

The Legal Services Board's submission to the Competition and Markets Authority's review of the legal services market study in England and Wales

30 September 2020

Introduction

1. The Legal Services Board (LSB) welcomes the Competition and Markets Authority's (CMA) review of its 2016 legal services market study in England and Wales.¹ The CMA is undertaking its review to assess to what extent its recommendations from the market study have been taken forward and the impact that these changes have had on competition.
2. The LSB is the independent body that oversees the regulation of legal services in England and Wales. The LSB was created by the Legal Services Act 2007 (the Act) to ensure that regulation in the legal services sector is carried out in the public interest and that the interests of consumers are placed at the heart of the system.
3. As the CMA noted in its call for inputs document, since the 2016 market study, the LSB has monitored the progress of the frontline regulators in implementing the CMA's recommendations, and the impact that the recommendations are having on the legal services sector.
4. We have worked closely with the CMA in the lead-up to its review. We are planning our own programme of reform which could provide an effective vehicle for further recommendations made by the CMA following its review. We will continue to work closely with the CMA throughout and beyond the review period, so that our thinking is aligned, and we are well-equipped to take forward relevant recommendations.
5. Overall, our assessment is that some limited progress has been made, but there is still much more that regulators and providers can do to improve consumer engagement and competition in the sector. The LSB is keen to ensure that individual consumers, businesses and others who would benefit from legal help are able to get it. Where we have existing statutory powers, we are prepared to exercise these to achieve our objectives.
6. We have several ongoing workstreams which will be informed by the CMA's conclusions. We intend to publish a statutory statement of policy next year, which will set clear expectations on what the regulators should do to make improvements in consumer awareness of and engagement with the legal services market. Later this year, we will be publishing a report on the developments in the legal services sector in England and Wales over the last decade. We have undertaken this to inform the development of a new strategy for the sector, and we will consult on a draft strategy later this year.

¹ <https://www.gov.uk/cma-cases/review-of-the-legal-services-market-study-in-england-and-wales>.

7. In forming our responses to the questions in the call for inputs, we have drawn on a range of published documents and sources, a full list of which is set out in an annex.
8. We have also drawn from our evidence base for our forthcoming report on the state of the legal services sector. We will make this evidence compendium available to the CMA to assist with its review and publish it in full later this year.

Questions regarding information remedies and supply-side developments

Q1. What challenges have legal service providers faced in complying with transparency measures, and how could these be addressed?

9. Requirements for increased price transparency in certain practice areas were introduced in late 2018 and 2019.² The findings from our recent prices research³ show good improvements in price transparency compared to 2017. The majority of firms surveyed said that they display prices on their websites in a substantial increase from 2017 (73% up from 11%), and this pattern was consistent across the practice areas surveyed (conveyancing, divorce, and wills and probate).
10. It is important to ensure that these new rules are appropriately enforced and that regulators seek to drive improved compliance where there are apparent gaps. For example:
 - a. 6% of conveyancing firms surveyed in our prices research do not display their prices and say that they do not plan to change their position.
 - b. A web sweep by the Solicitors Regulation Authority (SRA) in 2019 found that only 25% of providers checked were fully compliant with its transparency rules, with 58% partially compliant, and 17% non-compliant.⁴
 - c. 21% of chambers in 2019 gave “no information” on how fees are calculated according to a Bar Standards Board (BSB) compliance report.⁵
11. We understand that there are higher levels of compliance among legal executives and notaries. It might also be necessary for the existing rules to be tightened. Currently there is scope for providers to publish wide ranges of likely prices, but this does not necessarily meet the spirit of the rules and may not actually give helpful information to prospective customers.
12. It is important to note that relatively low levels of compliance have been achieved, even where – as is the case with the SRA and BSB – mandatory rules have been imposed. The picture looks considerably worse, however, where regulators have only set out voluntary guidance. For example, the Institute of Chartered Accountants in England and Wales (ICAEW) set guidance around improving

² Rules were introduced by the SRA, Council of Licensed Conveyancers and CILEx Regulation in December 2018, the BSB in July 2019 and the Master of Faculties in December 2019.

³ LSB, CMA, 2020. *Prices of Individual Consumer Legal Services in England and Wales 2020: Wave 3 of a survey of prices for commonly used legal services*. <https://www.legalservicesboard.org.uk/wp-content/uploads/2020/09/Prices-of-Individual-Consumer-Legal-Services-Sept-2020-1.pdf>.

⁴ <https://www.sra.org.uk/sra/how-we-work/reports/web-sweep/>.

⁵ <https://www.barstandardsboard.org.uk/uploads/assets/3359c36e-ef3e-449d-883e18c5ebeabad6/202006-External-Transparency-spot-check-report.pdf>.

price transparency. According to its latest research, only 5% of its firms surveyed in 2019 publicise charges and calculations for those charges.⁶ As we develop our policy statement, we are increasingly of the view that all regulators should set mandatory requirements and enforce them robustly.

