

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

- 1 CILEx Regulation is the independent regulator for Chartered Legal Executives, other grades of CILEx membership, CILEx Practitioners and firms. We take a risk based and outcomes focused approach to regulation, by working constructively with our regulated community to ensure that they deliver the best outcomes for clients. We have set clear principles within our Code of Conduct and inform the public of the standards they can expect. We believe this provides a balanced approach.
- 2 This consultation will run for 12 weeks, closing at 5pm on 21 December 2017.
- 3 This consultation sets out CILEx Regulation's approach to delivering the Competition and Markets Authority (CMA) recommendations to legal regulators in their report published in December 2016.
- 4 We welcome responses from our regulated firms and other stakeholders including members of our regulated community, consumers of legal services, consumer organisations and other interested parties.

### **Background: why are we proposing change?**

- 5 Imagine going to a restaurant. The waiter keeps bringing food until you can't eat another bite, takes no account of your food allergies, presents you with a bill for several hundred pounds, expects a tip and you had not been able to check out the restaurant on Trip Advisor before you went! How would you feel?
- 6 As consumers, we are now used to information being available about price, quality, different packages and on-line reviews. All this helps us make choices about which goods and services to buy. We are now used to shopping around for the deal which best meets our requirements.
- 7 In the legal services market, however, choice making-information is not available at the time consumers need to identify their legal needs and understand and compare the legal services they require, the price of the services on offer and which type of provider could help them. The market is not working as well as it could for consumers. There is substantial unmet legal needs amongst consumers and small businesses.
8. Certain aspects of the legal services market make it difficult for consumers to drive the kind of change that has taken place in other consumer markets. The law is complex. This creates asymmetries of understanding between providers

and consumers. Legal services are often “one-off” purchases at times of crisis and emotional stress for consumers with limited time to shop around. Many people assume that legal fees are beyond their financial means. Research by the Legal Services Board (LSB) published in 2016, found vast differences in price for the same legal service. The LSB is currently updating its research on prices for conveyancing, divorce, wills and probate. This is due for publication in November 2017 and will cover availability of price information.

- 9 The issues above led to the CMA carrying out a legal services market study during 2016. The CMA looked at a range of different legal services such as conveyancing, wills and probate, immigration, family and employment law. They carried out three detailed case studies into wills and probate, employment and commercial. Their final report was published on 15 December 2016.
- 10 The CMA concluded that the legal services market is not working well for individual consumers and small businesses. Consumers find it hard to make informed choices about legal services providers because of lack of transparency about price, service and quality. They recommended measures, including regulatory changes, which taken together, should ensure consumers have relevant information, encourage providers to engage in providing quality signals and facilitate comparison through open data. These measures include asking legal services regulators to:
  - a) ensure that providers disclose price, service, redress and regulatory status;
  - b) support improvement in the quality, utility and prominence of this information on providers’ websites;
  - c) publish guidance or introduce regulatory requirements to improve information provided to a consumer when they engage a legal services provider, such as through client care letters;
  - d) promote use of independent feedback platforms, such as online reviews, to help consumers understand the quality of service offered by competing providers, and give guidance to providers on how to engage with this kind of feedback;
  - e) make data more easily available to comparison sites and other intermediaries;
  - f) work together to introduce a single digital register of legal service providers through which regulatory and consumer information can be accessed by consumers.

## **Our approach to improving transparency**

- 11 We acknowledge the need for more transparency in the legal services market. We will follow the CMA’s lead on how to bring about change in the market. As our oversight regulator, the LSB has asked us to respond to the CMA recommendations. This consultation forms part of our work to develop a proportionate response given the composition and size of our regulated community.
- 12 Our approach to improving transparency reflects the small number of firms we regulate which deliver legal services in the areas of law the CMA recommendations focus on. There are several legal services regulators, regulating different kinds of legal services providers. We recognise that to

enable firms to deliver useful consumer information, collaboration with other legal services regulators in developing our approach will be key. Otherwise there is a risk that different regulators will take a variety of approaches. This could be counterproductive and lead to confusion for consumers.

