

Consultation: on information we propose to require our regulated firms to publish to deliver transparency information for consumers in the legal services market

Summary of responses and CILEx Regulation's response.

A. INTRODUCTION

1. We consulted on proposals to roll out transparency of price, service, redress and regulatory status, initially in conveyancing and will writing. Our consultation closed on 21 December 2017.
2. The following organisations provided written responses:
 - a) [CILEx](#),
 - b) [Legal Services Consumer Panel](#) (LSCP)
 - c) [Lawyer Checker](#) and
 - d) [Legal Ombudsman](#) (LeO) provided a single written response to all regulators and, in addition to addressing our proposals, addressed those by the SRA, BSB, CLC, IPReg and the Master of Faculties.
3. We received 141 on-line responses, mainly from individuals we regulate. A range of comments, broadly representing the collective response, is attached at Appendix 1.
4. During the consultation period, we:
 - engaged with CILEx who actively sought views from their conveyancing and private client specialist reference groups as well as other organisations operating in relevant parts of the market. Their response is a distillation of collective views and reports made to them;
 - engaged directly with 43% of our regulated firms for views (100% were approached);
 - attended an SRA-led roundtable with consumer organisations, to raise awareness and understand the impact of the proposals on the public;
 - worked collaboratively with the SRA and CLC in relation to development of quote generators and templates for conveyancing.
5. Following the consultation, we:
 - presented our proposals to authorised entities at an Entity event in January 2018; and



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- met with the SRA and CLC to share approaches and move forwards by sharing consumer testing and similar approaches to sector guidance to support transparency rules.
6. This report summarises the key points emerging from the responses together with our response.

B. SUMMARY OF CILEx REGULATION'S RESPONSE AND TIMESCALE

Response

7. Develop high level Rules governing transparency for consumers on price, service, and redress, with supporting guidance on possible templates with some key information (guidance not to be a regulatory arrangement);
8. Initially roll out these requirements to firms providing residential conveyancing and/or probate;
9. Require, through these Rules, that regulated firms display on their website, or make available at their premises, if no website available:
- a) full price, including what services are included in that price;
 - b) information about what services the firm offers;
 - c) professional indemnity insurance and compensation arrangements information;
 - d) information about the complaints procedure and the Legal Ombudsman;
 - e) digital smart logos, which will include website and verification of regulation by CILEx Regulation plus confirmation that professional indemnity insurance and compensation arrangements are available.

Timescale

10. We aim to introduce transparency requirement rules, with guidance, in January 2019.

C. CONSULTATION AND CILEx REGULATION'S RESPONSE

Rules and guidance

11. We asked whether firms would welcome a more prescriptive approach. 49% of individual respondents compared to 39% favoured less prescription. There was no preference among regulated firms. CILEx favoured a less prescriptive



approach. The LSCP commented that interventions may need to be prescriptive and that the needs of the consumer as well as the practitioner need to be considered.

12. Options considered for use of Rules and guidance as follows:

- a) High level Rules with supporting guidance on good practice and possible templates with some key information - the guidance would not to be a regulatory arrangement;
- b) Prescriptive Rules with less guidance - this would be restrictive on our firms and would require greater involvement and prescription in drafting sector specific layouts
- c) Area of practice specific Rules – this would require separate, new rules for each area of legal practice for which the transparency requirements are rolled out.

Factors considered:
We asked whether firms would welcome a more prescriptive approach. 49% of the individual respondents compared to 39% favour less prescription. There was no preference among regulated firms. CILEx favoured a less prescriptive approach. The LSCP commented that interventions may need to be prescriptive and that the needs of the consumer as well as the practitioner need to be considered.
Impact on proposals:
No change to outcomes focused approach which is consistent with the approach proposed by the other regulators.

13. Option decided for use of Rules and guidance:

- a) High level Rules with supporting guidance on good practice and possible templates with some key information - the guidance would not to be a regulatory arrangement.

