

Sent by email only to Michelle.Jones@icaew.com



30 September 2018

Dear Michelle

ICAEW Consultation – CMA Action Plan.

The Legal Services Consumer Panel (Panel) welcomes the opportunity to respond to ICAEW's consultation on its transparency measures.

In its assessment of the legal services market, the Competition and Markets Authority (CMA) found that competition is not working well for consumers of legal services¹. To address the deficiencies it found, the CMA proposed a number of information remedies designed to empower consumers to shop around and make informed decisions. The need for information on pricing and quality indicators were particularly highlighted.

The ICAEW now proposes to give effect to some of the remedies recommended by the CMA. The Panel has considered the ICAEW's plans and finds them insufficient. The proposals are out of step with comparable regulators, specifically those regulating probate services. It is equally concerning that these proposals do not give effect to the letter or spirit of the CMA's recommendations. The proposals are also out of touch with the reality and needs of consumers of probate services.

Evidence of the need

We know that the overall proportion of consumers who shop around for legal services remains low at 27%, and that this inhibits competition. We also know that consumers do not have easy access to the information they need to help them to shop around, as evidenced by the CMA's findings. Information on key choice factors such as price and quality are especially scarce. Further analysis of our annual tracker survey for 2018² shows that shopping around is even less likely amongst those who procure probate services, only 16% of whom shop around. This suggests that there is even more of a need for targeted action of the types we discuss below for regulators of probate services. It is also important to note that over the past two years, the most used legal services by consumers have been conveyancing (36%), will writing (31%) and probate (12%). This again bolsters the argument for ensuring that these sectors operate as efficiently as possible, and in consumers' interest. Our argument for targeted action in these areas is also supported by the fact that an overwhelming

¹ Legal Services Market Study, final report, Competition and Markets Authority, December 2016.

² Tracker Survey 2018, the Legal Services Consumer Panel.

majority of consumers use a regulated provider for will writing (92%) and probate services (87%).

Our annual tracker survey shows that the overall use of fixed-fee arrangements is at its highest level since tracking began in 2012. We also know that the use of fixed fee arrangements is highest for services related to will writing (68%) and power of attorney (65%). This shows that consumers will respond positively to predictability in price. The need for predictability reinforces the need for price transparency to facilitate consumer choice, and also to promote fair competition in the sector.

Against the backdrop of all the evidence noted above, it is therefore disappointing that ICAEW, the second largest regulator of probate providers in England and Wales, is proposing to rely on guidance in place of mandatory rules to address the chronic lack of information hindering effective competition. We do not believe that this approach aligns with the letter and spirit of the CMA's recommendation which calls on regulators to *'require providers to publish information on price, services, redress and regulatory status'*. Guidance has little legal or regulatory weight in comparison to rules. The widespread absence of price transparency, and the continuing handicap this poses to the demand side and competition, warrant robust regulatory intervention. Without direct intervention, providers will not be incentivised to take action.

We note that the ICAEW takes comfort in the endorsement of its approach by the Legal Services Board. This is not an endorsement we can support for the reasons outlined above. We would also like to draw attention to the LSB's own research on pricing information. The LSB found that the majority of law firms who responded to its survey, by their own admission, do not plan to display prices in the future. In will writing, trust and probate, 21% of firms display their prices, but 59% say they have no plan to publish in the future. These findings suggest that there is an entrenched culture of unwillingness to change, which cannot be addressed through guidance. The ICAEW says that it will review its voluntary approach after twelve months, and that if it finds insufficient voluntary compliance it will then give 'serious consideration' to making these requirements compulsory. It is difficult to be reassured by 'serious consideration' of action, instead of a declaration of action, should this approach fail.

Quality and service information

The consultation document has not addressed the need for quality measures sufficiently. There is no real information around developing or publishing quality proxies, even though the CMA and the Panel both highlighted the need for quality information to sit alongside pricing information.

The CMA recommended that regulators should ask firms to publish a description of the services they provide on their websites. This information should include details of the different staff who deliver services, a timeline showing when key stages of the work will be completed, and any factors that could affect these requirements. The CMA envisaged that this information would help consumers to assess and compare what different firms offer. The Panel is concerned that the ICAEW proposes to take

no clear regulatory action where service information is concerned. ICAEW says it may need to build on guidance without any substantial detail.

This approach is again out of step with other comparable legal services regulators who are also responding to the CMA's recommendations. For example, the SRA³ propose to set minimum standards on the following:

- a clear, brief description of the relevant services
- a brief description of any key stages of the services
- indicative timescales and any affecting factors, if possible
- Information about the different staff that deliver the services in the area. This should, as a minimum, include the experience and qualifications of the staff that carry out the work and those that supervise the work.

We would also like to note that the findings of the Client Care Letter research quoted by the ICAEW⁴ showed that consumers were looking for information around scope of the agreed work, associated fees, and likely timescales.

The CMA's findings and remedies were an indictment of regulation that was not working in consumers' interest. Regulators have an opportunity to redress the gap, especially when both good businesses and consumers are likely to be winners of improved transparency. The ICAEW's delay in doing this is disappointing to the Panel, and we hope you will reconsider on the basis of the arguments and evidence above.

Yours sincerely,



Sarah Chambers

Chair, Legal Services Consumer Panel

³ SRA's Looking to the Future: better information, more choice, September 2017

⁴ Client Care Letters Research, LSCP, 2016.