in paragraphs 98 to 106.

Solicitors

42. Solicitors are the most commonly used providers of will writing services. Solicitors were the main provider for 76% of consumers in the CMA's survey of individual consumers.[21] Similarly, the LSB's legal needs survey found that in 77% of will-related issues, consumers who got advice got help from a solicitor.[22] Other recent research has also found high shares of wills provided by solicitors. For example, a survey by Will Aid found two thirds of respondents with a will used a solicitor to write their will.[23] While comparing different surveys over time is difficult, the share of wills written by solicitors does not appear to have fallen in recent years. In 2010, a survey

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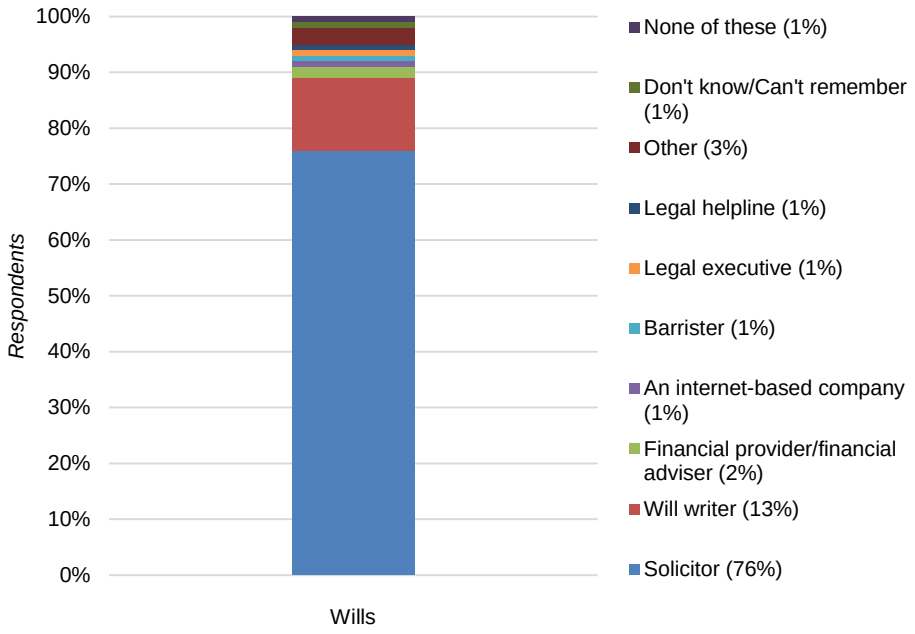
[17] Ipsos MORI (2016), *Online survey of individuals' handling of legal issues in England and Wales 2015*, commissioned by the LSB and the Law Society.
[18] OMB Research (2016), *Prices of individual consumer legal services: Research report,* commissioned by the LSB.
[19] This estimate does not account for any complex wills, which tend to be more expensive, or mirror wills, which tend to be cheaper.
[20] IFF Research (2016), *Market study into the supply of legal services in England and Wales – consumer findings*, commissioned by the CMA.
[21] IFF Research (2016), *Market study into the supply of legal services in England and Wales – consumer findings*, commissioned by the CMA.
[22] Ipsos MORI (2016), *Online survey of individuals' handling of legal issues in England and Wales 2015*, commissioned by the LSB and the Law Society.
[23] Will Aid (2015), *Research on will writing.* Sample size: 2259 respondents.

commissioned by the Law Society found 67% of respondents had used a solicitor to draft their will.[24]

Figure 2: Wills: only or main legal services provider



Source: IFF Research (2016), *Market study into the supply of legal services in England and Wales – consumer findings*, commissioned by the CMA. Base: Those that used a legal services provider for their legal matter. Number of consumers who had a will drafted: 144. 'Other' includes trade unions, insurance companies, and accountants.

43. There are a large number of solicitor firms active in this area of law, and they vary greatly in size. The SRA data shows just over 4,800 solicitor firms active in will writing, representing 46% of all firms.[25] These practices vary in size from sole practitioners to specialist departments in some of England and Wales' largest law firms.[26] Each year the smallest firms may only provide a handful of wills while the largest provide thousands. Even the largest of these firms only provide a small proportion of the total number of wills. The largest estimates we have heard of the number of wills completed by a single practice represent around just 1% of the number of wills written each year.[27]

44. For most solicitor firms, the typical delivery method is through a face-to-face meeting at the firm's offices. While solicitors 'should be happy' to visit clients at home[28] and evidence from the CMA's online questionnaire of solicitors suggests that many do,[29] it is not the normal way wills are provided. Some

[24] The Law Society, (2010), *Investigation into will writing – Call for evidence by the Legal Services Board, Response by the Law Society of England and Wales.*
[25] Data provided by the SRA to the CMA.
[26] The Law Society noted that some consolidation has occurred in the wills and trust areas of law, where the average size of firms' departments has increased by 13% compared with a 7% increase in the number of firms undertaking this category of work.
[27] The largest practices supply 5,000 to 10,000 wills compared with the estimated total number of 700,000 wills.
[28] The Law Society (2016), *Using a solicitor*.
[29] CMA's online questionnaire of solicitors providing wills and probate services.

solicitor firms, most commonly larger firms, provide wills by post and online too.

Specialist unauthorised will writers

45. The next most common type of provider are specialist will writers. While specialising in providing wills and related services, these firms are not authorised law firms. In the LSB's legal needs survey, they were the main provider for 9% of respondents who had paid for will writing advice. This is roughly in line with the CMA's consumer survey, which found they were the only/main provider for 11% of relevant consumers,[30] and other surveys, such as Will Aid's which found 10.5% of respondents had used an unauthorised will writer to make their most recent will.[31] While one estimate for this type of provider was 18%,[32] generally around one in ten consumers are found to have used unauthorised will writers.

46. Will Aid reports that the share of wills written by unauthorised will writers has declined each year since 2008. However, a 2010 survey commissioned by the Law Society found 10% used an unauthorised will writer which is in line with current estimates.[33]

47. Economic Insight, in a report for the LSB, estimated that there are 1,600 unauthorised will writers.[34] While there are a number of large firms, there is a high prevalence of sole traders amongst unauthorised will writers.[35] These firms vary greatly in the number of clients they serve; providers reported to Economic Insight annual client numbers of between 25 and 1,500.[36]

48. While specialist will writers are not authorised, many of them are subject to self-regulatory arrangements. In its website review, Economic Insight found that membership of voluntary regulation bodies is commonplace – their research estimated that 42% of unauthorised will writers they have identified

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[30] IFF Research (2016), *Market study into the supply of legal services in England and Wales – consumer findings*, commissioned by the CMA.
[31] Will Aid (2015), *Research on will writing.* Sample size: 2259 respondents.
[32] YouGov (2016), *Wills and Probate 2015*, up from 14% a year earlier.
[33] The Law Society, (2010), *Investigation into will writing: Call for evidence by the Legal Services Board, Response by the Law Society of England and Wales.*
[34] Economic Insight (2016), *Unregulated legal service providers: Understanding supply-side characteristics*, commissioned by the LSB.
[35] Economic Insight (2016), *Unregulated legal service providers: Understanding supply-side characteristics*, commissioned by the LSB.
[36] Economic Insight (2016), *Unregulated legal service providers: Understanding supply-side characteristics*, commissioned by the LSB. These figures do not just cover will writing but also include estate administration clients. However, estate administration firms account for a very small proportion of consumers who pay for estate administration and there are fewer estate administration cases than wills written.

were members of the SWW and 15% were members of the IPW. 20% of the providers they interviewed also had staff who were members of the STEP.

49. Many will writers have had prior experience of writing wills or a background in financial services.[37] Around a quarter of providers that Economic Insight spoke to had employees with a law degree or other legal qualification.[38] Their background is likely to influence the level of complexity of circumstances they deal with. For example, some, particularly those with financial backgrounds, target high net worth individuals with more complex needs, while others focus on consumers with more standard requirements.

50. Unauthorised will writers typically charge less than solicitors. IFF research found that their customers tended to spend less than those of solicitors. The price estimates received clustered around £100 compared with those from firms of solicitors that tended to vary from £100 to £300. This finding is supported by research by OMB, commissioned by LSB, which found unauthorised will writing firms charged significantly less for individual wills for identical scenarios. Unauthorised will writers charged on average £136 for a standard will and £161 for a complex will compared with solicitors who charged on average £176 and £218 respectively.[39]

51. Unauthorised will writers are less reliant than solicitors on past customers as a source of new work. Research by IFF found that having used the provider before is the main reason for choosing an unauthorised will writer for just 5% of their customers compared with 45% of those that chose a solicitor.[40] However, to some extent this may reflect the wider range of services that solicitors offer.

52. Referrals appear to be particularly important to this type of provider. The CMA's online questionnaire of members of the SWW and the IPW showed that more than half of respondents had formal referral agreements in place with intermediaries. For most of them, referrals accounted for less than a quarter of their turnover; however, for several will writers, referral arrangements represented over half of their turnover.[41]

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[37] Economic Insight (2016), *Unregulated legal service providers: Understanding supply-side characteristics*, commissioned by the LSB.
[38] Economic Insight (2016), *Unregulated legal service providers: Understanding supply-side characteristics*, commissioned by the LSB.
[39] Unauthorised will writers also charged considerably less for a lasting power of attorney, £263 compared with £440.
[40] IFF Research (2011), *Understanding the consumer experience of will writing services*, commissioned by the LSB, LSCP, OFT and the SRA. This difference is supported by the LSB's individual consumer needs survey (cited in Economic Insight (2016), *Unregulated legal service providers: Understanding supply-side characteristics*, commissioned by the LSB).
[41] CMA's online questionnaire of members of the SWW and the IPW.

53. These providers appear more proactive in attempting to reach consumers. Research has found that unauthorised will writers are more likely than solicitors to approach clients.[42] Among the ways these firms told us they tried to reach consumers were posting fliers, manning stands in shopping centres and working with local authorities, charities and community centres.[43] This, combined with their differentiated service, may mean they are reaching consumers who would not otherwise get wills.

54. In contrast to solicitors, almost all unauthorised will writers deliver their service through home visits, which they cite as a key differentiator compared with solicitors.[44] They also appear to spend longer with customers getting information about personal circumstances; 41% of unauthorised will writers' customers spent over an hour with their provider compared with 16% of customers who had their will drafted by a solicitor.[45]

Document providers

55. There are an estimated 80 DIY/automated providers who provide consumers with a template to enable them to draft a will without direct assistance.[46] These services can range from a paper-based kit to an online interactive template. These self-completion wills did not feature in the CMA's survey of individual consumers.[47] However, Will Aid's survey found DIY kits from a shop account for 5% and online wills account for a further 3% of wills. The 2010 survey commissioned by the Law Society found these accounted for 13% of wills.

56. Many document providers also offer to check the contents of a will once the client has completed it. In 2011, IFF found that around half of 120 consumers who had used a self-completion service had been offered the chance to have

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[42] Ipsos MORI research suggests that some unauthorised providers approach clients directly, whereas this is rarely done by authorised providers (Quoted in Economic Insight (2016), *Unregulated legal service providers: Understanding supply-side characteristics*, commissioned by the LSB). Similarly, IFF found that 12% of those who used a specialist will writer were approached by the firm compared with just 3% among those who used a solicitor (IFF Research (2011), *Understanding the consumer experience of will writing services,* commissioned by the LSB, LSCP, OFT and the SRA).
[43] CMA's online questionnaire of members of the SWW and the IPW.
[44] IFF Research (2011), *Understanding the consumer experience of will writing services*, commissioned by the LSB, LSCP, OFT and the SRA.
[45] IFF Research (2011), *Understanding the consumer experience of will writing services*, commissioned by the LSB, LSCP, OFT and the SRA.
[46] Economic Insight (2016), *Unregulated legal service providers: understanding supply-side characteristics*, commissioned by the LSB.
[47] IFF Research (2016), *Market study into the supply of legal services in England and Wales – consumer findings*, commissioned by the CMA.

someone, such as a solicitor, go through the content of the will; around four-fifths of these consumers took the opportunity.[48]

57. Firms offering self-completion wills typically charge less than solicitors and unauthorised will writing companies. IFF research found that 62% of consumers who used a self-completion service were charged less than £50 compared with 7% and 16% of those who used a solicitor or unauthorised will writer respectively.

58. Some document providers advise consumers that their services are not suitable to consumers with more complicated circumstances – some go as far as to have automatic prompts if information entered into the template indicates complexity. Customers of document providers also recognise this, 'emphasising that they would be less likely to recommend their will writer to a person with more complex circumstances as the process does not necessarily facilitate this.'[49]

59. Online document providers are likely to use digital marketing. For example, we spoke to one new entrant which had a digital marketing background and felt that it could do that better than rival sites.

Other providers and intermediaries

60. Other providers include financial services providers such as banks, building societies and IFAs. Many of these providers outsource the actual provision of the will to solicitors or unauthorised professional will writers. Other organisations, such as charities, trade unions and employers, tend to act as intermediaries rather than providers.

61. The largest individual providers in this group are banks. YouGov in 2015 found that 4% of wills were written using the services of a bank or similar organisation. These consumers tend either to receive financial advice or be part of a private banking service and so are likely to be amongst the financially better off will writing consumers.

62. However, it appears that many consumers who arrange to get a will through financial service providers are provided them by other firms.[50] Furthermore, over time banks have reduced their presence in this area of law, either

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[48] IFF Research (2011), *Understanding the consumer experience of will writing services,* commissioned by the LSB, LSCP, OFT and the SRA.
[49] IFF Research (2011), *Understanding the consumer experience of will writing services*, commissioned by the LSB, LSCP, OFT and the SRA.
[50] Of 48 such consumers recruited for a retrospective survey, 43 had the will supplied through another provider and five did not know. IFF Research (2011), *Understanding the consumer experience of will writing services*, commissioned by the LSB, LSCP, OFT and the SRA.

outsourcing more of the work to firms of solicitors or selling the whole business unit.[51] Even banks that remain involved consider the work to be a peripheral service offered to enhance their wider service to a client. They do, however, actively monitor the performance of their partners to which they outsource the service with key performance indicators and regular updates.

63. Some IFAs provide wills to their clients. They were also identified by unauthorised will writers as an important source of referrals of clients.[52]

64. Charities are another important intermediary in this area because of the importance of bequests as a source of income for some charities. Many charities have partnerships with will providers, usually offering discounted or free wills. The charities we spoke to carried out tender exercises to choose their partners and then monitored the performance of the provider.

Process of competition

65. Competition among providers of wills shares many characteristics with other legal services:

- Will writing is most likely to be a one-off purchase. Some providers will prompt past customers about whether they need to update their will. Despite people being advised to check regularly that their will is still up to date, YouGov found that just over half of those with a will made it at least six years ago.

- The key parameters of competition are quality of advice, price and ease of getting the will written. YouGov found these were all considered as important or very important by 86 to 87% of people. Consumers also appear to consider the complexity of their circumstances when deciding on a provider. For example, as noted above, consumers who used and would recommend document providers are less likely to recommend their provider to those with more complicated requirements.

- Consumers' preferences for face-to-face contact means there is an important local dimension to competition. In a 2015 survey, just over half of legal services providers who undertake work in the wills, trusts and

[51] For instance, in October 2015, HSBC transferred the probate business to Simplify. See Simplify welcomes HSBC probate customers.
[52] CMA's online questionnaire of members of the IPW and the SWW. IFF Research (2011), *Understanding the consumer experience of will writing services*, commissioned by the LSB, LSCP, OFT and the SRA. Economic Insight (2016), *Unregulated legal service providers: Understanding supply-side characteristics*, commissioned by the LSB.

probate area said their competition was local.[53] In the CMA's survey of individual consumers, those whose legal issue was will writing were more likely than the sample average to consider location important.[54] However, will writing can be and is provided remotely – 19% of providers according to one piece of research[55] – and so there is an element of national competition in will writing. In the 2015 survey, 22% of legal services providers who undertake work in the wills, trusts and probate area said their competition was national.[56]

66. Unlike many other legal services, will writing is unlikely to arise from an unforeseen need and be a distress purchase. Over half of will writing consumers had been meaning to purchase a will for a while and had only just got round to it.[57] Even where purchasing a will is prompted by a major life event, such as a marriage or the purchase of a home, these events tend to be foreseeable and the resulting need not urgent. This is reflected by the views of some stakeholders who see their main competition as people not getting a will rather than going to an alternative provider.

How well consumers use information to drive competition

67. As highlighted in Chapter 3 of the main report, effective competition requires consumers to be able to make informed purchasing decisions and that providers are incentivised to demonstrate the value of their offering.[58] To address this key issue, this section looks at:

(a) barriers to consumers engaging with the legal services sector;

(b) transparency of price information;

(c) transparency of quality information; and

(d) competition outcomes.

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[53] Results of 2015 Innovation survey reported in LSB (2016), *Evaluation: Changes in the legal services market 2006/07-2014/15 – Main report: An analysis of market outcomes associated with the delivery of the regulatory objectives*.
[54] IFF Research (2016), *Market study into the supply of legal services in England and Wales – consumer findings*, commissioned by the CMA.
[55] OMB Research (2016), *Prices of individual consumer legal services: Research report*, commissioned by the LSB, figure refers to the simple will scenario.
[56] Results of 2015 Innovation survey reported in LSB (2016), *Evaluation: Changes in the legal services market 2006/07-2014/15 – Main report: An analysis of market outcomes associated with the delivery of the regulatory objectives*.
[57] IFF Research (2011), *Understanding the consumer experience of will writing services*, commissioned by the LSB, LSCP, OFT and the SRA.
[58] See paragraphs 3.228–3.237 of the main report.

Barriers to engagement

68. A number of stakeholders have raised limited awareness of the legal services sector as a key problem for consumers.[59] This section explores whether this problem applies to will writing, by looking at how many people have wills, particularly among those most in need of wills, and how they address the need for a will.

69. Despite many attempts to increase awareness of the value of having wills, many people do not have wills,[60] although this might be because they do not feel a will is necessary given their circumstances. The 2016 LSCP consumer tracker survey found that 37% of adults have made a will.[61] Similarly a YouGov survey reports 37%. Other surveys have found slightly higher figures. A survey for Will Aid, a charity campaign, found that 47% of the adult population in the UK have written a will.[62] Research carried out in 2010 by GfK for the OFT also found that a little under half of respondents had wills.[63]

70. Older people are far more likely to have wills. Figure 3 shows how the proportion of people with wills increases with age.[64] YouGov found that 68% of those without a will considered themselves too young to make a will.

71. Similarly, those with more assets are more likely to write wills. Research by the Law Commission in 2009 using data from the Probate Service found that people are more likely to make a will if they have assets to dispose of.[65] YouGov found that one in five of those without a will said they had no assets to pass on.

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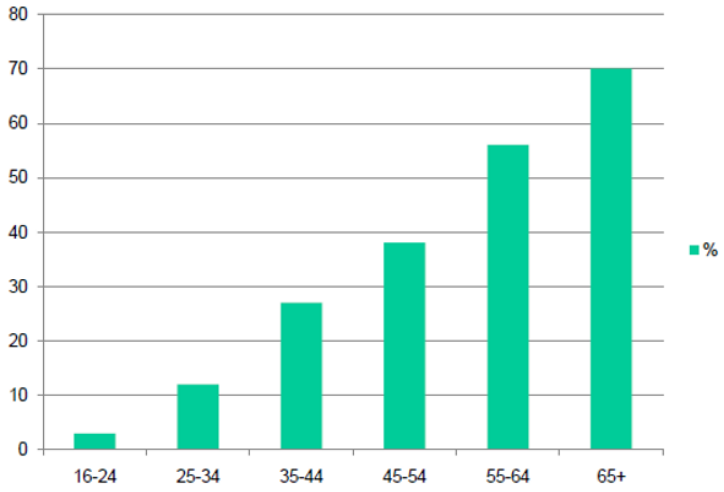
[59] See paragraphs 3.18–3.25 of the main report.
[60] For instance, a group of charities launched the 'Free wills month', where consumers aged 55 and over can get their wills written or updated free of charge by using participating solicitors.
[61] YouGov (2014), *Wills and probate 2013*.
[62] Will Aid (2015), *Research on will writing.* Sample size: 2259 respondents.
[63] OFT (2010), *Don't lose out when preparing wills and appointing executors, advises OFT*.
[64] The proportion with wills is even higher for the oldest people within the 65+ group; Will Aid's survey found 90% of 75 to 84 year olds had written a will.
[65] The Law Commission (2009), *Intestacy and family provision claims on death*, Consultation paper n.191.

Figure 3: Will ownership by age



Source: LSCP (2010), *Will writing: a whistle-stop tour of the market*.

72. Certain types of relationship affect people's need for a will. Providers identified married couples with children as a key customer group, reflecting the need to provide for children in the event of the death of the parents.[66] Less intuitively, cohabitants and separated couples are among the least likely groups to have a will, despite being considered among the most likely to need one.[67] It is not clear whether this reflects other factors such as age, wealth and the likelihood of having children.

73. Overall, those who need a will are very likely to have one. Probate Service statistics show that in contrast to the less than half of the population who have wills, around 85% of probate cases involve a valid will.[68] These intestate estates that require probate are likely to be smaller than average – in 2009, a third were found to be worth less than £25,000.[69] Around half of estates do not require probate as they are too small (less than £5,000) or pass automatically to another person through the rules of survivorship.[70] This suggests that most people understand and act on their needs in this area, but it still leaves many people who do not.

74. The LSB's individual legal needs survey found that, in relation to 37% of will-related issues, individual consumers handled it alone and, in a similar proportion of will-related issues, individual consumers got professional legal advice. Figure 4 shows the ways people handled legal issues relating to wills.

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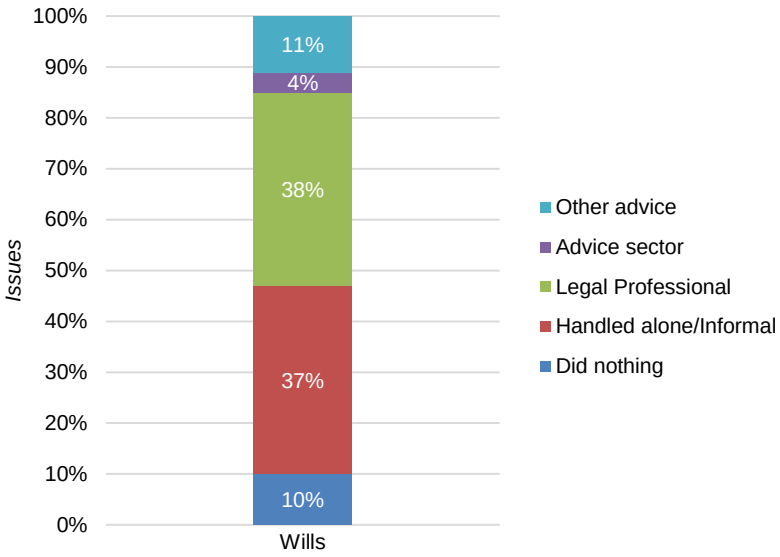
[66] Economic Insight (2016), *Unregulated legal service providers: Understanding supply-side characteristics*, commissioned by the LSB.
[67] LSCP (2010), *Will writing: a whistle-stop tour of the market.*
[68] MoJ (2016), *Family court statistics quarterly, England and Wales*. In around only 15% of cases, letters of administration are required, the type of probate where there is no valid will.
[69] The Law Commission (2011), *Intestacy and family provision claims on death*.
[70] HM Revenue & Customs (HMRC) (2016), *Inheritance tax statistics: tax year 2013 to 2014*.

People who write their own will appear to consider themselves to have relatively simple circumstances. The research also found that, for those will issues where individual consumers handled it alone, the main reasons given were: 'I was confident I could handle it alone' (34%) and 'Did not think the legal need/issue would be difficult to resolve' (32%).[71],[72]

Figure 4: Handling strategy for legal issues related to wills



Source: Based on Figure 5.10 in Ipsos MORI (2016), *Online survey of individuals' handling of legal issues 2015*, commissioned by the Law Society and the LSB, p62.

75. We have found that there do not appear to be any major barriers to consumers addressing their legal needs in this area, particularly among those most in need of a will. While less than half of people have wills, older people and those with more assets, are much more likely to have one. We have also found that the main reason some people choose not to use a legal services provider and write their own will is because they consider their circumstances to be relatively straightforward.

Transparency of price information

76. This section looks at the information on price that is provided to consumers when they are choosing a legal services provider to address their will-related issue. Following the framework set out in Chapter 3 of the main report, we look at whether that information is accessible and assessable.[73]

[71] Ipsos MORI (2016), *Online survey of individuals' handling of legal issues 2015: Topline datasheet by issue*, commissioned by the Law Society and the LSB, questions C6 and C7.
[72] YouGov (2016) found that just one in ten people, including those who paid for some assistance. However, amongst this group almost everyone did so because their estate was a relatively simple one.
[73] See paragraph 3.65 of the main report.

77. In relation to accessibility of information, we found that prices of wills tend to only be available on request.[74] Therefore, consumers need to contact individual providers directly, but this can be time-consuming and makes the information less easily accessible. Our consumer survey found that only around a third of those who made a will knew exactly what the price would be before contacting the provider.[75] One explanation for this might be that providers tend first to establish the complexity of a will and then offer a price depending on the client's circumstances.[76] However, factors that are likely to make a will more complex, such as those given in paragraph 27, can be easily identified by providers – around half of will providers already use a menu of outline prices.[77] This indicates that many providers could probably make price information more accessible.

78. Unauthorised providers have more accessible prices, but they could still be more transparent. OMB found that 28% of unauthorised will writers display their prices online compared with just 16% of solicitors.[78] A review of unauthorised providers' websites by Economic Insight, commissioned by LSB, found that half displayed price information online. Unauthorised will writers are also more likely to price from a menu of outline prices rather than on a case by case approach, 85% compared with 44% for solicitors.[79]

79. The vast majority of firms charge fixed prices for wills. Fixed prices have the advantage of making it easier for consumers to assess and compare costs. In a survey conducted by OMB,[80] when providers were given a hypothetical client with straightforward circumstances, 92% offered a fixed price. This is still the case for clients with more complicated circumstances; 85% of providers offered a fixed price in a complex scenario. Charging an hourly rate is now very rare with both LSB's pricing research and YouGov finding that charging structure in just 2% of cases.

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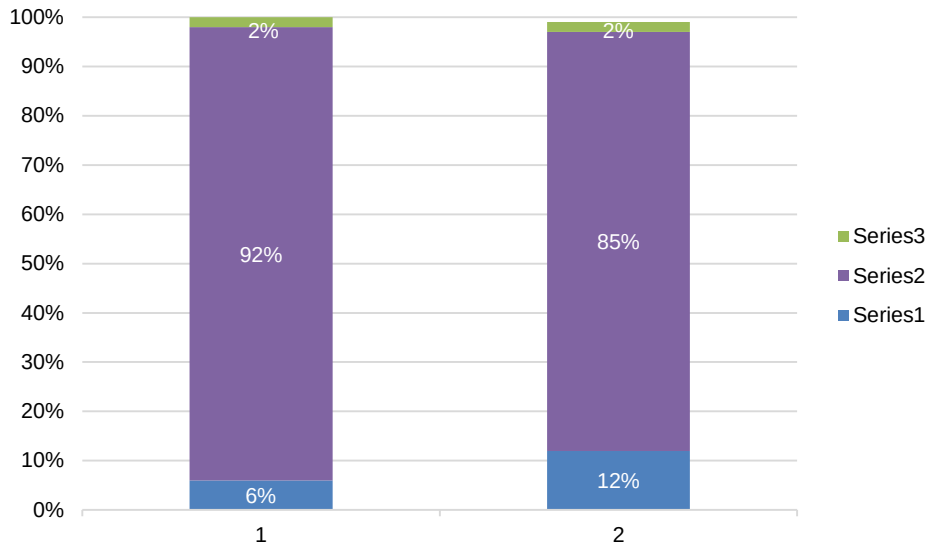
[74] OMB Research (2016), *Prices of individual consumer legal services: Research report*, commissioned by the LSB.
[75] IFF Research (2016), *Market study into the supply of legal services in England and Wales – consumer findings*, commissioned by the CMA. Note that this is an indicative finding due to small sample size.
[76] Firms vary in terms of how prices might change in response to more complicated circumstances. For example, almost two-thirds of providers would increase their price if there was a requirement to establish a trust arrangement for children, while others would not. OMB Research (2016), *Prices of individual consumer legal services: Research report*, commissioned by the LSB.
[77] OMB Research (2016), *Prices of individual consumer legal services: Research report*, commissioned by the LSB.
[78] OMB Research (2016), *Prices of individual consumer legal services: Research report*, commissioned by the LSB. The figure for solicitors is across all areas of law. However, this was also the figure for will writing as a whole and given that the unauthorised will writers were more likely to display prices removing them from the will writing specific figure would appear to mean that the figure for solicitors within will writing would be even lower.
[79] OMB Research (2016), *Prices of individual consumer legal services: Research report*, commissioned by the LSB.
[80] OMB Research (2016), *Prices of individual consumer legal services: Research report*, commissioned by the LSB.

Figure 5: Price structures offered for will writing



Source: Based on Figure 5.2.2 in OMB Research (2016), *Prices of individual consumer legal services: Research report*, commissioned by the LSB, p33. Number of wills considered: 490.

80. To conclude, our analysis has found that prices are rarely accessible without having to contact the provider and many providers could probably give more information as they already use a menu of outline prices. However, prices, once accessed, are more easily judged as fixed fees are offered by almost all providers.

Transparency of quality information

81. This section looks at the information on quality that is provided to consumers when they are choosing a legal services provider. We note that quality is difficult to assess for consumers and look at the types of information providers use to signal quality.

82. The quality of a will provider is inherently difficult for consumers to assess. This is a particular problem with wills as problems may not be discovered until many years later. There are a wide range of aspects to quality when writing a will and some of them can be difficult for a lay person to judge.[81]

83. Despite quality being difficult to judge, 85% of respondents to the CMA's consumer survey whose legal problem was making a will felt that they were able adequately to judge the likely quality of the help that a will provider would give them. However, our qualitative interviews found that people, although not necessarily those making a will, were drawing on 'softer' indicators of quality in making such judgements, such as 'gut feel', a sense of trust and their

[81] These are explored further in paragraph 117.

interaction with the provider in making these judgements.[82] The difficultly consumers have in directly assessing the quality of providers increases the importance of reliable signals of quality or tools to assess quality.

84. Attempts to signal quality appear similar for will providers as in other areas of law. Providers often seek to demonstrate quality through the use of testimonials and by emphasising their experience, training and qualifications. This includes highlighting any relevant regulators to which they are subject and any voluntary self-regulation bodies of which they are members, such as the SWW, the IPW or the STEP. Members of self-regulatory bodies saw one of the main benefits as the credibility this gave them.[83] This is perhaps unsurprising as 85% of respondents to YouGov's wills and probate survey said experience and qualifications of those providing services were important or very important to them.[84] Some providers also provide seminars or appear in the press in order to demonstrate their quality. It is more difficult to judge providers' quality using these signals partially because they are not independently verified. There are independent review websites that cover legal services including will writing, but we found they are not widely used.

85. Will writers make limited use of quality marks, although arguably membership of will-specific organisations, such as the SWW, the IPW or the STEP, serves as a form of quality mark. At the end of March 2016, there was a total of 184 member firms accredited to the Wills and Inheritance Quality Scheme managed by the Law Society and launched in October 2013.

86. Consumers appear keen on quality marks and professional accreditation as 78% of respondents to YouGov's wills and probate survey said these were important or very important factors. However, IFF's research found consumers 'were very unlikely to check whether will writing organisations have some form of accreditation. Even those who do check tend to concede that the various accreditation or quality marks mean little to them, and there is a degree of suspicion about 'invented' accreditations.'[85]

87. As in other areas of law, quality is difficult to assess for consumers. We found that the information providers give to assist consumers to judge quality tends to be limited to testimonials and highlighting experience and qualifications. We

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[82] IFF Research (2016), *Market study into the supply of legal services in England and Wales – consumer findings*, commissioned by the CMA, at p.41.
[83] Economic Insight (2016), *Unregulated legal service providers: Understanding supply-side characteristics*, commissioned by the LSB.
[84] YouGov (2016), *Wills and probate 2015*.
[85] IFF Research (2011), *Understanding the consumer experience of will writing services*, commissioned by the LSB, LSCP, OFT and the SRA.

found providers make very limited use of tools that could provide clearer signals of quality, such as independent reviews and quality marks.

Competition outcomes

88. This section looks at outcomes for competition given the information consumers obtain in order to make decisions. First, we look at how consumers choose will providers given the issues we identified above with the information available. Secondly, we look at the outcomes in terms of prices and quality.

- *How consumers choose providers*

89. As in other areas of law, the main reasons why people choose a particular provider are because they have used their services in the past or because that provider has been recommended by a friend or family member.

90. The CMA's survey of individual consumers found consumers dealing with a will writing issue were significantly more likely than average to use recommendations from family and friends when picking a provider.[86] IFF and YouGov both found these as the top two reasons why consumers choose a provider.[87]

91. While referrals are important for some providers, particularly unauthorised will writers (see paragraph 48), the CMA's survey of individual consumer found consumers in this area were less likely than average to use recommendations from a professional third-party when choosing a provider.[88]

92. Only around one in eight of consumers either responded to an offer or were approached by their provider.[89]

93. The CMA's survey of individual consumers also found that 17% of respondents making a will compared two or more legal services providers.[90] IFF found that around a third of those who had bought a will had compared

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[86] IFF Research (2016), *Market study into the supply of legal services in England and Wales – consumer findings*, commissioned by the CMA.
[87] IFF Research (2011), *Understanding the consumer experience of will writing services*, commissioned by the LSB, LSCP, OFT and the SRA, and YouGov (2016), *Wills and Probate 2015*.
[88] For those making a will 19% used feedback/recommendations from a professional third party compared with 28% across all areas of law. IFF Research (2016), *Market study into the supply of legal services in England and Wales – consumer findings*, commissioned by the CMA.
[89] IFF Research (2011), *Understanding the consumer experience of will writing services*, commissioned by the LSB, LSCP, OFT and the SRA.
[90] IFF Research (2016), *Market study into the supply of legal services in England and Wales – consumer findings*, commissioned by the CMA.

different providers.[91] A little over half of these comparisons involved two or three different providers and just 5% compared six or more. Comparing was more common among respondents who used unauthorised will writers or online document providers.

94. Just over half of people making comparisons used an online search engine (ie Google, Bing). Two-fifths of them contacted providers directly to make comparisons, although this appears to be a more time-consuming way of making comparisons. Finally, comparison websites were used by just over one in six people making comparisons, which represents 6% of all respondents.[92]

95. The 2015 LSCP Tracker Survey suggests lower levels of shopping around among consumers of wills, trusts and probate services when compared with residential conveyancing and family law consumers.[93] It also found though that, of those who did compare, only 11% stated that there was not very much choice compared with 20% in average of other areas of law.

96. The issues we identified with the information consumers receive may also affect the factors on which consumers base their decisions. For example, price is considered an important or very important factor when purchasing a will by 87% of potential consumers,[94] but it rarely forms the basis of decisions over which provider to use. When asked for their main reason for having chosen their provider, just one in eight consumers said value for money and just one in 11 because it was cheap.[95] Price seems to be a more important factor in deciding which providers not to choose. 61% of those that considered but decided not to use a solicitor firm stated that solicitors were too expensive (this was 40% for unauthorised will writers), although this could be based on a preconception rather than any information the consumer received.[96] Cost was also more likely to be considered an important factor by the consumers who had used an unauthorised will writer in the CMA's survey of individual consumers.[97]

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[91] IFF Research (2011), *Understanding the consumer experience of will writing services*, commissioned by the LSB, LSCP, OFT and the SRA.
[92] IFF Research (2011), *Understanding the consumer experience of will writing services*, commissioned by the LSB, LSCP, OFT and the SRA.
[93] YouGov (2016), *Legal services consumer tracker 2016*, commissioned by the LSCP.
[94] YouGov (2016), *Wills and probate 2015*.
[95] IFF Research (2011), *Understanding the consumer experience of will writing services*, commissioned by the LSB, LSCP, OFT and the SRA.
[96] IFF Research (2011), *Understanding the consumer experience of will writing services*, commissioned by the LSB, LSCP, OFT and the SRA.
[97] IFF Research (2016), *Market study into the supply of legal services in England and Wales – consumer findings*, commissioned by the CMA.

97. Given the problems accessing and assessing information, we found limited shopping around, with consumers often choosing providers that they have previously used or relying on personal recommendations in a similar way to other areas of law.

- *Prices, quality and innovation*

98. The limited levels of shopping around may have an impact on competitive outcomes for consumers. We consider these outcomes in terms of prices, quality and innovation.

99. Pricing research commissioned by LSB found the median price of a standard individual will to be £150. Even with providers given the same scenario, prices varied considerably from £25 to £750 for a standard individual will. The difference between the upper and lower quartile prices was found to be £90. Other summary statistics can be seen in Table 1. This pattern also held for the related service of lasting power of attorneys.

100. We considered whether some of the variation may be caused by differences in prices across different parts of the country. For example, we know that prices tend to be higher in the south east than in other parts of the country. However, using the data from the LSB research, we found that there was substantial price dispersion even within regions.

Table 1: summary statistics on prices charged for will writing

	Individual will (standard)	***Individual will (complex)***	***Lasting power of attorney***
Mean	£168	£206	£414
Median	£150	£163	£380
Standard deviation	£90	£140	£218
Maximum	£750	£1,500	£2,400
Upper quartile	£200	£250	£495
Lower quartile	£110	£120	£300
Minimum	£25	£25	£80

Source: OMB Research (2016), *Prices of individual consumer legal services: Research report*, commissioned by the LSB.

101. The same research gave some indication that firms that provided greater transparency were cheaper. It found that firms that displayed their prices on their website appeared to charge slightly less, although this difference was only statistically significant for standard individual wills. In addition, compared with those firms that offered fixed fees, prices were higher among firms that

charged using an estimate total cost, and even higher among the very few firms charging hourly rates.[98]

102. The research also found prices to be higher among firms that: [99]

- price on a case by case basis;
- are authorised providers compared with unauthorised ones;
- are in the South East of England; and
- are in urban locations.

103. It is possible that prices also vary according to quality. However, we are not aware of any evidence that the wide price variations seen are a result of quality differences. While the OMB research did not directly control for quality, it was based on a limited number of tightly defined scenarios reducing the scope for differences between the providers.

104. Given the difficulties in judging the quality of wills, there is insufficient evidence on the quality of wills to enable us to assess whether competition is driving quality. However, the evidence suggests that there are quality issues in will writing both in the authorised and unauthorised sectors. We look at quality issues in will writing in more detail in paragraphs 117 to 126.

105. Levels of innovation in will writing appear to be similar to those in other areas of law. The most obvious innovation is the ongoing development of will writing software. There is also some unbundling where consumers write their will, and then get it checked over by a professional.

106. In summary, our analysis indicates that the minority of consumers who make comparisons are unable to drive positive outcomes. Prices vary widely in this area of law, and the limited available evidence suggests there are problems with poor quality wills. Innovation appears limited.

The role of regulation in will writing

107. In this section we explore whether the regulatory framework for will writing results in consumer protection issues not being adequately addressed or distorts competition. We first summarise the protections in place for

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[98] Note, however, that the number of firms not charging fixed fees were particularly few and so the results should be treated with particular caution.
[99] Some of the sample sizes were quite small and so the results should be treated as indicative. See OMB Research (2016), *Prices of individual consumer legal services: Research report*, commissioned by the LSB.

consumers of will providers of different types.[100] We then consider the specific concerns that have been raised regarding will writing, particularly focusing on whether there are difference between types of provider. Finally, we consider whether there are any barriers to the growth of unauthorised providers.

Regulatory framework

108. As noted previously, will writing is not a reserved activity. Regulation of will writing has been a topic of much debate. In 2007, a parliamentary committee recommended that will writing should be included in the new regulatory framework. Later, the LSB undertook an investigation of the topic and in 2013 recommended to the Lord Chancellor that will writing activities should be reserved. The Lord Chancellor did not accept the recommendation, noting that the LSB had not demonstrated that alternative measures to reservation had been sufficiently exhausted.[101]

109. There are three different levels of regulation in will writing. First, at a minimum level, all providers are subject to general consumer law. Next, there are authorised providers which are covered by their wider professional regulation. Finally, there are self-regulated providers which have attempted to replicate the benefits of regulation on a voluntary basis.

110. Differences in regulation between different types of provider would be less of a concern if consumers, when choosing providers, were aware of their regulatory status and its implications. However, the LSB's legal needs survey found that, for 64% of will-related issues, individual consumers checked the regulatory status of their provider.[102] Furthermore, in 23 of the 61 will-related issues, customers of unauthorised providers did not check. In around half of these cases, consumers did not check because they assumed providers would be regulated.

Consumer law coverage

111. All will providers are covered by general consumer laws designed to protect consumers. These include protections against aggressive and misleading sales practices, false advertising, unfair contract terms, faulty service and breach of contract.[103] However, as highlighted by Citizens Advice in its

[100] Further detail is given in Table 2 in Appendix F (Comparison of consumer protection standards required of providers by regulatory status).
[101] House of Commons Library (2016), *Regulation of will*.
[102] Ipsos MORI (2016), *Online survey of individuals' handling of legal issues 2015*, commissioned by the Law Society and the LSB.
[103] Appendix E (Overview of the consumer law framework) provides further details on the consumer law framework.

response to the LSCP's 2010 consultation, there are particular problems that are specific to will writing: for example, contractual rights are not passed on with the deceased's estate, and so executors and beneficiaries must rely on showing the providers' negligence.[104] Overall, the LSCP reported that many of the poor sales practices that it outlined might breach existing consumer law,[105] but also concluded that further regulation was desirable.

Authorised providers

112. There are additional regulatory requirements on authorised providers, such as solicitors. As noted in paragraph 36, these include both those designed to make problems less likely, such as having certain qualifications, undertaking a certain amount of training and being subject codes of conduct, and those to help if things do go wrong, such as having PII and a compensation fund, and the ability to take complaints to the LeO and the relevant regulator. Failure to adhere to these requirements can result in providers being fined or even struck off from profession.

113. Some solicitors feel that they are at a disadvantage compared with unauthorised providers due to the burdens of regulation. However, it appears that these regulations are those that relate to being a solicitor rather than regulations specific to will writing; the majority of respondents to the CMA's online questionnaire of solicitors did not think they incurred any regulatory costs specific to will writing.[106]

Self-regulation

114. Self-regulated providers are covered by similar requirements to those in authorised professions. For example, they are subject to training requirements, codes of conduct, PII requirements and external complaints mechanisms. Both the SWW and the IPW have entrance exams, codes of conduct and requirements for professional development (CPD) and require members to have PII. Customers of these providers can refer complaints to these bodies. Table 2 sets out the key requirements of the two main self-regulatory bodies alongside that of the SRA in four key areas.[107]

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[104] Citizen Advice (2010), *Investigation into will writing call for evidence: Response to the Legal Services Consumer Panel from Citizens Advice*.
[105] Indeed, there have been successful prosecutions of will writers who have sold wills under false pretences. Examples are reported by Wigan Today (2015) Fake will writer jailed; the Law Gazette (2011), Will writing fraudster jailed; and Lincolnshire Live (2010), Will makers jailed for three-and-a-half years for stealing £400k from estates of clients.
[106] CMA's online questionnaire of solicitors providing wills and probate services.
[107] More detail on the requirements of the three bodies are given in Appendix F (Comparison of consumer protection standards required of providers by regulatory status).

Table 2: Requirements of self-regulatory bodies and the SRA

	SRA	*IPW*	*SWW*
Admission	Qualification as solicitor	Examination; 5 years' experience; or membership of another relevant body, eg STEP.	Completion of a recognised training course
Training	Continuing competence framework	20 hours CPD per year	24 hours of CPD per year
PII	At least £2 million	At least £2million	At least £2 million
Second tier complaints	The LeO for poor service or the SRA for failure to comply with professional obligations	The IPW conciliation service or the Estate Planning Arbitration Scheme, an ADR service	The SWW if a member has deviated from code of conduct.

Source: bodies' websites
* Until November 2016, solicitors were required to undertake 16h of CPD per year. From November 2016, qualified solicitors in England and Wales will no longer required to count CPD hours. Instead, the SRA requires solicitors to identify and undertake the training activities that are more appropriate for their needs and the needs of their firm. See SRA, Continuing competence.

115. There is little evidence about how effective these regimes are. As self-regulation is voluntary, providers can choose not to join a body that will impose such requirements. Research by Economic Insight suggests that only around half of unauthorised providers have signed up to be regulated by voluntary bodies.[108] In theory, providers can choose to abandon self-regulation if they wish to avoid the restrictions it places on them. Self-regulatory bodies themselves have noted the difficulties they face in enforcing their rules as members can be expelled, but then continue trading.[109] However, the SWW told us that in practice these instances are extremely rare as the majority of members will act on the recommendations from the SWW. The Law Society has said that it is 'not worth the risk in hoping that a will writer will abide by any voluntary requirements they sign up to.'[110]

Consumer protection concerns

116. To understand whether the levels of protection are appropriate, we consider the problems faced by consumers. We look at the main consumer protection concerns in will writing and overall evidence on satisfaction and complaints. We considered the scale of the problems and whether there was evidence that this differs depending on the type of provider.

[108] Economic Insight (2016), *Unregulated legal service providers: Understanding supply-side characteristics*, commissioned by the LSB.
[109] SWW (2011), *Investigation into will writing, estate administration and probate activities, SWW's response to LSB Call for evidence.*
[110] The Law Society, *Regulation of will writing: Protecting the consumers.*

Quality

117. Quality has various meanings in will writing. Quality of advice covers those elements that affect whether the will achieves what the client wishes. Quality of service covers the process of giving the advice including communication with the client, the speed of the service and so on. Quality of service is easier for consumers to assess than quality of advice, although it might not be apparent until during the service. Box 1 provides further detail on what quality of advice means in the context of will writing.

118. There is a range of evidence that suggests there may be problems with the quality of advice in will writing:

- A shadow shopping study examining 101 wills found that approximately one-quarter of the wills collected failed the assessment because they either did not meet the needs of client (ie they were of insufficient quality) or they were not deemed to be legally valid.[111] This is a valuable piece of research, but given the small sample size its results must be treated with caution.

- A wide range of examples of poor wills was presented to LSCP when they were considering the case for regulation in will writing in 2011.

- Of 97 will providers spoken to for one piece of research, around two-fifths voiced a negative opinion about the quality of wills.[112]

- Of 100 probate providers spoken to for another piece of research, 'most businesses stated that they encountered problems caused by poor quality wills on an infrequent basis.'[113]

- A YouGov survey of people who had dealt with a person's estate after death found that 13% had experienced problems because the will had not been drafted properly.[114]

[111] IFF Research (2011), *Understanding the consumer experience of will writing services*, commissioned by the LSB, LSCP, OFT and the SRA.
[112] IFF Research (2011), *Understanding the consumer experience of will writing services*, commissioned by the LSB, LSCP, OFT and the SRA. As well as being a small sample, the respondents were roughly evenly split between specialist will writers and solicitors and so do not match the proportions of these providers in this area of law.
[113] IFF Research (2011), *Probate and estate management services survey*.
[114] YouGov (2016), *Wills and probate 2015*.

Box 1: Quality of advice in will writing

Quality of advice in will writing includes the following elements:

Accurate drafting: Errors in drafting could include:

- straightforward mistakes;[115]
- contradictory instructions;[116]
- illegal instructions;[117] and
- ambiguous instructions.[118]

Valid execution: to be valid, a will must be correctly executed (ie correctly signed and witnessed). While partially the responsibility of the client, providers can take actions to reduce the likelihood of poor execution.[119]

Understanding a client's wishes and circumstances: a high-quality will takes into account all the relevant wishes and circumstances of the client and ensures the client is able to make informed decisions. Even a well-drafted will may fail to achieve what the client wishes if some pertinent fact was not known by the provider. Clients will not always realise what information is important and what options are available to them.[120]

Comprehensiveness: a high-quality will would account for the potential future circumstances that may affect what a will does, most notably whether any beneficiaries have died and changes in a person's assets.

Ease of probate: A high-quality service can make probate easier. Poorly drafted wills may make it harder for an executor to clearly understand and therefore carry out the wishes of the deceased. A provider can also make a contested probate less likely, for example, by having notes of the client's instructions and evidence that the client had mental capacity and was not under any undue influence.

119. We considered other ways to assess the quality of wills, for example, whether the number of submissions to the Probate Service that have been rejected, as

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[115] For example, putting the incorrect names of beneficiaries or not considering the ownership status of a property. The latter example is a commonly cited issue because a property owned jointly becomes the sole property of the surviving co-owner regardless of what is in a will, whereas half of a property owned as tenants-in-common can be left in a will.
[116] For example, using 'all my property' in one clause then specifying separate arrangements for specific items of property.
[117] For example, leaving a gift to a charitable trust that was not a registered charity.
[118] For example, leaving a music collection to one beneficiary and all Elvis memorabilia to another, without specifying what happens to Elvis music.
[119] For example, by explaining how to sign and witness a will; sending a reminder to consumers; and checking or supervising the execution.

well as the reasons for rejection,[121] might represent a useful proxy measure of the quality of wills. However, as noted by the LSB in its evaluation report, such data are not collected systematically.[122] Furthermore, the result of the probate process is likely to be affected not just by the quality of the will, but also by the quality of the probate work. Anecdotally the Probate Service has indicated that, in the majority of cases, rejections are caused by missing documents, errors and omissions in the completion of the probate forms.[123]

120. The number of contested probate cases may give some indication of the frequency of serious problems as a beneficiary or third party usually contests the will when there are issues with the drafting of the will.[124] The number of contested probate cases appears low; in 2015, there were 164 contested probate cases out of over a quarter of a million overall probate cases.[125] However, the real figure is likely to be higher as these figures do not include out-of-court settlements.[126]

121. While there is evidence of quality problems, we have found that in many cases the problems caused may have been limited. For example, the consequence of a poorly executed will generally seems to lead to extra work in probate rather than making the will invalid. In 2011, the Probate Service reported 'that very few wills it sees are actually invalid, but there are a small but significant number of poor quality wills that need further work.'[127] Similarly, probate providers see poorly written wills as a challenge in terms of delay and cost rather than a risk to probate and/or estate administration as a whole.[128] Commenting on its shadow shopping study, IFF noted that the likely detriment

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[120] For this reason the majority of providers use a fact-finding questionnaire to gather information before meeting a client.
[121] IFF research indicates that a will of poor quality may lead to a rejection from the Probate Service for the following reasons:

- improper execution of the will;
- an out-of-date version of the will;
- insolvent estate;
- unidentified beneficiaries;
- ambiguities within the will;
- tenancy issues (eg joint tenancy of the house);
- incorrect use of legal terminologies;
- issues with the signatures on the will;
- unclear or inaccurate spellings (eg of the executor or beneficiaries); and
- improper witnesses (eg beneficiaries of the will).

IFF Research (2011), *Probate and estate management services survey*, commissioned by the LSB.
[122] LSB (2016), *Evaluation: Changes in the legal services market 2006/07 - 2014/15 – Main report: An analysis of market outcomes associated with the delivery of the regulatory objectives*.
[123] This is based on the data collected by the Probate Service in a 2 week period in order to understand why applications had to be stopped.
[124] IFF Research (2011), *Probate and estate management services survey*, commissioned by the LSB.
[125] MoJ (2016), *Family court statistics quarterly, England and Wales.* There is also no discernible trend in the number of contested probates in the statistics. The number of contested probates in 2015 is a little higher than the average over the last five years (135), but lower than the number in 2014 (178).
[126] LSCP (2011), *Regulating will writing*.
[127] LSCP (2011), *Regulating will writing*.
[128] IFF Research (2011), *Probate and estate management services survey*, commissioned by the LSB.

caused in some cases would have been relatively small, but, in other cases, beneficiaries might fail to receive all or part of their intended inheritance.[129]

122. The cost incurred by consumers seeking to rectify[130] a poorly written will can be far more substantial where an order from a court is required: over £10,000[131] in some cases. This process of rectification will be particularly expensive where there is a dispute over the intentions of the deceased. These costs can potentially be recovered from will providers if due to their negligence. If rectification is not possible, the distribution of assets may differ from that intended by the deceased potentially costing the beneficiaries who potentially lose out far more than any legal costs they incur.

Quality differences between providers

123. There are a number of reasons why the different approaches taken by different types of provider may have an impact on the quality of the wills produced:

- Clearly there are inherent disadvantages in not having direct involvement in writing the client's will as is the case for document providers (except those that also check clients' wills). Only 18% of their clients agreed strongly 'there was a facility for me to ask any questions or gain clarification on any issues easily'; the equivalent figures for solicitors and will writers were 71% and 60%.[132]

- Specialism was cited as an advantage, particularly by unauthorised will writers who highlighted that a high street solicitor may only draft a handful of wills a year whereas it is all specialist will writers do. Solicitors' mandatory training seems unlikely to overcome this; in 2011 the LSCP found that the compulsory wills-related training requirements for solicitors are fairly minimal.[133] Obviously some solicitors also specialise in wills and may further specialise within will writing; for example, one large solicitor

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[129] IFF Research (2011), *Understanding the consumer experience of will writing services*, commissioned by the LSB, LSCP, OFT and the SRA.
[130] In order to address the problems that can occur through poorly written wills, providers of probate and/ or estate administration have three common options, depending on the circumstance in which they found themselves:
- affidavits to clarify ambiguous areas of the will;
- deeds of variation to change inaccurate areas of the will; and
- improved communication with the client for reassurance purposes regarding delays and additional costs.

IFF Research (2011), *Probate and estate management services survey*, commissioned by the LSB.
[131] Examples given in Law Society, (2010), *Investigation into will writing: Call for evidence by the Legal Services Board response by the Law Society of England and Wales.*
[132] IFF Research (2011), *Understanding the consumer experience of will writing services*, commissioned by the LSB, LSCP, OFT and the SRA.
[133] LSCP (2011), *Regulating will writing*.

firm with a specialist wills and probate department has solicitors who further specialise in issues around agricultural land in wills.

- Solicitors who also dealt with probate considered this an advantage as they had experience of how wills would be treated at the probate stage. This ability to take a holistic view was also echoed by some unauthorised will writers who had financial backgrounds and considered will writing as part of financial planning.

- There is evidence that unauthorised will writers spend more time with clients[134] and do so in clients' homes. Some unauthorised will writers argue that this makes it easier to get a complete picture of a client's circumstances and wishes.

124. There is limited evidence on differences in quality between different providers. In the IFF's shadow shopping exercise there was little difference between the proportion of wills that failed among solicitors, 9 out of 41, and self-regulated/unauthorised specialist will writers, 5 out of 24. Overall, the mean quality score out of five for solicitors was 3.28 and for specialist will writers it was 3.14. By contrast, the proportion of self-completed wills that failed was considerably higher (11 out of 26), and the mean quality score of self-completed wills was considerably lower (around 2.5) compared with solicitors and unauthorised providers. Further breaking down an already small sample to make comparisons clearly means these results should be treated with particular caution.