Areas of legal practice

14. Our initial proposal was to apply transparency provisions to residential conveyancing and will writing. There is an indication that there is already good disclosure of information for will writing and indication from other regulators not to proceed at this time.

15. There was a steer from the LSCP to roll out transparency for immigration work at this stage. CILEx Regulation currently regulates two immigration firms. We understand that most of their work comes from third party referrals (including law centres and CABs). There are issues with disreputable providers and vulnerable



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clients in this area of legal practice. Before immigration work can be covered by the roll out of transparency provisions at this stage, we would need to develop our understanding of charging models, consumer profile/entry points and how/when price is commonly communicated to consumers. Research options to assist would be use of:

- external research groups;
- the Office of the Immigration Services Commissioner (OISC).

16. If we were to roll out to other areas of legal practice, we would need to make provision for hourly rates. This becomes more challenging in specifying templates or other models. This could be achieved through the adoption of a high-level approach on Rules and use of guidance, leaving it to firms’ discretion to address price provision.

17. **Options considered** for roll out to areas of legal practice are as follows:

- a) residential conveyancing and will writing (as per original proposal);
- b) residential conveyancing and probate;
- c) residential conveyancing and probate and immigration;
- d) all areas of legal practice.

Factors considered:

We asked whether conveyancing and wills should be the first areas of law to which transparency requirements should apply. 67% of individuals and 60% of firms said YES. CILEx highlighted the complexity of the conveyancing pricing structure citing a number of variables.

We also asked to which areas transparency requirements should next be applied to. The highest two responses from individuals were for family and all areas of legal practice with 21% and 17% respectively. 60% of firms said all areas.

The LSCP said lack of transparency spans all areas and cited immigration, asylum, family and housing as priorities. CILEx responded that service/expertise is as relevant as price to consumers as the level of complexity becomes apparent. Even if information is made available, it is the level of consumer understanding of that information that is important as well as that information being genuinely like for like for comparison purposes.

Impact on proposals:

Adjustment to original proposal to align with the other regulators to ensure consistency for consumers.



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18. **Option decided** for roll out to areas of legal practice:

- b) residential conveyancing and probate.

Description of services:

19. **Options considered** for roll out in relation to the provision of service information were as follows:

- a) mandatory Rules requiring provision of service information (supported by guidance on wording and or possible templates);
- b) guidance only recommending provision of service information.

Factors considered:
<p>We asked about the elements that should be included in a template for services and/or redress. A common theme from individuals is that a full list of services/key facts document should be provided with a breakdown of costs. Firms responded that they would look to regulators for guidance and consistency across the same.</p> <p>The LSCP gave a description for four key stages of service. CILEx cited the cost of compliance and potential burden/barrier on small firms and agreed an outcomes focused approach with guidance allowing for some presentational discretion would be best.</p>
Impact on proposals:
<p>No change to outcomes focused approach, the factors considered support option 1.</p>

20. **Option decided** for roll out in relation to the provision of service information:

- a) mandatory Rules requiring provision of service information (supported by guidance on wording and or possible templates).

Information on professional indemnity insurance/compensation arrangements

21. **Options considered** for roll out in relation to information on professional insurance indemnity/compensation arrangements:

- a) mandatory Rules requiring that firms display professional indemnity and compensation arrangements information on their website or at their premises if no website is available;
- b) guidance only that this information should be provided as in option a).



Factors considered:

We asked what information should be provided through a digital smart logo. 61% of individuals cited professional indemnity insurance, and 48% compensation arrangements. All firms cited professional indemnity insurance and 60% compensation arrangements. CILEx acknowledged this information is implicit but there are generally low levels of understanding about regulation. Therefore, any information should be clear and written in consumer-friendly language. The LSCP took the view that a proliferation of logos would add confusion.

Impact on proposals:

No change to outcomes focused approach, the factors considered support option a).

22. Option decided for roll out in relation to information on professional indemnity insurance/compensation arrangements:

- a) mandatory rules requiring that firms display professional indemnity insurance and compensation arrangements information on their website or at their premises if no website is available.