- 13 In this consultation, we set out our proposals for the information our regulated firms will be asked to publish. We will take your views into account as we develop our transparency requirements.

## Transparency information

- 14 We will ask our regulated firms to publish information on price, service, redress, and regulatory status. The CMA gave an indication of what could be included for each element of information disclosure as set out at Figure 1 below. We explain our requirements in paragraphs 27 to 39 below.

Price	Service	Redress
<ul style="list-style-type: none"> <li>• Pricing and charging model (e.g. fixed fee, hourly rates, capped charges. Conditional Fee Agreement/Damages-Based Agreement)</li> <li>• Hourly fees (where charged) by grade of staff</li> <li>• (Where offered) indicative fixed fees and factors that may affect these and the circumstances where additional fees may be charged</li> <li>• Typical range of costs for different stages of cases (where appropriate)</li> <li>• Scale of likely disbursements (e.g. searches, court fees)</li> <li>• Key factors that determine price (including disbursements)</li> </ul>	<ul style="list-style-type: none"> <li>• A description of the services that the legal services provider provides</li> <li>• Mix of staff that deliver the service</li> <li>• Key (and discrete) stages of services</li> <li>• Indicative timescales for completing services and factors affecting these</li> </ul>	<ul style="list-style-type: none"> <li>• Regulatory status, registration details</li> <li>• Complaints process and access to the Legal Ombudsman (LeO)</li> <li>• Professional indemnity cover</li> </ul>

Figure 1

## Should we change our Code of Conduct?

- 15 We have considered whether we need to change our Code of Conduct (the Code) to include publication of transparency information by regulated firms. We propose to develop transparency rules for our regulated firms and have concluded that we do not need to change the Code. Principle 4 of the Code requires our regulated community to comply with their legal and regulatory obligations and will allow us to enforce should we need to.
- 16 We aim to develop transparency rules by early 2019. We plan to support these rules with transparency guidance for regulated firms and we will consider building in a transition period.

- 17 We will provide our regulated firms with appropriate and proportionate support to develop their publication of transparency information. We will assess how firms meet our expectations as part of the process of initial application to become an authorised and regulated firm, at annual review and other appropriate stages. We will monitor how our regulated firms respond and keep the development of responses under review when considering the need to take enforcement action.

### **Who will we ask to provide transparency information?**

- 18 Initially, firms will be expected to publish transparency information if they provide legal services in the areas of law covered by the initial roll out of our price transparency requirements. We will extend the requirements to other areas of law over time, as proportionate to the number and scale of firms we regulate, and in step with the requirements of other regulators in the sector.
- 19 The requirement to publish transparency information will be a requirement on the firm. Some firms employ legal staff who are regulated at an individual level by other regulators. We hope that through collaboration amongst legal services regulators, the requirements of all regulators will be broadly the same and will develop at broadly the same pace. However, for the avoidance of doubt, where a firm regulated by us employs legal staff whose regulator at the individual level has differing requirements, we will expect those staff to follow the firm's practice in accordance with our requirements.
- 20 Similarly, individuals that we regulate who work in firms regulated by another regulator, will need to meet the requirements of the firm's regulator.

### **What areas of service provision will be included?**

- 21 In some areas of law, such as litigation, services are often tailored to a person's specific needs and circumstances. We recognise that providing an indication of the total price for a service in such areas of law can be more challenging than in more commoditised areas, where the scope of the transaction is more predictable, like conveyancing.
- 22 We propose to ask that price (and other) transparency information is provided in more commoditised areas of law initially. We are taking this approach because it should be more straightforward for our regulated firms providing legal services in commoditised areas of law to develop their approach to transparency. Our approach will also enable us to better monitor the impact of regulated firms publishing transparency information, both on the firms and for consumers, by starting with a small number of areas of law. We propose initially to ask firms providing residential conveyancing (including freehold and leasehold, mortgaging and re-mortgaging) and wills to publish transparency information.

