

By email to professionalstandards@barstandardsboard.org.uk

21 December 2018



Dear Sir/Madam

The BSB's Rules Consultation on Transparency Standards

The Legal Services Consumer Panel (Panel) welcomes the opportunity to respond to the Bar Standards Board's (BSB) consultation on rule changes which will give effect to the Competition and Markets Authority's (CMA) transparency recommendations.

The Panel has previously expressed concerns about the approach the BSB proposes to adopt. On balance we continue to think the BSB's approach is not sufficiently aligned to the needs of consumers. The proposals are complicated and unnecessarily nuanced. This is likely to make it hard for the BSB to determine how it would help and support its regulated communities to comply with these new rules. That said, we are hopeful that the regulator will monitor compliance and make necessary adjustments should the rules prove inadequate.

We have outlined our main concerns below.

The BSB's proposal to increase price and service transparency

The BSB has broadly interpreted price transparency as the provision of pricing information on request. The BSB proposes an approach which will restrict its price transparency requirements to Public Access Barristers. There are also criteria around the nature of services provided by a Public Access Barrister before such a provider would be subject to the BSB's price transparency requirements. We do not agree that the categories of Public Access work should be divided in this way. If a BSB regulated provider or entity falls within the BSB's restricted additional transparency framework, such a provider, or entity, must outline their pricing model on their website or in writing. Specifically, they must state whether they charge on a fixed fee basis, or by hourly rate. This pricing information must also include indicative fees for the service, and the circumstances in which cost may vary.

Complication is further increased by the BSB's exemption for those who may not currently be providing the services subject to these additional transparency requirements, but who may be asked to accept instructions to do so at short notice. The BSB says that in these circumstances, those undertaking Public Access work will not need to comply with the additional transparency requirements before accepting instructions. This is clearly convenient for the provider who accepts the business with no responsibility to be transparent, but does not necessarily meet the needs of a client who may be seeking to use the provider's services under conditions of stress.

The Panel is pleased that some consumers will now have access to indicative pricing. This may help them to navigate the market better, or prompt them to ask further questions. We consider the BSB's approach to be a starting position. We expect that it would monitor the level of transparency through its supervisory activities, and assess the efficacy of its approach from a consumer perspective. And if this approach is found wanting, we hope steps would be taken to ensure that the outcome the BSB says it seeks is achieved: *'clients are provided with appropriate information to help them understand the price and service they will receive'*.

However, the Panel is not convinced that these sets of proposals will foster a market where consumers are empowered to shop around, make comparisons, and as a consequence, make informed and timely decisions. Putting the onus on consumers to ask a number of providers for pricing information, with service providers not obliged to respond until fourteen days later, does not give due consideration to the reality of consumer behaviour. It presumes that consumers have the confidence, know-how, time and desire to contact multiple providers for pricing information, and that the matter for which help is sought is not urgent.

It appears that the BSB has accepted providers' arguments that mandatory publication requirements are inappropriate for individual barristers who offer a different type of service from solicitors; and that it is not possible to price those services in a way that lends itself to price publication. We disagree with both arguments. Our Open Data report¹ argues that it is possible, and that it makes good sense, to cost even the most complex piece of work. We have noted in the past that self-employed professionals should be expected to use their wealth of experience to cost appropriately, and where they fail to, they should bear the risk.

With regards to service level information, we know from our annual tracker survey research² that almost half of consumers using barristers (43%) cannot find service level information, such as the number and identity of individuals involved in delivering the service, a timeline showing when key stages of the work will be completed, and any factors that could affect these. Therefore, we are pleased with the proposals from the BSB in this regard.

The BSB's proposals around increased redress transparency

The Panel is of the view that the BSB's proposals around redress transparency will go some way to alleviate concerns that consumers are often unaware of the redress procedure. We support the BSB's proposals to stipulate that information about the Legal Ombudsman should be in a prominent place on the website.

We are however concerned about the BSB's plan to require providers to provide a link on their website to the Legal Ombudsman's decision data; and then another link to the Barristers' register on the BSB's website. The link to the BSB's website will show whether a barrister has a current practising certificate and any disciplinary

¹ Open Data in Legal Services, LSCP, 2016

² Annual tracker Survey, LSCP, 2018

findings against them. We consider that linking to multiple pages from a provider's website will not help consumers to make informed decisions about whom to instruct. The Panel has previously highlighted the importance of ensuring that information is presented in ways that consumers can engage with³. We have also noted that information in the legal services sector is often scattered so as to make information hard to engage with. More importantly, we have said that basic and regulatory information should be merged for ease of access, better assessment and better consumer engagement. The Panel is of the strong opinion that the BSB should bring together its regulatory information and the Legal Ombudsman's decisions. Providers can then link to one place, which will save consumers from navigating from one link to another. This will put them in a better position to use the information as the BSB intends.

To conclude, the Panel considers that the BSB has found a very complicated way to restrict the transparency requirements to a few providers. While there may be some justification at this stage for exempting the referral bar from the transparency requirements, we do not agree with the further categorisations the BSB has developed.

The Panel hopes that the BSB will consider its response and address some of the concerns raised.

Yours sincerely,



Sarah Chambers
Chair, Legal Services Consumer Panel

³ The development of information remedies in legal services, LSCP, 2017