

FOR IMMEDIATE RELEASE

Wednesday, 3 February 2016

LSB responds to the CMA legal services market study's *statement of scope*

The **Legal Services Board** (LSB) publishes today its comments on the **Competition and Market Authority's** (CMA) 'Statement of Scope' for its recently announced **legal services market study**.

In its comments the LSB:

- welcomes the broad scope of the study, which includes small business consumers as well as individual consumers, and unregulated providers alongside regulated providers
- states it would not wish a market investigation reference to be ruled out at this stage
- signposts to LSB research and analysis of relevance to the study

Legal Services Board Chief Executive, **Neil Buckley**, said:

"This CMA legal services market study is a unique opportunity to see exactly how well the market is working for consumers and small businesses.

We anticipate that 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 break down regulatory barriers and tackle unmet legal need.

We look forward to seeing how this market study develops."

For further information, please contact our Communications Manager [Vincent McGovern](#) or by calling 020 7271 0068.

Notes for editors:

1. The Legal Services Board's letter to the Competition & Market Authority's (CMA) regarding the statement of scope (plus annex) can be found [here](#).
2. The CMA legal services market study was announced on 13 January. For more information please see [here](#).
3. The [Legal Services Act 2007](#) (the Act) created the LSB as a new regulator with responsibility for overseeing the regulation of legal services in England and Wales. The new regulatory regime became active on 1 January 2010.
4. The LSB oversees nine approved regulators, which in turn regulate individual legal practitioners. The approved regulators, designated under [Part 1](#) of Schedule 4 of the 2007 Act, are the **Law Society**, the **Bar Council**, the **Master of the Faculties**, the **Chartered Institute of Legal Executives**, the **Council for Licensed Conveyancers**, the **Chartered Institute of Patent Attorneys**, the **Institute of Trade Mark Attorneys**, the **Association of Costs Lawyers** and the **Institute of Chartered Accountants in England and Wales**.

In addition, the **Institute of Chartered Accountants of Scotland** and the **Association of Chartered Certified Accountants** are listed as approved regulators in relation only to reserved probate activities.

5. As at 1 April 2015, the legal profession comprised 142,109 solicitors, 326 alternative business structures, 15,237 barristers, 7,848 chartered legal executives and 5,678 other individuals operating in other areas of the legal profession such as conveyancing. The sector is valued at £25.49 billion per annum (total turnover in 2010).

Annex – Relevant research and analysis

Relevant primary research published by the LSB and other publications are listed below under each of the three themes in the Statement of Scope. Hyperlinks have been inserted for ease of access to these documents. In addition, the research pages of the LSB website contain the raw data underlying the quantitative surveys.

The LSB expects to publish the following research reports during the next six months and these will also be forwarded to the CMA to assist with its study:

- A large scale **legal need survey of individuals** in England and Wales and a detailed descriptive analysis of survey findings, jointly commissioned with the Law Society and Legal Education Foundation. This will build on previous surveys of individuals' legal needs and seek to describe changes over time (Ipsos MORI)
- A quantitative study gathering information on the **prices of common legal services** purchased by individual consumers (OMB Research)
- A study to **map the provision of unregulated legal services** focusing on three areas: will-writing and estate administration; divorce; and intellectual property (Economic Insight)
- A quantitative and qualitative study, commissioned jointly with the Bar Standards Board, on the operation of the **Public Access** arrangements, including information on the regulated community and their clients, impact on the regulatory objectives and barristers' businesses, and perceptions of the regulatory framework (Pye Tait)
- Economic advice on the **likely impacts of a range of changes to regulatory rules** over the past five years (Oxford Economics)
- An update to the **Market Evaluation** exercise assessing progress towards delivering the regulatory objectives since the benchmarking report published in 2012.

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

Research

A qualitative study, commissioned jointly with the Legal Services Consumer Panel, of [unbundled services](#) from the perspective of consumers, providers and judges (Ipsos MORI, 2015).

Large scale quantitative survey of the [experiences of 10,528 small businesses](#), showing the origin of legal problems that they face and their strategies for dealing with these problems, including where they seek advice and their experiences of doing so (survey by YouGov, analysis by Kingston University, 2015).

A qualitative survey, commissioned jointly with the Legal Services Consumer Panel, of [the consumer experience of legal services delivered online compared to face-to-face](#), using divorce as a case study (BDRC Continental, 2015)

Drawing on behavioural economics theories, an assessment of the [most effective methods of supporting consumers to identify and respond to legal problems](#) (Linstock Communications, 2014)

Statistical analysis of legal need survey data to understand how [consumers' demographics, attitudes, capabilities and beliefs affect their response to legal problems](#) (Professor Pascoe Pleasence and Dr Nigel Balmer 2014)

Large scale quantitative survey of 9,703 [small business owners or managers about their legal needs, problem resolution strategies and outcomes](#), (conducted by YouGov with analysis by Professor Pascoe Pleasence and Dr Nigel Balmer, 2013)

Research exploring the [factors that influence the decisions that consumers make when deciding how to respond to a legal problem and exploring why some consumers do not trust lawyers](#) (Optimisa Research, 2013)

Literature review exploring the [lessons from behavioural economics for legal services](#), from both the consumer and provider perspectives (Linstock Communications, 2013)

