



The development of information remedies in legal services

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1 Summary

- 1.1. **A regulatory obligation on businesses to disclose information to consumers, consumer groups, and in some cases intermediaries, is typically referred to as ‘information or disclosure remedies’¹.**
- 1.2. Regulators and competition authorities usually mandate for these types of disclosures to address market failings or to improve competition.
- 1.3. The Legal Services Board (LSB) has asked the Panel to provide it with advice on *‘the effectiveness of information remedies in legal services regulation and how these could be improved’*².
- 1.4. The scope of this advice is restricted to *‘information which an approved regulator requires authorised persons to provide to consumers at any stage’*³.
- 1.5. Economic regulators and competition authorities have used information remedies in varieties of ways. Typically, they have been used to
 - Address asymmetric information
 - Facilitate consumer awareness and understanding
 - Facilitate comparison across products
 - Prevent consumers being misled
 - Aid decision making when consumers are already using a product or service⁴.
- 1.6. There are numerous examples of information remedies across different markets: for example the Food Standards Agency (FSA) developed a star rating hygiene measure for eateries, as well as traffic light labelling for pre-packed foods. Both schemes enable consumers to engage with previously ‘hidden’ information and make more informed decisions at the point of sale.
- 1.7. Although we found examples of information remedies in the legal services sector, most of these were designed to help consumers after they had chosen their service provider. That said, it is important to note that the history and market experience of legal services regulation differ from those in other sectors.
- 1.8. Independent regulation is newer in legal services. Also, this sector has not faced some of the catastrophic economic crises experienced in other regulated markets. High profile events often drive regulatory change such as the financial crash, and food safety and labelling scandals, especially in parts of the economy where consumers have to spend large proportions of their income on a regular basis. Therefore, the use of information remedies to address misleading information, market failure, or market abuse is not exactly comparable in legal services.
- 1.9. Also, the purchase of legal services is often a one off distress purchase, so the use of information to promote switching has not featured heavily in this market.
- 1.10. Nevertheless, we know that the legal services market shares common detrimental features with other regulated sectors. Specifically, the existence of information asymmetry, an imbalance of power between providers of services and consumers, and a complex

¹ In this report we will refer to such disclosures as information remedies to keep in line with the language of the Commissioning letter.

² [Legal Services Board Commissioning Letter](#)

³ Ibid

⁴ Professor Amelia Fletcher, ‘The Role of Demand-Side Remedies in Driving Effective Competition’. A Review for Which? November 2016.

landscape that is difficult to manoeuvre. And like in other markets, these detriments have a negative effect on consumers and competition.

Designing information remedies for success

- 1.11. The Competition and Markets Authority (CMA)⁵ recently reviewed the legal services market and found a lack of transparency hindering both competition and consumer engagement. To address these problems, the CMA has recommended a number of information remedies in the legal services sector. Evidence from our research shows that the success of these remedies will depend very much on their design and implementation. Indeed, the only indirectly evaluated information remedy in the legal services sector⁶ highlighted the need for improved consumer research, testing, and evaluation of such remedies.
- 1.12. We found that even with the best will and intention, information remedies can be ineffective. The Panel has therefore used this exercise to draw together key criteria for success when thinking about information remedies.
- 1.13. We look forward to working with the legal services regulators in ensuring that these criteria form the foundation of any disclosure regime designed for the legal services market.

⁵ Competition and Markets Authority, Legal Services Market Study, 15 December 2016.

⁶ In 2016, the Panel along with the approved regulators commissioned Optimisa to conduct research into the

effectiveness of Client Care Letters. A key finding of this research was that consumers did not prioritise complaint information (an information remedy), and that the manner in which complaint information was communicated was not effective.

