

PE1724/F

Competition & Markets Authority submission of 8 October 2019

The Competition and Markets Authority (CMA) is an independent non-ministerial UK government department, and the UK's primary consumer and competition authority. We work to promote competition for the benefit of consumers, both within and outside the UK. Our aim is to make markets work well for consumers, businesses and the economy.

The Public Petitions Committee on 5 September asked for the CMA's views on petition 1724. The petition calls on the Scottish Parliament to urge the Scottish Government to carry out a review to ensure there are equal rights for all legal professionals in the legal system. It argues that the Scottish court system does not provide a level playing field for legal professionals, in particular for Commercial Attorneys. This is because of:

- the availability and accuracy of information made available to both courts and consumers on the role of Commercial Attorneys
- restrictions that hinder the work of Commercial Attorneys compared to other legal professions, and
- the lack of recognition by courts and other bodies of the role of Commercial Attorneys within the legal system

The petition concludes that due to unfair competition, solicitors hold a dominant position in the market.

Markets work best when businesses compete to deliver products and services. This encourages innovation and, as the petition refers to, increases consumer choice. Competition is enhanced when consumers are empowered to shop around through access to readily available and accurate information about products and services. In considering this issue, therefore, it would be important to look for substantive concerns and evidence to show a significant consumer or competition detriment.

This might include the lack of information for consumers on the role of Commercial Attorneys through the court's website or court forms; any impact on consumer choice from restrictions placed on Commercial Attorneys (the petition indicates that there are such restrictions); or the lack of a permanent practice scheme for Commercial Attorneys.

Where there are restrictions of the type mentioned in petition 1724, we believe it is in the public interest for there to be a transparent and open consultation on whether and how to address those restrictions.

It should also be noted that the CMA has a statutory duty to review certain types of application and provide advice to the Secretary of State or Scottish Ministers (as appropriate) 'as we think fit' regarding whether an application should be granted. In providing such advice, we have to consider whether anything in the application would have or would be likely to have the effect of restricting, distorting or preventing competition to any

significant extent. The CMA takes this responsibility seriously. In accordance with our statutory role we have delivered advice on Alternative Business Structures¹, solicitor-advocate training requirements² and on a revised scheme for Association of Commercial Attorneys members' rights to conduct litigation and extending their rights of audience in the Scottish courts³.

In January 2019 we responded to a request from The Lord President's Office for CMA advice in respect of the application by the Association of Commercial Attorneys (ACA) for approval of a revised scheme amending its members' rights to conduct litigation and extending their rights of audience in the Scottish courts. In this advice, we noted that we had no evidence to suggest that granting the extension would (or would be likely to) prevent, restrict or distort competition and that, provided that the Scottish Ministers were satisfied that the proposed extension in rights did not give rise to any consumer protection concerns, on balance we considered that it should improve competition in relation to construction law matters since it would enable members to compete more effectively in the sector and help create a level playing field with solicitors. We understand that the extended rights sought by the ACA were granted in their entirety in June 2019, and we welcome the decision.

In addition, however, the advice highlighted further steps that could be taken to reduce any remaining barriers faced by commercial attorneys, including steps to communicate more clearly the role played by commercial attorneys and to keep under review the requirement that ACA members cannot wear gowns to understand if it might have an impact on their ability to compete effectively with solicitors.

We hope the Committee finds the views above helpful in their consideration of petition 1724. If the Committee has any additional follow up queries we would be more than happy to discuss these further.