Working Party No. 2 on Competition and Regulation

DISRUPTIVE INNOVATIONS IN LEGAL SERVICES

--United Kingdom--

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More documents related to this discussion can be found at www.oecd.org/daf/competition/disruptive-innovations-in-legal-services.htm

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This document and any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.
The CMA is currently undertaking a market study into the provision of legal services in England and Wales. This paper focuses on those areas of the legal services sector within the scope of that market study. It does not pre-empt or represent any interim or final findings resulting from that study.

1. **2016 legal services market study**

   1. In January 2016, the CMA launched a market study into legal services in England and Wales to see if they are working well for consumers and small businesses. The market study is ongoing. Interim findings will be published in July 2016 with a final report due to be published by January 2017.

   2. The scope of our market study encompasses ‘legal services’ in a broad sense. We are considering services that are reserved, regulated or unregulated across a broad range of different legal areas. Criminal legal services have been excluded from the scope of our market study. We are also carrying out three case studies. These will contain a more detailed examination of issues in commercial law services, employment law services and will writing and probate services.

   3. Our market study will focus on the experiences of individuals or small businesses accessing legal services. Law firms which do not supply legal services to individuals and small businesses (for example, because they only handle complex or high-value corporate transactions) are therefore not generally considered within the scope of our market study.

   4. Within the UK there are three separate legal jurisdictions – England and Wales, Scotland and Northern Ireland – each of which has its own legal framework. In light of both the differences in the regulatory frameworks and the timings of regulatory reform in Scotland and Northern Ireland, this market study is limited to the supply of legal services in England and Wales.

2. **Legal services in the UK**

   5. The framework for the sector-specific regulation of legal services is set out in the Legal Services Act 2007 (LSA), which includes the following key elements:

   - An oversight regulator, the Legal Services Board (LSB), which is appointed by and accountable to government. Its main function is to oversee the performance of the eight approved regulators that together regulate all lawyers able to provide one or more of the reserved activities (see below). The law required the approved regulators (such as the Law Society) to establish functionally separate regulatory arms (such as the Solicitors Regulation Authority (SRA) as established by the Law Society).

1. https://www.gov.uk/cma-cases/legal-services-market-study
2. In particular, businesses up to ten employees.
3. There are an additional two approved regulators that regulate lawyers in Scotland and fall outside the scope of this study. A complete list of ‘approved regulators’ can be found on the LSB website.
Eight regulatory objectives including those of promoting competition and protecting and promoting the interests of consumers which the LSB and the approved regulators are under a duty to promote in discharging their functions.4

An independent body, the Legal Ombudsman, for handling complaints about ‘regulated’ legal service providers from consumers.

Six ‘reserved activities’: (i) the exercise of a right of audience; (ii) the conduct of litigation; (iii) reserved instrument activities (undertaken when conveyancing property); (iv) probate activities; (v) notarial activities; and (vi) the administration of oaths. These can only be provided by ‘authorised persons’ who are authorised to do so by their relevant approved regulator. There are also certain regulated services the providers of which are subject to sector-specific legislation other than the LSA. Regulated services include the provision of legal services in the areas of immigration, claims management and insolvency.

To become authorised, an individual must obtain the relevant regulated title such as ‘solicitor’ or ‘barrister’. The requirements to obtain a regulated titled are designed to ensure minimum quality standards for reserved activities and include provisions relating to training, insurance, adherence to codes of conduct and access to the Legal Ombudsman.

6. The scope in practice of the activities reserved to regulated providers can be narrowly limited to specific elements of a legal service. Unregulated providers are to some extent able to provide associated legal services while allowing just the reserved element to be carried out by a regulated provider or the client itself. For example, while the conduct of litigation is a reserved activity, individuals can carry it out themselves with unregulated legal professionals offering advice and assistance. This means there is relatively wide scope for unregulated providers to provide legal services. It also means that much of the regulation of authorised individuals is as a result of their title rather than the particular activity they are engaged in.

