

Market study into the supply of legal services in England and Wales – Interim report

A submission by
The Chartered Institute of Legal Executives (CILEx)

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1. Introduction

- 1.1. The Chartered Institute of Legal Executives (CILEx) is the professional association and governing body for Chartered Legal Executive lawyers, other legal practitioners and paralegals. CILEx has around 20,000 in membership, including approximately 7,500 qualified Chartered Legal Executive lawyers.
- 1.2. As an Approved Regulator we are authorised to grant practice rights in relation to litigation, advocacy, probate, reserved instrument activities, immigration services and the administration of oaths. We have delegated our regulatory functions to the independent regulator CILEx Regulation Ltd.
- 1.3. Genuine access to justice and affordable legal services are goals that must be permanently strived for. The task of balancing market forces, public duties, consumer protection, and the rule of law is something that requires constant vigilance and effort from all involved. As such, we support the CMA's study into legal services in England and Wales (civil justice), and we submitted evidence to assist in the preparation of the interim report.
- 1.4. This submission summarises CILEx's response to the interim report. We welcome the opportunity to discuss these matters with the CMA to inform the preparation of the final report.

2. General points

2.1. In CILEx's submission on the statement of scope¹, we made the following recommendations:

- Consider the issue of affordability of legal services, and whether the market is equipped to meet the needs of all consumers.
- One or more consumer groups who make distress purchases of legal services should be included as case studies.
- Consumer protection issues for clients of unregulated firms should be considered, along with the disparity consumers may experience when purchasing services from a regulated and unregulated providers.
- Reforms enabling Chartered Legal Executives to compete on an equal footing with existing legal services providers must be given sufficient time and opportunity to take effect before the impact of these reforms can be measured.
- Consider to what extent there is scope for the existing approved regulators and regulatory bodies to work together to improve the market for consumers.

2.2. We are pleased that the majority of these recommendations were considered, either directly or indirectly. Affordability was considered a key driver behind the focus on price transparency to improve competition; consumer protection issues and work already underway by the regulators was included in considering regulatory reform; and collaboration between regulators and professional bodies was considered for promoting information for consumers. However we would still encourage that those outstanding recommendations be reflected in the final report.

2.3. Firstly, we remain of the view that the market study would significantly benefit from considering those who make distress purchases of legal services as a case study. The focus on easily commoditised services may stem from such services being easier to assess from a market-analysis perspective.² However we would like to see a more thorough analysis of more complex areas of law that are often purchased in distress, which are by their nature less easily

¹ <https://www.gov.uk/cma-cases/legal-services-market-study#responses-to-statement-of-scope>

² Paras 1.20, 4.5

commoditised. This could be in family law, immigration and welfare benefits, for example.

2.4. Secondly, the reforms that enabled Chartered Legal Executives to compete on an equal footing with solicitors have not been adequately reflected in the interim report, and in most instances there are only passing references to legal service providers other than solicitors.

2.4.1. We do feel that whilst the report's predominant focus on solicitors may be in reflection of the large market share that solicitor firms hold, this has resulted in an unbalanced report.

2.4.2. We recognise that we are only beginning to see the first Chartered Legal Executive-run law firms established and competing with solicitor-run firms. This relatively recent change will have, over time, the effect of increasing the market share for providers who are trained and regulated as specialist lawyers, and who do not pass inflated training costs on to the consumer.

2.4.3. The report could therefore be clearer that both today, but more important in the near future, other types of lawyer that provide consumer legal services are active in the market, and compete on a level playing field with solicitors. Where this includes specialist lawyers like Chartered Legal Executives, they operate under more outcomes-focused and risk-based regulatory models.

2.4.4. We have acknowledged the challenges there are in quantifying the impact of Chartered Legal Executive-run businesses at this time, but we feel it an important issue that merits clarification and stipulation. If consumers are unaware of all their options, including which branch of lawyer to secure services from, then they are less likely to secure the service that is appropriate for them. We look forward to this being addressed in the final report.

