



Sent by email only to consultations@cilexregulation.org.uk

21 December 2017

Dear Sir/Madam

Consultation on plans to deliver transparency for consumers of legal services.

The Legal Services Consumer Panel (Panel) welcomes the opportunity to respond to Cilex Regulation's consultation on its transparency measures.

We accept the need to balance the Competition and Markets Authority's (CMA) transparency recommendations against the reality that Cilex regulation oversees a small number of authorised persons. As such, its proposals must be proportionate. That said, we cannot lose sight of the fact that Cilex Regulation provides a statutory function, with clearly defined statutory objectives. One of its objectives is to protect and promote the interest of consumers. We do not think that these proposals go far enough to protect and promote the consumer interest with regard to the deficiencies found by the CMA.

The Panel would also like to note that although Cilex Regulation addressed price transparency, there is little in the consultation on quality information.

We hope that our reflections are useful and aid in the development of the final decisions.

Reflecting on the consultation questions

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

Cilex Regulation proposes to restrict its transparency requirements, in the first instance, to firms providing conveyancing and will-writing services. The Panel understands Cilex Regulation's arguments for opting to focus on these commoditised services. Transparency measures in commoditised areas are easier to implement and, arguably, easier to monitor and evaluate. We would like to emphasise the need for action to address lack of transparency was identified across all legal services. Therefore, the ease of implementation cannot be the overriding factor for choosing the areas of law to focus on. Other areas of law may need to be prioritised if lack of transparency could have a disproportionate effect on vulnerable consumers for example.

In May 2016, the Panel published a report¹ identifying asylum and immigration, family relationships, and housing as areas for regulators to prioritise, to meet the demand for legal services. The Panel would have liked to see Cilex Regulation make reference to this work by choosing two commoditised areas, and one challenging area (immigration services). The lessons from the commoditised areas and the more challenging area could then inform thinking about future requirements.

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

In our report on priority areas of law², asylum and immigration services featured frequently as having increasing demand for services. The UK saw a 29% increase in applications for asylum in 2015³. LawWorks Clinics also reported a 106% increase in demand from 2013/14 to 2014/15. Moreover, In July 2012, the Panel produced a research note⁴ noting difficulties in accessing legal advice and finding advisors who specialise appropriately. We would suggest that Cilex Regulation prioritises immigration as the next area for the transparency requirements.

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

We recognise that there are challenges with presenting information in a meaningful and useful way. The Panel has been clear that information provision only works when there is a concerted effort to understand what consumers need and the best way to present the information. Often this means it has to be simple and accessible at the point of need. However, arriving at what is simple and accessible is not always easy. This is why we have consistently said that information needs to be tested before using, and then evaluated in use to ensure that the outcomes are the desired ones.

Research shows that the volume and density of information particularly matters. Sometimes the opportunity cost for engaging with complex information is simply too high for consumers. Finding the best ways to gather, simplify, and convey information is challenging, but asking consumers what information they need and how they would like it provided can make the task easier.

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

In the past five years, there has been a steady increase in the proportion of consumers who have had their legal service delivered through email or the internet. We know that digital delivery is now at 27% compared with 20% in 2012, and this trend is increasing. There is, therefore, an opportunity for providers to capitalise on consumers' use of the internet.

¹ [Priority areas of law, LSCP, May 2016](#)

² Ibid

³ [Asylum statistics Annual Trends, February 2016](#)

⁴ [Research note: Immigration and Asylum Services, LSCP 2012](#)

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

The guidance should include examples of good practice, and draw on findings of consumer testing and research.

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

We do not believe that providers should adopt different approaches, even with regulatory guidance. This uncoordinated approach is unlikely to help consumers to find and compare information easily.

In March 2017, the Panel published a report⁵ outlining success criteria for information remedies. Evidence from the report showed that successful outcomes are dependent on good design and implementation of any information remedy. We found that even with the best intentions, information remedies can be ineffective if not developed with consumers.

Where price transparency is concerned, Cilex Regulation has not made any reference to consumer research or testing. Consumer testing is at the heart of the Panel's success criteria for information remedies. And it is what Cilex Regulation should base its final decision on. Without a concerted effort to test, it is at best hit and miss whether the information provided will meet consumers' needs.

However, we accept that regulators of varying sizes may not be well enough resourced to undertake research by themselves. There is scope and good reason for Cilex Regulation to pool resources and work with other regulators to develop and test ways of presenting cost information both enables smaller regulators. Collaboration has the added benefit of introducing some standardisation in approach which would benefit consumers.

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

The Panel is not in a position to advise on the elements that should be in a pricing template. However, we are of the strong view that these elements should be determined after Cilex Regulation gathers evidence of charging practices, costing methods, and final invoices. This should then be assessed against a sample of final bills sent to consumers.

