

Sent by email only to Stephenw@clc-uk.org



21 December 2017

Dear Stephen

Helping Consumers Choose Their Lawyer. Service, Quality and Price Transparency.

The Legal Services Consumer Panel (Panel) welcomes the opportunity to respond to the Council for Licensed Conveyancers consultation on its transparency measures.

The Panel welcomes the CLC's commitment to work with other regulators on the Legal Choices website. This website has the potential to be a significant tool for aiding consumers' understanding and engagement with the legal services market. The Panel also commends the CLC's collaboration with other regulators¹ on the development of a quote generator for conveyancing. Where legal services are provided by individuals and firms regulated by different bodies, it is important that information remedies are aligned and standardised, where relevant, to enable consumers to compare better.

That said, the Panel is disappointed with the CLC's proposals in a number of substantive areas. Firstly, we disagree with the CLC's view that price transparency can be achieved through voluntary guidance. We simply do not believe that guidance provides a strong enough incentive for change.

Secondly, we disagree with the CLC's approach and justification for not publishing complaints data. In a sector where there are few quality proxies, regulators should use what is available, particularly when the evidence shows that consumers, consumer groups, and intermediaries use this information.

Thirdly, we disagree with the CLC's view that it does not need to prescribe service information because it deems this to be typically included in providers' marketing information. This approach differs from what other comparable legal services regulators are proposing to do. More importantly, this approach is out of step with the findings in the Client Care Letter Research² which showed that consumers prioritised some service level information.

Overall, the Panel found the CLC's transparency measures inadequate. Across all of the CLC's proposal, there is little mention of consumer testing or evaluation. This is unfortunate as the CLC has a real opportunity to effect market wide change. Many of the consumers using licensed conveyancers are individuals or small businesses. This

¹ Notable the Solicitors Regulation Authority and Cilex Regulation

² [Client Care Letter Research, 2016](#)

is the very market the Competition and Markets Authority (CMA) hoped to target with its recommendations.

Finally, the consultation has not addressed the need for quality measures sufficiently. Unfortunately, there is very little in this consultation around developing or publishing quality proxies. Price transparency has dominated the CLC's and other regulators' consultation documents. However, it is important to emphasise that the CMA and the Panel both highlighted the need for quality information to sit alongside pricing information.

We do not think that the CLC's proposals go far enough, and offer our reflections on the questions asked to aid in the development of the CLC's final decisions.

Reflecting on the consultation questions

Question 1: Is there any obstacle to the provision of full estimates at the point that potential clients are shopping around for a legal service provider?

Pricing information at the pre-engagement stage empowers 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%.³ It is worth emphasising that the CMA's pricing recommendations are targeted at the pre-engagement stage, to address the low number of consumers shopping around in this sector.

Some may suggest that it is impossible for legal professionals to provide full estimates at the point that potential clients are shopping around, because of the variation in the work they do. But this argument disproportionately places risks on consumers. It is also a less credible argument when one considers the experience and knowledge providers have in understanding the different directions cases may take, along with the likely price implications.

We accept that there may be legitimate difficulties with offering fixed fee or accurate estimates in all cases. However, at present, 90% of all CLC-regulated practices work on a fixed fee basis, rather than hourly rates. This makes it more possible for CLC regulated services to publish pricing information accurately.

Question 2: Would it be desirable for the CLC to amend its rules to make explicit that estimates provided to consumers should always be regarded by the firm as binding on them should they be (subject to any new information that legitimately affects cost)?

Yes. Aside from enhancing shopping around, binding estimates distribute risks proportionately between consumers and providers. At present, the risks of uncertainty and cost spiralling are disproportionately borne by consumers who are already disadvantaged by virtue of information asymmetry. On the other hand, providers who

³ [How consumers are using legal services, LSCP, 2017](#)

are skilled and experienced in running their own businesses are absolved of any risk from not costing transparently or efficiently. Binding estimates can redress the imbalance and incentivise providers to use their experience and knowledge to cost effectively. If 90% of CLC-regulated practices offer services on a fixed fee basis, it is possible to prescribe that these prices be made transparent, and for it to be binding.

