



LEGAL SERVICES
BOARD

The Chief Executive's Office
Legal Services Board
One Kemble Street
London WC2A 4AN

T 020 7271 0043
F 020 7271 0051

www.legalservicesboard.org.uk

4 April 2014

Dear Regulator,

Roundtable on access to data

Thank you for sending a member of your team to the roundtable on access to data on 24 March. We found this a productive and useful session.

We are pleased the regulators have agreed to the principle of making data openly available. Opening up data is in line with wider government policy and good practice, and is an essential step in providing consumers with the information they need so they can effectively stimulate competition and growth. As you know, we have asked regulators to make available data which is already in the public domain, but to do so in a reusable format.

We agreed a number of actions during the meeting. These are:

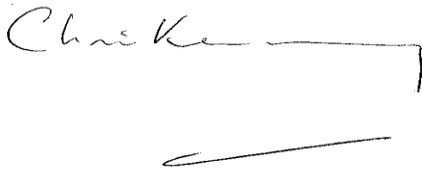
- Regulators agreed to the principle of making usable data openly available either through the Legal Choices website, or in other ways.
- As we agreed, we have attached a suggested dataset including both regulatory data and data which comparison sites could obtain from providers directly. It would be helpful if you could indicate by when you would be in a position to provide the regulatory element of this. Recognising system constraints and the like, you also agreed to set out the minimum core dataset, which initially might be limited to very basic information, which you would be in a position to make available by the middle of this year. It would be helpful if you could respond on these points by Easter.
- We appreciate that agreement at Board level may be needed at your respective organisations. Please could you confirm, by Easter, the timescale for release of the minimum core dataset.
- It would also be very helpful if you could confirm what work it will be feasible to carry out in the next two to three months in order to make progress on actual delivery of the data.

The Panel has developed a Q&A paper which sets out many of the issues discussed both in the 24 March meeting, as well as over the course of the past two years. We hope this will prove useful background material as we take forward the above actions.

We recognise and appreciate the step forward taken at the roundtable meeting. Maintaining momentum is now essential. While some practical difficulties might emerge, the guiding principle should be to release what is possible in the short term with a view to expanding and improving on this data in the medium term.

We will publish this letter on both of our websites in the middle of next week.

Yours sincerely,

Handwritten signature of Chris Kenny in black ink, consisting of a cursive 'C' followed by 'hris Kenny' and a long horizontal stroke.

Chris Kenny
Chief Executive

Handwritten signature of Elisabeth Davies in black ink, featuring a stylized 'E' and 'D'.

Elisabeth Davies
Chair, LSCP

Encl. List of useful data
Issues paper on transparency and access to data

List of useful data

Data which could be used by websites to make good quality comparisons is listed below. Not all the data described is held by the regulators. The starting point should be to establish what is held and make a decision about what can be released, and at what stage. It should at least be possible to make name/address and contact details available across each of the regulators immediately. We would expect comparison websites to source other non-regulatory data from other organisations which wish to participate.

Information that regulators are likely to hold:

- Name and address
- Contact details
- Size of the firm and the number of regulated practitioners working there
- Whether the person/firm is on the roll/regulated
- Any disciplinary findings/conduct issues

Information that professional bodies may hold:

- Practice area
- Accreditations
- Particular areas of specialisation
- Data such as gender or particular languages spoken

Information the Legal Ombudsman holds:

- Complaints data

Other useful information:

- Price
- Feedback from other consumers

- Whether the firm has specific facilities such as loop systems for deaf consumers or accessible offices.

Issues paper: Transparency and access to data

Why is this issue important?

Opening up data is an essential step in providing consumers with the information they need so they can more easily compare providers. Survey data shows that people find it harder to compare lawyers than other services. This policy is in line with wider government policy and good practice, as it is seen to stimulate competition and growth. The Consumer Panel and the LSB have been asking the regulators to open up the professional registers since 2011 and 2012 respectively.

What types of data could be used by choice tools?

Not all the data described below is held by the regulators. The starting point should be to establish what is held and make a decision about what can be released, and at what stage. It should at least be possible to make name/address and contact details available across each of the regulators immediately. We would expect comparison websites to source other non-regulatory data from businesses which wish to participate.

Types of data which would likely make for useful/informative comparisons include:

Information that regulators are likely to hold:

- Name and address
- Contact details
- Size of the firm and the number of regulated practitioners working there
- Whether the person/firm is on the roll/regulated
- Any disciplinary findings/conduct issues

Information that professional bodies may hold:

- Practice area
- Accreditations
- Particular areas of specialisation
- Data such as gender or particular languages spoken

Information the Legal Ombudsman holds:

- Complaints data

Other useful information:

- Price
- Feedback from other consumers
- Whether the firm has specific facilities such as loop systems for deaf consumers or accessible offices.