⁵ [Information Remedies, LSCP 2017](#)

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

Fixed fees empower consumers to shop around which in turn drives competition. We know that the overall proportion of consumers who shop around for legal services remains low at 27%.⁶

We accept that there may be legitimate difficulties with offering fixed fees or accurate estimates in all cases. However, it is our strong view that more providers can give consumers bands of prices, using previous experience and professional expertise to cost appropriately. An example would be a band where the price within the band would be determined by whether the case was resolved by early settlement, mediation or at trial. The consumer would then know the costs for a best and worst case scenario.

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

Fixed fee pricing gives consumers a clear idea of what a service is likely to cost, and enables them to compare prices to make informed decisions when choosing a supplier and when using a legal service. It is also an indicator of improved competition in the market.

The Panel has tracked the usage of fixed fees over time. At present they are used in 48% of legal services transactions. Where a fixed fee is offered, there is high take up: conveyancing (68%) and power of attorney (64%), as examples.⁷

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

In our report on information remedies we said that intervention may need to be prescriptive, if, for example, standardisation for the purposes of comparability is an important component of effectiveness. In some situations, there may be a need to dictate more precisely the format in which information should be provided. This is however an assessment that the regulator should make, taking on board the needs and requirements of consumers as well as providers of services.

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

A template which standardises service level information may facilitate better comparison and consumer engagement. The Panel sees the merit in standardisation for comparability purposes, to minimise consumer confusion, and to maximise consumer engagement with the information. However, whether this is the right approach would very much depend on consumers' needs as expressed in research,

⁶ [How consumers are using legal services, LSCP, 2017](#)

⁷ Ibid.

testing and or evaluation. It is disappointing that Cilex Regulation makes no reference to these methods. Moreover, Cilex Regulation does not draw on learnings from other sectors, especially as others have also had to consider issues such as whether a prescriptive template would lead to better consumer outcomes.

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

See response to question 12.

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

See response to question 12

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

The Panel believes that the following information should be included in a service and redress template:

- A brief description of any key stages of the services
- Indicative timescales and any affecting factors, if possible
- Information about the different staff that deliver the services in the area. This should, as a minimum, include the experience and qualifications of the staff that carry out the work and those that supervise the work.
- First-tier complaints data.

Question 16: What information should be provided through the digital smart badge?

The Panel has warned elsewhere against the proliferation of logos in the sector. Legal services regulation is already a complicated landscape with multiple regulators. Multiple logos may add to consumer confusion, especially if other regulators decide to develop logos. The Panel however acknowledges Cilex Regulation's reasons for moving away from a logo and using a digital smart badge. This digital smart badge would provide a live feed to the regulator's website. Consumers can click on the badge and be linked back to Cilex Regulation's website, where details of the firms' regulatory history would appear. In principle we have no objection to this approach, especially as the link has the potential to hold very useful information for consumers.

The digital smart badge should contain the following information:

- Cilex Regulation website link
- Firm is authorised

- Areas of specialism
- Other areas of law provided (unregulated)
- Professional indemnity insurance
- Cilex Regulation compensation arrangements for the firm's specialism and other areas of law offered
- First-tier complaints data
- Second tier disciplinary sanctions.

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?

Yes. The Panel agrees with Cilex Regulation's approach. We agree that this proposal has the potential to increase protection for consumers and employers. We also agree that it is important for regulators to inform the public about firms which are subject to intervention.

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

The Panel is of the view that any guidance about client feedback and/or online reviews should include the benefits of such feedback mechanisms to businesses, including evidence of this where possible.

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

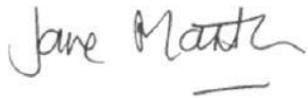
No. The publication of the volume and nature of first tier complaints data has the potential to improve market transparency and to aid consumers in making informed decisions. Complaints data can also provide commentators or intermediaries with more complex information which they are better placed to repackage in simplified form for consumers. Also, it is well argued that the availability of complaints data acts as a deterrent against poor practice, helps to identify areas of high risk, and can guide decisions around prioritisation for approved regulators.

In our Open Data report, the Panel expressed strong views in favour of the publication of complaints data. We said that we would like to see all approved regulators consider what is most appropriate for their regulated communities, consult on options, and then decide on how to make this information available. The Panel said that the publication of complaints data could be at firm level or the data could be aggregated by the individual regulator. The important thing is that it is easy for consumers to find and use to inform decisions.

With regards to Cilex Regulation's proposed approach, it is important to note that first-tier complaints are those raised directly with the service provider by the consumer either during or after services have been delivered. Cilex Regulation says that it has limited data as it regulates a small but growing number of firms. In our view, this does not prohibit the publication of this information, instead it should make it easier to publish and contextualise.

If you would like to discuss any aspect of this response in more detail please contact Lola Bello at lola.Bello@legalservicesconsumerpanel.org.uk.

Yours sincerely

A handwritten signature in black ink that reads "Jane Martin". The signature is written in a cursive style with a horizontal line underneath the name.

Dr Jane Martin

Chair