Q2. Are consumers engaging with the new transparency measures including the availability of price information, eg by accessing the pricing information on the provider websites and/or using this information in their interactions with providers? Does this differ between different areas of law?

13. Our research suggests increased engagement with price information by consumers. The findings from our 2019 Individual Legal Needs Survey show that most people (84%) find it easy to obtain price information when looking for it or to search for prices (76%). Conversely, 24% of respondents experienced difficulty in searching for price information, and this is exacerbated for those consumers with lower legal confidence.⁷ The findings from the Legal Services Consumer Panel (LSCP)'s latest tracker survey indicate that most consumers learn the price of the service by talking to the provider (64%) rather than through other means, e.g. looking on the website.⁸ This might suggest evidence of non-compliance with existing rules, or that information, where it is available, is not sufficiently prominent or helpful. Further analysis will be set out in our evidence compendium.

14. It is worth noting that transparency rules only exist in certain practice areas, including in conveyancing and wills and probate. As seen in our prices research, 52% of providers of divorce services, where there are no rules, display prices on their websites compared to 22% in 2017. It is possible to see some improvement in transparency without requiring changes then, with providers perhaps seeing commercial benefits in engendering customer trust. We believe, however, that to achieve broad and consistent transparency, it will likely be necessary to extend mandatory rules across more practice areas.

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

15. Our prices research suggest that the transparency reforms have had limited impact on competition so far. There is still a significant dispersion of prices for the

⁶ <https://www.icaew.com/-/media/corporate/files/technical/legal-and-regulatory/probate-and-abs/transparency-benchmarking-report-probate-firms.ashx>.

⁷ LSB, 2019. *Legal Needs of Individuals in England and Wales 2019*. <https://www.legalservicesboard.org.uk/online-survey-of-individuals-handling-of-legal-issues-in-england-and-wales-2019>.

⁸ Legal Services Consumer Panel, 2020. *Legal Services Consumer Panel Tracker Survey 2020*. <https://www.legalservicesconsumerpanel.org.uk/wp-content/uploads/2020/08/LSCP-2020-How-consumers-are-using-FINAL-DRAFT-.pdf>.

legal services sector. Where firms were behaving more competitively, we would have expected to see a narrowing of this dispersion. There is no consistent pattern of the spread of prices, nor any clear trend between 2017 and 2020. Indeed, our evidence suggests that most prices, regardless of complexity of case or practice area are increasing. It is also notable that some firms said they increased their prices because their competitors did.

16. According to the LSCP's latest research, there is evidence of a slow increase in consumers' shopping around in the last decade, though this has not increased significantly since the introduction of the transparency reforms. Regarding the ability of consumers to compare prices, this appears to have improved, but there is still work to do to ensure this information is available in a consistent and comparable way.
17. In the Individual Legal Needs Survey, reasons given for not shopping around included assumptions that there were no benefits to shopping around given the perceived similarity between providers or the perceived simplicity of the legal matter. In some cases, choices are made by intermediaries, for example as part of an insurance claim.
18. The evidence so far suggests to us that price transparency alone is not sufficient to drive increased competition, and further information i.e. descriptions of services and quality indicators, need to accompany the information on pricing. We set out more on quality indicators in response to Q5.

Q4. To what extent has the Legal Choices website helped consumers to navigate the legal services sector? To what extent has improved content been actively promoted by regulators, consumer/industry bodies and service providers?

19. Too many people and businesses are not engaging with legal services when it could really help them. There are likely to be many reasons for this including cost (or perceptions of cost) and service design. For many consumers, however, it will be simple lack of knowledge about how the legal system works and who they can approach when they need help.
20. This is where a facility such as Legal Choices, properly funded and supported across the sector, has a critical role to play. We see Legal Choices, with the necessary support in place, as having the potential to become a flagship consumer resource. We consequently welcomed the commitment by the legal services regulators in the wake of the 2016 market study to work together to develop Legal Choices.
21. There have been some successes with the redevelopment of Legal Choices through the three-year programme launched in October 2017. Legal Choices is

now available on a new-look website with new products in development. We understand that the site has its three-year target for visitor traffic and that a unified register of disciplinary records is being developed as part of the website.