2.5. Additionally, we hope the final report will correctly refer to CILEx Fellows by their title of 'Chartered Legal Executives', and their institute as the 'Chartered Institute of Legal Executives' or 'CILEx'.³

³ Paras 3.14, 3.28, 3.33, 6.35, Appendix A Para 12 etc

3. Improving price and service transparency

What are the barriers to providers sharing price and service information with consumers and do these vary by legal service?

Is there a minimum level of information that providers should either (i) publish or (ii) provide to consumers with in advance of or on engagement. Should this be mandatory?

Are there examples of good practice in price and service transparency that could be shared more widely?

How and when should legal service providers communicate: fees and rates to clients, and anticipated or actual cost overruns (i.e. where the fee will exceed an estimate or quote)?

Are there any measures of quality that can readily be collected by regulators or government (including HMCTS in relation to civil actions and probate) on observable trends in quality of legal services?

- 3.1. CILEx supports the principle of price and service transparency, and we encourage members to be as open as possible about their pricing structures and service models so consumers know what to expect. Consumers from the outset should have a clear understanding of how much their case will typically cost and transparency on how costs are accrued, including the circumstances under which costs might change. We share the CMA's concerns in this area that a lack of transparency creates a disincentive to consumers seeking legal services in the first place for fear they will be left with a larger than expected bill.
- 3.2. However we acknowledge that for the information to be meaningful to consumers it must be reliable, justifiable and comparable – which requires consistent methodologies in comparable practice areas. Whilst it will take time for methodologies to be developed for more complex areas, we hope businesses will take the initiative to ensure their consumers can reasonably assess potential service costs.
- 3.3. The interim report is right to identify that consumers can make quality judgements based on perceived quality of professional titles.⁴ Chartered Legal

⁴ Para 4.32

Executives are subject to a code of conduct that must be adhered to at all times, and CILEx Regulation as an independent regulator investigates and disciplines members for breach of the code. To qualify, Chartered Legal Executives must apply for independent authorisation and meet the minimum quality standards set by the regulator (including requirements for qualifications, work-based learning and day-one outcomes). Members must then maintain their standards through the planning and completion of outcomes focused CPD - continuous professional development.⁵

- 3.4. By these means, only practitioners that meet minimum quality standards are allowed to practise as Chartered Legal Executives. If they wish to deliver additional reserved activities they must prove their knowledge and competence before being authorised. Consumers can be assured therefore that where their legal adviser is a Chartered Legal Executive there are high quality standards that individual has met.
- 3.5. When considering what remedies should be enforced in this area, we ask that consideration be given for the impact on start-ups and market entrants. An established solicitor firm will have both the historical data and analytical resources to ground their fixed cost offers in experience to-date. Whereas a start-up or market entrant is less likely to have this valuable resource to hand, and so may be at a disadvantage if compelled to provide cost information on par with an established firm. This would disproportionately affect CILEx members who have only relatively recently gained the ability to establish their own firms delivering reserved activities.
- 3.6. The interim report rightly identifies that some legal areas are complex and will face additional challenges to being offered for a fixed fee. Frontline regulators, particularly specialist regulators like CILEx Regulation, will be better placed to assess the relative complexities for price and service transparency models across different services, and regulate accordingly. We anticipate that any rules would be in the context of *The Provision of Services Regulations 2009*,

⁵ CILEx Regulation also requires applicants to submit information on any prior conduct, which is considered as part of the application process. In cases where the prior conduct is relevant to their suitability for Fellowship, they can be rejected.

which set an expectation for businesses to make available their prices, or sufficiently details price estimates.⁶

- 3.7. We would therefore recommend that if measures designed to improve price and service transparency are to be mandated, they should be outcomes focused, and not put start-ups and market entrants at a significant disadvantage. We also recommend that the remedies proposed in 7.28 and 7.32 of the interim report can form a substantive part of guidance from frontline regulators as part of an outcomes-focused model, rather than prescriptive rules.

