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30 November 2017

Dear Sir/Madam

**Master of Faculties consultation on plans to deliver transparency for consumers of legal services.**

The Legal Services Consumer Panel (Panel) welcomes the opportunity to respond to the Master of Faculties (MoF) consultation on its transparency measures.

The Panel is in broad support of the approach outlined by the MoF. We accept that the MoF must balance the Competition and Markets Authority's (CMA) transparency recommendations against the reality that it oversees a small number of authorised persons. As such, its proposals must be proportionate.

Nevertheless, the Panel believes that the MoF's proposals can be strengthened in parts, especially around how pricing information should be presented to consumers.

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

**Reflecting on the consultation questions**

**Question 1: Do you agree that changes to the Practice Rules is the best way of achieving the changes which the CMA recommendation require? If not, how else might this be achieved?**

The Panel agrees with the MoF that changes to the Practice Rules is the best way of achieving the transparency measures that the CMA recommended. Aside from the MoF's rationale, we also believe that changes to the Practice Rules, as opposed to changes to the Code of Practice (which sits beneath the Practice Rules), signify the importance of the transparency measures.

**Question 2: Do you have any comments on the proposals to extend the transparency requirements to all the areas of work which the notary undertakes?**

The Panel agrees that the transparency measures should apply to the full ambit of work provided by notaries, so that the profession as a whole is seen to be responding positively to the CMA recommendations. We would also like to add that restricting the transparency measures to specific areas e.g. conveyancing, will-writing or probate

activities, could inadvertently lead to two different cultures co-existing within such a small sector.

**Question 3: If you think the proposals should be limited to discrete types of work undertaken by notaries, what areas should be covered and why? Please also give your reasons for not including other types of work.**

The Panel is of the view that the transparency measures should apply to all notaries for the reasons given in the consultation document, and expressed in our response to question 2 above.

**Question 4: What are the challenges and opportunities for notaries of publishing transparency that is helpful to consumers: on a notary's own website; on the website of a firm of lawyers of which the notary (who may also be a solicitor, for example) is either a partner, consultant or employee?**

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 notaries to capitalise on consumers' use of the internet.

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. There is therefore a challenge to consider the best way to gather, simplify, and convey information meaningfully.

**Question 5: What challenges do you foresee in providing advance pricing information at the pre-engagement stage?**

Pricing information at pre-engagement stage empowers consumers to shop around. This improves their decision making process which in turn drives competition. We know that the overall proportion of consumers who shop around for legal services remains low at 27%<sup>1</sup>.

Some may suggest that it is impossible for legal professionals to cost services 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

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<sup>1</sup> The Legal Services Consumer Panel, How consumers are choosing legal services, July 2017.

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, it is our strong view that more providers can give consumers a range of prices, using previous experience and professional expertise to cost appropriately. This must be possible by estimating cost depending on whether (for example) a litigation case is resolved by early settlement, mediation or at trial, to ensure consumers have an idea of costs for a best and worst case scenario.

**Question 6: Could fixed fee pricing be used more widely for consumers of notarial services and, if so, how this might be achieved?**

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. At present only those offered services at a fixed fee rate can be confident in the final cost.

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.

We believe that fixed fee pricing could be used more widely as evidenced by the 48% of providers who operate in this way. If a fixed fee cannot be offered, then providers of services should be able to give consumers a range of prices, using previous experience and professional expertise to cost appropriately as noted above.

**Question 7: What are the challenges and benefits, to notaries and consumers, of different approaches that notaries can take to publishing price information?**

In March 2017, the Panel published a report<sup>2</sup> outlining the success criteria for information remedies. Evidence from the report showed that successful outcomes are dependent on good design and implementation of the information remedy. We found that even with the best will and intention, information remedies can be ineffective.

It appears that the approach for presenting price information as not been considered carefully. We do not believe that providers should adopt different approaches, without any regulatory guidance, particularly as this is a new regulatory requirement on providers. This uncoordinated approach is unlikely to lead to an outcome where consumers are able to find and compare information easily.