Question 3: Would it be preferable to require firms only to publish general pricing information rather than personalised, transaction-specific estimates?

No. We do not think it would be useful to consumers if firms published general pricing information rather than personalised, transaction-specific estimates. We agree with the arguments outlined in the paper against this approach. General pricing information will not provide comprehensive information for the individual consumer to make an informed decision.

Question 4: Do you agree that we can rely on guidance to secure greater availability of information rather than creating new rules?

No. The Panel is disappointed that the CLC is proposing to rely on guidance in place of mandatory rules. Guidance has little legal or regulatory weight in comparison to rules. We do not believe that this approach aligns with the letter and spirit of the CMA's recommendation which call on regulators to ***'require providers to publish information on price, services, redress and regulatory status'***.

The history of in-action in this sector suggests that providers need to be directed to act. The wide-spread absence of price transparency and the continuing handicap this poses to the demand side and competition, warrant robust regulatory intervention. Without direct intervention, providers will not be incentivised to take action.

We would also like to draw attention to the Legal Services Board's (LSB) recent research on pricing information.⁴ The LSB found that the majority of law firms who responded to the survey, by their own admission do not plan to display prices in the nearest future. More specifically, the data shows that only 11% of conveyancing firms advertise their prices, yet, 74% say they have no plans to publish in the near future. And in Will, trust and probate, 21% of firms display their prices, but 59% say they have no plan to publish in the future. These findings suggest that there is an entrenched culture of unwillingness to change which cannot be addressed through guidance.

Question 5: Do you agree that the range of inputs that will be used to generate estimates need not be specified as long as the outputs have to meet with a standard?

Yes. We agree with the CLC's approach.

⁴ [Price of Individual Consumer Legal Services 2017, LSB.](#)

Question 6: If you believe that the list of inputs should be standardised, are there any omissions from the list above or any items that should be removed

We agree with the CLC's approach.

Question 7: Will the template for conveyancing provide clients with complete and reliable estimates? If not, what changes should we consider?

The Panel is not in a position to determine whether the proposed template for conveyancing will provide clients with complete and reliable estimates. To determine this, we suggest that the CLC gathers evidence of conveyancers charging practices or costing method. This should then be assessed against a sample of final bills from consumers.

We would also advise that the CLC keeps any final template under review.

Question 8: Do you agree that the range of inputs that will be used to generate estimates need not be specified as long as the outputs have to meet a common standard?

Yes. We agree with the CLC's approach.

Question 9: If you believe that the list of inputs should be standardised, are there any omissions from the list above or any items that should be removed?

We do not believe that that list of inputs need to be standardised.

Question 10: Will the template for probate estimates provide clients with complete and reliable estimates? If not, what change should we consider?

The Panel is not in a position to determine whether the template for probate estimates will provide clients with complete and reliable estimates. Please see Question 7 for the Panel's preferred approach.

Question 11: Do you agree that firms should be required either to use an estimate generator or to publish their prices as a list?

The Panel agrees that the estimate generator is a good approach.

Question 12: Should we make the use of estimate generators – whether on a firms own website or through a DCT – mandatory for easier comparison?

Yes. The Panel believes that the use of a mandatory estimate generator is more likely to facilitate easier comparison.

Question 13: How has use of a DCT affected your ability to attract clients?

N/A

Question 14: Is the publication of the price list feasible in your opinion, if not why not?

The Panel would like to see the CLC adopt the use of an estimate generator for all the firms it regulates. This would support ease in comparison and facilitate shopping around. We accept that estimate generators may be disproportionately expensive for very small firms. However, giving all providers the option to choose between an estimate generator and a price list may lead to widespread fragmentation.