⁶ The Provision of Services Regulations 2009, Reg 7(1) and Reg8(2)
http://www.legislation.gov.uk/uksi/2009/2999/pdfs/uksi_20092999_en.pdf

4. Addressing barriers to comparison and search

What are the barriers to comparison and search?

Are those barriers consistent across different legal services (by area of law, activity and the extent to which a service is commoditised)?

What additional information could be made available by regulators and trade bodies?

What measures would allow consumers to be better able to compare the non-price attributes of legal services providers (such as quality or consumer protections)?

How can intermediaries and those making recommendations better support consumers in selecting a legal service provider?

Is there any additional information held by government or regulators that if published would assist the development of the comparison sector or assist consumers directly conducting comparisons?

- 4.1. CILEx is committed to the provision of information and accessible means of services comparison to consumers. Already publicly available is the CILEx Practitioner Directory.⁷ The Directory contains the details of fully qualified and practising Chartered Legal Executive lawyers and other members and individuals who have been authorised to practise and hold a valid CILEx practising certificate. Employer and location data contained in the Directory is based on information supplied to us by our Chartered Legal Executives, as well as details of their area of specialisation.
- 4.2. CILEx members are able to opt in, through their regulator CILEx Regulation, to their information being shared with comparison websites that have approached the regulator, and we encourage them to do so where appropriate.
- 4.3. As we articulated in our submission to the statement of scope, Chartered Legal Executives experience some barriers through lack of recognition amongst the public. The responsibility for addressing this issue lies with individual Chartered Legal Executives, their businesses, and us as their professional association. However we feel it necessary to bring it to the attention of the CMA again.

⁷ <http://www.cilex.org.uk/about-cilex-lawyers/cilex-practitioners-directory>

- 4.4. Of concern though is that some DCTs are advertised as only comparing solicitors, and not those of competing non-solicitor lawyers.⁸ We have previously identified other concerns regarding the criteria businesses will use when appointing legal businesses to be on their panel of firms that favour solicitors.⁹
- 4.5. Many members of the public think of solicitors and barristers when they think of lawyers, and not the full range of professionals who are lawyers. If consumers are unaware of all their options, including which branch of lawyer to secure services from, then they are less likely to secure the service that is appropriate for them. Our members are at the forefront of providing cost effective, accessible legal services to the public, and we ask DCTs and intermediaries to ensure they operate appropriately to reflect the changing nature of legal service delivery, and not focus narrowly on solicitors alone.
- 4.6. With regards to consumers making quality assessments, we would also refer to our comments under 3.3 and 3.4 above.

⁸ Para 4.43

⁹ For example, banks utilise a panel of conveyancing firms for their services. CILEx members applying to join these panels have found internal rules placing undue restrictions on the sort of firms the bank will use, such as requiring that only solicitors should be partners. Other restrictions include: requirements for minimum numbers of cases transacted previously and these being set at a very high level and requirements for Chartered Legal Executives to have accreditations that they are not permitted to access eg the Law Society's Conveyancing Quality Scheme (CQS).

5. Improving consumer information

How and what information should be provided by a central information hub?

Should Legal Choices act as the central information hub for legal services in England and Wales or would an alternative website be more appropriate?

- 5.1. We support Legal Choices as the central information hub for legal services. This would ostensibly ensure the provision of a minimum level of consistent information, across the professions, derived from accurate regulatory data. It should not preclude and may also include reference to other richer information being provided by other bodies which would complement the minimum information with greater detail for the benefit of consumers.
- 5.2. CILEx supported the establishment of Legal Choices by all the frontline regulators, including the Solicitors Regulation Authority, Bar Standards Board, and CILEx Regulation. We feel that its independence from legal businesses and the professional bodies, but still with input from the full range of regulators, makes it the most suitable resource.
- 5.3. Any central information hub should independently, and without favour, provide balanced information and guidance on the full range of legal service providers.