7. Three other, relatively recent, developments in the regulation of legal services that are relevant to understanding the scope for innovation in legal service provision in England & Wales are as follows:

- Alternative business structures (ABSs). These are structures which permit non-lawyers to act in management roles and take financial interests in law firms. The LSA gave the LSB powers to authorise the approved regulators to issue licences for the operation of an ABS and established certain minimum requirements for applicants of such licences.

- The LSA also allowed more professions the right to carry out reserved activities. As well as solicitors and barristers, those entitled to carry out reserved activities now include legal executives, licensed conveyancers and chartered accountants. The range of reserved activities they can carry out varies. Overall this has the potential to increase competition for those services. However, the number of these professionals carrying out legal activities is relatively small.

4 The other six objectives are: (i) protecting and promoting the public interest; (ii) supporting the constitutional principle of the rule of law; (iii) improving access to justice; (iv) encouraging an independent, strong, diverse and effective legal profession; (v) increasing public understanding of citizens legal rights and duties; and (vi) promoting and maintaining adherence to the professional principles of independence and integrity; proper standards of work; observing the best interests of the client and the duty to the court; and maintaining client confidentiality.
The introduction of barristers taking instructions on a ‘direct access’ basis. Public access enables barristers to take instructions directly from a client rather than via a professional client, usually a solicitor, on behalf of a lay client. In order to do this, a barrister must complete additional training and be registered with the BSB to accept public access work. They must also comply with additional rules, which specify in more detail the information that must be provided to clients and require the barrister to be satisfied that the client and/or case is suitable for public access (and refuse the case if, for example, it would be in the client’s interests to instruct a solicitor). At present, around 5,300 self-employed barristers are entitled to do public access work. There is also licensed access for certain listed professions to instruct any member of the Bar in their area of expertise.

8. The LSA defines a number of roles for the CMA including:

- investigating if it believes the regulatory arrangements of any approved regulator to be anti-competitive. The LSB is required to respond to any such report.
- advising on applications from regulators to become ABS licensing authorities;
- advising on the recognition of new approved regulators; and
- advising on changes to the list of reserved activities.

9. The CMA was given these roles to prevent anti-competitive practices in the market and help the LSB meet its objective for competition in the sector. While the CMA’s powers are not frequently used, they signal the importance put on ensuring that regulations in legal services do not have anti-competitive impacts.

10. The statement of scope that the CMA published on launch of the market study has more details on the regulatory regime and recent developments in the sector that have been of particular interest to the CMA. The statement of scope also explains in more detail the three themes that the CMA is examining in its market study (which are briefly outlined below).

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5 From the Bar Standards Board response to market study.
7 Section 57
8 Part 5 and Schedule 10 Part 1 Paragraph 3 (2)
9 An example of this is available here: http://www.legalservicesboard.org.uk/Projects/statutory_decision_making/pdf/2015/20151022_BSB_LA_Application_150721_CMA_Advice.PDF
10 Schedule 4 Part 2 paragraph 5 (2)
11 Schedule 6
13 https://assets.digital.cabinet-office.gov.uk/media/56962803e5274a117500000f/Legal_services_market_study_statement_of_scope.pdf
3. Themes and issues under consideration

11. The CMA is examining three themes in its market study:

- **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.

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

- **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.

12. These themes assess features that have the potential to act as barriers to innovation in the legal services sector (barriers to and drivers of innovation are discussed below). If consumers are unable to drive effective competition through making informed purchasing decisions, providers of legal services may not have strong incentives to innovate. Innovation may also be affected by regulations if they go beyond what is necessary to protect consumers and, as a consequence, restrict the ability of incumbents or new entrants to innovate in the market.

4. Innovations in the legal sector

13. We have seen a range of innovations taking place in the legal services sector. However, the uptake of these innovations by legal service providers and consumers appears limited. The discussion below is focussed on those areas of law relevant for individuals or small businesses as this matches the scope of our market study.