Consumer research and testing is at the heart of the Panel's success criteria for information remedies. The MoF has not explored this key component of the Panel's success criteria. We accept that regulators of varying sizes may not be well resourced to commit to elaborate research. However, if resource is a hindrance, there is scope

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<sup>2</sup> The Legal Services Consumer Panel, Information Remedies, March 2017.

and a good rationale for the MoF to pool resources and work with others. Without a concerted effort to test, it is at best hit and miss whether the information provided will meet consumers' needs. Working with other regulators to develop and test ways of presenting cost information both enables smaller regulators to fund the needed work and introduces some standardisation in approach, both of which benefit consumers.

**Question 8: To what extent would notaries welcome a more prescriptive approach to presenting 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 9: Do you have other comments on presentation of price information.**

See question 7.

**Question 10: Do you have any comments on the proposals to allow notaries to provide the required information in a format that suits them rather than being prescriptive (save as to the requirement that it is in plain and consumer friendly language)?**

The MoF has stated that it will require notaries to publish information on consumers' rights to redress and compensation, but it will not prescribe how notaries should do this, except for asserting that this information should be in plain and consumer friendly language.

Joint regulatory and Panel research<sup>3</sup> showed that language in itself can be a barrier to accessing legal services. The Panel is therefore disappointed that the MoF proposes to adopt an approach that will be untested on consumers. While the Panel is not insisting that a prescriptive approach should be adopted, the MoF should explore in more depth what would work for consumers, and if necessary draw on lessons from other sectors.

**Question 11: Would you prefer a more prescriptive template format? If so, do you have any suggestions as to what the template might look like?**

See question 10 above.

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<sup>3</sup> The Legal Services Consumer Panel, Research into Client Care Letters - Qualitative Research Report, October 2016.

**Question 12: Do you agree that notaries offering conveyancing, probate activities and/or will-writing should provide information, so far as possible, in legal sector-wide standard format to assist comparison by consumers?**

The Panel sees the merit in standardisation for comparability purposes, to minimise consumer confusion and to maximise consumer engagement with the information. Therefore, we strongly agree that there is merit in legal regulators working together to ensure that, where possible, providers regulated by different regulators use a common language and approach when disseminating information. However, for this approach to be effective, regulators would need to pool resources and work towards an agreed common approach.

**Question 13: What are your views on the provision of a prescribed form of wording for use on business communication and websites to confirm the regulated status of a notary?**

The Panel agrees that the existence of different forms of words explaining that a provider is regulated by the MoF is confusing. We therefore support the prescription of an appropriate form of words to confirm the regulated status of a notary.

**Question 14: Do you believe that a logo for use in conjunction with the regulatory statement referred to above would be helpful to consumers?**

The Panel acknowledges that a logo can be a useful and easily recognisable visual symbol for consumers, where there is high awareness of the logo. However, we would like to warn against the proliferation of logos in the sector. Legal services regulation is already a complicated landscape with multiple regulators. Therefore, there is a danger of multiple logos adding to consumer confusion, especially if other regulators decide to develop their own logos. And we know that others are consulting on this exact proposal.

The MoF regulates fewer than 800 authorised persons, and the procurement of a notary service is likely to be infrequent. We are therefore not convinced that a logo is necessary. It is our opinion that a clear, simple sentence, without a logo, would suffice.

**Question 15: Do you agree that expanding the rules to require additional redress and service information at the point of instruction will be beneficial to consumers?**

Yes. The Panel believes that the additional information requirements around Professional Indemnity and Fidelity Insurance, timescale for the transaction, and other service information would be especially useful for consumers.

**Question 16: Do you agree that the Code of Practice is the appropriate place for guidance as to the content and style of Client Care letters/email?**

Yes. The Panel welcomes the MoF approach, especially as the findings of the Client Care Letters research<sup>4</sup> revealed a disconnect between the information provided and/or prioritised in the Client Care Letters and the information that consumers are interested in receiving. The Panel believes that clear regulatory guidance, drawing on the findings and best practice principles in the report, would be of much help.

**Question 17: Do you think it would be in the interest of the consumer to provide a link from the Directory on our website to related disciplinary decisions of the Court of Faculties where there has been a finding against a notary?**

The Panel has consistently said that basic and regulatory information is scattered in the legal services sector. This makes it difficult for consumers to access and assess information. Consumers are expected to go to different sections of different websites, find the information they need, piece it together, and then make sense of it. As such, we have asked approved regulators to do more to bring together regulatory information in a meaningful way. In our Open Data report we said a starting point would be to link basic information with conduct and complaints data. It is therefore our strong view that once the Court of Faculties has made an adverse finding against a provider that information should as a matter of course be merged with the provider's profile.