How should any central information hub be promoted?

- Should frontline regulators, representative bodies and self-regulatory bodies be asked to promote an information hub?
 - Should legal services providers be obliged to link to an information hub?
- 5.4. CILEx is happy to play its part, and has promoted Legal Choices on frequent occasions. We are currently promoting Legal Choices on the front page of our corporate website, and in the upcoming editions of the CILEx Journal. We are now looking at how we can give Legal Choices a consistent place on the front page of our website.
 - 5.5. Providing information on Legal Choices would be a relatively inexpensive and achievable way for providers to give consumers access to independent information on the nature of legal services. However Legal Choices is not designed for all consumers, and there may be circumstances where it is not relevant or suitable, and so making its promotion mandatory would not be

appropriate in all circumstances. Frontline regulators will be better placed to make this assessment.

Should Legal Choices include information on unregulated and self-regulated providers?

What material should be developed to aid in comparing and selecting a provider?

- Should materials be made available through channels other than a central information hub (such as Citizens Advice)?
- 5.6. Consumers should be appropriately informed of the range of options available to them before selecting a legal service provider, including from the full range of legal professionals offering services, and those who are regulated and unregulated.
 - 5.7. Getting at information related to the unregulated sector is notoriously difficult and real thought will have to be given as to how this will be done so that consumers have a properly balanced picture of that part of the market. In addition, for the website to be reconfigured, and additional information and guidance compiled, there will be additional cost. Consideration should be made therefore for how unregulated businesses can provide financial support to Legal Choices, which is currently funded solely by the frontline regulators through PCF income from regulated lawyers.
 - 5.8. Materials will ideally be designed to ensure a consumer is clear on what they should expect from a provider, and what consumer protections are in place in the event of poor service or malpractice. These are largely already in place on Legal Choices.
 - 5.9. Sources of information, such as Citizens Advice Bureaux, Which?, and other IAG providers should be supported to refer individuals to the Legal Choices website, rather than duplicating information which carries risk of becoming inaccurate or outdated.

6. Improving client care communication and increasing access to redress

How can client care communications be improved to better protect consumers' interests and are there examples of client care communication that provide succinct and relevant information?

- 6.1. CILEx is of the view that it is key to consumers' interests that client care communication is made as clear as possible. The CMA interim report seems to find that current arrangements are broadly effective. It notes that regulators already place certain information requirements on providers and this includes that relating to costs.
- 6.2. It is important to note though that there is a minority of respondents to the CMA who raised concerns that client care letters are not working effectively or, though generally satisfied with the quality of legal services received, felt that the nature of the provider's regulatory status and rights to redress could have been better explained.¹⁰
- 6.3. Perhaps regulatory obligations around the provision of information will have to be made more specific (though this goes against the trend for less prescriptive and more outcomes focused regulation) along the lines of the Law Society Practice Note referred to in the report¹¹. It may be an area that, as the report acknowledges¹² 'rules are more effective'.
- 6.4. CILEx will watch with interest the work of certain regulators considering improvements to client care letters and would support any recommendations which aim to improve on the clarity and timeliness of information that should be provided to consumers. However, such obligations should be evenly applied and neither disproportionately or negatively affect any one type of legal service provider over another, nor be so disproportionate as to become a barrier to entry to new entrants to the market (whereby existing providers are better able to adapt from current obligations to the new, compared to new entrants effectively just seeing increased obligations).

What would be the consumer protection benefits and impact on competition of restricting the use of the title 'lawyer'?

¹⁰ Paras 5.42, 5.43 and 5.48.