14. In 2009, Nesta, an innovation charity, conducted a survey to examine the strength of innovation activity in nine sectors of the UK economy.\(^\text{14}\) The survey found that there were significant gaps between innovation practice and performance in legal services and other UK business services sectors in 2009.\(^\text{15}\) A later larger scale survey jointly commissioned by the LSB and SRA and carried out by the Enterprise Research Centre (ERC) in 2015 suggests that since then there has been stability in the sector, rather than significant change.\(^\text{16}\) Similarly a recent report on the legal service market found that “the LSA has had a gradual rather than a “big bang” impact on the sector”.\(^\text{17}\) Some stakeholders believe that further change is coming; the Law Society has reported that “it seems inevitable that solicitors and lawyers face a future of change” and “innovation in services and service delivery will become a key differentiating factor”.\(^\text{18}\)

15. Among different types of legal service providers, ERC’s report found that unregulated providers were more likely to report introducing a new or improved service in the previous three years (36% versus an average of 28.4%) and had the highest share of their revenue from innovative services (10.3% versus an

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14 Nesta (2009), Measuring sectoral innovation capability in nine areas of the UK economy
15 The conclusion reached in Enterprise Research Centre (2015), Innovation in legal services
16 Enterprise Research Centre (2015), Innovation in legal services – jointly commissioned by SRA and LSB
18 The Law Society (2016), The Future of Legal Services
average of 6.3%). They also found that all other things being equal, ABS solicitors are 13-15% more likely to introduce new legal services (ABSs are further discussed below).  

16. Levels of innovation also appear to be affected by the nature of the legal service with less complex, more commoditised, higher volume and more competitive areas of law appearing to be more amenable to innovation. This is consistent with the early findings of our market study. In addition, the Law Society’s latest Future of Legal Services report states that “the impact of technology is being felt where firms largely service mass or process-driven needs rather than specialist cases.” We also have evidence to suggest that innovation may be more prevalent in larger law firms serving corporate clients which are outside the scope of our market study.

17. One innovation that has become commonplace is the offering of fixed fees. Fixed fees now predominate for less complex matters such as conveyancing (around 80% fixed pricing), wills (85-92% fixed pricing depending on complexity) and uncontested divorces (65-74% fixed pricing depending on whether petitioner or respondent). This could be an important innovation in helping consumers to make informed purchasing decisions because fixed fees give more certainty over the final cost of the service and make it easier to compare providers.

18. Below we look at innovations across the four broad categories discussed in the OECD secretariat background note as well as organisational innovations. Our focus is on those areas of legal services covered by our market study.

**Online service delivery**

19. Already common in other areas, online delivery of services is predicted to become more widespread within legal services. Cost appears to be a key reason to use online services, however consumers also cite speed and convenience. Online services can range from the provision of information about legal problems to having a provider complete and file one’s divorce papers, for example. In a survey of small and medium sized firms, LexisNexis found half have implemented or are planning to implement the use of technology for client relationship management and 78% have carried out or are planning to carry out website development. Currently just a small, albeit growing, number of consumers use online only organisations, 5% in 2015 up from 2% in 2014. A greater number of consumers, 24% in 2015, report having their legal service mainly delivered online, including by email.

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19 Enterprise Research Centre (2015), Innovation in legal services – jointly commissioned by SRA and LSB. This research standardised for a range of factors that may impact firms’ likelihood of choosing to become ABSs, such as firm size, age and area of law. There remains the possibility that that some unobserved characteristic of firms, such as an open culture, is making them both more innovative and more likely to become ABSs.

20 The Law Society (2016), The Future of Legal Services

21 OMB Research (2016), Prices of Individual Consumer Legal Services – prepared for LSB


25 LSCP, 2015 Tracker Survey

26 LSCP, 2015 Tracker Survey
20. One area where managed online service provision is available in the UK is divorce. One firm, onlinedivorce.co.uk, has assisted with over 200,000 divorces and considers that it is the largest filer of divorce petitions in the UK. Research commissioned by the LSB and Legal Services Consumer Panel (LSCP) into the consumer experience of online divorces found that there appears to be a high degree of self-selection with customers who pursue online divorces being significantly more likely to be involved in amicable divorces which on average involve smaller estates. To some extent this suggests that people choose online services in simpler cases where online provision is more likely to be appropriate, because more detailed legal advice is unlikely to be required. Online divorces were also found to be significantly cheaper and quicker than divorces using face to face providers, although this is likely to be at least partially a reflection of the fact that they typically involve a higher number of amicable divorces.