22. Despite these welcome developments, however, achieving the full potential of Legal Choices has been inhibited by a persistent lack of consensus among the legal services regulators over funding and governance. It is hard to avoid the conclusion that – for some regulators at least – the importance of contributing funds toward high-quality, sector-wide consumer information may be considered an undue burden on their fee-payers. While this is of course in itself a source of significant concern to the LSB, our view is that the lack of consensus has diverted energy and resource from making Legal Choices work better for consumers.
23. The BSB’s decision in 2019 to withdraw its participation, and its funding, from Legal Choices has only made the task of agreeing funding even harder for those regulators that remain. This is to the extent that, at the time of writing, there is no commitment to fund the project beyond the first year of the next three-year programme, putting its long-term future in some doubt. The BSB’s decision was made without its being able to demonstrate that it had alternative plans in place. We are currently conducting a review of the BSB’s performance under the “well-led” standard. The BSB’s decision prompted some of the other regulators to reconsider their own participation, with the result that Legal Choices is now effectively limping into its next three-year programme of development. We consider this position to be highly unsatisfactory.
24. At the time of writing, therefore, it seems unrealistic to expect that voluntary collaboration between the frontline regulators at the current level of ambition is a sustainable method for maintaining and developing the Legal Choices website. In the absence of a fundamental shift of position on the part of some regulators, the long-term survival – let alone development – of Legal Choices will require a new model.
25. It is important to note though that to date Legal Choices has provided a convenient means for regulators, particularly smaller regulators, to demonstrate their performance against obligations regarding transparency and consumer information. They can benefit from the substantial economies of scale that come from collaborating with others.
26. We intend, through our forthcoming statutory policy statement, to set out our expectations of the regulators even more clearly in the field of transparency and consumer information. While any regulator is free to withdraw its commitment to Legal Choices, we will expect credible alternative provision to be made by any regulator that does so. Given that, under such circumstances, the economies of scale available through Legal Choices would not apply, alternative provision that

involves a reduction in financial investment may struggle to be considered credible.

27. Looking ahead, the reluctance of some regulators to put their full weight behind Legal Choices under the current voluntary arrangements creates a drag on the ambition of those who are doing so, ultimately to the detriment of consumers. It seems likely that only fundamental changes in the way that the initiative is supported, governed and funded will improve prospects for success.⁹

Q5. To what extent are quality indicators needed to drive consumer engagement and competition? Which further indicators are needed and what are the barriers to these indicators being developed?

28. Given that the existing transparency measures on prices have had a limited effect on competition, we consider that additional quality indicators are necessary to drive consumer engagement. This is supported by our prices research and the LSCP's recent research findings.¹⁰ In the absence of quality indicators, it is not clear to consumers what level of quality they are receiving for their purchase. Better, more transparent information for consumers on the quality of providers and descriptions of their services would help stimulate greater price competition.

29. Existing quality marks such as accreditation schemes offered by the Law Society may offer useful signals, but perhaps due to a lack of consumer awareness of these schemes, they do little to drive competition. The prices research did not demonstrate any statistical link between prices and the presence of such quality marks. Consumers also need to have confidence that such quality marks are evidenced with proper assurance, rather than merely purchased.

30. Given the lack of a standard definition for quality in the sector and the fragmented nature of the market, transparency of service quality has proved a tricky area to determine suitable solutions. It is the area where there has been least progress since 2016 and we have previously observed a lack of enthusiasm from the regulators to engage with this problem.

31. Recently though there have been constructive discussions among some of the regulators to develop some potential initiatives.¹¹ There is some consensus among the regulators on the types of information that it would be useful to promote within the sector to support consumers:

⁹ See also the LSB Board papers of April 2020 regarding Legal Choices and of September 2020 regarding consumer engagement.

¹⁰ Legal Services Consumer Panel, 2020. *Consumers feedback on quality indicators in legal services*. <https://www.legalservicesconsumerpanel.org.uk/wp-content/uploads/2020/07/2020-07-15-LSCP-Quality-Report-FINAL.pdf>.

¹¹ See the LSB Board paper of September 2020 for more detail.

- a. independent data on performance, such as complaint figures and quantitative evidence from other independent authorities;
- b. independent consumer feedback; and
- c. general information about a provider's background and experience.

32. We agree this offers a useful framework for developing quality indicators.

Regulators and firms should be seeking to increase the volume of these sorts of information in the market. They should also consider where best such information can be offered to be most helpful for consumers. Information could be displayed on the firms' sites, the regulators' sites, or made available through wider use of independent customer feedback sites or online comparison tools, with the latter options providing more opportunity for comparing providers.

33. Given the lack of progress in recent years, it is also worth considering initiatives that have previously been dismissed, such as publication of first-tier complaints figures by provider. We are developing our own thinking around quality indicators and intend to conduct research later this year that will inform our upcoming policy statement.

34. We are separately undertaking work to understand the systems and processes in place across the sector to ensure that legal practitioners are competent throughout their careers, rather than just at the point of qualification. We have ensured that this work is closely aligned with our policy development on quality indicators, given that both take account of the quality of service offered by legal professionals. We have recently concluded a call for evidence on ongoing competence and will be publishing a report on the findings from this exercise later this year.¹²

Q6. To what extent are DCTs currently operating in the legal services market? What are the main barriers to greater use of DCTs in legal services and how can they be overcome?

35. The legal services sector has not seen significant development of digital comparison tools (DCTs) since the 2016 market study. In our 2018 technology and innovation survey, findings indicated that only 12% of legal services providers used DCTs or had plans to do so.¹³ Further, the 2019 Individual Legal Needs Survey found that only 3% of consumers use a price comparison website when choosing their main adviser. Research by the LSCP indicates low usage of

¹² <https://www.legalservicesboard.org.uk/wp-content/uploads/2020/04/LSB-ongoing-competence-call-for-evidence-1.pdf>.