Criteria for success

1. **Appropriateness test:** Regulators should consider whether information remedies are appropriate. This should take into consideration the level of risk and the ability of consumers to adequately comprehend the significance of the information.
2. **Consumer Testing:** Consumer testing has played a significant role in the design and effectiveness of newer information remedies. In recent times, the CMA has mandated that regulators carry out consumer testing such as Randomised Controlled Testing (RCT) before implementing information remedies. The CMA has also placed an obligation on firms and service providers to participate in such research.
3. **Accessibility of information:** It is important that information is given at the right time, the right place, and for the intended consumer groups.
4. **Information overload:** Too much information can make decision-making worse. Regulators should work hard not to create a risk that firms, and even themselves, adopt a 'tick-box' approach to their disclosure regimes. Instead, regulators should design an effective disclosure regime to help consumers understand and engage better.
5. **Consumer Awareness:** For it to be effective consumers must be aware of the information remedies in the first instance. Information remedies may need to be accompanied with measures around the prominence and timeliness of the disclosure.
6. **Prescriptive disclosure:** Intervention may need to be prescriptive, particularly where standardisation for the purposes of comparability is an important component of effectiveness. There may be a need to dictate more precisely the format in which information is provided.
7. **Segmentation and targeting:** There is early evidence that information remedies might affect groups of consumers differently, including vulnerable consumers. There is also emerging recognition that information may need to be targeted differently e.g. to vulnerable consumers.
8. **Compliance monitoring:** Limited compliance will have an impact on the remedy. Regulators should develop a system to monitor compliance whilst designing and developing information remedies.
9. **Evaluation:** The design process must build in an evaluation stage which allows regulators to assess effectiveness. This will empower regulators to make adjustments and improve future designs.

2 Introduction

- 2.1 Periodically, the LSB commissions the Panel to consider an important area of policy or research which feeds into the LSB's strategic objectives and work plan. Typically, the commission is in an area the LSB itself is exploring. Our advice contributes to the LSB's final output or considerations.**
- 2.2 The LSB has asked the Panel to provide advice on the effectiveness of information remedies in legal services regulation and how these could be improved⁷.
- 2.3 Information remedies are about to feature more considerably in the legal services market because of a recent Competition and Markets Authority (CMA) report, which found that competition is not working well in the sector.
- 2.4 To address this failing, the CMA proposed a host of transparency measures featuring information remedies. The approved regulators are charged with working together, and towards implementing these remedies, while the LSB has been given a monitoring and reporting role.
- 2.5 Although regulatory information remedies are not widespread in legal services, there is no shortage of examples of how they have been used in comparable sectors, where regulators or competition authorities have mandated that providers of goods or services provide consumers with specific pieces of information.
- 2.6 This paper explores the usage of information remedies in comparable sectors. It draws on learnings and lessons which can lead to well-designed information remedies.
- 2.7 Overall, we found that information remedies are not a panacea for consumer engagement. There is now a growing body of research signifying when information provision has been effective, as well as when it has been ineffective, including when it has had a detrimental outcome to the one desired⁸.
- 2.8 Research shows that the volume and density of information particularly matters. There is also a challenge for regulators to gather, simplify, and convey information meaningfully - things they may not be experts in.
- 2.9 These challenges are further compounded by the fact that it is difficult to predict how consumers will react to, or use, information. Insights from behavioural economists highlight behavioural biases, e.g consumers' overconfidence, which conspire against them when faced with decision making. In legal services these biases are compounded by the difficulties of choosing a service provider in a complex landscape, where there is a recognised imbalance of power.
- 2.10 Therefore, regulators must consider very carefully the efficacy of information remedies by investing in consumer research, testing, evaluations, monitoring and learnings from other sectors. And, perhaps significantly, whether an information remedy is the right remedy.
- 2.11 The scope of the requested advice is restricted to information which 'an approved**

Scope, approach and methodology

⁷ [LSB Commissioning Letter](#)

⁸ Oxera, Review of Literature on regulatory Transparency: Update on Recent development, September 2012.

regulator requires authorised persons to provide to consumers at any stage’.

- 2.12 This scope eliminates many other types of information remedies. However, it is important, for context setting and completeness, to outline other types of information remedies used across the legal services landscape and in comparable sectors, as our consideration of what is effective will draw on mixed examples.
- 2.13 To undertake this task, the Panel carried out desk research. This drew together a number of literature reviews and reports from across different regulated sectors.
- 2.14 The Panel focused on reports which had evaluated the effectiveness of information remedies. However, evaluations of information remedies have not always occurred, even in significantly more advanced sectors, so the intelligence is limited.
- 2.15 It is also telling, and possibly a finding in itself, that we did not come across any published research or evaluation of information remedies in the legal sector.
- 2.16 In our 2016 report on Open Data⁹, we referenced Oxera’s 2014 report on product disclosure for promoting good consumer outcomes¹⁰. This report continues to have direct relevance to this subject, and it is one we have drawn on in assessing the regulatory landscape.
- 2.17 In the course of researching this work, the Panel also drew upon the recent publication

by the Centre for Competition Policy for Which? ‘Assessing the role of demand side remedies in driving effective competition’¹¹. This report partly addresses the questions posed to the Panel, but also goes beyond by assessing demand side remedies in general.