¹¹ Para 5.40

¹² Para 7.60

- 6.5. There are clear consumer benefits to be derived from restricting the use of the title 'lawyer'. To continue one of the themes in the answer above, clarity of information is of key of importance for consumers. The current unprotected status of the title of 'lawyer' means that anyone can call themselves such and that, combined with the fact that anyone is able to offer unreserved legal services, leads to confusion for consumers in relation to whether or not their legal services providers are regulated and what, if any, redress mechanisms are in place in the event that they are not satisfied with the services received or suffer detriment through the conduct of those providers.
- 6.6. Although the CMA interim report says that no evidence has been found of any specific detriment caused by unregulated legal services providers using the title 'lawyer'¹³, CILEx believes that the title has strong connotations for most individual consumers. For example, being associated with the trend that most individual consumers assume that their legal services provider is regulated¹⁴ and they can get redress when things go wrong, protection of the title and restricting its deployment only to those who are suitably qualified to offer certain legal services could go some way to providing the clarity and correcting consumers' information asymmetry in that regard, created by the unrestricted use of the term. CILEx does not believe that there need be any adverse impact on competition by making this change; as the report suggests, unregulated providers may simply be moved to use alternative titles in providing their services.

What are the barriers to using LeO and are there any benefits in amending its scope, jurisdiction or approach?

- 6.7. As the interim report recognises¹⁵, LeO's scope to accept complaints is already limited via its scheme rules and a high proportion of consumers are aware of information relating to the redress mechanisms¹⁶. As already noted, CILEx believes that the effectiveness of the redress mechanisms could be improved by shortening the timeframe taken to resolve complaints.

¹³ Para 7.50

¹⁴ Paras 5.8, 6.20

¹⁵ Para 5.27

¹⁶ Para 5.48

- 6.8. Given that the report finds that complaints handling does not raise any significant problems¹⁷, CILEx would suggest that incrementally making gradual improvements to the system might be the best approach, allowing both the LSB and LeO to investigate how best those improvements could be made, rather than introducing more dramatic changes such as moving to the Scottish Legal Complaints Commission's approach to accepting complaints from third parties, for example.
- 6.9. LeO might be better ensuring that its current modus operandi is right before looking to change its scope and approach. Therefore, addressing erratic timeframes for complaint resolution, ensuring consistent approaches to investigating complaints, making sure complaints handling staff are properly trained so they are perceived as having the right experience and legal knowledge and producing better, clearer guidance on its processes might be areas that might be first considered.

Are the current arrangements for ADR in legal services clear and readily understandable to consumers and is there scope for greater use of ADR?

- 6.10. Part of the confusion in relation to current ADR provision in legal services relates to the circumstances around the introduction of the ADR Directive: LeO effectively is already a form of ADR service and it was always envisaged that its scheme rules would be amended so that it could become the certified ADR provider for legal services following the transposition of the ADR Directive in English law. Relatively late in the day, it withdrew its application to attain that status and, following consultation has not resubmitted it, leading to the current situation where both LeO and 3 ADR providers¹⁸ may be referred to by firms in correspondence with clients where the first claims complaints process has not resolved any given complaint.
- 6.11. The Directive only obliges firms to notify consumers (in addition to their right to complain to LeO) of the name and address of an ADR approved body which would be competent to deal with the complaint, if both parties wished to use their scheme and whether or not they intend to use that provider ie they are not obliged to use it. There may therefore be good reason to try and

¹⁷ Para 5.61

¹⁸ Ombudsman Services, Promediate and Small Claims Mediation

extend the use of ADR within the legal service sector as consumers may be left confused as to what they can do if the first tier complaints process does not achieve resolution and the firm does not wish to use the ADR provider. That said, enabling better access to ADR may not be best achieved by obliging LeO to revisit its LSB application to become the certified ADR provider for legal services as there were concerns within the sector that the requisite changes to its Scheme Rules were inappropriate^[2]. LeO itself also concluded that it was not the right time to adopt that role as its preference was to focus on improving the efficiency and quality of its statutory scheme. The use of ADR in legal services is clearly a nuanced picture and would probably be better considered as part of a proper stand-alone review.

Should legal services providers be provided with additional guidance on communicating redress options?

6.12. CILEx does not have anything more to add on this topic other than those related points made in answer to the questions above, and in 5.5.