125. The perception amongst many solicitors is that unauthorised will writers are of lower quality.[135] Self-regulated will writers tend to say that poor quality provision is more likely to be a feature of unauthorised (but not self-regulated) providers of will writing.[136] Hence, it is possible that when solicitors draw inferences on the quality of unauthorised providers, these are based only on the subsection of the unauthorised sector that is not subject to self-regulation. IFF noted in its research on probate that unauthorised probate providers, including accountants and charities, identify poor quality wills as common to all will providers.[137] A number of other non-solicitor stakeholders we spoke to

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[134] IFF Research (2011), *Understanding the consumer experience of will writing services*, commissioned by the LSB, LSCP, OFT and the SRA. IFF found that consumers of unauthorised will writers tended to spend longer discussing their personal circumstances with their provider.
[135] IFF Research (2011), *Understanding the consumer experience of will writing services*, commissioned by the LSB, LSCP, OFT and the SRA.
[136] IFF Research (2011), *Understanding the consumer experience of will writing services*, commissioned by the LSB, LSCP, OFT and the SRA.
[137] IFF Research (2011), *Understanding the consumer experience of will writing services*, commissioned by the LSB, LSCP, OFT and the SRA.

also said that, based on the wills they have seen at the probate stage, there is little evidence of a difference in quality between types of will provider.

126. Some stakeholders have said that quality problems in the unauthorised sector may not have been revealed yet because of the time it would take any problems to emerge. It is worth noting though that unauthorised providers have been active in will writing services for at least ten years and so one might have expected problems to be more evident by now. Furthermore, if these wills have not been updated for a long time, it may well be that there would be problems due to changed circumstances regardless of the quality of the original will.

Ability to seek redress

127. Another concern is that getting redress may not be possible when things go wrong. Redress is particularly important as consumers are very unlikely to be able to assess the quality of the will when it is originally written. This is a particular concern in will writing since problems with wills may not be discovered until many years later, making it harder to get redress. All authorised and self-regulated providers are required to have PII that can provide compensation if things go wrong. However, not all other unauthorised firms have such insurance and even those that might have it may be hard to trace when problems arise because there is no central tracking of firms.

128. Customers of authorised and self-regulated firms also have the option of escalating complaints to other bodies.[138] Taking into account the size of the self-regulated part of this area of law, the number of escalated complaints appears roughly proportionate to the number referred to LeO.[139] However, as explained in paragraph 115, the complaint process 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.

129. Other forms of redress options may exist, such as through the courts, but at such high cost as to put them out of reach for most people, particularly where parties are required to go to court.[140]

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[138] Consumers of authorised providers can escalate complaints to LeO, while consumers of self-regulated providers can escalate complaints to the self-regulatory body or the chosen ADR scheme, where available.
[139] This is only indicative given the uncertainty in the size of the self-regulated sector and differences in the way complaints are handled and recorded. For instance, the numbers of official complaints received by the SWW against its members were 48 in 2014, 28 in 2016 and 36 until November 2016. LeO received 824 wills and probate complaints in 2015/16. Legal Ombudsman, *2015/16 Wills and probate complaints data*.
[140] LSCP (2011), *Regulating will writing*.

130. Even where there is a redress mechanism in place, it may not be able to find the original provider; this is particularly a concern in the unauthorised sector where, as noted, there is no central tracking of firms.

Sales practices employed

131. Concerns have been raised about a range of misleading and aggressive sales practices adopted by will providers and a more particular concern over cross-selling, where a firm offers an unrealistically cheap basic will with the aim of selling related services which may be unnecessary, unsuitable and expensive.[141]

132. These concerns have been expressed to us by both solicitors and self-regulated providers, as well as by independent bodies, such as Citizens Advice.[142] Similarly, Economic Insight's research highlighted potentially misleading claims on unauthorised providers' websites during their website review.[143]

133. The majority of anecdotal examples of misleading selling relate to unauthorised will providers. Furthermore, IFF, in its survey of will purchasers, found that 36% of customers of unauthorised will writers felt pressured to buy additional services compared with just 17% of solicitors' customers.[144]

134. However, the little existing direct evidence of the frequency of such problems, suggests they are rare. IFF found that 4% of respondents felt they were given no choice over the purchase of additional services and these were added to their bill automatically.[145] We carried out an analysis of the general complaints data held by Citizens Advice and found that in recent years there have been few complaints in relation to unfair sales practices in the legal services sector generally,[146] and in particular in relation to high-pressure selling and the targeting of vulnerable groups.[147]

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[141] Letter from the LSB to the LSCP.
[142] See Citizens Advice's response to the LSB's consultation on will writing in 2010. Citizens Advice (2010), *Investigation into will writing call for evidence: Response to Legal Services Consumer Panel from Citizens Advice.*
[143] Economic Insight (2016), *Unregulated legal service providers: Understanding supply-side characteristics*, commissioned by the LSB.
[144] IFF Research (2011), *Understanding the consumer experience of will writing services*, commissioned by the LSB, LSCP, OFT and the SRA.
[145] IFF Research (2011), *Understanding the consumer experience of will writing services*, commissioned by the LSB, LSCP, OFT and the SRA. Similarly, a survey by YouGov found that 4% of respondents felt a great deal of pressure to purchase additional services.
[146] The complaints data held by Citizens Advice are not categorised on the basis of whether they relate to the regulatory status of the provider.
[147] Since 2012, fewer than 60 complaints each year have been made by consumers in relation to unfair sales practices in the legal services sector. This represents two per cent of all complaints regarding legal services made to Citizens Advice. In 2015, there was a total of only nine complaints in relation to unfair sales practices

Storage

135. In 2011, the LSCP found that a recurring theme in its research into will writing was beneficiaries being unable to trace wills.[148] While this can be a problem in the authorised sector,[149] LSCP found it was mostly due to will writing companies becoming insolvent and disappearing without trace. This can clearly be a serious issue when it arises, but it may not be that common. YouGov, in a survey on the use of probate and estate administration services, found that around 3% of wills could not be located.

136. A further issue is with seemingly excessive charges for storage among unauthorised providers. The LSCP's case studies include examples of significant charges for will storage sometimes taken as a lump sum at the time the will is written. The examples include cases where an unauthorised will writer did not incur the storage costs it had passed on to the customer; for example where a third party stored a will for a one-off payment, but the unauthorised will writer's client was charged an ongoing fee as well. Solicitors typically offer to store wills for free.

Overall satisfaction and complaints

137. Satisfaction appears high in both the authorised and unauthorised sectors, albeit slightly higher among consumers who had used a solicitor. The IFF research found that overall around four out of five respondents were satisfied with their will and two-thirds would be happy to recommend the company they used if asked.[150] Satisfaction was highest among consumers who had used a solicitor, particularly compared with those who had used a self-completion approach. However, 'they found there were no aspects of the will writing service where there were statistically significant differences between customers of solicitors and those of unauthorised will writers.'[151] The LSB's survey on individuals' legal needs found high levels of customer satisfaction, with consumers using solicitors slightly more likely to be satisfied than those of unauthorised will writers (94% to 91%).

138. The available evidence on complaints does not suggest widespread problems. Members of self-regulatory organisations report very low levels of

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regarding wills. Citizens' Advice Consumer Direct database, Feb 2012-Dec 2015. We excluded bogus selling from sales practices.

[148] LSCP (2011), *Regulating will writing*.

[149] See an example on LeO's website. Around 2.2% of complaints heard by LeO about wills and probate concern lost paper.

[150] IFF Research (2011), *Understanding the consumer experience of will writing services*, commissioned by the LSB, LSCP, OFT and the SRA.

[151] IFF Research (2011), *Understanding the consumer experience of will writing services*, commissioned by the LSB, LSCP, OFT and the SRA.

complaints.[152] The LSB's research found that most unauthorised providers reported not receiving any complaints in the last year.[153] Only a minority of the respondents to the CMA's online questionnaire of the members of the SWW and the IPW said they had received a complaint in the last 12 months.[154] We are not aware of any evidence on complaints in the rest of the unauthorised sector.

Conclusions on consumer protection concerns

139. We have found a range of consumer protection issues. Although the limited evidence on quality we have suggests similar problems among both authorised and unauthorised providers, other consumer protection concerns, for instance, in relation to sales practices, are more prevalent in the unauthorised sector. Problems in will writing are especially difficult to address through redress mechanisms due to consumers' difficulty in assessing quality and the potentially long delay before the will is needed. However, due to the general lack of evidence, we have not been able to identify the scale of any consumer detriment. Furthermore, there is evidence that it is a small rogue element, rather than the broader unauthorised sector, that is the source of such problems.[155]

Why unauthorised providers are increasing their share of supply

140. Despite having lower prices and apparently offering similar quality, unauthorised will writers do not appear to be growing their share of the supply of wills. Unauthorised will writers provide around one in ten wills (see paragraph 40) a similar proportion to that found in 2010. This is particularly surprising because these providers are more proactive in attempting to reach consumers (see paragraph 48). We have found a number of factors that may explain the limited growth of unauthorised will writers:

- **Lack of trust amongst the public about using unauthorised providers**: Specialist will writers consider that being unauthorised gives consumers the impression that their services are of lower quality. This is supported by results from IFF's research, set out in Table 3, that some consumers do not choose unauthorised providers due to concerns over

[152] CMA's online questionnaire of members of the SWW and the IPW. See also paragraph 128.
[153] Economic Insight (2016), *Unregulated legal service providers: Understanding supply-side characteristics*, commissioned by the LSB.
[154] CMA's online questionnaire of members of the SWW and the IPW.
[155] The LSCP found that the 'evidence suggests that a relatively small number of companies are responsible for the worst problems'. See LSCP (2011), *Regulating will writing*.

quality and even whether wills would be valid.[156] Self-regulated providers consider that consumers' lack of trust may partially result from being associated with lower quality providers that are outside of all regulation. They cite this as one of the main challenges they face.[157] Many unauthorised providers are in favour of statutory regulation of will writing in order to stop the worst practices in the unauthorised sector and to signal to consumers that they can be trusted.[158]

Table 3: Why consumers decided against particular will writing channels

	Consumers who considered but rejected a:		
Main reason for deciding against particular provider	Unauthorised will writer	Self-completion	Solicitor
I was unsure about their reliability	39%	37%	19%
I had doubts as to whether the will would be legally binding	17%	43%	3%

Source: IFF Research (2011), *Understanding the consumer experience of will writing services*, commissioned by the LSB, LSCP, OFT and the SRA.

- **Lack of awareness of prices and quality of unauthorised providers**: We have found that consumers find it difficult to access prices and assess quality. This may mean that when unauthorised will writers have the best offering, consumers do not realise that this is the case. People who use an unauthorised will writer are more likely to compare providers (43%) than those who use a solicitor (27%).[159] This may be an indication that unauthorised will writers would be chosen by more consumers if they shopped around more. However, one alternative explanation is that those who shop around are more price sensitive and thus more predisposed to prefer unauthorised will writers.

- **Limited demand for services**: The lack of growth may reflect a limited number of people who value the alternative they offer in comparison to solicitors.

141. We do not have enough evidence to say definitively which of the above factors are holding back unauthorised will writers. However, we note that the measures we are proposing to help consumers in the wider legal services

[156] IFF Research (2011), *Understanding the consumer experience of will writing services*, commissioned by the LSB, LSCP, OFT and the SRA.
[157] CMA's online questionnaire of members of the SWW and the IPW.
[158] CMA's online questionnaire of members of the SWW and the IPW.
[159] IFF Research (2011), *Understanding the consumer experience of will writing services*, commissioned by the LSB, LSCP, OFT and the SRA.

sector should also help address consumers' understanding and awareness of unauthorised will writers.

Conclusion on the role of regulation in will writing

142. We have found that the nature of will writing, particularly consumers' difficulty in assessing quality and the potentially long delay before the will is used, means there is potentially a role for ex-ante regulation, eg training and entry requirements. The benefit of any such regulation would have to be weighed against the burdens it placed on businesses and the impact on choices for consumers. However, there is not clear evidence on how widespread consumer protection problems are and therefore the extent to which further regulation would be beneficial. More robust evidence about the unauthorised sector would allow this question to be assessed more comprehensively.

Probate and estate administration services

143. In this section we consider probate and estate administration services. First, we provide some background for these areas of law, including which providers are active in the provision of such services and how the process of competition works. Second, we analyse whether and how consumers use information when choosing their provider and how this has an impact on market outcomes (price, quality and innovation). Finally, we analyse the role of regulation in probate and how regulation in this area of law affects the wider estate administration process.

Providers

144. As noted in paragraph 32, probate is just one element of the administration of the estate process. However, it plays an important role in the process, as it is the only part that is subject to sector-specific regulation.

145. In 2015, there were just over 277,000 grants of probate issued by the Probate Service. As can be seen in Table 4, the numbers fluctuate but have remained broadly consistent over the last five years at around 250,000 a year. In 2015, 39% of grants were issued to private individuals, ie not professionals. The proportion of personal applications appears to be rising; in 2007, less than 30% were administered by private individuals.[160]

[160] See YouGov (2016), *Wills and probate 2015*.

Table 4: Grants of probate issued in England and Wales, 2010 to 2015

	2010	*2011*	*2012*	*2013*	*2014*	*2015*
Grants of representation	240,758	272,932	243,975	261,559	248,027	277,029
% of personal applications	37.51%	33.93%	39.27%	40.78%	39.60%	39.06%

Source: Probate Service. Note: figures include grants of probate, grants of letters of administration with will annexed (cases where there is a will but the executor is not applying), and grants of letters of administration.

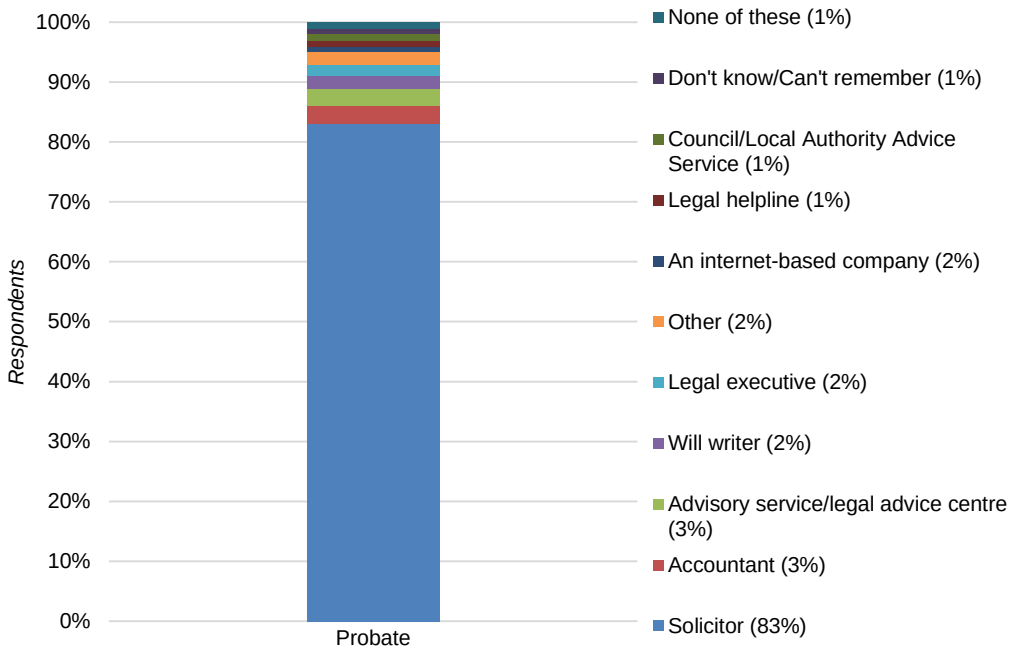
146. The LSB research estimated that the mean price paid for probate services was £829.[161] On the basis that there are roughly 160,000 grants that have been made to professionals, we estimate the total value of probate services to be around £140 million per annum.[162] This may underestimate the size of this area of law as some people making personal applications will pay for advice and then submit a personal application.[163]

147. Solicitors are by far the most common type of provider for paid-for probate services. There are a range of other providers that make up small percentages. These are a mix of authorised providers, including accountants, legal executives, licensed conveyancers and notaries who can carry out the reserved part of the process, and unauthorised providers who cannot, although some unauthorised providers outsource the reserved element of the process.

148. The CMA's survey of individual consumers found that solicitors were the only or main legal provider for 83% of those surveyed who had used a legal services provider for a probate issue.[164] There were then a range of other types of provider none of which was the main provider for more than 3% of respondents. The breakdown of providers from the CMA's survey is set out in Figure 6.[165]

[161] OMB Research (2016), *Prices of individual consumer legal services: Research report*, commissioned by the LSB.
[162] This methodology is consistent with YouGov (2016), *Wills and probate 2015*.
[163] One potential reason for proceeding in this way is where the advice is from a provider not authorised to submit probate forms. See paragraphs 155 and 202 for further details.
[164] IFF Research (2016), *Market study into the supply of legal services in England and Wales – consumer findings*, commissioned by the CMA.
[165] IFF Research (2016), *Market study into the supply of legal services in England and Wales – consumer findings*, commissioned by the CMA.

Figure 6: Probate: only or main legal services provider



Source: IFF Research (2016), *Market study into the supply of legal services in England and Wales – consumer findings*, commissioned by the CMA. Base: Those that used a legal services provider for their legal matter. Number of consumers with probate issues: 95.

Authorised providers

Solicitors

149. Solicitors represent a very high share of all probate service providers. In line with the CMA's survey of individual consumers, research by YouGov indicates that solicitors have an 86% share of such services.[166] The CMA's survey also indicates that consumers were more likely to use a solicitor for probate services than average.[167]

150. While as a group they have a high share, provision among solicitors is very fragmented. Data from the Law Society suggests that around 4,000 solicitor firms, 40% of the total, provide probate and estate administration services. Of these, around 450 solicitor firms specialise in these areas of law (ie, probate and estate administration work makes up over 30% of their turnover[168]). On average, solicitor firms administer around 100 estates per year, with larger firms administering over 500 estates per year.[169] The very largest authorised

[166] YouGov (2012), *The use of probate and estate administration services*, commissioned by the LSB.
[167] IFF Research (2016), *Market study into the supply of legal services in England and Wales – consumer findings*, commissioned by the CMA. The finding is indicative, given the small size of the sample.
[168] Data provided by the Law Society to the CMA.
[169] IFF Research (2011), *Probate and estate management services survey*, commissioned by the LSB.

providers administer several thousand probate cases a year representing around 3% of the total number of probate cases.

151. We understand from the Law Society that probate is not a significant source of revenue for most solicitors. However, probate work is often a gateway for estate administration work, which tends to generate relatively more revenue.

152. It is worth noting that some of the legal work done by solicitor firms may be in practice carried out by other legal professionals, most notably paralegals (see paragraph 197).

ICAEW-authorised providers

153. The Institute of Chartered Accountants in England and Wales (ICAEW) has only recently been given the power to authorise probate providers. Since September 2014, ICAEW has authorised more than 200 firms.

Other authorised providers

154. Other professions, such as notaries, licensed conveyancers and legal executives are authorised to provide probate services. However, there are far fewer of these professionals compared with solicitors and none is particularly focused on probate.[170]

Unauthorised providers

155. Other professionals may still offer probate as a part of the wider estate administration services. These firms are not entitled to submit probate forms to the Probate Service but can do all other parts of the estate administration process and have various options to deal with the reserved element of the process.[171] According to YouGov research, these providers were more likely

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[170] Specifically,

- **Notaries**: the majority of authorised notaries only undertake notarial activities. Only 2% of them undertake probate work alongside notarial activities.
- **Licensed Conveyancers**: There are relatively few licensed conveyancer entities authorised by the Council of Licensed Conveyancers (CLC), just 214 in September 2015. Their main focus is on residential conveyancing, rather than probate, which made up just 7% of their work. Of the 49 ABSs licensed by the CLC registered at December 2015, just 4% were licensed to offer probate services only, and 17% for both probate and conveyancing services.
- **Legal Executives**: Following its designation as an approved regulator for probate activities, CILEx regulation has introduced additional practising rights for Chartered Legal Executives who wish to provide reserved activities. We understand that, from November 2014, just three CILEx fellows gained the probate additional rights.

Source LSB (2016), *Evaluation: Changes in the legal services market 2006/07-2014/15 – Main report: An analysis of market outcomes associated with the delivery of the regulatory objectives*.

[171] Paragraph 203 describes how unauthorised providers undertake in practice probate activities.

to be used by consumers who needed an ad hoc service or advice, rather than by those looking for a full service.[172]

Accountants

156. Although the number of accountants who are authorised to provide probate is limited (but growing), we understand that unauthorised accountants play an important role in the wider provision of estate administration services.

157. This is because executors of large and complex estates tend to consult both lawyers and accountants.[173] The work is often divided in a way which leaves the bulk of work on financial management and control of the estate to the accountants. In the case of smaller but complex estates (for instance, those involving business assets), families will frequently seek advice or executor services from accountants, to assist with financial management and tax issues, without requiring the services of a lawyer. The work undertaken by accountants on larger and more complex estates means that the importance of their role is likely to be underestimated if only figures based on number of estates are considered.

158. When an accountant not authorised to provide probate activities is used, probate is generally provided in the form of advice to someone who completes the probate as an individual; or by outsourcing the reserved element to an authorised provider, typically a solicitor. Referral arrangements to solicitors tend to involve informal relationships between fellow professionals without any fees passing hands. The ICAEW (representative arm) told us that there is no predominant route, with the choice depending on the wishes of the client, the nature of the case and the accountant.

159. Research by LSB in 2011 (ie prior to ICAEW designation) showed that nearly one in five of those who used any type of professional probate service (16%) used two or more service providers. The majority used two service providers, usually an accountant or bank which sub-contracted or outsourced the application for grant of probate to a solicitor.[174]

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[172] YouGov (2012), *The use of probate and estate administration services*, commissioned by the LSB.
[173] Research by IFF found that 'Around two-fifths of solicitors stated that on occasion they will engage third parties such as accountants for help with trickier issues relating to the administration of an estate. These issues are typically due to income tax issues or stocks and shares owned by the testator, whereby an accountant or stockbroker will be engaged. IFF Research (2011), *Probate and estate management services survey*, commissioned by the LSB.
[174] IFF Research (2011), *Probate and estate management services survey*, commissioned by the LSB.

Banks

160. For banks and building societies, we understand that probate and estate administration do not currently represent a major source of revenue. In the past, many banks and building societies employed in-house solicitors for probate.[175] However, the role of banks as probate providers has declined in recent years: many banks have started to outsource their probate work, or sold their in-house probate unit.[176] Banks still play an important role in this area of law, however, as they are often informed early on about someone's death. Furthermore, due to their scale, they are important partners for some probate providers. For the banks, probate is now typically offered as a service that enhances their wider offering to high net worth customers by either allowing a joined up financial management service or recommending a trusted partner.

Other providers

161. Other unauthorised legal professionals, most notably unauthorised will writers, IFAs and paralegals, also offer probate and estate administration services. In order to finalise the probate application, some providers (particularly those who work for firms offering financial advice) have established partnerships with authorised persons in order to outsource the reserved element of the probate process. This is not necessarily through formal referral arrangements.

162. However, according to the LSB's legal needs survey, unauthorised will writers and paralegals are responsible for only around 1% of paid-for estate administration cases.[177] LSB's research on unauthorised providers found there were 1,000 wills and estate administration providers, although they account for a very small proportion of paid-for estate administration.[178] The CMA's online questionnaire of self-regulated will writers shows that many of them also provide assistance with the preparation of the probate application.[179]

163. Charities also may be involved in probate and estate administration services if they are a beneficiary and there is nobody else to administer the will. Charities tend to use a select handful of solicitors experienced in probate and administering estates for charities.

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[175] IFF Research (2011), *Probate and estate management services survey*, commissioned by the LSB.
[176] For instance, in October 2015, HSBC transferred its probate business to Simplify.
[177] See Ipsos MORI (2016), *Online survey of individuals' handling of legal issues 2015*, commissioned by the Law Society and the LSB.
[178] Economic Insight (2016), *Unregulated legal service providers: Understanding supply-side characteristics*, commissioned by the LSB.
[179] CMA's online questionnaire of members of the SWW and the IPW.

Process of competition

164. Competition within probate and estate administration services shares many characteristics with other legal services:

- Professional help with probate is most likely to be a one-off purchase, although those who have an ongoing need for legal or financial advice may purchase it as part of an ongoing relationship.

- Generally, probate services are considered as distress purchases by the executor of the will.[180] This is likely to affect the way in which people approach buying the service. Research by YouGov showed that the most common reason for using a professional for probate was the reassurance that it gives in a moment of stress. People also felt using a professional seemed like the obvious thing to avoid mistakes.[181]

- As for wills, there is an important local dimension to competition for probate services. Research by the LSB indicates that just over half of providers undertaking work in the wills, trusts and probate area said their competition was local, with only 22% stating it was national. Probate services are, however, more likely to be delivered remotely than will writing services.[182]

165. One feature specific to probate is the strong link between will writing, probate and estate administration, as the will can be considered as the starting point for probate, which is in turn the starting point for estate administration. Consumers' decisions when purchasing a will have an impact on these other services. This impact comes through a number of routes:

- **Professional executors**: where a will appoints a professional executor they are also then very likely to carry out the probate and the estate administration work. IFF found that one in eight consumers appoint their will provider as the executor of their will.[183] This rises to just under one in five for customers of solicitor firms. This in line with the CMA's online

[180] YouGov (2016), *Wills and probate 2015*.
[181] See YouGov (2012), *The use of probate and estate administration services*, commissioned by the LSB. Furthermore, in the case of funerals, a classic distress purchase, the OFT found that people do not know what to expect, spend little time thinking about their purchase and feel under pressure to sort everything out quickly. See OFT (2001), *Funerals: A report of the OFT inquiry into the funerals industry*.
[182] OMB Research (2016), *Prices of individual consumer legal services: Research report*, commissioned by the LSB.
[183] IFF Research (2011), *Understanding the consumer experience of will writing services*, commissioned by the LSB, LSCP, OFT and the SRA.

questionnaires of solicitors where the majority of firms said that they are appointed as executor for up to 25% of wills they write.[184]

- **Prepayment for probate services**: some consumers prepay for probate and estate administration services, often when the will is drafted. In doing so, they are seeking to fix the cost of probate and the estate administration upfront. Concerns have been raised in relation to this practice, which may not necessarily be advantageous for consumers, given that the locked-in price of probate is often reported to be no better and sometimes worse, than prevailing prices. Moreover, the price guarantee is not necessarily enforceable and providers may have the incentive not to fulfil their price promise if prevailing prices are higher.[185] It is unclear how prevalent this option is in practice: it is widespread according to the 2012 research by YouGov (which reports that in 33% of paid-for cases, the provider was pre-arranged by the deceased, a proportion that increases with the value of the estate). However, a more recent survey by YouGov found just 1% took this option in 2015.[186] Furthermore, wills and probate providers we spoke to did not think it was a common practice.

- **Will storage**: often consumers choose the solicitor who has drafted and stored the will of the testator to provide probate services. The CMA's online questionnaire of solicitor firms found the majority of respondents stored over 75% of the wills they wrote. These stored wills are an important source of probate work; in our online questionnaire of solicitor firms, the majority of respondents said that over half of their probate work related to wills that the firm had drafted.[187]

166. The use of professional executors and prepayment are likely to limit consumer choice of the provider undertaking probate and estate administration, but their use appears relatively rare. While will storage does not make it as difficult to use a different provider, it is a more common occurrence. Its impact may be magnified further by consumers' low levels of engagement in the area of probate (see paragraphs 180 to 183).

167. While it is difficult to assess the scale of the impact of will storage, a number of probate providers to whom we spoke raised it as a barrier to them winning more work. Providers also appear to recognise and take advantage of the link. IFF notes that estate administration tend to be a more lucrative area of law

[184] CMA's online questionnaire of solicitors providing wills and probate services.
[185] We understand that the code of conducts adopted by the SWW, STEP and IPW prohibit its members from taking advance payments for acting in the administration of a client's estate.
[186] YouGov (2016), *Wills and probate 2015*.
[187] CMA's online questionnaire of solicitors providing wills and probate services.

than will writing and that will writing is often offered at a low cost and sometimes even as a loss leader to gain probate and estate administration work or other legal work later.[188]

168. That probate services are required after someone's death has an impact on competition beyond making it a distressed purchase (see paragraph 13) as sensitivity is required by providers in this area. More so than in other areas of law, providers have to be careful about how and when they approach potential consumers. This gives an advantage to providers who will be approached by consumers, for example, to retrieve a stored will or for another service such as funeral services. It may also affect providers' marketing with a preference for reactive approaches, such as search engine keyword advertising.

How well consumers use information to drive competition

169. As highlighted in Chapter 3 of the main report, effective competition requires consumers to be equipped to make informed purchasing decisions and providers to be incentivised to demonstrate the value (in terms of price and quality) of their offering.[189] To assess how well consumers are able to drive competition in probate services, this section considers:

- how consumers act upon their probate legal need;
- transparency of price and quality information; and
- competition outcomes.

Consumers' legal needs in relation to probate

170. The customer base for probate services are those who choose not to handle the issue alone. For relatively few probate issues, people did nothing in response to a probate issue,[190] whereas in almost 60% of probate-related legal issues, people decided to handle it alone or in an informal way.[191] Figure 7 summarises the ways people handled legal issues relating to probate.

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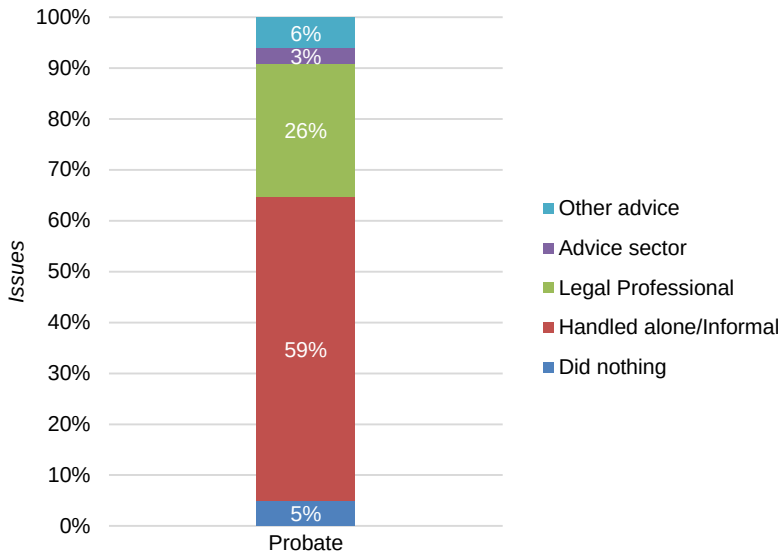
[188] IFF Research (2011), *Probate and estate management services survey*, commissioned by the LSB.
[189] See paragraphs 3.228–3.237 of the main report.
[190] LSB's individual legal needs survey found that just 5% of people take no action in response to a probate legal need. This is lower than the 14% average across all areas of law.
[191] As noted in paragraph 145, around 40% of grants of representation are issued to private individuals and this figure will include grants where some advice has been paid for and thus the number of pure DIY probates is likely to be lower. The difference in these figures may be explained by the fact that only around half of estates require probate, but people may consider their involvement in other estates as a probate legal need, for example if they had to establish probate was not required.

Figure 7: Handling strategy for legal issues related to probate



Source: Based on Figure 5.9 in Ipsos MORI (2016), *Online survey of individuals' handling of legal issues 2015*, commissioned by the Law Society and the LSB, p61.

171. Those who handle probate alone find the process reasonably straightforward. Research by YouGov shows that factors that make it more likely that the DIY route is taken include the presence of a sole executor, lower value estates and reduced complexity of the estate to be administered.[192] The perceived price of probate is also important: over one quarter (27%) cited high professional costs as a reason for doing it themselves although the majority (69%) giving this reason did not get a quote from a provider.[193]

172. The LSB survey also found that in 26% of probate-related issues, people use a legal professional, higher than the average across all legal issues.[194] The use of paid professionals for probate is more likely when a will already exists, when the value of the estate is above the inheritance tax threshold (ie £325,000) and when the estate is considered to be complex to administer (eg estates involving inheritance tax, a family trust, younger beneficiaries and complicated family histories). Age does not appear to be a factor that makes the use of paid professionals more likely.[195]

[192] See YouGov (2012), *The use of probate and estate administration services*, commissioned by the LSB. Furthermore, it should be noted that help and guidance on DIY probate has been made available via the GOV.UK and HMRC websites. This might have increased the numbers of people applying for probate without specialist assistance.
[193] YouGov (2012), *The use of probate and estate administration services*, commissioned by the LSB.
[194] Ipsos MORI (2016), *Online survey of individuals' handling of legal issues 2015*, commissioned by the Law Society and the LSB.
[195] YouGov (2012), *The use of probate and estate administration services*, commissioned by the LSB.

173. Research by LSCP shows those using probate services were most likely to have carried out some aspects of the service themselves (ie unbundling) compared with other areas of law.[196]

Transparency of price and quality information

174. Probate providers tend not to advertise or display their prices, making them less easily accessible for consumers. The OMB research found that only about 14% of firms display their prices on website.[197] The majority of respondents to our online questionnaire of solicitors stated that they provide prices only on request or do not advertise at all.[198] Both of these pieces of research found firms less likely to display prices for probate services than for will writing services.

175. While consumers are given price estimates before engaging their provider, this is likely to be too late to help consumers make an informed comparison of providers.[199] This is in line with the CMA's online questionnaire of solicitor firms specialising in probate services, which indicates that all firms provide an initial written quote to the customer for probate services before the contract is signed.[200] YouGov research confirms that the majority of consumers were informed of costs before commissioning a probate service. Only a small minority said there was no mention of cost or were unable to remember. Those who were dissatisfied and those who found the service poor value for money were significantly more likely to say that cost was not mentioned.[201]

176. The majority of probate providers price their work on a fixed fee basis. However, in contrast to will writing, hourly rates remain relatively common. Price structures in estate administration are even more varied, with fixed pricing being less common,[202] but they are becoming increasingly used.

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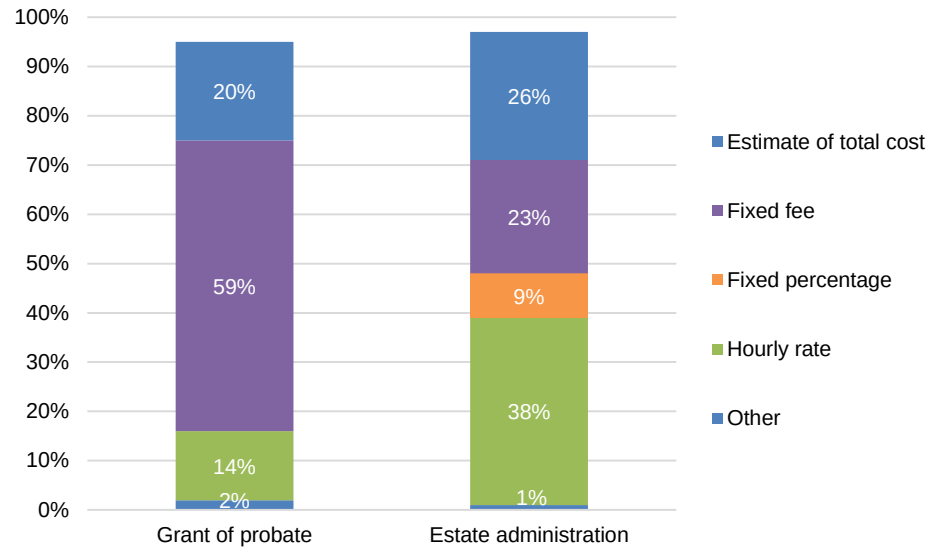
[196] YouGov (2016), *Legal services consumer tracker 2016*, commissioned by the LSCP.
[197] OMB Research (2016), *Prices of individual consumer legal services: Research report*, commissioned by the LSB.
[198] CMA's online questionnaire of solicitors providing wills and probate services.
[199] According to IFF research, all solicitors and around three-fifths of non-solicitors reported that they always provide an indication of likely cost at the point of engagement, irrespective of whether the client asked for it. IFF Research (2011), *Probate and estate management services survey,* commissioned by the LSB.
[200] CMA's online questionnaire of solicitors providing wills and probate services.
[201] YouGov (2012), *The use of probate and estate administration services*, commissioned by the LSB.
[202] Research commissioned by the LSB shows that 59% of probate providers charge a fixed fee and the remainder use either an estimate of the total cost (20%) or an hourly rate (14%). For estate administration, the most common approach was an hourly rate, with over a third of firms charging in this way (38%). A quarter said they would charge a fixed fee (23%) or an estimate of the total cost (26%) and a smaller proportion would charge a fixed percentage (9%). Often fees were based on a combination of two or more of these charging structures. OMB Research (2016), *Prices of individual consumer legal services: Research report*, commissioned by the LSB.

Figure 8: charging approach to probate and estate administration



Source: Based on Figure 5.2.2 in OMB research (2016), *Prices of individual consumer legal services: Research report*, commissioned by the LSB, p.33.

177. Non-solicitor providers adopt a variety of charging approaches. According to IFF's research, accountants predominantly charge an hourly rate,[203] while unauthorised will writers and IFAs tend to take a percentage of the estate's value or charge a flat fee. Trust corporations and banks/building societies employ a range of charging structures (although they are most likely to charge a percentage of the estate's value).

178. So far as transparency on quality is concerned, we understand that firms attempt to demonstrate quality in a similar way to other areas of law, for instance, by citing experience and testimonials from past clients.

Competition outcomes

179. This section looks at competitive outcomes as a result of the limited information available to consumers when choosing probate providers. First, we look at how consumers choose probate providers. Secondly, we look at the outcomes in terms of prices and quality.

- *How consumers choose providers*

180. As with other legal services, those buying probate services tend to choose their provider based on past use or a recommendation. YouGov found half of

[203] IFF Research (2011), *Probate and estate management services survey*, commissioned by the LSB. A qualitative survey carried out by SWAT UK among firms that were already authorised by ICAEW to conduct non-contentious probate shows that they typically charge either at an hourly rate or on the basis of a fixed fee. See SWAT UK (2016), *Probate UK survey*. SWAT UK is a provider of accountancy training and also provides compliance support to accountancy firms.

consumers who used a probate professional used someone they had previously used for another legal issue. The next most often given reasons for choosing a provider are recommendations and knowing someone who worked at the firm.[204]

181. Few consumers compare providers. The percentage of consumers shopping around for probate services is lower compared with other areas of law. Survey evidence indicates that just 10% of consumers shopped around for a probate provider.[205] Those who did not compare said that they did not know where to start or believed it would be too difficult.[206] The CMA survey on individual consumers also indicates that consumers of probate services were less likely than average to use information about the provider's costs and/or qualifications; they were also less likely to rely on feedback and recommendations from a professional third party compared with the sample average.[207]

182. Of those who have compared different providers, the majority did so by searching the internet and asking family and friends. Some comparers found that there was not very much choice.[208]

183. The distressed nature of the probate process is likely to reduce the incentives to shop around for the best probate deal and may induce consumers to go with a local provider, typically a solicitor,[209] who is familiar to them (for instance, because the will is stored with that solicitor or the solicitor is the executor of the will) or recommended by family or friends.

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[204] YouGov (2012), *The use of probate and estate administration services*, commissioned by the LSB.
[205] The percentage of consumers who have compared providers varies from 9% (YouGov (2016), *Legal services consumer tracker 2016*, commissioned by the LSCP) to 11% (YouGov (2012), *The use of probate and estate administration services*, commissioned by the LSB). CMA's consumer survey found that 17% of probate consumers shopped around, in line with the sample average.
[206] Research by YouGov found that 6% of consumers wanted to compare different providers but did not know where to start. YouGov (2016), *Wills and probate 2015*. The CMA's survey of individual consumers found that non-comparers whose legal matter was probate were more likely than average to consider that comparing providers would be too difficult to do. IFF Research (2016), *Market study into the supply of legal services in England and Wales – consumer findings*, commissioned by the CMA.
[207] IFF Research (2016), *Market study into the supply of legal services in England and Wales – consumer findings*, commissioned by the CMA. Note that this is an indicative finding due to small sample size.
[208] Research commissioned by the LSCP found that 19% of those who shopped around for a probate provider found that there was 'not very much choice' when looking for a provider, higher than those who used a service for will writing (11%). See YouGov (2016), *Legal services consumer tracker 2016*, commissioned by the LSCP.
[209] CMA's survey indicates that individual consumers who had experienced probate matters were more likely to have used a solicitor than the sample average. IFF Research (2016), *Market study into the supply of legal services in England and Wales – consumer findings*, commissioned by the CMA. Note that this is an indicative finding due to small sample size.

- *Competition on price, quality and innovation*

184. The limited levels of consumer engagement in this area are likely to have an impact on competition. We look at the impact this has on outcomes for consumers in terms of prices, quality and innovation.

185. In terms of prices, LSB research found striking variation in the prices given by providers for identical scenarios.[210] Quoted prices for probate services varied from £100 to £6,375 for a fixed scenario.[211] The difference between the upper and lower quartile prices quoted was found to be £450. Similarly, the research found high degree of variation in the prices quoted for the estate administration scenario. Table 5 presents some summary statistics showing prices charged for the probate and estate administration scenarios.

Table 5: Summary statistics on prices charged for probate and estate administration

	Grant of probate scenario	*Estate administration scenario*
Mean	£829	£1,926
Median	£650	£1,500
Standard deviation	£751	£1,506
Maximum	£6,375	£8,750
Upper quartile	£900	£2,500
Lower quartile	£450	£875
Minimum	£100	£150

Source: OMB research (2016), *Prices of individual consumer legal services: Research report*, commissioned by the LSB.

186. The price paid for probate and estate administration services is likely to be affected by the provider's charging approach.

- For probate, providers that charged a fixed fee offered the lowest price, followed by providers charging hourly fees. Those that charge an estimate of total cost tend to be, on average, more expensive.[212]

[210] OMB Research (2016), *Prices of individual consumer legal services: Research report*, commissioned by the LSB.
[211] Like the will writing scenario, the probate scenario was based on a defined set of features including a total value of the estate of £255,000, made up of residential property, cash and securities.
[212] For probate, providers that charged a fixed fee had the lowest mean price at £737; for those charging an hourly rate the mean was £871 and for those giving an estimated total cost the mean was £928. YouGov found that probate consumers who were presented with a fixed cost stated that their costs (£1,200) were significantly lower than respondents who were presented with hourly rates (£1,800), and combinations of approaches (£2,500). Note, however, that the small sample size means that all but one of these differences are not statistically significant. See OMB Research (2016), *Prices of individual consumer legal services: Research report*, commissioned by the LSB, and YouGov (2016), *Wills and probate 2015*.

- For estate administration, price differences across charging structures were smaller except for those charging a fixed percentage of the estate who were far more expensive.[213]

187. OMB research shows that providers' characteristics are also likely to affect the price charged:

- **Type of provider**: among unauthorised providers, there is limited evidence that unauthorised will writers tend to be relatively more expensive than solicitors.[214] However, as noted in paragraph 162, only a small proportion of unauthorised probate providers are will writers. As regards other unauthorised providers, IFF research found 'little variation between solicitors and non-solicitors in terms of their fees for probate and/or administration services.'[215]

- **Whether firms displayed their prices online**: the mean price for the grant of probate scenario of firms that display their prices online was narrowly higher than those that did not. This was the only one of the five scenarios in the wills and probate area where this was the case. Caution needs to be exercised in interpreting this result given the small number of firms which actually advertise prices online.

- **Location**: clear differences in prices exist depending on the firms' location. For the grant of probate scenario, prices in the South East were significantly higher than those in the North and Midlands.[216]

- **Other characteristics**, such as size, having an ABS structure, and offering services remotely seem not to have an impact on the price charged for probate and estate administration services.[217] Nor was a statistically significant difference in average prices charged found between firms that quoted using a menu of outline prices and those that quote on a case by case basis.

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[213] For estate administration, the average hourly rate was £1,700; average fixed fee £1,721; average estimated cost £1,868; and average fixed percentage £4,153. See OMB Research (2016), *Prices of individual consumer legal services: Research report*, commissioned by the LSB.
[214] Note, however, this result is based on a small sample size (ie 30 specialist will writers). Average cost for grant of probate is £819 compared with £1,150 of specialist will writers. Average cost for estate administration is £1,894 for solicitors and £2,258 for specialist will writers. See OMB Research (2016), *Prices of individual consumer legal services: Research report,* commissioned by the LSB.
[215] IFF Research (2011), *Probate and estate management services survey*, commissioned by the LSB.
[216] As noted in the wills section, we considered whether some of the overall variation might be caused by these regional differences. However, using the data from the LSB research we found that there was still substantial price dispersion within regions. Since the probate scenario was based on a fixed estate value, this should control for any differences in average estate values between regions.
[217] OMB Research (2016), *Prices of individual consumer legal services: Research report*, commissioned by the LSB.

188. In relation to quality of advice in probate, we have not found any robust indicator that is readily available. In principle, an immediate test of the quality of probate services takes place when the application for grant of probate is submitted to the Probate Service, as the grant is only released when an application is in order.[218] While probate may be rejected because of a poor will writing service (see paragraphs 117 to 126), part of the role of probate providers is to check these elements. Anecdotal data from the Probate Service indicated that, in the majority of cases, rejections are caused by missing documents, errors and omissions in the completion of the probate forms, suggesting that the quality of the probate service plays a major role in rejections.[219] From data collected over a two-week period there was no evident correlation between frequency and type of mistakes and the type of provider (ie, solicitor and personal applications, which include submissions by individuals who obtained assistance by unauthorised providers). However, such data are not collected systematically.[220]

189. IFF reports practitioners' views in relation to quality of advice in the area of probate.[221] A majority of solicitors considered that the quality of the probate and estate administration services met the needs of clients, but many noted that there was room for improvement in the transparency of the service provided, particularly around the cost of the service and the various steps of the probate process. Unauthorised providers we spoke to that have outsourced reserved probate work noted that quality was mixed and solicitors being subject to regulation was no guarantee of quality.

190. Generally, probate consumers are satisfied with the overall service of their provider. Satisfaction rates tend to be higher when the service is undertaken by solicitors.[222] Consumers who felt dissatisfied with their experience cited as reasons delays and poor communication on the developments in their case as well as the perception that the services provided did not represent good value for money, and mistakes made by the provider.[223] The LSCP tracker survey

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[218] Similarly, HMRC plays a similar quality control role in relation to inheritance tax and capital gains tax.
[219] This is based on the data collected by the Probate Service in a two-week period in order to understand why applications had to be stopped.
[220] LSB (2016), *Evaluation: Changes in the legal services market 2006/07 - 2014/15 – Main report: An analysis of market outcomes associated with the delivery of the regulatory objectives*.
[221] IFF Research (2011), *Probate and estate management services survey*, commissioned by the LSB.
[222] YouGov (2012), *The use of probate and estate administration services*, commissioned by the LSB.
[223] This is in line with complaints data collected by the LeO. Although only a minority of dissatisfied consumers go on to complain to LeO, the key reasons for complaints include delays in the process, mistakes, failure to follow instructions, and excessive costs. Consumers who do not complain to LeO have the belief that no good would come of making a complaint and it might actually result in more expense. Many also decided not to complain formally because of their distressed status. See IFF Research (2011), *Probate and estate management services survey*, commissioned by the LSB.

reports that probate consumers were more likely to feel the service was poor value for money compared with consumers purchasing will writing services.[224]

191. As noted above, however, delays are often caused by complications with the will, which require providers to spend additional time and resources on rectifying such problems. This has an impact on cost, which is passed onto the client and may create dissatisfaction, despite the fact that the quality of the will is out of the control of the probate provider.[225]

192. Innovation in probate services appears similar to that in other areas of law. Areas of innovation often cited include an increase in the use of fixed fees, particularly for estate administration, and the unbundling of probate services. Online provision is relatively limited in the probate sector: for instance, only 18% of probate consumers had their service delivered electronically, compared with an average of 26% of other areas of law.[226]

Conclusion on competition outcomes

193. In summary, our analysis indicates that the minority of consumers search and shop around. As a result, there is limited scope for competition to drive positive outcomes. Price dispersion is higher than in other areas of law; it is particularly difficult to assess quality of probate services, mainly because the quality of the will is likely to affect the probate process. The role of unauthorised providers appear to be limited at the moment: consumers tend to use solicitors who they have used in the past.

The role of regulation in probate

194. This section considers what impact regulation has on the provision of probate services. It considers the rationale for reservation, both from a public interest and a consumer protection perspective, and the impact of reservation on competition in the provision of probate and estate administration services. Specifically, it analyses whether reservation achieves an appropriate balance between the public interest and consumer protection considerations and competition barriers. Furthermore, it tries to assess the impact of allowing new authorised providers (eg accountants and legal executives) to offer probate services. Finally, it assesses whether the possibility for unauthorised providers to work around the narrow probate reservation (and undertake an estate administration service similar to the one offered by authorised

[224] YouGov (2016), *Legal services consumer tracker 2016*, commissioned by the LSCP.
[225] IFF Research (2011), *Probate and estate management services survey*, commissioned by the LSB.
[226] YouGov (2016), *Legal services consumer tracker 2016*, commissioned by the LSCP.

providers) has had any impact on competition in the provision of probate and estate administration services and on consumer protection.

195. The Legal Services Act 2007 defines 'probate activities', as 'preparing any papers on which to found or oppose a grant of probate/letters of administration'. As noted in paragraph 32, this definition limits the reservation to a small part of the wider estate administration process (ie the submission of the completed papers to the Probate Service), and this is the only element for which provision is restricted to authorised persons.[227] Other aspects of the estate administration process, including the distribution of the deceased's assets, are not subject to sector-specific regulation and can be undertaken by unauthorised providers.

196. Section 12(2) and Schedule 4 to the Legal Services Act 2007 and the Legal Services Act 2007 (Approved Regulators) Order 2009 (SI 2009 No. 3233) designate the Law Society, the Bar Council, the Master of the Faculties, the Council for Licensed Conveyancers, the Institute of Chartered Accountants of Scotland (ICAS) and the Association of Chartered Certified Accountants (ACCA)[228] as approved regulators in relation to probate.

197. The Legal Services Act 2007 sets out some exceptions to the requirement to be authorised: first, reservation only extends to services delivered for a fee, gain or reward. As such, any individual can make a personal application for a grant of probate without the involvement of authorised persons. Furthermore, unauthorised persons employed in authorised or licensed firms can carry out reserved legal activities under the supervision of an authorised person.

198. Recently, two other bodies – The Chartered Institute of Legal Executives (CILEx) and the ICAEW – became approved regulators in relation to probate activities.[229,230]

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[227] Unauthorised providers undertaking reserved probate activities (and any reserved activities in general) commit a criminal offence under s14 and s17 of the Legal Services Act 2007.
[228] Note, however, that neither the ACCA nor the ICAS have actually exercised the right to grant members the right to conduct probate. See paragraph 208 for further details.
[229] In April 2013, CILEx submitted to the LSB an application to become an approved regulator in relation to probate activities (and reserved instrument practice rights). In December 2013, LSB recommended to the Lord Chancellor to designate CILEx as an approved regulator for probate activities. In March 2014, the Lord Chancellor accepted the recommendation and CILEx became an approved regulator. See ILEX Professional Standards Ltd (IPS) - Approved regulator application.
[230] In December 2012, the ICAEW made an application to the LSB to be designated as an approved regulator and a licensing authority in relation to (uncontested) probate activities. LSB recommended to the Lord Chancellor to designate ICAEW as an approved regulator for (uncontested) probate activities. In September 2014, the Lord Chancellor accepted the recommendation and ICAEW became an approved regulator. See ICAEW - Approved regulator and licensing authority applications.

199. In March 2015, as part of the Deregulation Bill, CLC was granted the power to issue standalone licences for professionals to conduct reserved probate work without them having to become licensed conveyancers.[231]

200. As noted in paragraph 36, legal services providers authorised to provide reserved activities, including probate, are subject to regulation which generally applies to all of the activities they undertake, including unreserved activities such as estate administration. Authorised providers need to adhere to rules on standards of service and conduct, to hold PII and to maintain up-to-date training. Particularly relevant for probate and estate administration is the requirement for authorised professionals to comply with client money-handling rules, ie specific accounts rules ensuring that money belonging to clients is kept safe.[232] Authorised professionals are also subject to a redress framework in the event that things go wrong, which includes access to LeO, run-off PII insurance and access to compensation fund, where available. This is not necessarily true for providers unauthorised to carry out probate activities, who are generally subject to general consumer law.[233]

201. Concerns around the regulatory framework led the LSB to launch an investigation in 2011 on whether the probate reservation should be widened to include estate administration activities or whether probate activities should cease to be reserved. The LSB's final decision was to recommend neither reservation of estate administration activities nor removal of probate from the list of reserved activities.[234]

Scope of the reservation

202. The narrow scope of the probate reservation allows unauthorised providers to undertake the other elements of the wider estate administration process that are not reserved and incentivises them to find ways to work around the reservation in order to provide a service that is as close as possible to the one offered by authorised providers.

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[231] See CLC (2015), CLC granted powers to issue licences to probate specialists and Legal Futures (2015), Peers pave way for new breed of lawyer – licensed probate practitioners.
[232] For instance, solicitors' handbook requires them to comply with SRA's accounts rules.
[233] For further details, see Appendix F (Comparison of consumer protection standards required of providers by regulatory status). However, some unauthorised providers are still subject to regulation from other bodies. For instance, accountants regulated by the ICAEW are subject to Clients' money regulations.
[234] The investigation did not find evidence of substantial consumer detriment in relation to estate administration. In relation to probate, the LSB did not have evidence of how important reservation is to ensure consumer protection. Neither there was evidence of likely impact on consumers of removing of probate activities from the list of reserved legal activities. LSB (2013), *Sections 24 and 26 investigations: will writing, estate administration and probate activities – Final report*. For more details on the process for changing the list of reserved activities, see paragraphs 14-17 in Appendix H (Processes for regulatory changes).

203. As noted by the LSB in its 2011 investigation, there are several ways in which unauthorised providers can work around the boundaries of the probate reservation.[235] While some of these approaches are perfectly legitimate business practices, others appear not be fully in the spirit of the Legal Services Act 2007 and may put consumers at risk of issues if anything goes wrong. We understand that unauthorised providers can work around reservation in the following ways:

- Outsourcing the probate application to an authorised provider (eg a solicitor). Solicitor costs are then charged as professional disbursements in addition to the quoted cost of administering the estate.
- Unauthorised providers employing an in-house solicitor who may prepare the probate papers in that capacity.
- Unauthorised providers preparing the papers and requesting that lay executors grant them power of attorney, allowing them to submit an application as a personal representative. It is not entirely clear whether this practice is compliant with the Legal Services Act 2007 but we do not have evidence on how widespread this practice is.
- Unauthorised providers preparing the papers themselves for the client to authorise or sign. It is unlikely that this practice is covered by the exemptions available under the Legal Services Act 2007.
- The client renouncing their executor role and appointing an individual from an unauthorised firm or a trust corporation.
- Given that the reserved activity only extends to services delivered for fee, gain or reward, unauthorised providers offering a free probate application service when taken alongside paid-for estate administration services.
- Unauthorised providers leaving the preparation of the probate documents to the executor but providing estate administration services later in the process (ie unbundling).

204. We understand that outsourcing to authorised providers is the most common way to work around reservation for many unauthorised providers and is the approach typically adopted by unauthorised accountants, unauthorised will writers and paralegal firms. As noted in paragraph 173, unbundling in relation to probate and estate administration is becoming more common because it

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[235] LSB (2013), *Sections 24 and 26 investigations: will-writing, estate administration and probate activities – Final Report,* and LSB (2012), *Enhancing consumer protection, reducing regulatory restrictions: will-writing, probate and estate administration activities.*

allows consumers to keep costs down and to have more control over their legal matter.

205. As noted in paragraph 148, although various unauthorised providers undertake probate and estate administration activities, they have only gained a small share of such services. It is not clear, however, whether this is because consumers use the title of authorised providers as a proxy for superior quality or they are not aware that unauthorised providers could provide a similar service.

