

John Gould

Russell-Cooke



Trust consumers to make their own choices

The Competition and Markets Authority said at the time of its 2016 market study that it would assess progress in implementing its recommendations after ‘several years’. That is what it is now doing in a focused three-month process (see *Gazette*, 9 September, tinyurl.com/yyh3kzf6). The review will have two aspects: whether price transparency in the legal sector has improved, with easier navigation of the market for consumers; and whether consumers of non-regulated legal services need stronger protections.

Although regulators have gamely attempted to implement rules requiring more website-based front-end transparency, they may well have produced a levelling up of prices. The tedious and wordy website information necessary to convey the complexity and variety of legal services, and hence their pricing, was always likely to be of more interest to competitors than all but the most fastidious of consumers.

In truth, the basis of the recommendations was misconceived. Even the most common legal services can be delivered in a variety of ways, according to the consumer's choice. As the ‘product’ is rarely standard, price transparency, without actual dialogue, is unlikely to be a secure basis for choice. In attempting to shoehorn services into centrally titled but infinitely variable product packages, for example, ‘a simple house purchase’ is very unlikely to offer very much assistance to a consumer.

A market operating well would give a competitive advantage to fixed prices specifically agreed and matched to the service required, not inevitably misleading published examples of hypothetical transactions. The regulator's construction of price transparency rules is, I am afraid, built on the CMA's own inadequate foundations. We are in an information age with unprecedented access to information; the days of menu prices posted on a blackboard outside your shop are long gone.

The second aspect of the review has much more potential, because it could actually improve the market for legal



services. There are many situations in which the need for legal advice is not met because highly and broadly trained regulated lawyers are mostly drawn to clients and cases in which the amount at stake or the client's wealth justifies the expense of their services. They design their cost base accordingly. Providers other than traditional professionals may be able to offer some services more cheaply

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because (for example) they offer a more standardised product; they dispense with generally trained professionals; they lever profit from large numbers of less well remunerated staff with more focused training; or they have a higher reliance on IT. What they lack at present is transparent quality assurance and the offer of redress.

Attempts to spread the long-established brands of solicitor and barrister to ‘alternative structures’, regulated in

common with those professionals, are misconceived. They actually reduce transparency on a key element of consumer choice, namely, what kind of provider do I want or need. Unregulated providers, offering wider access, may be unattractive to consumers for many services only because they lack some basic level of regulatory assurance.

So my message to the CMA would be to forget the idea of mandatory price transparency in advance of any discussion between client and lawyer. If more online information, including on pricing, wins clients, lawyers will continue to add to the enormous body of information they already provide. The review should concentrate on the overall scheme of regulation to let the market do its work. It is hardly news that conveyancing costs more in London than in Newcastle; the conclusion that this is simply because of an imperfect market sounds like confirmation bias to me.

Consumers can be trusted to make their own choices if they can establish the facts that matter to them. The current muddled regulatory system has increased complexity and made choice more difficult. There is, I think, a rare opportunity to actually improve the system to benefit everyone.

John Gould is senior partner at Russell-Cooke