**Question 1: Should conveyancing and wills be the first areas of law to which transparency information requirements apply?**

**Question 2: Which areas of law should transparency information be required in next?**

## **Publishing the transparency information**

- 23 The Code already requires our regulated firms to provide much of the relevant information to clients, typically in a client care letter. Firms are currently required to provide this only when the client has chosen them as their legal services provider. Our proposals introduce a requirement that firms publish equivalent information in relation to price, service, redress and regulatory status in the public domain so consumers can access it before they choose a provider.
- 24 We will expect our firms to publish the transparency information prominently on their websites and in an easy-to-understand format. This should enable consumers to understand what to expect in terms of price, service, redress and regulatory status before they choose a firm and to compare legal services offered by different providers.
- 25 Where a firm has no website, but uses social media to advertise, we will expect them to publish the transparency information via social media, where the platform used can support the information. A firm with no website or social media will be expected to supply the information in print or by email on request.
- 26 We aim to develop transparency rules, and supporting guidance, for provision of transparency information by early 2019. The responses to this consultation will help our thinking on the content of, and how we develop, our rules and guidance.

Question 3: What challenges will firms face in publishing transparency information on: website, social media, in print or by email?

Question 4: What opportunities are there for firms by publishing transparency information on: website, social media, in print or by email?

Question 5: What things should be in guidance about publishing information on: website, social media, in print or by email?

## **TRANSPARENCY INFORMATION**

### **PRICE – information to be provided**

- 27 We appreciate that firms calculate prices in different ways and for different services. We will ask firms to make it clear to consumers what the expected total cost of a legal service will be and the basis on which they will be charged.
- 28 In addition to current legal and other regulatory requirements, the following is the minimum price information we will ask firms to publish on their website, social media or make available. The price information must be clear and presented in a way that is easy for consumers to understand. The price information should clearly explain:
  - a) the total price of the transaction to the consumer where practicable;

- b) if it is not practicable to give the total price, any known elements of price such as hourly rates, fixed fees for sections of work together with the other information and prices payable as set out from c) to g);
- c) what is included in the price;
- d) the basis on which prices are calculated, for example, fixed fee, hourly rate percentage of the value of an asset;
- e) all other prices payable, for example to third parties (disbursements) such as search fees or expert's fees, together with a simple explanation of what the cost is for;
- f) which prices bear VAT and the amount of VAT payable;
- g) the circumstance in which prices might vary from those published, supported with a short explanation.

29 In some areas of legal services provision, online calculators or quote generators, where appropriate, might be used to provide the required price information.

30 We recognise that there is no one-size-fits-all approach to publication of price information. We will determine which of a range of approaches will meet our initial expectations. We may develop guidance on ways to publish and allow firms to present information on a website in a format which suits them. For both conveyancing and wills, this might include:

- publishing packages of services available for stated prices, with clear information about what is and isn't included<sup>1</sup>;
- using a template that we supply setting out the minimum level of information that complies with the requirement;
- publishing a menu of fixed fees with details of what work is covered by the fixed fee, together with a breakdown of other costs and VAT;
- publishing the basis on which prices are calculated with indicative prices for services, with clear information about what is and isn't included.

Question 6: What challenges are there to firms in publishing price information as set out above in conveyancing, wills and/or other areas of law?

Question 7: What benefits are there to firms in publishing price information as set out above in conveyancing, wills and/or other areas of law?

Question 8: What elements should be in a price template for: conveyancing, wills and/or other areas of law?

Question 9: What are the challenges and benefits for firms of charging fixed fees for conveyancing and/or wills?

Question 10: What are the challenges and benefits for consumers if firms offer fixed fees for conveyancing and/or wills?

Question 11: Would firms welcome a more prescriptive approach to presenting price information?

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<sup>1</sup> The CMA provide an example at page D2 of their final report.