If 85% of CLC regulated firms have a website, it is arguably easy to determine, through desk research, the size and nature of said businesses. Using this information, we would expect the CLC to carry out a survey of the smaller firms and gather other market intelligence to help it analyse and determine which firms (perhaps by turnover) are likely to be disproportionately impacted by the requirement to use an estimate generator. The evidence from this exercise should then be used to carefully prescribe limited exemptions from the requirement to have an estimate generator.

Question 15: Do you agree that firms should be required to provide written estimates by email, post or in person in response to non-internet queries? If not, please tell us why?

Yes. We agree with this proposal.

Question 16: Do you agree that the provision of data by firms to DCT should be on a voluntary basis?

The Panel agrees with this approach, but only if the transparency measures proposed are mandatory. If providers are mandated to publish pricing and other pertinent information, we envisage a scenario where intermediaries such as Digital Comparison Tools (DCT) simply collate the mandated information and reuse it for their own purposes. However, if the CLC decides to use guidance, we foresee low compliance rates and at best patchy data. In the latter scenario, asking providers to work with providers of DCT's on a voluntary basis would be futile.

Question 17: Are there any other issues we should take into account in relation to DCTs

N/A

Question 18,19, and 20

We have grouped these questions as they all relate to the CMA's recommendation to provide pre-engagement service information.

Question 18: Do you agree that no regulatory action is required to ensure that firms make clear to clients the legal service they can provide because firms already publish sufficient information?

Question 19: Do you agree that no regulatory action is required and that the market will ensure that information about models of service delivery will be communicated to customers as part of firms' marketing efforts. If not please tell us why?

Question 20: Do you agree that firms should provide general information about their mix of staff when providing cost estimates and on their website?

The CMA recommended that regulators should ask firms to publish a description of the services they provide on their websites. This information should include details on the different staff who deliver services, a timeline showing when key stages of the work will be completed, and any factors that could affect these requirements. The CMA envisioned this information helping consumers to assess and compare what different firms offer. The Panel is concerned that the CLC proposes to take no regulatory action where service information is concerned. In our view, there should be a requirement for the publication of service information, especially timescales. As noted in our Open Data report,⁵ information on price is not enough. Consumers also need service and quality information where possible.

Moreover, the CLC's approach is out of step with other comparable legal services regulators who are also responding to the CMA's recommendations. For example, the SRA⁶ proposes to set minimum standards on the following:

- a clear, brief description of the relevant services
- 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.

We note that the CLC is working with the SRA on how to present pricing information for meaningful cross sectoral comparability. In our view, this must also extend to service description, as this will assist consumers in their understanding of what they are purchasing, and help them compare more successfully.

The CLC's approach is also out of step with the consumers' needs as identified in the findings of the Client Care Letter research.⁷ That research showed that consumers were looking for information around scope of the agreed work, associated fees, and likely timescales.

⁵ Open Data in Legal Services, LSCP, 2016.

⁶ SRA's Looking to the Future: better information, more choice, September 2017

⁷ Client Care Letters Research, LSCP, 2016.

We do not accept the CLC's argument that no regulatory action is required because firms already provide sufficient information. If this is indeed the case, then the CLC should prescribe that the information be published to assure a high compliance rate.

Question 21: Do you agree that the legal qualifications and experience of the individuals who will actually carry out the work for the client should be set out in the letter of instructions?

Yes. The Panel agrees with this proposal.

Question 22: Do you agree that accreditation schemes should not be used as a basis for consumer choice?

Yes. The Panel agrees that accreditation schemes do not guarantee competence. We note the CLC's recap of previous concerns raised by the Panel about the rigour of existing accreditation schemes. This concern was recently highlighted by the Advertising Standards Authority which ruled that the Law Society's advertisement about its Conveyancing Quality Scheme was misleading, because it did not involve any assessment of applicants' expertise or quality of service⁸.

Moreover, evidence from our annual Tracker Survey shows that consumers' awareness of quality marks dropped in 2017 to 68%, following an increase in 2015 to 72%.⁹ Also, recognition of quality marks continues to be lower among BME groups, with 62% noting their awareness of quality marks, compared to 72% of those from White British background. This figure drops further with Pakistani consumers (47%) and Black African consumers (50%).