21. There are a large number companies selling legal documents online in the UK, including LegalZoom, Rocketlawyer and Mylawyer. Documents are provided either at a fixed price or as part of a subscription service, including as part of a wider offering such as that from the Federation of Small Businesses. They can range from simple templates intended to be printed off and signed to more interactive templates using document automation (discussed below). A relatively common area of use has been for writing wills, however solicitors have expressed concerns that these self-completion wills are of lower quality or may be used in complex situations where getting legal advice may be more suitable. Such concerns are supported by an assessment of the quality of wills which found that a considerably higher proportion of self-completion wills failed an assessment of quality compared to those completed by a specialist will writer or solicitor.

22. Free information is provided online through a variety of websites. Information on legal processes and options are provided by government websites, such as gov.uk, and through free guides provided by legal providers, such as the range from Slater & Gordon. Consumers with specific queries can use online forums, such as LegalBEAGLES, or use free “ask a solicitor” services provided through specialist websites or as add-ons to other websites. Although often free, some legal providers offer fixed price advice by email services.

**Ranking and review information**

23. Unlike in some other sectors, comparison sites are not readily available in legal services. Of the UK’s large price comparison websites, only MoneySupermarket operates in the legal services sector and even then only for conveyancing. Others have decided not to operate in the legal services sector in part because of the one-off nature of most transactions and the presence of intermediaries in the high volume legal services areas (for example mortgage brokers in conveyancing). It can also be difficult to sign up a sufficient number of legal service providers willing and able to provide price information.

24. While there are some comparison websites for legal services, they are not widely used. A survey in 2015 found that just 1% of consumers purchasing legal services used a comparison website. This is despite past research showing that 42% of consumers would like access to comparison websites when purchasing a legal service. A review by the LSCP in 2012 found comparison websites have the potential

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28 These three were referenced in the OECD secretariat background note
29 IFF (2012), Understanding the consumer experience of will-writing services – prepared for LSB, LSCP, Office of Fair Trading (OFT) and SRA
30 LSCP, 2015 Tracker Survey
31 LSB, 2009 Omnibus survey
to benefit consumers by empowering them to drive competition between providers on price, quality and service features. However, they also found some problems such as consumers contacting providers through the website and receiving no response to their inquiries and a lack of transparency around market coverage. As a result they introduced good practice standards for comparison websites in the legal sector against which firms could self-assess.

25. A number of websites offer directories of legal services providers. The Law Society’s “Find a Solicitor” aims to list all regulated solicitors’ firms and individual solicitors and is popular with consumers averaging over half a million visits per month. However, there is not much potential for consumers to use this to compare options as information is limited to basic details and the different areas of law covered. Others, such as Contact Law, email the details of a solicitor to the consumer but do not assist comparison between providers.

26. Other listings services do have comparison features such as reviews and ratings, for example legallybetter.co.uk and ReviewSolicitors. However, the low levels of use mean these comparison tools are less useful than they could be. Figures given by another website, solicitor.info, show it has just under 10,000 reviews on its site, fewer than the number of solicitors firms in England and Wales.

27. Other websites allow consumers to enter their details and to receive instant quotes from providers. This is most common in conveyancing with MoneySupermarket, reallymoving.com, Homebuyer Conveyancing and Compare Conveyancers all operating in the sector. As well as offering fixed price quotes, consumers can also see a breakdown of charges allowing them to distinguish between different components of the cost, for example between land registry fees and the legal service provided.

The unbundling of services

28. Unbundling is where a package of legal services is broken down into parts with some undertaken by the legal service provider and others by the consumer. The main advantage for consumers is the reduced cost. For some consumers, unbundling allows them to access legal advice when otherwise they would have been unable to do so. As well as reduced cost, some consumers see value in having direct control over their case including the ability to speed up the process if they believe they may struggle to get a busy solicitor to prioritise their case. In 2015, 19% of consumers reported agreeing that their legal service provider would carry out some of the specific tasks on their case and the consumer would do the others. 28% of firms surveyed by the Law Society reported providing unbundled services.