Consumer protection and wider interest rationale for reservation

206. There is general agreement among stakeholders that the main justification for reserving probate activities is to ensure that only appropriate persons can undertake the full process of estate administration and to prevent the misappropriation of funds. This is because the grant of probate represents the gateway to enabling an executor to access the deceased's assets. Furthermore, as noted above, customers of authorised providers have access to redress mechanisms, should anything go wrong.

207. Stakeholders have also told us that the reservation of probate has an important public interest rationale because it ensures that the inheritance tax is correctly calculated and properly collected. Specifically, the Law Society noted that reserved activities, including probate, are critical for a well-functioning economy and rely on the trust placed in authorised persons to act not only in the interests of the client but to uphold the duties they hold to others (eg in relation to probate, to HMRC or other third parties) to ensure the effective functioning of the legal services sector.

208. However, several stakeholders noted that the narrow probate reservation does not target the administration of the deceased's estate, which is potentially more risky for consumers as it involves handling of client's money.[236,237,238]

209. While authorised providers, as noted in paragraph 200, are subject to regulation which generally covers the unreserved activities they undertake (for instance, rules on handling clients' money), this is not generally the case for

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[236] ACCA submitted that the narrowness of the probate reservation and the ability of unauthorised providers to work around it (also in ways that are not in the spirit of the Legal Services Act 2007) indicate that there is no merit in the current reservation of probate, but significant cost and efficiency benefits in removing the reservation.
[237] The Professional Paralegal Register submitted that all reserved activities, including probate activities, should be abolished, on the grounds that there are no clear policy reasons or associated criteria for the six activities to be reserved. Further, the Professional Paralegal Register believes that sufficient evidence has been produced to support the existence of the reserved activities.
[238] See also Mayson, S. and Marley, O. (2010), *The regulation of legal services: reserved activities – History and Rationale*.

unauthorised providers.[239] As such, non-reservation of estate administration services might create a regulatory gap, given the different regulatory requirements between authorised and unauthorised providers, which exposes consumers to the risk of fraudulent or dishonest practices or other problems causing significant detriment. The risk might be exacerbated where consumers believe that all providers are subject to regulation.

210. However, in practice, it is unclear how significant the impact of this regulatory gap is. We have received anecdotal evidence of issues regarding unauthorised providers undertaking estate administration services. However, there is also limited evidence of issues involving solicitors engaged in probate fraud, although it is not clear the extent to which this occurs in practice.[240]

211. We have also considered whether unauthorised providers working around the probate reservation exposes consumers to risks, particularly when the reserved element is either outsourced or unbundled. CILEx told us that providers of unbundled services, where the reserved and unreserved activities are delivered by different providers, could face challenges given the reluctance of their PII providers to insure unbundled services. CILEx told us that insurers can be reluctant because the practitioner or firm they are insuring might be exposed to additional risks in the event that there was a problem with a transaction and the insured provider might not be in control of the entire process, and therefore might be affected by, or be liable for, failures that are not their own. This is more common for authorised providers who are required to hold PII cover.

212. There are several factors, however, that mitigate in practice the impact of the regulatory gap:

- First, the gap might be less of an issue for customers of unauthorised providers who undertake estate administration work and are either members of a self-regulatory body (such as the SWW, the IPW or the Institute of Paralegals) and/or are subject to the jurisdiction of other

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[239] As noted above, some unauthorised providers are still subject to regulation from other bodies.
[240] The legal area of wills, probate and estate administration generates several complaints to LeO and claims to solicitors' PII. Around one in eight complaints to LeO involve will, trust and probate. Recent research by the SRA showed that PII claims in relation to wills, estate administration and probate constitute c. 10% of the total number of claims. Reasons for PII claims include: delay, technical mistakes in execution, mistakes in drafting, higher tax bills, and failure to advise on contested wills. SRA (2016), *Reflecting on solicitor's PII: market trends and analysis of historical claims data.*
In addition, as reported by the LSB, many claims to the SRA's compensation fund come from the area of estate administration. Source: LSB (2016), *Evaluation: Changes in the legal services market 2006/07 - 2014/15 – Main report: An analysis of market outcomes associated with the delivery of the regulatory objectives*. For more details on SRA's compensation fund, see paragraph 4.114 of the main report.
Finally, the LSCP has stated 'there is data suggesting non-trivial incidence of probate fraud among solicitors. However, the extent to which fraud occurs is not known. That is because the evidence on theft of clients' money in estate administration (involving either authorised or unauthorised providers) is not collected systematically by regulators. See LSCP (2013), *Letter to the LSB on will writing, estate administration and probate.*

regulators (ie unauthorised ICAEW members). These providers may be required by their membership or regulatory bodies to demonstrate competence to undertake estate administration, to undertake specific training, to be subject to certain conduct rule in relation to money handling, and to have appropriate redress mechanisms in place that are, to some extent, similar to those available to consumers of authorised legal services providers.

- Second, some unauthorised providers have acquired on-the-job experience and skills that make them competent to undertake estate administration activities. Anecdotally, some stakeholders noted that they have dealt with authorised persons who did not have the ability to carry out the task, due to inexperience or a failure to maintain up-to-date knowledge of the procedures, particularly when dealing with complex estates. As noted in paragraph 188, probate applications submitted by authorised providers are just as likely as personal applications to fail the assessment by the Probate Service.

- Third, unauthorised providers undertaking estate administration have gained a very limited share of this area of law, thus suggesting that the impact of the detriment, if any, is likely to be limited.

213. In summary, our analysis suggests that the scope of the probate reservation does not target the riskiest aspects of the wider estate administration process. There are also questions as to whether the justifications for reserving probate activities are sufficiently strong for reservation to be a proportionate and targeted form of regulation (particularly when there may be lighter forms of regulation, such as licensing of probate providers, that could apply).

214. While authorised providers are generally subject to regulatory rules on handling client's money, by virtue of regulation by title, this is not necessarily true for unauthorised providers. However, this regulatory gap does not currently appear to be a major concern from a consumer protection perspective. This is mainly because authorised providers, in particular solicitors, are the most significant providers of probate and estate administration services.

215. However, the gap may become a more significant issue in the future should unauthorised providers gain greater shares of the provision of probate and estate administration services – which might be a consequence of greater transparency price and quality. Problems will be particularly significant if consumers remain unaware of the differences in redress that exist across different provider types.

Impact on competition of probate reservation

216. This section considers what impact the probate reservation has on the level of competition in the provision of probate and wider estate administration services. Reservation, by allowing only certain providers to undertake probate activities, may also limit competition from unauthorised providers wishing to offer a complete estate administration service (ie including unreserved and reserved elements – which need to be outsourced).

217. In principle, this should not be the case since only a very specific element of the wider estate administration process is reserved. Furthermore, unauthorised providers could in theory provide a cheaper service compared with authorised providers. This is because unauthorised providers benefit from a number of competitive advantages:

- **Lower regulatory costs**: unauthorised providers are not subject to certain regulatory costs, including PII costs, contributions to compensation funds and more generally compliance costs, although some of them have PII or are subject to non-legal regulation or self-regulation.
- **The ability to cross-subsidise and cross-sell services**: many unauthorised providers tend also to provide additional services such as insurance policies, accountancy, banking, financial advice and financial products, and funeral services.
- **Lower labour costs**: unauthorised providers tend to use non-lawyer staff with no formal qualifications (but who may have gained appropriate experience and skills on the job) who are likely to be cheaper than lawyers.
- **Specific experience**: unauthorised providers tend to be specialists with experience in a particular area of law which are of value when dealing with complex cases. Some solicitors, particularly those who are generalists, may not have acquired such experience or skills.

218. Notwithstanding these advantages, stakeholders told us that probate reservation in practice represents a barrier to entry for providers wishing to offer a complete estate administration service. In particular, the following barriers were identified:

- Outsourcing to solicitors the reserved element fragments the service and creates extra costs and delay for consumers.[241] ICAEW has received

[241] LSB (2012), *Investigations into regulation of will writing, estate administration, probate*.

anecdotal reports that some lawyers to whom the probate has been outsourced charge a high amount for these small services, taking advantage of the fact that they have a near statutory monopoly.

- Unauthorised providers are at a competitive disadvantage to the extent that authorised providers offering probate can also market and offer the unreserved activities of will writing and estate administration, which are considered to be more substantive engagements and thus more remunerative.

- Consumers' preference for bundled services may (amongst other reasons) makes it more difficult for unauthorised providers to gain shares by only offering the unreserved part of the service.

- Consumers may not be comfortable with having a third person (ie the authorised providers to whom the reserved element is outsourced) involved in the transaction or may not be willing to undertake probate on a personal capacity.

- It may be inefficient for unauthorised providers, who have the expertise to undertake the activity, not to be authorised to do so.

219. As noted in paragraph 187, there is mixed evidence that in practice unauthorised providers are cheaper than authorised probate providers. Moreover, unauthorised providers operating in the probate and estate administration area have gained only a small share of supply. That said, we also note that unauthorised providers have gained limited shares in other areas of law which are fully unreserved.

220. As such, it does not appear that reservation alone is limiting entry and expansion of unauthorised providers in the provision of probate and estate administration services. As noted in Chapter 3 of the main report, consumers in practice use traditional professionals such as solicitors, and they do so because titles are usually associated with quality (eg adherence to minimum standards).[242] Survey evidence also suggests that awareness of unauthorised providers is low and that the majority of consumers assume all providers are regulated.

221. Moreover, despite the limited entry and expansion of unauthorised providers, reservation does not appear to have resulted in any concentration of authorised providers in the area of probate, which is very fragmented.

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[242] See paragraphs 3.47–3.52 of the main report.

222. We also have considered whether CILEX and ICAEW's designation as approved regulators in relation to probate activities has had an effect on outcomes such as price and quality, besides increasing the number of providers authorised to undertake probate. Stakeholders broadly agreed that it is too early to assess the impact of this increased entry on price, quality and innovation. As noted in paragraph 153, the number of ICAEW firms and individuals seeking authorisation for probate is still limited (although above ICAEW's expectation) and the amount of work generated by probate is limited.[243] Furthermore, the number of CILEX members who undertook the additional probate qualification is relatively small.

223. Authorised accountants told us that, at the moment, probate services represent an additional service provided to their existing customer base, and not an activity they are proactively advertising. Some said that they are exploring the possibility of building a will bank (potentially by offering will writing to complement traditional accountancy services) in order to increase their customer base. Others said that having ongoing relationships with local solicitors (where solicitors might require accountants' assistance to deal with the more complex estate administration cases) reduce the incentives proactively to market this additional service to the wider public. Finally, authorised accountants find it difficult to win business from solicitors and banks which have been nominated as executor of a will.[244]

224. Although new designations in principle have a positive impact on entry in the area of probate, the process to become approved regulators (called designation) can be complex and ultimately costly for the body to undertake.[245] This may discourage other bodies from undertaking the designation process. Both ICAEW and CILEx noted the length and the complexity of this process, although they appreciate that the aim of the long approval process was to ensure that the bodies had the capacity and capability to regulate probate activities.[246,247]

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[243] Qualitative research undertaken by SWAT UK indicates that, in the first year of accreditation, the majority of accountancy firms have dealt with less than 10 probate cases, generating less than £10,000 of fees. See SWAT UK (2016), *Probate UK survey.*
[244] Source: SWAT UK (2016), *Probate UK survey.*
[245] ACCA, despite being an approved regulator for probate, has not yet put in place regulatory arrangements that would permit it to start authorising individuals to provide probate services. ACCA has, thus far, considered that the potential costs associated with regulatory oversight present a risk, and regulatory oversight could impose a disproportionate regulatory burden on ACCA and, therefore, its members. See ACCA (2016), Response to the CMA's Legal services market study interim report.
[246] CILEx noted that its application to become an approved regulator for probate (and reserved instrument activities) consisted of several documents, including the submission of associated scheme rules, as well as 35 annexes containing additional information on the scheme and additional submissions of implementation project plans and delivery projects plans.
[247] ICAEW (regulatory arm) noted that the designation process is extremely long and tortuous and requires considerable investment by the applicant body. This means that the process could be out of reach for the smaller trade bodies which, even if they had the experience and capability, could not afford the paperwork and

Conclusion on probate reservation

225. The probate reservation is narrow and does not extend to the administration of the estate, which involves handling of client's money and potentially may be a major source of consumer detriment. Hence, from a consumer protection perspective, the scope of the current reservation creates a regulatory gap. However, authorised providers are subject to strict requirements in relation to handling clients' money and their consumers benefit from greater redress mechanisms. The impact of the gap is therefore currently limited, given the limited role played by unauthorised providers. However, it may become a more significant issue in the future if consumers become more aware of unauthorised providers, potentially because of increased price transparency, but they will continue to assume that all legal services providers are regulated in the same way.

226. The narrow probate reservation does not appear to be a major entry barrier for unauthorised providers wishing to offer an estate administration service that is similar to the one offered by authorised providers. In fact, reservation can be easily worked around by unauthorised providers and typically the reserved element is outsourced to authorised providers, although outsourcing might create extra costs and delays for consumers and may be a source of inefficiencies.

timescales required in order to secure the designation. ICAEW noted that the whole process, from the submission of the initial application to the LSB in December 2012 until approval by parliament, lasted a period of 19 months. Source: ICAEW (regulatory arm) (2016), Response to CMA's legal services market study statement of scope (paragraph 16).

Employment law services case study

Introduction 2
Key findings 3
  Individual consumers 3
  Small businesses 6
Individual consumers 8
  Background: The employment law sector 8
  The experience of individuals 13
  The role of information 18
  The role of trade unions 19
  Competition between legal services providers 22
Small businesses 24
  Background: The employment law sector 24
  Legal services providers 25
  The experience of small businesses 29
  The role of information 31
  Competition between legal services providers 34

Introduction

1. Employment law governs the rights and obligations of employers and employees. This case study focuses on the experiences of individuals and small businesses using employment law services. We have considered the provision of services to individuals and small businesses separately, while recognising the overlap between providers of these two services.

2. We have not sought to conduct a comprehensive market analysis of the employment law sector but rather have focused on the following key issues:

   (a) **The role of information:** we have identified that there is more information available for individuals and small businesses in relation to employment law, and the steps to take in case of employment disputes than in most other areas of law. We have considered (i) to what extent individuals and small businesses use these sources of information; and (ii) whether these sources of information help individual consumers and small businesses to identify their legal needs more easily.

   (b) **The role of trade unions in purchasing legal services for their members**: we have identified that as trade unions make repeat purchases, they have a better knowledge of the legal services sector than individual consumers. We have considered (i) to what extent intermediaries such as trade unions are likely to get better information and value for money from legal services providers than individual consumers; and (ii) to what extent intermediaries stimulate competition among legal services providers.

   (c) **Competition between authorised and unauthorised providers:** employment law services are provided to small businesses by both unauthorised (eg HR consultancies) and authorised providers (eg solicitors). We have considered (i) the factors that lead to higher numbers of unauthorised providers in employment law than other areas of law and (ii) how competition works between authorised and unauthorised services providers and whether this leads to better outcomes in terms of transparency and innovation.

3. This chapter draws on evidence from our qualitative and quantitative research on individuals and small businesses, discussions with stakeholders and other available evidence, including quantitative surveys commissioned by the LSCP

and the LSB to assess how individuals and small businesses engage with the market.[1]

Key findings

4. This section summarises our key findings for individuals and small businesses separately.

Individual consumers

The role of information on engagement and awareness

5. As for other areas of law, we have found that individuals rely on advice and recommendations from family and friends when facing an employment law issue. Nevertheless, there is more information available on what constitutes an employment legal problem and how to resolve employment disputes than in most other areas of law.[2] Free sources of information, in particular the Advisory, Conciliation and Arbitration Service (Acas)[3] helpline and trade unions' websites, play an important role in helping consumers identify their legal needs on employment issues. Specifically, we found that:

   (a) One in two individuals first consult Acas when seeking advice on their employment law issue.[4] In addition, the majority of individuals who sought assistance from Acas actively engaged with their legal problem by either discussing their issue with management in their workplace (45%) or by seeking advice from another body, such as a trade union, solicitor or CitA (23%). Only one in five individuals did not take any action after contacting Acas.[5]

   (b) Individuals use these sources of information to find out what represents a legal problem at work and what options are available to pursue a claim.

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[1] These surveys were conducted with respondents drawn from online panels. There are several caveats associated with online panels. We note, however, that we have used a variety of different sources of evidence, including qualitative research and discussions with stakeholders, to inform our overall thinking of this study.
[2] We compared the presence of free sources of information across different areas of law, such as probate, divorce, family matters etc. We understand that, to some extent, there are sources of information that individuals can access in other areas of law, for example family law. However, we also understand that individuals do not access them often. See Chapter 3.
[3] Acas is a non-departmental public body, sponsored by the Department for Business, Energy and Industrial Strategy (BEIS), that promotes the improvement of employment relations. Acas provides free and impartial information and advice to employers and employees on workplace relations through its website and legal helpline.
[4] See Table 2.
[5] See Table 9.

This differs from other areas of law where individuals may not be able to diagnose their legal problem and do not know what to do about it.[6]

(c) The vast majority of individuals who used the Acas helpline thought that Acas' guidance was important in their decision to make a claim to the Employment Tribunal (ET).

6. We conclude that, based on the experience of those who used these sources of information, Acas, CitA and other sources of free information act as drivers of individuals' engagement in the employment legal services sector. By providing information on what constitutes an employment legal problem and guidance on the options available, these sources of information appear to assist individuals in diagnosing their legal problem and helps reduce unmet demand.

The role of trade unions in purchasing legal services

7. Trade unions play an important role in the employment law sector. They are repeat purchasers of legal services and their understanding of the legal services sector represents an advantage when choosing a legal services provider. By contrast, most individuals rarely use legal services providers, making it more difficult for them to judge quality or prices. In particular, we found that:

(a) Trade unions may have arrangements in place with more than one firm of solicitors or barristers, which are appointed through a recurring tendering process (usually every two to four years). We note that trade unions typically use authorised legal services providers as they are more likely to have experience in employment law and representation during the ET hearings.

(b) Trade unions have different price agreements with legal services providers including fixed fees, hourly fees and capped hourly fees. The price arrangements may also vary by case depending on its complexity. When hourly fee arrangements are in place, solicitors' firms usually give an indicative estimate of the hours needed for particular types of cases.

(c) Trade unions are able to obtain more information from legal services providers than individuals. In addition, due to their experience in this sector they are also better able to evaluate information on the likely

[6] See Chapter 3.

quality of the legal services providers (such as their experience in employment law and past cases).

(d) Stakeholders told us that trade unions are able to get better deals than individuals as they are able to negotiate and receive more advantageous fees or reduced costs for their members. For example, we were told that legal services providers may provide trade unions with discounted rates for employment cases on the understanding that personal injury cases are referred to the same provider.

(e) We understand that typically hourly rates and fixed fees are agreed in advance between trade unions and legal services providers. When hourly arrangements are in place, we were told that solicitors' firms usually give an indication of the hours needed. This indicates that trade unions are able to access information on the likely cost of the legal services before engaging with a legal services provider, suggesting that more information on prices could be provided upfront to the public.[7]

(f) Generally, trade unions are better able to judge the quality of the external legal services providers because of experience of dealing with employment matters. Trade unions monitor the performance of external legal services providers through feedback from members and union representatives and regular updates on the progress of the case directly from legal services providers.

8. In conclusion, we expect trade unions to have greater access to information on price and quality than individuals because they can offer a greater volume of work for legal services providers, not only for employment services but also for other legal services such as personal injury claims. This repeat and high-volume purchasing is likely to give unions greater bargaining power than individuals, as a result of both accumulated knowledge and the commercial incentives of providers to win this business. Whilst this does not incentivise providers to make information publicly available, the desire to win business may lead to a more open disclosure direct to the union as a client.

Competition

9. We found that legal services providers compete more vigorously for intermediaries, who are repeat purchasers, than for individuals making one-off purchases. In particular, we note that:

[7] From our engagement with solicitors we understand that they tend to be reluctant to provide an estimate of the cost upfront as prices are usually set on a case-by-case basis depending on the complexity of the case.

(a) when competing to be on intermediaries' panels, legal services providers provide key information on their past cases and experience in employment law cases in order to signal their quality. This does not appear to be the case when they are competing for custom from individuals;[8]

(b) when competing for intermediaries' panels, legal services providers tend to agree price structures with the intermediaries based on caseloads and complexity of the cases and typically fixed and hourly fees are agreed in advance. By contrast, when competing for individuals, prices are set on a case-by-case basis depending on the complexity of the case. In addition, fixed fees are used relatively infrequently; and

(c) competition for intermediaries' panels tend to be national rather than local. Firm size appears to be another important factor when competing for intermediaries rather than for individuals. Indeed, legal services providers need to demonstrate their ability to handle potentially large volumes of work in order to be appointed to a trade union's panel.

Small businesses

The role of information

10. As for individuals, we found that small businesses tend to use solicitors when facing an employment legal issue. We found that Acas, the Law Society and other online sources of information help small businesses to diagnose their employment law problems before seeking assistance from a legal services provider. In addition, we understand that small businesses access these sources of information in order to receive guidance on how to comply with the law and reduce the risk of incurring costly legal action in the future. In particular we found that:

(a) small businesses frequently use free sources of information such as Acas and other online sources of information, such as the Law Society's website and online sector specific forums;

(b) small businesses use these sources of free information as guidance on routine problems and/or to ensure compliance with employment law in order to minimise the risk of more serious problems emerging in the future (such as tribunal claims); and

[8] See Chapter 3.

(c) small businesses frequently use these sources of information to diagnose whether they need to seek legal advice on their issue.

11. We found that small businesses are more likely to seek external legal advice when facing employment issues than when facing a trading issue. This may be due in part to the fact that small businesses are better informed on what constitutes an employment legal problem, as well as because small businesses may wish to avoid damaging their relationships with providers or customers through legal actions.

12. Finally, when facing an employment issue, small businesses are more aware of alternative sources of help and advice, such as helplines and HR companies, than when facing a trading issue, where the default option is mostly a solicitors' firm.

Competition

13. As there are no regulatory restrictions on the supply of employment law services to businesses, there are a number of unauthorised providers which supply (in combination or isolation) documents, advice and representation to business only – including micro and small businesses. HR consultancies have been growing in recent years and have taken business from solicitors and other authorised providers. In 2015, around 15% of small businesses with 10 to 49 employees had a contract in place with an HR consultancy. This number is around 3% for micro businesses with two to nine employees.[9]

14. We explored whether more competition between authorised and unauthorised providers leads to better outcomes for small businesses, for example, through lower prices, higher quality or innovation. We found that:

(a) Authorised and unauthorised providers typically compete for small businesses which have ongoing HR needs. Law firms and HR consultancies consider each other as competitors in the provision of employment law services. We also note that some solicitors' firms[10] have shifted their offerings to include more comprehensive HR packages like those offered by HR consultancies, for example, including access to helplines and fixed fee monthly subscriptions.

(b) It is not clear whether there has been increased transparency over prices as result of increased competition. There is some evidence of providers competing on prices, although this impact might be limited to larger

[9] See Table 2.4 in Blackburn, R., Kitching, J., and Saridakis, G. (2015), *The legal needs of small business: An analysis of small businesses' experience of legal problems, capacity and attitudes,* prepared for the LSB, p9.
[10] In particular, ABSs.

solicitors' firms that are most likely to attempt to compete with HR consultancies for small businesses with ongoing employment-related legal needs.

15. The remainder of this case study chapter sets out our findings in more detail, starting with employment-related legal advice to individual consumers and then considering advice to small businesses.

Individual consumers

Background: The employment law sector

16. There is no specific regulation covering the provision of employment law services. Advice in employment law and representation in ET and Employment Appeal Tribunal ('tribunals') are not reserved activities.[11] As a consequence, these activities can be undertaken by unauthorised persons without any regulatory oversight.[12]

17. Box 1 sets out the process of making an employment claim and the introduction of tribunal fees.

Box 1. Employment claims and tribunal fees

Process of making an employment claim:

- Where an employee has a grievance, they can try to resolve the issue with the employer informally or formally. Additionally in claims of misconduct, an employee may be subject to a disciplinary process. Where an employee considers that their treatment is in breach of employment law, they can start a formal claim to the ET.

- Since May 2014, ET claimants have been required to notify Acas of their intention to make a claim, so that an offer of Early Conciliation (EC) can be made. The aim is to resolve disputes before they reach an ET. An Acas conciliator can discuss the issue with the parties, explain the ET process and provide both parties with information on the options available.

[11] Centre for Consumers and Essential Services University of Leicester (2011), *Mapping potential consumer confusion in a changing legal market* commissioned by the Legal Ombudsman and *Legal Services Bill debate [Lords]*.
[12] Legal Services Institute (2010), *The regulation of legal services: Reserved legal activities – history and rationale.*

- Taking part in the EC is entirely voluntary for both the claimant and the employer. If an agreement is not reached through the EC, or one of the parties refuses to take part, Acas will issue a certificate allowing the claimant to proceed with the claim to the ET. If the ET accepts the claim, it then sets a date for the hearing. During the hearing, the claimant and respondent are able to present their respective arguments and evidence.

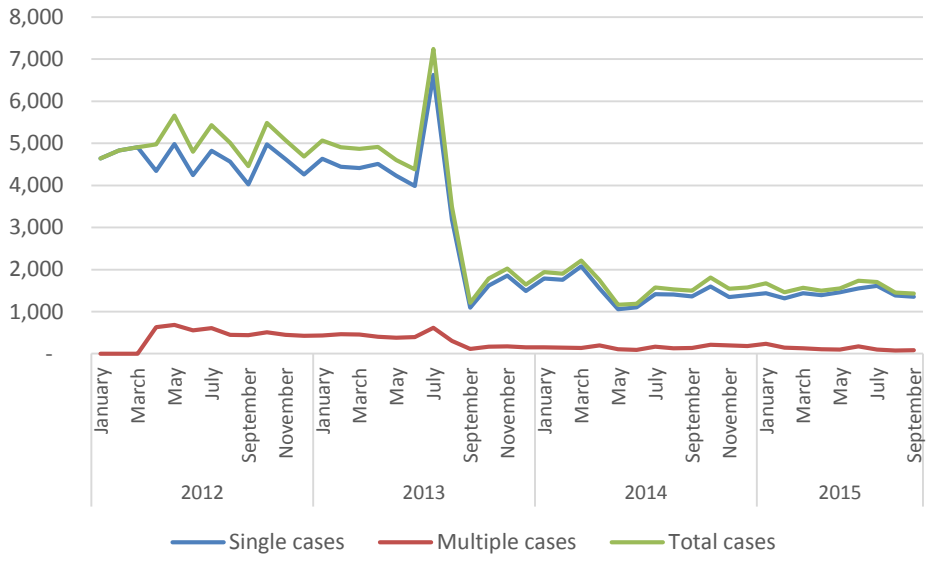
- If the ET finds in favour of the claimant, it can order the respondent to, for example, give the claimant their job back or pay compensation if the employer cannot give the claimant their job back.

Introduction of tribunal fees:

- On 29 July 2013, fees were introduced to access the ET and the tribunals. The fees are proportional to the complexity of the case and they range from a minimum of £320 to a maximum of £1,200. These fees were introduced in order to reduce the number of frivolous claims and to encourage settlements before reaching a tribunal.

- Figure 1 shows the number of claims received by the ET. Between 2013 and 2014 the number of cases reaching an ET fell by 68%. The introduction of fees for ET cases and a growing number of cases settling during the Acas EC may have contributed for this fall.

Figure 1: Number of claims received by the ET, 2012-2015



Source: CMA analysis based on *Annex C: Employment Tribunal Receipts Tables*.

18. Representation in tribunals can be provided by any party, but typically is provided by solicitors, barristers, Civil Mediation Conciliators, trade union officials (for individuals) and HR professionals (for small businesses). Although it is not a reserved activity, it is largely provided by authorised providers. Indeed, it is common practice for unauthorised providers, such as trade unions, to outsource tribunals representation to solicitors and barristers. We understand that this may be because unauthorised providers want to minimise the risk of losing a claim and, as a consequence, they tend to make arrangements with providers that are specialised in tribunal representation. Specialism appears to have become increasingly important because employment law has become more complex in recent years.

19. For individuals, employment law provides and protects a number of rights in relation to their employment and treatment in the workplace. These include the right not to be discriminated against in the workplace and rights to a minimum wage, maternity/paternity leave, redundancy payment, etc. In this case study, we looked in particular at advice and representation in employment disputes, principally those which are expected to be resolved by an application to tribunals or civil court.[13]

20. The main providers that typically offer services to individuals for employment law services are set out below:

    (a) Authorised providers offering employment law services to individuals are solicitors and barristers. Solicitors' work typically involves legal advice, help with paperwork before making a claim and representation in tribunals. As well as being commissioned by solicitors, barristers offer tribunals representation to individuals mainly through direct access and work with trade unions.

    (b) Trade unions are not for profit membership organisations which play a dual role in the employment law sector:

        (i) As legal services providers offering legal advice and, in some instances, representation[14] during tribunals claims to their members through trade union officials and/or in-house lawyers.

[13] Reviews of settlement agreements, mediation and arbitration are also related services to employment disputes.
[14] Representation from trade unions is typically provided when two conditions hold: (i) the claim to have a reasonable prospect of success (ie more than a 51% chance of success), and (ii) the claimant was a member of the trade union at the time of the incident.

(ii) As purchasers of legal services making arrangements for legal representation in tribunal claims by a third party solicitor or barrister.[15]

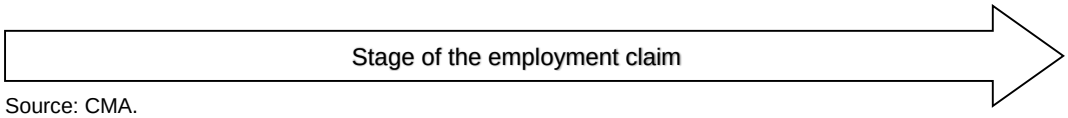
(c) Advice agencies and public bodies which offer general information and guidance on how to resolve a work dispute and on procedure or process. CAB and Acas' websites and helplines are the most frequently used by employees.

(d) Other unauthorised providers which can offer advice and representation to individuals are HR officials and professional bodies.

21. Table 1 shows the range of services provided by different types of legal services providers at the different stages of an employment claim. The stages include: (i) 'only information and guidance' where individuals seek general information on what constitutes an employment problem, (ii) 'legal advice' where individuals seek guidance on how to proceed on a specific employment issue, (iii) 'early stage of disputes' including mediation and representation during Acas early resolution and settlement agreements, and (iv) 'representation in ET claims' where a legal services provider take responsibility for the preparation of the case and acts as the individual's representative in ET hearing.

Table 1: Range of services provided by different types of providers of employment law services

Only information and guidance	*Legal advice*	*Early stage of disputes (including Acas early resolution)*	*Representation in ET claims*
Acas, CitA	CAB	Solicitors, barristers	Solicitors, barristers
Trade unions (eg website, legal helpline)	HR officials	Trade union officials	Trade unions
HR officials	Solicitors	HR officials	Self-representation or informal third parties
Solicitors	Trade union officials		Other (eg HR officials)



Source: CMA.

22. As for other areas of law, information and advice prior to a claim is usually provided by both informal advisers (eg family and friends, work colleagues, etc) and legal services providers. Acas is also largely used by individuals in order to gather information and receive guidance on what constitutes a legal issue. Table 2 shows that Acas was the first port of call for 50% of individuals who experienced a problem at work between 2012/13. According to data

[15] The role of trade unions as intermediaries is discussed further in paragraphs 42 to 44.

reported by Acas, we understand that the use of the Acas helpline has increased between 2009 and 2014, with 61% of Acas' calls being from individuals in 2014.[16]

Table 2: Source of legal advice used by individuals before a claim

	2012/13 (%)
Family and friends	56
ACAS	50
Solicitor, barrister	47
CAB	39
Trade union	28
Employment rights advisor	12
Colleague	9
Manager/boss	6
Human resources officer	4
Other†	11

Source: Table 2.2 in Department for Business, Innovation & Skills (2014), *Findings from the survey of employment tribunal application 2013*, p91. Base of respondents (N=1988). This survey was conducted over the telephone and the sample of employees and employers were drawn using Her Majesty's Court and Tribunal Service (HMCTS) data on single claims between January 2012 and January 2013.
† 'Other' includes: other person at workplace (1%), equity and human rights commission (4%) and other (not specified) (6%).

23. In the case of tribunal claims, representation is predominantly carried out by solicitors. Trade unions directly represent members, but they also make arrangements for legal representation by a third party solicitor or barrister.

24. Table 3 shows the shares of representation in tribunal hearings between the financial years 2011/12 and 2014/15. Solicitors' share in representation has slightly increased in recent years, going from 69% in 2011/12 to 75% in 2014/15. Although trade unions' share in representation increased in the latest data, they are not a major presence in ET hearings as they typically tend to outsource representation to solicitors' firms or barristers.[17] Self-representation in tribunal hearings is around 13%, with fewer individuals representing themselves in 2014/15 than in 2013/14. This decline in self-representation is likely to be because of the complicated nature of employment claims and the fact that employers are likely to have representation.

[16] Acas (2015), *Research Paper Acas Helpline evaluation 2014*, Ref:02/15.
[17] See paragraphs 42 to 44 on the role of trade unions as intermediaries.

Table 3: Shares of representation in tribunal hearings between 2011/12 and 2014/15

				%
	2011/12†	*2012/13*	*2013/14*	*2014/15*
Trade union	3	3	3	6
Solicitor*	69	71	71	75
Self-represented	18	18	20	13
Other	9	7	6	6

Source: *Employment Tribunal data*, table E.3.
* Solicitor category may also include law centres and trade associations.
† In 2011/12 some cases were misreported as 'other'. Revised guidance was provided for 2012/13, but comparisons with 2011/12 should be treated with caution.

25. As noted in Box 1, after the introduction of tribunal fees, the overall volume of claims declined by 68%. This had a major impact on the total volume of work undertaken by solicitors, barristers and trade unions. Table 4 shows that in 2012/13, around 137,000 individuals were represented by solicitors, but by 2014/15 this had fallen by 66% to 46,233. For trade unions the reduction was less pronounced, but still significant with a decrease of 41%, from 5,955 cases in 2012/13 to 3,496 cases in 2014/15.

Table 4: Claims accepted at Employment Tribunal between 2010/11 and 2014/15

Years	*Claims accepted*	*%change*	*Dealt with by solicitors*	*%change*	*Dealt with by trade unions*	*%change*
2010/11	218,096		152,825		10,069	
2011/12	186,331	-14.6%	129,137	-15.5%	5,998	-40.4%
2012/13	191,541	2.8%	136,858	6.0%	5,955	-0.7%
2013/14	105,803	-44.8%	74,862	-45.3%	3,282	-44.9%
2014/15	61,308	-42.1%	46,233	-38.2%	3,496	6.5%

Source: *Employment Tribunal data*, tables E.1 and E.3.

The experience of individuals

26. Relatively few individuals require employment law services. When they do, many do not pay for them directly as they are covered by their employers,[18] trade unions or insurance.[19] As in other areas of law, consumers tend to engage with the market by relying on recommendations and their previous experience. One large difference with other areas of law is that many

[18] For instance, in cases of assessment agreements.
[19] Source: YouGov (2016), *Employment survey 2016*, pp31 to 32 and Ipsos MORI (2016), *Online survey of individuals' handling of legal issues in England and Wales 2015*, commissioned by the LSB and the Law Society, question F.32.

consumers engage via their trade union. Overall satisfaction amongst individuals appears high.[20]

27. Purchases of employment legal services are rare events for individual consumers and are frequently a distress purchase.[21] Evidence shows that:

    (a) In 2015, in 12% of responses, individuals reported that they experienced a legal problem at work.[22]

    (b) Overall, the number of employees involved in employment claims or disputes is very low. Just 4% of individuals were involved in an employment claim or dispute in the period between 2010 and 2015. Another 12% considered making a claim or starting a legal dispute but then decided against it.[23]

28. According to a recent survey commissioned by the LSB and the Law Society, employment issues were most likely to cover claims about redundancy issues (35%) and grievances (24%). Other issues include change of terms and conditions of employment contracts (22%), and other rights at work (eg paternal leave, holidays etc).[24] Of those consumers involved in a claim, almost a quarter of individuals were involved in a claim for unfair dismissal (24%). Other significant issues included claims over redundancy (22%), discrimination (21%) and disciplinary issues (19%).[25]

29. Our understanding is that many individuals do not pay for legal services when making a claim. This is supported by a YouGov survey which shows that 60% of individuals having a work problem did not pay for the advice received.[26] Of those, 22% of individuals' legal expenses were covered by their employers

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[20] See paragraph 34.
[21] YouGov (2016), *Employment Law 2016* reports that the most common reasons for not pursuing an employment claim are related with the stress involved in pursuing a claim and the fear of jeopardising their position at the workplace. See p23.
[22] Ipsos MORI (2016), *Online survey of individuals' handling of legal issues in England and Wales 2015*, commissioned by the LSB and the Law Society, p31. This survey explored up to three issues experienced by each of the 8,192 respondents who had experienced at least one issue in the previous three years. Therefore, the 12% is the proportion of respondents within the survey who experienced each issue (as opposed to all those entering the survey).
[23] YouGov (2016), *Employment survey 2016*.
[24] Ipsos MORI (2016), *Online survey of individuals' handling of legal issues in England and Wales 2015.* commissioned by the LSB and the Law Society. See question F.32 'for the services you received from your main adviser, if you have to directly pay for all or part of the help you received?' We only considered respondents who had a problem with their employer.
[25] YouGov (2016), *Employment Law 2016*, pp23 to 24.
[26] YouGov (2016), *Employment Law 2016*. See question 9 'how were you charged for the legal advice supplied?' Base of respondents 174 individuals.

and 17% by trade unions. A further 8% said that their legal expenses were covered by an insurance policy.[27]

30. The LSB and the Law Society research found that in 72% of employment legal issues, individuals received legal advice from their main adviser for free, while in 13% of employment legal issues individuals paid for all or part of it. For those issues where individuals paid for all or part of their legal advice, a solicitor was used in most (61%) cases with around a quarter (24%) of individuals using another type of legal services provider (24%), such as a council advice service, a law centre or a financial adviser. In the large majority of cases where individuals were advised by trade unions or by the CAB as their main source of legal advice, legal services were supplied without charge. Table 5 reports the payment methods broken down by type of legal services provider used.

Table 5: Payment method by legal services provider used as main advice

	Paid themselves		*The service was free*	
	N	%	N	%
Solicitor	148	61	117	19
Trade union	14	6	124	20
CAB	19	8	131	21
Insurance company	1	0	12	2
Your employer	1	0	17	3
Other	59	24	215	35

Source: CMA analysis of Ipsos MORI (2016), *Online survey of individuals' handling of legal issues in England and Wales 2015: Survey data*, commissioned by the LSB and the Law Society. Cross tab of questions F32: 'for the services you received from your main adviser, did you have to directly pay for all or part of the help you received?' and F6: 'Which of the people you contacted was your main adviser?' for all employment legal issues/responses.
Note: Other includes all other types of legal professionals and a range of other bodies such as charities which each accounted for only a small number of issues.

Individual consumers' engagement

31. As with other legal issues, individuals' confidence around engaging with employment problems is low. Evidence from the LSB and the Law Society survey shows that levels of engagement for employment issues are largely consistent with other areas of law. In 47% of employment issues, respondents solved their problem without using a legal services provider, versus 49% for all issues (see Table 6).

[27] The remaining 39% of respondents indicated as response 'any other' methods of charging. This includes self-funding or received financial help from family and friends. Source: YouGov (2016), *Employment survey 2016*, pp31 to 32.

Table 6: How consumers dealt with their legal problem at work 2015

%

	*Employment**	*All issues†*
Did nothing/Took no action	15	13
Dealt with it myself without help	26	31
Dealt with it myself with the help of family/ friends	18	15
Obtained advice/ assistance/help	31	30
Tried but failed to get advice then dealt with it myself	3	3
Tried and failed to get advice then did nothing	3	2
Tried to handle alone then obtained help/ advice/assistance	6	5

Source: Ipsos MORI (2016), *Online survey of individuals' handling of legal issues in England and Wales 2015*, commissioned by the LSB and the Law Society. Question B.8: 'Which of these descriptions best indicates how you went about dealing with your issue or problem?'.
*Sample size: 628 employment issues.
†Sample size: 16,694 issues.

32. For employment law, individuals generally find a provider through trade unions, recommendation from family and friends or previous knowledge of a provider. Internet search is also used by a small proportion of individuals. Table 7 shows the methods of choosing a legal services provider by individuals for employment legal issues and across all issues.

Table 7: Methods of choosing a legal services provider

%

	*Employment**	*All issues†*
Previous experience	8	21
Internet search	11	19
Recommendations from family and friends	19	18
Already knew the provider, but had not used	14	13
Referred to by another advisor (eg social worker)	2	7
Trade union	38	5
Referred to by a business (eg estate agent, bank)	1	4
Walked past offices	1	3
I was approached by the provider	*	1
Yellow Pages	-	1
Advertisement in newspaper/magazine	1	1
The provider contacted me	1	1
Leaflet	-	1
Advertisement on TV or radio	-	1
Don't know	3	3

Source: Ipsos MORI (2016), *Online survey of individuals' handling of legal issues in England and Wales 2015*, commissioned by the LSB and the Law Society. Question F.8: How did you find the main provider you used?
* Sample size: 225 employment issues.
† Sample size: 5,925 issues.

33. A similar picture emerges from the YouGov survey: when making a claim the most popular way of choosing a legal services provider was a

recommendation from family and friends (24%) followed by a referral from trade unions (18%). Internet search was used by 11% of individuals and websites with consumer reviews and online directories were rarely consulted.

Outcomes

34. Generally individuals are satisfied with the advice and value for money of their legal services provider.[28] According to a YouGov survey,[29] individuals were most satisfied with the explanation of the process they received (74%), the supply of copies of documents (68%), the explanation of the fees at the start of the process (63%) and the explanation of the cost involved (60%). Higher levels of dissatisfaction were found for the final outcome of the case (20%).

35. Since 2013, employment law complaints to the Legal Ombudsman (LeO) have decreased year-on-year, going from 157 complaints in 2013 to 124 complaints in 2015 (a fall of around 20%). The main reasons for complaining to LeO are failure to advise,[30] followed by failure to follow instructions and excessive costs. Table 8 shows the main reasons for complaints related to those employment law services and that the key reasons for complaining are similar to those in other areas of law.

[28] LSCP, *Tracker Survey 2015* reports that over 60% of consumers who purchased employment legal services had value for money.
[29] YouGov (2016), *Employment law survey 2016*, question 11 'How satisfied or dissatisfied were you with your external adviser when considering the legal advice services provided at various stages of the employment claim/dispute and how the claim concluded?' Sample size: 174 individuals.
[30] Complaints involving failure to advise in employment relate to legal services providers failing to provide clients with advice on what course of action the client should take.

Table 8: Reasons for complaints, LeO

2014/15	*% Employment law*	*% Grand total**
Failure to advise	20	18
Failure to follow instructions	16	18
Cost excessive	11	9
Costs information deficient	10	8
Failure to progress	9	9
Delay	8	9
Failure to keep informed	6	8

Source: CMA analysis of LeO complaints data for the financial year 2014/15.
Note: Each complaint can be about more than one reason.
*This includes all complaints made to LeO about all areas of law.

The role of information

36. When experiencing a problem at work, there is more information available for individuals on how to resolve an employment dispute than in other areas of law.[31] Individuals can obtain help in identifying their legal problems through information on websites and helplines, trade unions, charities and Acas.[32] Based on the experience of those who use these sources of information, we expect that they, and in particular Acas, act as drivers of individuals' engagement in the provision of employment law services.[33] Indeed, by providing information on what constitutes an employment legal problem and guidance on the options available, these sources of information help individuals to diagnose their legal problem and reduce unmet demand.

37. In 2013, one in two individuals who experienced a problem at work used Acas as a source of advice in order to decide whether to pursue a claim in the ET.[34] Individuals frequently use sources of information such as Acas, CAB and trade unions websites. Evidence shows that individuals use these sources of information in order to get basic advice on workplace relations and what options are available to them when making a claim.

38. A 2013 research report from the Department for Business, Energy and Industrial Strategy (BEIS) reports that when making a claim, individuals use on average 3.5 sources to find information to help with their employment

[31] We compared the presence of free sources of information across different areas of law, such as probate, divorce, family matters etc. We understand that, to some extent, there are sources of information that individuals can access also in other areas of law, for example, family law, but we also understand that individuals do not access it often.
[32] See footnote 3 for definition of Acas.
[33] This refers to individuals who already engaged with their legal issue by seeking guidance to Acas. We still understand that individuals' confidence around engaging with employment problems is low (see paragraph 31).
[34] See paragraph 22.

issue. The sources of information mentioned were Acas' website, HM Courts and Tribunal Service's website, Direct Gov websites and other internet sites.[35]

39. Overall, individuals find the information provided by Acas valuable helping decide what to do next. Following their call to the Acas helpline, the majority of individuals actively engage with their legal issue by discussing their problem with management (ie HR office, employer), contacting Acas again or by seeking advice from another body, such as a trade union, solicitor or CAB. Only 18% of callers did not take any further action (see Table 9).

Table 9: Actions taken by callers following their call to the Acas helpline

	% *All employees**
Discussed the problem with management	45
Applied changes recommended by Acas	22
Contacted Acas again	24
Sought advice from another body (ie trade unions solicitor, CAB)	23
Took no further action	18
Submitted a formal complaint	17
Took formal disciplinary action	5
Other	4

Source: Table 4.2 in Acas (2015), *Research paper helpline evaluation report 2014*, p28.
* This includes employees and former employees. Base of respondents: 976; employees: 817; and former employees: 159. Responses sum to more than 100% as respondents could give more than one response.

40. We understand that individuals find Acas a useful support in their decisions to pursue a claim. This is supported by Acas survey findings on the use of the helpline where 90% of individuals perceived that Acas guidance/support was very or fairly important in their decisions to make a claim to ET.[36]

The role of trade unions

41. Intermediaries play an important role in the employment law sector. As explained in Chapter 3, intermediaries are likely to have better information on quality and price than end-consumers as they are repeat purchasers. In addition, intermediaries may generate competition between providers for higher volumes of transactions through bidding processes.

[35] Table 3.3 in Department for Business innovation & Skills (2014), *Findings from the survey of employment tribunal applications 2013*, research series No. 177.
[36] Table 4.6 in Acas (2015), *Research paper helpline evaluation report 2014*, p34.

Trade unions as purchasers of legal services

42. We engaged with a small number of trade unions[37] and with a solicitors' firm[38] which gave us an overview of how trade unions purchase legal services. Trade unions acting as intermediaries are typically repeat purchasers and have a good knowledge of the legal services sector. The LSCP reports[39] that approximately 1 in 27 trade unions' members seek legal assistance annually. We understand from discussions with stakeholders that only some of these cases are referred to external law firms while the rest are dealt with internally.

43. Trade unions typically have legal expertise when dealing with employment legal issues. Stakeholders told us that they have trained representatives who refer requests for legal advice to in-house or external lawyers, such as solicitors or paralegals, who typically deal with the legal assessment of a case and provide legal advice to members when an issue arises.[40]

44. Trade unions, to varying extents, purchase legal services from solicitors' firms and barristers to support their members in employment disputes, particularly those that reach the ET. We understand that trade unions usually appoint legal services providers through a bidding process where solicitors' firms and barrister chambers are selected on a number of quality and pricing criteria. In particular we have found that:[41]

    (a) Trade unions may have arrangements in place with more than one solicitors' firm or barrister chambers. Usually there is flexibility as to which legal services provider is chosen for a case depending on the lawyers' expertise. For example, one trade union told us that it has arrangements in place with about four or five external solicitors' firms.

    (b) Legal services providers are appointed differently depending on the trade union. One stakeholder told us that trade unions typically tender periodically to select solicitors' firms for their panels. Another stakeholder told us that its union has arrangements in place with around ten barrister chambers nationally which were selected partially on the basis of whether they were willing to offer fixed fees.

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[37] We talked to Unison (about 1.3 million members), PCS (about 200,000 members) and RCN (about 420,000 members). In 2015, there were about seven million people in the UK who had a trade union membership.
[38] Thompsons Solicitors is a solicitors' firm which provides employment law services to trade unions in disputes. The firm told us that it has relationships with the vast majority of trade unions.
[39] LSCP (2010), *Referral agreement in legal services*, p19.
[40] In addition, Unison told us it does not allow representatives or paralegals to provide legal advice. The RCN told us that it has a team of in-house solicitors who are regulated by the SRA. The PCS told us that it does not have an in-house legal team of lawyers such as solicitors, but it has a team of around seven caseworkers who are usually paralegals.
[41] Based on our engagement with trade unions, solicitors' firms that engage with trade unions and evidence from existing reports and/or surveys.

(c) Trade unions have different price agreements with legal services providers including fixed fees, hourly fees and capped hourly fees. The price arrangements also vary by case depending on complexity as well as any likely scale of reward. When hourly rate arrangements are in place, solicitors' firms usually give an indication of the number of hours likely to be required. According to the LSCP research on referral agreements, another common practice is for legal services providers to discount rates charged for employment cases referred by the trade unions on the understanding that the union will also refer personal injury cases to the legal services provider.[42]

(d) We understand that specialism and experience in employment law are the key criteria used by trade unions when selecting legal services providers. In particular, experience in dealing with employment cases and knowledge of employment law are considered as signals of quality by trade unions. Two trade unions told us that they use their experience in dealing with employment legal services providers in order to judge the likely quality of the providers.

(e) Trade unions monitor the performance of external legal services providers through feedback from members and union representatives and regular updates on the progress of cases from legal services providers. This is to ensure that, where issues with the quality of service arise, they are identifiable before the conclusion of the case. Generally, we understand that trade unions are able to judge the quality of the external legal services providers used based on their experience of using employment legal services.

(f) In cases of poor performance, members can access a more formal process of complaint, where they can report on issues experienced with the quality of advice and service. We understand that trade unions can also talk with senior members of the legal services providers directly.

Outcomes

45. Trade unions are repeat purchasers of legal services and their understanding of the legal services sector represents an advantage when choosing a legal services provider. In particular, one trade union told us that its experience in this sector gives it the capacity to be an 'intelligent customer'. In contrast, most individuals use legal services providers rarely and are likely to have difficulty when judging quality or prices. Based on our engagement with trade

[42] LSCP (2010), *Referral agreement in legal services*, p19.

unions, we found that trade unions were happy overall with the available choice of legal services providers.

46. We found that trade unions are able to get better information on prices and deals than individuals. The LSCP research on referral agreements reports that while trade unions tend not to charge legal services providers a referral fee, they usually receive additional services or reduced cost of legal services for their members. These additional services can include telephone helplines, wills and/or training for union officers on employment law.[43] One solicitors' firm told us that the package of services for trade unions is better than that available to members of the public who are not union members.

47. We understand that hourly rates and fixed fees, often based on particular packages of work, are typically agreed in advance between trade unions and legal services providers. When hourly rate arrangements are in place, solicitors' firms usually give an indication of the hours likely to be required. This indicates that trade unions are able to access information on the likely cost of the legal services before engaging with a legal services provider, suggesting that more information on prices could be provided upfront to the public. Indeed, as reported in Chapter 3, information on prices upfront for individuals who searched the market themselves is limited.

Competition between legal services providers

48. As noted in Chapter 3, intermediaries play a major role in driving competition among legal services providers. In the context of employment law, we consider whether the presence of trade unions acting as intermediaries leads legal services providers to compete differently for individuals (who make one-off purchases) and for trade unions (who are repeat purchasers).

Competition for trade unions' panels

49. We understand that when competing for trade unions, legal services providers participate in a tendering process in order to be selected for a panel of advisers. Competition between legal services providers has the following characteristics:[44]

    (a) There are repeated interactions with trade unions over long periods.

    (b) Competition is mainly among authorised legal services providers. This is because intermediaries typically make arrangements with external legal

[43] LSCP (2010) *Referral agreement in legal services*, p19.
[44] This is based on our engagement with trade unions and solicitors' firms that engage with trade unions.

services providers in order to provide representation in ET. Representation is largely provided by solicitors with trade unions and self-representation only accounting for a small proportion of all claims.

(c) Key parameters of competition tend to be specialism and experience in employment law. Other parameters include cases pursued, services provided, and customer satisfaction surveys.

(d) As intermediaries have a preference for large national/regional law firms, which are able to satisfy large volumes of cases, we understand that competition often takes place nationally or regionally.

(e) Legal services providers tend to agree the price structure with the intermediaries based on caseloads and complexity of the cases. One stakeholder told us that fee structure varies by union and by service. Typically hourly rates and fixed fees are agreed in advance.

(f) In order to signal quality, stakeholders told us that legal services providers may contribute to a variety of events to demonstrate expertise, such as attending HR conferences, Acas events and organising mock employment tribunals. In addition, quality marks in other areas of law, such as personal injury, may form part of the consideration when choosing a firm to appoint to a panel.

Competition for individual consumers

50. Legal services providers compete for business in employment services in similar ways as they do in other areas of law:

(a) Competition tends to be based on one-off transactions.

(b) The key parameters of competition tend to be price, quality of service and expertise in employment law.

(c) We note that individuals who choose their own representation tend to choose a small local firm. Therefore, competition for individual consumers is likely to have a local element.

51. Prices are usually set on a case-by-case basis depending on the complexity of the case. Stakeholders[45] told us that it is difficult to be specific on the final price as this strongly depends on the inquiry and on the client's requirements. Hourly rates are more common than fixed fees, although fixed or capped

[45] For example, we attended a meeting at the Law Society in the Employment Committee in May 2016.

pricing can be offered for some services such as, for example, settlement agreement review.

52. A number of solicitors[46] told us that the internet is becoming increasingly important with individuals particularly searching for specialism and location. We do not know whether this phenomenon is specific to employment law services or is also valid to other areas of law.

Small businesses

Background: The employment law sector

53. As for individuals, there is no specific regulation covering the provision of employment law services for small businesses. Advice in employment law and representation in tribunals are not reserved activities.[47] As a consequence, these activities can be undertaken by unauthorised persons without any regulatory oversight.

54. Unauthorised providers are not required to have any specific arrangements in place to offer redress if things go wrong in the provision of employment law services. Nevertheless, unauthorised providers, such as HR consultancies, that offer insurance products are usually regulated by the Financial and Conduct Authority (FCA). However, the FCA provisions in relation to redress mechanisms do not apply to an authorised professional firm in respect of expressions of dissatisfaction about its unregulated activities.[48]

55. Even where the activity is not reserved, providers that are part of authorised legal professions are covered by regulations that are part of their professional rules when providing employment law services. Authorised providers are required to hold professional indemnity insurance. We also note that, although professional indemnity insurance is not a legal requirement for unauthorised providers, it is used by those providers that want to be protected against claims made by clients for financial loss or reputational damages in case of negligent advice, design or services.

56. Employment services to small businesses include:

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[46] For example, we attended a meeting of the Employment Committee at the Law Society in May 2016.
[47] Centre for Consumers and Essential Services University of Leicester (2011), *Mapping potential consumer confusion in a changing legal market* commissioned by the Legal Ombudsman and *Legal Services Bill debate [Lords*].
[48] We are aware that the Financial Ombudsman Services (FOS) might accept complaints outside of its jurisdiction (eg against the bodies they regulate, but regarding unregulated activities such as will writing services). However, we are also aware of the 'Barclays complaint' that shows the FOS has no jurisdiction if the services were provided by an unregulated legal services provider (eg an unregulated division of the bank) and this is currently at the High Court.

(a) the drafting, preparation, review and supply of employment documentation including employment contracts and employment policy documents;

(b) advice on compliance with employment law; and

(c) advice and representation in employment disputes as a respondent.