Do any additional redress mechanisms need to be introduced for unregulated providers?

6.13. CILEx does not have sufficient evidence to answer this question as there is not enough information available about how the unregulated sector's redress mechanisms function compared to those of the regulated. Consumer awareness of the redress mechanisms relating to regulated providers seems good which suggests that there may be a gap in awareness in relation to redress mechanisms for services from unregulated providers. However, CILEx would be cautious about the idea of simply introducing those redress mechanisms (or extending the remit of those that currently exist) without a proper examination of whether or not the real issue is that the services and/or the providers themselves actually require regulation (and the panoply of processes, protections and redress that accompany that).

^[2] For example, they would have required changes to time limits for dealing with complaints which could have opened up historic cases, increasing case volume/costs and adversely affecting LeO's operational efficiency.

7. Changes to regulation and the regulatory framework

Are the high level criteria for assessing the regulatory framework that we have identified appropriate?

- 7.1. In looking at the proposed 'high level criteria for assessing the impact of possible regulatory changes', and considering 'Impact on Competition', CILEx is particularly keen that, on the supply side, the potential creation of 'barriers to entry' is focused on. Looking to the legal services market of the future, CILEx Regulation has only just begun regulating entities and there are relatively few Chartered Legal Executive-run entities in the market as yet. There is significant potential for these entities to offer greater consumer choice and value, as well as meeting some of the deficiencies identified in this report in relation to current incumbents. It would be unfortunate if changes to the regulatory regime unwittingly favoured incumbents, who already have in place a raft of mechanisms and regulatory processes, over new entrants who could view certain changes as just another raising of the threshold for entry.
- 7.2. Looking at 'Direct costs of regulation', care will have to be taken that changes to regulation do not create increased costs of monitoring and enforcement which ultimately will be borne by the regulated and passed on to consumers. Examples where such care might have to be particularly used include: possible extension of parts of the regulatory machinery to parts of the unregulated sector, and creating new obligations around the use of ADR processes by legal services providers.
- 7.3. The same could be said in relation to 'Consumer protections' and methods to assess the quality of services provided; this could prove quite complex and therefore potentially costly to do properly. However, generally CILEx very much supports the focus on 'consumer protection' as a key standalone criterion for assessing regulatory impact; this should be the first criterion as no changes should be made to stimulate competition, for example, if there is any risk that this might be at the expense of the consumer.
- 7.4. Similarly, CILEx believes that the 'Wider impact on society' criterion should be one of the priority criteria alongside consumer protection. Making a proper assessment of whether or not a regulatory change promotes access to justice and ensures an effective functioning legal system may be challenging but is

crucial, in public interest and should not be lost amongst other competitive or commercial priorities. To that extent, CILEx supports 'Practicalities' as being another key criterion as this is vital to regulation being properly proportionate, clear and effective.

Does the current regulatory framework prevent, restrict or distort competition?

- 7.5. CILEx is keen that the current regulatory framework should be applied evenly and fairly to all relevant legal services providers operating in the legal services sector. Although there has been much progress in relation to levelling the playing field so all lawyers have access to delivering the legal services they are qualified, competent and authorised to offer, there remain some anomalies that, for example, continue to preclude CILEx lawyers from doing so. This is to the detriment of consumers, reducing client choice and precluding access to some value-for-money services that may go some way to helping meet the perceived level of unmet legal need. These include the ability to certify copies of lasting power of attorney, the applicability of the general qualification, the applicability of 'officer of the court' status, as well as several processes and institutions that require membership of quality marks established by other professional bodies unaware that these can exclude Chartered Legal Executives or impose barriers to their involvement. Largely these are relics that CILEx is working to address, but they are in effect legislative or regulatory barriers that prevent, restrict or distort competition.
- 7.6. CILEx supports initiatives to promote or introduce innovation and competition into the market. However, Where those initiatives result in reconsideration of or amendment to the current regulatory framework, CILEx is keen that this should not be at the expense of reducing consumer protection.
- 7.7. In relation to this, CILEx is concerned that parts of the interim report seeks to play down the differences between the risks to consumers using unregulated providers, as opposed to using regulated providers. The report states that the CMA has 'not found consumers are exposed to material risk as a result of a lack of knowledge or understanding of differences between regulated and unregulated providers'; there is a real risk that this view undermines the value of the client protection afforded by the regulatory framework.

