

Maria Rican-Sevitz
Assistant Project Director
Sector Regulation Unit
Competition and Markets Authority
Victoria House
Southampton Row
London WC1B 4AD



**LEGAL SERVICES
BOARD**

Legal Services Board
One Kemble Street
London
WC2B 4AN

T 020 7271 0043
F 020 7271 0051

www.legalservicesboard.org.uk

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Dear Ms Rican-Sevitz,

Legal services market study: response to statement of scope

The LSB welcomes the CMA's market study into the legal services sector in England and Wales to see if it is working well for consumers and small businesses.

Whilst the functioning of the legal services market has without doubt improved since the Legal Services Act 2007, we know from our research and analysis, and from our work as the oversight regulator for legal services in England and Wales, that it still has a long way to go before it can be said that there is effective competition. For example:

- There are significant levels of unmet legal need. Half of the public will have a legal problem over a three year period, but only 20% of those individuals will use a lawyer to solve it. Only 13% of small businesses view lawyers as cost-effective.
- Although choice has grown and shopping around has increased over the last five years (from 19% to 25%), progress on consumer empowerment has been sluggish. Consumers are not driving competition through their purchasing behaviour.
- A programme of deregulation and liberalisation has reduced burdens on providers, but the underlying legislative framework needs reform. The scope of regulation is not based on a sound rationale, with blanket consumer protections that apply regardless of activity and that are not risk-based. There is a 'regulatory gap' where the same service can be provided within and outside regulation, causing consumer confusion. There is insufficient independence between some lawyers and their regulators.

We anticipate that the powers and the dedicated focus and resources that the CMA can bring to investigating the issues will be a significant and effective complement to the LSB's own efforts to drive change in this sector, which focus (as set out in our strategy for 2015-18) on breaking down regulatory barriers and tackling unmet legal need.

You have kindly confirmed that there will be opportunities for the LSB to engage with the CMA team throughout the lifetime of the market study. However, it might be helpful at this early stage for us to offer some initial reactions on the proposed scope and approach. In addition, we thought it would also be helpful to set out how our key primary research findings, analysis and policy development work map onto the three proposed themes for your market study. These are set out in the annex to this letter, including hyperlinks to the source material. As set out in the annex, we are due to publish further highly relevant research studies over the next six months and we will forward these to the study team.

Given the legal market is so diverse – both in types of consumer and range of suppliers – the CMA is right to start by looking broadly and including unregulated providers in its study. We note that criminal legal services will be excluded from scope. Whilst there may be good reasons for this, it will be important for the CMA to take account of how the criminal and civil market segments interact and the effects of this on competition. For example, many providers take on both criminal and civil matters; indeed, diversification by the supplier base appears to have increased in response to recent developments in the market, such as changes in legal aid policy.

We think that the three themes you have proposed will enable the CMA to focus on the key challenges that need to be met to secure a well-functioning legal services market. The dual focus on individual and small business consumers is also welcome. Our understanding is that the small number of case studies are not intended to be representative of the entire legal services market, but will be used as a window on the market from a select number of perspectives. This distinction is important since the legal services market is highly segmented on both the demand and supply sides and policy responses may need to be tailored accordingly.

In relation to the specific case studies you have proposed, it will be important for the CMA to take into account the information and analysis that is already available in these areas, for example in relation to will writing and probate services. We think it is also important that the choice of case studies affords insight into as full a range of service providers as possible, including different types of regulated provider and unregulated providers. In particular, the CMA might give further consideration to how its choice of case studies can adequately capture the provision of legal services by barristers. This provision is evolving as liberalisation of regulatory arrangements relating to public access take effect.

The Market Study Notice seeks representations by 3 February on whether the CMA should make a market investigation reference under section 131 of the Enterprise Act 2002. We would not wish to see a market investigation reference ruled out at this stage.

Finally, I am grateful for the constructive engagement between the CMA and LSB that has taken place on the study to date and look forward to this continuing in the months ahead.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Neil Buckley', followed by a long, sweeping horizontal line that tapers to a point on the right.

Neil Buckley
Chief Executive