¹³ LSB, 2018. *Technology and Innovation in Legal Services 2018*.
<https://www.legalservicesboard.org.uk/wp-content/media/Innovation-survey-2018-report-FINAL-2.pdf>.

customer review websites and price comparison websites.¹⁴ Given though that price transparency rules only came into effect in December 2018, we might expect a lag before new DCTs develop by taking advantage of this information.

36. We consider that DCTs offer a valuable tool for improving consumer engagement in the market. There has been growing funding for DCTs in other sectors, with fintech ventures building comparison tools. There are though unique features of the legal services market that mean consumers are less likely to shop around and use DCTs:

- a. Consumers generally use legal services infrequently, with no regular point to switch or consider one's options as in other markets, for example with insurance renewal or at the end of a phone contract.
- b. Legal services are often taken at a moment of crisis or major life event when consumers are not inclined to spend time shopping around.
- c. Offline intermediaries often guide consumers to relevant services (for example estate agents to conveyancers, or solicitors to barristers).
- d. It may also be the case that the retail legal services market for consumers and small businesses is simply too small to offer a competitive profitable environment for DCTs.

37. As it stands, there is a sense of inertia from the firms themselves regarding encouraging DCTs and proffer more information to help consumers shop around. The providers have little motivation in general, given that most providers secure sufficient work through word of mouth, repeat custom and referrals from intermediaries. The lack of comparable information in the market describing services offered, and the price and quality of those services, presents a challenge to nascent DCTs, particularly if trying to operate across multiple practice areas in the fragmented market. For example, MoneySuperMarket.com, among the UK's largest DCTs, operates only in conveyancing in the legal services sector.

38. With increased information about service quality, this should allow for greater development of DCTs. In considering our options for stimulating the use of quality indicators, we are mindful of the lack of jurisdiction we have over DCTs in our sector.

¹⁴ Legal Services Consumer Panel, 2020. *Consumer Impact Report*. <https://www.legalservicesconsumerpanel.org.uk/wp-content/uploads/2020/03/2020-03-19-Consumer-Impact-report-Working-FINAL-DRAFT.pdf>.

Q7. What impact have ABSs and lawtech had on driving innovation in the legal services sector? Are there any barriers deterring further innovation?

39. The findings of our innovation surveys (2015 and 2018)¹⁵ indicate that innovation has not been uniform across the sector, with the highest levels of service innovation among unregulated businesses. Innovation was also greater among young firms and larger firms, while alternative business structures (ABS) and the involvement of non-lawyers was important in fostering innovation.
40. While the general perception is that technology is mostly benefiting corporate clients, the Legaltech Startup Report 2019¹⁶ stated that the highest concentration of legal tech start-ups has been in 'consumer services', i.e. services designed to meet the needs of individuals and/or businesses, such as document templates and provider comparison tools. The concentration of these start-ups has been enabled through several factors, including minimal barriers to entry, comparatively low tech development requirements and an underserved market.
41. Overall, we might consider that the nature of the market is such that providers do not see an urgent need to innovate given the success of existing practices. We perceive a general risk-averse attitude by professionals individually and many law firms, where the traditional partnership model hinders practitioners from embracing innovations in technology and elsewhere. Our 2018 innovation survey identified a variety of constraints on innovation reported by providers, such as: lack of expertise and capacity; lack of necessary finance; limited opportunities for new services; and the existing legislative and regulatory frameworks. This is despite a perception that regulatory barriers to innovation have fallen away in recent years.
42. The Legal Access Challenge programme, delivered jointly by the SRA and Nesta Challenges offered a cash prize for early stage digital technology solutions that could help individuals and small businesses to understand and resolve their legal problems.¹⁷ Through this work, Nesta have identified a series of barriers to lawtech innovation, including the lack of access to relevant data (for example from courts or standardised customer data), low awareness and trust of digital legal services by consumers, and the fragmented nature of the sector meaning entities have lower capacity to invest in new services. Where there are regulatory barriers, Nesta considered these to be soft (for example, comprehension of the regulatory framework) rather than hard rules that explicitly blocked innovation.

¹⁵ LSB, SRA, 2015. *Innovation in legal services*. <https://www.legalservicesboard.org.uk/wp-content/media/Innovation-Report.pdf>.

¹⁶ <https://legalsolutions.thomsonreuters.co.uk/content/dam/openweb/documents/pdf/uki-legal-solutions/report/tr-legaltech-startup-report-2019.pdf>.

¹⁷ Nesta Challenges, 2020. *The Legal Access Challenge: Closing the legal gap through technology innovation*. <https://legalaccesschallenge.org/wp-content/uploads/sites/70/2020/06/Legal-Access-Challenge-Report-FINAL.pdf>.

Q8. Are there other developments which have had or will have a significant impact on competition in the sector?

