



Sent by email only to professionalstandards@barstandardsboard.org.uk

5 January 2017

Dear Sir/Madam

Response to the Competition and Market Authority's Recommendations

The Legal Services Consumer Panel (Panel) welcomes the opportunity to respond to the Bar Standards Board's (BSB) consultation on its transparency measures.

The Panel would like to commend the BSB for a well-considered consultation document that has the potential to advance transparency in the sector. We are particularly pleased that the BSB has recognised the need for clear compliance and communication strategies. These would make the proposals more effective. We must also commend the BSB for its consideration of vulnerable consumers, and its efforts to ensure that these proposals meet their needs.

The Panel would like to offer some overarching comments on the substance of the consultation document before addressing the BSB's questions.

Scope of the proposals

The Panel has considered whether it is justifiable to limit the transparency disclosure requirements to Public Access barristers and barristers working with clients who have a right to complain to the Legal Ombudsman. The overriding reason for this approach is the need to ensure that the regulatory obligations and requirements are proportionate. The BSB proposes to exempt barristers advising big corporations, businesses and government from the transparency requirements. Barristers offering services to ordinary consumers, charities, small and micro businesses will be subject to the disclosure requirements. Although the Panel understands the proportionality point, we are concerned that allowing for different disclosure requirements within the profession may not be favourable to the overall cultural shifts necessary to effect change. Also, it is our view that, on balance, the benefits of transparency and consistency across the profession warrant a uniform approach.

Mandatory and voluntary information

The Panel acknowledges the consideration given to the need for a proportionate approach. However, we are concerned about the layers of complexity the BSB has built into its proposals. Whilst a risk-based approach to regulation is one of the key

better regulation principles, this must always be grounded in strong evidence of the impact or potential impact on consumer detriment. The BSB appears to have done this as a basis for categorisations which determine mandatory and discretionary information for consumers. Our main concern, however, is that the categorisations are only based on a regulatory self-assessment without input from consumers. The Panel has consistently said that consumers have a role to play in articulating what information they prioritise, and how it should be presented to them. It is therefore disappointing that the BSB has not involved consumers in this important exercise.

Regulators should also weigh up the advantages of proportionality for providers against the benefits of clear and consistent regulation for consumers. We would therefore point out that this overcomplicated approach is unlikely to achieve the improvements requested of regulators to address a lack of information for consumers across the sector. We would urge BSB to consider a common and consistent approach with other regulators as the most effective way to develop greater transparency. In the light of experience it may subsequently then be possible to relax regulatory requirements with a risk based approach.

Information on quality

In our Open Data report,¹ the Panel highlighted the need for quality information to sit alongside price transparency. This need has not been addressed sufficiently in our view. We would like to see the BSB address our concern on this issue.

Consumer Research and Testing

The consultation document highlights the importance of consumer research and testing, but the document is silent on the approach and timeframe for these. The Panel would like to emphasise that the timing of this research is also important.

The Panel's work on information remedies² is quoted extensively in the consultation document, but sometimes as a reason not to provide information because of 'information overload'. The Panel will support information overload as a reason for not providing information if regulators demonstrably show, through analysis, consumer research and indeed testing, that the information would be unhelpful or counterproductive.

Complaints Data

The consultation document asks whether the BSB should request barristers and chambers to publish complaints data on providers' websites. In our Open Data report,³ we recommended that regulators should collate and consider how to publish this information in a meaningful and contextual way for consumers and consumer representatives. We note that the BSB already collects complaints data through its

¹ [Open Data in Legal Services, LSCP, 2016.](#)

² [The Development of Information Remedies in the Legal Services Sector, LSCP, 2016.](#)

³ [Open Data in Legal Services, LSCP, 2016.](#)

supervisory work. The next phase is for the BSB to consider how to publish and present this information. It is disappointing to see very old arguments about the merits of publication rehashed. We have rebutted all of these arguments in the past, most recently in the Open Data report. More importantly, all the issues and challenges around the publication of first-tier complaints data have been tackled by other regulators outside of legal services. As our Open Data report shows,⁴ all other regulators outside of legal services now publish this data as a matter of routine. In a sector where few quality indicators exist, complaints data can prove very useful.

The Panel has answered most of the BSB's questions below, please note that we have omitted to respond to a few because we don't have the expertise, experience or insight to make valid suggestions. We hope our reflections on the questions answered aid in the finalisation of your decisions.

Reflecting on the consultation questions

Question 1: do you agree that the publication of price recommendations 1,2, and 3 would have the greatest impact in order to improve consumer understanding, facilitate shopping around and drive competition in service provision?

The Panel recommends that the BSB keeps the areas it chooses to issue Guidance around under review. Without consumer input or testing, it is difficult for the Panel to be certain that the BSB's assessment is correct.

Question 2: do you agree that the publication of service recommendation 7 and 10 would have the greatest impact in order to improve consumer understanding, facilitate shopping around and drive competition in service provision.

The Panel's criticism of the BSB's self-assessment approach (question 1) applies to information provision on services too. We are not convinced that information on the mix of staff should be considered 'medium impact', which means providers would not be mandated to provide this information. The mix of staff that will deliver the service, in terms of experience and seniority, may legitimately be linked to the cost of the service, and so, in our view, this information should be mandated.

We also note that the BSB's approach is out of step with other comparable legal services regulators, most of whom are mandating the publication of this information to aid comparability of services.

Question 3: do you agree that the publication of redress recommendation 11 and 12 would have the greatest impact in order to improve consumer understanding, facilitate shopping around and drive competition in service provision?