How does opening up data in the legal sector relate to wider government policy?

The government is pursuing an open data strategy, whereby data produced or controlled by government or government controlled entities can be freely used, reused and redistributed by anyone. The aims of the strategy are to facilitate transparency, drive innovation and stimulate the economy, create opportunities for businesses, and allow citizens to become more informed and involved.

The Freedom of Information Act 2000 was amended recently in order to make sure that those who are entitled to a dataset can have it provided in a format that is useful.¹

The Department for Business Innovation and Skills' consumer empowerment strategy focuses on the role of credible comparison websites as a choice tool to drive competition and support growth. A related aspect of this strategy, 'Midata', is a voluntary programme with government in partnership with industry. It aims to give consumers greater insight into their personal data, allowing them to make more informed choices when purchasing products and services. For example smart energy meters allow consumers to see their usage profile and select a tariff accordingly.²

The Midata programme is part of the government's 'Plan for Growth', which is designed to stimulate growth and strengthen the economy by encouraging vigorous competition, and relying on active and empowered consumers to drive this. The strategy is centred around the role of technology which allows consumers to find, compare and purchase goods and services; the use of data to allow businesses to make more tailored recommendations; and the development of consumer collaboration, for example by leaving feedback.³

The government also commissioned an independent review of public sector information led by Stephan Shakespeare, to explore the growth opportunities of, and how to widen access to, the wealth of information held by the public sector. The review makes a number of recommendations, including:⁴

- Recognition that 'perfect' data 'should not be the enemy of the good' and that there should be an imperative to publish early even if imperfect. This would reduce excuses for poor or slow delivery and allow organisations to 'get it all out and then improve'.

¹ Cabinet Office, *White paper on open data*, June 2012. The Protection of Freedoms Act 2012 is now in force and has indeed extended the scope of FoIA.

² See <https://www.gov.uk/government/news/the-midata-vision-of-consumer-empowerment>

³ Cabinet Office and Department for Business, Innovation and Skills, *Better Choices: Better Deals*, April 2011, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/60540/better-choices-better-deals.pdf.

⁴ Shakespeare, S., *An independent review of public sector information*, May 2013.

- The economic and social value of opening up data in conjunction with innovations in technology. There are currently ways to measure the costs of producing and publishing data but no model for evaluating the economic or social benefits 'downstream' and so these activities may be undervalued, leading to under-investment of resources.
- There should be a mixed economy of public data so that everyone can benefit from two-way sharing between the public and commercial sectors.

In addition to this the European Commission continues to have a strong focus on comparison sites. The new 'proposal for a regulation laying down measures concerning the European single market for electronic communications and to achieve a Connected Continent', for example, highlights that end users should have access to independent evaluation tools so that they can compare performance, cost and services. Under the proposed regulation, where comparison facilities are not available for electronic communications national authorities will need to make facilities available so that consumers are able to compare.⁵ In addition to this DG Sanco are currently carrying out two studies: a mapping of comparison tools across Europe and a review of whether user reviews are trustworthy.

Do the regulatory objectives under the Legal Services Act apply to data release?

The LSA 2007 sets out the regulatory objectives, one of which is the duty of the regulators to promote competition in the provision of services (which do not need to include reserved legal activities) and another of which is the duty to protect and promote the interests of consumers. Section 28 sets out the approved regulators duty to promote the regulatory objectives. The Panel argues that promoting better access to data contributes to the fulfilment of both of these objects – to help consumers make better choices when searching for legal services providers, and by virtue of the fact that open data would facilitate greater transparency in the market which in turn should improve competition between providers.

Is data release in line with the new Regulators' Code?

The Better Regulation Delivery Office has released an updated Regulators' Code and a new requirement, the 'growth duty', has been included in the Deregulation Bill being considered by Parliament. The Regulators' Code will provide a framework for how regulators should engage with those they regulate. The code is expected to come into force in April 2014.

Currently, of the approved regulators, only the LSB and SRA are named as being subject to the Regulators' Code, but BIS proposes to make all legal regulators subject to the growth duty. The growth duty means that non-economic regulators will need to have regard to the desirability of promoting economic growth when they exercise their functions. When considered in the context of the wider government policy, and in

⁵ COM(2013) 627 final, September 2013. See specifically Article 25 (3).

particular the recommendations from the Shakespeare Review that the economic and social value of opening up data (and how this can be developed by innovations in technology) should be taken into account, the Panel argues that data release is in line with the better regulation principles.

How does freedom of information legislation apply?

The Freedom of Information Act 2000 (FoIA) was specifically amended in 2013 in order to make sure that those who are entitled to a dataset can have it provided in a format that is useful and that data can be re-used, even for commercial purposes.