57. Employment law issues can also overlap with other work-related areas such as HR related legal enquiries (ie maternity leave and pay and benefits), health and safety, pensions and injuries at work.

Legal services providers

58. Employment services to small businesses are provided by a range of authorised (eg solicitors, barristers) and unauthorised providers (eg HR consultancies, trade associations) which supply (in combination or isolation) documents, advice and representation. Solicitors are the main legal services providers used by small businesses, and in particular micro businesses, for advice and representation in ET cases. HR consultancies are an established presence in the market, offering day-to-day advice and legal representation for employment tribunal claims. Small businesses may also obtain information or advice through telephone and online portals provided by government, trade and employers' associations and Acas.

59. We have identified four main types of providers of employment law services to small businesses:

(a) Authorised providers offering employment law to small businesses are solicitors and barristers.

(b) HR consultancies[49] provide employment law and human resources consulting to micro and small businesses.

(c) Membership bodies include trade bodies or affinity groups such as the Engineering Employers Federation (EEF)[50] and the Federation of Small Business (FSB).

(d) Legal helplines provided by government and trade bodies (eg Acas, FSB).

60. We are aware of other providers such as individual HR consultants, claims management companies (which also provide services to claimants) and other

[49] These are predominantly relatively large providers operating legal helplines and typically offering some form of insurance backed legal advice.
[50] Industry body for engineering and manufacturing employers.

small unauthorised providers trading as employment lawyers though we do not believe that they have a significant role in the market.

61. Table 10 sets out the service offerings of the four main provider types described above classified by whether they offer information only, advice on routine employment issues (ie contract drafting, paid leave) or advice and representation in ET claims. This table highlights the overlap of the service offerings of solicitors and HR consultancies.

Table 10: Services offered by different types of providers of employment law services

Only information	*Information and advice on routine employment issues*	*Advice on early stages of a dispute*	*Representation in ET hearings*
Acas	HR consultancies (ie helplines)	Solicitors, barristers	Solicitors, barristers
Business Link	Trade bodies	HR consultancies	HR consultancies
Trade bodies	Solicitors	Trade bodies	Self-representation or informal third parties
HR consultancy helplines			

Source: CMA.

62. Legal advice for employment law can also be provided by in-house lawyers or staff undertaking HR roles. However, evidence from the LSB survey shows that only a small proportion of micro and small businesses (around 5%) have in-house legal capacity or HR staff.[51] We also understand that when small businesses start to face higher volumes of employment issues as a result of expansion, they often outsource the HR services to an external HR consultancy, rather than hire an internal HR manager.[52]

Solicitors

63. Solicitors are the largest providers for employment law services to micro and small businesses. This is supported by our qualitative research[53] which indicated that solicitors are the main source of advice and representation for employment-related issues.

64. Solicitors' work typically involves the drafting, preparation, review and supply of employment documentation; advice on 'routine' employment issues; and advice and representation during ET claims.

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[51] For the definition of in-house lawyer see the commercial law services case study in Appendix C.
[52] This is supported by findings from our qualitative research where a small business reported that outsourcing HR functions is cheaper than hiring an HR manager.
[53] Research Works conducted qualitative research on how small businesses engage with the legal services sector commissioned by the CMA. The research included 100 depth interviews with small businesses, including 52 micro businesses (0 to 3 employees) and 48 small businesses (10 to 30 employees). Research Works (2016), *CMA Legal Services, Qualitative Research Report*, commissioned by the CMA.

65. Our analysis indicates that there are few, if any, national law firms that exclusively focus on providing employment law services to small and micro businesses. However, there are some national firms that offer employment law services that target specifically micro and small businesses. We understand that there is a much larger number of smaller law firms that offer employment law services to both small and micro businesses as well as individuals.[54]

66. As noted in the commercial law services case study in Appendix C, our analysis indicates that large law firms accept work from all sizes of businesses, but tend to focus on serving larger corporate businesses. This is because large corporate businesses tend to purchase a wide range of services in different areas of law from large law firms (eg employment and commercial law). On the other hand, smaller law firms are more likely to focus on servicing small businesses because they are unlikely to have the capacity to undertake the large volumes of services required by larger businesses.

Barristers

67. Barristers also provide employment law services to small businesses, but tend to focus on providing clients with representation in matters that are before the ET. For this reason, they are a much less common source of supply than solicitors across the market as a whole.[55] The Bar Standards Board (BSB) estimated that in 2014 around 1,500 barristers, 10% of all barristers, practised employment law.[56]

HR consultancies

68. Legal services offered by HR consultancies are usually part of a medium- or long-term contract (ie two to five years). Services include the provision of employment contracts and other forms of documentation, day-to-day legal advice and legal representation for employment tribunals and mediation. Consulting services on employment law are usually carried out by HR consultants, while representation before the ET is usually provided by solicitors.[57] These legal services are frequently bundled together with health and safety services[58] and an insurance policy covering fees in case an ET

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[54] CMA analysis of SRA data.
[55] Bar Council response to Legal Services Market Study Interim Report.
[56] Figure 3 in BSB (2014), *Bar Barometer: Trends in the profile of the bar,* p14. This includes barristers providing employment services to both individuals and small businesses.
[57] We understand that HR consultants also provide representation in the ET, however this is not very common.
[58] Health and Safety services typically include audit services to ensure that businesses comply with the health and safety legislation which is mandatory for all employers.

claim arises.[59] HR consultancies may also offer a legal helpline for their clients.

69. HR consultancies supply businesses only. There are around eight to ten large national HR consultancies for whom the provision of employment law services to small and micro businesses forms a significant part of their business model.[60] These include companies such as Peninsula, Citation and RBS Mentor. In addition, many smaller HR consultancies offer specific employment law services to small and micro businesses in local markets.

Membership bodies

70. Other unauthorised providers include trade associations or affinity groups that provide legal advice to their members. This type of provider includes trade bodies or affinity groups such as the EEF, the National Farmers Union (NFU) and the FSB. They provide legal advice over the telephone or by providing documents online. In some cases, membership bodies may also offer representation in the ET as well as insurance products to cover any costs arising from claims before the ET.

71. The FSB is an important trade body for small businesses. The FSB offers members a '24/7' legal advice helpline manned by qualified lawyers; access to a hub of employment contract templates and other related documents; and access to specialist solicitors and barristers who can represent them in the ET. As part of this service, the FSB provides an insurance product that covers all claims against the member up to an award of £50,000. The FSB also provides advice on more complex employment law matters on a fee-paying basis.[61]

Legal helplines

72. In addition to directly engaging a legal services provider, small businesses may obtain information or advice through telephone and online portals provided by government,[62] trade associations,[63] employers' associations[64] and insurance companies. In particular:

    (a) Legal helplines provided by government or public bodies (eg Acas, GOV.UK) typically offer general information, which is limited to information

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[59] The specific legal form of the insurance cover varies by provider but may include captive and self-insurance schemes.
[60] *Peninsula and Croner merger inquiry.*
[61] FSB's website. Accessed on 6 December 2016.
[62] For example, GOV.UK.
[63] For example, the FSB.
[64] For example, the *National Farmers Union.*

and guidance on procedure and process on how to comply with employment law. Acas is the most commonly consulted source of public information for small businesses.

(b) Legal helplines which are part of a membership subscription (ie HR consultancies, trade bodies) provide both guidance on procedure and compliance and advice on more specific legal issues.

The experience of small businesses

73. Small businesses are more likely to have recurring needs for employment legal services than individual consumers. The number and frequency of employment legal problems and claims that businesses face are linked to the number of staff they employ. Evidence from the LSB research reports that larger small businesses (10 to 49 employees) are more likely to experience an employment problem, and therefore have recurring legal needs, than micro businesses (one to nine employees).[65]

74. This is consistent with the BEIS findings on employment tribunal cases that the large majority (77%) of small businesses, those with fewer than 25 employees, are rarely involved in employment claims, while larger businesses, with up to 50 employees, have more experience of employment claims cases.[66]

75. We understand that the employment issues experienced by small and micro businesses tend to fall into two categories: (i) more serious but very infrequent (ie grievances, disciplinary action and disputes including responding to the ET claims); or (ii) more routine personnel issues (ie contracts, staff welfare).

76. Table 11 shows that the most common employment problems faced by small businesses are staff misconduct followed by dismissal and payment of wages/pensions.

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[65] Blackburn R., Kitching J. and Saridakis G. (2015), *The legal needs of small business: An analysis of small businesses' experience of legal problems, capacity and attitudes,* prepared for the LSB. This research found that the larger small businesses are more likely to experience an employment problem which shows that 43% of small businesses with 10 to 49 employees experienced an employment problem versus only 3% of micro businesses with one employee. It was also reported that for employment problems there is a size-threshold at 29 employees beyond which the size effect on reported employment problems diminishes.

[66] Table 3.1 in Department for Business, Innovation & Skills (2014), *Findings from the survey of employment tribunal application 2013,* p114. Sample size for businesses with less than 25 employees is 528 and for businesses with 25 to 49 employees is 180.

Table 11: Small businesses employment legal needs

	2013 (% of firms reporting)	*2015 (% of firms reporting)*
Any employment problem	**7.9**	**6.5**
Staff misconduct	2.5	2.0
Dismissal of staff	2.1	1.5
Making staff redundant	1.9	1.1
Content or exercise of parental rights leave/pay	0.7	0.5
Payment of wage/pension	1.6	1.5
Working conditions	1.1	0.8
Employee injury at work	0.7	0.7
Other employment contract issue	1.5	1.0
Complaints/grievances made by employees	0.5	0.6
Other employment issues	0.8	0.4

Source: Based on Table 3.3 in Blackburn, R., Kitching, J., and Saridakis, G. (2015), *The legal needs of small business: An analysis of small businesses' experience of legal problems, capacity and attitudes*, prepared for the LSB, p23. The sample size of these surveys are 9,548 small businesses for 2013 and 10,528 small businesses for 2015.

77. Our qualitative research also found that small businesses' most frequent issues include creating and maintaining contracts for employees and dismissal/unfair dismissal issues. Small businesses in manual trades such as manufacturing and construction ('blue collar') appeared to have more recurring employment needs than other small businesses.[67]

78. Qualitative research from LSB reports that employment issues are generally perceived as problematic by small businesses because taking on employees is the first step undertaken by a growing business and it is often a 'major learning curve' for micro-businesses.[68]

Channels used when purchasing legal services

79. As we note in the commercial law services case study in Appendix C and in Chapter 3, the most common way for a small business to choose a legal services provider is through peer and informal recommendations. Our qualitative research reports that the majority of small businesses in the sample chose a legal services provider based on a recommendation from business peers, accountants, friends or family. The research found that when micro and small businesses need to address an employment legal issue they either chose to use a solicitor and incurred costs; or sought legal advice from services that they had already paid for (ie trade organisations, insurers,

[67] Research Works (2016), *Legal Services, Qualitative Research Report June 2016,* commissioned by the CMA, p14.
[68] AIA research (2010*), Legal Advice for Small Businesses Qualitative Research,* prepared for the LSB, p7.

outsourced HR services); sought free legal advice services (eg Acas, CAB, the Law Society).[69]

80. When a small business has a recurring legal employment need, existing relationships with legal services providers are important. This is reflected in the YouGov survey[70] where 33% of the businesses in the sample[71] used the same law firm for years, and 19% had an annual/monthly contract with a legal adviser or HR consultancy.

The role of information

81. There is more free information available for small businesses on how to resolve an employment dispute than in other areas of law.[72] Examples include the Acas helpline and website as well as other types of legal helplines (eg FSB and HR consultancies). As for individuals, although solicitors are a default choice for most small businesses, we understand Acas, the Law Society and other online sources of information help small businesses to diagnose their employment law problems before seeking assistance from a legal services provider.[73] We understand that small businesses access these sources of information in order to receive guidance on how to comply with the law and reduce the risk of incurring costly legal action in the future.

82. Small businesses frequently access the Acas helpline, website and other online sources of information.[74] A survey conducted by Acas reports that businesses and businesses' representatives are the heaviest users of its helpline.[75] Although Acas does not capture the number of small businesses

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[69] Research Works (2016), *Legal Services Qualitative Research Report June 2016,* commissioned by the CMA, p17.
[70] YouGov (2016), *Employment Law 2016*.
[71] The survey has a sample of 263 senior managers dealing with an employment dispute in the last five years. We need to interpret these results with caution as the survey does not specify the size of these businesses and therefore they may include larger businesses with more than 50 employees which are not included in the scope of our market study.
[72] We compared the availability of free sources of information across different areas of law, such as commercial. We understand that, to some extent, there are sources of information that small businesses can also access in other areas of law, such as commercial law. However, we also understand that small businesses do not access it often.
[73] A respondent to our qualitative research who was thinking of taking an employee said 'Well as they are free, I might start with Acas so I don't go blind to a law firm' (Partner, technology recruitment, no employees). Source: Research Works (2016), *Legal Services Qualitative Research Report June 2016* commissioned by the CMA.
[74] Small businesses can access a number of sources of information when facing an employment legal issue. Examples of information sources that small businesses can access are websites such as GOV.UK, Acas and Business Link. Small businesses can also access information through HR consultancy legal helplines and trade bodies as part of an annual/monthly subscriptions.
[75] In this Acas survey respondents were asked how many times they had called the Acas helpline in the year before the survey. The caller types with the heaviest use of the helpline were employer representatives (a mean average of 5.22) and employers (a mean average of 4.26). Current employees used the helpline the least frequently (a mean average of 2.66). Source: Acas (2015), *Research Paper Acas Helpline evaluation 2014,* Ref:02/15.

accessing its helpline, we would expect larger businesses (and in particular those with in-house HR and legal functions) to be less likely to use the Acas helpline.

83. Overall, evidence shows that small businesses use these sources in order to clarify an employment-related issue which has not yet become a problem before seeking a legal services provider.[76] Our qualitative research found that small businesses use free or low-cost solutions, such as legal helplines or CAB, as a 'sounding board' (ie a channel for discussing a legal issue) before seeking advice from a legal services provider.[77] The Law Society website and online sector-specific forums were also consulted by a small group of small businesses in the sample.[78]

84. Although free sources of information can help small businesses to gain a better understanding of the employee and employer rights, qualitative research commissioned by the LSB found that in many cases small businesses still seek help from solicitors as a default choice, being unaware of other options available to them.[79]

Awareness of the legal services market

85. Unlike commercial legal issues,[80] where small businesses do not always see their trading issue as a legal problem,[81] small businesses are more aware of what constitutes an employment-related legal issue. This may be due to the fact that small businesses generally do not want to damage their relationships with their suppliers or customers through legal actions. In addition, small businesses deal with employees on a day-to-day basis and it is likely that they are more informed about employment law as a result.[82]

86. Our qualitative research, as well as other evidence,[83] suggests that small businesses, and in particular micro businesses, tend to solve their problems

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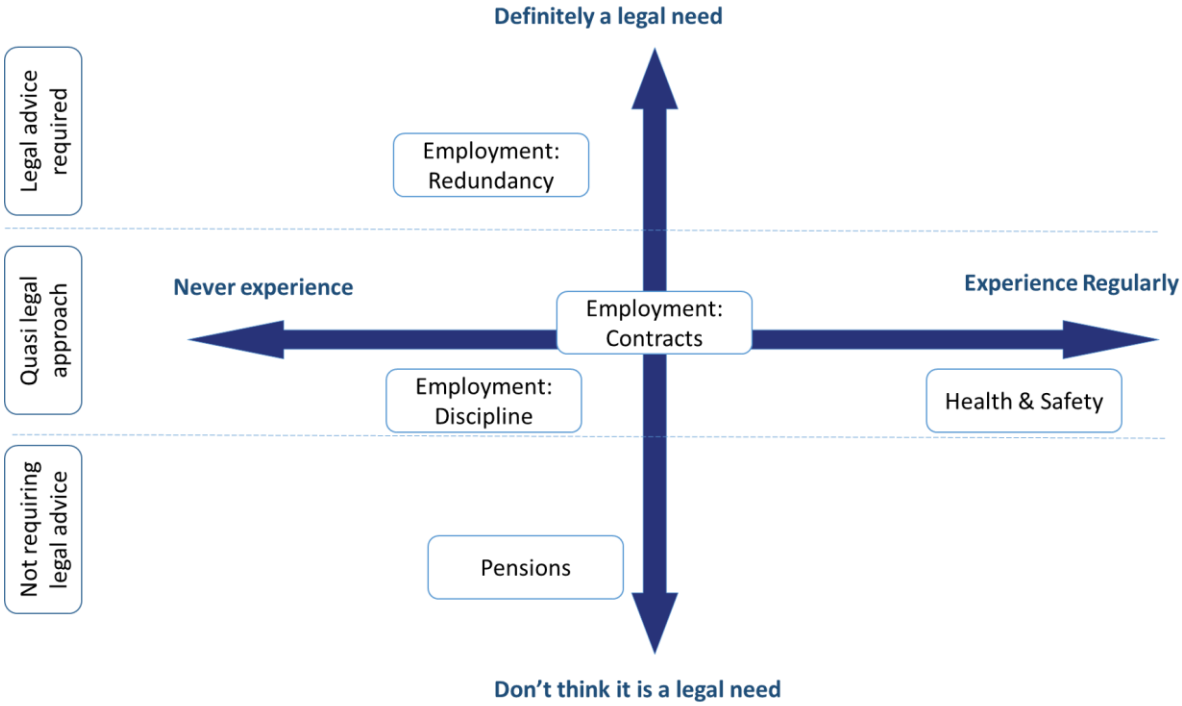
[76] Acas (2012), *Research paper: Employment relations in SMEs: Day-to-day advice seeking and the role of intermediaries,* prepared by Agnes Hann, p30. This is a qualitative survey carried out by the London School of Economics and Political Science. The methodology used a total of 15 in-depth interviews with the person in the firm mainly responsible for personnel issues.
[77] The research shows that the Acas helpline was used by a small group of small businesses for advice about specific and/or general employment issues such as maternity-related questions, pay for apprentices.
[78] Research Works (2016), *Legal Services, Qualitative Research Report June 2016,* commissioned by the CMA, p18.
[79] AIA research (2010), *Legal Advice for Small Businesses Qualitative Research* prepared for the LSB, p9.
[80] We have considered commercial law because we collected evidence for our commercial law services case study which gave us a basis of comparison.
[81] See our commercial law services case study in Appendix C.
[82] Indeed a failure to deal with employment-related issues can have serious consequences for the business and lead to costly legal actions (ie employment tribunal claims).
[83] Blackburn, R. Kitching, J., and Saridakis, G. (2015), *The legal needs of small business: An analysis of small businesses' experience of legal problems, capacity and attitudes,* prepared for the LSB, pp50 to 51.

with employees internally, particularly where they have previous experience of dealing with similar issues. The LSB research also found that the main areas of internal legal expertise included contracts and employment.[84] However, whenever a legal issue is new or complex, small businesses tend to seek help from an external legal services provider.[85]

87. Levels of awareness also depend on the type of issue faced. The LSB research[86] found that employment contracts and issues related to discipline (eg misconduct and poor performance) are usually regarded by small businesses as a 'quasi legal' need. In these cases, the internet or help from colleagues and friends are generally the main source of legal advice. By contrast, for redundancy issues, legal advice is considered as being required, as shown in Figure 2.

Figure 2: Perception about what issues might require legal advice



Source: Figure 3.5.2 in AIA research (2010), *Legal Advice for Small Businesses Qualitative Research*, prepared for the LSB, p13.

[84] Blackburn, R. Kitching, J., and Saridakis, G. (2015), *The legal needs of small business: An analysis of small businesses' experience of legal problems, capacity and attitudes,* prepared for the LSB. Table 2.1 shows that employment is the second area of specialism of internal legal capacity. The Acas (2012) research paper *Employment relations in SMEs: Day-to-day advice seeking and the role of intermediaries* also report that the existence of a strong management structure is linked to the size of the firm, with the largest organisation in the small business segment, having high levels of hierarchy.
[85] This is supported by our qualitative research. See Research Work (2016), *Legal Services, Qualitative Research Report June 2016,* commissioned by the CMA, p9.
[86] AIA research (2010), *Legal Advice for Small Businesses Qualitative Research*, prepared for the LSB, p13.

88. Our qualitative research found that, for employment-related issues, awareness of the range of different types of legal services provider was limited.[87] However, we understand that small and micro businesses have some awareness of 'non-solicitor' providers, such as HR consultancies and legal helplines. The LSB survey findings suggest that solicitors, legal helplines and HR consultancies are the largest sources of help used by small businesses when experiencing an employment issue.[88]

89. The available evidence suggests that solicitors are considered as a source of help for more serious problems that could have legal consequences for the business. In addition, anecdotal evidence from Acas qualitative research also noted that, when small businesses use a solicitor, they tend to rely on it for legal advice related to all aspects of their business, not just employment.[89]

Competition between legal services providers

90. This section looks at how competition operates among legal services providers. In particular, we have explored:

    (a) the prevalence of unauthorised providers in the provision of employment law services; and

    (b) how competition works between authorised and unauthorised services providers and whether this leads to better outcomes in terms of transparency and innovation.

Growth of unauthorised providers

91. Authorised providers, in particular solicitors, remain the predominant providers of employment law services. However, we understand that the HR consultancies sector is expanding and HR consultancies are important competitive players in this area.

92. Although there is a lack of robust data on shares, evidence from the LSB 2015 survey found that 15.6% of small businesses with 10 to 49 employees had a contract in place with an HR consultancy. This number drops to 2.7% for micro businesses with two to nine employees. In relation to specific issues,

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[87] Research Works (2016), *CMA Legal Services, Qualitative Research Report*, commissioned by the CMA.
[88] CMA analysis of the survey Blackburn R Kitching, J. and Saridakis, G. (2015), *The legal needs of small business: An analysis of small businesses' experience of legal problems, capacity and attitudes*, prepared for the LSB. We analysed responses to the survey question E20 filtered for those respondents who indicated an employment problem: 'And on those occasions when your business obtained help from an adviser/representative/support service, what types of service were used?'
[89] Acas (2012), *Research paper: Employment relations in SMEs: Day-to-day advice seeking and the role of intermediaries,* prepared by Agnes Hann, p30 paragraph 3.3.

the survey found that 3.6% of small businesses that sought advice in relation to a legal problem sought advice from an HR consultancy.[90] This is markedly lower than in the LSB 2013 survey where 6.2% of small businesses sought advice from an HR consultancy.[91]

93. Another LSB report into unauthorised providers suggests that the size of the unauthorised sector in employment law for all businesses is around 4 to 5% of the whole employment law area.[92] From discussions with stakeholders, we understand that this figure is likely to underestimate the competitive impact of HR consultancies, in particular for small businesses. In addition, the LSB also reports that this figure is unlikely to capture all the employment issues which resulted in the use of an HR consultancy.

94. In addition, stakeholders told us that the area of employment law legal advice is expanding, with 'many first-time buyer' micro and small businesses approaching HR consultancies. HR consultancies have invested in consumer outreach programmes to reach such customers. For instance, a significant majority of Peninsula's new small business clients did not previously have a contracted provider for employment law services.[93]

95. In conclusion, we understand that HR consultancies are increasingly being seen as an alternative for small businesses purchasing employment law services for the following reasons:

(a) There are no regulatory barriers which impede unauthorised providers providing employment law services. This means that any legal services provider can provide advice and representation to consumers.

(b) HR consultancies typically sell employment law services together with health and safety and/or HR services. Small businesses, which purchase health and safety and HR services, may purchase employment law as an ancillary service.

(c) HR consultancies are seen as specialists in HR services and employment law and employ specialised staff, such as non-practising solicitors, law graduates and HR professionals.

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[90] Blackburn R., Kitching J., and Saridakis G. (2015), *The legal needs of small business: An analysis of small businesses' experience of legal problems, capacity and attitudes,* prepared for the LSB. See Table 2.2 'Use of business support services in past year'. These results are also in line with findings from the YouGov survey into the sources of legal advice used during employment law disputes which shows that for businesses of all sizes solicitors are the most common source of legal advice for employment matters (62%) followed by HR consultancies (28%), membership associations (16%) and legal helplines (10%).
[91] Pleasence, P. and Balmer, N. (2013), *In Need of Advice? Findings of a Small Business Legal Needs Benchmarking Survey*, prepared for the LSB.
[92] LSB (2016), *Mapping of for profit unregulated legal services providers,* p10.
[93] *Peninsula and Croner merger inquiry*.

Process of competition

96. We are interested in whether the presence of unauthorised providers leads to better outcomes in this sector. HR consultancies differ from law firms in a number of ways and, therefore, have expanded the range of choices available to small businesses. While there is no direct evidence regarding outcomes, competition from HR consultancies has had an impact on solicitors' firms. That impact seems to include a greater range of services offered by solicitors' firms (and how they are delivered) as well as benefits in terms of pricing structures.

97. We identified a range of differences in the way unauthorised (and in particular, HR consultancies) and authorised providers provide employment law services. While some authorised firms, particularly larger firms, share these characteristics, we found that unauthorised firms were more likely to:

(a) be more focused on businesses: while membership bodies and HR consultancies specifically target businesses, law firms tend to target businesses and individuals together;

(b) have longer contracts: they tend to enter into medium- and long-term contracts (lasting one or more years) for ongoing advice and support for HR consultancies;

(c) offer different products and pricing structures: HR consultancies offer a range of services, as well as pricing models, which typically differ from those offered by solicitors' firms and barristers. HR companies usually offer a package of legal services at a fixed price per month, while solicitors and barristers often offer ad hoc services based on hourly rates;

(d) operate over a wider geographic area: solicitors' firms (or individual offices) and barristers typically operate locally,[94] while HR consultancies operate at a regional/national level; and

(e) be more proactive in getting customers: solicitors' firms and barristers typically rely on peer recommendations, while HR consultancies have a more direct approach with small businesses using marketing and/or cold calling.

98. Competition from HR consultancies has had an impact on solicitors' firms. The clearest example is of solicitors introducing HR products in order to compete. Another example is represented by solicitors' firms spending more

[94] There are some exceptions with large national law firms such as Irwin Mitchell.

time and effort on marketing strategies in order to attract small businesses, for example, through participation in employment law seminars, webinars and social media marketing. There is also some evidence of firms competing on price. However, this impact might be limited to larger solicitors' firms that are most likely to attempt to compete for small businesses with ongoing employment-related legal needs.

Views on competition

99. We asked stakeholders, including 'traditional' solicitors' firms, ABSs and HR consultancies, whether they believe they compete with each other over the provision of employment law services (both advice and representation). Overall, we found that solicitors' firms and HR consultancies see each other, at least for some small businesses, as competitive constraints. Solicitors told us that there is an increased level of competition driven by unauthorised providers such as HR consultancies. In consequence, some solicitors are shifting their offering towards that of HR consultancies. One HR consultancy told us that it competes with other HR consultancies and traditional law firms. However, it also underlined that solicitors tend to give more legal advice. One HR consultancy believed that HR consultancies were its main competitors rather than law firms.

100. During our study, Peninsula Group, an HR consultancy, acquired another consultancy, Croner. The CMA assessment of that acquisition recognised that law firms and self-supply provide some competitive constraint to HR consultancies.[95] Evidence from the inquiry shows that where the parties have lost customers, the majority have stopped purchasing a fixed fee consulting product altogether rather than switch to another HR consultancy. These customers could be seen as self-supplying and/or paying for ad hoc legal advice by using a law firm.

Competition on prices

101. Price is an important parameter of competition. The YouGov survey reports that cost is the second most important factor when choosing an employment legal services provider for businesses.[96]

102. Solicitors' firms and barristers usually price on a case-by-case basis depending on the complexity of the case. They tend to use hourly rates.

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[95] *Peninsula and Croner merger inquiry*.
[96] YouGov (2016) *Employment Law survey 2016*. The survey includes all types of businesses not only micro and small businesses.

However, stakeholders told us that fixed and capped fees can be offered for some more commoditised services.

103. HR consultancies and membership bodies tend to offer pricing structures based on fixed one-off or monthly charges with contracts of one to five years, though there is variation across providers and services. Where representation is provided this may be either incorporated as part of an insurance backed product, as a monthly fixed fee, a one-off fixed fee or charged on an hourly basis.[97]

104. We understand from discussions with solicitors' firms and HR consultancies that there is some competition on price among these legal services providers. A number of solicitors told us that competition on fixed fees is increasing with more solicitors' firms offering fixed fees for more commoditised services (eg settlement agreement review). However, it was also noted that, in relation to advice and representation in ET claims, it is very difficult to provide an indicative cost upfront.

105. We understand that law firms and solicitors' firms have started to offer annual and/or monthly subscriptions to their employment law services, particularly to small businesses. For example, Weightmans offers a fixed fee product which targets small and medium size businesses as an alternative to those offered by HR consultancies.

106. Anecdotal evidence from stakeholder shows that in recent years there has been a general downward reduction of fees. For example, according to one HR consultancy, a service that might have previously cost £7,000 per year is now available for around £1,500. This suggests that there has been increasing competition on prices in recent years.

Price Transparency

107. Although we have not conducted comprehensive research on whether legal services providers publish their prices online for employment law services, we have found generally that there is a lack of price transparency online, as is the case for other legal service areas.[98]

108. In addition, a number of solicitors' firms told us that that they were not enthusiastic about publishing prices and that a shift to a different pricing

[97] These typically cover both legal expenses and any award made by the employment tribunal.
[98] This is supported both by our findings in Chapter 3 and our review of 95 providers' websites for commercial law, which found limited information on prices online in particular for solicitors (see commercial law services case study in Appendix C). We note however that this website review only covers the provision of commercial law services.

model is difficult. In contrast, HR consultancies and document providers tend to be more transparent about both the price structure and the final amount to be paid for employment law consulting services.[99] However, we found that these companies usually price their services based on a number of characteristics of the potential customer such as number of employees, value of payroll and previous experience of employment disputes, as well as contract length, which can make pricing more complicated. Whilst this complexity is likely to be greatest for larger companies, it necessarily affects small and micro businesses. Therefore, it may not be possible to find an indication of the price without first contacting the provider.[100]

Competition on quality

109. The quality of legal services providers is difficult to observe for small businesses. In employment law, legal services providers appear to signal quality using various methods, including by highlighting their specialism in this area of law and through marketing and seminars.

110. Stakeholders told us that specialism and expertise in employment law is a very important factor that small businesses look at when selecting a legal services provider. Therefore, specialism in employment law is an important way of signalling their quality. Discussions with stakeholders highlighted the importance of having specialised staff in employment law. HR consultancies told us that their staff is comprised of a mixture of practising and non-practising solicitors, law graduates and HR professionals. One solicitors' firm also told us that they hired an HR professional in response to increased competition from HR consultancies.[101]

111. Another way of signalling quality is through the development of brands, for example, through advertising. We found that HR consultancies tend to invest in various forms of marketing to target small businesses.[102] The large majority of solicitors' firms and barristers do not rely on such tools in order to promote and signal quality,[103] although some large solicitors' firms do. We were also told by two solicitors' firms that they also promote their brand through seminars and specific HR training for businesses.

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[99] This usually does not include cost of representation in case of ET claims.
[100] In the context of HR consultancies, it should be noted that these products typically cover not only access to a helpline but also to what is effectively an insurance product for tribunal costs and awards.
[101] Based on our engagement with solicitors (for example, we attended a meeting of the Employment Committee at the Law Society in May 2016) and with HR consultancies.
[102] For example, Peninsula Group told us that it regularly organises seminars which target small and medium sized businesses.
[103] CMA (2016), *Legal Services Market Study Interim report,* p45.

112. We also noted that the way in which HR consultancies approach small businesses differs from the approach adopted by most solicitors' firms and barristers. While solicitors' firms typically rely on peer recommendations, as reported by our qualitative research,[104] HR consultancies have a more direct approach using marketing and/or cold calling. For example, one of the largest HR consultancies for small businesses told us that it uses a number of channels to advertise its services, which differ from those typically adopted by solicitors' firms.

Barriers to entry, expansion and exit

113. Based on our research, there does not appear to be particularly large barriers to entry, expansion and exit in the employment law sector. We identified the following barriers to entry that apply to both authorised and unauthorised providers:

(a) Long-term contracts: small business consumers which use HR consultancies typically enter into contracts that last between three and ten years,[105] making it harder for entrants to win new business and gain scale.

(b) Employment law specialism: to provide advice on employment law it is necessary to have knowledge of employment law legislation. This applies not only to authorised providers, but also to unauthorised providers.

114. However, the presence of a large number of small players, such as local law firms and smaller HR consultancies, suggests that entry within this market is not difficult.

115. The use of long-term contracts in this market may constitute a barrier to expansion for new providers. The presence of HR consultancies with extended contract periods may reduce the frequency of switching for some consumers, but their presence in the market may be acting as barrier to expansion on other legal services providers.

116. We are not aware of any specific barriers to exit that apply to providers operating in this market. We note more generally that the requirement for solicitors' firms to hold PII run-off cover may serve as a barrier to exit.

[104] Research Works (2016), *CMA Legal Services, Qualitative Research Report*, commissioned by the CMA.
[105] *Peninsula and Croner merger inquiry*.

Innovation

117. We understand that innovation in employment law is mainly driven by HR consultancies and other unauthorised providers. Service delivery, unbundling services and automation are examples of innovation in employment law.

118. A number of providers sell employment contracts and other legal documents online including Rocketlawyer[106] and Mylawyer.[107] Documents providers give access to documents through an online portal which allows small businesses to generate legal documents, such as employment contracts. One HR consultancy also told us that it has a similar portal for businesses to generate their own documents, which is accessible through either a monthly subscription or a pay as you go service.

119. In addition, many HR consultancies provide their services remotely through a combination of online and telephone channels. For instance, Peninsula offers a service that includes a '24/7' legal helpline, legal representation in ET, and face-to-face consultancy visits. Another example is Riverview,[108] which delivers its services largely through a legal helpline that allows clients to speak to qualified lawyers directly.

120. The presence of HR consultancies seems to have had an impact on innovation by authorised providers in this area. There are some large/national 'traditional' firms that have adopted similar models to HR consultancies and online documents providers, including Irwin Mitchell[109] and Weightmans.[110] There has, however, been relatively little innovation by authorised providers (with limited exceptions) and this supports our findings on innovation more generally. It is noteworthy that in the case of employment law services the innovation that authorised firms have engaged in has been in direct response to unauthorised providers.

Unbundling

121. From discussions with stakeholders, we understand that unbundling employment legal services has become quite common. Unbundling is where a

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[106] Rocketlawyer offers a number of employment documents, including employment contracts, job offer letters, HR policy documents etc. *Rocketlawyer.co.uk*.
[107] Mylawyer is an unauthorised provider *Mylawyer.co.uk*.
[108] Riverview is an SRA authorised provider. Riverview has recently exited the market for the provision of legal services to small businesses.
[109] Irwin Mitchell also noted that the introduction of HR solutions in their offering was in large part due to small businesses asking for more fixed fees contracts.
[110] The specific approach implementation of this model varies with some firms assigning a specific solicitor to manage a client's affairs and others using a pool of qualified and unqualified staff with issues allocated through a triage system.

package of legal services is broken down into parts with some undertaken by the legal services provider and others by the consumers.[111] We understand that small businesses are able to purchase contracts and advice on a pay as you go basis and then go to solicitors' firms or other legal services providers if representation in ET is needed. Membership bodies and trade associations may also play a role in unbundling legal services.[112]

Impact of ABSs on competition

122. As noted in Chapter 3, changes in management and/or organisation can also be considered as a type of innovation. One of the main changes in the market in terms of organisation of law firms has been the introduction of ABSs. Some ABS firms specialise in employment law.

123. Though the impact of ABSs on competition has so far been limited, there are signs that ABSs are adopting more innovative business models like those operated by HR consultancies. For example two ABSs, Weightmans and Irwin Mitchell, have started offering fixed fee contracts, including HR advisory services, to small businesses, not only because small businesses have asked for more fixed fees contracts (as noted in footnote 109), but also in response to the increasing competition from HR consultancies.

[111] CMA, *Legal Services Market Study Interim report,* p52.
[112] For example, by providing first port advice through their helplines or by providing employment documents as part of their monthly subscription.

Commercial law services case study

Introduction 2
Key findings 3
The scope of this case study 4
Overview of commercial law 5
Regulatory framework 5
Legal services providers 7
Online document providers and other unauthorised providers 11
Legal helplines accessed through membership bodies 12
Small businesses' experiences of commercial law 13
Prevalence of commercial legal issues 13
Awareness of commercial legal issues 15
Knowledge of the market 16
Engagement with the market 17
Outcomes 19
Conclusion on small businesses' experiences of commercial law 20
Competition between legal services providers 21
Process of competition 21
Prevalence of unauthorised providers 22
Competition on price 23
Competition on quality 28
Intermediaries 30
Barriers to entry, expansion and exit 31
Innovation 32

Introduction

1. Commercial law governs the conduct of commerce and business. In its widest definition it is relevant to almost all activities that businesses engage in.[1] The scope of this case study, 'commercial law', is however narrower and focuses on trading issues, including advice relating to contracts and disputes, with a particular focus on the experiences of small businesses[2] accessing commercial law services.

2. We consider commercial law services to be a particularly relevant subject for a case study given that research commissioned by the Legal Services Board (LSB) found that trading problems are the most common legal problem experienced by small businesses.[3]

3. The case study is structured into three sections:

   (a) A brief overview of the provision of commercial law services (paragraphs 15 to 42);

   (b) Small businesses' experiences of commercial law (paragraphs 43 to 66); and

   (c) Competition between legal services providers (paragraphs 67 to 125).

4. We have not sought to conduct a comprehensive market analysis of the provision of commercial law services, but have included within our analysis some key questions which relate to the main themes in the report and, in particular, we have focused on the role of information in driving competition. The key questions are:

   (a) What information do small businesses use when choosing a legal services provider for a commercial law matter? How do small businesses engage in the market?

   (b) How prevalent are unauthorised providers in the provision of commercial law services?

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[1] Law firms providing 'commercial' law services may group discrete areas of the law such as company law, health and safety and regulatory compliance within their commercial service line, although we are not treating these as 'commercial law' for the purposes of our case study.
[2] In particular, businesses up to ten employees.
[3] Employment was the second most frequent legal problem in the sample (6.5% of all firms). Source: Blackburn, R, Kitching, J, and Saridakis, G (2015), *The legal needs of small business: An analysis of small businesses' experience of legal problems, capacity and attitudes*. For the LSB.

(c) What price information is made available to small businesses when choosing a legal services provider? Are there any differences between authorised and unauthorised providers?

(d) What types of innovation have developed in the provision of commercial law services? Are there any barriers to innovation?

5. This chapter draws on evidence from our qualitative research on small businesses and other available evidence, in particular quantitative research commissioned by the LSB[4] to assess how small businesses engage with the legal services sector.

Key findings

6. Commercial legal issues are the most common legal problem experienced by small businesses. We have found that small businesses often deal with these issues on their own. We have also found that some small businesses may simply not see a commercial issue as a legal problem. In addition, those small businesses that search for a legal services provider have low awareness of the different types of provider available and tend to rely on recommendations from business peers or contacts in the legal services sector.

7. Solicitors remain the most common type of provider of commercial law services to small businesses which is in line with other areas of law, such as employment law. We have found that the prevalence of unauthorised providers in the provision of commercial law services is very low.

8. We have found that there is a lack of transparency in terms of information on price structures and specific price information. The websites of unauthorised providers that we reviewed provided more upfront price information than solicitors' firms.[5] We did not find major barriers or risks associated with providing relevant upfront price information, although we note that the potential level of complexity and uncertainty in disputes may make it more difficult for providers to publish fixed fees and price information upfront.

9. There have been some notable entrants that offer different business models from 'traditional' law firms, but these new business models currently represent a small proportion of providers. The majority of these entrants focus on the

[4] The LSB 2013 and 2015 surveys were conducted by YouGov, with respondents drawn from an online panel. There are several caveats associated with online panels. We note, however, that we have used a variety of different sources of evidence to inform our overall thinking of this case study.
[5] We note that our results are only indicative given the small sample size.

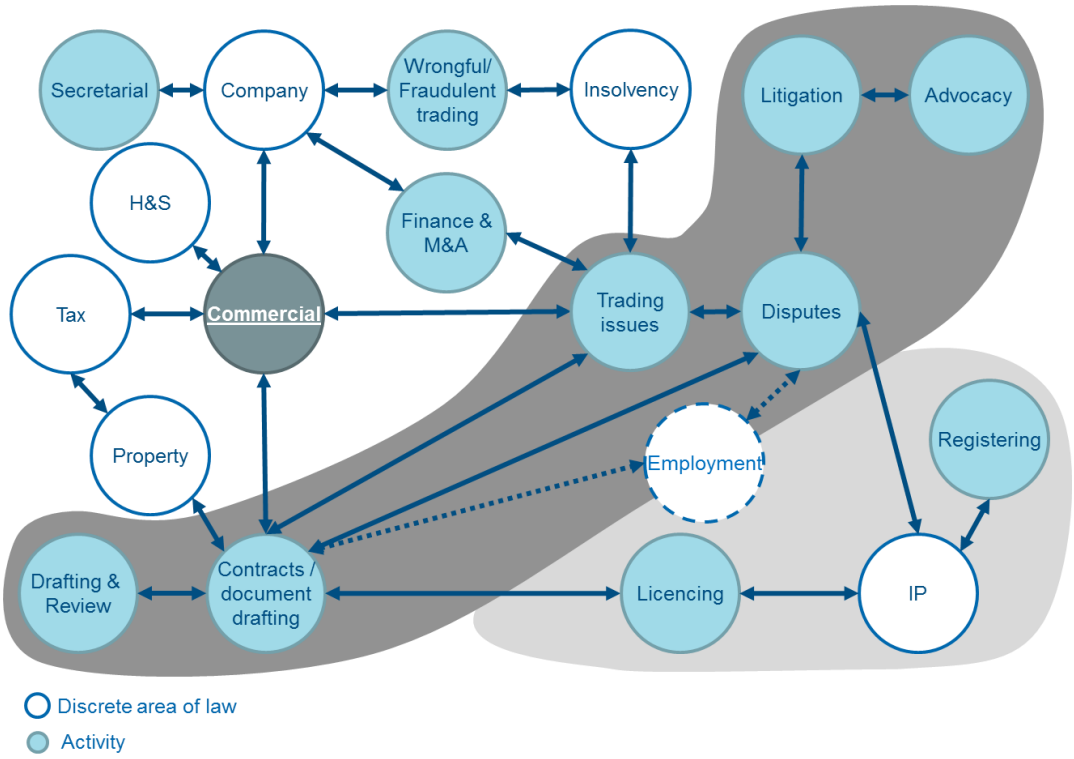
online provision of legal services. While we have not found any particular supply-side barriers to innovation, uptake of innovative services is limited.

10. The limited expansion of innovative providers and unauthorised providers may be due to small businesses' lack of awareness of commercial legal issues and, even when aware, a lack of engagement with legal services providers.

The scope of this case study

11. The broad range of legal services that a 'commercial law' firm or department might offer is set out diagrammatically in Figure 1 with discrete areas of law identified as shaded circles and activities as unshaded circles.[6] Given this breadth we have excluded some areas of law that might be considered commercial services and have instead focused on a number of core activities (which fall into the dark grey area) and set out below in paragraphs 13 and 14.

Figure 1: Scope of commercial law services



Source: CMA.

12. We have identified employment law and intellectual property law as two distinct legal specialisms where the nature of the legal services offered to small businesses often involve similar services, including contracts and

[6] That is, an area of law can cover different activities. For example, IP as an area of law will involve activities such as contracts/document drafting and disputes.

disputes. We have undertaken a separate case study on employment law services. In this case study, our focus has not been on intellectual property law, although we recognise that some intellectual property legal services (such as the use of contracts in licensing IP or IP disputes) overlap with core activities.

13. For this case study, we have therefore focused on the provision of legal services relating to contracts and business disputes for micro and small businesses, including:

    (a) legal document preparation (including advice) which includes contract drafting and reviewing draft and existing contracts; and

    (b) advice and representation (both in respect of litigation and advocacy) in disputes.[7]

14. We have also identified mediation and arbitration as related services to disputes.

Overview of commercial law

15. This section provides a high level description of the provision of commercial law services. First, it outlines the regulatory framework within which firms provide commercial law advice, and then it describes the main types of providers currently active in the provision of commercial law services.

Regulatory framework

16. For the most part, practising commercial law (such as the provision of advice and drafting services) is not a reserved activity. However, some aspects of dispute resolution are reserved activities, specifically litigation and advocacy.[8] This restricts the range of services which can be provided by certain providers.

17. For example:

    (a) unauthorised providers cannot conduct litigation or act as an advocate unless granted rights of audience by the court;

    (b) solicitors, unless qualified as solicitor advocates, cannot act as an advocate in higher courts; and

[7] These disputes may either be business-to-business or business-to-consumer and may relate to a range of issues.
[8] Where this requires rights of audience. See Chapter 5 for more detail.

(c) barristers, unless authorised to conduct litigation, cannot provide litigation services.[9]

18. Even where an activity is not reserved, authorised providers are subject to their professions' regulatory and conduct requirements when providing commercial law services (see Chapter 5).

19. Authorised providers are required to hold professional indemnity insurance (PII). Additionally, micro-business clients[10] of authorised providers have access to the Legal Ombudsman (LeO) and may have access to the compensation fund if made available by the relevant regulator (which is the case for the Solicitors Regulation Authority (SRA)). Authorised providers are also required to conduct a certain amount of continuing professional development.[11]

20. Unauthorised providers are not required to have any specific arrangements in place to offer redress if things go wrong.[12] As noted in Chapter 4, the Consumer Rights Act 2015 does not apply to business-to-business contracts and hence, does not apply to small businesses when purchasing commercial law services. However, the Supply of Goods and Services Act 1982 applies to business-to-business contracts and requires services to be performed with reasonable care and skill, within a reasonable time, and for a reasonable remuneration (where not otherwise agreed). In addition, some unauthorised providers choose to be part of self-regulatory bodies, such as the Professional Paralegal Register (PPR), that require minimum training/qualifications, a minimum cover of PII and a first-tier complaints procedure.[13]

21. Changes introduced in response to Lord Justice Jackson's recommendations to promote access to justice at a proportionate cost also have an impact on the conduct of commercial litigation.[14] These changes sought a greater focus on predicting and controlling costs of litigation.[15]

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[9] A practising barrister, whether holding a self-employed, employed or dual practice practising certificate, will need to apply to the BSB for individual authorisation to conduct litigation. See Authorisation to conduct litigation.
[10] Those who meet two out of the following three criteria over the past ten years: (i) turnover or (ii) balance sheet of less than €2 million or (iii) fewer than ten employees.
[11] We note that, since November 2016, all solicitors are required to assess their own individual training needs and link their assessment to the objectives of the organisation in which they work.
[12] The EU ADR provisions do not apply to legal services providers when offering legal advice to businesses. That is, EU ADR provisions only apply in business-to-consumer transactions and not business-to-business.
[13] The PPR also offers a second-tier complaints procedure and a compensation fund in certain circumstances.
[14] *Review of Civil Litigation Costs: Final Report*, December 2009, prepared by Lord Justice Jackson.
[15] Some changes relevant to commercial litigation are related to conditional fee agreements and damages-based agreements. We have not reviewed the impact of the reforms on the provision of commercial law services.

Legal services providers

22. Commercial law services are supplied by providers on the basis of a number of different business models and are delivered through a variety of channels. We note, in particular, that legal document preparation (including advice)[16] and advice in disputes[17] are delivered by both authorised and unauthorised providers.

23. Litigation, a reserved activity, can legally only be delivered by authorised providers. However, unauthorised providers may provide advice and drafting support to the client during a dispute. For example, we have identified unauthorised providers that provide advice and assistance with drafting letters in litigation (though do not send or sign the letter). Similarly, in relation to advocacy, some providers may either provide advice to clients in court without addressing the court or may request rights of audience from the judge.[18]

24. Based on our research and engagement with providers, we have developed a typology of providers active in the provision of commercial law services:

    (a) 'traditional' authorised providers: include solicitors and barristers, typically delivering services in person, by telephone or in writing;[19]

    (b) online document providers: these tend to be unauthorised, but may also be authorised. Examples include Rocket Lawyer, an unauthorised provider, which offers access to technology that generates legal documents, and Legal Zoom, an SRA-authorised provider, which offers document templates. These providers also offer personalised or bespoke services for additional fees; however, their set of core services consists of online documents;

    (c) other unauthorised providers:[20] these include paralegal law firms, lawyers with previous in-house legal experience or other unauthorised firms that offer commercial law services,[21] which will tend to provide a more

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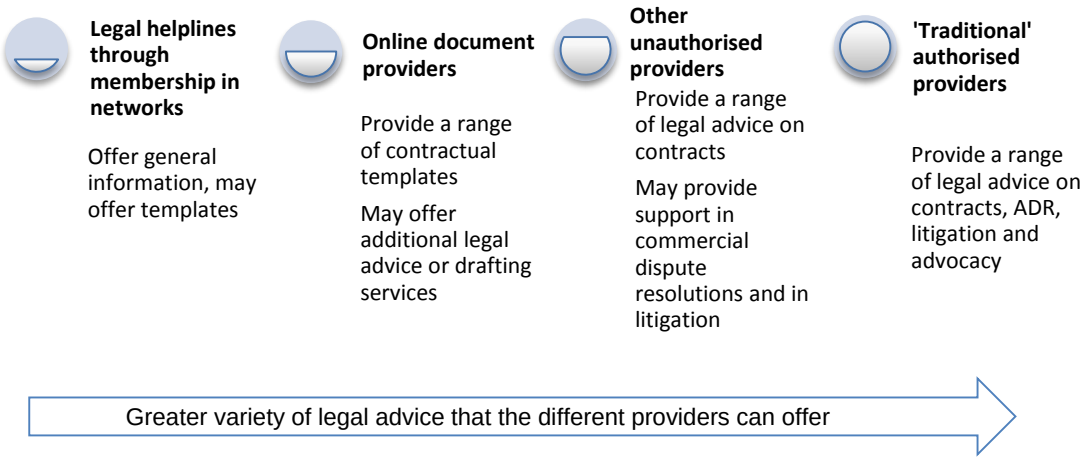
[16] Examples of commercial contracts include customer and/or provider agreements, franchise agreements, confidentiality agreements, outsourcing agreements, etc.
[17] Often mediation and arbitration.
[18] In respect of seeking rights of audience, our understanding is that this relates almost entirely to the small claims court and fast-track cases.
[19] Such providers also include chartered legal executives, although most of them are employed in solicitors' firms. Further, as mentioned in paragraphs 13 and 14, our definition of commercial law services excludes commercial property and general intellectual property problems (unless contracts) and so, we have not considered the specific role of licensed conveyancers and patent and trademark attorneys as authorised providers in this case study.
[20] We note that some of these providers may be self-regulated, for example, by the Institute of Paralegals and/or the PPR.
[21] It can also include lawyers who have completed the academic elements of their legal education but have not qualified (eg as solicitors) and experienced business people with experience of handling legal problems themselves.

bespoke service and without a key focus on the online provision of services as online document providers; and

(d) legal helplines accessed through membership bodies: these include trade bodies such as the Federation of Small Businesses (FSB) that provide legal advice through a legal helpline or access to online documents.[22]

25. Figure 2 shows the types of services offered by different types of provider. For example, legal helplines usually offer general information and potentially some contractual templates, whereas solicitors tend to provide a range of legal advice on commercial contracts and formal dispute resolutions.

Figure 2: The range of services provided by different types of provider of commercial law services



Source: CMA.

26. Few micro or small businesses employ in-house lawyers.[23] For example, the LSB found that only 5% of small and micro businesses have in-house legal capacity and that in-house legal capacity increases as a business expands. However, where small businesses do employ in-house lawyers, their expertise is most commonly in relation to contracts.[24] Research commissioned by the SRA found that the expansion of a business leads to

[22] Another example is the Chartered Institute of Logistics and Transport that offers a legal helpline to its members. This legal helpline includes advice to commercial legal matters such as advice in contracts as well as personal legal matters such as probate and wills. Source: www.ciltuk.org.uk/Membership/Benefits/Legal. Accessed on 22 September 2016. Similar arrangements are also provided to varying extents by insurers.
[23] We define in-house lawyers as lawyers who are employed by an organisation other than a regulated legal business, eg in commerce or industry, the not-for-profit sector, a trade union or local government. According to a report commissioned by the SRA about in-house solicitors, in-house lawyers are only allowed to act for the employer, subject to limited exceptions as set out in Rule 4 in the SRA Handbook. Source: Oxera (2014), *The role of in-house solicitors,* prepared for the SRA.
[24] Blackburn, R, Kitching, J and Saridakis, G (2015), *The legal needs of small business: An analysis of small businesses' experience of legal problems, capacity and attitudes*, for the LSB.

rising legal costs which may lead to in-house provision being a more cost-effective option.[25]

27. While accountants are commonly used by small businesses to provide business support services,[26] small businesses do not typically use them as a source of commercial law advice in relation to contracts and disputes. For example, a literature review conducted by the International Federation of Accountants suggests that, although accountants provide a range of services to small businesses, these are within the broader function of financial management.[27] In addition, the 2013 survey commissioned by the LSB found that accountants were most often used in relation to tax problems or business structure/ownership.[28]

28. We now provide more detail on each of the providers identified in paragraph 24 and, in particular, on the services that each type of provider offers to small businesses, based on the limited data available.[29]

'Traditional' authorised providers

29. The Law Society estimates that 10.3% of the turnover of solicitors' firms is derived from work for small businesses and 53.8% is derived from work for larger businesses.[30] Hence, a large majority of the turnover relating to commercial law services generated by solicitors is likely to be generated from larger businesses. We further assume that a significant concentration of commercial law turnover relates to the largest corporate clients.

30. Table 1 shows the total number of solicitors' firms in 2015 by size (number of practitioners) that generate turnover in areas of law that relate to commercial law.[31] Table 1 shows that 18% of sole practitioners generate turnover from the

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[25] Oxera (2014), *The role of in-house solicitors,* prepared for the SRA.
[26] The LSB 2015 survey found that 43% of small businesses had engaged with an accountant to provide business support. Source: Blackburn, R, Kitching, J and Saridakis, G (2015), *The legal needs of small business: An analysis of small businesses' experience of legal problems, capacity and attitudes*, for the LSB.
[27] International Federation of Accountants (2010), *The role of small and medium practices in providing business support to small- and medium-sized enterprises*.
[28] Pleasence, P. and Balmer, N. (2013), *In Need of Advice? Findings of a Small Business Legal Needs Benchmarking Survey*, commissioned by the LSB.
[29] It is difficult to carry out a full analysis of the services (and shares of services) offered by authorised providers in the provision of commercial law services to small businesses for two reasons: first, the available data does not allow us to break down the clients of law firms by size of business, and second, it is difficult to identify the commercial law services within the scope of this case study.
[30] The remaining work is from private clients/individuals, civil legal aid, criminal legal aid and other clients such as charities and public sector bodies. 'Small business' was defined as having fewer than 50 employees and 'large business' as having more than 50 employees. Source: The Law Society 2015/16 Firms Survey.
[31] The SRA segmentation includes different areas of work. We have selected specific categories that we considered to be related to commercial law services. We have considered arbitration and disputes to be mostly generated from businesses as opposed to consumers. In fact, the Law Society estimates the amount of ADR work to be almost all business-to-business (approximately 1.5% of total ADR work is estimated to be business-to-consumer). To estimate this split, the Law Society assumed that for any firm with greater than 10% of its turnover accounted for by family/matrimonial and children work has been categorised as ADR business-to-consumer.

area of 'commercial/corporate (non-listed companies)'[32] compared with 67% of law firms with more than 25 solicitors.