More significantly, the use of quality marks to help consumers choose between different providers has been consistently low over the past six years. Only 4% of consumers used them this year. Although this figure is very low compared with other sectors, it must be noted that 25% of consumers across all sectors say they never look for quality marks, and another 25% say they do not use quality marks to choose between providers.¹⁰

Question 23: Are there accreditation schemes which could be developed that would provide useful information to consumers?

The Panel recognises that there are difficulties and challenges with developing quality proxies in this sector. In our Open Data report,¹¹ we asked regulators to work towards developing these proxies by drawing on learnings from other sectors. Our report is full of examples from other regulators.

⁸ ASA.org.uk

⁹ How consumers are choosing legal services, LSCP, 2017

¹⁰ Ibid.

¹¹ Opening up Data in Legal Services, LSCP, 2016

Question 24: Should the CLC require all firms to ask their client's one standard question as part of their wider feedback surveys as a basis for comparisons of quality?

The Panel commends the CLC for initiating this important development to require all firms to seek customer satisfaction feedback. We also acknowledge the importance of establishing a format which is easily comparable. The proposal for one standard question would achieve this. However, we would urge CLC to lead the development of a more comprehensive set of questions which will give a better picture of service quality overall. This is a well researched area with many good examples to build on.

Question 25: Should the CLC require firms to publish their score on the standard question on their website?

Yes. If the CLC decides to adopt this approach.

Question 26: Should the CLC collate and publish the scores of all firms against the standard question?

Yes. The CLC should own the process. It should analyse and publish the information should it decide to adopt this approach.

Question 27: Would it be desirable for the CLC to manage the collection of responses to the standard question through a survey that firms should sign post to clients?

Should the CLC decide to go ahead, we agree that it would be desirable for it to manage the process, and perhaps integrate the 'rating' into its proposed digital register.

Question 28: Do you agree that the CLC should promote the use of third party feedback platforms as best practice and not make their use mandatory?

Yes. The Panel agrees that the CLC should promote the use of third party feedback platforms as best practice, and not make their use mandatory.

Question 29: Would making use of third party feedback platforms mandatory improve outcomes for consumers.

We do not believe that a single quality indicator can improve consumer outcomes. Instead, a concerted effort to develop and be transparent about a number of quality proxies would help.

Question 30: What measures of proxy would help consumers choose the right legal service provider for them

In the Panel's Open Data report,¹² we highlighted the need for regulators to develop quality proxies in the sector by drawing on learnings from other regulated sectors. As noted in that report, first-tier complaints data and the Legal Ombudsman's full decision would be a good place to start in legal services as most regulators collate first-tier data already.

Question 31, 32 and 33 (we have grouped these questions together as they all relate to first tier complaints data):

Question 31: Do you agree that publication of data on first tier complaints by law firms should not be mandatory?

Question 32: If you believe that first tier complaints data should be published by law firms, what steps can the CLC take to ensure that it provides a reliable basis for comparison between firms without raising the regulatory burden disproportionately?

Question 33: How important would comparable first tier complaints data be in informing consumer choice?

The Panel has consistently advocated for the publication of first-tier complaints data as a proxy for quality, because it has the potential to improve market transparency, and 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 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,¹³ the Panel highlighted the benefits of publishing complaints data in other sectors. For example, in 2011 Ofcom published research which showed that a fifth of consumers in every market would be likely to use information comparing complaints. Also, in 2012, a survey for the Financial Services Authority showed that 38% of customers said they would be likely to use complaints data as a factor in making their choice of financial services provider. And we noted that complaints data has been used by consumer groups to create league tables to help consumers make better informed decisions.

The Panel acknowledges that there are challenges around capacity to collect, analyse, and contextualise complaints data in a meaningful manner. However, as noted in our Open data report,¹⁴ these challenges are not insurmountable. Other

¹² Ibid.

¹³ Ibid.