- 7.8. The CMA study is limited in scope both in relation to the consumers it considers and the areas of law that it focuses on as case studies. It may be the case that some areas of law have a lesser 'material risk' (threat of harm, distress, or significant financial loss) but this cannot be said for all, or even most, areas of law and this view should not suggest or downplay the consumer protections of the regulatory regime across the market. As the report itself highlights, risks to consumers are also exacerbated by the asymmetry of information between consumer and supplier.
- 7.9. CILEx can envisage a future in which unregulated providers are able to go a considerable way to solving the perceived problem on unmet legal need but would also urge caution at drawing any conclusions from this report or associated research that this is in any way a panacea. Such a view would be too simplistic; it is true that better targeted and risk-based regulation could mean that only those areas of work where there is greatest risk to consumers are regulated thus releasing providers of other services from the burden of regulation. This could potentially enable greater variety and choice for consumers to meet their legal needs but this would likely have to be supported through some other complementary framework of assurance so consumers can do so with confidence.
- 7.10. That might be through a review of how redress mechanisms could be extended to services provided by unregulated providers. Again, this would have to be considered thoroughly to prevent the creation of a risky half-way house wrongly reinforcing assumptions in consumers' minds that the service providers they are using are all regulated. If certain legal services are assumed in the minds of consumers to be regulated, carry sufficient enough risk to contemplate their delivery going wrong, warranting consideration of redress mechanisms, then they may just require regulating; on the other hand it may be possible through proper consideration to develop that complementary framework which gives consumers confidence and assurance but does not deploy the full burden of regulation. CILEx has been developing its thinking in this area given the unique position of its members in the market and would be pleased to discuss this further with CMA.
- 7.11. CILEx and CILEx Regulation recognise the need for appropriate regulation, and we effectively provide a voluntary regulation model that guarantees

appropriate consumer protections. Such voluntary regulation also promotes competition (providing a market differentiator for those practitioners who choose to adopt it) and great consumer choice and confidence.

Would the potential changes to the regulatory framework we have identified promote competition?

- 7.12. CILEx supports the need for regulation to be proportionate and risk-based. In fact, CILEx Regulation already delivers risk based entity regulation by:
- Focusing on how a business is run and is therefore able to deliver the necessary outcomes to protect the consumer.
 - Looking for proportionate processes and procedures to be in place to manage the risks a firm may encounter.
 - Looking to understand the business behind the firm, so that real risk can be identified and managed.
 - Providing a structure to help CILEx members start up their new firms from a solid foundation, knowing they have considered all the risks in starting a new legal business.
- 7.13. Done properly, the work to reduce the regulatory burden on regulated providers to those areas only justified by consumer protection risk is sensible and could promote competition by enabling them to better compete with unregulated providers who are unencumbered by any similar burden in providing their services. Whilst CILEx fully supports the reduction or removal of unnecessary regulation, we urge caution in relation to any temptation to assume that simply stripping out regulation promotes competition. As referred to above, it may be that some services currently provided by unregulated providers actually require a degree of regulation they currently do not have in order for consumers to be properly protected.
- 7.14. As the report itself also acknowledges, although that will also mean moving more towards outcomes-focused regulation, there will be circumstances where consumer protection is best maintained by specific rules, clearly spelling out the absolute lines that should not be crossed by the regulated providers. Those circumstances are likely to be required in those areas where there is the potential for consumers to suffer the greatest detriment eg in

relation to professional indemnity insurance requirements for practitioners, having properly constituted Compensation Fund arrangements and around the management of client money.