Table 1: Number of solicitors' firms with turnover by areas related to commercial law, 2015

Number of practitioners	*Total number of firms*	*Arbitration and disputes*		*Commercial corporate non listed company*		*Debt collection*		*Landlord and tenant*		*Litigation other*	
Sole	3,172	137	4%	584	18%	329	10%	727	23%	989	31%
2 to 4	3,787	151	4%	804	21%	650	17%	1317	35%	1576	42%
5 to 10	1,882	117	6%	566	30%	419	22%	774	41%	1066	57%
11 to 25	903	103	11%	439	49%	298	33%	426	47%	626	69%
More than 25	559	140	25%	376	67%	203	36%	287	51%	439	79%

Source: CMA analysis of the SRA data 2015. The SRA defines turnover as the total professional fees of the firm, including remuneration, retained commission and income of any sort whatsoever of the firm (including notarial fees). Specifically excluded are interest, reimbursement of disbursements, VAT, remuneration from a non-private practice source, dividends, rents and investment profit.
Note: The sum of the number of firms undertaking work in the areas related to commercial can be greater than the total number of firms because each firm will most likely undertake and generate turnover in more than one area.

31. We were told that although large law firms may undertake work for all types of businesses, the focus tends to be on larger corporate businesses. On the other hand, smaller law firms are more likely to service small businesses as opposed to large corporate firms, but are less likely to provide commercial law services.[33]

32. Our analysis of turnover in relation to commercial law services suggests that larger firms that offer commercial law services tend to tend to do so alongside a wider variety of areas of law, whereas smaller firms offering commercial law services are comparatively more likely to specialise in commercial law.[34]

33. Barristers also provide commercial law services to small businesses, but to a much lesser extent than solicitors.[35] We estimate that around 14% (or 2,200) barristers practise commercial law (albeit we would expect that a significant proportion of the Commercial Bar's work relates to medium and large businesses).[36]

Correspondingly, for firms with 10% or less of their turnover accounted for family/matrimonial and children work, the Law Society assumed that all of its ADR is corporate/commercial (ie business-to-business).
[32] This consists of companies that are not listed on a stock exchange for public trading.
[33] This may be a function of larger firms that have multiple departments.
[34] We found that in 2015 there were 132 sole practitioners firms with 90% or more of their turnover derived from the area 'commercial/corporate (non-listed company)', whereas there were only six large law firms. This does not confirm that work from small businesses is more likely to be undertaken by smaller law firms because those six large law firms could be undertaking larger volumes. Nonetheless, it emphasises that smaller law firms are more likely to generate turnover almost exclusively from commercial law services than larger law firms that tend to offer a wider range of services in different areas of law.
[35] Bar Council response to the Legal Services Market Study Interim Report.
[36] Based on the BSB Barometer around 14% of practising barristers undertake commercial litigation work. In 2015, there were 15,915 barristers in practice in England and Wales, giving a figure of around 2,200. Sources:

34. In addition to their work as advocates, barristers provide advice and other legal services which can be accessed either through a solicitor or on a 'public access' basis. Barristers have been permitted to undertake direct public access work since 2014. This means that members of the public can engage participating barristers directly, without the need to engage the services of a solicitor. Based on a survey commissioned by the BSB and the LSB, the majority of public access work is undertaken in the areas of chancery, family and commercial law.[37] However, the Bar Council told us that most barristers choose not to do transactional work because of its reliance on administrative support and the additional cost this entails, as well as the focus of their expertise being on advocacy.

Online document providers and other unauthorised providers

35. The service offered by online document providers varies by provider, ranging from DIY templates through to semi-bespoke options (ie options that involve some personalised legal advice).[38] Some providers offer an additional document review service conducted by a qualified lawyer.

36. Other unauthorised providers tend to offer services not only in relation to advice on legal documents, but also support in commercial disputes, delivered either in person or remotely by telephone or email. Furthermore, some unauthorised providers offer ADR services such as mediation and arbitration.

37. We conducted a review of provider websites to gain a better understanding of the differences between authorised providers and online document providers and/or other unauthorised providers. We reviewed the 95 highest ranked[39] websites of legal services providers that offered commercial law services to small businesses.[40] Of the 95 sites reviewed, 82 were solicitors' firms,[41] 12

BSB (2014), *Bar Barometer: Trends in the profile of the Bar* and Pye Tait Consulting (2016), *Research into the public access scheme,* commissioned by the LSB and the BSB.

[37] Pye Tait Consulting (2016), *Research into the public access scheme,* commissioned by the LSB and the BSB.

[38] These more bespoke documents may also be automatically generated based on a number of required inputs from a customer.

[39] In identifying the highest ranked websites, we did not include firms listed as paid search/advertising alongside the organic search results.

[40] We did not target pre-defined firms, but rather used specific keywords (ie 'commercial (law OR legal) advice "small business"'). We selected those firms that appeared first in the search which has the caveat that the search was not randomised since those firms that appear first are also more likely to be most used by users. We also note the other caveats listed in paragraph 72. We used both Google and Bing search engines in order to minimise that problem. We selected 95 links from Google and 66 links from Bing. There was a significant overlap between both lists and around 120 links were selected. Around 35 links were outside of our scope either because they were intermediaries, newspapers, Australian, American firms or firms only servicing clients in Scotland. These were also the firms that were less likely to be at the top of our list. The search was made on 25 and 26 May 2016.

[41] Fourteen of the SRA-regulated firms from the sample were ABSs. This was confirmed using the search engine for licensed bodies available on the SRA website.

were fee-charging unauthorised firms[42] and one was a claims management company.

38. Our website review found that solicitors tend to offer a wider range of services in relation to commercial legal advice, contracts, litigation and ADR mechanisms. Unauthorised firms from our sample tended to specialise in legal document templates with the support of a legal helpline. We note, however, that five of the 12 unauthorised firms offered a wider range of legal advice in relation to commercial contracts and so fall into our category 'other unauthorised' as opposed to online document providers. Furthermore, while almost all firms (authorised and unauthorised) advertised services in areas of law other than commercial, the range of services offered by solicitors' firms was greater than that offered by unauthorised providers. In particular, some unauthorised providers focused on business services (including employment law), whereas solicitors' firms offered services to both individual and small businesses.

39. We also found that unauthorised providers advertise themselves using terms such as 'lawyer', 'legal adviser' or 'legal consultant'. In meetings with unauthorised providers we were told that small businesses tend to have low awareness or understanding of different legal titles. Some unauthorised providers told us that, for this reason, in their first engagement with a client they clarify their regulatory status.

Legal helplines accessed through membership bodies

40. Other types of provider include trade bodies that provide legal advice through a legal helpline or online documents. The FSB, for example, offers its members a legal protection scheme that gives access to a 24-hour legal advice helpline and online legal information, among other support or services.[43]

41. The FSB told us that 'business law' is the second-most frequently sought area of legal advice through the FSB legal helpline (accounting for 27% of all calls), with late payments being the issue that small and medium businesses most often get into dispute with others about. In 2015, the FSB legal helpline received 40,000 calls from businesses about 'business law' with 36% relating to commercial contracts, 7% intellectual property and 5% about civil procedure.

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[42] We excluded from our sample those websites that offered unpaid information on commercial legal services, intermediaries such as digital comparison tools, and networks of solicitors, such as Quality Solicitors.
[43] FSB's website. Accessed on 24 June 2016.

42. The FSB also offers online legal documents across a wide range of issues including commercial contracts. In 2015, 10,500 downloads of 'business law' related documents were made (29% of the total volume of documents downloaded). However, given the scale of the FSB's membership (around 200,000 businesses), only a small proportion of those that have access appear to use the FSB for 'business law' documents on a regular basis.[44]

Small businesses' experiences of commercial law

43. This section provides our analysis of small businesses' experience of commercial legal issues, including how these problems are addressed. It also explores how small businesses engage with the market and whether small businesses complain when things go wrong.

Prevalence of commercial legal issues

44. The LSB found that trading problems are the most common legal problem experienced by small businesses.[45] Table 2 sets out the LSB's findings. The most common problems[46] related to the quality of purchased goods (8.6% of all respondents), late/non-payment for sold goods (7.5%) and late delivery of purchased goods (6.6%).

[44] Furthermore, around 84% of FSB's member businesses employ fewer than ten staff, indicating that levels of usage are low for even the smallest business. Source: FSB (2016), *Membership profile*.
[45] Employment was the second most frequent legal problem in the sample (6.5% of all firms). Source: Blackburn, R, Kitching, J and Saridakis, G (2015), *The legal needs of small business: An analysis of small businesses' experience of legal problems, capacity and attitudes*, prepared for the LSB.
[46] Businesses could have listed more than one type of problem.

Table 2: Experience of trading issues

	2013 (% of firms reporting)	*2015 (% of firms reporting)*
Any trading problem	**24.3**	**19**
Goods or services provided to or by customers		
Not as described	11.3	8.6
Late delivery	8.8	6.6
Late/non-payment	9.3	7.5
Distance selling consumer rights	3.3	2.4
Other contract problems or disputes	2.9	2
Fraudulent or wrongful trading	1.6	0.8
Unfair operation of a public tender	1.2	0.5
Legal/regulatory issues relating to international trading	2	1.1

Source: Blackburn, R, Kitching, J and Saridakis, G (2015), *The legal needs of small business: An analysis of small businesses' experience of legal problems, capacity and attitudes*. Based on Table 3.3, p23. The sample size of these surveys are 9,548 small businesses for 2013 and 10,528 small businesses for 2015.

45. In 2015, the issue of late receipt of payment for small businesses, in part, led the UK government to create the Small Business Commissioner in the Enterprise Act 2016. The principal objective of this Commissioner is to enable small businesses to resolve disputes and discourage unfavourable payment practices by larger businesses. A 2014 survey of members of the FSB found that 51% had experienced late payment within the previous 12 months.[47]

46. The LSB's research indicates that the larger small businesses are, the more likely it is for those businesses to have trading problems.[48] This could be a reflection of a broader customer base and greater geographical reach of the larger firms in the sample. In addition, businesses serving individual consumers and businesses[49] were more likely to experience legal problems related to trading issues than those businesses serving individual consumers only.[50] Being in certain activities such as production, construction, wholesale and retail also increases the likelihood of a trading problem.[51]

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[47] Department of Business, Innovation & Skills (2015), *Impact Assessment – Small Business Commissioner*.
[48] Although overall there is a positive relationship between the size of the business and having a trading problem, there is a size-threshold at 27 employees beyond which the size effect on reported trading problems diminishes. Source: Tables 3.4 and 3.8 in Blackburn, R, Kitching, J and Saridakis, G (2015), *The legal needs of small business: An analysis of small businesses' experience of legal problems, capacity and attitudes*. For the LSB.
[49] It may also include non-for-profit organisations or other type of organisations.
[50] This is also emphasised in a qualitative research conducted in 2010 for the LSB where small businesses indicated that dealings with companies could be more stressful, because they feel less in control of setting the terms of the transaction and it is more likely to delay payments. Source: AIA Research (2010), *Legal advice for small businesses: Qualitative research*, commissioned by the LSB.
[51] Blackburn, R, Kitching, J and Saridakis, G (2015), *The legal needs of small business: An analysis of small businesses' experience of legal problems, capacity and attitudes*. Prepared for the LSB, p39.

Awareness of commercial legal issues

47. Although trading issues are the most common legal problem experienced by small businesses, the LSB 2013 survey found that small businesses often deal with trading problems on their own and that this is the legal issue for which they were least likely to seek independent help, when compared with other legal issues such as intellectual property.[52] Our qualitative research with small businesses[53] also found that, where possible, small businesses will try to solve their legal problems themselves, particularly where they have accumulated experience of dealing with similar issues. Additionally, small businesses are more likely to tackle trading issues without external assistance than they are with other legal issues, such as intellectual property. The LSB also found that the main areas of internal legal expertise included contracts and employment.[54]

48. Small businesses may choose to address commercial legal issues without recourse to legal services providers because they have internal expertise. However, some small businesses may simply not see a commercial legal issue as a legal problem. The FSB also told us that some small businesses are not aware of which business problems are legal and, when aware, may either choose not to pursue disputes or are unable to identify an appropriate route to resolve that dispute.[55] In addition, the LSB 2013 survey found that only 8.4% of trading problems were characterised as legal, while the figure was 48.2% for intellectual property problems.[56]

49. The available evidence also suggests some lack of awareness of ADR mechanisms and legal services providers for commercial disputes. For example, the consultation responses cited in the impact assessment of the Small Business Commissioner indicate that small businesses may not be aware of routes for dispute resolution such as mediation or conciliation.[57] The FSB similarly told us that small businesses tend not to use ADR, because either they do not know about its existence or they do not know about its

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[52] Other legal issues included employment, premises, tax, debt/finance, regulation, structure, and other. For a definition of these legal issues used in the LSB 2015 survey see Table 3.3 in Blackburn, R, Kitching, J and Saridakis, G (2015), *The legal needs of small business: An analysis of small businesses' experience of legal problems, capacity and attitudes*, For the LSB, pp23–25.
[53] Our qualitative survey includes 100 small businesses, in which around half the sample had experienced commercial issues in the past 12 months. Further, the research focused on small businesses with up to 30 employees with around half the sample on small businesses with up to nine employees. Hence, the results are only indicative. Research Works (2016), *CMA Legal Services, Qualitative Research Report*, commissioned by the CMA.
[54] Similar findings were found in both surveys commissioned by the LSB in 2013 and 2015.
[55] FSB response to CMA Legal Services Market Study Interim Report.
[56] Furthermore, trading problems were more often rated in the least serious quartile (33.6%) and less often in the most serious quartile (19.5%). Source: Pleasence and Balmer (2013), *In Need of Advice? Findings of a Small Business Legal Needs Benchmarking Survey*, prepared for the LSB.
[57] Department of Business, Innovation & Skills (2015), *Impact Assessment – Small Business Commissioner*.

benefits. Small businesses may also be discouraged from litigation or pursuing ADR approaches because of perceptions of the likely time and cost (as well as any risk of damaging a significant commercial relationship).[58]

Knowledge of the market

50. Our qualitative research found that small businesses have a limited knowledge of the different legal services providers available in the provision of commercial law services.[59] Our qualitative research also found that solicitors are the most used provider for dealing with commercial legal issues. This is in line with other areas of law such as employment law (see the employment law services case study). Only a small number use legal services providers other than solicitors. Such providers included trade bodies, insurers and other specialist support for start-ups. Our sample of small businesses with commercial issues did not use their accountant for support, other than asking their accountants to recommend a legal services provider.[60] The FSB also told us that small businesses tend to use solicitors as a default and assume all lawyers/providers are regulated in some way.

51. In addition, Table 3 shows the LSB's findings on the sources of help that small businesses use in relation to trading problems, with solicitors representing the single largest source.

Table 3: Use of types of legal services providers in relation to trading problems by small businesses in the past 12 months, 2015

Legal services provider used for any trading problem	*N*	*%*
Solicitors' firm	413	70
Barrister	30	5
Licensed conveyancer	27	5
Patent/trademark attorney/agent	46	8
A legal helpline	60	10
Another legal service	12	2
Total	**588**	**100**

Source: CMA analysis of the survey in Blackburn, R, Kitching, J and Saridakis, G (2015) *The legal needs of small business: An analysis of small businesses' experience of legal problems, capacity and attitudes*. For the LSB. Note: We used question B4 in the survey: 'In which areas did a service you have mentioned help your business in the past 12 months?' This question was asked to those businesses reporting use of each type of service in the past 12 months. The category 'Another legal service provider' can include a trade body, contract law specialist, start-up business support or another business support.

[58] Department of Business, Innovation & Skills (2015), *Impact Assessment – Small Business Commissioner*.
[59] We have used a broader definition of commercial law services in our qualitative survey than the one defined in paragraphs 13 to 14. We believe, however, that this does not affect our findings.
[60] Research Works (2016), *CMA Legal Services, Qualitative Research Report*, commissioned by the CMA.

52. As Table 3 shows, some small businesses with trading issues stated that they had used a licensed conveyancer and/or a patent/trademark attorney, though it is not clear what the specific nature of trading issues or the services provided in these instances were, and may be related to the specific business activities of the respondent. The LSB research noted that this could be as 'a result of respondents not necessarily knowing whom to approach, possibly approaching trusted advisers known to them dealing with an earlier matter, or even approaching an adviser before being moved on to another adviser'.[61] [62]

Engagement with the market

53. Our qualitative research[63] found that different businesses tended to adopt one of three engagement strategies when choosing a legal services provider for commercial and/or employment legal issues:[64]

    (a) 'make a single contact': respondents who tended to approach a non-solicitor legal services provider that had already been paid for (eg insurer or trade body);

    (b) 'ask a contact': respondents who approached legal services providers based on recommendations from business peers or other legal services providers; and

    (c) 'review the market': respondents who use different tools such as the internet to seek information useful for their choice of services provider.

54. The majority of the small businesses in our qualitative research used a legal services provider that they had learned about via a recommendation (ie asked a contact). Once small businesses recognise that they have a legal problem and need to seek legal advice, they commonly approach business peers, accountants, friends or family. Free or low-cost solutions such as legal helplines or Citizens Advice are also often used in the first instance.

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[61] The LSB 2013 report also found a similar issue and indeed explained that this might be due to some respondents being unclear about the formal description of services used. Source: Pleasence, P., and Balmer, N. (2013), *In Need of Advice? Findings of a Small Business Legal Needs Benchmarking Survey*, commissioned by the LSB.
[62] In addition to trading issues, there were two categories of legal services issues in this survey – business premises and intellectual property – that relate more to the type of work undertaken by licensed conveyancers and patent/trademark attorneys respectively. This can be explained by lack of awareness of the different types of providers and what they can do to help in each legal matter.
[63] Research Works (2016), *CMA Legal Services, Qualitative Research Report*, commissioned by the CMA.
[64] There was evidence of overlap between the 'ask a contact' and the 'review the market' groups.

55. The following is an example of a small business in our qualitative survey that experienced a legal issue when reviewing its terms and conditions and hired a specialised firm of solicitors that had been recommended.

> ‘I would speak to friends who are in business to see who they have used. I use my networks to find out someone they have used’ (one employee, in operation for five years, £300k annual turnover).

56. The qualitative research also found that recommendations differ depending on whether they are from business peers or professional legal contacts. For example, if it is a business peer’s recommendation, the type of information will tend to relate to the peer’s own specific experiences. Recommendations from legal professionals may provide additional guidance about whether the small business would need to engage a legal services provider or whether other sources of information would be appropriate (for example, in our research a small group of respondents were signposted to the small claims court website). This is especially the case when the value of the claim is relatively small.

57. Some businesses in the ‘review the market’ group searched for a little information and made minimal comparison between legal services providers. For these businesses, whether a provider had experience or relevant specialism in dealing with the type of legal issue was often cited as a relevant factor. However, location tended to be the most relevant factor for these type of businesses.

> ‘My main concern when finding a solicitor is travel. I don’t have time to travel too far, and I don’t like to deal with someone via e-mail or phone. I’d rather talk to someone face-to-face to tell them what I want and what I require in my contract’ (four employees, in operation for 20 years, £100k annual turnover).

58. Those businesses that only asked a contact, or reviewed the market with a minimum degree of searching, tended to feel vulnerable and anxious about their legal problem. They were less experienced and did not know whom to approach, what type of questions to ask or what type of information to look for.

59. A very small group of our qualitative sample were more sophisticated when reviewing the market. If this review was made online, it involved searching for information about the location, qualifications/experience of staff, certificates or quality marks and/or external recommendations and forum discussions. If the review was made by telephone or face-to-face, then businesses would try to

obtain information about price structures and customer service offering (eg if the firm had a legal helpline). Those who used both website and telephone to review the market, also tried to find out information about specialism and case studies/testimonials. This small group often used the Law Society's website given the amount of information available on legal issues. However, the most sophisticated searchers felt there was lack of consistency in the information available online needed to make adequate price and/or quality comparisons. Nonetheless, those more likely to make price comparisons were also more likely to assess quality proactively.

60. Overall, most small businesses in our sample relied on recommendations rather than search and those who did compare tended to use limited information.

Outcomes

61. Our qualitative research indicates that small businesses might be less likely to make a complaint when unhappy with the service that they have been given than individual consumers. This is potentially because of a higher opportunity cost[65] as shown in the following two quotes from our qualitative research:

> 'I could have complained but I did not have the time or the information on how to do it. Besides I needed to focus on the day-to-day running of my businesses' (Owner of an independent retail store, zero to three employees).
>
> 'I have looked up ways of complaining about current solicitors, but did not think the cost would be worth the outcome' (private landlord, zero employees).

62. The main reasons for complaining to the LeO about commercial law are failure to follow instructions, followed by excessive costs and delays. Table 4 shows the main reasons for complaints related to commercial law services. This, however, should be read carefully as there were only 53 complaints about commercial law in 2014/15 against a total of 7,370 complaints for all areas of law. Furthermore, as mentioned in paragraph 19, only micro businesses have access to the LeO. Nevertheless, the key reasons for complaining are similar to those in relation to the grand total.

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[65] Although related to when searching a provider, a report for the FSB also noted that high opportunity costs and low benefits (actual or perceived) of time spent play a relevant role for small businesses. Source: Fletcher, A. Karatzas, A and Kreutzmann-Gallasch, A (2015), *Small businesses as consumers: Are they sufficiently well protected?* A report for the FSB.

Table 4: Main reasons for complaints to LeO about commercial law, 2014/15

2014/15	*% Commercial law*	*% Grand Total**
Costs excessive	17	9
Costs information deficient	7	8
Delay	14	9
Failure to advise	12	18
Failure to follow instructions	24	18
Failure to progress	10	9

Source: CMA analysis of the LeO complaints data for the financial year 2014/15.
Note: Each complaint can be about more than one reason.
*This includes all complaints made to the LeO about all areas of law.

63. In addition, our qualitative research indicates that finding a legal services provider for a significant number of small businesses is time-consuming and sometimes stressful. Hence, switching provider for the same legal matter rarely happens and only if the provider's service was very unsatisfactory. The FSB told us that when a small business chooses to switch for a different matter within commercial law, then it might be because a specialist problem arises and a specialist is needed for advice.

Conclusion on small businesses' experiences of commercial law

64. Overall, smaller businesses appear to face similar difficulties to those experienced by individual consumers when accessing legal services, such as a lack of awareness and understanding of legal services providers. Although commercial legal issues are one of the most common legal problems, small businesses often attempt to solve those problems themselves. In addition, small businesses sometimes lack awareness of what business problems are legal and have low awareness of the different routes to resolve a dispute.

65. Our qualitative research indicates that small businesses tend to rely on recommendations from business peers or contacts in the legal services sector. The few that compare legal services providers feel that there is lack of consistency in the information available online needed to make adequate price and/or quality comparisons.

66. We also found that, although small businesses have fewer opportunities to make a complaint, they also appear to be less likely than individual consumers to pursue a complaint.

Competition between legal services providers

67. This section sets out our analysis of the process of competition and the structure of the market, with particular regard to the prevalence of unauthorised providers in the provision of commercial law services. It also examines price transparency and the extent to which firms make price information available on their own websites and whether unauthorised firms are more or less likely to publish price information. It then briefly looks at barriers to entry, expansion and exit. Finally, this section looks at innovations and barriers to innovation in the provision of commercial law services.

Process of competition

68. The provision of commercial law services to small businesses shares a number of common features with other legal services areas. In particular:

    (a) Competition tends to be based on one-off transactions rather than longer term contracts for repeat purchases.[66]

    (b) The key parameters of competition tend to be price, quality of service and quality of advice. Location and expertise in a specific industry are also relevant factors for many small businesses when choosing their provider.

    (c) Small businesses tend to prefer face-to-face contact with their provider and, therefore, competition tends to be local. However, competition may also occur nationally when face-to-face contact is less important, as is the case for online document providers.

69. There are key differences between the types of services offered in the provision of commercial law services.

    (a) Transactional work, such as drafting certain commercial contracts, is generally more commoditised than contentious work, making it theoretically easier for providers to be more transparent about their offerings. By contrast, contentious work can vary significantly in scale and complexity. For example, disputes can be resolved by early settlement, mediation or at trial, and hence it is inherently harder for providers to be clear upfront on likely costs, and for small businesses to compare offerings.

    (b) The drafting of commercial contracts can be conducted by both authorised and unauthorised providers. By contrast, litigation is a

[66] Although we have identified a few firms that offer monthly subscriptions which therefore may involve longer relationships with small businesses.

reserved activity and can, therefore, only be delivered by those providers authorised to do so.

Prevalence of unauthorised providers

70. As noted in paragraph 50, solicitors remain the predominant providers of commercial law services. However, there has been a growth in the provision of legal services by unauthorised providers. Therefore, we consider how prevalent unauthorised providers are in the provision of commercial law services.

71. There has been little detailed research into the provision of unauthorised legal advice. In 2016, the LSB estimated that unauthorised providers were engaged for 4.5-5.5% of all legal problems where advice was sought and paid for. The LSB was not able to make a quantitative assessment for specific areas of law, but indicated that the current level of unauthorised providers in commercial law[67] appears very low (under 5%).[68]

72. Our analysis of the LSB's research into the legal needs of small business (presented in Table 3 above) found that solicitors are by far the largest type of provider. However, this analysis has limitations – for example, it is not clear what proportion of fee-charging unauthorised providers account for the provision of commercial law services. In our review of 95 providers' websites, we found 82 solicitors' firms,[69] 12 fee-charging unauthorised firms[70] and one claims management company. This exercise supports our view that solicitors' firms are the predominant providers of commercial law services.

73. However, our understanding is that the prevalence of unauthorised providers in this market is lower than that suggested by our website review and more consistent with the LSB survey data (see Table 3). This is for several reasons. First, the type of work that solicitors can undertake is much wider than unauthorised providers (specifically it includes the conduct of litigation) and hence, the number and complexity of the cases that solicitors undertake is likely to be greater. Second, barristers are not included in the sample because these tend to be individuals as opposed to entities and therefore, tend not to have personal websites.[71] We also did not include trade associations, such as

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[67] Referred as 'other business affairs' in the LSB report.
[68] This study used mostly consumer surveys in order to obtain indicative shares. Therefore, the shares should be read by number of customers as opposed to turnover. LSB (2016), *Mapping of for profit unregulated legal services providers*.
[69] Fourteen of the SRA authorised firms from the sample were ABSs. This was confirmed using the search engine for licensed bodies available at the SRA website.
[70] We excluded from our sample those websites that offered unpaid information on commercial legal services, intermediaries such as digital comparison tools, and networks of solicitors, such as Quality Solicitors.
[71] Though may be listed on their respective chamber's website.

the FSB within our analysis. Third, online document providers (which are typically unauthorised) are inherently more likely to have a website than other legal services providers.[72]

74. The low prevalence of unauthorised providers in the provision of commercial law services may be due to small businesses' lack of awareness of commercial legal issues and their tendency to use solicitors as a default option. Intermediaries such as digital comparison tools, which are now starting to enter the market (see paragraph 108), could increase small businesses' awareness of the alternative types of provider.

Competition on price

75. We are not able to quantify price dispersion in the provision of commercial law services as the necessary data are not available. Nevertheless, an important aspect of price competition in legal services is the structure of fees/prices presented to consumers and how likely it is for legal services providers to publish specific price information. Our review of 95 providers' websites (see paragraph 37) allowed us to gather evidence on levels of price information that is publicly available to small businesses when searching for a legal services provider.[73] We also consider whether there are any barriers or risks associated with providing price information.

Price transparency

76. First, we have considered transparency of price structures.[74] We gathered data on whether our sample of firms published online their type of price structure, such as fixed fee or hourly rate, to be charged in a commercial law service. We found that 41 of the 79 of the solicitors' firms in the sample published their price structure for at least one commercial law service, whereas 11 of the 12 unauthorised firms in the sample published their price structure. We found that almost all those firms in the sample that published their price structure for at least one commercial law service, also offered fixed fees for at least one commercial law service.[75]

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[72] We note, however, that based on the IRN qualitative survey, digital marketing now takes the largest share of spending on marketing. Source: IRN Research (2016), *UK Legal services market*, 6th edition.
[73] This analysis focuses in the provision of commercial law services to small businesses and therefore, should not be generalised to other areas of law.
[74] That is, whether they charge on a fixed fee basis, hourly fee, or any other type of price structure.
[75] In our exercise, if a given firm published price information for only one of the commercial services (for example, drafting a simple contract), we would classify that firm as displaying price information. This allow us to compare authorised and unauthorised providers. This is because solicitors tend to offer a wider range of services in commercial law than unauthorised providers. In particular, many solicitors may offer litigation where there might be difficulties with offering accurate estimates in all cases and so, publication of prices might not always be feasible.

77. Second, we have considered the extent to which there is transparency of specific price details/information. We gathered data on whether firms published specific price details, eg £X per hour of work. Those unauthorised firms that published information about price structure also displayed some information on prices. By contrast, only 12 of the 79 solicitors' firms in the sample published any prices on their websites. This is broadly consistent with other evidence on price transparency in the legal services market.

78. We also found that solicitors' firms offering services in a number of areas of law were less likely to publish information on price structure and specific price information for commercial law services compared with the other services offered.[76] Thus, there appears to be less information available for customers seeking commercial law services. We recognise that there might be legitimate difficulties with offering price information in part driven by the nature of the specific legal services in different areas of law (and to the extent that they are standardised or commoditised). However, we note that many aspects of commercial law work (such as document drafting or low value debt recovery) share characteristics with more commoditised work in other areas of law.[77]

79. Even though around half of the solicitors' firms did not publish any form of price information in relation to commercial law services, some offered some form of free initial consultation or interview and we expect that price information would be provided in such a consultation.[78] This is consistent with the FSB's view that pricing information is only normally available after consultation.

80. Based on our review of websites, we conclude that there is lack of price transparency online when searching for a legal services provider (and particularly for solicitors).[79]

Barriers to price transparency

81. Lack of transparency can increase search costs for small businesses that want to engage with the market. In light of this problem, we consider the possible barriers to providing greater upfront information on prices. Given the differences in complexity between legal document advice and advice and

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[76] For example, wills, conveyancing, estate administration, divorce and employment law.
[77] In addition, we found that, in employment law, some firms offer factsheets for free, which is rare to find within commercial law services. We note that this may be driven by the presence of ACAS (Advisory, Conciliation and Arbitration Service) in employment law. ACAS is a non-departmental public body and plays a very important role in providing free and impartial information and advice to employers and employees on workplace relations through its website and legal helpline. Although trade bodies and some online sites provide free material to businesses, we have not found a similar body to ACAS offering advice in relation to commercial legal issues.
[78] Some of these firms that offer a free initial consultation are also members of the 'Lawyers for your business' scheme that requires members to offer a 30-minutes free consultation.
[79] We note, however, that our sample size is quite small and hence, the results are only indicative.

representation in disputes, we analyse the risks to price transparency separately for these two types of commercial law services.

Legal document advice

82. We have engaged with several solicitors[80] in order to better understand the risks or barriers to providing more price information. In relation to barriers to price transparency when providing advice in commercial legal documents, we were told that publishing rates and/or breaking work into pieces and providing a range can be misleading as consumers have no meaningful way to know how complex their legal need is (and thus, where in the range they might expect to fall).

83. In its response to our interim report, the Legal Service Consumer Panel (LSCP) indicated that it accepts that there might be difficulties with offering fixed fee or accurate estimates in all cases. This is because some cases can vary greatly in complexity. Nevertheless, the LSCP's view is that if fixed fees cannot be offered, then providers of services should give clients a range of prices, using previous experience and professional expertise to cost appropriately.[81]

84. To better understand these point of views, we have looked at how service providers have been publishing prices.

85. Online document providers tend to publish fixed prices for their documents with additional fees if personalised or bespoke advice is needed. Law Bite, for example, offers a fixed price 'download&review' service that charges per document and includes a) download of a relevant template and access to editing tools, b) review and bespoke drafting of the document in accordance with the client's notes; and c) up to two rounds of amendments. Law Bite also provides price information for other services such as document checking/review and bespoke legal advice.[82]

86. Figure 3 shows an example of an ABS SRA authorised firm, LHS. This law firm indicates the potential range of fees and how long it can take to draft the confidentiality agreement.

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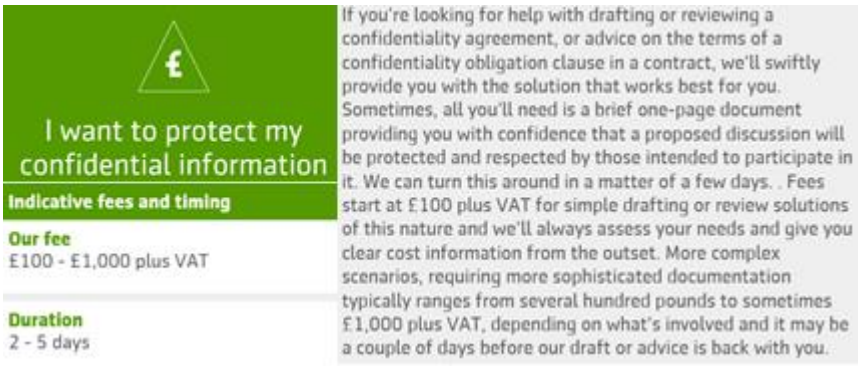
[80] For example, we attended a meeting at the Law Society in the Civil Justice Committee in May 2016.
[81] LSCP response to Legal Services Market Study Interim Report.
[82] Law Bit offers a 15 minute free consultation and charges £130 plus VAT if the service is delivered online and £140 plus VAT if the service is delivered by phone or Skype. This information was obtained from www.lawbite.co.uk/business-legal-advice/corporate-legal-advice. Accessed on 27 July 2016.

Figure 3: LHS: confidentiality agreement



Source: www.lhs-solicitors.com/milestones/business/trading-and-contracts/Im-looking-for-more-information/I-want-to-protect-my-confidential-information/#. Accessed on 27 July 2016.

87. These examples show that it is feasible to provide price information at least for the drafting of a confidentiality agreement. Although the range of prices in the second example is wide, it provides an indication of the variable nature of the work. We do not consider this information to be harmful for consumers if well contextualised. Therefore, in relation to legal document preparation (including advice), we do not consider complexity to be a significant barrier to price transparency.

Advice and representation in disputes

88. Several solicitors told us that the nature of commercial disputes means that it is very difficult to provide an indicative upfront cost and that an initial fact-finding/advice stage is needed before an indicative cost could be provided. In addition, litigation is driven by the litigation strategy adopted by both sides and there is lack of knowledge about what the other side is likely to do at the outset.

89. In the LSCP's view, it should be possible to provide cost estimates on a number of bases, such as if a litigation was resolved by early settlement, mediation or at trial, to ensure clients are given a 'best and worst case scenario'.

90. We note that, recently, there has been a shift towards greater focus on predicting and controlling costs of litigation. This has been made partially via the introduction of a form called Precedent H that is a template for the preparation of detailed budgets to be used at case management hearings in multi-track cases.[83]

[83] For more information see the Precedent H and Guidance Notes on Precedent H. Precedent H is not required in fast track cases.

91. One solicitor told us that such a detailed budget is only possible once a claim has reached the case management stage[84] and the respondent's defence has become apparent. On the other hand, Jim Diamond, a cost lawyer, considers that it is possible to provide a detailed budget early on in litigation, by using precedents from other cases although, where this is done, it is rarely provided to the client.[85] Joe Rose, a cost lawyer from the City Costs Management, noted that, in the majority of cases, it is possible to provide an early estimate especially if the law firm has accumulated experience across a number of past cases and the client is represented by a specialist in costs.[86]

92. This suggests that although it is hard to give upfront price information in litigation, a more detailed budget can be given before the case management stage is reached. Furthermore, more information on the payment structure (and relevant factors determining price such as hourly rate) could be provided early on in the case such that small businesses can take informed decisions when deciding whether to take a dispute forward to court.

93. In addition, we have noted that hourly rates are still the predominant charging structure in litigation with an increase in the use of fixed fees in certain cases. We note, however, that in the US there has been a move towards alternative fee arrangements away from the common hourly rate.[87] In a report from ALM Legal Intelligence that looked into alternative fee arrangements in the US, a survey of 218 law firms indicates that cost predictability, cost savings and increased efficiency are the major benefits of alternative fee arrangements.[88]

94. We are not aware of any significant regulatory restrictions on lawyers offering alternative fee arrangements in England and Wales with the exception of litigation.[89] However, we understand that there is a low level of awareness among small businesses about these type of fee arrangements. This, combined with a potential lack of incentive for firms to offer alternative fee structures, could explain why these are not commonly offered. Further, the report from ALM Legal Intelligence notes that firms may need more sophisticated software to collect, manage and analyse data to be able to offer alternative fee arrangements. Hence, lack of investment in, or, access to

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[84] The case management stage takes place after the claim has been allocated to one of the three tracks (small claims, fast or multi-track). Once the case has been allocated to a track, the court will manage the case. At this stage, the parties also have to prepare a costs budget, although this might differ for each track.
[85] Jim Diamond (2016), *The price of law*, Centre for Policy Studies, Pointmaker.
[86] We also note that the SRA Handbook includes a variety of requirements in relation to client care when the legal matter involves fee arrangements. See outcomes IB(1.13) to IB(1.21) in the SRA Handbook.
[87] These alternative fee arrangements include, for example, 'risk collars' that involve the lawyer and client sharing any savings or overruns where outturn differs from the initial budget.
[88] ALM Legal Intelligence (2012), *Speaking different languages: Alternative fee arrangements for law firms and legal departments*, a report sponsored by LexisNexis.
[89] We understand that there are restrictions on the use of hybrid damages based agreements in litigation.

technology may also be a constraint to the increase use of alternative fee arrangements.

Conclusion on competition on price

95. An important aspect of competition on price is the structure of prices presented to small businesses. Our website review found that there is a lack of transparency in terms of information on price structures and specific price information. We found that those unauthorised providers in our sample provided more upfront information on prices than solicitors' firms.[90] In addition, unauthorised providers are more likely to offer online documents, in relation to which it is inherently easier to provide information on prices.

96. We have considered whether the lack of transparency could be a result of barriers or risks associated with providing price information. In relation to legal document advice, we do not consider there to be any significant barriers to providing price information. The same does not necessarily apply to advice and representation in disputes where the level of complexity and uncertainty can be significant. Nevertheless, we consider that, even for litigation, clear information on the payment structure (and relevant factors determining price)[91] and the service delivered would help small businesses to compare providers.

Competition on quality

97. In this section we try to understand how differences in quality manifest themselves and the role of quality in competition between providers.

98. Developing and advertising specialism in an area of law can be a way of signalling quality and, indeed, is one of the main factors for small businesses when choosing a legal services provider. As noted in paragraph 31, there appears to be a small number of solicitors' firms that specialise in commercial law for private companies.[92] Although not very common among solicitors, based on our website review and our stakeholder engagement, specialism seems to be more relevant for unauthorised providers that tend to focus on small businesses.[93]

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[90] We note that our results are only indicative given the small sample size and are dependent on the ranking algorithm of the search engines used.
[91] For example, the hourly rate where used.
[92] The number of firms that provide commercial law services may be much wider.
[93] Given the low prevalence of unauthorised providers, this does not mean that there are more specialist unauthorised providers in the provision of commercial law services than authorised providers.

99. Quality marks or accreditation schemes are another form of differentiation and can be used to signal quality to small businesses when choosing their legal services provider. We have identified two quality marks most relevant to small businesses purchasing commercial law services that are promoted by the Law Society.[94]

100. The civil and commercial mediation quality mark covers mediation arising from all types of civil and commercial disputes. However, this scheme has around 30 members who are accredited by the Law Society.[95] From a consumer survey conducted by the Law Society in 2014, 70% of respondents (out of 100 purchasers of mediation services) rely on recommendations when choosing a civil or commercial mediation practice. This scheme is currently under review due to the low levels of membership and consumer awareness.

101. The 'Lawyers for your business' scheme has been running for over 16 years and it is designed for smaller practices that want to win new SME business. The law firms that are part of the scheme are added to regional listings; commit to responding to enquiries within two working days; and agree to offer a 30-minute free consultation where they should give an estimate of the costs and likely timescales.

102. However, we note that there are certain problems associated with the quality marks in the legal services sector. These are explained in detail in Chapter 3.

103. Another way of signalling quality is through review sites such as Trustpilot or Feefo. These review sites offer a neutral platform where consumers can provide feedback about their legal services provider. They also give providers the opportunity to respond to comments and embed a link or reference to the overall feedback score received (expressed as a star rating). However, we have not identified the extent to which small businesses actively use such sites before or after choosing a legal services provider.

Conclusion on competition on quality

104. Although there have been some developments in different ways of signalling quality in commercial law, those have not yet been successful. The number of members of quality marks is not significant. Further, we have not received evidence that small businesses actively use quality marks when searching for a legal services provider. Specialism seems to be an important way of

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[94] The Law Society also has other quality marks, one being the Lexcel that aims to signal quality in legal practice management and in client care. In its response to the Legal Services Market Study Statement of Scope, the Bar Council told us that it 'is currently conducting research to establish whether there is sufficient demand to set up a Bar-led quality mark, demonstrating excellence in chambers management'.
[95] Civil and Commercial Mediation Accredited Members.

signalling quality in this market and especially because small businesses consider it to be an important factor when choosing a legal services provider. Nonetheless, we have not found a significant level of specialism in the provision of commercial law services. In turn, poor quality signalling and inherent difficulties in evaluating certain aspects of quality together with low levels of repeat purchasing leads to small businesses being poorly informed on the potential quality they will receive from their legal services providers.

Intermediaries

105. Intermediaries can be an effective way of overcoming the difficulties associated with a lack of information on quality and price and empowering small businesses to choose the most appropriate legal services provider. We looked at the current types of intermediaries in the provision of commercial law services.

106. Table 5 shows the main types of intermediaries[96] that offer information and support to small businesses in relation to commercial law needs. Those intermediaries that provide only information will not involve any referral or other fee. This is not necessarily the case for other intermediaries, such as digital comparison tools.

Table 5: Intermediaries

Only information:	*Information with referrals/ advertising to referrals:*	*Support with referrals:*	*Legal advice providers:*	*Template providers:*	*Other type of advice providers:*
Directgov Business Link	Law Society (Find a Solicitor) CitA helpline Directories (eg Legal 500) Digital comparison tools (eg Lexoo)	FSB Chambers of commerce	Solicitors Barristers Licensed conveyancers Unauthorised providers	Online document providers	Accountants Insurance companies Banks

Source: CMA.

107. Providers who are not authorised to provide a service such as litigation, or do not have capacity or relevant knowledge or expertise, may make referrals to other providers. For example, online document providers may refer customers to a network or a panel of solicitors if additional legal advice is needed. Similarly, two unauthorised providers told us that if necessary they could refer clients to public access barristers through Clerksroom Direct (a virtual barristers' chambers). This can also be accessed directly by small businesses when searching for a public access barrister.

[96] We consider anyone making a recommendation to be an intermediary, regardless of whether there is a commercial relationship.

108. Digital comparison tools have been increasing in number in the legal services sector including in the provision of commercial law services.[97] Some of these tools specialise in the type of consumer that they serve and the legal services listed, for instance, Lexoo and Lawyer Fair target small businesses.[98] Another example is ClaimItOnline, a platform that specialises in claims disputes, that allows businesses and individual consumers to receive a number of fixed fee quotes from a panel of providers. The platform requires customers to complete an intelligent form to identify relevant aspects of a customer's legal need. Once submitted, a panel of solicitors receives information collected and can offer to provide a quote.

109. Digital comparison tools have only recently entered the market – for example ClaimItOnline and Lexoo both started their business in 2016. Hence, it is too early to conclude on whether small businesses actively use those tools when searching for a legal services provider and on whether those tools are effective at providing clear quality and price information. Nonetheless, we believe that digital comparison tools have the potential to facilitate small businesses in choosing legal services providers on the basis of quality and price.

Barriers to entry, expansion and exit

110. Evidence we have gathered suggests that barriers to entry, expansion and exit do not differ from the overall legal services sector. Although not particular to the provision of commercial law services, barriers to entry, expansion and exit can differ according to the business model and whether the firm is authorised or unauthorised. For example, for authorised providers, run-off insurance cover appears to be the most significant barrier to exit, whereas unauthorised providers are not required to hold run-off insurance cover. Similarly, online document providers are less likely to face barriers to expanding their client base (although there might be barriers to expanding face-to-face services).

111. Overall, as noted in Chapter 3, we do not consider that there are significant barriers to entry, expansion and exit in the legal services sector. The same seems to apply in the provision of commercial law services. We note, however, that small businesses' lack of awareness of commercial legal issues and their tendency to use solicitors as a default option may explain the low

[97] Examples include VouchedFor and Access Solicitor.
[98] Based on an article in Legal Futures. By November 2015, Lexoo worked with around 200 individual lawyers, who paid a commission of 10% on the fees received from the clients. Source: www.legalfutures.co.uk/latest-news/lawyer-matching-service-targets-bigger-businesses-as-it-secures-850000-funding. Accessed on 1 July 2016.

prevalence of unauthorised providers in the provision of commercial law services (as noted in paragraph 74).

Innovation

112. Table 6 shows a few examples of recent entrants in the provision of commercial law services that differ from 'traditional' law firms in terms of the way the service is delivered. The majority of these providers focus on the online provision of legal services and might also provide bespoke advice for additional fees.

Table 6: Examples of recent entrants

Provider	*Service/ delivery model*	*New entry/ expansion*
Riverview Law	Used to offer an initial package of free template documents and one free consultation to small businesses. It also offers litigation and advisory packages. It is an ABS SRA authorised firm.	Entry in 2011* (but shifted away from the small businesses to large corporates recently)
Law Bite	Offers fixed fee documents and online review service, also offers online legal advice, negotiation and dispute and resolution advice. It is an online document provider and unauthorised firm.	Entry in 2011†
Rocket Lawyer	Provides access to technology that generates legal documents under a 'Freemium model' (ie 1st week is free, after documents cost is £10-£60), also provides legal advice provided by paralegals. It is an online document provider and unauthorised firm.	Entry in 2012‡; entry in the US in 2008
Business Law Online (currently 360 Business Law)	Offers templates and legal advice for a monthly subscription to small businesses. Does not provide any advice on M&A or reserved legal work. It is an online document provider and unauthorised firm.	Entry in 2014§
EULAW Online	Offers online legal advice, online documents on a fixed fee basis, and 'virtual' in-house legal adviser to businesses. It is an unauthorised firm.	Entry in 2015¶
Law Plan/ Stormcatcher	Offers an all-inclusive service for a flat monthly fee and/or fixed fee online documents. Delivery services mainly online or phone. Legally qualified but unauthorised.	Entry in 2016
Legal Zoom	Offers bespoke individual documents for a list price; offers free 30 min consultation and annual plans for ongoing coverage. It is an ABS SRA authorised firm.	Entry in 2016; entry in the US in 2004

Sources: Firms' websites, meeting notes and Legal Futures newspaper. All the links below where accessed on 4 July 2016.
* www.linkedin.com/company/riverviewlaw3.
† www.lawbite.co.uk/management/clive-rich-ceo.
‡ www.linkedin.com/company/rocket-lawyer-uk.
§ www.legalfutures.co.uk/latest-news/massive-space-unregulated-firms-advise-smes-says-head-online-service.
¶ www.eulawonline.uk and https://www.linkedin.com/company/eulaw-online.

Note: The information was collected before August 2016. Hence, changes might apply following this date.

113. Innovation has not only been carried out by new entrants. For example, a number of solicitors' firms are part of a network of lawyers, Quality Solicitors, which has the aim of improving online presence. Quality Solicitors also

advertises on its website that its network of firms offers a clear price guarantee ('no surprise on the bill'), direct lawyer contact, same day response, free first advice and Saturday openings.

114. From our website review, we found that some solicitors' firms provide an online enquiry form where potential clients can provide an outline of their case that allows the firm to provide information to the client through a call or face-to-face meeting. Other firms have a more sophisticated online service that allows consumers to upload documents. An example is LHS Solicitors, an ABS firm that provides services directly to businesses and operates a legal helpline on behalf of associations like the FSB. In particular, it offers a £50 'quick review' service that allows clients to post relevant documents online, if necessary, and then receive an advice call of up to 30 minutes from a solicitor or barrister within two hours. If the client goes on to instruct the firm, the £50 is credited against their bill.[99]

Unbundling

115. Although technology and online presence seem to be key factors for innovation in the legal services sector, unbundling has also been highlighted as a form of innovation. Unbundling involves breaking down a package of legal services into parts with some undertaken by the legal services provider and others by the client.[100] The main advantage for consumers is reduced costs (where they self-supply some elements) or more certain costs (such that some elements are provided on a fixed fee basis), while retaining the ability to receive expert legal advice.

116. According to some solicitors there are risks associated with unbundling[101] in a commercial law context.[102] In particular, we were told that once a fixed fee is set for specific drafting or advice for initial stage of a claim, small businesses may then demand additional advice on next steps. It was further noted that it is difficult to communicate the specific scope of the service in the client care letter to avoid being subject to subsequent legal action if a client is not happy. We are also aware of issues around the ability of solicitors to go on and then off-the-record when providing unbundled advice in supporting litigants.

117. Despite these risks, the Law Society's 2015/16 Firms Survey found that 30% of law firms surveyed provided unbundled services to consumers, including to

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[99] Information obtained from LHS Solicitors' website. Accessed on 22 June 2016.
[100] Unbundling can operate at different levels, from simply providing clients with self-help packs, to discrete advice about a specific step(s) in a case to advocacy or provision of a McKenzie Friend.
[101] These risks can also be associated with fixed fees.
[102] From a meeting that we attended in May 2016 at the Civil Justice Committee in The Law Society.

individual paying consumers.[103] Of those firms that provided predominantly business-to-business services, 27% provided unbundled legal services, and of those firms that provided predominantly business-to-consumer services, 35% provided unbundled services, indicating that while a significant proportion of providers do offer unbundled services, the majority do not.

118. Intermediaries can also play a role in increasing the use of unbundling by facilitating the transaction. For example, ClaimItOnline provides an online platform for prospective claimants to seek and receive unbundled legal advice at a fixed fee. ClaimItOnline told us that providing unbundled services was not inherently difficult, but providing such a service was different from providing a full litigation service and hence, the legal services provider needs to clearly define the scope of work for a fixed fee.

Impact of ABSs on competition

119. Changes in management and/or organisation can also be considered as a type of innovation. The introduction of ABSs has been one of the main changes in the market in terms of organisation of law firms. A large number of current ABSs specialise in personal injury work, however some ABS firms also specialise in other areas such as commercial/corporate work. A report by the Law Society identifies 84 ABS firms undertaking business-to-business work in 2015, mainly in the commercial/corporate and ADR/litigation areas.[104]

120. Though the impact of ABSs on competition has so far been limited, there are signs that this may change in the future. In particular, firms that already serve small businesses, such as accountants, may be able to expand their offering to include more commercial law services. Recently, a business recovery firm, Leonard Curtis, has submitted an application to the SRA for an ABS licence. From its own website, this new law firm will complement the present services offered to small businesses such as commercial finance advice.[105] A recently authorised ABS also told us that is looking at products and services aimed at small businesses to address their legal needs across a full range of legal areas, including commercial law. The ABS recognises the latent market opportunity arising from the difficulties faced by small businesses in accessing legal services. The service would encompass a technology platform supported by personnel, accessible to users though a low cost monthly subscription.[106]

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[103] The survey has a sample size of 1000 law firms.
[104] The Law Society, The future of legal services, January 2016.
[105] Source: www.leonardcurtislegal.co.uk/september-blog/. Accessed on 25 October 2016.
[106] In our review of 95 providers' websites, we also considered the extent to which ABSs were transparent about pricing information. We identified 14 ABS firms in that review. Of those 14, only two did not provide any

121. Another ABS, MTA Solicitors, has developed a brand, *LawStore*, to sell a range of online documents to individual consumers and small businesses with varying levels of service. An example of one such document is an agency agreement template, where the consumer can select a self-service, assisted service or solicitor managed service.[107]

Barriers to innovation

122. Although we found few examples of innovation, our view is that there is potential for more innovation. For this reason we have sought views on whether there are any significant barriers to innovation in the provision of commercial law services. Stakeholders told us that:

(a) Regulatory costs such as professional indemnity insurance may be too high and therefore, can act as a barrier to create new products that fit better with small businesses;

(b) The current partnership business model of most 'traditional' law firms is not the best way of incentivising the building of capital due to lack of incentives for retaining profit. The focus of this type of law firm is often not sufficiently on the client's real needs and convenience, but rather on time-recording and how to maximise chargeable hours. This can be seen as a barrier to innovation, especially when trying to deliver services in a new way that is more attractive to small businesses; and

(c) There is a demand-side barrier in the sense that it is hard for firms to attract small businesses to take up new services due to lack of awareness and engagement. One recent entrant, which had offered an initial package of free template documents and one free consultation to small businesses, ceased targeting small businesses and ended its relationships with all but a small number of small business customers. It attracted a number of clients, but found that small businesses only used the consultation when it was absolutely needed. It found that where it was engaged by small businesses, a significant element of its business related to retrospective reviews of contracts and resolving contract issues where, for example, appropriate legal advice had not been sought during drafting. It also found that the cost of marketing made targeting larger businesses more cost-effective and productive than smaller businesses.

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information about the price structure of commercial law services. The remaining 12 firms advertised offering fixed fees for particular services in commercial (and other areas). However, only one out of the 14 ABS firms published specific price information in relation to at least one service within commercial law.

[107] There is also some price information for these services. The information was obtained from www.lawstore.co.uk/. Accessed on 22 June 2016.

Conclusion on innovation

123. We have identified examples of entrants and other legal services providers that are beginning to transform the way in which commercial law services are delivered. Online service delivery and unbundling of services are the main ways in which these legal services providers have been increasing small business awareness and price transparency. We have also identified a small number of examples of ABSs that have the potential to help transform the provision of commercial law services.

124. Although we have identified examples of innovative firms, we believe that the rate of adoption has been slow. For example, the predominant price structure in litigation is still the hourly fee when there are alternative fee arrangements that could be used. While a significant proportion of solicitors' firms offer unbundled services, the majority do not.

125. While we have not found any particular supply-side barriers to innovation, uptake of innovative services is limited. The limited expansion of such providers may be due to small businesses' lack of awareness of commercial legal issues and, even when aware, a lack of engagement with legal services provider.

Examples of real world price disclosures

1. We found that key information for making informed decisions is not accessible by consumers when they are shopping around (see further chapter 3 of our report). One of the objections from providers to increased transparency is that the complex and bespoke nature of the services they offer makes it difficult to present information on price and service in a way that consumers can assess. In this appendix, we explore examples of real world disclosures, for both commoditised and more complex legal services. We report on examples where providers have set out more information than is usually observed about the price and associated service of their offering.

2. In order to find these examples of real world price disclosures, we conducted a limited web-sweep across seven areas of law. The areas of law that were examined included:

   (a) will writing;

   (b) conveyancing

   (c) personal injury;

   (d) divorce;

   (e) employment;

   (f) commercial; and

   (g) boundary disputes.

3. The search was conducted using Google and for each area of law specific search terms were used to identify the top 100 highest organically ranked websites in the UK. We then selected a number of examples of more detailed, innovative or engaging disclosures from each area of law.

4. It should be noted that this was not an exhaustive study of good practice in providing transparent information in legal services and we are not making any statement about best practice by setting these examples out. Rather it provides some practical examples of how firms seek to be transparent about the services they are providing.