29. Unbundling takes a number of forms and is available across a wide range of areas of law. Pricing varies depending on the service and can be done on a pay as you go basis, where payment is made after each discrete service, billed on an hourly rate or based on fixed fees for particular agreed tasks. The Law

32 LSCP (2012) Comparison Websites
33 LSCP (2013) Good practice standards for legal comparison websites
34 Law Society submission to market study
35 Ipsos MORI (2015), Qualitative research exploring experiences and perceptions of unbundled legal services
36 Ipsos MORI (2015), Qualitative research exploring experiences and perceptions of unbundled legal services
37 LSCP, 2015 Tracker Survey
38 Law Society, 2014 Omnibus Survey
Society’s practice note on unbundling\textsuperscript{39} sets out several different levels of unbundling which are illustrated below with examples from our market study case studies:

- Self-help packs such as those available for will writing and probate which are typically provided for a small cost or for free. Some have an interactive element that takes the consumer step by step through the process like those discussed above in online delivery;
- The provision of discrete advice, for example on appropriate next steps in a commercial dispute;
- Checking or drafting documents such as probate forms, wills and papers for employment tribunals;
- Advocacy may apply to any legal issue that ends up in court. Consumers may now directly instruct barristers meaning that this service can be unbundled from the provision of legal advice by solicitors to reduce the overall cost.

In addition to these examples drawn from our market study case studies, the Law Society highlights a range of areas where there is potential for unbundling to take place, including small personal injury claims, family law and immigration.

\textit{Automation}

As in other areas of innovation in legal services, there are a range of examples of innovation taking place through the introduction of automation but the broader impact is limited. A survey by the Law Society found that, in just 14\% of law firms, work undertaken by non-fee earning staff has been replaced with automated/IT based systems during the previous three years. Just 2\% had done so for work undertaken by qualified solicitors. LexisNexis’ survey of small and medium law firms found fewer than 10\% of firms used artificial intelligence.\textsuperscript{40} Around half of the firms they interviewed had practice, case and document management technology.

The Law Society’s latest Future of Legal Services report highlighted two examples of legal service providers teaming up with academics to explore the potential for automation in legal services.\textsuperscript{41} Riverview Law is working with the University of Liverpool to see how far Artificial intelligence can be used in a commercial law firm. Riverview has launched virtual assistants designed to enable lawyers to manage work flows more effectively. Hodge, Jones and Allen worked with academics from University College London (UCL) to create software that assesses the merits of personal injury cases. The result is a model that predicts the likely outcomes of personal injury cases and that is able to challenge the firm’s views about the cases they should be taking on.

Document automation software creates bespoke legal documents based on the customer’s relevant circumstances by replicating the question and answer session a solicitor would have with clients when drafting a legal document. An example of this is Rapidocs from Epoq, which also allows the user to see the document being built in real time. This type of software can be used to provide legal documents to clients directly or to support legal providers and increase their productivity.

\textsuperscript{39} \url{http://www.lawsociety.org.uk/support-services/advice/practice-notes/unbundling-civil-legal-services/}
\textsuperscript{40} LexisNexis, The Riddle of Perception. LexisNexis Bellwether Report: 2016
\textsuperscript{41} The Law Society (2016), The Future of Legal Services
Organisational innovation

34. A major potential organisational innovation is the use of ABSs (see paragraph six). In time this organisational innovation may give rise to more innovations in the provision of legal services to the extent that ABSs have features conducive to innovation, such as the ability to raise outside capital and greater involvement of non-solicitors in management. We note, however, that these features are already available to unregulated providers. While ABSs are allowed to carry out reserved activities, some of the activities are quite narrowly defined. As a result, some unregulated firms that could have become ABSs decided not to as they could continue to operate in their area of law without becoming an ABS and did not want to incur the regulatory cost of operating as an ABS.

35. It may still be too early to judge the impact of ABSs; the first ABSs were only licensed in 2011 and by 2015 there were almost 700 licensed ABSs. While a small number of these ABS are new entrants with different business models, the majority of these ABSs are pre-existing law firms that have wanted to extend ownership to specific non-lawyers.