43. The long-term effects of Covid-19 are hard to assess at present. While the impacts of the pandemic have increased the legal needs of consumers, the economic outlook suggests that fewer consumers will have the necessary funds to access legal services. There will likely be a greater appetite among consumers to receive legal services online remotely. This is significant given our recent findings on the disparity in prices by geography.
44. More broadly, we continue to question whether the privileged access to the market for some groups of professionals inherent in the Act is genuinely operating in the interests of consumers. Too many people and businesses are not getting access to the services they need, and there appears little market incentive to drive the changes in culture and service that might start to tackle this unmet legal need. The real challenge is not to assess what developments have had, or will have an impact on competition, but rather what developments should be put in place to drive meaningful change.

Q9. Are further measures needed to drive consumer engagement and competition in legal services in addition to the areas we have identified above?

45. In our policy statement, we intend to set expectations for activity in the four areas of transparency where the CMA made recommendations in 2016:
- a. price;
 - b. service quality;
 - c. information about the redress available to consumers; and
 - d. information about whether a provider is regulated or not.
46. We will also reflect on Legal Choices and public legal education (PLE) initiatives.
47. It is important to look more widely at issues of public confidence, and to ensure that consumers can trust and rely on legal services providers and the market at large to work effectively. We are currently developing our strategy and business plan for 2021/22, as well as an overall strategy for the sector, which may generate further ideas.
48. The complexity of choice in the market caused by a lack of standardisation of services and different pricing approaches is likely an important underlying feature of the market that limits consumer engagement and trust. Complexity also makes it more difficult for comparison tools to penetrate the market. There may be merit in considering solutions that would create simpler options for consumers.

49. We have set out above details of our work on ongoing competence, which recognises that consumers should be able to trust that practitioners have the necessary up-to-date skills, knowledge and attributes to provide good quality legal services. We set out below considerations regarding further work to improve redress mechanisms and access to them.

Q10. Are there any issues specific to the provision of legal services for small businesses that should be considered in order to improve competition for such customers?

50. Our legal needs survey for small businesses, with fieldwork last conducted in 2017, reported similar challenges for small businesses as with citizens in understanding their legal needs, accessing legal services and getting the best deal.¹⁸ It was found that many did not obtain independent legal advice, with low levels of shopping around and perceptions that legal services are unaffordable. These findings were reflected in the CMA's own research on the sector in 2016. It is therefore possible that information remedies, such as wider take-up of PLE initiatives and use of Legal Choices could be of particular benefit to small businesses.

51. The development of lawtech is also particularly relevant to small businesses. In recent years, we have seen more providers use technology to offer cheaper access to legal documents and new business models to make legal advice more affordable.

¹⁸ LSB, 2018. *The legal needs of small businesses 2013-2017*.
<https://www.legalservicesboard.org.uk/wp-content/media/FINAL-Small-Business-Report-FEB-2018.pdf>.

Questions regarding redress and regulation

Q11. What measures can be taken to develop a more flexible and proportionate regulatory framework within the Legal Services Act 2007 without requiring any, or only light touch, further legislative change, for example a review of the reserved activities as being considered by the LSB?

52. We consider there are broadly four categories of regulatory reform that might be pursued:

- a. longer-term legislative reform;
- b. shorter-term and more minor legislative reforms (such as those proposed by the Mayson Review);¹⁹
- c. structural changes that can be achieved within the existing legislation; and
- d. regulatory interventions that we and the regulatory bodies typically undertake.

53. Regarding changes within the existing framework, as cited, we have recently set out our thinking around a potential review of the reserved legal activities, in our June 2020 Board paper.²⁰ Such a review could better align the activities with areas of risk, provide a more modern framework to take account of technological and social developments, and address the ‘regulatory gap’ whereby unauthorised providers cannot easily compete with regulated entities who can provide reserved legal activities.

54. Should we proceed with a review, this could have a wide scope or be targeted in areas of particular concern or interest. As a standalone project, or a component of a review of the reserved activities, we see merit in updating the mapping exercise of the unregulated sector that we carried out in 2016.²¹ There is scope for us to consider alternative approaches that could raise standards in the sector. This could include using our powers under s.163 of the Act to enter into voluntary arrangements for the purpose of improving standards and promoting best practice in the sector.

55. There are differing views in the sector about how the list of activities could be amended, ranging from:

¹⁹ Mayson, 2020. *Reforming Legal Services: Regulation Beyond the Echo Chambers*. https://www.ucl.ac.uk/ethics-law/sites/ethics-law/files/irlsr_final_report_final_0.pdf.

²⁰ <https://www.legalservicesboard.org.uk/wp-content/uploads/2020/06/7.-Paper-20-30-Reserved-activities-website-02.pdf>.

²¹ <https://www.legalservicesboard.org.uk/wp-content/media/Mapping-unregulated-providers.pdf>.

- a. significantly expanding the list to include activities such as immigration, will-writing and insolvency;
- b. reducing the list to consist simply of rights of audience and conduct of litigation; or
- c. overhauling the system in its entirety.