Although the LSB and the Legal Ombudsman are subject to FoIA via the Legal Services Act, the approved regulators are not. Neither are the representative bodies. The Law Society, for example, have a Freedom of Information Code which states that they are following FoIA as if it did apply to them⁶ but the Code is fairly brief and does not mirror the provisions in FoIA exactly. The regulatory arm, the SRA, states its aim is to regulate in the public interest but does not explicitly state that it follows FoIA.⁷

If the approved regulators were added to Schedule 1 of FoIA they would have to deal transparently with all requests made under FoIA, and it would bring them within the reach of some of the wider governmental policy on access to data. However, the FoIA route is likely to be time consuming and laborious for anyone seeking access to data in this way (as well as potentially for the regulator in question), and would not lead to a regular stream of data which a comparison site would need in order to make up to date and useful comparisons. It would be better to be proactive and provide this in a structured way rather than react to events later.

Will consumers be able to understand and interpret the data they are presented with?

At a meeting the Panel hosted in November there was concern over how consumers might use and interpret complaints data. For example consumers may not understand that when a large firm has a certain number of complaints made against it and a smaller firm has a smaller number of complaints, when seen in relation to the number of staff or the turnover of the firm, the proportion of complaints against the larger firm may actually be much less significant.

However, research has shown that consumers are generally reasonably savvy about using choice tools. OFT research, for example, has shown that the majority of consumers will use more than one site to make a comparison, in order to compare as much of the market as possible.⁸ Therefore it is not likely that consumers will use information such as complaints data out of context in this way. Moreover, websites compete with one another to serve the market which means that they have an incentive to present data in the most useful and accessible way for consumers.

⁶ <http://www.lawsociety.org.uk/get-in-touch/freedom-of-information/>

⁷ See <http://www.sra.org.uk/sra/strategy.page>

⁸ Office of Fair Trading, *Advertising of Prices*, December 2010, see section 9.

Should regulators publish data if they are not sure of the integrity of information held in their systems?

The Shakespeare Review recommends that there should be an imperative to publish early even if imperfect, and that ‘the perfect should not be the enemy of the good’. This imperative would be in conjunction with a ‘high quality core’ which would allow organisations to first get information out and then work to improve the quality after. Data users say that poor lower quality is not as much of a problem as non-publication. In addition, sites are already operating using limited data. The longer we wait to make more data available the longer this situation will persist. Moreover, we are not asking regulators to publish new data, just making existing data re-usable.

Should regulators only share data with sites they consider to be ‘trustworthy’?

It is possible that only those websites which are ‘trustworthy’ should have data shared with them. This might be websites which have signed up to the Panel’s good practice standards for example, or regulators may want to set other criteria.

However, this approach might restrict competition between comparison sites. Sites are already subject to general consumer law which is enforced by the CMA and trading standards, and to specific rules around advertising and the publication of advertisements (enforced by the ASA) and data protection (enforced by the ICO).

The OFT has previously recognised that an important barrier for choice tools is access to data, that public bodies often collect data at the service provider level, and that access to unrefined public sector information needs to improve. However, self regulation could cause competition risks if only those who are signed up to the scheme benefit from access to data. Sensible scheme design could overcome this but the Panel thinks that on balance it would be best not to restrict access to data to those websites which have signed up to the good practice standards.⁹

We are asking regulators to release data transparently, which can then be used by choice tools to facilitate informed choice. We are not suggesting regulators should have a relationship with particular websites or ‘recognise’ or endorse certain providers.

Should the regulators co-ordinate and only start releasing data once all the regulators are ready and in a position to do so?

Regulators will be ready to share data at different times and the large number of regulators could lead to significant delay, which would deny the benefits of data release to consumers and society, as outlined above. Our position is that starting with the data already held and building from there is the most sensible option.

⁹ Office of Fair Trading, *Empowering consumers of public services through choice-tools*, April 2011.

However, co-ordination is to be encouraged so far as possible to promote a consistent approach and make combining data sets easier at a technical level.

How often should data be published?

Data might be released on an ongoing basis as a live feed, or periodically, for example every month or every quarter. It is likely that when data is released there would be a need to give the date it was released on in order to avoid any concerns about data being relied upon as being up to date when it is actually out of date.

Changing processes to capture and share data might increase costs - this will ultimately be passed on to the regulated community and to consumers

There could be costs associated with having to change processes to capture particular data. However, using data which is currently captured would be a good place to start and it might be possible to build on and refine this in future.

The Shakespeare Review recommends gathering evidence of the economic and social value of opening up public sector information and government data, and how it can be further developed taking into account the latest innovations in technology. Currently the costs of producing and publishing data can be measured but the economic or social benefits downstream may be undervalued, leading to under-investment of resources.

The regulators are not being asked to publish data they don't hold at the moment. In fact in most cases the data is actually already in the public but not currently in a reusable format.