36. Though the majority of ABSs so far have been pre-existing law firms, there are some interesting examples of ABSs adopting different business models and there has been a variety of other organisations and businesses that have become ABSs. These include local authority legal departments, such as Essex Legal Services Limited; academic institutions, such as the University of Law; Barristers’ Chambers; membership groups; insurance companies; and three of the four largest accountancy firms in the UK. There have also been new start-ups established by non-lawyers with minimal or no lawyer ownership, for instance Genus (previously Brilliant Law) was formed in 2013 by three successful entrepreneurs. However, others who were thought likely to take advantage of the opportunity have not. Thus, for example, despite the introduction of ABSs being dubbed “Tesco Law”, no supermarkets have adopted ABS status. A number of well-known brands including Co-op and The AA have entered the market as ABSs, although some of these have since left have left the market.

37. ABSs may be helping promote the development of other organisational innovations, such as the virtual practice. Keystone Law provides IT and central support along with office space, as required, to a network of lawyers, often working remotely, who are remunerated directly in accordance with their fees earned. Other firms are focusing on offering greater flexibility to clients, for example providing businesses with seconded in-house lawyers like The Legal Director and Axiom.

38. One innovation that was thought to have potential when ABSs were being considered is the multi-disciplinary practice (MDP) which brings together lawyers and other professionals. However, there are currently few examples of such practices, and they are often focused on high net worth individuals and niche services. Schillings was a law firm specialising in defamation which after becoming an ABS extended its expertise by adding cyber security and risk management professions. Red Square London offers legal and business services targeted at Russian individuals and businesses.

5. Potential barriers to innovation

39. The ERC report on innovation in legal services found a mixed picture on the effect of regulation and legislation on innovation. It was the most commonly cited barrier to innovation. However, as the report notes, its figures also suggest that 75-80% of respondents did not consider these to be a major constraint on innovation. In addition, changing regulation and legislation can be seen as a driver as well as a barrier to innovation. Indeed these were the top two drivers of innovation identified in the report with nearly twice as many organisations seeing changes in legislation related to the legal services they deliver as having a positive effect as opposed to a negative effect on innovation.
40. Other external factors identified in the ERC report included a perceived lack of market opportunities and conservative attitude of clients. Although these were cited by a relatively small number of respondents (15.3% and 5.2% respectively compared to 23.8% for regulatory factors and 20.9% for legislative factors), most participants in the ERC’s in-depth qualitative interviews\textsuperscript{46} noted that many people within the legal profession have (or at least have had until recently) a lack of incentive to change.

41. The report identified lack of finance and a lack of expertise in the business as important internal constraints on innovation. A conservative attitude within the profession was cited as a barrier by a relatively small number of legal organisations and has been raised during our market study by some stakeholders. In 2009, Nesta reported that law firms felt one of the main barriers to innovation was cultural factors and several firms suggested that conservatism was a major constraint on innovation in the sector.\textsuperscript{43} There is however evidence of more innovative firms within the sector and the Regulatory Policy Institute considered that while many firms fit the ‘traditional’ description, an increasing number do not.\textsuperscript{44} Similarly LexisNexis has identified a breed of entrepreneurial lawyer embracing the emerging opportunities in the market.\textsuperscript{45}

6. Concluding remarks

42. There are a range of innovations taking place in the legal services sector and we expect these to grow over time. However, evidence suggests that uptake of these innovations by legal service providers and consumers, particularly those legal service providers and consumers that fall within the scope of our market study, is currently limited. If the legal services market is not working as well as it might, and consumers are not able to make informed purchasing decisions, legal service providers may have less incentive to provide innovative services than would otherwise be the case.

\textsuperscript{42} ERC (2015), Innovation in legal services: annexes – jointly commissioned by SRA and LSB
\textsuperscript{43} Nesta (2009), Measuring sectoral innovation capability in nine areas of the UK economy
\textsuperscript{44} RPI (2013), Understanding barriers to entry, exit and changes to the structure of regulated legal firms
\textsuperscript{45} LexisNexis, Brave New World. LexisNexis Bellwether Report: 2014