



Legal Services Board

CONSULTATION ON PROPOSED POLICY ON CONSUMER EMPOWERMENT

A response by
CILEx Regulation

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EXECUTIVE SUMMARY

- a) CILEx Regulation (CRL) strongly supports the view of the Legal Services Board (LSB) that further action is needed to deliver real change in outcomes for consumers, particularly in relation to promoting competition, improving access to justice, advancing and protecting the interests of consumers, increasing public understanding of the citizen's legal rights and duties and encouraging an independent, strong, diverse and effective legal profession.
- b) CRL also agrees with the LSB's proposal to use a statutory statement of policy on empowering consumers under Section 49 of the Legal Services Act and concurs that further action is needed from the regulators to deliver real change in outcomes for consumers.
- c) Whilst CRL supports the flexible framework approach set out by the LSB to enable each of the legal regulators to adopt the policy in accordance with the consumers of its regulated community, many questions remain as to how the policy will work in practice. Some key issues that require further consideration include:
- how success will be effectively monitored and evaluated;
 - the expectations for effective implementation;
 - whether greater consideration should first be given to market segmentation;
 - detailed consideration of price and sector standardisation;
 - further consideration of what is understood by quality;
 - a greater understanding of what is 'meaningful information' for consumers;
 - the cost/impact of implementation; and
 - the timescales for implementation.
- d) CRL looks forward to reading the outcomes from the consultation and engaging further with the LSB and other regulators to deliver real change for consumers.

RESPONSE

Q1. Do you agree with our approach of using expectations, outcomes and principles? Do you agree that the expectations and outcomes we have identified are the right ones?

1. CRL agrees with the flexible framework approach adopted by the LSB, which will enable each of the legal regulators to adopt the consumer empowerment policy in accordance with the consumers of its regulated community.
2. In reviewing the outcomes, CRL has considered how it would be able to monitor and evaluate success against these objectives. CRL believes that evaluating the knowledge and capability of consumers may prove challenging. Therefore, it is recommended that the wording is amended to:

'Enable and support consumers to recognise legal issues and access the legal services market'.

3. This could be measured through public legal education outputs, such as providing support to help consumers recognise legal issues and signposting to appropriate advice where needed.
4. These actions are measurable and would allow CRL to focus on tools to assist effective delivery, such as website improvements, comparison tools etc. CRL could focus on those who are vulnerable and/or digitally disadvantaged with specific actions identified and evaluation of those activities completed. Improved access to legal services for the consumer could provide a measure of improvement.
5. CRL considers that these general expectations are more likely to be achieved through appropriate cross-regulator working, together with making use of the existing and future research conducted by the frontline regulators. This would enable the outcomes to be evaluated from the consumer perspective, rather than by regulator/provider type.
6. Other issues for the LSB to consider in relation to implementation of the policy include:

- What is the proposed timescale for ensuring consumers have the knowledge and capability to recognise legal issues and access legal services?
- What proxies will be used to measure success against the outcomes?
- What would be the potential cost to the regulator (which will be passed onto law firms and ultimately the consumer) to deliver these outcomes?
- What are the expectations of implementation, e.g., will it be to improve shopping around or to widen access to legal services? Whilst shopping around may be an effective measure in some cases, legal services consumers are also influenced by other elements beyond price, such as location, service etc. Therefore, it may be appropriate to broaden success measures to judge the effectiveness of the market.

Q2. Do you agree with the proposed principles to be adopted?

7. Generally, CRL supports the adoption of the proposed principles, with some caveats.
8. The focus on individual consumers and small businesses (less sophisticated clients) will require some groundwork to ensure that the focus is in the right areas. Notably, there should be a market segmentation exercise, which includes identification of consumer behaviour by segment. This will enable activity to be targeted to the right areas of practice and consumers. This will also enable the regulators to identify when cross-regulator working would be more appropriate to address the identified issues.
9. CRL considers that the sector will face greater challenges in reaching vulnerable and digitally disadvantaged consumers in that it will be harder to enable comparison of the market if consumers do not have access to online information. Whilst we have identified some possible alternatives to reach these consumers, the ability to make wide comparisons on key markers will be more complex, and these consumers may be restricted by geography. CRL has also identified that the use of Legal Expenses Insurance to widen access may have limitations in relation to the consumers' ability to choose a lawyer, as insurance companies may have preferred suppliers.

Q3. Do you agree with the proposed expectation around public legal education?

10. CRL supports this expectation as a key driver of consumer empowerment. CRL already contributes actively to Legal Choices and is willing to extend this work to include PLE more widely, particularly in collaboration with other regulators. It is noted that the BSB has offered to lead development in this area and CRL would be willing to engage in this work, including making contributions to the required investment.

Q4. Do you agree with the expectations set out in the statement of policy around minimum levels of information about price, service and quality?

11. Generally, CRL agrees with the expectations on the introduction of minimum expectations in these areas. However, CRL would like to see the LSB increasing information on the differences between the regulated and unregulated providers in the legal sector. Additional information is included for consideration below.
12. CRL has rules for price publication for some areas and will shortly extend these rules and guidance to immigration. CRL's firms are largely compliant with the transparency requirements.
13. More generally, because the costs of legal services and hours-based billing are not standardised, it will be challenging to provide comparable price information across all areas of practice. Where fixed fees are used, then the ability to compare prices of services across providers is more straightforward.
14. In addition, publication of prices may not lead to lowest costs, and agreed pricing across suppliers may result, which will need to be guarded against. Furthermore, the consumer should be able to choose a provider that has higher costs if desired, similar to the choice available in the market for other services such as opticians, brand of car, supermarket, etc., provided that is a genuine choice on the part of the consumer.
15. CRL is of the view that consumers consider bad service to be of higher importance than price. However, how consumers determine the level of service they have received can also be complex, especially when much of this may be hidden until many years later (e.g., a poorly drafted will, lack of good title etc.) unless the error was catastrophic.