56. There are also contrasting views on whether, and if so how, to address developments in legal technology. It might be appropriate to bring other elements of legal services provision within the scope of the regulatory framework, such as legal tech. Our Board will consider these issues again later this year.

57. It remains the LSB's ambition for there to be a single regulator in the legal services market. In the absence of major legislative reform, however, we can already oversee regulator entrances to, mergers within, and withdrawals from the market under existing processes. Our Board has powers to make a recommendation to the Lord Chancellor that an order is made cancelling a body's designation as an approved regulator in relation to one or more reserved legal activities, in addition to designating a body as an approved regulator for the same.

58. The demands on the regulatory bodies continue to grow across disparate and increasingly complex areas, from designing price transparency remedies to grappling with the implications of artificial intelligence. Given this, and the resources available to the smaller regulatory bodies, we are increasingly concerned about their capacity to deliver high-quality regulation that commands public confidence. As noted above in relation to Legal Choices, the current system of multiple regulators makes it difficult for the sector to move forward in a coordinated way with the right level of ambition and pace.

59. Regarding commonplace regulatory intervention, through our existing statutory decisions framework, we frequently approve changes proposed by the frontline regulators to their individual regulatory regimes. These span a range of areas, including education and training, codes of conduct and disciplinary procedures.²² Regulators themselves are able to implement changes without an extensive consultation process where these changes are deemed minor against a framework assessing significance, impact and risk.

²² <https://www.legalservicesboard.org.uk/our-work/statutory-decision-making>.

Q12. Would such measures above be sufficient to deliver effective change that can promote competition and optimise consumer outcomes in the longer term?

60. Although we have opportunities within the existing framework to effect change, we believe that an overhaul of the entire regulatory framework is merited. We have noted the findings of the Mayson review with interest and continue to assess the merits and drawbacks of all his recommendations.
61. Within our existing powers, we are still reliant on Government to accept any recommendations we make, for example around amendments to the list of reserved activities, or to the functions of the approved regulators. It is not clear whether the Act provides sufficient flexibility for regulators to take appropriate account of the impacts of legal tech. We are undertaking work to better understand this, but such impacts might increase the case for major legislative change.
62. A radical reassessment of the regulatory framework could simplify the existing structures, which in turn would be more easily comprehensible to consumers, supporting improved consumer awareness and engagement. As noted above, the current fragmentation of the market with multiple regulators operating across different practice areas is not conducive to good outcomes for consumers. We have seen a lack of traction on issues requiring cross-sector collaboration, such as Legal Choices. There has also been a reluctance by the regulatory bodies to pursue individual approaches to issues such as quality indicators.

Q13. To what extent is there merit in extending the regulatory framework to include unauthorised providers? What evidence is there of consumer detriment from unregulated providers, or other rationale, to warrant this?

63. We consider there could be merit in extending the regulatory framework to include unauthorised providers. We set out above concerns around the unmet legal need among consumers. It is possible that bringing a much broader range of providers within the scope of regulation could give consumers greater confidence to use these providers. On the other hands, in areas such as will-writing, unregulated providers have already successfully penetrated the market, resulting in a risk that even light-touch regulatory requirements could create unnecessary barriers to entry.
64. The Individual Legal Needs Survey findings suggest that unauthorised providers represented only 1% of paid-for legal advice, but we expect this is under-reported due to some respondents assuming their provider was regulated. This also varies substantially by practice area, and our analysis suggests that in family law and property law, unregulated providers command a larger market share of for-profit providers, around 10% in each area.

65. Though unregulated providers may prove more innovative and offer services more cheaply, there is some evidence of potential consumer detriment. The Individual Legal Needs Survey found that users of unregulated providers were most likely to register dissatisfaction at the service offered. There is in general a lack of evidence about the unregulated sector, due to its small market segment and the lack of clear evidence of consumer harm.
66. One option for intervention is to extend access to redress to the entire market, but without setting additional regulatory requirements on unregulated providers. Wider changes to the Legal Ombudsman may need to be considered, however, so that it is a suitable solution for this part of the sector. For example, the Legal Ombudsman's unit cost in Q4 2019/20 was £1,934, due in part to the Act being quite prescriptive regarding how the Legal Ombudsman should operate. Its case fee is currently £400, but most of the cost of complaints handling is paid by the whole profession through the levy. Unregulated providers would need to meet the full cost of handling complaints, which could be unaffordable for many under the current arrangements.
67. Some industries such as will-writing already have existing alternative dispute resolution schemes in place (where firms are members of a trade body). Yet it would be preferable to maintain a single redress mechanism, namely the Legal Ombudsman, for all legal services conducted within the scope of the regulation.
68. Rather than fully extend the scope of regulation, there are other exercises that could be undertaken in relation to this segment of the market. As part of our potential work on reserved activities, we are considering a mapping exercise of the unregulated sector, as well as gathering more evidence of detriment and potential consumer harm. The SRA recently removed restrictions on solicitors working in unregulated firms, which should diversify the market and improve competition.
69. It may be instructive to examine models in other sectors. In the healthcare sector, for example, the Professional Standards Authority accredits registers of providers that can include unregulated providers. Such a model in the legal services sector would provide consumers with additional assurance and confidence about those unauthorised providers that were registered. When we last considered this model in 2016, however, we found no appetite among existing trade bodies to come under such a scheme for legal services.