Smart logos:

23. Options considered for smart logos:

Consultation responses were mixed on the extent of information to be displayed. The options for the ‘clickable’ smart logo on a firm’s website are to take visitors to verification webpage, controlled by our supplier, which provides:

- a) website and verification of regulation by CILEx Regulation (the current proposal); or
- b) website and verification of regulation by CILEx Regulation plus confirmation that professional indemnity insurance and compensation arrangements are available for specific areas of practice.



Factors considered:

We asked what information should be provided through a digital smart logo. 61% of individuals said professional indemnity insurance, and 48% compensation arrangements. All firms said professional indemnity insurance and 60% compensation arrangements. CILEx acknowledged this information is implicit but there are generally low levels of understanding about regulation therefore any information should be clear and written in consumer-friendly language. The LSCP took the view that a proliferation of logos would add confusion. Consultation responses were mixed on the extent of information to be displayed.

Impact on proposals:

No change to outcomes focused approach, the factors considered support option b).

24. Option decided for smart logos:

- b) website and verification of regulation by CILEx Regulation plus confirmation that professional indemnity insurance and compensation arrangements are available for specific areas of legal practice.

Information about redress

25. Options considered for information about redress:

- a) mandatory requirement in Rules that information about the complaints procedure and the Legal Ombudsman is displayed on a firm’s website or at their premises if no website is available;
- b) guidance that this information should be provided.

Factors considered:

We asked whether firms would prefer to format redress information themselves. 74% of individuals and 40% of firms said YES. We also asked whether a template would be useful. 76% of individuals and 80% of firms said YES. CILEx cited the cost of compliance and potential burden/barrier on small firms and agreed an outcomes focused approach with guidance which allowed for some presentational discretion would be best. The LSCP said a standardised template would be better for comparison purposes and to maximise consumer engagement and suggested that we benchmark with other sectors.

Impact on proposals:

No change to outcomes focused approach, the factors considered support Option a).



26. **Option decided** for information about redress:

- a) mandatory requirement in Rules that information about the complaints procedure and the Legal Ombudsman is displayed on a firm's website or at their premises if no website is available.



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ON-LINE SURVEY RESPONSES

There were 141 responses comprised as follows:

Type of respondent	Percentage of all respondents
Individual regulated by CILEx Regulation	74.5%
Blank	12.1%
Employee of a firm regulated by CILEx Regulation	5.7%
Firm regulated by CRL	4.3%
Member of the public	2.8%
Consumer organisation	0.7%

In response to being asked if conveyancing and wills should be the first areas of law for transparency requirements.

66.7% agreed that they should. Conveyancing and wills were viewed as common reasons for engaging with the legal profession, so it makes sense to start with these. It was anticipated that transparency would eventually extend to all areas. Of those who disagreed, comments included concern was expressed that price would be promoted over quality and the importance of client and professional discussion prior to engagement. All areas should be subject to transparency because of its importance.

Should conveyancing and wills be the first areas of law?	Percentage of all respondents
Yes	66.7%
No	29.8%
Blank	3.5%

Of firms regulated by CILEx Regulation who responded, three agreed and two did not. Comments included: that it would be difficult to imagine other areas of law in which it would be easy to disclose this type of information; and that it would make sense that all firms practising in all areas of law should have to comply by a date set by regulators rather than implementing certain areas over a period.



The top suggestions of areas in which transparency should be rolled out in next, including by firms regulated by CILEx Regulation, were: family/mediation, and all areas of law because if this is going to be a requirement then all firms should have to comply. The top five areas of law suggested were:

Number of respondents	Area of law
24	Family/ Matrimonial (mediation)
20	All
8	Personal Injury
7	Civil litigation/ litigation
7	Wills, Probate, Powers of Attorney, estate and trusts
6	Criminal

The top suggestions of **challenges firms will face in publishing transparency information** were:

Number of respondents	Challenges for firms
31	Cost Competition/Confidentiality
30	Generic/non-specific information only versus bespoke/variable cases
18	Cost/ time of accurate, up-to-date information
12	Simple language/ clear information/ interpretation
10	Dissatisfied customers/disputes/social media comments/negative press
8	Undercutting including. by unregulated firms
6	Reduced quality/service levels as price reduces
6	Security/ copyright/data protection/GDPR/hacking
5	None/not difficult/needs to be done

Firms regulated by CILEx Regulation expressed similar views and additionally it was suggested that publishing prices would lead to less enquiries, but the reduced client contact will lead to lost opportunities to win business.