Large scale quantitative [survey of 4,017 individual consumers about their legal needs, problem resolution strategies and outcomes](#) (BDRC Continental, 2012)

Focus groups to explore [consumers' views about the potential for the internet to support their legal needs](#) (Vanilla Research, 2012)

In-house [discussion paper on measuring access to justice](#), seeking feedback on proposed indicators for understanding how it changes over time (2012)

Qualitative research into the [legal needs of small businesses and their perception of legal services](#) (AIA Research, 2010)

Other relevant publications

None identified

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

Research

A report analysing the findings of a quantitative survey of [providers of probate and estate administration services](#), and an [online survey of consumers](#) who had gone through the process in the last three years (IFF Research, 2012)

A review of existing [consumer protections in relation to solicitors charges](#) (Hogan Lovells, 2012)

Quantitative online survey and shadow shopping, exploring [service experience and the quality of will-writing services](#) (IFF Research, 2011).

Quantitative research on [first-tier complaints handling](#) (YouGov, 2011)

Qualitative research to understand [what consumers want when using legal services and develop a set of outcomes to describe their needs](#) (Opinion Leader Research, 2011)

Other relevant publications

Investigations into [will-writing, estate administration and probate](#) activities (2013)

A report on [regulatory interventions to address quality risks](#) (2012)

Guidance on [first-tier complaints handling](#) (2010) – *currently under review*

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

Research

A quantitative and qualitative study, commissioned jointly with the Solicitors Regulation Authority, on research into [levels of innovation in legal services, capabilities for and barriers to innovation](#) (survey by OMB research, analysis by Enterprise Research Centre and Warwick Business School, 2015).

Analysis of a quantitative survey, conducted in house, of the regulated communities' views on the [cost of regulation](#) (2015)

A study to establish the [incremental cost of regulation](#) in the legal sector (ICF International, 2015).

Literature review considering the case for the Bar Standards Board's '[Cab Rank Rule](#)' (Professor John Flood and Dr Morten Hvid, 2013)

A report on the [proportionality of legal services regulation](#) summarising the key areas of legal services regulation as implemented by the Solicitors Regulation Authority and the Bar Standards Board (Kyla Malcolm, 2013)

A quantitative survey testing the [contingent valuation methodology](#) in the legal services context, to support cost benefit analysis of regulation (Opinion Leader Research, 2013)

An economic analysis of the [regulatory barriers to entry, exit and merger](#) in the solicitors market (Regulatory Policy Institute, 2013)

Qualitative investigation into '[Special Bodies](#)' – non-commercial organisations providing reserved legal activities to the public (Frontier Economics, 2011)

Qualitative investigation into the [large commercial solicitors firms](#), the market segments they operate in, and interactions with regulation (Charles River Associates, 2011)

An economic literature review looking at [the economic rationale for the regulation of legal services markets and the legal services professions](#), and a [collection of essays](#) responding to the report (Regulatory Policy Institute, 2010)

Economic study looking at the evidence of the impact of [referral fees](#) on the legal services market (Charles River Associates, 2010)

Other relevant publications

A paper exploring different [options available for a new regulatory framework beyond the current Act](#) (2015 – note the paper is the product of collaborative working by LSB and approved regulators; the views do not represent the views of individual regulators, nor the simple sum of collective views)

Status report on the [work of the legal regulators to reduce regulatory burdens](#) since the Act (a joint report by LSB and approved regulators, 2015)

Recommendations for [minor clausal changes to the Legal Services Act](#) to reduce the burden of regulation and improve the efficiency of the regulatory process (a joint report by LSB and approved regulators, 2015)

A paper on [alternatives to handling client money](#) (a joint report by LSB and approved regulators, 2015)

A thematic review of Section 15 of the Legal Services Act regulating to [regulation of employers and employees providing reserved legal activities](#) to the public or a section of the public (2015)

A thematic review of [business ownership restrictions](#) (2014)

A thematic review of [regulatory sanctions and appeals processes](#) (2014)

A discussion paper on the [role of education and training in regulation](#) (2012)

Consideration of appropriate [licensing authority arrangements for special bodies](#) (e.g. charities) which benefit from transitional protections under the Act (2012)

Other

Research

Independent economic investigation into [changes in access to justice in the personal injury](#) legal services market 1999-2013 period (London Economics, 2014)

A joint study by the LSB, Law Society and Ministry of Justice [surveying 2,007 solicitors firms across England and Wales](#) (2013)

LSB analysis examining [how competition has been effectively promoted](#) between 2010/2011 – 2012/2013 (2013)

An in-house report providing a [baseline of the legal services market against the Legal Services Act regulatory objectives](#) (2012)

Compendium of published information on the legal services market in England and Wales presented in two parts: [Supply](#) and [Demand](#) (2011)

[An economic framework for segmenting the legal services market and monitoring change](#) (Oxera, 2011)

In-house review of the [potential impacts of alternative business structures](#) using a wide range of research (2011)

Other relevant publications

The articulation by the LSB of [what the regulatory objectives mean](#) and how they will be applied in its work (2009)

The LSB's framework for assessing the [performance of the approved regulators](#) (2011) and various reports on each regulator (2012-14) – *note that new reports on the performance of each regulator are due for publication in March 2016*

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3 February 2016

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

Neil Buckley
Chief Executive