⁴ Ibid.

The Panel agrees that information about the regulatory status, registration details and complaints process are important. We welcome the BSB's proposal to make these mandatory. However, we are also of the view that information about the existence of Professional Indemnity Insurance could be equally important to consumers' pre and even post engagement.

Question 4: do you agree that the BSB should introduce guidance (rather than mandatory rules) for the CMA recommendations that have been categorised as having high and medium impact for consumers? Please explain your answer.

The Panel believes that the BSB's use of mandatory and voluntary requirements is overly complicated and relies too heavily on the BSB's own assessment of what is likely to have very high impact on consumers. Please see the paragraph on 'Mandatory and voluntary information' on page 1 for a full response.

Question 5: do you agree with the BSB's analysis of why the high and medium impact recommendations should not be adopted as mandatory rules. Please explain your answer.

No. please see responses to question 1-4. And our opening comments on page 1.

Question 6: do you think the BSB should require publication of first-tier complaints data. Please explain your answer?

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,⁵ 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

⁵ Ibid.

noted in our Open Data Report,⁶ these challenges are not insurmountable. Other regulators have successfully mitigated against similar risks, and gone on to overcome comparable difficulties. Regulators can draw on learnings 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.

Question 7: do you think it would be beneficial for barristers to display the BSB's logo on their website? Please explain your answer.

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 Panel however acknowledges that a digital smart badge that provides a live feed to the regulator's website, confirming the regulatory status of the individual or firm, could be a helpful tool. In principle we have no objection to this approach.

Question 8: do you think Public Access barristers should be required to publish the BSB's Guidance for Lay Clients on their websites? Please explain your answer.

Yes. Consumers dealing with Public Access barristers do not have the extra safeguard of an intermediary e.g a solicitor explaining the nature or details of the relationship or arrangement. As Public Access is not the typical route consumers take when procuring the services of a barrister, we agree that consumers should be provided with guidance. More importantly, the BSB should mandate that this information be provided on the website, and also provided to consumers before work commences.

Question 10: do you agree that the BSB's suggested minimum disclosure requirements should apply to all barristers undertaking Public Access work? Please explain your answer.

Yes, we agree that as a minimum the BSB's proposals should apply to barristers undertaking Public Access work.

⁶ Ibid,

Question 11: do you think that the BSB's suggested minimum disclosure requirements should apply to barristers undertaking referral work, either

- When dealing with clients that are entitled to complain to the LeO**
- By reference to high-risk practice areas or**
- A combination of the above (a) and (b) above?**

Yes, we agree. We are of the view that the BSB's proposals should extend to all barristers practicing in areas of high consumer vulnerability. The lack of transparency in areas of high consumer vulnerability e.g. immigration services, could have a disproportionate effect or compound the challenges faced by consumers navigating these areas. In May 2016, the Panel published a report identifying asylum and immigration, family relationships, and housing as areas for regulators to prioritise. Therefore, we support the suggestion that the BSB's minimum disclosure requirements should apply to barristers' undertaking referral work when dealing with clients that are entitled to complain to the LeO, and when practicing in high-risk practice areas.

Question 14: do you have any comments on when the BSB's suggested minimum disclosure requirements should apply to Public Access barristers and those undertaking referral work for clients entitled to complain to the LeO?

Please see question 11.

Question 15: do you agree that option two would be more feasible in terms of providing minimum price and service information? Please explain your answer.

The Panel appreciates the need to implement proportionate solutions which will also be meaningful to consumers. We understand the unique position of barristers working in chambers and appreciate that this may pose specific difficulties. Nevertheless, we are not convinced about proposals to provide blended prices and service information on chambers' websites. We would therefore suggest that this approach is consumer tested before implementation.

Question 17: are there any other issues in relation to accessibility of information (other than those highlighted above) that the BSB should consider?

The Panel welcomes the important considerations around accessibility, information overload and complexity noted by the BSB and referenced in our report on Information Remedies. The Panel would also like to note that in addition to these issues, we recognized that it is difficult to predict how consumers would engage with information without testing the information first.

Question 18: do you think it would be useful to provide core information on either the BSB's website or through other third party sites?

In our Open Data report,⁷ we noted that although regulatory data is available across the sector, a key weakness is that it is scattered and not easily accessible. In that report, we recommended that regulators should do more to bring together regulatory information in a meaningful way. A starting point would be to link basic and conduct information. In our view, the BSB should provide core information on its own website where third parties may then access it for their own use.

Question 19: are there any other issues in relation to consistency of information (other than those highlighted above) that the BSB should consider?

The BSB has referenced the issues we raised in our information remedies report. There isn't any more we can add at this stage.

Question 24: do you have any comments on the BSB's proposed strategy for compliance with the new transparency requirements?

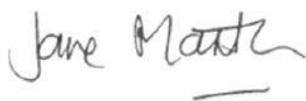
We support this strategy and commend the BSB for having a well-considered approach

Question 25: do you agree with the analysis in the EIA, and our view that although barristers who are BME, male and over 35 will be somewhat more likely to be required to comply with new transparency requirements in respect of Public Access work, this is justified given the expected benefit to Public Access clients, access to justice and competition? Please explain your answer.

We agree with the BSB's analysis and its justification for proceeding even though on the face of it BME barristers who are male, and over 35, appear to be disproportionately affected by these requirements.

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



Dr Jane Martin

Chair

⁷ Ibid.