## **SERVICE – information to be provided**

- 31 Price information alone presents only a partial view of what a firm offers. Consumers need additional information about service, including transactional elements, redress when things go wrong and regulatory status, as a minimum. These allow consumers to compare offers from different providers and choose the best package or deal which meet their requirements. Providing information about the elements of the service they provide gives firms the opportunity to distinguish their business on factors that consumers value.
- 32 We will expect our firms to publish the following minimum service information:
- a short explanation of the service to be provided in plain consumer friendly language;
  - key stages of a transaction with likely timescales for these stages, together with a short explanation of circumstances in which timescales may change.
- 33 We will provide guidance on how this may be achieved and how it may be linked to other elements of transparency information to help consumers.
- 34 We recognise that regulated firms may wish to provide additional information about what they can offer consumers, such as languages spoken, accessibility, opening hours, phone numbers, car parking, consumer feedback and information about client complaints.

## **REDRESS – information to be provided**

- 35 We will expect our firms to publish the following minimum information:
- details of the firm's complaints handling procedure;
  - information about referring complaints to the Legal Ombudsman (LeO), with time limits;
  - required information<sup>2</sup> relating to Alternative Dispute Resolution (ADR);
  - confirmation that the firm has professional indemnity insurance (PII) covering all services provided; and
  - confirmation of which services are covered by compensation arrangements.

## **SERVICE AND REDRESS – presentation of information**

- 36 One approach would be to allow firms regulated by us to present information on service and redress in a format that suits them. We will provide guidance on how this may be achieved. An alternative approach might be to develop a template for provision of the minimum information to keep the cost of providing transparency information as low as possible. There is a potential regulatory burden to firms in complying with transparency requirements and a more prescribed approach could reduce this burden.
- 37 One element of a more prescribed approach might be the use of the kind of matrix we currently provide on our online directory of firms. This shows the

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<sup>2</sup> ADR requirements can be found within our First-Tier Complaints Handling Guidance.

area(s) of law a firm specialises in and is authorised to provide, together with other areas of law in which they deliver services. It shows which areas of legal provision are covered by professional indemnity insurance and/or CILEx Regulation’s compensation arrangements, as in the example at Figure 2.

Areas of law provided by this firm	Covered by insurance	Covered by compensation arrangements
<b>Conveyancing (residential and commercial)</b>	✓	✓
<b>Landlord and Tenant</b>	✓	
<b>Wills</b>	✓	

Figure 2

Question 12: Would firms prefer to format information themselves about redress and/or service?

Question 13: Would the provision of a template for firms be useful for redress and/or service information?

Question 14: Should firms be required to use a mandatory template to provide information about service and/or redress?

Question 15: What elements should be included in a template for services and/or redress?

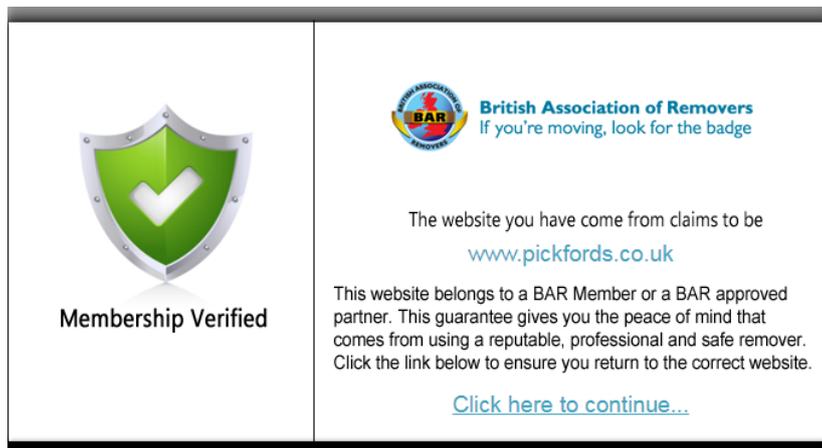
## Regulatory status

- 38 Our regulated firms are currently required to state on their websites that they are regulated by us. We offer a logo for use on regulated firms’ websites and business communications. Firms must use the logo in conjunction with a regulatory statement about their authorisation. This gives consumers confidence that they are using a regulated firm and the safeguards this offers.
- 39 We will aim to provide firms we regulate with a digital smart badge. We recognise that logos have been open to fraudulent use. The smart badge will provide assurance that the firm is regulated by us. An example of a smart badge is shown at Figure 3. When a consumer clicks on the smart badge it links to our website for confirmation that the firm is regulated by us. An example of the landing page is shown at Figure 4.