Q14. We recommended a review of the independence of regulators both from the profession and from government, to the MoJ in the CMA market study. Is that review still merited, taking into account, for example, the work that has been undertaken by the LSB on IGRs and the arguments put forward by the IRLSR?

70. The review of the internal governance rules (IGRs) has been extensive, including three consultation exercises with a broad range of stakeholders. We consider that the revised IGRs will deliver positive outcomes for the sector and consumers.²³ The IGRs have delivered greater structural independence than ever practised previously in the sector. All but two of the regulatory bodies are now fully independent of their approved regulators. We have set out more clearly the different roles performed by approved regulators and regulatory bodies, including on the limited ways that approved regulators can seek assurance and information from regulatory bodies. This has been an area of tension in the past, where the LSB has carried out two investigations that have informed the review of the IGRs.
71. In effect, our review and development of the IGRs constituted a review of the structural independence of the regulators, and a further review at this time is unlikely to be productive. We anticipate, however, that as in other sectors, cultural independence is likely to lag considerably behind formal operational separation. There remains some way to go before we can justifiably assert that all the regulatory bodies are culturally and structurally working solely in the interests of the public rather than the professions.
72. Regulators should clearly be focused on benefiting the consumer rather than meeting the expectations of the profession. These are matters that the LSB will continue to focus on as part of its ongoing assessment of regulators' performance under our regulatory performance framework, especially in relation to the "well-led" standard. Should progress on cultural independence become a cause for concern, we would have no hesitation in supporting, and indeed leading, a broader review.

Q15. What work has been undertaken by regulators to reduce the regulatory burden on providers of legal services for individual consumers and small businesses? What impact has this had?

73. As set out above, we have seen a gradual programme of deregulatory change over the last decade, with regulation not identified as a significant barrier to innovation by providers or Nesta in its related work. As part of our statutory decisions processes, we regularly approve rule changes that result in a reduced

²³ <https://www.legalservicesboard.org.uk/wp-content/uploads/2019/07/Decision-document-July-2019.pdf>.

regulatory burden. For example, we approved the SRA's Looking to the Future Application in 2018 that led to its new Standards and Regulations.²⁴ These allowed regulated solicitors to work in unauthorised firms, and for freelancers to conduct reserved activities without being authorised as an entity themselves.

74. Our latest prices research found very few providers cited regulation as a reason for increasing their prices. From an LSB study in 2015, the highest areas of incremental cost reported included professional indemnity insurance (PII) and professional development.

75. Anecdotal evidence²⁵ suggests the costs of premiums for PII have risen markedly since 2018/19, with the SRA reporting average increases of c.15-20% for the minimum level of cover. It is likely the market will harden further due to the impact of Covid-19, which could cause significant issues across the sector. It might be helpful for a market review of PII to be undertaken.

76. A significant element of PII costs includes run-off cover to meet claims in future after a firm ceases to practice (but arising from a firm's time in practice). In June 2020, the SRA agreed to extend by a year the use of the Solicitors Indemnity Fund to provide post-six-year run-off cover for claims against firms that have closed without a successor practice.²⁶

Q16. What impact has the removal of restrictions to allow solicitors to practice in unauthorised firms had on the availability of lower cost options in the sector?

77. We are not familiar with any published evidence on this, though we anticipate the SRA will have more insight.

²⁴

https://www.legalservicesboard.org.uk/Projects/statutory_decision_making/pdf/2018/SRA_application_to_LSB_Aug18.pdf.

²⁵ For example, <https://www.lawgazette.co.uk/features/running-for-cover/5105497.article>; <https://www.todaysconveyancer.co.uk/main-news/exodus-continues-another-pi-insurer-escapes-hardening-market/>; <https://www.insurancebusinessmag.com/uk/news/professional-liability/renewal-season-reveals-pii-market-for-lawyers-hardening-insurers-looking-to-lift-rates-115219.aspx>.

²⁶ <https://www.sra.org.uk/solicitors/resources/indemnity/solicitors-indemnity-fund/>.

Annex A: Sources of evidence

This annex sets out the sources of evidence we have cited in our submission. As noted in our introduction, a copy of the evidence compendium, which will accompany our forthcoming report on the state of the legal services sector, will be provided to the CMA alongside this submission.