Is a further review of the regulatory framework justified on the basis of competition concerns?

- 7.15. CILEx supports a proper review of the regulatory framework but is less keen on disjointed reform. The framework itself is complex with many interdependencies and no one element can be tackled without the risk of another part of the system being adversely affected. This was in part why the original review of the system by Sir David Clementi in 2004 took the form it did.
- 7.16. This principle also extends to review and potential changes to the system just through the prism of 'competition'. Competition is of course of vital importance, to consumers, practitioners and UK PLC. But legal services, as with the Regulatory Objectives of the Legal Services Act themselves, do not just have commercial and competition aspects; they are also concerned with encouraging an independent and diverse legal profession, supporting the rule of law and improving access to justice. These aspects are just as important in protecting the interests of consumers as promoting competition, so any further review of the regulatory framework should not be conducted in a narrowly focused way that neglects these aspects or they risk being undermined.

8. Summary of recommendations

- 8.1. The final report would significantly benefit from considering those who make distress purchases of legal services as a case study. This could be in family law, immigration and welfare benefits, for example.
- 8.2. The final report should aim to provide a more balanced picture of legal service providers, and not overly focus on practitioners with the largest market share. It should also assess and provide greater detail on the potential arising from reforms that enabled Chartered Legal Executives to compete on an equal footing with solicitors.
- 8.3. If measures designed to improve price and service transparency are to be mandated, they should be outcomes focused and not put start-ups and market entrants at a significant disadvantage to established providers.
- 8.4. Potential remedies identified in the interim report should form a part of the guidance issued by frontline regulators, and not become prescriptive rules.
- 8.5. DCTs and intermediaries should ensure they operate appropriately to reflect the changing nature of legal service delivery, and provide details on the full range of legal service providers.
- 8.6. Legal Choices should be promoted as the central information hub for legal services, with materials designed to ensure a consumer is clear on what they should expect from a provider, and what consumer protections are in place in the event of poor service or malpractice. Sources of information, such as Citizens Advice Bureaux, Which?, and other IAG providers should be supported to refer individuals to the Legal Choices website
- 8.7. Any reforms to client care communications should be evenly applied and neither disproportionately or negatively affect any one type of legal service provider over another, nor be so disproportionate as to become a barrier to entry to new entrants to the market.
- 8.8. Protection of the title of lawyer is worth exploring on grounds that it carries strong connotations for consumers that those operating with the title are regulated.

- 8.9. Changes to LeO/complaints handling should be conducted incrementally; making gradual improvements to the system allowing both the LSB and LeO to investigate how best those improvements could be made.
- 8.10. The use of ADR in legal services is a nuanced picture and would be better considered as part of a stand-alone review.
- 8.11. 'Consumer protection' should be the first criterion for assessing the impact of possible regulatory changes, as no changes should be made to stimulate competition if there is any risk that this might be at the expense of the consumer.
- 8.11.1. Similarly, CILEx believes that the 'Wider impact on society' and 'Practicalities' criteria should be prioritised alongside consumer protection. Making a proper assessment of whether or not a regulatory change promotes access to justice and ensures an effective functioning legal system may be challenging but is crucial, in public interest and should not be lost amongst other competitive or commercial priorities. It is also vital to ensure regulation is proportionate, clear and effective.
- 8.12. CILEx has been developing its thinking in the area of the development of the regulatory framework given the unique position of its members in the market, and would be pleased to discuss this further with CMA.
- 8.13. CILEx supports a proper review of the regulatory framework, but not disjointed reform. The framework itself is complex with many interdependencies and no one element can be tackled without the risk of another part of the system being adversely affected. Aspects such as encouraging an independent and diverse legal profession, supporting the rule of law and improving access to justice, are just as important in protecting the interests of consumers as promoting competition, so any further review of the regulatory framework should not be conducted in a narrowly focused way that neglects these aspects or they risk being undermined.