### Accreditations and Memberships



Figure 3



**Figure 4**

40 We will consider what additional information the badge could provide for consumers, while being mindful that information overload can be confusing. Options that may be available are:

- a) website and authorisation verification;
- b) website, authorisation and specialism verification;
- c) website, authorisation and specialism verification with confirmation of other areas of law provided;
- d) website, authorisation, specialism and non-specialism (unregulated) verification;
- e) options a) – c) with consumer protection for professional indemnity insurance and compensation arrangements relevant to the specialisation in which the firm is authorised and other areas of law offered by the firm.

Question 16: What information should be provided through the digital smart badge (tick all that apply)?

- a) CILEx Regulation website link;
- b) firm is authorised;
- c) areas of legal specialism;
- d) other areas of law provided (unregulated);
- e) professional indemnity insurance (PII);
- f) CILEx Regulation compensation arrangements for the firm's specialism and other areas of law offered.

### **Client care information**

- 41 Our regulated firms will still need to meet the outcome of Principle 5 of our Code and provide clear information about costs, redress and service in client care communications at the start of a case or transaction. This will need to be tailored to the individual client's needs.
- 42 We have taken steps to raise awareness across our regulated community of key principles for preparing client care letters and best practice generally in communicating with clients. We have published guidance on our website. We will continue to promote the improvement of client communications amongst those we regulate.

## Publication of disciplinary hearings

- 43 As well as our online directory of firms we publish a directory of authorised individual legal services providers on our website. This shows any disciplinary findings published in line with our Publication Policy.
- 44 Our practice is currently to publish notice of disciplinary hearings four weeks in advance. We propose instead to publish notice of hearings as soon as a case to answer has been made out. We consider this to be in the interests of the public and the profession and is comparable to the practice of other legal services regulators.
- 45 Published notice of disciplinary hearings may include:
- the name of the regulated individual;
  - their area of legal practice;
  - the geographical area in which they practise;
  - the hearing date;
  - details of the allegations;
  - details of the nature of the allegations;
  - the part of the Code of Conduct allegedly breached.
- 46 This proposal is aimed at increasing protection for consumers and employers. It will enable us to inform the public about firms which are subject to intervention. It will enable the public to access the information they need to make choices, either about whose services they wish to engage or retain and enable employers to make choices about who they wish to employ, or to report conduct issues.

Question 17: 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?

## Client feedback and engagement with online reviews

- 47 We acknowledge that third-party intermediary websites are not working as well as they could. We believe increased levels of engagement with them by legal service providers could improve consumer outcomes. We will develop guidance for firms we regulate on:
- a) encouraging consumers to provide feedback; and
  - b) how to interact/engage with online reviews.

Question 18: What should any guidance about client feedback and/or online reviews cover?

## Quality information

### Information about specialisation

- 48 In our firm directory we provide information for consumers about the reserved areas of law in which our firms specialise. This is because we authorise our firms for specific areas of reserved legal practice. These areas of law are covered by professional indemnity insurance cover and compensation

arrangements. Consumers can have confidence that the firm is specialist in providing the reserved legal service.

- 49 Some of our firms also provide legal services in unreserved areas of law. These are covered by professional indemnity insurance but not by compensation arrangements.
- 50 Our [online firm directory](#) includes information about specialist area of law and other legal services provided. We provide a visual presentation of how each of the legal services provided by the firm benefit from professional indemnity cover and compensation arrangements using the matrix shown at Figure 2 above.