LSB research

- *Prices of Individual Consumer Legal Services in England and Wales 2020: Wave 3 of a survey of prices for commonly used legal services.*
<https://www.legalservicesboard.org.uk/wp-content/uploads/2020/09/Prices-of-Individual-Consumer-Legal-Services-Sept-2020-1.pdf>.
- *Legal Needs of Individuals in England and Wales 2019.*
<https://www.legalservicesboard.org.uk/online-survey-of-individuals-handling-of-legal-issues-in-england-and-wales-2019>.
- *Technology and Innovation in Legal Services 2018.*
<https://www.legalservicesboard.org.uk/wp-content/media/Innovation-survey-2018-report-FINAL-2.pdf>.
- *Innovation in legal services.* <https://www.legalservicesboard.org.uk/wp-content/media/Innovation-Report.pdf>.
- *The legal needs of small businesses 2013-2017.*
<https://www.legalservicesboard.org.uk/wp-content/media/FINAL-Small-Business-Report-FEB-2018.pdf>.
- *Mapping of for profit unregulated legal services providers.*
<https://www.legalservicesboard.org.uk/wp-content/media/Mapping-unregulated-providers.pdf>.

LSB Board papers

- September 2020, Paper (20) 43 – Consumer Engagement Update.
<https://www.legalservicesboard.org.uk/wp-content/uploads/2020/09/5.-Consumer-engagement-update.pdf>.
- June 2020, Paper (20) 30 Reserved Activities.
<https://www.legalservicesboard.org.uk/wp-content/uploads/2020/06/7.-Paper-20-30-Reserved-activities-website-02.pdf>.

- April 2020, Paper (20) 23 Legal Choices.
<https://www.legalservicesboard.org.uk/wp-content/uploads/2020/04/6.-Paper-20-23-Legal-Choices.pdf>.

Other LSB publications

- *Call for evidence: ongoing competence.*
<https://www.legalservicesboard.org.uk/wp-content/uploads/2020/04/LSB-ongoing-competence-call-for-evidence-1.pdf>.
- *Internal Governance Rules – Enhancing regulatory independence.*
<https://www.legalservicesboard.org.uk/wp-content/uploads/2019/07/Decision-document-July-2019.pdf>.
- LSB decision notice 12 August 2020.
<https://www.legalservicesboard.org.uk/wp-content/uploads/2020/08/20200812-Decision-Notice-SRA-Compensation-Fund-2020.pdf>.

LSCP research

- *Legal Services Consumer Panel Tracker Survey 2020.*
<https://www.legalservicesconsumerpanel.org.uk/wp-content/uploads/2020/08/LSCP-2020-How-consumers-are-using-FINAL-DRAFT-.pdf>.
- *Consumers feedback on quality indicators in legal services.*
<https://www.legalservicesconsumerpanel.org.uk/wp-content/uploads/2020/07/2020-07-15-LSCP-Quality-Report-FINAL.pdf>.
- *Consumer Impact Report.*
<https://www.legalservicesconsumerpanel.org.uk/wp-content/uploads/2020/03/2020-03-19-Consumer-Impact-report-Working-FINAL-DRAFT.pdf>.

Publications by regulatory bodies

- SRA. SRA Transparency Rules: Web sweep report.
<https://www.sra.org.uk/sra/how-we-work/reports/web-sweep/>.

- SRA, Application for the approval of regulatory arrangements. https://www.legalservicesboard.org.uk/Projects/statutory_decision_making/pdf/2018/SRA_application_to_LSB_Aug18.pdf.
- BSB. *Compliance with the price, service and redress transparency rules*. <https://www.barstandardsboard.org.uk/uploads/assets/3359c36e-ef3e-449d-883e18c5ebeabad6/202006-External-Transparency-spot-check-report.pdf>.
- ICAEW. *Transparency – room for improvement?* <https://www.icaew.com/-/media/corporate/files/technical/legal-and-regulatory/probate-and-abs/transparency-benchmarking-report-probate-firms.ashx>.

Other publications

- Mayson, 2020. Reforming Legal Services: Regulation Beyond the Echo Chambers. https://www.ucl.ac.uk/ethics-law/sites/ethics-law/files/irlsr_final_report_final_0.pdf.
- Thomson Reuters. Legaltech Startup Report 2019 – A Maturing Market. <https://legalsolutions.thomsonreuters.co.uk/content/dam/openweb/documents/pdf/uki-legal-solutions/report/tr-legaltech-startup-report-2019.pdf>.
- Nesta Challenges, 2020. The Legal Access Challenge: Closing the legal gap through technology innovation. <https://legalaccesschallenge.org/wp-content/uploads/sites/70/2020/06/Legal-Access-Challenge-Report-FINAL.pdf>.

Press

- <https://www.lawgazette.co.uk/features/running-for-cover/5105497.article>.
- <https://www.todaysconveyancer.co.uk/main-news/exodus-continues-another-pi-insurer-escapes-hardening-market/>.
- <https://www.insurancebusinessmag.com/uk/news/professional-liability/renewal-season-reveals-pii-market-for-lawyers-hardening-insurers-looking-to-lift-rates-115219.aspx>.