**Question 18: If a link is provided, should this be time-limited or permanent**

In the case where the Court of Faculties finds against a provider, this should form part of their regulatory history report for as long as they are authorised by the MoF to carry out business.

**Question 19: Do you think it would be in the interest of consumers and the profession to provide notice of an intended hearing in the Court of Faculties in advance and to link that with an entry in the Directory.**

Yes. The Panel believes that a culture of transparency should apply to the work of the regulator and the Court of Faculties. As noted in the consultation document, this is the approach adopted by the Solicitors Regulation Authority and the Solicitors Disciplinary Tribunal. Both bodies publish notices of hearings and findings in full. We believe the MoF should emulate this approach. Furthermore, a common approach by all the regulator is likely to enhance transparency around enforcement procedures.

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<sup>4</sup> Ibid.

**Question 20: Do you have any other views on the linkage of disciplinary or complaints information with an entry in the Directory and the balance to be struck between assisting a consumer to make an informed decision and being unduly prejudicial to the notary's practice?**

The Panel is aware that the SRA is carrying out an extensive review of its 'digital register'. This approach proposes to merge disciplinary findings with basic regulatory information. It is a balanced approach and in the direction we would like to see other regulators move.

**Question 21: Do you agree that the MoF should encourage notaries to engage with third-party intermediary websites but that they should not mandate such engagement through changes in the rules?**

Yes. We agree that there is a role for intermediaries in the legal services market. The Panel has actively supported the entry of intermediaries such as price comparison websites into the market. We developed twenty good practice standards with industry input.

However, it is important to emphasise that the standards we developed were as a direct result of observing some poor practices, e.g. opacity around who price comparison owners were and how many law firms they were comparing. Also, lessons from other sectors highlight that intermediaries can add complexity to an already complicated landscape. Consumers can sometimes get confused about who they are dealing with, and be unsure of any recourse to redress for misleading information. Therefore, on balance, we agree that notaries should not be mandated to engage with intermediaries through changes in the rules. Instead, the MoF should encourage and promote compliance with all its transparency measures. Compliance with measures such as pricing information or complaints data would give intermediaries access to the information they need to do business.

**Question 22: Do you have any comments on the place which client feedback and online review sites might have in enhancing consumer information/consumer choice in relation to the areas of work in which notaries are routinely instructed by individual consumers and or small businesses?**

The Panel recognises that consumer feedback and online review sites can be a useful resource for consumers, especially as there is a scarcity of information around service quality.

**Question 23: Do you have any comments on our approach to first-tier complaints data?**

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, to 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 the MoF'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. The data cited in the consultation in respect of the Company of Scriveners or Faculty Office for Notaries suggests little or no activity, but we would recommend that this situation is closely monitored. Consumer Panel survey data suggests that around half of consumers of legal services who are dissatisfied do not know how to raise a complaint.

**Question 24: Do you agree that the development of the legal choices website is the appropriate platform to achieve the CMA's recommendation that better information be made available to assist consumers to identify their legal needs and how these might be best met.**

In principle we agree with the recommendations being considered around utilising the Legal Choices website more effectively. We know that the approved regulators are working together towards enhancing the website so that it can better assist consumers and meet their needs. We fully support the opportunity that this presents.

**Question 25: Do you have any views on the development of a single digital register of legal service providers which you wish us to take into account?**

As noted above, we are in support of a single digital register which merges basic service and conduct information. Such a register could enhance consumers' decision making skills and help them navigate the landscape better. Eventually, we would like to see a single cross sectoral register placed on the legal choices website, with links to it from all provider and regulator websites.

We would be happy to discuss any aspect of this response. Please contact Lola Bello for further enquiries at [lola.bello@legalservicesconsumerpanel.org.uk](mailto:lola.bello@legalservicesconsumerpanel.org.uk).

Yours sincerely

Dr Jane Martin

Chair

A handwritten signature in black ink that reads "Jane Martin". The signature is written in a cursive style. Below the name, there is a short horizontal line.