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The top opportunities publishing transparency information would provide to firms were seen as:

Number of respondents	Top opportunities for firms
35	Client trust/ reassurance/ clarity re: charging
16	Open market/ aware of competitor pricing
11	Attract clients
10	Publicity/ marketing

Concern was expressed about negative feedback, drop in prices, winning business on price over other aspects of service.

Firms regulated by CILEx Regulation commented on the challenge and the possible opportunity to differentiate and promote the firm and its high level of service. The legal services marketplace will provide greater choice for the consumer, many firms will have an improved position from being competitive.

The top items suggested for guidance for social media should include were: security/ scams/ fraud/ cybercrime / confidentiality/ data protection/ GDPR.

There were other suggestions about style and review dates and provision of a checklist.

Firms regulated by CILEx Regulation asked for minimum levels of required information, examples of how to comply and a disclaimer that costs would only be confirmed following a meeting with the client.

Challenges to firms in publishing price information included: competitors using the information to take business, loss of business, price wars, getting the price right so the work pays but low enough to win business and reduction in quality of service.

Firms regulated by CILEx Regulation added a concern about ensuring consumers do not simply opt for the cheapest law firm. Therefore, how to express that the service provided is good and detailing in a brief easy format what the service comprises.

It was suggested that there are benefits to firms publishing price information and the top ones included: transparency for clients and gaining business because clients have a sense of security knowing the price before approaching the firm and less time answering queries.



Firms regulated by CILEx Regulation made similar suggestions together with observing that there may be opportunities for firms with a competitive edge.

Suggestions for elements in a price template included: it was impossible; and the price and all additional fees which may become payable. For conveyancing, there were comments about how to deal with additional costs arising because of the need to correct a defective title or extend a lease. For wills, comments were made about simple and complex wills and the possible need for tax advice. Firms regulated by CILEx Regulation added the need to include how to present hourly rates; examples of fees applicable to common activities on case types; and examples of fixed fees for separate stages of a transaction.

Many challenges were given for firms providing fixed fees in conveyancing and wills.

Challenges included: how to deal with the need to increase costs where there are unforeseen circumstances that require substantially greater work than a normal case; competition from bucket shops and unregulated firms; lack of interaction for consumers with the lawyer at shopping around stage. Firms regulated by CILEx Regulation highlighted the challenge of not charging sufficient prices; that fixed fee wills are a lost leader to establish a client relationship; and issues with competition from the unregulated sector with their lower overheads including regulation and professional indemnity insurance.

Benefits included: no misunderstandings for clients over price; less challenging of costs at the end of a case and improved firm budgeting due to knowing what money will be brought in.

Challenges and benefits of fixed fees for the consumer were suggested.

Challenges included: consumers' ability to understand when fixed fees do not apply; consumers being misled by the headline price even if additional information is given in caveats and this leading to complaints; fixed fee information presented in different formats which could make one firm look cheaper than another when it is not; the challenge for consumers to ascertain the level of engagement and client care the lowest cost providers will provide and poor service due to firms offering unrealistically low quotes.

Benefits included: clarity and better understanding for consumers which will present the legal sector in a better light; consumers will benefit from being able to easily see the range of fees for the work they require.



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Would firms welcome a more prescriptive approach to presenting price information?

Prescription to presenting price information welcome?	All responses	Firms regulated by CILEx Regulation
Yes	39.0%	2
No	48.9%	2
Blank	12.1%	0

Yes, if it would stop volume conveyancers piling on extra charges at the end; and it should stop bills being questioned. It may reduce the time and stress of file management.

