

Response to the CMA Review of the Legal Services Market Study in England and Wales

About us

STEP is the worldwide professional association for those advising families across generations. We help people understand the issues families face in this area and promote best practice, professional integrity and education to our members.

Today we have over 20,000 members across 95 countries, with over 7,000 members in the UK. Our membership is drawn from a range of professions, including lawyers, accountants and other specialists. Our members help families plan for their futures: from drafting a will or advising family businesses, to helping international families and protecting vulnerable family members.

We take a leading role in explaining our members' views and expertise to governments, tax authorities, regulators and the public. We work with governments and regulatory authorities to examine the likely impact of any proposed changes, providing technical advice and support and responding to consultations.

STEP welcomes the opportunity to submit comments on this CMA Call for Inputs as part of your assessment of the implementation and impact of the CMA's market study recommendations and thank you for the opportunity to be able to discuss these issues directly with you.

If you have any questions relating to our response please contact Sarah Manuel, Professional Standards Manager at standards@step.org or call +44 (0) 3752 3762.

Questions regarding information remedies and supply-side developments

Transparency of Fees

Since the report was launched in 2016, STEP has monitored developments within the legal sector closely.

There are a number of challenges to the successful increase in transparency of fees within the legal sector. In the case of will writing, it is difficult to address the complexity of issues arising from the concept of a standard fee on a website. Whilst most firms will be able to indicate the hourly rates of their fee earners, this gives little real meaning to the scope of the work to be carried and therefore the full cost of the work which may be required. This is particularly so for those who have complex families or require tax advice as part of the process. Many individuals may not even have realised that they require such advice. Hourly rates therefore have the potential to be misleading in themselves. We accept that some services will lend themselves to fixed fees more easily than others, however even within the provision of most services there will be outliers.

In the case of will writing, fixed fees have been used by some firms as the equivalent of a 'loss leader' for clients, in order to be retained for other types of transactions. For the most part, therefore, it is difficult to state up front the full cost of a will until after the first consultation (which may in some firms be free).

STEP has seen an increase in the provision of online wills and 'standard' template wills being provided to clients where the upfront cost is clearly displayed. Indeed many people would consider that they only require a simple will and these can often appear to be reasonably priced, (c. £50) or indeed cheap (c. £9.99) but these should be used with caution. The consequences of failing to follow or understand pro forma documents can be serious and lead to disputes and often litigation.

We have seen Wills which fall within these categories which we do not consider to be fit for purpose. We have seen Wills with hidden fees within the online terms and conditions, whereby the consumer will appoint a professional executor unnecessarily and in turn, the executor has the authority to authorise third party agencies to administer the estate. This can be used in small estates of up to 10k, where once these professional fees calculated on this basis have been discharged the net estate for distribution is reduced significantly.

In the case of wills any deficiencies often remain unknown until after the testator has passed away. We have also seen the difficulties which can arise from a poorly drafted and relatively cheap wills which may appear good value in comparison to a professionally prepared Will, however after a contentious court case has accumulated legal fees, time and ill will, the properly prepared will would be considered value for money in comparison.

The use of pro forma wills exclude the provision of personal consultation and so does not enable a full examination of someone's personal situation – whether personal or financial - in order to provide a tailored product (are they a blended family, what is the full scope of their assets etc.?). The complexity of an individual's circumstances will determine the number of hours which will be required to prepare and then finesse an appropriate solution. In essence, in the scope of will planning Clients are purchasing a service rather than simply a product. The concerns we have seen range across both the regulated and unregulated sector.

Information to the consumer

As we raised directly we hold the view that education of consumers is key. It is vital that consumers know how to navigate the legal services market. They need information on who can provide what service, what are the quality indicators to look out for, what are the available redress mechanisms for each type of provider, what are the core difference between providers of the same legal service. An unfiltered fee quotation is in itself in reality of little help.

STEP is on the advisory panel for the Legal Choices website and has contributed commentary on Will writing. The main deficiency with the Legal Choices website however is its relatively low profile even amongst the providers of legal services. Knowing where to turn for initial signposting information can often be the first challenge and only being available as an online resource does not assist with reaching the 7.5% of adults who have never used the internet (according to the Office of National Statistics Internet Users report 2019).

Providing access to information is key to improving consumer awareness and there are a number of existing information providers which can be explored to disseminate information, for example, Libraries, Community Hubs, Citizens Advice Bureau, Schools, Local councils. There are also a number of free will writing providers out there linked with charities including Age UK who can assist those unable to pay the higher end fees where quality of service will still be provided.

Impact of ABS'

In the experience of our members there is insufficient evidence available to demonstrate whether ABSs are adding value to the market.

Concern has been raised as to whether ABS's do benefit competition in the market place. Once a client has instructed an ABS there is less incentive from them to price competitively and complacency may set in with regards to providing a good level of service provision. In our view, advice from a range of firms will provide the necessary competition and quality standards.

The Trusts and Estates sector relies on specialist expertise from across a range of disciplines to ensure that clients benefit from expert tailored advice. An increase in regulations across jurisdictions has increased the complexity of the legal service required as there is an increased need for collaboration across professions. This will ultimately improve quality in the provision of services.

Questions regarding redress and regulation

As noted in our submission to Professor Mayson's Interim Review of Legal Services Regulation (copy provided) the existing regulatory landscape is complex making it difficult for consumers to navigate and identify appropriate service providers, quality indicators and how and who to complain too.

Whilst increasing the redress options to the unregulated, presumably through the remit of the Legal Ombudsman to ensure consistency in the way matters are dealt with, can only be perceived as in the interests of both the consumer and the sector as a whole. It is important however to ensure that any financial burden does not fall solely on the existing regulated sector. What we advocate is the proper regulation of will writing to ensure that standards are maintained and that consumers are not misled by unscrupulous operators who tend to be

more mass-market driven. The lack of regulation in this area of the provision of legal services we see as a gap that quickly needs to be addressed.

As indicated by both Professor Mayson and the Legal Services Board, the adoption of a voluntary register for the unregulated sector could be developed. Healthcare already has a successful quality assurance framework in place to accredit the unregulated healthcare providers through the accreditation of their professional bodies. This is robust and could be reviewed as a potential solution to extending the scope of regulation without a full scale upheaval of the legal services sector at this time.