¹⁴ Ibid.

regulators have successfully mitigated against similar risks, and gone on to overcome comparable difficulties. Regulators can draw on learning to explore how others do it. For instance, Ofcom originally published complaints data by market share. Providers with 5% or more were required to submit data to Ofcom. In total, those providers accounted for 87% of the market covered. In financial services, firms with 500 or more complaints are required to report to the Financial Conduct Authority every six months. Its predecessor, the Financial Services Authority, started off by providing aggregated data broken down by type, nature of complaint, timeliness in handling, and outcome. The CLC already collates complaints data, it can make a start with what it has.

We are disappointed that despite the overwhelming evidence of the importance and usefulness of complaints data, the CLC has opted not to explore how this information should be contextualised for meaningful use.

In 2016, the Panel published a report on information remedies¹⁵ outlining various success criteria for information provision to consumers. One of the criteria asks regulators to consider whether the information remedy under consideration is 'appropriate'. We said that appropriateness should take into consideration the level of risk, and the ability of consumers to adequately comprehend the significance of the information. In its consultation document, the CLC has used the 'appropriateness test' to dismiss the publication of complaints data. The Panel strongly disagrees with the CLC's interpretation and use of the test. As noted above, there is overwhelming evidence describing how complaints data has been successfully used by ordinary consumers, consumer groups and intermediaries. The evidence from other sectors also shows that although contextualisation is a legitimate risk, it can be mitigated against. In a sector with little quality indicators we would urge the CLC to reconsider its approach.

Question 34 and 35: Do you believe that publication of data on second tier complaints by law firms should not be mandatory? If you believe that second tier complaints should be published by law firms, what steps would need to be taken to ensure that consumers could use them easily.

The Panel believes that a culture of transparency should apply to the work of the regulator. We believe the regulator should publish decisions against its regulated communities in full, and promote transparency to consumers by requiring that providers publish the decisions against them on their websites.

In our Open Data report, we said regulators should link basic information with conduct and complaints data. It is therefore our strong view that once the CLC has made an adverse finding against a provider, that information should be merged with the providers profile and published via the CLC's digital register. The information should remain on the register for as long as the provider is authorised.

¹⁵ [Information Remedies in Legal Services, LSCP, 2016](#)

Question 36: Do you agree that firms should be required to publish disciplinary information about their lawyers and the firm.

Yes. We agree with this proposal.

Question 37: Do you think that there is merit in firms publishing their level of PII cover to help guide consumer choice?

The Panel is unaware of evidence showing that consumers use PII information to help them choose their service provider. Without consumer research or testing, it is difficult to say for sure. That said, we have suggested in this response, and elsewhere, that regulators should work together to develop one logo which shows that a provider has PII and contributes to a Compensation Fund, with accompanying information about the possible implications for the consumer.

Question 38: Do you think that data about first tier and second tier-complaints should be added to the digital register of CLC regulated firms as a useful resource for DCT and others?

Yes. Please see question 34 and 35.

Question 39: If you agree that the complaints data should be added to the register how should we make clear to consumers the relevant context and the degree of reliance that can be placed on comparison of those figures?

Please see question 33 for a full response on complaints information.

Question 40: How can data about complaints be made available in other ways?

Please see question 33 for a full response on complaints information.

Question 41: Do you agree that information about conduct matters should be signposted from entries on the digital register?

Yes, see response to question 37.

Question 42: Do you agree that the CLC should not publish information about individuals or firms under investigation?

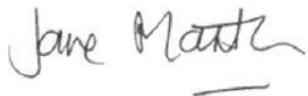
No. We do not agree with this approach. As noted above, we believe that transparency should extend to the work of the regulator. Establishing a blanket ban on publishing information about individuals or firms under investigation may not always be in the public interest, including providing appropriate protection for consumers.

Question 43: Should the CLC add service ratings to its digital register of firms?

Complaints data and service ratings are quality proxies that could be of use. However, work would need to be done around how this information should be presented in such a register.

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