Will writing

5. Will writing is generally offered at a fixed price and there is some evidence that prices are more likely to be accessible than in other areas of law.[1]

6. The more detailed or innovative disclosures that we identified had a number of key features that may be useful in facilitating comparison with other offers, including:

   (a) Setting out a small number of fixed price offerings (eg three options), with options being linked to identifiable cost drivers that explain the price differences eg a standard will; a pair of wills; or a will containing a trust.

   (b) Having a clear discussion of what services are included in the price eg for a standard will this might be an initial consultation with your provider; drafting the will; will storage; and advice on will-related matters (such as. inheritance tax).

7. An example is set out below in Figure 1.

Figure 1: Example price disclosure, wills

PRICES

We have three Will Writing services. Each one can be for an individual or alternatively a couple who are cohabiting, married or in a civil partnership who wish to reflect each other's wishes.

1. Standard Will Writing service

Individual £145.00 or couple £170.00

This service includes:
- Consultation with a member of the team
- Drafting the Will
- Clear, simple, step by step advice
- Free lifetime secure storage
- Guidance relating to severance of joint tenancy
- Inheritance Tax advice

2. Will Writing service containing a trust

Individual £300.00 or couple £360.00

This service includes:
- Consultation with a member of the team
- Drafting the Will
- Clear, simple, step by step advice
- Free lifetime secure storage
- Guidance relating to severance of joint tenancy
- Inheritance Tax advice
- Trust advice
- One life interest trust or one discretionary trust
- Severance of joint tenancy prepared and registered at the Land Registry

3. Will Writing service containing multiple trusts

Individual £480.00 or couple £600.00

This service includes:
- Consultation with a member of the team
- Drafting the Will
- Clear, simple, step by step advice
- Free lifetime secure storage
- Guidance relating to severance of joint tenancy
- Inheritance Tax advice
- Trust advice
- Multiple trusts or business property trusts
- Severance of joint tenancy prepared and registered at the Land Registry

We will provide you with one free amendment to your Will within 2 years of preparing your Will. This free amendment includes straightforward changes to your Will such as a change of name or the addition of a gift. This does not include preparing a further trust document on your behalf.

GET IN TOUCH

Our team of experts are ready to help take care of your Will in a few quick, easy steps.

Call them on 0844 893 0996 or email wills@daslaw.co.uk

Find out more at www.daslaw.co.uk/for-individuals/will-writing

Source: CMA web sweep.

[1] The CMA's survey reported that 32% of consumers 'knew exactly' what their cost would be before contacting a provider.

Conveyancing

8. In conveyancing, the majority of firms ask for particular details before giving a quotation eg the value and location of the relevant property. In the examples below, we used the case of buying a property valued at £205,000 in order to get more detailed information.[2]

9. In order to be able to compare a provider's offering with other providers' offerings, it is useful to have a total price and a clear indication of what services and fees or charges are included in that total.

10. Some of the important price elements that were included in the total price of the more detailed price disclosures were:

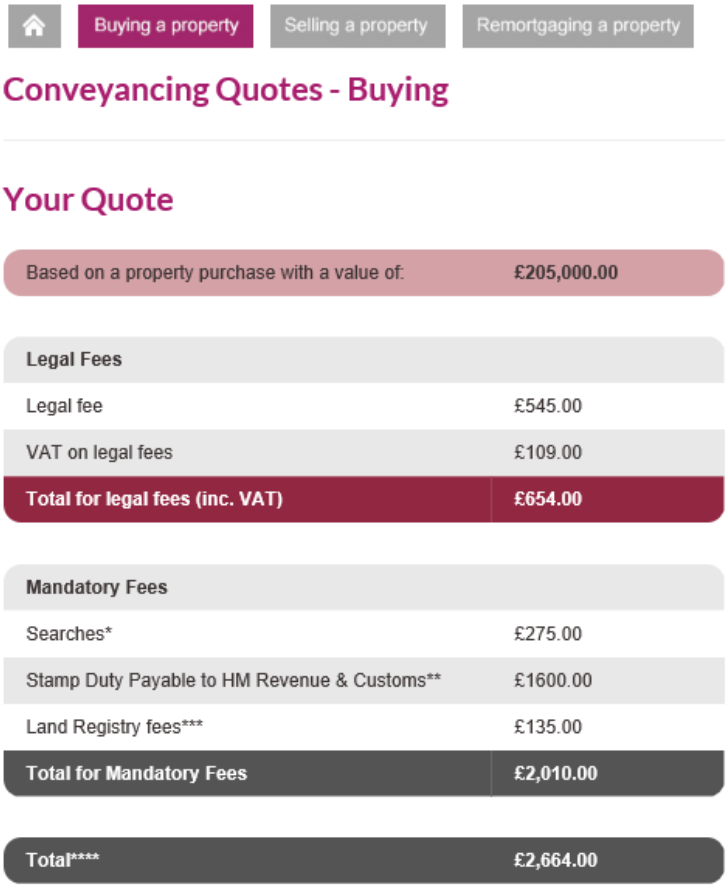
    (a) a fixed price for the legal fees (+VAT) associated with the transaction ie the cost of using a legal services provider; and

    (b) a list of any mandatory fees that would be additional to the legal fees eg for searches, stamp duty and land registry fees. Some explanation of the mandatory fees were given.

11. An example of a detailed price disclosure is set out in Figure 2.

[2] We chose this value as it is in line with the property value used by the LSB in its research on the prices in individual consumer legal services. OMB Research (2016), *Prices of Individual Consumer Legal Services*, commissioned by the LSB.

Figure 2: Example price: disclosure, conveyancing



Buying a property | Selling a property | Remortgaging a property

Conveyancing Quotes - Buying

Your Quote

Based on a property purchase with a value of:	£205,000.00

Legal Fees	
Legal fee	£545.00
VAT on legal fees	£109.00
Total for legal fees (inc. VAT)	**£654.00**

Mandatory Fees	
Searches*	£275.00
Stamp Duty Payable to HM Revenue & Customs**	£1600.00
Land Registry fees***	£135.00
Total for Mandatory Fees	**£2,010.00**

Total**	**£2,664.00**

Source: CMA web sweep.

Personal injury

12. We found relatively fewer examples of detailed price disclosure among personal injury providers by comparison with the other more commoditised services. The examples we observed generally set out a two stage process for service provision. The first stage was an initial consultation which could be free or paid for. The purpose of the consultation would be to assess the consumer's case, including the likelihood of winning the claim; explain the legal services that could be provided; and discuss the potential level of compensation. There was more limited upfront information about what would be involved if a consumer did decide to pursue his or her claim and while payment was often described as being on a 'no win, no fee' basis there was limited explanation of this.

Divorce

13. Divorce cases range from the simple to the complex and may present greater challenges for providers who are trying to be transparent. However, we were able to observe a number of examples of detailed or innovative price disclosure across the spectrum of complexity.

14. For providers of services in relation to divorce, we observed examples of more detailed disclosure that involved:

(a) Having a fixed price offering for straightforward cases – the price for these kinds of cases generally differed depending on whether the client was the petitioner or the respondent, with the fee for a respondent being lower.

(b) Giving the consumer some way of determining the likely total costs eg setting out the provider fee and noting that there would also be VAT and court fees.

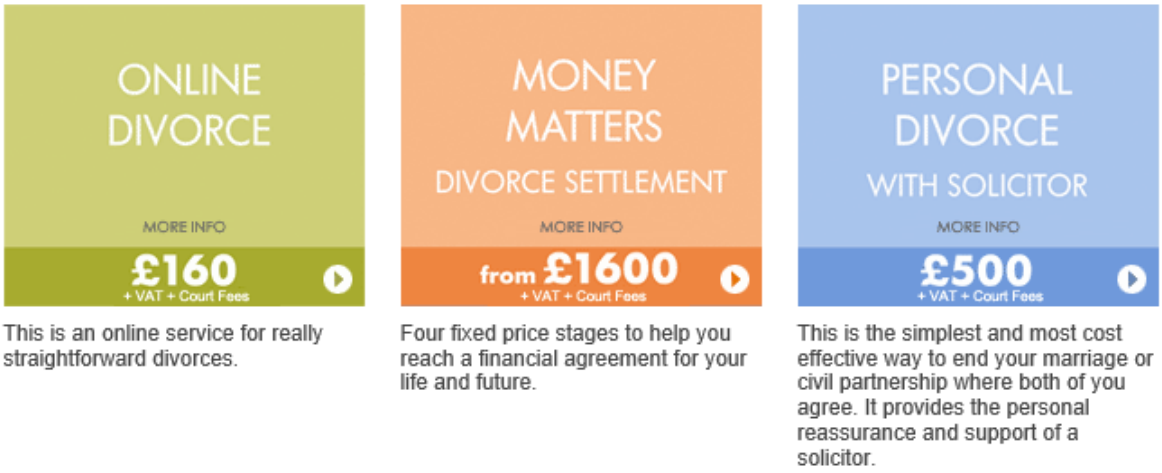
(c) Explaining why divorce cases may become complex and where the fixed fee option may therefore not be appropriate eg where the division of assets or arrangements for children were in dispute.

(d) Setting out a price indication or range for complex cases. The services for complex cases were more likely to be priced on an hourly basis.

(e) Setting out all the steps involved in resolving a complex case and how these steps fed into the costs.

15. An example price disclosure in relation to a divorce with a dispute over assets is set out in Figure **3**.

Figure 3**: Example price disclosure, divorce involving a dispute over assets**



Money Matters

We need help with the financial side of our break-up

Part of the divorce process, the settlement of financial matters is actually handled as a separate process. This is formally referred to as 'Ancillary Relief'.

In our experience, the settlement of finances can be dealt with through careful negotiation. Court should be seen only as the last option. If together we're able to get such an agreement early on, it will be incorporated into an Order of the Court, formally known as a Consent Order.

Normally, cases only go to Court if circumstances are complicated, where there are high value assets involved or if your partner is not being open about their assets. In such tricky situations, we do our utmost to protect your position to ensure a successful, swift and satisfactory conclusion is reached.

Agreement and closure could occur at any time. We have therefore broken the process into four major stages - all of which could vary but equally might not happen in every case. As part of each stage, we have indicated what costs will arise. You can use all the steps or some of the steps at any stage of the proceedings. The total cost is £10,000 + VAT & Court fees and is equivalent to 4% of the assets based on a case involving liquid assets of £250,000. The fees arising can be split into smaller amounts which are paid at various stages.

1 MONEY MATTERS
FINANCIAL DISCLOSURE
more info

This is where we aim to achieve a mutual disclosure of financial matters between you and your partner (or through their solicitor) and reach a financial agreement between you after we have reached full disclosure.

2 MONEY MATTERS
1st COURT APPOINTMENT
more info

This step is available if agreement cannot be reached in Stage 1 and proceedings need to be issued. This stage will compel financial disclosure and is used as a "Housekeeping" hearing to narrow down the issues between you.

3 MONEY MATTERS
SETTLEMENT HEARING
more info

If your case progresses this far and provided all the evidence and Orders have been complied with from Stage 2, the Judge will assist and encourage settlement negotiations.

4 MONEY MATTERS
FINAL HEARING
more info

This is the final step where if the case has not been settled on a voluntary basis, the Court will make a ruling on financial matters. Every couple's financial matters are different, but as a guide, where your combined liquid assets do not exceed £250,000* March Solicitors want to remove uncertainty by giving you a cost for closure of your joint financial responsibilities.

Step 1 – Financial disclosure stage
What is included?

- We will write to your spouse or their solicitors and suggest voluntary disclosure of financial matters by way of exchange of Form E (a financial statement);
- If voluntary disclosure is agreed, we will prepare your Form E and we will liaise with your spouse or their solicitors to agree a date for the exchange of Form E's;
- If voluntary disclosure cannot be agreed, we will advise you as to the possible next steps,which may involve applying to the Court for a timetable to be set down for the determination of financial matters. If this application is necessary, we will draft the application, prepare your Form E and file the Form E involving the Court and your spouse or their solicitors. It should be noted that the payment of Court fees will be an additional fee paid to the Court.
- Following receipt of your spouse's Form E (either on a voluntary basis or following an application to the Court), we will advise you on your spouse's Form E and the next stages and the likely future costs involved.
- Where agreement can be reached following financial disclosure we will draft a Consent Order which incorporates the terms of an agreement reached between yourself and your spouse, and the accompanying Statement of Information for a Consent Order (Form M1). We will also send these documents to the Court for approval.

What is not included?

Court fees or any other professional fees that may need to be incurred, such as a Surveyors fees, Actuary's fees, Solicitor Agents fees, Barrister's fees or any fees payable to a third party;
Advice on any dispute involving children or acting in Children Act proceedings;
Advice concerning the dissipation of assets by your spouse;
Advice with regard to divorce or separation matters;
The cost of any extra applications that may need to be made during the Court process;
Any conferences or meetings involving a Barrister or other experts.

The Cost?

For cases where proceedings are not issued the cost will be £1600.00 + VAT, which is broken down as follows:
Initial payment of £1000.00 + VAT to start the process;
A final payment of £600.00 + VAT. Upon receipt of your spouse's form E to enable us to provide advice on your spouse's form and settlement options, if possible.
For cases where proceedings are required to be issued the cost will be £1600.00 + VAT + Court fees which is broken down as follows:
Initial payment of £1000.00 + VAT to start the process;
Payment of Court fees of £255.00. This will be requested if our request for voluntary disclosure is not successful ;
A final payment of £600.00 + VAT. Upon receipt of your spouse's form E to enable us to provide advice on your spouse's form and settlement options, if possible.

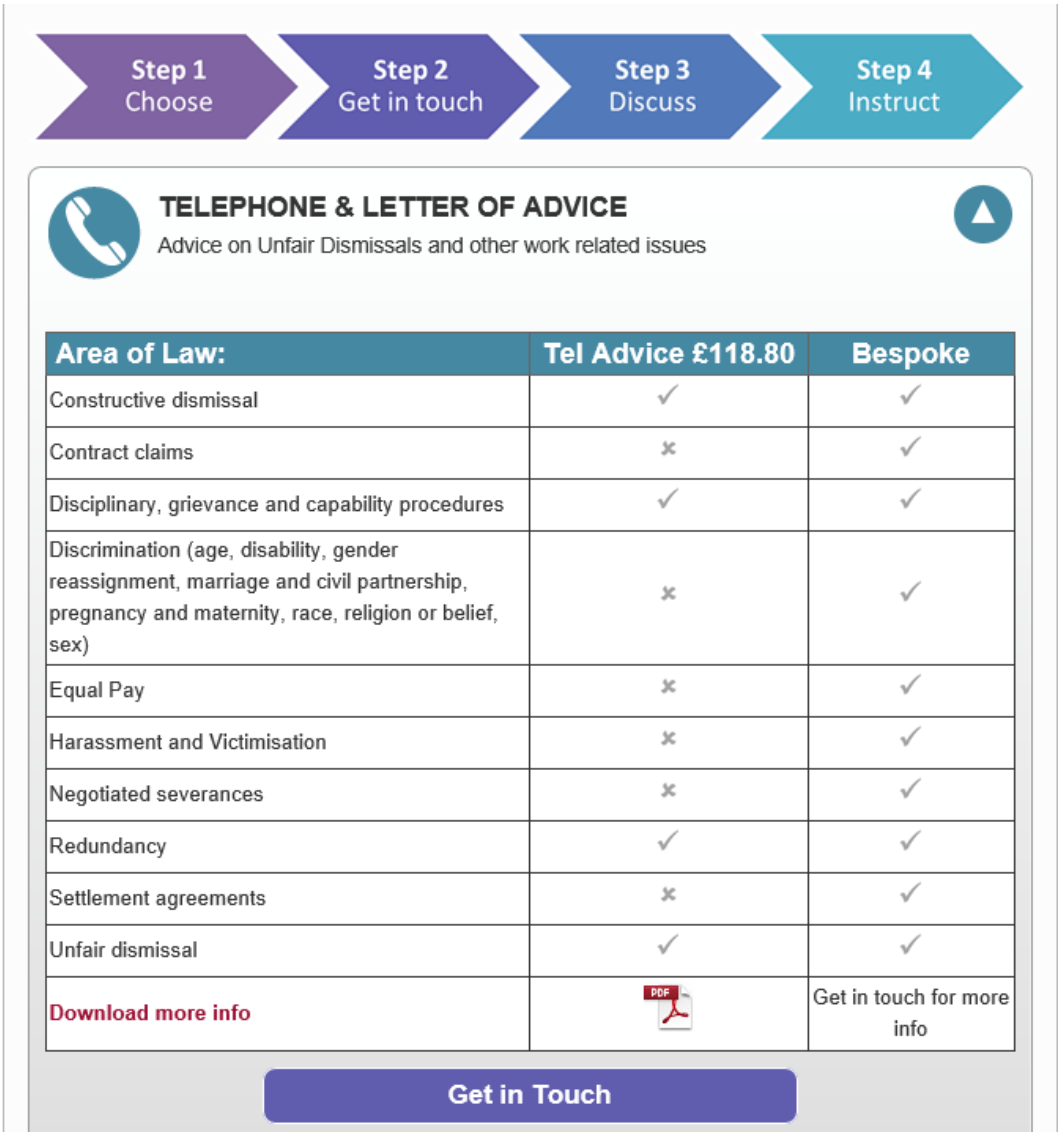
Source: CMA web sweep.

Employment

16. In employment law, we found more variation in how firms presented their available services and therefore less comparability. For firms in our web sweep, it was common to try to separate out services that could be provided on a fixed fee basis, from other types of services. However, the approaches to doing this differed between firms.

17. For one firm captured in our web sweep, the approach was to separate fixed price and bespoke pricing on the basis of the type of employment issue. In the example set out in Figure 4, the fixed price service simply includes a 30 minute telephone call and written advice following the call.

Figure 4: Example price disclosure, employment



Source: CMA web sweep.

18. Another approach we observed was to provide fixed fees for different elements of an employment case, rather than for the particular issue. For example, giving fixed prices for:

(a) an initial one hour meeting with written advice;

(b) preparation of the relevant forms;

(c) preparation of a list of documents;

(d) setting out a schedule of loss;

(e) preparing a witness statement; and

(f) preparing instructions for a barrister.

19. An example is set out in Figure 5.

Figure 5: Example price disclosure, employment

The fixed price employment law services we offer include:

Service	Price
1 hour meeting with employment law expert including written advice	£200 plus VAT
Preparation of basic ET1 and particulars of claim	£250 plus VAT
The ET1 is the form used by the claimant, the ex-employee or employee, to tell the Employment Tribunal what their case is about.	
Preparation of detailed ET1 and particulars of claim	£450 plus VAT
Preparation of List of Documents (where do not exceed 50 documents)	£100 plus VAT

Preparation of detailed list of documents (where exceed 50 documents)	£250 plus VAT
Preparation of basic schedule of loss	£125 plus VAT
The schedule of loss is a document in which you set out what you think you are owed in monetary value as a result of bringing the claim. It covers a basic award, a compensation award and future losses. We can discuss this in further detail with you.	
Preparation of detailed schedule of loss	£200 plus VAT
Preparation of single witness statement (confined to unfair dismissal or straightforward discrimination claim)	£400 plus VAT
Preparation of more detailed witness statement on complex claims	£600 plus VAT
Preparation of instructions to a barrister for the case	£350 plus VAT

Source: CMA web sweep.

20. A final approach we observed, that may be more relevant to small businesses, was to set out fixed prices for the preparation of relevant standard documents eg an employee handbook or an employment contract.

Commercial

21. The commercial law examples that we considered showed some similarities with the employment law examples, particularly in the approach taken to identifying a number of key documents that may need to be drafted. In the

examples we found, these documents were either offered at a fixed price or with a price range based on the complexity of the document required.

22. A more user-friendly approach we found in commercial law was the use of non-technical language to describe the service eg ‘I want to protect my confidential information’. Given the limited time that small businesses have available for non-core business activities, it is also noteworthy that some of the more innovative examples include a discussion of how long it might take for the service to be provided. For example, for a basic confidentiality agreement, one legal services provider described this as only requiring a few days to draft, given that it was likely to be a one-page document. By contrast, it was noted that a more complicated agreement would attract a higher fee and would take several days to draft.

23. For complicated commercial cases involving a dispute, we would not expect to see a fixed price offering. However, we did still observe some more detailed price disclosures. These involved providers giving a fee range and a discussion of what would drive prices to the high level of the range. It was noted in particular that going to court to resolve a dispute is likely to take significantly longer and that the fees typically increase in line with timeframes.

Boundary disputes

24. We examined price disclosures in boundary disputes as a representative case of a more complex legal issue eg those involving a dispute. We would expect these kinds of cases to be harder to price upfront because of the uncertainty around the role and actions of a third party. However, there have been some attempts to provide more detailed disclosure, where possible.

25. As was the case for employment law, one price disclosure we observed involved separating out the different elements of the service and providing a fee for those different elements but then reserving the option for a more bespoke service where necessary.

26. Examples of some elements of a dispute for which fixed prices have been offered include:

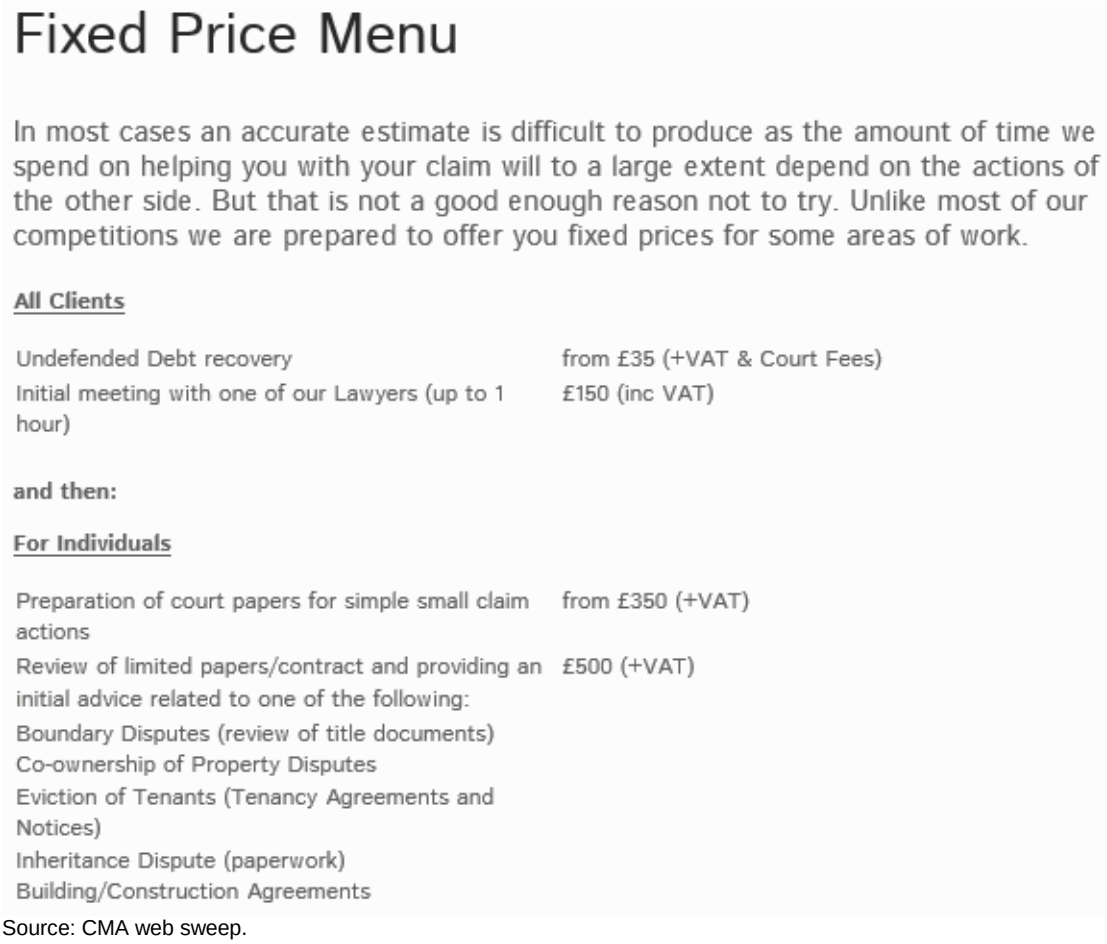
    (a) an initial meeting with the provider to discuss the case;

    (b) preparing court papers for simple claims; and

    (c) reviewing papers/contract and providing initial advice.

27. Figure 6 sets out an example.

Figure 6: Example price disclosure, boundary dispute



Fixed Price Menu

In most cases an accurate estimate is difficult to produce as the amount of time we spend on helping you with your claim will to a large extent depend on the actions of the other side. But that is not a good enough reason not to try. Unlike most of our competitions we are prepared to offer you fixed prices for some areas of work.

All Clients

Undefended Debt recovery	from £35 (+VAT & Court Fees)
Initial meeting with one of our Lawyers (up to 1 hour)	£150 (inc VAT)

and then:

For Individuals

Preparation of court papers for simple small claim actions	from £350 (+VAT)
Review of limited papers/contract and providing an initial advice related to one of the following: Boundary Disputes (review of title documents) Co-ownership of Property Disputes Eviction of Tenants (Tenancy Agreements and Notices) Inheritance Dispute (paperwork) Building/Construction Agreements	£500 (+VAT)

Source: CMA web sweep.

28. An approach found in some of the examples of more detailed disclosure was to have a fixed price (or free) initial consultation to better understand the exact nature of the dispute and any complications. This coupled with an hourly rate could provide some basis for comparing between providers in these more complicated issues.

Conclusion

29. Based on our review of examples of real world disclosures, we are able to identify certain practices that make it easier for consumers to assess a firm's offering. These practices include:

    (a) Seeking to offer services where possible on a fixed fee basis, either covering the entire service or at least some elements of the service.

    (b) Clearly setting out what is included in the fixed fee and how the fee structure will work for service elements that are outside this scope eg hourly fees for issues around finances and children that are linked to divorce proceedings; or following an initial consultation for disputes.

(c) Identifying key cost drivers that might lead to a difference in the price eg a standard will as opposed to a will involving a trust.

(d) Separately reporting any mandatory fees that the consumer will have to pay eg stamp duty, court fees.

Overview of the Consumer Law Framework

Introduction 1
Summary of legislative framework – business to consumer transactions 2
Scope of consumer protection legislation 3
A. Coverage in relation to sales practices 4
B. Coverage in relation to the provision of information 10
C. Coverage in relation to quality of advice provided 14
D. Coverage in relation to unfair terms 15
E. Summary of legislative framework – business to business transactions 17
Remedies 22
Alternative Dispute Resolution 24

Introduction

1. In our interim report, we indicated that customers lacked awareness about the different levels of protection offered by authorised and unauthorised providers, but did not find evidence that this was causing significant harm to customers in practice.

2. In response to our interim findings, certain stakeholders raised concerns that we may be underestimating potential risks around the use of unauthorised providers. We have considered this issue further. However, in light of the lack of available evidence in relation to unauthorised providers, we have focused in particular on whether customers face additional consumer protection risks when using unauthorised providers because of differences in consumer protection regulations, including redress.

3. This appendix will outline the consumer protection framework relevant to the legal service sector in relation to the quality of services provided, sales practices, the provision of information and unfair terms. In particular, it will consider in summary, legal services providers' obligations under consumer protection law and the circumstances in which consumers have a right to redress in their own right,[1] including the practicalities of enforcement.

4. There is a similar although less extensive body of law which applies in business-to-business transactions, and so would offer protection to small

[1] Enforcers such as Trading Standards and the CMA can bring proceedings to require compliance with consumer law, under Part 8 of the Enterprise Act 2002, which in some situations can include requiring traders to compensate consumers or implement specific trading practices to ensure compliance.

businesses using legal services. We provide an overview of this legislation at Section E of this Appendix.

Summary of legislative framework – business to consumer transactions

5. The consumer protection legislation derives mostly from EU Directives which are implemented into UK legislation by Parliament. The main legislative instruments relevant to our market study are the Consumer Protection from Unfair Trading Regulations 2008 (CPRs), the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (CCRs), the Provision of Services Regulations 2009 (PSR)[2] and more recently, Part 1 and Part 2 of the Consumer Rights Act 2015 (CRA).

6. The CPRs[3] implement the Unfair Commercial Practices Directive of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices 2005/29/EC (UCPD).The CPRs prohibit any commercial practice which:

   (a) contravenes the requirements of professional diligence and materially distorts or is likely to materially distort the economic behaviour of the average consumer;

   (b) is a misleading action;

   (c) is a misleading omission;

   (d) is aggressive; and

   (e) is a banned practice as listed in Schedule 1 of the CPRs.

7. Failure to comply with these provisions can give rise to criminal liability[4] and in some instances, entitles consumers to redress.

8. Information requirements are set out in the CCRs which came into force on 13 June 2014 and apply to all relevant consumer contracts entered into on, or after, this date.[5] The CCRs apply to all contracts in scope which are:

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[2] The PSRs apply to business and consumer transactions and business-to-business transactions. The PSRs are considered in more detail in the business to business section of this Appendix (see paragraphs 61 to 65).
[3] The Law Society has published guidance on the application of the CPRs to conveyancing transactions – Consumer Protection Regulations in Conveyancing Practice Note (February 2016).
[4] The CPRs make it a criminal offence for a trader to engage in unfair commercial practices (see Regulation 8 to 18). In addition, the CPRs allow consumers, in certain instances, to seek consumer redress (see Regulation 27A to 27L).
[5] The CCR's supersede the Consumer Protection (Distance Selling) Regulations 2000 and the Cancellation of Contracts made in a Consumer's Home or Place of Work etc Regulations 2008. Note these regulations continue to apply to contracts entered into prior to 13 June 2014.

- on-premises contracts;
- off-premises contracts; and
- distance contracts;

although the precise rules differ according to which type of contract is involved.

9. The CCRs require traders to provide consumers with certain specified information which varies according to the type of contract entered into. The CCRs apply to contracts made between legal services providers, as traders, and their clients (who are not acting in the course of their trade, business of profession), as individual consumers.[6]

10. In addition to the CCRs, the PSRs also require legal services providers to make certain information available for the recipients of their services.[7] However, unlike the CCRs, the PSRs apply to business to business and mixed contracts, as well as business-to-consumer contracts. The PSRs are considered in more detail in the business-to-business section of this Appendix.

11. The CRA came into force on 1 October 2015 and consolidates key consumer rights legislation dealing with goods, services, digital content (part 1) and the law relating to unfair terms in consumer contracts (part 2).

Scope of consumer protection legislation

12. The CPRs, CCRs and CRA apply to transactions between a trader and a consumer. A trader is defined by these provisions as 'a person acting for purposes relating to that person's trade, business, craft or profession, whether acting personally or through another person acting in the trader's name or on the trader's behalf'.[8] Legal services providers supply a service in the course of their trade, business or profession and are therefore traders for the purposes of the CPRs, CCRs and CRA.

13. The terms consumer is defined by the CPRs, CCRs and CRA as an individual who is acting for purposes that are wholly or mainly outside the individual's

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[6] Businesses seeking legal advice or assistance for the purposes of their trade or profession cannot be categorised as consumers under Regulation 4 and therefore fall outside the scope of the CCRs.
[7] The Provision of Services Regulations 2009 (SI 2009/2999) was implemented to give effect to Directive 20016/123/EC of the European Parliament and Council of 12 December 2006 on services in the internal market OJ L 376/36 (Services Directive).
[8] CCRs, Regulation 4. CRA, section 2(4) and CPRs Regulation 2, which uses similar wording.

trade business, craft or profession.[9] Consumers who are acting in the course of a trade, business or profession are not consumers for the purposes of the CPRs, CCRs and the CRA and do not therefore have the protections set out in these laws.

A. Coverage in relation to sales practices

14. There are five types of unfair commercial practices that legal services providers are prohibited from engaging in under the CPRs. These are:

- Commercial practices that contravene the requirements of professional diligence and which manifestly distort or are likely to materially distort the economic behaviour of the average consumer.
- Commercial practice that is a misleading omission.
- Commercial practice that is a misleading action.
- Commercial practice that is aggressive.
- Commercial practice that is listed in Schedule 1 of the CPRs.

Commercial practices that contravene the requirements of professional diligence and which materially distort or are likely to materially distort the economic behaviour of the average consumer

15. Professional diligence is defined[10] as 'the standard of special skill and care which a trader may reasonably be expected to exercise towards consumers which is commensurate with either – (a) honest market practice in the trader's field of activity, or (b) the general principles of good faith in the trader's field of activity'. The word special is not intended to require more than what would reasonably be expected of a trader in that field of activity.

16. The CPRs do not define the terms 'honest market practice' or 'good faith'. The principles require traders to deal with transactions professionally and fairly as judged by a reasonable person.

17. Material distortion[11] is defined as 'appreciably to impair the average consumer's ability to make an informed decision thereby causing him to take a transactional decision that he would not have taken otherwise.' For a commercial practice to fall within this prohibition, it must impair the average

[9] CPRs, Regulation 2. CCRs, Regulation 4 and CRA, section 2(3).
[10] CPRs, Regulation 2.
[11] CPRs, Regulation 2.

consumer's ability to make an informed decision. The impairment must be significant enough to alter the average consumers' decision. This means that practices that do not affect or are unlikely to affect the economic behaviour of the average consumers are unlikely to fall within this prohibition.

18. Examples of conduct that could infringe this provision are:

- Offering incorrect advice on the consumer's options, leading to the consumer commissioning work which is unnecessary.
- Falsely claiming that the legal services provider employs qualified solicitors and barrister when they do not.
- Failing to provide adequate information to a consumer about the time that will be engaged in progressing the consumer's case and the likely costs.
- Failing to comply with recognised standards in the legal services industry such as the Solicitors Code of Conduct.
- Failing to deal with complaints at all or in an honest, fair, reasonable and professional manner.

Commercial practice that is a misleading action

19. A commercial practice is misleading if:

(a) It contains false information that is therefore untruthful or it is presented in a way that deceives or is likely to deceive the average consumer (even if the information it contains is factually correct).

(b) The false information, or deception, relates to one or more pieces of information listed in Regulation 5(4)[12] which includes, the nature of the trader's commitment and the price or the manner in which the price is calculated.

(c) The average consumer takes, or is likely to take, a different decision as a result.

20. A commercial practice is also misleading if:

[12] The full list of matters at Regulation 5(4) is 'the existence or nature of the product; the main characteristic of the product (as defined in paragraph 5); the extent of the trader's commitments; the motives for the commercial practice; the nature of the sale process; any statement or symbol relating to direct or indirect sponsorship or approval of the trader or the product; the price or the manner in which the price is calculated; the existence of a specific price advantage; the need for a service part, replacement or repair; the nature, attributes and rights of the trader (as defined in paragraph 6); the consumer's rights or the risk he may face.'

(a) it markets a service (including comparative advertising) in a manner which creates confusion with any services, trademarks, trade names or other distinguishing marks of a competitor; or

(b) it concerns any failure by the trader to comply with a commitment contained in a code of conduct which the service provider has undertaken to comply with, if –

i. they indicate in a commercial practice that they are bound by that code of conduct (in the case of an authorised legal services provider, this may be the Solicitors Code of Conduct); and

ii. the commitment is firm and capable of being verified and is not aspirational; and

(c) The average consumer takes, or is likely to take, a different decision as a result.

21. A misleading action may arise in the context of legal services provider where for instance, an unregulated legal services provider falsely claims they are subject to the Solicitors Code of Conduct and this representation causes the average consumer to make a transactional decision they would not have otherwise made (eg retaining the services of an unauthorised legal services provider as opposed to a authorised legal services provider). Likewise, it would be a misleading action to state that a legal service will cost a certain sum of money (eg fixed price) if in fact it is likely to cost more than this.

Commercial practice that is a misleading omission

22. A commercial practice may also be misleading if it fails to give consumers information they need to make an informed choice in relation to the service. A misleading omission will occur when the practice;

(a) omits or hides material information,[13] or provides it in a manner which is unclear, unintelligible, ambiguous or untimely manner or fails to identify its commercial intent unless this is already apparent from the context; and

(b) the average consumer takes, or is likely to take, a different decision as a result.

[13] Material information is information the average consumer needs to have, in the particular context, in order to make informed decisions. It includes any information required by European (EC) derived law, such as the Package Travel, Package Holidays and Package Tours Regulations and the CCRs.

23. There are special provisions in the CPRs regarding commercial practices that are deemed to be invitations to purchase.[14] These provisions specify information that is automatically regarded as material information,[15] unless it is apparent from the content. Failure to provide this information will lead to a misleading omission.

24. An invitation to purchase takes place where a trader provides sufficient details of the product and price to enable he consumer to decide whether to purchase that service. According to the case law of the Court of Justice of the European Union, this is not a high threshold.

25. The purpose of this is to ensure consumers are given key information they need to make an informed purchasing decision, such as fully inclusive pricing.

26. Examples of invitations to purchase in the context of legal services providers are:

- Retainer letters that enable consumers to purchase the service by signing and returning it.
- Information provided on a legal services provider's website about their services, including likely prices.

27. Examples of possible misleading omissions could include:

- Failing to provide a consumer with full information on fees and charges, such as how they are calculated and when they will be payable, before they become contractually bound.
- Failing to adequately highlight or draw to a consumer's attention unusual or surprising terms in their terms and conditions. For instance, in a claim for compensation, any deductions that the legal services provider will make from the consumer's damages award.
- Failing to set out in a clear and unambiguous manner, any codes of practice the legal services provider is bound by.

[14] CPRs, Regulation 6(4).
[15] Information that is automatically material is listed at Regulation 6(4) and includes information concerning the main characteristics of the product, the geographical address of the trader, price include taxes, where the nature of the product is such that the price cannot reasonably be calculated in advance the manner in which the price is calculated.

Commercial practice that is aggressive

28. The CPRs prohibit commercial practices which (taking into account all the features and circumstances):

    (a) By harassment, coercion or undue influence;

    (b) significantly impairs or is likely to significantly impair the average consumer's freedom of choice of conduct concerning the product; and

    (c) the average consumer takes, or is likely to take a different decision as a result.

29. The terms harassment and coercion are not expressly defined in the CPRs but include both physical and non-physical, (including psychological) pressure.

30. Undue influence is defined by CPRs as 'exploiting a position of power in relation to the consumer so as to apply pressure, even without using or threatening to use physical force, in a way which significantly limits the consumer's ability to make an informed decision.'[16]

31. A commercial practice may significantly impair a consumer if, for example, the legal services provider stays in a consumer's home for so long that they feel compelled to sign a contract for their legal services. A breach is established if it can be shown that a consumer is likely to have taken a different decision had it not been for the unfair commercial practice adopted by the legal services provider.

32. The CPRs list factors which will be taken into account when determining whether a commercial practice is aggressive. It is not necessary for all these factors to be present for the practice to be deemed as aggressive and therefore unfair. The list includes the timing, location, nature or persistence, the use of threatening or abusive language and behaviour, the exploitation by the trader of any specific misfortune or circumstances of such gravity that impairs the consumer's judgment with a view to influencing the consumer's decision.[17]

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[16] CPRs, Regulation 7(3)(b).

[17] Regulation 7(2) of the CPRs states 'In determining whether a commercial practice uses harassment, coercion or undue influence account shall be taken of – (a) its timing, location, nature or persistence; the use of threatening or abusive language or behaviour; the exploitation by the trader of any specifies misfortune or circumstances of such gravity at to impair the consumer's judgment, of which the trader is aware, to influence the consumer's decision with regard to the product; (d) any onerous or disproportionate non-contractual barrier imposed by the trader where a consumer wishes to exercise rights under the contract, including rights to terminate a contract or to switch to another product or another trader; and (e) any threat to take any action which cannot legally be taken.'

33. Examples of aggressive practices are:

- Pressurising a consumer to enter into a contract for the supply of a legal service. For instance, pressurising a client who has asked for a will to be drawn up to appoint the legal services provider as executor, or to accept provision of a will holding service.

- Refusing to allow a consumer to cancel their contract, where a cancellation period applies and has not expired.

- Intimidating, pressurising or coercing consumers into dropping complaints against the legal services provider, for example by the use of threatening or abusive language or behaviour.

Commercial practice that is listed in Schedule 1 of the CPRs

34. Schedule 1 of the CPRs lists 31 commercial practices which are considered unfair in all the circumstances and which are prohibited (banned practices), irrespective of the effect these practices will have on consumers. The type of banned practice applicable to legal services providers will depend on the circumstances. Below are some examples (with reference to the banned practice) which may amount to a prohibited commercial practice under the CPRs in the context of legal services providers.

- **Claiming to be a signatory to a code of conduct when the trader is not.** An unauthorised legal services provider claims that it is bound by the Solicitors Code of Conduct when they are not.

- **Displaying a trust mark, quality mark or equivalent without having obtained the necessary authorisation.** A legal services provider displays a Law Society Accreditation Quality Assurance mark on its website when it does not have authorisation from the Law Society to do so.

- **Claiming that a trader (including his commercial practice) or a product has been approved, endorsed or authorised by a public or private body when the trader, the commercial practices or the product has not or making such a claim without complying with the terms of the approval, endorsement or authorisation.** A legal services provider claims its wills service is accredited by the Law Society's Wills and Inheritance Quality Scheme when it is not.

- **Conducting personal visits to consumer's home, ignoring the consumer's request to leave or not to return except in**

circumstances and to the extent justified to enforce a contractual obligation. A legal services provider enters a consumer's home during a doorstep selling process and later fails to leave when the consumer asks him to do so.

- **Making persistent and unwanted solicitations by telephone, fax, e-mail or other remote media except in circumstances and to the extent.** A legal services provider repeatedly contacts a consumer by telephone and by email to persuade him or her to enter into a contract for the provision of legal services when the consumer has specifically asked the provider to cease this practice.

B. Coverage in relation to the provision of information

35. The CCRs require legal services providers to provide their clients (consumers) with certain specified information which varies according to whether the contract is a distance contract, an off-premises contract or an on-premises contract. This is a specific rule in addition to the general requirement under the CPRs to provide information that is accurate and sufficient to prevent the consumer from being misled.

Distance and off-premises contracts

36. Distance contracts are contracts concluded under an organised distance sales or service-provision scheme where legal services providers and consumers are not both physically present at the time the contract is made. Additionally, the agreement must be made by exclusive use of one or more means of distance communication (for example, by phone, post or the internet) up to and including the time at which the contract is concluded.[18] The requirements relating to distance contracts are likely to apply where, for instance, legal services providers send contractual documents to consumers by post and consumers return signed copies using the same means. This is likely to be common practice amongst legal services such as conveyance contracts, contracts for Wills and probate.

37. Regulation 5 of the CCRs sets out four types of contracts that may amount to an off-premises contract. The types of contract that are most likely to be relevant to the provision of legal services are as follows:

[18] CCRs, Regulation 5.

- A contract concluded in the simultaneous physical presence of the legal services provider and the consumer, in a place which is not the business premises of the legal services provider;

- A contract concluded on the business premises of the legal services provider or through any means of distance communication immediately after the consumer was personally and individually addressed in a place which is not the business premises of the legal services provider in the simultaneous physical presence of the legal services provider and the consumer.[19]

38. The former situation may occur where for instance, legal services providers engage in door-to-door sales practices during which they enter into a contract with the consumer for the provision of legal services at consumers' homes. It could also include where a legal services provider is invited to a consumer's home to take instructions and as part of which process, a contract to provide legal services is concluded.

39. The latter situation may occur where for instance, legal services providers supply information to consumers at their homes, but the consumer does not immediately enter into a contract and only later signs the contract at the legal services provider's offices, or alternatively, signs and returns the contract by post.

40. Pursuant to the CCRs, legal services providers must provide consumers with the information set out in Schedule 2 in a clear and comprehensible manner and in a way appropriate to the means of distance communication used.[20]

41. Having regard to the information specified in Schedule 2[21] it is the CMA's view that legal services providers should provide the following types of pre-contract information to consumers, in addition to that outlined for on-premises contracts above, in their retainer letter before they are bound by off-premises or distance contracts:

[19] The remaining two types of contract that fall within the definition of off-premises contracts are:
(a) a contract for which an offer was made by the consumer in the simultaneous physical presence of the trader and the consumer, in a place which is not the business premises of the trader; and
(b) a contract concluded during an excursion organised by the trader with the aim or effect of promoting and selling goods or services to the consumer.

[20] CCRs, Regulations 10(1) and 13(1).

[21] Note, not all requirements listed in Schedule 2 will be relevant or applicable to legal services providers.

Legal services providers number, fax number and email address	This is self-explanatory.
The identity and geographic address of any third party trader if the legal services provider is acting on their behalf	This generally applies to conveyancing transactions where legal services providers act for both the purchaser and the mortgage lender.
Address where complaints should be sent to	If the address for complaints is different to the business address then this should be stipulated. This is likely to be relevant where the legal services provider has multiple offices.
In the case of a contract of indeterminate duration or a contract containing a subscription, the total costs per billing period or (where such contracts are charged at a fixed rate) the total monthly costs	If the consumer has an ongoing retainer, for an indeterminate period, the legal services provider should give an estimates of costs for each stage.
Costs associated with using distance communication to conclude the contract	This is unlikely to be relevant to legal services contracts which are likely to be concluded in writing in the majority of cases. However, if a consumer has the option of concluding a contract by telephone using a premium number then this should be highlighted to the consumer.
Information on the conditions, time limits and procedures for exercising a right to cancel	The right to cancel only applies to distance and off-premises contracts. Information requirements include the time limit for cancellation (14 days from the date the contract was entered into) and the procedure for cancellation.
Notification that if the consumer asks the legal services provider to start the work within the cancellation period, the consumer will be responsible for paying the reasonable costs of the service if the contract is cancelled	The consumer loses the right to cancel the service contract if the service has been fully performed at their request and they acknowledge that they would lose their right to cancel once the contract was completed. This is likely to apply in urgent cases – eg emergency injunction or a Will, or any work that the consumer wishes to commence immediately.
Notification if there are no cancellation rights for specific services or circumstances in which the consumer will lose those rights	This is likely to apply where the consumer asks the legal services provider to start the work within the cancellation period.
The existence of relevant codes of conduct and how copies of these can be obtained	In respect of authorised legal services providers this is likely to be the Solicitors Handbook or equivalent for barristers or any other codes that authorised legal services providers are subject to. Legal services providers should inform consumers how they can access these codes (eg links to the website).
Where applicable, the existence and the conditions of deposits or other financial guarantees to be paid or provided by the consumer at the request of the trader	This includes money that a consumer is required to pay upfront ('on account') to the legal services provider. This may apply in conveyance transactions where money on account is needed to enable the conveyancer to undertake searches.
The possibility of having recourse to an out-of-court complaint and redress mechanism, to which the trader is subject, and the methods for having access to it	In the case of authorised legal services providers, details of the Legal Ombudsman service which handles complaints against solicitors and barrister, should be provided to consumers.

* The right to cancel does not apply to off-premises contracts of low value, under which the payment to be made by the consumer is not more than £42.00.

42. Any information that a legal services provider supplies pursuant to the requirements of an off-premises contract or the requirements of a distance contract is treated as being incorporated as a term of the contract.[22]

On-premises contracts

43. On-premises contracts are contracts which are neither off-premises contracts nor distance contracts.[23] Instead, they are contracts which are entered into between a legal services provider and consumer at the legal services provider's office. These contracts are wide in scope and cover most contracts concluded between legal services providers and consumers.[24]

44. Legal services providers must provide consumers with the information set out in Schedule 1 of the CCRs in a clear and comprehensive manner if the information is not already apparent, before making an on-premises contract.[25]

45. Having regard to the information specified in Schedule 1, it is the CMA's view that legal services providers should provide the following type of pre-contract information to consumers in their retainer letters before they are bound by on-premises contracts:

The main characteristics of the service	Consumers should be given sufficient information about the service to enable them to make informed decisions. This is likely to include a description of the legal service for instance, 'advice and assistance in relation to the purchase of 123 Avenue Road'.
The identity of the trader including geographic address and telephone number	In some instances, the geographic address may not be obvious, particularly where the legal services provider has multiple premises. Consumers should be provided with this information including a contact telephone number.
The total price of the service including taxes	This is likely to be straightforward where a solicitor is charging a fixed fee (eg conveyancing transaction). However, where a fixed fee cannot be calculated, the consumer should be provided with the best possible information about the overall cost of their matter (hourly rate plus the number of hours that are likely to be engaged). If there are likely to be any disbursements (eg court fees, land registry fees) then where possible, these should be factored into the price. It could be material information, under the CPRs, for the provider to set out

[22] CCRs, Regulations 10(5) and 13(6).
[23] CCRs, Regulation 5. Certain contracts fall outside the scope of CCRs. These include gambling, residential rental agreements, construction of new or substantially new buildings, package holidays, tour or travels (see Regulation 6).
[24] CCRs, Regulation 6 set out a number of contracts that fall outside the scope of CCRs. These include gambling, residential rental agreements, construction of new or substantially new buildings, package holidays, tour or travels.
[25] CCRs, Regulation 9(1).

	some typical estimates of how much the work is likely to cost, based on the different sorts of likely scenarios.
Arrangements for payment, delivery and performance and the time that the trader will take to perform the service	This may include setting out what steps the legal services provider will take, estimated timescales and how frequently they will get in contact as well as how payment can be received.
The length of the contract if fixed or if the contract is of indeterminate duration or will be automatically extended, the conditions for terminating that contract	Most contracts for legal services providers are for indeterminate period. Consumers should therefore be provided with information on how they can cancel their contract.

46. Where applicable, information on the legal services provider's complaints handling policy should also be provided. For instance, in the case of authorised legal services providers, details of the role of the LeO in resolving disputes and where further information can be obtained in this respect should be provided to consumers.

47. Any information that a legal services provider gives the consumer pursuant to Regulation 9 is treated as included as a term of the contract.[26]

C. Coverage in relation to quality of advice provided

Reasonable care and skill

48. Section 49 of the CRA states that every contract for the supply of a service is to be treated as including a term that the trader must perform the service with reasonable care and skill. The test of assessing reasonable care and skill is set out in case law as 'what the reasonably competent [provider] would do having regard to the standard normally adopted in his profession.'[27]

49. The test is whether the legal services provider has made an error which no reasonably competent member of his profession, in his circumstances, would have made.[28]

50. An unauthorised legal services provider is in CMA's view likely to be held to the same standard of reasonable care and skill as an authorised legal services provider, particularly if they hold themselves out as providing a service of comparable quality to an authorised provider or where they employ, or claim to employ, qualified legal advisors.

[26] CCRs, Regulation 9(3).
[27] *Midland Bank Trust Co Ltd v Hett, Stubb & Kemp* [1979] Ch. 384, 403.
[28] *Arthur J S Hall & Co v Simons* [2000] UKHL 38; *McFaddens v Platford* [2009] EWHC 126.

51. The principal question is whether in all circumstances, the legal services provider in question is acting with the skill and competence to be expected from a person undertaking their particular activity.

Reasonable price to be paid for the service

52. If a contract for legal services is silent on the price, a consumer must pay for the service then section 51 implies a term into the contract that the consumer must pay a reasonable price for the service, and no more. The term 'reasonable' is not defined by the CRA. It is however, a question of fact.

Reasonable time for performance of the contract

53. As with price, if a contract for legal service is silent on the time for service to be performed, then section 52 implies a term into the contract for the trader (legal services provider) to perform the service within a reasonable time. What is reasonable is a question of fact. This may occur, where, for instance, a consumer consults a legal services provider to obtain an emergency injunction. If the terms of the contract do not express when the injunction will be applied for or obtained then it is implied by section 52, that it will be applied for or obtained within a reasonable time (for instance, same day or the next day).

Remedies

54. Should a legal services provider fail to perform a service with reasonable care and skill, within a reasonable time and for a reasonable price then the consumer may be entitled, under the CRA, to remedies which include the right to a price reduction (up to 100% of the contract price) or where appropriate repeat performance.[29] Such a consumer may also be entitled to common law remedies for negligence and breach of contract (for instance, damages). See paragraphs 77 to 86 below for further details.

D. Coverage in relation to unfair terms

55. Part 2 of the CRA applies to all terms (ie including negotiated terms) in contracts between a trader and a consumer entered into on or after 1 October.[30] It also applies to consumer notices provided or communicated on or after 1 October 2015. A consumer notice is defined by section 61 of the

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[29] Consumer Rights Act 2015, sections 55 and 56.
[30] Part 2 of the Consumer Rights Act (CRA) has replaced the UTCCRs in that it applies to contracts entered into, and notices, provided or communicated, on or after 1 October 2015. UTCCRs continue to apply to contracts entered into prior to this date.

CRA as wording that relates to rights or obligations as between a trader and a consumer. It includes all announcements, whether or not in writing, and any other communication or purported communication. It does not matter whether the notice is expressed to apply to a consumer, as long as it is reasonable to assume it is intended to be seen or heard by a consumer. A consumer notice can for instance, include online representations or material advertised in the trader's office.

56. The CRA applies a test of fairness to terms in consumer contracts. Section 62 states that a standard term is unfair, 'if contrary to the requirements of good faith, it causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer'. The test is applied by looking at the words, and how they could be used. It takes into consideration what is being sold, how a term relates to other terms in the contract, and all the circumstances at the time the term was agreed. The CRA also applies substantially the same test of fairness to consumer notices.[31]

57. An unfair term of a consumer contract or unfair consumer notice is not legally binding on the consumer.[32]

58. The CRA also provides an indicative and non-exhaustive list of consumer contract terms which may be regarded as unfair.[33] These are known as 'greylisted' terms. All of these terms are subject to the fairness test, but are not necessarily unfair.

59. Examples of greylisted terms are:

- A term which has the object and effect of requiring the consumer who fails to fulfil his obligation under the contract to pay a disproportionately high sum in compensation (paragraph 6). This may occur where the terms of a legal services provider's contract specifies a disproportionately high rate of interest that will be charged against all outstanding invoices.

- A term which has the object or effect of enabling the trader to terminate a contract for an indeterminate duration without reasonable notice except where there are serious grounds for so (paragraph 8). A term which allows a legal services provider to terminate a contract without notice is unfair as it has the potential of allowing the legal services provider to withdraw from the contract during an important stage of a case, for instance just before trial.

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[31] CRA, section 62(6).
[32] CRA, section 62(1) and (2).
[33] CRA, section 63(1) , Schedule 2, Part 1.

E. Summary of legislative framework – business to business transactions

60. Legislation which governs a business-to-business transaction also derives largely from EU Directives which are implemented into UK legislation by Parliament. The main legislative instruments relevant to business are the PSRs,[34] which as mentioned above, also apply to business and consumer transactions, Business Protection from Misleading Marketing Regulations 2008 (BPRs),[35] the Supply of Goods and Services Act 1982 and the Unfair Contract Terms Act 1977.

Provision of information under the PSRs

61. The PSRs apply to 'providers' and 'recipients' of a 'service' rather than traders and consumers.

(a) **Provider** is a person who provides or offers to provide a service and is an EEA national or is established in an EEA state.

(b) **Recipient** is defined as a person who is an EEA national or is established in an EEA state who for professional or un-professional purposes uses, or wishes to use, the service. This is a broad definition and includes consumers who are seeking legal advice in their personal capacity and individuals seeks legal advice in their professional/business capacity.

(c) **Service** is an economic activity normally provided for remuneration and which is not a contract for employment. 'Remuneration' should be interpreted broadly, for example, money or payment in kind (but excluding wages/salaries). A service can be business-to-business or business-to-individual activity. Legal services providers generally provide a service for remuneration and therefore fall within the scope of this definition.

62. Pursuant to the PSRs, legal services providers have a duty to make their contact details available so that recipients can send complaints or send requests for information about the service. In addition to this, legal services providers must make the following information available[36] (as relevant to this sector),

The provider's name and the provider's legal status and form	The provider's legal status and form includes whether they are a sole trader, partnership, limited liability partnership and limited company. This information informs the recipient of the type of entity the legal services provider is and the extent of its liability.