### **Additional quality information**

- 51 We have considered the CMA recommendation on publication of first-tier complaints information. We take a proportionate approach. We started regulating firms in 2015, having regulated individuals only before that. We currently regulate a small but growing number of firms. This means that we hold limited first-tier complaints data. LeO has notified us of no complaints in relation to firms regulated by us, so we have no second-tier data to compare with firms' complaints information.
- 52 As second-tier complaints information about our regulated firms becomes available, we will review our position. We will also monitor how first-tier complaints information is published across the sector. We will develop our approach to publication of complaints data having regard to how the sector deals with it, our regulated community; and if a single digital register of legal service providers is introduced, whether this includes first-tier complaints data.

Question 19: Do you agree with our approach to first-tier complaints data?

### **Publication of regulatory data**

- 53 We currently publish basic regulatory data on our website about our authorised firms for the use of third parties in [spreadsheet](#) form. We also publish basic regulatory data about authorised individuals who opt-in to publication of their data. We will continue to publish this and keep under review the legal sector's approach to the published data sets and the basis on which data relating to individuals is published.
- 54 We will work with other regulators to develop the collection of consistent data across the sector with the aim of facilitating sector wide consistency in data publication.
- 55 We will continue to work with the other regulators to explore the development of a single digital register.
- 56 We are committed to making better information available to help consumers identify their legal needs and legal services available. We will continue, with other legal services regulators, to co-fund the [Legal Choices](#) website, develop its content and grow consumer engagement with the site. We will support a

three-year joint regulator development plan to increase the reach of the Legal Choices website.

Question 20: Please add any further comments.

### **Consultation questions**

- Q1 Should conveyancing and wills be the first areas of law to which transparency information requirements apply?
- Q2 Which areas of law should transparency information be required in next?
- Q3 What challenges will firms face in publishing transparency information on: website, social media, in print or by email?
- Q4 What opportunities are there for firms by publishing transparency information on: website, social media, in print or by email?
- Q5 What things should be in guidance about publishing information on: website, social media, in print or by email?
- Q6 What challenges are there to firms in publishing price information as set out above in conveyancing, wills and/or other areas of law?
- Q7 What benefits are there to firms in publishing price information as set out above in conveyancing, wills and/or other areas of law?
- Q8 What elements should be in a price template for: conveyancing, wills and/or other areas of law?
- Q9 What are the challenges and benefits for firms of charging fixed fees for conveyancing and/or wills?
- Q10 What are the challenges and benefits for consumers if firms offer fixed fees for conveyancing and/or wills?
- Q11 Would firms welcome a more prescriptive approach to presenting price information?
- Q12 Would firms prefer to format information themselves about redress and/or service?
- Q13 Would the provision of a template for firms be useful for redress and/or service information?
- Q14 Should firms be required to use a mandatory template to provide information about service and/or redress?
- Q15 What elements should be included in a template for services and/or redress?

Q16 What information should be provided through the digital smart badge (tick all that apply)?

- a) CILEx Regulation website link;
- b) firm is authorised;
- c) areas of legal specialism;
- d) other areas of law provided (unregulated);
- e) professional indemnity insurance (PII);
- f) CILEx Regulation compensation arrangements for the firm's specialism and other areas of law offered.

Q17 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?

Q18 What should any guidance about client feedback and/or online reviews cover?

Q19 Do you agree with our approach to first-tier complaints data?

Q20 Please add any further comments.

## How to respond

A response form has been provided for completion. Please send the response form to CILEx Regulation by one of the following methods:

- By responding online at the following link [here](#).
- By email to [consultations@cilexregulation.org.uk](mailto:consultations@cilexregulation.org.uk). Please mark your reply for the attention of Sue Chandler, Consumer Engagement and Policy Officer.
- By post to CILEx Regulation Ltd, College House, Kempston, Bedford MK42 7AB.
- By DX to CILEx Regulation, DX 124780 Kempston 2.

## Submission deadline

Please respond by 5pm on 21 December 2017.