16. Research indicates that consumers currently accessing legal services are usually happy. Therefore, CRL considers that to empower the consumer, the key issue to address relates to widening access rather than improving the service, although it is accepted that there are examples of poor service in the legal services market.
17. Other issues considered relevant to pricing information are:
 - The availability of after-the-event insurance (ATE).
 - Price being determined by level of experience of staff member undertaking the work.
18. These would be useful additions, although it is also important to ensure that the information provided remains meaningful and that it is not too complex for the consumer. CRL considers that appropriate cross-sector working is vital to achieve this.
19. In relation to quality, a key first step is to define what we mean by quality, to enable suitable indicators to be developed, evaluated, and refined.
20. Service quality is easier to define, measure and publish than quality of advice and outcomes.
21. In some areas, measures of quality of work could prove problematic, for example, although a consumer may be unhappy with the outcome of the case, this is not necessarily indicative that the quality of the work was poor; a defendant may be found guilty in a criminal case, or financial settlements in a divorce may not suit one side or the other. In both situations this is not necessarily a result of poor quality of representation. Equally, how would success/error rates etc. be recorded? If it is to be through self-reporting, this may require audit etc.
22. Accreditation for providers of review sites and digital comparison tools may sit better with professional bodies rather than regulators. However, if accreditation of firms is to be used as a quality proxy, then this should be available to all firms operating in the area of practice, otherwise some firms may be disadvantaged in

relation to required elements of publication, based on the regulator of the firm.

23. There is a suggestion within the consultation document that the size and age of a firm should be published as part of service/quality. CRL considers that this may lead to discrimination against new firms which may be small but may also be more inclined to provide innovative services to consumers. A new firm may indicate to the consumer a lack of experience (incorrectly, as the individuals running the firm may be very experienced), which would put these firms at further disadvantage if age and/or size becomes required information for publication.

Q5. Do you agree with the expectations around making information available to consumers?

24. The LSB states that information should be 'meaningful' to consumers. For this to be effective, the regulators would need to research and define what is meaningful information to the consumer. Of central importance is the need to ensure commonality across regulators, if the information provided is to be useful to consumers, as this will aid comparison. This will require continued joint working with regulators where the firms regulated offer similar services.
25. There is also a need to keep the information at a relatively high level, otherwise consumers will be put off using the information. For example, identification of the PII provider may be of limited value to a consumer seeking access to legal services, whereas knowing that there is current PII cover would be relevant. Therefore, there is a balance to be struck between providing detailed information on all possible elements, against the ability to quickly compare a range of providers to identify the one which best suits the individual consumer's need. This may require further research with consumers, as these indicators are developed, to determine those considered to be of most use. These may vary based on area of practice.
26. Digital Comparison Tools and review websites are considered to be a key tool to assist digitally able consumers in choosing a legal services provider. However, in order for these to be effective, consumers must have trust in the service provided. This may require accreditation, but this could bring additional challenges. For example, there was a recent case where an individual left a review about a law firm on a review site. He was subsequently sued successfully

for the review and the individual was required to pay £25,000 in damages to the law firm. By extension, the accreditation of such sites by regulators, to enhance trust, may create exposure to similar claims if the review information is inaccurate.

Q6. Do you agree with our proposed plan for implementation?

27. The draft policy statement is intended to take immediate effect. However, the outcomes and general expectations will take some time to achieve. How will the LSB ensure that, in assessing regulators against these elements, the timeframe to implement the changes is taken into account?

Q7. Do you have any comments regarding equality impact and issues which, in your view, may arise from our proposed statement of policy? Are there any wider equality issues and interventions that you want to make us aware of?

28. Whilst smaller firms may be able to improve visibility through the use of DCTs, there are other factors to take into account when introducing additional regulatory measures. Small firms are less likely to have access to the same level of resources as larger firms to enable them to implement the required changes, which may disadvantage them.
29. Over emphasis on the use of review sites and comparison tools is likely to disadvantage those who are digitally disadvantaged or vulnerable as, even if alternatives can be introduced to provide similar information, such consumers are likely to be restricted by geography, as they are more likely to have to travel to the provider to action the legal service, which may in turn limit their ability to identify and access the cheapest or highest quality service.

Q8. Do you have any comments on the potential impact of the draft statement of policy, including the likely costs and anticipated benefits?

30. No additional comments on regulatory impact.

Q9. Do you have any further comments?

31. The draft policy references the need to publish regulatory status. A key issue, which has not been addressed through the consultation, is the impact of the changes on the unregulated sector. Increasing the regulatory burden on regulated firms may increase the costs of regulation and therefore the cost of

regulated legal services to the consumer. This could make accessing unregulated legal services cheaper and may be more appealing to the consumer, unless there is a clear statement of the benefits of accessing regulated legal services. There is also a risk that less well-known regulators may be at a disadvantage if consumers do not recognise the brand.

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