[34] Implements Directive 2006/123/EC on Services in the Internal Market
[35] Directive 2006/114/EC concerning misleading and comparative advertising.
[36] PSRs, Regulation 8.

The geographic address at which the provider is established	For instance, the registered office of a company.
Details by which the provider may be contacted rapidly and communicated with directly	This is particularly relevant for, for instance, criminal law practitioners that may need to be accessible out of office hours to provide advice and assistance. Methods of communication includes email and by mobile telephone number.
If the provider is registered in a trade or other similar public register, the name of that register and the provider's registration number, or equivalent means of identification in that register	For instance, where the legal services provider is registered with the Solicitors Regulatory Authority, the SRA ID number must be provided.
Where the activity is subject to an authorisation scheme in the UK, the particulars of the relevant competent authority	For instance, details of the Solicitors Regulatory Authority must be provided if the legal services provider is authorised by the regulator to provide the service.
Where the activity is subject in another EEA state to a scheme equivalent to an authorisation scheme, the particulars to the authority involved or the single point of contact in that state	This is likely to apply where legal services providers have a presence in EEA states. In this scenario, legal services providers must provide details of an equivalent SRA scheme that is recognised in the EEA state and a single point of contact.
Where the provider exercises an activity which is subject to VAT, the VAT identification number	This is self-explanatory.
Where the provider is carrying out a regulated profession, any professional body or similar institution with which the provider is registered, the professional title and the EEA state in which that time has been granted	For instance, a solicitor might state 'I am authorised to act as a solicitor in the UK by the Solicitors Regulatory Authority.'
The general terms and conditions, if any, used by the provider	This is self –explanatory.
The existence of contractual terms, if any, that you use concerning the competent courts or the law applicable to the contract	These terms must be provided if they exist. They may, for instance, include a statement stating that the English courts have jurisdiction or the contract is governed by English law.
Price of a service where price is pre-determined by the provider for a given type of service	The price of a service may in certain circumstance be pre-determined by the legal services provider. For instance, where the legal services provider charges a fix fee for a conveyance transaction or a Will drafting service.
The main features of the service if not already apparent from the context	This is likely to include a description of the key features of the service offered by the provider, for instance, commercial disputes, family matters (divorce, child arrangement orders, family mediation) personal injury matters, etc.
Contact details of the insurer or guarantor, and the territorial coverage of the insurance or guarantee.	If the legal services provider is subject to a requirement to hold professional liability insurance, information about that cover and, in particular, the contact details of the insurer and the territorial coverage must be provided.

63. Information can be made available in the following ways:[37]

(a) Supply it to the recipient on the provider's own initiative.

(b) Make it easily accessible to the recipient at the place where the service is provided or the contract concluded, for example, at your premises.

(c) Make it easily accessible by the recipient electronically by means of an address they supply, for example, by providing the exact address of where the information can be found on a publicly available website.

(d) Include it in any information documents that are supplied to the recipient, which set out a detailed description of the service the provider provides.

64. Additionally, legal services providers must supply the following information if the recipient asks for it[38] (although they may choose to make the information available in all cases if they prefer):

(a) Where the price is not pre-determined by the legal services provider or an exact price cannot be given, the method for calculating the price so that it can be checked by the recipient, or a sufficiently detailed estimate. This will include the hourly chargeable rate and the likely number of hours the legal services provider will engage.

(b) Where the legal services provider is authorised, a reference to the professional rules applicable in the UK (Solicitors Code of Conduct) and how these can be accessed– so recipients can easily find the rules, for example, on a website.

(c) Information on any other activities carried out by the legal services provider which are directly linked to the service in question and on the measures taken to avoid conflicts of interest. This information should be included in any information document in which the legal services provider gives a detailed description of their services.

(d) Any codes of conduct to which the trader is subject and the websites from which these codes are available, specifying the language version available. For instances, a legal services provider may be subject to the paralegal's code of conduct.

65. All the above information must be given in a clear and unambiguous manner so that it can be easily understood to enable the recipient to make an

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[37] PSRs, Regulation 8(2).
[38] PSRs, Regulation 9.

informed decision. The information must also be given in good time before the contract is concluded or before the service is provided when there is no written contract. This is so that the recipient has enough time to consider the information and alter their decision about entering into a contract.[39]

Business-to-business advertising

66. The BPRs prohibit advertising that misleads traders.[40] The protections are broadly comparable to those offered by the misleading action and omission provisions of the CPRs.

67. Advertising is 'any form of representation which is made in connection with a trader, business, craft or profession in order to promote the supply or transfer of a product.'[41] The definition is broad and includes any representation that is made to promote the supply of a product to a trader.

68. Advertising is misleading if it:

(a) deceives, or is likely to deceive the traders to whom the advertisement is addressed or reaches; and

(b) the deception is likely to affect the economic behaviour of those traders; or

(c) as a result of the above, injuries or its likely to injure a competitor

69. An advertisement can be deceptive if it:

(a) contains a false statement of fact;

(b) conceals or leaves out important facts;

(c) promises to do something but there is no intention of carrying it out; or

(d) creates a false impression, even if everything stated in it may be true.[42]

70. In determining whether advertising is misleading, account shall be taken of all:

(a) the characteristics of the product;[43]

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[39] PSRs, Regulation 11.
[40] The BPRs also regulate the use of comparative advertisement. However, comparative advertisement will not be considered here as it is unlikely to apply to the legal services sector.
[41] BPRs, Regulation 2(1).
[42] OFT guidance on Business to business promotions and comparative advertisements.
[43] Characteristics of the product is defined by Regulation. 3(4) as 'availability of the product; nature of the product; execution of the product; composition of the product; method and date of manufacture of the product; method and date of provision of the product; fitness for purpose of the product; uses of the product; quantity of

(b) the price or manner in which the price is calculated;

(c) the conditions on which the product is supplied or provided; and

(d) the nature, attributes and rights of the advertiser.[44]

71. This may apply where for instance, legal services providers falsely claim in their advertising material that their legal advisers are all qualified solicitors and barristers who specialise in all matters relating to business law. This will amount to a misleading advertisement as the false representation is made in relation to the main characteristic of the product (nature of the product, quality of the product, specification of the product) and the nature, attributes and rights of the advertiser (qualifications).

72. For a false advertisement to be misleading, the advertisement must be capable of affecting the economic behaviour of the traders. This is likely to occur where for instance, it induces or is likely to induce the business to part with money for what is being advertised.

73. The BPRs make it an offence for a business to engage in misleading advertising.[45] While the BPRs do not provide remedies for traders who are adversely affected by misleading advertisement, they may however be able to pursue a remedy for breach of contract or negligence.

Supply of Goods and Services Act 1982 (SGSA)

74. The SGSA incorporates implied terms into contracts requiring the business to carry out the service with reasonable care and skill, to do so within a reasonable time, and only make a reasonable charge if no price has been fixed in advance.[46] These provisions apply to business-to-business contracts, which fall outside the scope of the CRA.

Unfair Contract Terms Act 1977 (UCTA)

75. Transactions between businesses are covered by the UCTA.[47] In general, businesses are free to enter into whatever contracts they agree between

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the product; specification of the product; geographical or commercial origin of the product; results to be expected from use of the product; or results and material features of tests or checks carried out on the product.'

[44] Nature, attributes and rights are defined by Regulation 3(5) of the BPRs as the advertiser's 'identity, assets, qualifications, ownerships of industrial, commercial or intellectual property rights; or awards and distinctions.'

[45] BPRs, Regulation 8.

[46] SGSA, sections 12 to 15.

[47] Note, UCTA does not apply to certain types of contract which may involve businesses, including those relating to the creation or transfer of an interest in land; those relate to the creation or transfer of a right or interest in intellectual property, such any patent, trademark, copyright, design right etc; and those relating to the formation or dissolution of a company.

themselves. However, the UCTA places a number of restrictions on the contract terms businesses can agree to, for example, the business providing the services is not allowed to exclude liability for:

(a) death or personal injury;

(b) losses caused by negligence – unless to do so is 'reasonable';[48] and

(c) defective or poor quality goods – unless to do so is 'reasonable'.[49]

76. The UCTA deals with contractual terms in contracts between business-to-business transactions but they do not create liability or provide redress. Therefore, if a legal services provider has acted negligently in providing advice or assistance to a business, then provided this is not fairly excluded from the contract, the business will still have to bring an action for instance, under contract law or in tort for negligence.

Remedies

Remedies available for consumers

77. As described above, a consumer who enters into a contract for legal services with a business provider, or pays a business provider for a supply of legal services, has a right to redress under the CPRs if the service provider engages in a practice which is misleading action or in an aggressive commercial practice in relation to the services. The CPRs do not provide a mechanism for redress for misleading omissions and banned practices.

78. The CPRs give three types of redress – the right to unwind the contract;[50] the right to a discount;[51] and the right to damages.[52]

79. The right to unwind must be exercised while the services remain capable of being rejected and within a period of 90 days. If the consumer exercises this right the contract comes to an end, and the consumer is entitled to a refund, subject to the conditions set out in the CPRs.

80. If the consumer has the right to a discount, it will be for 25%, 50%, 75% or 100% of past or future payments under the contract, depending on the seriousness of the prohibited practice, the impact of the practice on the consumer and the time which has elapsed. Exercising this right of redress has

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[48] UCTA, section 2.
[49] UCTA, section 6.
[50] CPR rule 27E.
[51] CPR rule 27I.
[52] CPR rule 27J.

no effect on any rights and liabilities that may arise under the contract, but a consumer cannot recover twice for the same loss.

81. The right to damages is available to redress additional financial loses and any alarm, distress, physical discomfort and inconvenience caused by the prohibited practice. The legal services provider will be able to raise a due diligence defence in respect of a consumer's right to damages.

82. The CRA deals with compliance of the contract. Where the contract is not performed with reasonable care and skill or within a reasonable time then the remedies available to consumers are:

(a) **The right to require repeat performance.** This is a right to require the trader to take steps necessary to perform the service again so that it conforms with the contract. If the consumer requires such repeat performance, the trader must provide it within a reasonable time, but without causing significant inconvenience to the consumer.[53] The trader must also bear any necessary costs incurred in repeating performance of the contract. The availability of repeat performance as redress in the legal services sector depends entirely on the facts of the case and, in particular, the point at which the consumer raises a complaint or seeks a remedy.

(b) **The right to require price reduction.** This is a right to require the trader to reduce the price payable by the consumer to an appropriate amount.[54] It includes the right to receive a refund for anything already paid above a reduced amount and may include the full amount of the price.[55]

83. Consumers can pursue action directly through court proceedings against legal services providers for redress on the following bases:

(a) Breach of contract.

(b) Negligence or lack of reasonable care and skill.

(c) Certain unfair commercial practices.

(d) Failure to provide information.

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[53] Section 55(2)(a) of the CRA.
[54] Section 56(1) of the CRA.
[55] Note that the availability of these statutory remedies does not preclude the individual consumer seeking other remedies for breach of any of the terms that the CRA requires to be treated as included in a service contract, instead of or in addition to the new statutory remedies (Section 54(6) of the CRA).

Remedies available for small businesses

84. Small businesses do not have a right to redress under the CPRs or the CRA as these regulations do not apply to business-to-business transactions. Therefore, if a legal services provider has either acted negligently in providing advice or assistance to a business, then provided this is not fairly excluded from the contract, or contrary to an agreed contract, the business can seek a remedy by bringing an action for breach of contract or in tort for, for example negligence.

85. There are several remedies for breach of contract, such as award of damages, specific performance, rescission and restitution. The main remedy is an award of damages and this is the same for tortious loss where the main remedy is also financial compensation for damages. An action under breach of contract or tort will require a business to undertake formal legal action against the provider, ultimately via the court system. In the case of a continuing tort, or even where harm is merely threatened, the courts will sometimes grant an injunction. Breach of contract or tortious remedies will generally require the purchaser to engage a 'new' legal services provider in order to bring an action against the provider.

86. The practicalities of enforcement will include production of evidence to substantiate their claim that will usually require the assistance of a legal advisor; produce supporting account/material eg witness statement and navigate a somewhat expensive court system.

Alternative Dispute Resolution

87. An ADR service is designed to help facilitate the negotiation and settlement of disputes, with the aim of avoiding potentially lengthy and costly court proceedings. The most common forms of alternative dispute resolution are mediation and arbitration.

88. The ADR for consumer disputes (Competent Authorities and Information) Regulations 2015 ('ADR regulations') set out provision for the supply of information concerning ADR in disputes arising between a consumer and business transaction. They do not apply to a business-to-business transaction.

89. Where a legal services provider has exhausted its internal complaints handling process relating to a service provided, the legal services provider must inform the consumer, on a durable medium:[56]

[56] Durable medium is defined by ADR, Regulation 5 as 'paper or email, or any other medium that allows information to be addressed personally to the recipient, enables the recipient to store the information in a way

(a) That the legal services provider cannot settle the complaint with the consumer.

(b) The name and address of a certified ADR entity that would be competent to deal with the complaint.

(c) Whether the legal services provider is prepared to submit to an alternative dispute resolution procedure operated by an ADR entity.[57]

90. Neither consumers nor traders are required to use ADR at all unless the trader is required to do so under a statutory instrument, is committed to using an ADR as a condition of membership of a trader or profession, or if ADR is a term of the contract between the trader and consumer.[58] Traders can however, engage in ADR on a voluntary basis and are encourage to do so because:

(a) Courts look favourably on parties that engage in ADR before getting the courts involved.

(b) If a party refuses without good reason to engage in ADR then the court can later penalise them (even if they are successful in court) when deciding who should pay the cost of the proceedings.

(c) The courts can, and now frequently do, order the parties to engage in ADR with the aim of resolving the dispute. If the parties do this before issuing proceedings, they can potentially save material litigation costs.

91. The above advantages of engaging in ADR apply equally to disputes arising as a result of a business-to-business transaction. Further, it should be noted that a business can be compelled, by the terms of the contract they have entered into (as long as these are incorporated), to submit to arbitration, which is a process governed by the Arbitration Act 1996, and means that they may forgo their right to bring matters to court. This restriction does not apply to consumer contracts – consumers are generally always able to bring a matter to court, even if they have engaged in arbitration or ADR of some kind.

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accessible for future reference for a period that is long enough for the purposes of the information, and allows the unchanged reproduction of the information to be stored'.

[57] ADR, Regulation19.

[58] Note, an agreement between a consumer and trader to submit a dispute to an ADR entity is not binding on a consumer to the extent that the agreement was concluded before the dispute materialised, and has the effect of depriving the consumer of the right to bring judicial proceedings in relation to the dispute (Regulation 14B of the ADR Regulations).

Comparison of consumer protection standards required of providers by regulatory status

Table 1: Comparison of consumer protection standards required of providers by regulatory status

	*Unauthorised provider**	*Self-regulated provider*	*Authorised providers*
Clarity of information			
Standards related to clarity of information	• General consumer protection includes relevant provisions on price transparency and prominence of information about the service to be carried out.	• The majority of self-regulatory bodies are subject to specific information requirements relating to service, costs and complaints procedures. • General consumer protection also applies.	• Authorised providers are subject to information requirements at various different stages of their engagement with a client. Authorised providers are expected to provide the 'best possible information' relating to service, costs and complaints procedures at the different stages of their engagement with a client. • General consumer protection also applies.
Information (confidentiality)	• Unauthorised and self-regulated providers' communications are not subject to legal professional privilege (LPP). • Are not specifically regulated around their handling of confidential business information. • Requirements under the Data Protection Act 1998 apply.		• Authorised providers' communications may attract LPP. • Authorised providers are required to have a written file retention/destruction policy available to the client on request. • Requirements under the Data Protection Act 1998 apply.
Quality			
Qualifications and training	• Not a requirement.	• The majority of self-regulatory bodies set out minimum qualification requirements that members must demonstrate. • Usually involves a minimum number of hours of training (ie CPD).	• All approved regulators have academic and professional training requirements in place. These requirements will differ according to the regulator.
Standards related to technical competence	• No additional requirements – treating consumers fairly and with reasonable skill and care is covered by the CRA.	• The majority of the self-regulatory bodies have a code of conduct with rules and principles related to technical competence.	• Standards of conduct require authorised providers (individuals or entities) to carry out their work with care, integrity and diligence and with proper regard for the technical standards expected of them.

	*Unauthorised provider**	*Self-regulated provider*	*Authorised providers*
		• Treating consumers fairly and with reasonable skill and care is covered by the CRA.	• An authorised person should undertake work within his or her expertise or competence.[†] • CRA also applies to authorised providers.
Sales practices			
Standards related to sales practices	• High pressure doorstep selling may amount to an aggressive practice under CPRs. It may also amount to a banned practice in some circumstances.	• The majority of self-regulatory bodies have a code of conduct with rules or principles to ensure members treat clients fairly and give information in the best interest of the client.	• Authorised providers are required to treat clients fairly and must put clients in a position to enable them to make informed decisions about the services they need, how their matter will be handled and the options available to them.
Redress mechanisms and financial protection arrangements			
Financial protection arrangements, that include: - PII - compensation fund	• Not a requirement in principle, but many businesses have PII cover in place for their clients' protection as well as their own.	• Having PII cover is generally a requirement for members of the self-regulatory body.	• Financial protection arrangements protect clients from loss due to dishonesty, fraud, negligence, insolvency or failure to account. • All regulators require professionals to have PII cover (but not all regulators require a run-off cover). Under the different regulators' codes of conduct, an entity or individual will be unable to practise a reserved activity until they have PII in place. • Some, but not all regulators have a compensation fund in practice.
Complaints handling, including access to the LeO	• No access to the LeO. • ADR Directive signposting rules are relevant.[‡]	• The self-regulatory body generally have a complaints procedure in place. • No access to the LeO. • ADR Directive signposting rules are relevant.	• Authorised providers must have a complaints procedure. Written details of the procedure should be available whenever the client requests them and should be given in writing in the initial client care letter. • Complaints can be taken to the LeO free of charge for the consumer (a case management fee is payable by the lawyer). • Complaints redress procedure must be given to the client and must also be made publicly available in the regulators' website. • ADR Directive signposting rules are relevant.

	*Unauthorised provider**	*Self-regulated provider*	*Authorised providers*
Sanctions	• Trade associations may have a range of penalties at their disposal including expulsion, although this does not amount to a prohibition on trading. • General consumer law is subject to a mixture of private and public enforcement. • Trade associations may have mechanisms to protect consumer prepayments. Insolvency law applies.	• In addition to general consumer law, self-regulatory bodies may investigate breach of their code of conduct. Sanctions typically include fines, suspension and being expelled from the self-regulatory bodies.	• Authorised providers may be investigated for breaches of rules and sanctioned with penalties which range from reprimands to fines, suspension and ultimately 'striking off'.
Closure			• Regulatory arrangements are designed to ensure continuity of service for clients in case of a law firm closing down, eg transfer of files to another firm. • Some, but not all regulators will require run-off cover insurance.
Other standards required			
Advertising	• Subject to advertising codes administered by the Advertising Standards Authority (ASA).		• Codes of conduct include specific and general conduct rules which apply to authorised providers when advertising their services (including on websites). • Authorised providers are also subject to advertising codes administered by the ASA.

Source: CMA analysis.
* Not subject to regulation by other bodies due to their activities outside of the legal service sector.
† See, for example, the SRA, Statement of solicitor competence.
‡ The ADR for Consumer Disputes (Competent Authorities and Information) Regulations 2015 is the main UK implementing measure of the ADR Directive and came into force in October 2015. This provides that where a trader has exhausted its internal complaints procedure, it must inform the consumer of the name and website address of the approved ADR entity which would be competent to deal with the complaint. It should also state whether it is obliged to use the ADR entity (ie by virtue of any rules or regulations) or whether it is prepared to do so. These rules apply only to individual consumers but do not in general cover SMEs.

Table 2: Comparison of consumer protection standards required of authorised providers and self-regulated unauthorised providers in the provision of will writing services

	Unauthorised provider self-regulated by		*Authorised provider regulated by*
	IPW	*SWW*	*SRA*
Clarity of information			
Standards related to clarity of information	• Members are required to provide clear information on costs, service and complaints procedures to consumers. • Members should provide the best possible information to consumers when introducing any ancillary service or product. Members should disclose any fee sharing arrangement that may be relevant to the introduction of such other products and services before the client is committed to purchasing them.	• Members are required to provide clear information on costs, service and complaints procedures to consumers. • Members are required to provide clients with a written document giving clear confirmation of the client's instructions.	• Solicitors' firms are subject to information requirements at various different stages of their engagement with a client. • Solicitors are expected to provide the 'best possible information' relating to the service, costs and complaints procedures at the different stages of their engagement with a client.
Information (confidentiality)	• Self-regulated providers' communications are not subject to LPP. • Are not specifically regulated around their handling of confidential business information. • Requirements under the Data Protection Act 1998 apply.		• Solicitors' communications may attract LPP. • Solicitors are required to have a written file retention/destruction policy available to the client on request. • Requirements under the Data Protection Act 1998 apply.
Quality			
Qualifications and training	• Three routes: (i) examination; (ii) qualification (five years of experience); (iii) exemption (for solicitors, STEP members, CILEx members). • Members are also required to achieve a certain number of hours of training each year (it varies depending on the type of membership).	• There are three grades for full membership of which one may apply: (i) Member; (ii) Associate Member: This grade recognises those individuals who by study have attained qualifications in their own discipline which may be allied to, but not necessarily will writing; (iii) Fellow Member. • Members are also required to achieve at least 24 hours of CPD.	• Solicitors need to have completed the academic stage (eg undergraduate qualifying law degree, common professional examination) and vocational stage (that includes the legal practice course) or an apprenticeship; have complied with the SRA admission regulations and have satisfied the SRA suitability test. • Solicitors are required to maintain the level of competence and legal knowledge needed to practise effectively, taking into account changes in their role and/or practice context and developments in the law.

	Unauthorised provider self-regulated by IPW	*SWW*	*Authorised provider regulated by SRA*
Standards related to technical competence	• Treating consumers fairly and with reasonable skill and care is covered by the CRA.	• Members are required to comply with the client's instructions using all due skill, care and expedition appropriate to the need of the client. • Treating consumers fairly and with reasonable skill and care is covered by the CRA.	• Standards of conduct are designed to ensure that solicitors' firms and solicitors are required to carry out their work with care, integrity and diligence and with proper regard for the technical standards expected of them. • Solicitors should undertake work within their expertise or competence.† • Treating consumers fairly and with reasonable skill and care is covered by the CRA.
Sales practices			
Standards related to sales practices	• Members should put clients in a position to enable them to make informed decisions about the services they need, how their matter will be handled and the options available to them. • Members are required never to intimidate, harass, pressure clients, or discriminate.	• Members should put clients in a position to enable them to make informed decisions about the services they need, how their matter will be handled and the options available to them. • Members are required never to intimidate, harass, pressure clients, or discriminate.	• Solicitors' firms and solicitors are required to treat clients fairly and must put clients in a position to enable them to make informed decisions about the services they need, how their matter will be handled and the options available to them.
Storage of the will	• Members who hold clients' wills and/or collect payments for the storage of wills should keep the IPW advised in writing of the location of such documents. • Members are required to provide all documents held on behalf of clients on written request of authorised persons (or their appointee).	• The SWW offers storage. • Members offering storage of wills should offer alternative arrangements (at no further cost to the client) in the event of their ceasing to practice for whatever reason.	• The SRA advertises on its website the will storage offered by the Probate Service (£20). • Solicitors should advise clients of the options available and ensure the client understands the importance of the executor(s) knowing where to find the will following the client's death.
Executorship	• Members should not make their appointment as an executor a condition of accepting instructions. Before the appointment, the member should provide a written indication of the fees to complete those duties. • If a member is appointed as an executor of a will he/she shall renounce his/her appointment if requested to do so in writing by all of co-executors or by all of the residuary beneficiaries capable of doing so.	• Members are required to not undertake probate services or the administration of the estate of a deceased person for gain without the prior consent of the SWW. • The SWW will verify whether the member has established competence to provide this service.	• The SRA allows a client to appoint a solicitor or a solicitors' firm or others in the firm as executors in a will. However, solicitors are required to advise clients of the options available and ensure the client understands that the executor does not have to be a professional. Solicitors have a duty to act in the client's best interests.

	Unauthorised provider self-regulated by IPW	*SWW*	*Authorised provider regulated by SRA*
Mental capacity	• Members are required to be particularly careful not to take advantage of vulnerable clients by inducing them to make an inappropriate decision. • Members are required always to act in the clients' best interests and take reasonable steps to establish that the client is acting freely, without coercion or undue influence and with sufficient understanding of the product or service to make an informed decision.	• Member are required to establish that the client is acting freely, without coercion, with a full understanding of the transaction and is of testamentary or other appropriate capacity.	• Solicitors, in taking instructions and during the course of the retainer, should have proper regard to client's mental capacity or other vulnerability, such as incapacity or duress.
Redress mechanisms and financial protection arrangements			
Financial protections arrangements, including: - PII - compensation fund	• Members are required to have a minimum cover of £2 million.	• Members are required to have a minimum cover of £2 million. • Members have to pay into The Society of Will Writers Guarantee, which guarantees that, in the event of serious or critical illness; death or bankruptcy, any client who has paid for work will have his/her contract fulfilled (wills and lasting power of attorney).	• Solicitors' firms are required to have a minimum cover of £2 million (ie sole practitioners and partnerships). The cover raises to £3 million for recognised body and/or ABS. • The SRA has a compensation fund that replaces money which a defaulting practitioner (or his/her employee or manager) has misappropriated.
Complaints handling	• Members are required to have a complaints procedure in place. • Complaints can be taken to the IPW which offers a conciliation service that is free of charge for the consumer. If not satisfactory, complaints can be taken to the estate planning arbitration. • ADR Directive signposting rules are relevant. IPW's chosen scheme is the Estate Planning Arbitration Scheme (EPAS). Where the customer wishes to proceed to arbitration, the provider is bound to proceed.‡	• Members are required to have a complaints procedure in place. • When a complaint is first brought to the provider, it has seven working days to resolve the matter. If the matter is not resolved, the complaint will be handled by the SWW. There is a non-refundable investigation charge of £150 to be paid by the member. • If the complaint remains unresolved following the SWW's intervention, the member should advise the client of an ADR scheme. • ADR Directive signposting rules are relevant.	• Solicitors' firms must have a complaints procedure. Written details of the procedure should be available whenever the client requests them and should be given in writing in the initial client care letter. • Complaints can be taken to the LeO free of charge for the consumer (a case management fee is payable by the lawyer). The LeO accepts complaints from beneficiaries. • ADR Directive signposting rules are relevant.

	Unauthorised provider self-regulated by IPW	*Unauthorised provider self-regulated by SWW*	*Authorised provider regulated by SRA*
Sanctions	• Any breach of the IPW's code of conduct may result in disciplinary proceedings being instigated by the IPW. Sanctions include fines, suspension and been expelled from the IPW.	• Any breach of the SWW's code of conduct may result in disciplinary proceedings being instigated by the SWW. Sanctions include fines, suspension and being expelled from the SWW.	• Solicitors may be investigated for breaches of rules and sanctioned with penalties which range from reprimands to fines, suspension and ultimately 'striking off'.
Closure	• Information not available.	• Under the SWW's PII scheme members can purchase run off insurance, but it is not a requirement.	• Regulatory arrangements are designed to ensure continuity of service for clients in case of a law firm closing down, eg transfer of files to another firm. • Solicitors are required to obtain six years' run-off cover. After six years, the Solicitors Indemnity Fund provides supplementary run-off cover beyond this period.§
Other standards required			
Advertising	• Subject to advertising codes administered by the ASA.	• Subject to advertising codes administered by the ASA.	• Codes of conduct include specific and general conduct rules which apply to authorised providers when advertising their services (including on websites). • Subject to advertising codes administered by the ASA.

Source: CMA. Information based on analysis of IPW's website, SWW's website and SRA's website. Retrieved in November 2016.
† See SRA Statement of solicitor competence.
‡ EPAS can charge a £50 fee to the complainant but can be reimbursed if claim successful. For further details, see Estate planning arbitration scheme.
§ Although this insurance cover is due to expire in September 2020.

Assessment of the reserved legal activities

Introduction

1. This appendix provides an assessment[1] of each reserved legal activity with particular regard to:

   - their potential impact on competition in the legal services sector given each reserved legal activity's scope, and
   - the consumer protection and public interest considerations that have been offered as justifications for these activities being reserved to authorised providers.

2. In assessing the impact on competition from the reserved legal activities, we have particularly focused on how their scope may affect unauthorised providers that may be seeking to provide legal services to consumers. However, where relevant, we have also sought to consider how competition operates between different types of authorised providers in order to gain a better understanding of consumer choices in obtaining providers for these activities.

The exercise of a right of audience

Description and scope

1. The exercise of a right of audience is the right to appear before and address a court, including the right to call and examine witnesses. The exercise of a right of audience is reserved to authorised providers except where, before the Legal Services Act 2007 came into force, there was no restriction on a person to do this. As such, unauthorised providers that benefited from an exception to this reservation prior to the passing of the Legal Services Act 2007 continue to have the benefit of this exception.[2] Unlike the conduct of litigation, the scope of this reservation is relatively wide and clearly understood.

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[1] Our assessment was aided by a number of submissions provided by a number of approved regulators (plus their front line regulators), the LSB, the Legal Services Consumer Panel (LSCP) and a number of self-regulatory organisations and professional associations.

[2] Schedule 2, paragraph 3, to the Legal Services Act 2007. Prior to the Legal Services Act 2007, a number of exemptions and/or liberalisations had been developed, in particular this included the Courts and Legal Services Act 1990 which extended rights of audience to solicitors and the Lay Representatives Order 1999 (allowing lay representatives in small claims court). The Legal Services Act 2007 also contains some quite specific exemptions

2. Historically, the exercise of advocacy has been a prerogative reserved to barristers. Over time, solicitors have gradually gained rights to conduct advocacy in a range of courts.[3] More recently, the Chartered Institute of Legal Executives (CILEx); the Association of Costs Lawyers; the Chartered Institute of Patent Attorneys and the Chartered Institute of Trademark Attorneys have all been designated as approved regulators in relation to this reserved legal activity, although the scope of their members' right to exercise this reserved legal activity is limited to certain areas of law and/or courts.[4] The Institute of Chartered Accountants in England and Wales (ICAEW) has recently submitted an application to become an approved regulator to authorise its members to undertake advocacy in relation to tax matters.[5]

3. The current reservation allows individuals to advocate on their own behalf. Anecdotal information and some empirical evidence indicates that since the most recent legal aid reforms introduced by the Legal Aid Sentencing and Punishment of Offenders Act 2012, there has been a marked increase in the number of people representing themselves in court – known as 'litigants in person' (LIPs). For example, the National Audit Office reports a 22% increase in LIPs for cases involving contact with children and a 30% increase across all family court cases. In this context, particular concerns have been voiced over the capacity of LIPs to present their cases effectively.[6]

4. The broad scope of the reservation should, in principle, make it more difficult for unauthorised providers to work around the advocacy reservation. However, the Legal Services Act 2007 preserves strong judicial discretion as to who can be heard in court. For instance, judges can refuse to hear persons even if they possess rights of audience.[7] Such wide discretion also allows for the provision of a right of audience to non-authorised persons. This may include legal professionals authorised for other reserved legal activities, such as CILEx members who are not Chartered Legal Executive Advocates, but

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(eg rights of audience in chambers if assisting an authorised person in litigation; employees of housing management bodies in housing proceedings). Finally, an exemption in the Legal Services Act 2007 allows individuals to conduct their own advocacy.

[3] Specifically, magistrates' courts, county courts, the Family Court; coroners' courts, the European courts, and tribunals. Furthermore, the introduction of Higher Rights of Audience in 1990 enabled some solicitors, if qualified as 'solicitor advocates', to conduct advocacy in the Crown Court, the High Court, the Court of Appeal and the Supreme Court, a right that was historically reserved to barristers. In order to exercise advocacy in the higher courts, solicitors need to complete an advocacy assessment and demonstrate on an ongoing basis that they are maintaining and developing their advocacy skills.

[4] For instance, IPReg, the front line regulator for patent and trademark attorneys, only authorises these lawyers to exercise a right of audience in intellectual property matters. Under CILEx, members can qualify as Chartered Legal Executive Advocates with rights of audience in a range of courts, but not the higher courts (aside from before a high court judge in chambers in relation to bail applications).

[5] See ICAEW's approved regulator and licensing authority application.

[6] See: House of Commons (2016), *Library Litigants in person: the rise of the self-represented litigant in civil and family cases in England and Wales.*

[7] Section 192 of the Legal Services Act 2007 (although reasons for refusing must be given).

also unauthorised providers such as McKenzie Friends who may already be providing an LIP with 'reasonable assistance'.[8]

Consumer protection and public interest considerations

5. Given the technical difficulty involved in advocating a case and the potentially severe consequences of poor provision, reserving the exercise of a right of audience to only authorised persons secures consumer protections by providing a level of assurance as to minimum quality and ethics of the provider.

6. In addition, given the importance of maintaining the effectiveness of the courts, the reservation has strong justifications based on the wider public interest. In a submission to us, the Law Society noted that authorised providers not only have to act in their client's best interest but also have additional duties to the court to:

   - uphold the rule of law and the proper administration of justice; and,
   - ensure that their independence is not compromised.

7. A submission from the Bar Council also emphasised the importance of the current reservation for securing a number of public interest considerations that went beyond consumer protection for the individual client. Furthermore, the Bar Council submitted that reservation promoted public and consumer interests in tandem given that compensation after the event is likely to be an insufficient remedy in the event that a person's rights under the law are not upheld.

8. The reservation of rights of audience (and litigation activities as discussed further below) therefore have the effect of ensuring that only those who can be trusted to honour their duties to the courts are permitted to practise before the courts. It should also be noted that clients of solicitors and barristers undertaking advocacy and litigation benefit from legal professional privilege[9] which is a key aspect of the proper administration of justice, but also has the potential to be abused by unscrupulous providers.

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[8] Practice Guidance (McKenzie Friends (Civil and Family Courts) 2010) notes that litigants have the right to have reasonable assistance from a layperson, sometime known as a McKenzie Friend. While there is presumption in favour of allowing this assistance in closed court, the court may refuse this assistance where it is satisfied that the interests of justice and fairness do not require the litigant to receive such assistance (paragraph 5).
[9] See s190 of the Legal Services Act 2007.

Impact on competition of the reserved legal activity

9. While the reservation of the exercise of a right of audience might limit the ability of unauthorised providers to provide advocacy services, submissions made to us have argued that competition for advocacy services is strong as a result of the interaction between solicitors, as repeat buyers of these services, and the barristers they instruct. In addition, barristers face competition from a range of solicitors and other lawyers also possessing rights of audience in a number of courts.

10. We understand that solicitor advocates are playing an increasingly significant role in this area. Data from the SRA shows that there are currently 6,577 practising solicitors with higher rights of audience, comprising 3,274 with criminal higher rights, 1,820 with civil and 1,483 with both. While outside the scope of this market study,[10] in criminal advocacy the percentage of publicly funded contested trials where the defence was conducted by a solicitor advocate rose from 4% in 2005/6 to 24% in 2012/13. The number of publicly funded guilty pleas conducted by solicitor advocates also rose from 6% to 40% over the same period.[11]

11. In a submission to us, the LSB noted that solicitor firms, in having their own (perhaps repeat) clients and ability to obtain clients through Legal Aid Agency, may have a competitive advantage over other providers of criminal advocacy services. This dynamic may also be a factor in civil legal services, despite the more restricted scope of legal aid in respect to civil matters. The LSB also noted that recent regulatory reforms by the BSB, such as the public access scheme, the ability for barristers to obtain authorisation to conduct litigation and establish BSB-regulated entities, should in principle have increased competition between barristers and solicitors in the provision of advocacy services.

12. Evidence suggests that there has recently been a rise in the number and prevalence of paid McKenzie Friends providing advocacy services to consumers[12] and that judges have increasingly exercised their discretion to hear McKenzie Friends in both open and closed courts has been growing in

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[10] Our market study has not considered criminal law. See CMA (2016), *Statement of Scope* at paragraph 3.10, and paragraph 1.6 of the final report.
[11] The Jeffrey Review provides the most recent analysis of the criminal advocacy area of law. It noted that there has been substantial growth in the number and scale of in-house advocacy departments within solicitors' firms, beyond anything experienced in the years immediately after the liberalisation of rights of audience. See Sir Bill Jeffrey (2014), *Independent criminal advocacy in England and Wales*.
[12] See MoJ (2014), *Litigants in person in private family law cases* and LSCP (2014), *Fee-charging McKenzie Friends*.

order to avoid people acting as LIPs.[13] However, the number of providers identifying themselves as 'professional' or 'paid' McKenzie friends[14] and other unauthorised providers, such as paralegals, who may undertake advocacy on a regular basis remains very small compared to the overall number of authorised providers.[15]

13. While we note anecdotal evidence of an increase in McKenzie Friends being granted rights of audience in individual cases, according to the Society of Professional McKenzie Friends, the typical model of a McKenzie Friend is that, for short directions or pre-trial hearings, the litigant exercises the right of audience personally, relying on prior guidance from the McKenzie Friend and prompting from the McKenzie Friend during the hearing. When it comes to the final hearing or other substantial hearings which involve cross examination of witnesses and oral legal argument, the McKenzie Friend will often advise the litigant to engage a public access barrister for that one hearing, and may recommend a particular barrister for the task.

14. Over the course of our market study, we have engaged with unauthorised providers who have operated as paid McKenzie Friends. These discussions uncovered a range of opinions on whether the current reservation constitutes a strong impediment on their business models. While some providers felt that the reservation did not represent a barrier to their work, mostly as judges tended to allow them to advocate on behalf of an otherwise unrepresented person, others said that uncertainty as to whether they would be heard by a judge did compromise their ability to operate and this undermined their usefulness in helping the litigant in person and the overall court system.

15. We understand that the growth of unauthorised providers providing advocacy services has raised concerns both in relation to the quality of their work and the lack of adequate redress for clients.[16] These concerns persuaded the Lord Chief Justice to publish a consultation in February 2016 on the use of McKenzie Friends, with the most notable proposal being a prohibition on McKenzie Friends receiving remuneration.[17] This specific proposal has been

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[13] A recent example of this being *Ravenscroft v Canal & River Trust*. See: The Law Gazette (2016), 'Relentless and obstinate' McKenzie friend allowed to be advocate.
[14] Which we understand from the Society of Professional McKenzie Friends to be around 40 to 50 fee charging McKenzie Friends.
[15] For instance, based on latest numbers from the SRA and BSB, there are just over 150,000 solicitors and barristers who can exercise rights of audience in the lower courts (undertaking civil, family and criminal work). As the LSB identifies, this pool of potential advocates has grown over time with around 30,000 extra advocates being added over the last 10 years (see: *LSB (2014), Criminal Advocacy services in England and Wales: Briefing Pack, slide 7*.
[16] For instance, see the Law Gazette (2016), McKenzie friend jailed for deceit in family court.
[17] To be chiefly enforced through judges being advised to not grant rights of audience to 'professional / paid" McKenzie Friends. See: Lord Chief Justice of England and Wales (2016), *Reforming the courts' approach to McKenzie Friends*.

queried by the LSB, SRA and LSCP in their consultation responses given their shared view that, although risks exist in the use of paid McKenzie Friends, a ban on their remuneration would be disproportionate and serve to compromise consumer choice and access to legal services.[18] Specifically, the LSB has queried why the already wide judicial discretion to hear McKenzie Friends (or not) is insufficient to safeguard consumer protections and the wider public interest.

Conduct of litigation

Description and scope

16. The conduct of litigation includes the issuing, commencement, prosecution and defence of proceedings before any court plus any 'ancillary functions' related to such proceedings. While there is a lack of clarity as to what constitutes an ancillary function, case law on the scope of this reserved legal activity indicates that the activity should be construed narrowly and would not include the giving of legal advice in connection with court proceedings.[19]

17. As noted in Table 5.1 of the main report, solicitors, barristers, legal executives, patent attorneys, trademark attorneys and cost lawyers are entitled to conduct litigation.[20] While the conduct of litigation has traditionally been the preserve of solicitors, an important regulatory change took place in 2014, when regulations were amended to allow self-employed barristers to conduct litigation on behalf of clients.[21,22]

18. The Legal Services Act 2007 allows individuals to conduct their own litigation. In the same manner as the exercise of rights of audience, there has been significant growth in the number of LIPs in recent years that can be related to

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[18] See LSB (2016), Reforming the courts' approach to McKenzie Friends; LSCP (2016), *Letter from Elisabeth Davies, Chair, Legal Services Consumer Panel*, and SRA (2016), *Consultation by Lord Chief Justice of England and Wales on reforming the courts' approach to McKenzie Friends: SRA response*.

[19] See Agassi v HM Inspector of Taxes (2005) ECWA Civ 1507. The case makes it clear that correspondence during litigation does not itself amount to the conduct of litigation. Although note this was before the Legal Services Act 2007 and therefore decided under previous legislation (namely sections 20 -25 of the Solicitors Act 1974).

[20] Note that for legal executives, patent attorneys, trademark attorneys and cost lawyers, the right to conduct litigation is limited in scope.

[21] Specific statutory provisions may confer a right to undertake litigation. For example, all barristers who are employed by the Crown Prosecution Service and who are Crown Prosecutors have a right to conduct litigation that derives from the Prosecution of Offences Act 1985 as opposed to the Legal Services Act 2007. Furthermore, s.223 of the Local Government Act 1972 enables a duly authorised officer of a local authority to prosecute or defend in a magistrates' court.

[22] Barristers do not acquire automatic rights to conduct litigation when they obtain a practising certificate, but must acquire an extension to their practising certificate to undertake such work. Those accredited to conduct litigation are often also public access accredited, and the extension allows them to provide the full range of services to clients. A barrister cannot conduct litigation on the lay client's behalf without BSB authorisation, as that would be both a criminal offence and a breach of the provisions of the BSB Handbook.

changes in the legal aid system. Research shows that LIPs often decide to employ an unauthorised person to assist them because they cannot afford a solicitor or other authorised provider.[23] It is the court's discretion to allow these unauthorised providers to undertake litigation, but stakeholder evidence suggests that, as with rights of audience, judges have granted such exemptions more regularly in recent years.

19. Stakeholder submissions to us indicated that the narrowness of the reservation allows considerable scope for unauthorised providers to work around the reservation, particularly in relation to employment and commercial legal services. For instance, McKenzie Friends and other unauthorised providers such as paralegals or online providers[24] can handle certain aspects of litigation by drafting documents and correspondence (for example, applications and skeleton arguments) for the consumer, while not being formally on the record nor filing these documents on the behalf of the litigant.

Consumer protection and public interest considerations

20. Arguments in favour of reserving the conduct of litigation rest upon similar consumer protection and public interest grounds as the rights of audience. While some stakeholders have noted that the reserved aspects of litigation may not be as technically difficult as exercising the rights of audience, reservation still ensures that only providers with sufficient levels of knowledge and expertise can deliver an activity that has a direct bearing on securing the legal rights of individuals.

21. The reservation therefore protects consumers from potentially severe, and possibly irreparable, consumer detriment that may result from poor quality service. As noted by Mayson, missing deadlines or creating problems with disclosure of evidence through a lack of skill in litigation may result in detriment including incarceration, fines and the loss of assets or even access to children.[25]

22. The reservation of certain litigation activities, such as issuing proceedings and going on the court record, also ensures the effective functioning of the court system which facilitates proper and efficient administration of justice. Several submissions to us have emphasised the importance of solicitors and

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[23] LSCP (2014), *Fee-charging McKenzie Friends*.
[24] For instance, LSB research on unauthorised providers has shown that online divorce is an area where unauthorised providers are growing. Filing for divorce is within the definition of 'conducting litigation', which is one of the reserved legal activities. Online providers do not contravene the reservation because they will prepare the material for their clients who then file for divorce themselves.
[25] Mayson, S. and Marley, O. (2011),*The regulation of legal services: what is the case for reservation?*, p31.

barristers owing duties to the court in this respect.[26] Poor provision of this activity could cause delays and extra costs which would affect wider society as well as the individual litigant.[27]

23. The Society of Professional McKenzie Friends submitted that the scope of the current reservation is not fully aligned with consumer protection considerations, as it is essentially limited to the formal representation of litigants and not to the advice given to them, which can be potentially more risky.

24. The PPR's submission to us indicated that authorisation to undertake litigation should be based on providers' competency rather than their professional titles. However, as noted above in relation to the Lord Chief Justice's consultation on McKenzie Friends, concerns have been raised about the quality of unauthorised providers providing support to LIPs for a fee.

Impact on competition of the reserved legal activity

25. Barristers undertaking work under the BSB's Public Access Scheme may be directly instructed by consumers. Most of these barristers are not authorised to conduct litigation on behalf of these clients. However, the BSB submitted to us that many public access barristers have traditionally assisted clients who are acting as LIPs. These barristers have mainly assisted the client with the preparation of papers and representation in court, even though in such cases, the barristers cannot file any papers with the court in respect to those proceedings in the absence of the authorisation to conduct litigation.[28]

26. The impact of allowing public access barristers to conduct litigation has been, so far, relatively limited. There might be several reasons for this low uptake rate. In submissions to us, the SRA noted that the culture of using both a barrister and a solicitor persists, meaning that consumers may not be aware of being able to instruct a barrister without instructing a solicitor. As discussed above, public access barristers are still able to work around the reserved legal activity which may explain why they have not sought to be authorised to conduct litigation. We also understand that some barristers may have simply decided not to undertake this type of work given the administrative burden it places on them and the fact that, as self-employed professionals typically

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[26] Although we note that other authorised persons undertaking litigation and advocacy may not be officers of the court (eg chartered legal executives).
[27] See *Noueiri* v *Paragon Finance plc* – [2001] All ER (D) 43 (Sep) for an example of where poor litigation advice by a McKenzie Friend resulted in wasted court time and expense.
[28] See also Pye Tait consulting (2016), *Research into the public access scheme final report*, commissioned by the LSB and the BSB.

working in Chambers, barristers do not have an appropriate infrastructure to handle litigation and meet clients' demands.[29,30]

27. Aside from barristers, other authorised providers can also undertake conduct of litigation. This includes chartered legal executives who can undertake litigation in a range of areas[31] and patent attorneys, trademark attorneys and costs lawyers whose litigation rights are limited to their spheres of expertise. However, the overall number of these providers is limited when compared to the number of solicitors in the sector.[32]

28. Both our employment and commercial case studies have illustrated the degree to which unauthorised providers are able to be involved in contentious legal matters despite the current reservation. Generally, discussions with these stakeholders indicate that the reserved element of the conduct of litigation is either outsourced to an authorised person or undertaken by the litigant itself. This outsourcing practice is particularly prominent in relation to online divorce providers who prepare material for clients who then file the divorce themselves.[33]

29. Although the number of unauthorised providers assisting LIPs seems to have increased based on anecdotal evidence, their impact on competition in this area seems to be limited. Discussions with unauthorised providers have indicated some practical difficulties related to such providers not being formally entered onto the court record and so being unable to reclaim costs from the other side. Moreover, unauthorised providers are not able to offer a complete service, which can impose costs and delays to consumers, although the scope of the reservation nonetheless allows them to offer a service that is close to the end-to-end service offered by authorised providers. Some

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[29] To date, only 245 barristers (less than one tenth of public access work, or c.5% of practising barristers) have been authorised to conduct litigation in a self-employed capacity (this includes 29 who are authorised as 'dual capacity' and therefore undertake both self-employed and employed work). In recent research with public access barristers commissioned by the LSB and the BSB, respondents authorised to conduct litigation were asked about the impact that this has had on their public access work. The majority said it had not resulted in any impact at all, and only a quarter of respondents said it had led to a 'very positive' impact. In qualitative feedback some barristers authorised to conduct litigation said that they were less inclined to actually undertake litigation primarily because of the 'administrative burden'. Typically barristers do not have the day-to-day involvement in case management and the administrative responsibilities that a solicitor has, and this may discourage public access barristers from undertaking litigation. See Pye Tait consulting (2016) *Research into the public access scheme final report*, commissioned by the LSB and the BSB, p63.

[30] For instance Richmond Chambers, a barrister-led ABS, told us that in order to enable significant direct access work to be undertaken by barristers, it was necessary to have additional infrastructure that went beyond the traditional Chambers model.

[31] They can apply for litigation rights in three different practice areas: civil litigation; criminal litigation; and family litigation.

[32] For instance, while there are approximately 7,500 qualified chartered legal executive lawyers, just eight of these lawyers hold independent litigation rights.

[33] See Economic Insight (2016), *Unregulated legal services providers: Understanding supply-side characteristics*, commissioned by the LSB.

stakeholders told us that opposing parties may choose not to correspond with unauthorised providers if they are not formally 'on the record'.

Probate activities

Description and scope

30. Probate activities involve the preparing of 'probate papers' for the purposes of the law of, or in relation to any proceedings, in England and Wales. Probate papers being papers on which to found or oppose a grant of probate or a grant of letters of administration. A detailed assessment of the impact of the reservation of probate activities can be found in the wills and probate case study. However, it is important to note that the grant of probate represents the first step towards initiating the wider, but unreserved, activity of estate administration. In fact, probate activities constitute a narrow reserved element between two larger unreserved legal activities: the making of wills and the administration of estates based on those wills.[34]

Consumer protection and public interest considerations

31. Stakeholders have submitted that the reservation of probate activities can be justified on the basis that it protects consumers by avoiding inappropriate misappropriation of funds. This is especially an issue in contentious probate, given that the grant of probate represents the gateway enabling an executor to access the deceased's assets. It also may be justified on certain public interest grounds, in that it helps ensure collection of inheritance tax and because authorised persons have to act not only in the interests of the client, but to uphold the duties they hold to others (eg HM Revenue & Customs (HMRC) or other third parties).

32. However, as noted by Mayson and Marley,[35] the current scope of the probate activities reservation seems to be one of the least justifiable in terms of consumer protection. This is because the reserved element does not focus on the activity which raises the greatest risks, namely the handling of client's money within estate administration. This currently unreserved legal activity

[34] Although we recognise that many people die intestate and, as such, this link will not be present in these cases.
[35] See Mayson, S. and Marley, O. (2010), *Reserved legal activities – history and rationale*.

may cause greater consumer detriment than preparing probate papers should anything go wrong.[36,37,38]

Impact on competition of the reserved legal activity

33. Submissions have consistently indicated to us that unauthorised providers, typically unauthorised accountants, paralegals or legal executives have long-provided probate services (which can then lead to estate administration services with that provider). Most commonly, this is achieved by outsourcing arrangements with solicitors or through helping to prepare the papers and then allowing clients to sign and submit the probate papers themselves.[39] However, as discussed in more detail in Appendix A (Wills and probate services case study), solicitors have a very high share of the supply of probate services.[40] Furthermore, while as a group they have a high share of such services, provision among solicitors is very fragmented. Data from the Law Society suggests that around 4,000 solicitor firms provide probate and estate administration services.[41] The CMA's consumer research also indicates that consumers were more likely to use a solicitor for probate services compared to other areas of law.

34. Recently the CILEx [42] and ICAEW [43] became approved regulators in relation to probate activities. We have considered whether CILEX and ICAEW's designation has increased the number of providers potentially authorised to

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[36] Mayson notes the difference between the 'administration' of an insolvent company's 'estate', which is a regulated (though not currently reserved) activity, and the administration of a deceased person's estate, which is neither regulated nor reserved. See Mayson, S. (2013), *Review of Legal Services Regulatory Framework: Response to Call for Evidence*.

[37] These concerns persuaded the LSB to launch investigations in the wills, probate and estate administration areas of law under sections 24 and 26 of the Legal Services Act 2007 in July 2011. The aim of the investigation was to form a view on whether will writing and estate administration activities should be added to the list of reserved legal activities or probate activities should be excluded. The LSB's final decision was to recommend neither reservation of estate administration activities nor the removal of probate from the list of reserved legal activities. The investigation did not find evidence of substantial consumer detriment in relation to estate administration. In relation to probate, the LSB did not have evidence of how important reservation is to ensure consumer protection. Neither was there evidence of likely impact on consumers of removing of probate activities from the list of reserved legal activities. See LSB (2013), *Sections 24 and 26 investigations: will writing, estate administration and probate activities – final reports*.

[38] It should be noted that authorised providers need to adhere to rules on standards of service and conduct, to hold PII and to maintain up-to-date training. Particularly relevant for probate and estate administration is the requirement for authorised professionals to comply with client money handling rules, ie specific accounts rules ensuring that money belonging to clients is kept safe. See the Wills and Probate case study for more details.

[39] Paragraph 202 of Wills and probate services case study) discusses other ways in which unauthorised providers could work around the boundary of probate. While some of this approaches are perfectly legitimate business practices, others may not be fully in the spirit of the Legal Services Act 2007 and may put consumer at risk of issues if anything goes wrong. A key example of this being the inappropriate use of power of attorney to navigate around the reservation. However, we have no evidence on how widespread these practices are.

[40] YouGov (2012), *The use of probate and estate administration services*, commissioned by the LSB.

[41] Data provided by the Law Society to the CMA.

[42] See LSB (2013), ILEX Professional Standards Ltd (IPS) Approved Regulator Application.

[43] See LSB (2013), The Institute of Chartered Accountants in England and Wales (ICAEW) Approved Regulator and Licensing Authority applications.

undertake probate. However, stakeholders told us that it is too early to assess the impact of this increased entry on price, quality and innovation. As noted in Appendix A (Wills and probate services case study), few firms have been authorised by ICAEW to undertake probate, and the amount of work generated by probate is limited.[44] Furthermore, the number of CILEx members who undertook the additional probate qualification is relatively small.[45]

35. Since 2015, the CLC has also been able to grant standalone licenses to providers in order to conduct probate work (meaning that these providers do not have to also become licensed conveyancers in order to obtain this licence). However, probate activities do not represent the main work of CLC-authorised providers. As noted in the wills and probate case study, out of the 214 licensed conveyancers, probate makes up just 7% of their work. Furthermore, of the 49 ABSs authorised by the CLC registered at December 2015, just 4% were licensed to offer probate services only and 17% were licensed for both probate and conveyancing services.

36. Our discussions with providers of estate administration services who are not authorised to provide probate activities indicated that these providers believed themselves to be well equipped to undertake the reserved element given its lack of technical difficulty. Furthermore, some of these stakeholders have indicated that outsourcing arrangements between unauthorised providers and solicitors to provide probate activities inevitably invite potential inefficiency. This might make the service more expensive than would be the case if the unauthorised provider could undertake the reserved element.

37. In addition, CILEx told us that providers of unbundled services, where the reserved and unreserved legal activities are delivered by different providers, could face challenges given the reluctance of their PII providers to insure unbundled services. CILEx told us that insurers can be reluctant because the practitioner or firm they are insuring might be exposed to additional risks in the event that there was a problem with a transaction and the insured provider might not be in control of the entire process, and therefore might be affected by, or be liable for, failures that are not their own. This is more common for authorised providers who are required to hold PII cover.

[44] Authorised accountants told us that, at the moment, probate services generally represent an additional service provided to their existing customer base, rather than an activity that is proactively marketed to the general public.
[45] Three chartered legal executives hold probate practice rights at the time of writing.

Reserved instrument activities (in relation to conveyancing)

Description and scope

38. As set out in paragraph 5(1) Schedule 2 to the Legal Services Act 2007, reserved instrument activities means: (a) preparing any instrument of transfer or charge for the purposes of the Land Registration Act 2002; (b) making an application or lodging a document for registration under that Act: and (c) preparing any other instrument relating to real or personal estate for the purposes of the law of England and Wales or instrument relating to court proceedings in England and Wales. However, it specifically excludes wills and powers of attorney, which are unreserved legal activities. In the main, reserved instrument activities (specifically (a) and (b)) are typically exercised as part of the process of conveyancing residential or commercial property and this is where we have focused our examination.