No, pricing should be tailored to individual consumers who have individual needs and abilities to pay. Most firms have a niche or USP (unique selling point) and a move to all being the same will lead to the end of High Street firms.

Firms regulated by CILEx Regulation responded:

Yes, any assistance or guidance would be welcome and

No, working with the regulator and subsequent approval would be better. There should be examples in the guidance.

Would firms prefer to format information themselves about redress and/or service?

Firms format own redress and/or service information?	All responses	Firms regulated by CILEx Regulation
Yes	74.5%	2
No	12.8%	2
Blank	12.8%	0

Yes, with assistance and support from the regulator.

No, this should be something for firms to decide. It is in client care letters and not needed on the website as well, why give clients the fear something may go wrong.

Firms regulated by CILEx Regulation expressed that there should be uniformity and that help and support from the regulator is needed.



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Asked about the provision of a template for firms be useful for redress and/or service information

Provision of template for redress and/service?	All responses	Firms regulated by CILEx Regulation
Yes	75.9%	4
No	13.5%	0
Blank	10.6%	1

Yes, If CILEx intends to regulate in this area - and provide sanctions - it should also provide straightforward templates to enable compliance. As long as it is not mandatory and could be changed to suit the firm.

No, doubt that this is possible because matters and clients vary.

Firms regulated by CILEx Regulation said that the majority of firms would welcome this.

Asked if firms be required to use a mandatory template to provide information about service and/or redress?

Mandatory template for information about service and/or redress?	All responses	Firms regulated by CILEx Regulation
Yes	34.8%	1
No	56.7%	3
Blank	8.5%	1

It was suggested that while firms should work with the regulator to provide information, this was an opportunity for innovation within the legal services sector.

There were many elements suggested that should be included in a template for services and/or redress.

It was suggested that a key facts documents should be provided. Firms regulated by CILEx Regulation suggested that if there is a template it should align with what the SRA and CLC requirement and guidance of what is expected across the board should be given.



What information should be provided through the digital smart logo?

Information to be included in the digital smart logo	All responses	Firms regulated by CILEx Regulation
CILEx Regulation website link	73.8%	5
Firm is authorised	82.3%	5
Areas of legal specialism	78.0%	4
Other areas of law provided (unregulated)	44.0%	3
Professional indemnity insurance	61.0%	5
CILEx Regulation compensation arrangements for the firm's specialism and other areas of law offered	48.2%	3

Comments included that it should be kept simple and assume that in depth information is not read. Firms regulated by CILEx Regulation commented that as much of the information as possible should be provided to provide peace of mind for the consumer.

Do you agree that it is in the public and profession’s interest that information is published if a regulated person has a misconduct case to answer?

Should information be published about a misconduct case?	All responses	Firms regulated by CILEx Regulation
Yes	48.2%	2
No	44.0%	3
Blank	7.8%	0

Yes: provided the case passes the test of being a proper case to answer, not merely an investigation.

No: not all cases to answer are proven and malicious allegations could taint a professional reputation.

What should any guidance about client feedback and/or online reviews cover?

There were numerous suggestions including that the clients’ permission to publish should be obtained, how to respond to feedback, star rating, how accessible the fee earner was, how to encourage feedback and how to deal with inaccurate reviews.



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Firms regulated by CILEx Regulation added: level of satisfaction/communication, speed, accuracy, would they reinstruct, suggestions of how to improve.

Asked do you agree with our approach to first-tier complaints data?

Agreement with our approach to first-tier complaints data?	All responses	Firms regulated by CILEx Regulation
Yes	60.3%	5
No	16.3%	0
Blank	23.4%	0

There were several comments including that our approach may change once second-tier complaints data becomes available.

Further comments were invited and included:

There is already considerable work necessary to achieve regulatory compliance alongside the everyday work of a lawyer to be able to make money in a small firm. The additional burden that transparency work will place on firms may require an additional employee, with the consequential costs.



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