Consumer protection and public interest considerations

39. The reservation, in its current form, is typically justified on the basis that it is important that title is correctly registered so that the buyer is secure and able to rely upon it.[46] Reservation can also be justified on the basis of public interest as it ensures that only qualified and experienced providers verify the title (and thereby ensure the buyer has good title to the property acquired). Parties other than the transferor and transferee of the title, such as the Land Registry and HMRC, rely on the veracity of the registration of the title. In particular, HMRC relies on authorised conveyancers to establish, collect, pay and file a tax return in relation to, the proper amount of Stamp Duty Land Tax to the government.

40. However, it is important to note that only a small part of the entire process of conveyancing is actually reserved. In particular, the reservation covers the preparation of the registration document that establishes proof of ownership or of interest in the land. As such, the current reservation does not capture the real risks of the transaction, which arise not from preparing the documents of exchange but from not adequately checking the title has been transferred. In addition, the actual handling of client monies as part of the conveyancing process is not reserved.

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[46] Conveyancing is a high risk area of work. As noted by a recent research by SRA, more than half of the value of all indemnity payments stem from conveyancing problems. See SRA (2016), SRA publishes data ahead of insurance consultation.

41. Discussions with stakeholders indicated that a key consideration in justifying the authorised status of conveyancers was the importance of ensuring that the undertakings given prior to completion of the transaction can be relied upon. As identified by Mayson and Marley,[47] prior to completion the buyer must rely on an undertaking by the seller's conveyancer that funds provided by the buyer will indeed be used to pay off any mortgage on the property. As noted by the Law Society, where solicitors or licensed conveyancers provide an undertaking, they have a regulatory obligation, which goes beyond their duties to clients, to discharge this undertaking.

42. Given the importance of undertakings in the conveyancing process, there is a justification for requiring that they be provided by authorised providers who must abide by a code of conduct that obliges them to act in a manner consistent with any undertakings they may have offered the other party. However, it is important to note that the provision and adherence to these undertakings does not form part of the current reserved legal activity. Instead, regulatory rules that underpin the degree of reliance that can be placed on undertakings is a product of title-based regulation rather than the reservation.

Impact on competition of the reserved legal activity

43. Despite the narrowness of the reservation, our examination of the conveyancing area of law has indicated that unauthorised providers have a very low share in this legal area (around.2%, mainly comprising of online providers which offer a DIY plus service[48]). Discussions with stakeholders have indicated that this likely results from the influence of important intermediaries such as bank and estate agent panels. These panels tend only to admit authorised providers to the panels.[49] Consequently, the ability of unauthorised providers to offer a full conveyancing service is limited.

44. The majority of residential and commercial conveyancing services tend to be provided by solicitor firms. The conveyancing sector is highly fragmented, with a handful of very large conveyancers (typically ABSs) and a large number of very small firms. However, in the past few years, the number of providers has fallen, and an increase in the average volumes handled by each firm has been observed.[50]

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[47] See Mayson, S. and Marley, O. (2010), *Reserved legal activities – history and rationale.*
[48] LSB (2016), *Mapping of for profit unregulated legal services providers*, p28.
[49] The role of intermediaries in conveyancing is analysed in detail in Chapter 3 of the main report.
[50] Charles River Associates (2010), *Cost benefit analysis of policy options related to referral fees in legal services*, commissioned by the LSB.

45. We have analysed the impact of authorising licensed conveyancers to undertake reserved instrument activities. Unlike other recent designations (eg ICAEW and CILEx), licensed conveyancers have been authorised for a period of time that is sufficient for a qualitative evaluation.[51] Although the number of licensed conveyancers and CLC entities is relatively low,[52] Land Registry transaction data from September 2015 suggests that, in practice, the role of licensed conveyancers is significantly greater than their overall number when compared to solicitor firms. Licensed conveyancers provided services to 4.4% of account customers but CLC-licensed practices carried out 10.3% of transactions by value. CLC firms are also relatively well represented amongst the larger conveyancing firms, with two of the top five firms being authorised by the CLC.

46. It is more difficult to determine the impact of licensed conveyancers on prices. Research by Steven et al suggested that following the entry of licensed conveyancers in 1987, there were some differences in the pricing practices of the two types of providers. Licensed conveyancers were initially charging 20 to 30% below solicitors' prices and were less likely to price discriminate on the basis of property price. However, by 1992 their pricing practices were much more in line with those of solicitors. More recently, research commissioned by the LSB found that the prices quoted by licensed conveyancers were lower than those offered by solicitors. However, these differences were not statistically significant because the number of licensed conveyancers in the sample was quite low.[53]

47. We understand that licensed conveyancers did face some barriers to enter panels, largely because of a lack of awareness about the services they offer. However, we understand that only a few panels persist in not accepting licensed conveyancers on their panels. Interviews with a number of conveyancers also indicated that, overall, these providers now see themselves as operating on an equal footing with solicitors.

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[51] Prior to the Administration of Justice Act 1985, conveyancing was limited to solicitors. This Act allowed licensed conveyancers also to provide a conveyancing service and they began operating in 1987.
[52] In 2015, there were 1,262 licensed conveyancers and around 215 licensed conveyancer entities. See LSB (2016), *Evaluation: Changes in the legal services market 2006/07-2014/15 – Main report*, p36.
[53] See Steven F., Love J. and Paterson, A. (1994) Deregulation of Conveyancing Markets in England and Wales, *Fiscal Studies* vol. 15, no. 4, pp102-118 and OMB Research (2016), *Prices of Individual Consumer Legal Services Research Report*, commissioned by the LSB, p15.

Notarial activities

Description and scope

48. Schedule 2, paragraph 7 to the Legal Services Act 2007 defines notarial activities as activities which were customarily carried on by virtue of enrolment as a notary in accordance with section 1 of the Public Notaries Act 1801.[54] The Master of Faculty is the only approved regulator in relation to notarial activities.

49. In contrast to most other reserved legal activities, the scope of this reservation appears to be both broad and rather unclear. As noted by commentators,[55] no formal rules or statute appear to codify what a notary can do. Furthermore, there has never been any attempt to codify the precise nature of the notary's office in England and Wales as has been done in civil law countries. Instead, the functions of a notary in England and Wales must be gleaned from various sources, including case law, and some statutes.

50. We understand that a definition of the activity undertaken by notaries be can found in the 'Brooke's Notary' textbook,[56] which lists the main functions of a notary as: verification of documents to take effect abroad; preparation and translation of documents for use aboard; translation of documents emanating from overseas; protesting bills of exchange; certifying copies; conveyancing and probate matters; taking of affidavits; ship protests; certificates of law; advice on matters of the law of England and Wales and foreign law; drawing of foreign bonds and debenture stock; electronic commerce.

51. The list in Brooke's Notary indicates that a notary can undertake either very specialised duties (such as the issue of ship protests, protests of bills of exchange, and the certification of copies and translations) or more general activities (any activity that involves the authentication of legal documents executed in England and Wales for use overseas).

52. We note that, unlike other reservations, the title of 'notary' is of key importance in that it is also used to define the scope of the reserved legal activity. This is in contrast to other reservations, for instance rights of audience or conduct of litigation, which do not involve reference to 'solicitors' or 'barristers'. Therefore, while an unauthorised provider could seek to verify documents for use abroad on behalf of consumers, its actions would be ineffective unless it were an appropriately qualified notary. However, unless

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[54] Reservation does not include reserved instrument activities and probate activities, or administration of oaths.
[55] Noel Cox, (2002), The Influence of the Common Law and the Decline of the Ecclesiastical Courts of the Church of England, 3(1), *Rutgers Journal of Law and Religion*, pp1-45.
[56] See Brooke's Notary.

the unauthorised provider was holding itself out to be an authorised notary when seeking to provide this service to consumers, it seems unlikely that its actions would constitute a breach of the current reservation.

Consumer protection and public interest considerations

53. The reservation of notarial activities tends to be justified mainly on public interest considerations: commentators[57] and stakeholders agree that the use of notaries provides considerable certainty to business or individuals involved in international transactions, particularly with civil law countries. There is also a consumer protection justification in the sense that reservation avoids potentially costly litigation after the event should the validity of a document be disputed.

Impact on competition of the reserved legal activity

54. Despite the very broad definition of notarial activities, and the fact that some of the activities listed in paragraph 50 are not reserved (such as translation of documents and provision of legal advice), based on submissions to us there is some evidence of unauthorised providers seeking to undertake services similar to those offered by notaries. We understand that such providers may be purporting to offer notarial services as an accessory to other legal services.

55. It is likely that the currently limited role of unauthorised providers in this area relates to the fact that notaries are a recognised 'brand' and business or individuals involved in international transactions use them as a guarantor of quality. Moreover, as noted by the Master of Faculties, unauthorised providers seeking to authenticate legal documents for use abroad would find it difficult to get these documents recognised by counterparties in European jurisdictions. Being a 'notary' and being recognised as such by other lawyers in foreign jurisdictions is crucial to the delivery of these services.

Administration of oaths

Description and scope

56. The administration of oaths is a reserved legal activity in accordance with section 12(1)(f) of the Legal Services Act 2007. The activity is defined as: 'the exercise of the powers conferred on a commissioner for oaths by:

[57] See, among others, Mayson, S. (2013), *Review of Legal Services Regulatory Framework: Response to Call for Evidence*.

- the Commissioners for Oaths Act 1889 (c. 10);
- the Commissioners for Oaths Act 1891 (c. 50); and
- section 24 of the Stamp Duties Management Act 1891 (c. 38)'.

57. Currently, all regulators are approved regulators in relation to the administration of oaths (except for the ICAEW, which has recently applied to become an approved regulator). In contrast to some other reserved legal activities, there are no exemptions for individuals who undertake the activity for no fee or gain. The fee for swearing an oath is prescribed by statute and is set at a very low level (£5 plus £2 for any attached document).[58]

58. Many situations require the administration of oaths. The typical example is in relation to probate: following an application for grant of probate, the applicant may be required to swear an oath about the veracity of the contents.

Consumer protection and public interest considerations

59. The reservation of oaths seems to be based mainly on public interest grounds. Reservation of this activity ensures confidence and efficiency in the administration of justice and in transactions and appointments. Furthermore, it ensures that society can have confidence that oaths are administered by a person with good standing who has a duty to act with integrity and uphold the law. There are also some consumer projection justifications in the sense that provision of the activity by competent providers may avoid the costs of litigation in case of contested statements.

60. The ICAEW has noted that these protections can also be guaranteed if the activity is undertaken by an appropriately qualified non-legal professional. Specifically, the ICAEW has submitted to us that the ethics of professional accountants (with its emphasis on integrity and objectivity) and their training and work experience in providing assurance on information provided for the use of third parties (such as in relation to audit) makes its members appropriate to this task. As a result, the ICAEW believe that reservation under the Legal Services Act 2007 is not the only way in which these protections should be provided and that, in an improved regulatory system, their members would not require specific authorisation under the Legal Services Act 2007.

[58] These are the fees prescribed by the Commissioners for Oaths (Fees) Order 1993/2297. See Commissioner for Oath's website.

61. In relation to training, Mayson has also queried whether current legal training for administration of oaths is sufficient.[59]

Impact on competition of the reserved legal activity

62. We understand that many authorised providers potentially compete with each other in the administration of oaths, and we have not found evidence of unauthorised providers working around the reservation, probably because of the low margins associated with this activity due to statutory fees involved. In its submission to us, the SRA has noted that oaths are becoming less relevant in practice. This is because it is increasingly common to submit online applications without signatures and rely on other methods of assurance such as providing statements of truths.

Conclusions

63. Overall we have not found that the scope of the current reserved legal activities has a very significant negative impact on competition. While the reservations restrict, to some extent, potentially lower cost providers from competing with authorised providers, the scope of the reservations tends to be narrow enough to allow unauthorised providers to work around them in many areas of law.[60] Furthermore, there are a large number of providers in these markets, including new forms of authorised providers.

64. It should be noted that the assessment in this appendix does not represent a full analysis of the impact of each reserved legal activity and we recognise that further work would have to be done before seeking to remove or amend the current list of reservations. Furthermore, on the basis of our analysis, we do not consider it a given that the reservation of any of these activities to a particular type of provider represents the most proportionate approach to addressing potential risks to consumer protection and the public interest connected to their delivery.

65. However, on the basis of the information we have gathered, we consider that (i) the scope of some reserved legal activities seems better aligned to their proposed rationales for reservation, and (ii) the underlying arguments in favour of reserving some of the reserved legal activities are stronger in respect to certain activities than in others.

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[59] See Mayson, S. (2013), *Review of Legal Services Regulatory Framework: Response to Call for Evidence*.
[60] For instance, the LSB reports that while 'profit unregulated providers' only constitute a small part of the overall legal services sector, some market segments attract higher levels of unregulated provision. These segments are likely to include: family, property, welfare and benefits, consumer problems, wills and intellectual property. See LSB (2016), *Evaluation: Changes in the legal services market 2006/07-2014/15 – main report,*, paragraph A1.62.

66. Taken as a whole, we believe the following high-level points can be made on each activity:

Rights of audience and the conduct of litigation

67. In comparison to the other reserved legal activities, stronger arguments around public interest and consumer protection concerns can be advanced in favour of some form of restriction on who can provide these services. The scope of the current reservations also seems better aligned to the risks of provision while still allowing for potentially lower cost unauthorised providers to provide services to consumers who may not be able to afford an authorised provider.

Probate activities and reserved instrument activities

68. While public interest and consumer protection arguments can be advanced in favour of some form of regulation on providers (although the public interest arguments seem weaker in relation to probate than in the case of reserved instrument activities[61]), the narrow scope of these current reserved legal activities does not seem well aligned with the riskiest activities associated with the relevant legal areas (wills/estate administration in respect to probate and conveyancing in respect to reserved instrument activities).

Notarial activities

69. The current scope of the reservation seems unclear in nature and, unlike other reservations, the use of the regulated title of 'notary' in the reservation's definition raises further questions as to the extent to which an unauthorised provider can legitimately perform certain activities also undertaken by authorised notaries. However, in practice, interactions with lawyers in foreign jurisdictions are likely to limit the ability of unauthorised providers to provide these legal services even if these activities were not reserved.

Administration of oaths

70. The relative lack of technical difficulty involved in the delivery of this service seems to call into question the need to reserve the activity to the current limited types of provider (as a greater number of providers are likely to be capable of providing the service to the requisite quality and consumers are more able to judge whether it has been done appropriately). However, the potential consumer detriment linked to this reservation is likely to be mitigated

[61] Mayson, S. and Marley, O. (2011), *The regulation of legal services: what is the case for reservation?,* p43.

by the presence of price regulation set at such a low level of cost. Overall, a broader licensing system that can ensure the trustworthiness and relevant training of the provider might be a more proportionate system than the current reservation.

Processes for regulatory changes

Introduction

1. This appendix provides an overview of the processes for regulatory changes, focusing on:

    - changes to regulatory rules by approved regulators;
    - designation of new approved regulators to authorise providers to undertake the reserved activities;
    - designation of new licensed authorities to authorise ABSs; and
    - changes to the list of reserved activities.

Process for changes to regulatory rules

2. Approved regulators may submit applications to change regulation with regard to their statutory remit. These changes may only affect a single or a subset of legal professions and are not generally applicable to the whole sector.

3. An approved regulator that wishes to change rules must submit an application to the LSB. Upon receipt by the LSB, the 'initial decision period' of 28 days starts. The LSB must, within this period, either:

    - grant the application and issue an 'approval notice' to the applicant; or
    - give the applicant a 'warning notice' to inform the applicant that the LSB is considering refusing the application.

4. If neither an approval notice nor warning notice is issued, the application is deemed approved.

5. The criteria that the LSB should follow in making its decision are set out in Schedule 4 to the Legal Services Act 2007.[1]

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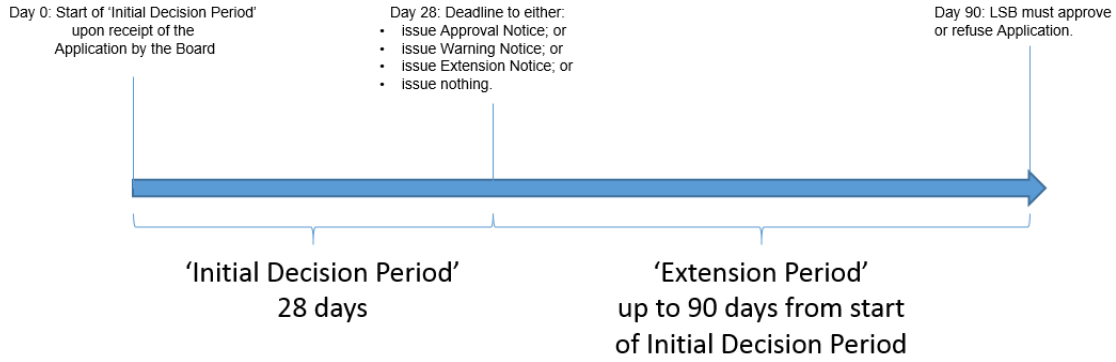
[1] As specified in Schedule 4, Part 3, section 25(3) to the Legal Services Act 2007, the LSB may refuse an application if it is satisfied that:

- granting the application would be prejudicial to the regulatory objectives;
- granting the application would be contrary to any provision made by or by virtue of the Legal Services Act or any other enactment or would result in any of the designation requirements ceasing to be satisfied in relation to the approved regulator;
- granting the application would be contrary to the public interest;
- the alteration would enable the approved regulator to authorise persons to carry on reserved activities;

6. The only instances in which changes to regulatory arrangements are not subject to the LSB's approval process are where the LSB has directed the change to be exempt (so called 'exemption alteration') from the requirement for approval, either through a general exemption regarding a particular type of change, or individual exemptions which are specific to the approved regulator that requested it. In this case, the regulatory change is not subject to the conditions specified in Schedule 4 to the Legal Services Act 2007.[2]

7. The LSB may, either upon agreement with the applicant or upon issuing an extension notice, extend the initial decision period by up to 90 days.[3]

Figure 1: Process for regulatory changes by the approved regulator



Source: CMA.

Process and rules for designations as approved regulator

8. An approved regulator that wishes to regulate further reserved activities or a new body that wishes to obtain the status of approved regulator must apply to the LSB for the LSB to recommend to the Lord Chancellor to designate it in relation to one or more reserved activities.

9. Once the relevant application has been received by the LSB, it can request further information from the applicant. In addition, the LSB must forward the application on to certain consultees[4] for advice. Once the LSB receives their advice, the application and the consultees' advice is forwarded to the Lord Chief Justice. Upon consideration of the advice from the consultees, the Lord

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- legal activities in relation to which it is not a relevant approved regulator;
- the alteration would enable the approved regulator to license persons under Part 5 to carry on activities which are reserved legal activities in relation to which it is not a licensing authority; or
- the alteration has been or is likely to be made otherwise than in accordance with the procedures (whether statutory or otherwise) which apply in relation to the making of the alteration.

[2] LSB's decisions regarding exemptions are made in accordance with LSB's Significance, Impact and Risk framework.

[3] For further information about rules for rule changes see LSB (2010), *Rules for Rule Change Applications – Version 2.*

[4] There are three consultees in total, two of which are mandatory consultees: the CMA (formerly OFT), the LSCP, and a third optional consultee.

Chief Justice provides further advice to the LSB. Then, all advice is sent to the applicant who is given 28 days to make representation to the LSB on the advice.

10. The LSB, having considered the representation of the applicant, then decides whether to recommend to the Lord Chancellor to designate the applicant, in part or in full, as an approved regulator with regard to the reserved activities specified in the application, or to refuse to recommend such designation to the Lord Chancellor.[5]

11. The LSB has 12 months to reach this point in the designation process, unless it issues an extension notice to the applicant.[6]

12. Upon receipt of a recommendation by the LSB the Lord Chancellor has 90 days to notify the applicant whether to make an order in accordance with the application or not.[7]

Process and rules for Licensing Authority designation applications

13. The process to designate an applicant as a Licensing Authority (which allows authorisation and regulation of ABSs) follows the same methodology and timing as set out in the section 'Process and rules for designations as approved regulators'.[8]

Process for changes to the list of reserved activities

14. The Lord Chancellor may make an Order to change the list of reserved activities specified in the Legal Services Act 2007.[9] The Lord Chancellor may only make such an Order on recommendation of the LSB.[10] In general, any person can request the LSB to investigate whether a legal activity should be added or removed from the list of reserved activities.[11] The LSB is under no obligation to consider such requests unless it comes from the Lord Chancellor; the CMA; the LSCP; or the Lord Chief Justice.

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[5] In addition to the criteria specified under Schedule 4 Part 3 section 25(3) to the Legal Services Act 2007, the criteria for designations are:

- a requirement that the approved regulator has appropriate internal governance arrangements in place;
- a requirement that the applicant is competent, and has sufficient resources to perform the role of approved regulator in relation to the reserved legal activities in respect of which it is designated; and
- additional requirements specified in paragraph 13(e)-(c) of the Legal Services Act 2007.

[6] The LSB may extend the process up to 16 months.

[7] For further information about rules for designations see: LSB, Rules for applications for Approved Regulator and Qualifying Regulator designation.

[8] For further information about rules for Licensing Authority designation applications see LSB, Rules for applications to be designated as a licensing authority.

[9] As specified in Part 3 section 24(1) of the Legal Services Act 2007.

[10] As specified in Part 3 section 24(2) of the Legal Services Act 2007.

[11] As specified in Schedule 6 paragraph 2(1) to the Legal Services Act 2007.

15. Upon receipt of such a request, the LSB has three months to decide whether to carry out an investigation.[12] If the LSB decides to carry out such investigations, it must issue a notice to the Lord Chancellor; the CMA; the LSCP; and the Lord Chief Justice that it has done so.[13]

16. The investigation period lasts 12 months.[14] The LSB must produce and publish a provisional report which states whether or not it is minded to make a recommendation to the Lord Chancellor as well as the reasons for doing so.[15]

17. Upon publication of the provisional report, the LSB has three months to produce its final report on whether or not to recommend to the Lord Chancellor to make an order in relation to the investigation.[16]

[12] An investigation can be carried out either under section 24 or 26 of the Legal Services Act A07. A section 24 investigation seeks to evaluate whether a legal activity should be added to the list of reserved activities, whereas a section 26 investigation seeks to evaluate whether an activity should be removed. The three months period is called 'the preliminary inquiry period', specified in paragraph 3(3) of Schedule 6 to the Legal Services Act 2007. The preliminary inquiry period can be extended by up to one month (Schedule 6 paragraph 3(5) to the Legal Services Act 2007.

[13] As specified in Schedule 6 paragraph 9 to the Legal Services Act 2007.

[14] The twelve month period is called the 'investigation period' (Schedule 6 paragraph 11(1) to the Legal Services Act 2007). The investigation period can be extended by up to 4 months (Schedule 6 paragraph 11(3) to the Legal Services Act 2007).

[15] The duty to produce a provisional report is specified in Schedule 6 paragraph 10(2) to the Legal Services Act 2007. The content is specified in Schedule 6 paragraph 10(3) and paragraph 10(4) to the Legal Services Act 2007.

[16] This period is called the 'final reporting period' (see Schedule 6 paragraph 17(1)-(6) to the Legal Services Act 2007). The final reporting period can be extended by up to two months, as specified in Schedule 6 paragraph 17(2) and 17(3) to the Legal Services Act 2007.

International comparison

Introduction

1. This appendix provides a high-level overview of the legal services sectors of other jurisdictions, with a particular focus on differences in regulatory scope, and recent reforms to regulatory structures and fees. It has been compiled on the basis of desk research and a request for information to members of the European Competition Network.

2. Overall it appears that the framework for legal services regulation is relatively liberalised in England and Wales compared with most other countries, which tend to place tighter regulations on lawyers' activities. However, a number of other countries have also engaged in recent regulatory reforms, this includes the introduction of Alternative Business Structures (ABSs) and allowing other professions to carry out certain legal services. We also note that some more liberalised jurisdictions have identified concerns associated with their regulatory frameworks and have recently contemplated ways of addressing those concerns, including by introducing greater regulation.

Regulatory frameworks

3. There are notable differences in the way in which lawyers are regulated in different jurisdictions around the world.[1] The key differences include:

    - whether certain legal activities are reserved only to lawyers and the number and type of these reservations (ie the scope of legal services regulation);
    - whether professional titles for lawyers are protected;
    - whether unregulated providers are allowed to operate in the legal services sector;
    - whether the regulation of lawyers is characterised by professional self-regulation or not;
    - whether non-lawyers can own and manage law firms; and
    - whether non-lawyers can work alongside lawyers in a regulated entity.

[1] Note that the scope of the term 'lawyer' differs to some extent across different jurisdictions.

Scope of regulation

4. It is possible to distinguish between a number of more or less restrictive models in relation to the scope of legal service regulation. In broad terms, the number and scope of activities reserved to lawyers in England and Wales is more limited than in many other countries. Many jurisdictions maintain broad reservations around the assistance (including legal advice) and representation of clients which limit the provision of these services exclusively to lawyers (eg France, Germany, Italy).[2] In some circumstances, depending on the relevant court, this reservation might also involve placing limits on self-representation by the consumer.[3,4] Other more restrictive models, as seen in the US and Canada,[5] maintain extensive lists of activities that constitute legal services and the performance of which by a non-lawyer would be considered an unauthorised practice of law. Other models reserve the engagement in legal practice in general (eg Australia[6]).

Regulators and regulatory structures

5. Overall, it appears that the regulatory structures of most other jurisdictions place greater reliance on self-regulation than is currently the case in England and Wales. In this respect, the regulatory structures are more reminiscent of the regulatory structure in England and Wales prior to the Legal Services Act 2007. On balance, other jurisdictions tend to have fewer national front-line regulators of legal professionals in comparison to England and Wales, with these differences reflecting each jurisdiction's individual legal history and the development of their respective legal professions. However, it is important to note that due to the self-regulation of lawyers by local bar associations, some

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[2] For a comparison of regulatory scope, see: Claessens, S (2008), *Free Movement of Lawyers in the European Union*, (p123) where a threefold division of the degree of legal monopoly is observed and where the 'United Kingdom' is classified as possessing an 'intermediate' degree of regulation behind just two countries possessing a 'low' degree of regulation: Sweden and Finland.
[3] In France, self-representation is allowed in the Tribunal d'Instance, but not at the Tribunal de Grande Instance.
[4] In the Netherlands, it is only in cases before canton judges (handling civil claims in relation to employment law, rent disputes, consumer law, small commercial claims and minor criminal cases) that parties are not required to have legal representation, they can go to court unrepresented or can choose to be represented by any person.
[5] Denckla, Derek A (1999), 'Non-lawyers and the Unauthorised Practice of Law: An overview of the Legal and Ethical Parameters', *67 Fordham Law Review* 2581, 2587; Semple, N (2015) Legal Services Regulation at the Crossroads*, Justitia's Legions*, p46.
[6] Under the various State and Territory Legal Profession Acts, it is a crime for anyone other than a legal practitioner to 'engage in legal practice' without some relevant exception applying: Legal Profession Act 2006 (ACT), s 16(1); Legal Profession Act 2004 (NSW), s 14(1); Legal Profession Act (NT), s 18(1); Legal Profession Act 2007 (Qld), s 24(1); Legal Profession Act 2007 (Tas), s 13(1); Legal Profession Act 2004 (Vic), s 2.2.3(1); Legal Profession Act 2008 (WA), s 12(2). Section 21(1) of the Legal Practitioners Act 1981 (SA) prevents non-entitled parties from, or holding out as entitled to, 'practis[ing] the profession of the law'; Bartlett F, Burrell R (2013), Understanding the 'Safe Harbour': The Prohibition on Engaging in Legal Practice and Its Application to Patent and Trade Marks Attorneys in Australia, *Australian Intellectual Property Journal*, vol. 23(4), pp.74-93.

jurisdictions may be comprised of a large number of separate bodies regulating the conduct of lawyers in different geographical areas.

6. A small proportion of US states, Canada and certain parts of Australia have adopted a model which is more similar to that in England and Wales in which the legal professions are predominantly regulated by independent or delegated authorities (ie separate regulatory organisations that may be established under the auspices of an ultimate statutory or constitutional authority responsible for lawyer regulation).[7] Ireland has also recently established the Legal Services Regulatory Authority as an independent regulatory of the legal profession.[8] In contrast, models where the regulation of legal professionals resides exclusively with a professional association seem to be most prevalent in continental Europe (eg Finland, France, Germany and the Netherlands). [9,10]

7. Overall, an International Bar Association overview reports that there has been:

> A shift away from exclusive professional body oversight of the complaints and disciplinary system and the introduction of complaints commissioners or separate disciplinary agencies (eg Ireland, Northern Ireland, Queensland, Victoria and New South Wales in Australia).

with another development being:

> …the greater isolation of regulation from professional representation. Where this is being done it tends either to take the form of ring-fenced regulatory arrangements under the auspices of the Bar or Law Society (eg Netherlands) but there are examples of jurisdictions in which there has been a conscious separation of regulatory and representational responsibilities into different legal entities (eg Denmark, Canada).[11]

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[7] International Bar Association (2016), *Findings from the Directory of Regulators of the Legal Profession*, pp5-6.
[8] See Legal Services Regulatory Authority holds its first meeting, 27 October 2016.
[9] *Ibid*.
[10] Moreover, there seem to be a number of common themes in the recent legislative changes that have been introduced in various jurisdictions. For example, there seems to be a shift towards national systems of regulation away from decentralised local regulation (eg Netherlands) as well as towards greater harmonisation in federal systems (eg Canada and Australia). In addition, jurisdictions seem to be moving away from exclusive professional body oversight of the complaints and disciplinary system to the introduction of complaints commissioners or separate disciplinary agencies (eg Ireland and Queensland, Victoria, New South Wales in Australia).
[11] International Bar Association (2016), *Findings from the Directory of Regulators of the Legal Profession*, p9.

Specific regulatory reforms in different jurisdictions

Introduction of Alternative Business Structures

8. While ABSs exist in several jurisdictions, their exact form differs from country to country. However, these models do possess some key common features that differentiate them from traditional law firms. For instance:

    - They allow for non-lawyers to hold ownership or investment interests in law firms (although the degree of non-lawyer ownership interest permitted may be different, restricted or unlimited).

    - They allow multidisciplinary practices where different types of legal professionals can work together or, alternatively, legal professionals can work in partnership with certain non-legal professionals.[12]

9. Based on the evidence we have gathered, it seems that currently only Australia[13] (where ABSs were first introduced in 2001[14]) appears to permit law firms to be owned entirely by non-lawyers as is the case in England and Wales. Other European countries permit non-lawyer ownership of ABSs on a more limited scale. For example Scotland (up to 49% non-lawyer ownership)[15], Italy (33%), Spain (25%) and Denmark (10%) all require lawyers to have majority control of the ABS.[16] In the US, regulation of law firm ownership structures is typically restrictive[17] with only two jurisdictions (the district of Columbia[18] and Washington state[19]) permitting a form of ABS.[20]

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[12] See The ABA Commission on the Future of Legal Services (2016), Paper Regarding Alternative Business Structures.
[13] Terry, L., Mark, S., Gordon, T. (2012), Trends and Challenges in Lawyer Regulation: The Impact of Globalization and Technology, *80 Fordham Law Review* 2661, 2670, 2662.
[14] *Alternative Business Structures: Frequently Asked Questions*; see Legal Profession Amendment (Incorporated Legal Practices) Act 2000 (NSW); see also Legal Profession Amendment (Incorporated Legal Practices) Regulation 2001 (NSW).
[15] Although the ABS scheme has not yet been implemented since the passing of the Legal Services (Scotland) Act 2010.
[16] Classens, S et al. (2012), *Evaluation of the Legal Framework for the Free Movement of Lawyers*, pp205-206.
[17] ABA Model Rules of Professional Conduct, Rule 5.4.
[18] D.C. Rule 5.4(b). Although D.C. permits non-lawyer ownership, very few ABS firms have organized there because of the restrictions on ABS outside of D.C. – see: The ABA Commission on the Future of Legal Services (2016), Paper Regarding Alternative Business Structures.
[19] Non-lawyer ownership in Washington State is limited to Limited License Legal Technicians, who may own a minority interest in law firms – Washington Rule 5.9(a).
[20] The ABA Commission on the Future of Legal Services (2016), Paper Regarding Alternative Business Structures. Also see: American Bar Association (2016), *A report on the Future of Legal Services in the United States*. Relatedly, in February 2016, Georgia amended its Rules of Professional Conduct to allow Georgia law firms to work with and share legal fees with ABS firms organised in jurisdictions outside of Georgia that permit non-lawyer partnership and passive investment. See Georgia Rules of Professional Conduct, Rule 5.4. Comment 2 to Rule 5.2 makes clear that rule is 'not intended to allow a Georgia lawyer of firm to create or participate in alternative business structures in Georgia' but only 'to work with an ABS outside of the state of Georgia and to share fees for that work'.

10. European jurisdictions differ in the degree to which lawyers are allowed to partner with other types of professionals in order to form multi-disciplinary partnerships (MDPs). Overall, most European jurisdictions currently prohibit MDPs. However, in some countries, MDPs are permitted with respect to a limited number of other professions (examples include: Germany (with notaries, auditors and tax advisors); the Netherlands (with tax advisers, notaries and patent lawyers), Poland (with tax advisors and patent attorneys) and Spain (professionals with a 'common objective').[21] Similarly in France, lawyers and notaries can now partner in the same structure as well as with other legal and judicial professions.[22]

11. Multi-disciplinary practices in Australia have been permitted since as early as in 1990 and are analogous to those operating in England and Wales.[23] Similarly, the Irish Legal Services Regulation Act 2015 opens up the possibility of new business models in the legal sector, including multi-disciplinary practices featuring non-lawyers and legal partnerships (between solicitors and barristers).[24]

Liberalisation of conveyancing

12. In continental Europe, conveyancing has traditionally been carried out by legal professionals such as notaries or lawyers (although there is also a Scandinavian model of legally trained estate agents who provide legal services which has not been adopted anywhere in other jurisdictions).[25] This is in contrast to the common law systems of the US, Australia and New Zealand, where conveyancing can be handled by a wider range of professionals (realtors or specialised conveyancers).[26]

13. The traditional civil notary system[27] involves perhaps the most restrictive regulation, including the use of fixed fees scales and numerus clausus (ie a fixed number of providers). Evidence suggests that legal services in civil notary countries are generally more expensive than in more deregulated systems (eg the Netherlands), the common law system or the Scandinavian

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[21] Classens, S et al (2012), *Evaluation of the Legal Framework for the Free Movement of Lawyers, final report.*
[22] As listed in article 65,2 of *Loi Macron.*
[23] Semple, N (2015), Legal Services Regulation at the Crossroads*, Justitia's Legions*, p66.
[24] Under the Act, the Legal Services Regulatory Authority must consult on measures to introduce these models. For more background to the Act, see: The Independent Referral Bar: Retrospective and Prospective, David Barniville SC, Chairman, Council of the Bar of Ireland.
[25] Barker, J (1996), Conveyancing fees in a competitive market and Schmid, Ch. Legal services I conveyancing: a European comparison, in *New Directions in Comparative Law*, Bakardjieva, Engelbrek, A. and Nergelius, J. (eds.) (2010), pp188-189.
[26] Semple, N (2015), Legal Services Regulation at the Crossroads*, Justitia's Legions*, p50.
[27] This is the model that seems to have been adopted in all western continental Europe states from Portugal to Germany to most eastern European countries including Poland, Slovakia, Slovenia as well as the in the Baltic countries.

model.[28] This disparity is particularly evident in higher value transactions where Latin notary systems' use of fixed fee scales result in some of the highest absolute legal fees (for example, in France, Belgium and Italy). It has been argued that the fixed fees scales used can be arbitrary in nature and do not reflect the real costs of providing the services given – they are usually calculated as a percentage of the transaction value.[29]

14. In England and Scandinavian countries, other suitably qualified and licensed professionals (for example licensed conveyancers and licensed real estate agents) can also provide conveyancing services. Some recent reforms in other jurisdictions have sought to emulate the system adopted in England and Wales. For example, following its Legal Services Regulation Act 2015, Ireland is to consider introducing licensed conveyancers.

Other reforms

15. Significant changes in the regulation of legal services are being seen in many jurisdictions. Based on our desk review of sources, we note the following developments:

- As already outlined, Ireland has introduced the Legal Services Regulation Act 2015:
  - The Act provides for the establishment of an independent regulatory body, the Legal Services Regulation Authority, replacing the existing system of self-regulation by the Bar Council and the Law Society. This body will investigate complaints against legal practitioners under a new redress mechanism for consumers.
  - The Act also opens up the possibility of new business models in the legal sector, including multi-disciplinary practices and legal partnerships;
- Denmark is currently examining competition in the legal services market;
  - The work focuses on the possibility of deregulation within the legal services, in particular the requirements relating to the education and training of lawyers, and the ownership of professional corporations by lawyers. The study also examines how the legal services competition in Denmark is functioning and whether deregulation could improve

[28] See Schmid, Ch. Legal services I conveyancing: a European comparison, in: *New Directions in Comparative Law*, Bakardjieva, Engelbrek, A. and Nergelius, J. (eds.) (2010), pp188-189.
[29] Ibid, 196-198.

competition. The work is estimated to finish by the end of 2016, when the Ministry of Justice will publish the final report.

- The ABA Commission on the Future of Legal Services produced a report on the study into the legal services market that was ongoing from 2014 to 2016:

  - The ABA Commission has examined the accessibility and affordability of legal services in the US and studied traditional and evolving delivery models for legal services. The ABA Commission recommends that States should explore how legal services may be delivered by entities that employ new technologies and internet-based platforms and then assess the benefits and risks to the public associated with those new forms of services.

  - The ABA Commission concluded that continued exploration of ABS models is necessary and, where ABSs are allowed, evidence and data regarding the risks and benefits associated with these entities should be further developed and assessed.

- The Spanish Competition and Markets Authority has issued reports in 2008, 2009 and 2012 regarding legal services:

  - The reports deal mostly with issues raised by the status of 'Professional Bodies' (or 'Professional Colleges', Colegios Profesionales), which share features with professional associations, but fall under the scope of Spanish public law and are endowed with some public functions, such as regulating the profession and protecting the interests of users of professional services. There are professional bodies for legal professions, such as lawyers (abogados) and legal representatives (procuradores).

  - According to this work, the most evident barrier to entry to some legal services is mandatory membership of the Professional Bodies. Moreover, the existence of entry fees in Professional Bodies can act as an additional barrier;

  - The reports outline how the provision of legal services are subject to certain exclusivity rights and geographical restrictions.

- A reform of the legislative and regulatory framework of the legal profession took place in France in 2015 (the Macron Law[30,31])

  - From September 2016, lawyers can represent their clients before all courts of first instance (in the jurisdiction of the Court of Appeal where they are established) rather than solely before the court of first instance to which they are attached. This change has the effect of extending the scope of territorial competition between French lawyers.

16. It is worth noting that some jurisdictions, which had previously maintained or adopted more liberalised regulatory frameworks characterised by low entry barriers to the legal services market,[32] have identified concerns over these systems. For instance:

- **Netherlands:** In order to improve access to courts for a wider range of financial cases, the jurisdiction of 'canton judges' in the Netherlands – in which consumers do not require legal representation by an advocaat – was extended by raising the previous financial limit for claims handled by canton judges.[33] However, the Dutch Bar Association (de Nederlandse Orde van Advocaten) expressed concerns that, as a result of the increase in consumers not being legally represented, fewer cases would be resolved through settlement and the quality of litigation might be reduced. Furthermore, potential unfairness might be caused in circumstances where one party to a dispute was legally represented and the other party was not.[34] In the context of these concerns, the Dutch Ministry of Defence (het Ministerie van Veiligheid en Justitie) is conducting an evaluation of the increased jurisdiction of canton judges; this evaluation includes a review of (i) the quality of legal services provided, (ii) the number of cases that are brought to court and (iii) possible effects in the market of legal representations.

  - An interim report published in 2014 contains initial findings following the reforms. According to this report:

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[30] The Macron Law of 6 August 2015 and supplemented by a number of decrees and ministerial orders;
[31] For details on how the Macron Law affects legal services, see: OECD, Working Party No. 2 on Competition and Regulation, Disruptive Innovations in Legal Services – France, 13 June 2016.
[32] Evaluation of the Legal Framework for the Free Movement of Lawyers.
[33] On 1 July 2011, the limit for bringing financial claims was raised from €5,000 to €25,000; De Minister van Justitie, W. Sorgdrage, *Memorie van toelichting: Verhoging van de grens van de bevoegdheid van de kantonrechters en van de appellabiliteit van vonnisses van deze rechters in burgerlijke zaken*, 1998.
[34] The Dutch Bar Association argued that many consumers would not have the legal expertise and experience to properly asses their legal problem. The advocate's role of identifying weaker claims and resolving these through settlement, rather than through the courts, could be lost, which could result in the canton judges being flooded with cases and would frustrate the measure's aim of enabling faster procedures. Sheltema, T. *Verhoging competitiegrens: all is quiet*.

- The number of cases being heard with a financial value of between €5,000 and €25,000 has increased. However, the majority of these cases may have migrated from other courts, leaving only a small number of the new cases that would otherwise not have been brought to court.
- Judges and clients were generally positive about the quality of the legal representation they received.
- The ratings of lawyers who charge hourly rates and fixed fees were largely consistent. The few negative ratings from judges were all for lawyers charging hourly fees, while the negative ratings from clients were for both.

- **Finland:** Prior to 2013, Finnish lawyers – which includes self-regulated advocates who are part of the Finnish Bar Association and benefit from the reserved title of 'asianajaja' – did not hold a monopoly on the provision of advocacy services in court proceedings. As such, there was little barrier to establishing oneself as a 'lawyer' and providing these services to consumers.[35,36,37] In order to improve the supervision and the quality of representatives in legal proceedings,[38] the professional regulation of legal services in Finland was recently modified by the Licensed Legal Counsel Act (715/2011). The regulatory changes brought about in 2013 were intended to enable centralised supervision and control over clients' representation in court. The 2011 Act introduced qualitative entry restrictions for advocacy services[39] and established a new form of regulated legal professional in Finland – Licensed Legal Councils. Once admitted, Licensed Legal Councils can provide advocacy services in courts in the same manner, and thus in competition to Finnish advocates. However, an issue remains in that while advocates are subject to comprehensive supervision (always when they provide legal services), Licensed Legal Counsels are supervised only when representing clients in court (ie this gives rise to a problem of asymmetric regulation).

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[35] See European Young Bar Association, Peculiarity in Finland. 'Before 2013, almost anybody could appear in front of the court and only the court had the power to intervene if the lawyer's behaviour was inappropriate. No guarantee of qualifications was available and consequently, a good neighbour could assist in one's case instead of a qualified lawyer.'
[36] See Finnish Bar Association, Legal Services, and European Young Bar Association, Peculiarity in Finland. [*accessed May 2016)*
[37] As noted in Evaluation of the Legal Framework for the Free Movement of Lawyers, the ability of Finnish lawyers to provide legal services without being 'full members' of the legal profession has caused difficulties in their ability to establish themselves in other jurisdictions under free movement rules (see page 119).
[38] Although we note that, as reported, a recent Finnish submission to the OECD, the Finnish Competition and Consumer Authority stated that 'here was only little evidence of serious faults in the system'. See Disruptive Innovations in Legal Services – France, 13 June 2016.
[39] This includes obtaining a Master of Laws degree in Finland (or a corresponding degree recognised in Finland).

Furthermore, due to this difference, consumers might be confused as to the extent of regulatory supervision for Licensed Legal Counsels.[40]

17. While these reforms and others indicate some common themes, it is difficult to draw clear comparisons with the approach to regulation in England and Wales given the disparity between different jurisdictions and the fact that liberalising reforms are often highly specific to particular issues arising in that country's sector.

Regulation of lawyers' fees

18. The regulation of lawyers' fees differs between jurisdictions. However, we can distinguish between the two main models: (i) where fees are freely negotiated and (ii) where some form of fee regulation is in place (for example, as is the case in France,[41] Spain,[42], Germany (in cases where no agreement can be reached between the lawyer and the client[43] and Finland (where the maximum or minimum fee is set out in regulation in legal aid cases).[44]

19. The European Commission for the Efficiency of Justice (*Commission européenne pour l'efficacité de la justice*, CEPEJ) has previously issued reports on '*European judicial systems*' in 2010, 2012 and 2014.[45] As part of this research, the CEPEJ reports have queried how lawyers' fees are set in participating jurisdictions. While caution should be exercised given the limited number of participating jurisdictions (and slight differences in which

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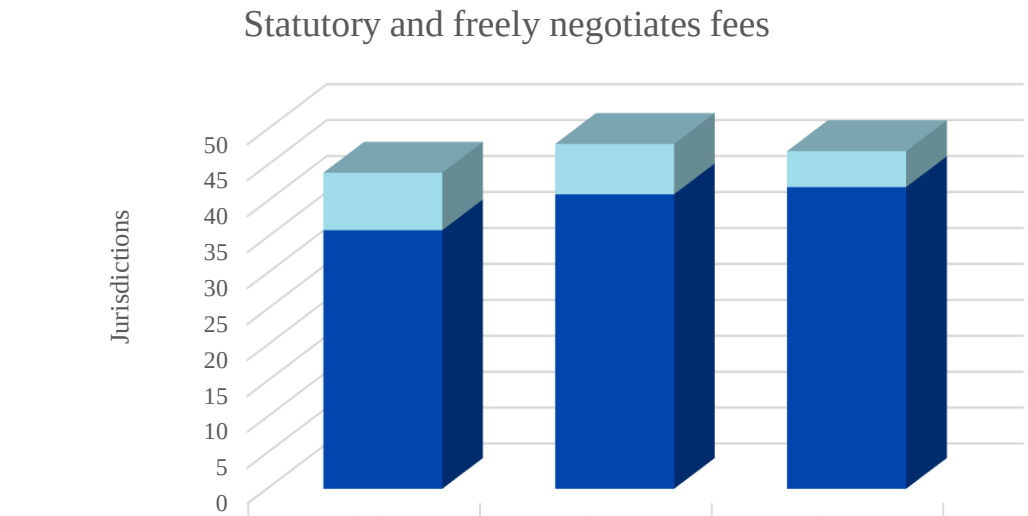
[40] See European Young Bar Association, Peculiarity in Finland.
[41] Under the French law and pursuant to the French National Bar Association Rules, lawyer's fees must be determined through a fee arrangement with the client. The amount of fees can be freely negotiated and generally corresponds to a fixed fee or to a fee based on an hourly rate. Full contingency fees are prohibited, but success fees are allowed where they do not account for the entirety of the fee.
[42] In Spain 'professional bodies' (*colegios profesionales*) originally set minimum fees, although a reform in 1996 transformed its role into one of setting guidelines. Although the transposition of the Services Directive in 2009 removed these powers, the only exception to that framework is the appraisal of judiciary costs, where professional bodies can set indicative criteria (fourth additional provision of the Law on Professional Bodies). Furthermore, notaries (*notarios*), property registrars (*registradores de la propiedad*) and legal representatives (*procuradores*) have their prices (*aranceles*) regulated by law. In the case of legal representatives, there is a complex system of prices (approved by the government and monitored by the professional body) in the form of fixed fees, a percentage of the amount claimed or a mix of the two things. These can vary within a range of 12% and legal representatives can agree on a higher remuneration with their client. There are also other restrictions eg lawyers' statutes (*estatutos*) still prohibit the practice of cuota litis by which lawyers receive a percentage of the amount claimed.
[43] In Germany, attorneys' fees are fixed by law and governed by the Federal Attorney Remuneration Act (*Rechtsanwaltsvergütungsgesetz*). Under the Act fees are primarily calculated on the basis of the value of the matter in dispute, in the absence of an agreement on fees between the parties. Therefore, the parties can negotiate legal fees with their lawyers but the fees must be explicitly agreed upon. Larger law firms in particular will normally charge by hourly rates or enter into negotiated fee arrangements with their clients. In the case of court proceedings, lawyers must charge at least the amount of the statutory fees. Contingency fees are permissible but only under very limited circumstances.
[44] In legal aid cases in Finland, the maximum hourly fee is determined by statute (€100). Where a client is unable to agree to the amount of a fee note, the disciplinary board of the Finnish Bar Association may give a recommendation on the lawyers' fee. Although not expressly prohibited, contingency fees are very rarely encountered in practice.
[45] See European Commission for the Efficiency of Justice, *European judicial systems*.

jurisdictions participated in each review), these reports indicate that many jurisdictions still maintain regulated fee structures rather than allowing freely negotiated fees, although there seems to be a broad trend away from the fixed-fees approach towards a freely negotiated model.

Figure 1: Statutory fees versus freely negotiated fees



	2010 (2008 data)	2012 (2010 data)	2014 (2012 data)
Statutory fees	8	7	5
Freely negotiated fees	36	41	42

Source: CMA analysis of CEPEJ reports on European Judicial Systems.

20. We note that, following the OFT's Competition in the Professions Report, fee guidance for legal services in England and Wales was gradually removed. As a result, the lack of minimum fees in the sector (outside of administration of oaths) indicates that England and Wales is part of a growing number of jurisdictions where clients and lawyers are free to negotiate prices. Overall, the number of developed legal systems maintaining regulated fees and other pricing rules now seem to be in the minority and their number continues to shrink.[46]

[46] See Reimann, M (eds.) (2012), Cost and Fee Allocation in Civil Procedure, *Ius Gentium, Comparative Perspectives On Law And Justice*, Volume 11, pp26-28.

Stakeholder engagement

The table below provides a list of organisations with which we have engaged since the market study was launched in January 2016. We have also met a wide range of authorised and unauthorised providers, various price comparison websites, and a number of academics and other commentators on the legal services market.

Type of organisation	*Organisation*
Oversight regulator	Legal Services Board
Frontline regulators	Bar Standards Board CILEx Regulation Costs Lawyer Standards Board Council for Licensed Conveyancers Institute of Chartered Accountants in England and Wales Intellectual Property Regulation Board Master of the Faculties Solicitors Regulation Authority
Other legal services regulators	Office of the Immigration Services Commissioner
Representative bodies/ trade associations	ABS and New Law Advisory Council Association of Commercial Attorneys Bar Council Chartered Institute of Legal Executives Commercial Litigation Association Employment Lawyers Association Faculty of Advocates Federation of Small Businesses Institute of Chartered Accountants in England and Wales Representative Arm Law Society of England and Wales Law Society of Scotland Society of Licensed Conveyancers
Self-regulatory bodies	Institute of Paralegals Institute of Professional Willwriters Professional Paralegal Register Society of Professional McKenzie Friends Society of Trust and Estate Practitioners Society of Will Writers
Consumer organisations	Chartered Trading Standards Institute Citizens Advice Citizens Advice Cymru Citizens Advice Scotland Legal Ombudsman Legal Services Consumer Panel Providers of alternative dispute resolution services Scottish Legal Complaints Commission Which?
Government bodies	Advisory, Conciliation and Arbitration Service Department for Business, Energy and Industrial Strategy HM Courts and Tribunal Service - Probate Registry HM Treasury Ministry of Justice Northern Ireland Executive - Department of Finance Scottish Government - Justice Welsh Government - Department for Economy and Infrastructure
Judicial	President of the Employment Tribunal

Glossary

ABS	**Alternative Business Structure**. The ABS allows lawyers and non-lawyers to offer services covering multiple disciplines (these ABS' are called multi-disciplinary practices). In addition, the ABS structure allows non-lawyer ownership and for non-lawyers to be managers. The Legal Services Act 2007 gave the Legal Services Board powers to authorise the approved regulators to issue licenses for the operation of an ABS.
ADR	**Alternative Dispute Resolution** involves the use of methods such as mediation and arbitration to resolve disputes without resort to litigation.
Approved regulators	There are nine designated approved regulators for England and Wales which, in turn are governed by an oversight regulator. The nine approved regulators are: • Law Society • Bar Council • Chartered Institute of Legal Executives • Council for Licensed Conveyancers • Chartered Institute of Patent Attorneys • Institute of Trade Mark Attorneys • Association of Costs Lawyers • Master of the Faculties • Institute of Chartered Accountants in England and Wales. Some of the approved regulators are also licensing authorities which means that they can license alternative business structures that provide reserved legal activities. We note that both the Association of Chartered Certified Accountants and the Institute of Chartered Accountants of Scotland are approved regulators for probate activities only, but they do not currently authorise providers to provide this service.
Authorised legal services providers	Authorised providers can carry out certain reserved legal activities and all other legal activities.

Client care letter	The letter typically used by authorised providers to provide clients with key information immediately after instruction.
Consumers	Individual consumers and small businesses.
Frontline regulators	The Legal Services Act 2007 required the designated approved regulators to separate their representational functions from their regulatory functions. This has led to the creation of separate 'frontline' regulators (independent regulatory bodies) which regulate the relevant legal profession. They are: • Solicitors Regulation Authority • Bar Standards Board • CILEx Regulation • Council for Licensed Conveyancers • Intellectual Property Regulation Board • Costs Lawyer Standards Board • Master of the Faculties • Institute of Chartered Accountants in England and Wales.
LeO	The **Legal Ombudsman** is an independent and impartial scheme set up to help resolve complaints about the following legal professionals in England and Wales: • barristers; • costs lawyers; • chartered legal executives; • licensed conveyancers; • notaries; • patent attorneys; • probate practitioners; • registered European lawyers; • solicitors; • trademark attorneys; • ABSs; or • those authorised in England and Wales by the Claims Management Services Regulator.
Oversight regulator	The Legal Services Board is the oversight regulator for the approved regulators.
PII	Professional Indemnity Insurance is insurance that covers civil liability claims arising from a legal professional's work.

	These claims will most commonly involve some form of professional negligence.
Representative body	The Legal Services Act 2007 required the designated approved regulators to separate their representational functions from their regulatory functions. This has led to the creation of separate representative bodies for some approved regulators which represent the relevant legal professions. They are: • Law Society; • Bar Council; • Chartered Institute of Legal Executives; • Chartered Institute of Patent Attorneys; • Chartered Institute of Trade Mark Attorneys; • Association of Costs Lawyers; • Institute of Chartered Accountants in England and Wales Representative Body.
Reserved legal activities	The Legal Services Act 2007 specifies the following six reserved legal activities: (i) the exercise of a right of audience; (ii) the conduct of litigation; (iii) reserved instrument activities (undertaken when conveyancing property); (iv) probate activities; (v) notarial activities; and (vi) the administration of oaths. Authorisation to carry out a reserved legal activity is obtained from an approved regulator.
Self-regulation	Some unauthorised legal services providers have chosen to join a self-regulatory professional body and to voluntarily comply with rules set by their self-regulatory body.
Title-based regulation	All activities provided by an authorised provider, such as solicitors or barristers, must comply with the professional rules governing the holders of that professional title.
Unauthorised legal services providers	Unauthorised providers can provide all legal services except for the reserved legal activities and certain other legal activities that are subject to special regulation. Some unauthorised providers are regulated by non-approved regulators, for example, immigration lawyers are

regulated by the Office of the Immigration Service Commissioner (OISC).

Other unauthorised providers have chosen to join one of the self-regulatory bodies that operate within the legal services sector such as the Institute of Professional Will-writers, the Institute of Paralegals and the Society of Professional McKenzie Friends.

In addition, some unauthorised providers are subject to regulation due to their activities in other sectors such as financial services, which may have an impact on the way in which they offer legal services.