- 2.18 We have drawn together the key lessons from these reports, and used our own knowledge and understanding of the legal services market to assess good and bad practice.
- 2.19 The Panel has focused its limited resources on reviewing how information remedies are used by the largest legal regulators. In this regard we mean the largest in terms of regulated individuals, entities, and/or consumer reach. These regulators are the Solicitors Regulation Authority (SRA), the Council for Licensed Conveyancers (CLC) and the Bar Standards Board (BSB). All were contacted for relevant information at the beginning of this project.
- 2.20 A key limitation of this advice is the lack of primary research which directly evaluates the implementation of information remedies in the legal sector. Therefore, the Panel can only infer from and draw on learnings from what has worked or not worked in other sectors.

⁹ Legal Services Consumer Panel, ‘Opening up data in Legal Services, February 2016.

¹⁰ [Oxera, Review of Literature on regulatory Transparency: Update on Recent development, September 2012.](#)

¹¹ [The Role of Demand-Side Remedies in Driving Effective Competition: A review for Which?](#)

3 What are information remedies

- 3.1. **The obligations on businesses to disclose information to consumers, consumer groups, or intermediaries, are typically referred to as ‘information remedies.’**
- 3.2. Regulators typically mandate information to address market failings, or to improve competition. Effective competition is reliant on engaged consumers. Information remedies purport to create engaged consumers, widely interpreted as consumers who can successfully access the market, assess their own needs, and take action based on their individual needs.
- 3.3. Information remedies are not only provided by regulators or competition authorities. They are also provided by other market players. Examples of these are outlined below.

Information provided by service providers or trade bodies

- 3.4. These types of information remedies are generally put in place by providers or trade bodies working in conjunction with sectoral regulators, or at the request of the competition authority. One example is the review of the car rental sector led by the Competition and Markets ¹². The findings of poor transparency in this market led to five leading car rental businesses agreeing to improve transparency for consumers when booking services online. In the legal sector, The Law Society of England and Wales provides advice to the general public on how to find and use a solicitor.

Information provided by the regulator:

- 3.5. Information is sometimes provided directly by regulators. In addition to addressing information asymmetry or to encourage consumer engagement or competition, the provision of information by regulators can also act as a catalyst for providers to improve service delivery. A typical example is complaints data provided by the Financial Conduct Authority amongst others. Likewise, Ofcom publishes information about broadband speeds¹³. This information shows consumers how broadband speed varies amongst providers.
- 3.6. Sometimes this information is provided to intermediaries because in reality not all consumers are able to act on the information without help.

Information provided by intermediaries and consumer groups:

- 3.7. The increase in the use of the internet has encouraged intermediaries into various markets. Such intermediaries often fill gaps in information provision or make comparison easier and quicker for consumers.
- 3.8. In the legal services sector, the Law Superstore¹⁴, a price comparison website, is one example of an intermediary providing consumers with information. This model often reduces search costs by standardising the format of information presented from different providers, and of course compiling this information in one place.
- 3.9. Markets have also witnessed an increase in the use of ‘expert consumers’ sharing their

¹² Competition and Markets Authority, ‘Short-term car rental in the European Union’ 2015.

¹³ [Legal Services Consumer Panel, ‘Open data in legal services’, February 2016.](#)

¹⁴ [The Law Superstore](#)

views, with ratings provided e.g. moneysavingexpert.com.

- 3.10. Consumer groups like Citizens Advice also provide generic advice on purchasing decisions and provide links to other bodies that may offer more specialist help.

Information mandated by the regulator:

- 3.11. The focus of this paper as noted above is on information remedies mandated by the Regulator. One example from the financial services sector is the mandatory requirement that mortgage providers offer consumers a Key Facts Illustration (KFI) before they purchase a mortgage¹⁵.

Examples of Information remedies from across regulated sectors

Mixed remedies

- 3.12. Information remedies are rarely used in isolation: most regulators combine remedies, recognising that information remedies alone have limitations and that at times a more interventionist or mixed approach may be most appropriate.
- 3.13. For example, in its 2015 Policy Statement on Cash Savings¹⁶ the FCA's recommended response to market failings within the Cash Savings market was to combine remedies. The FCA therefore combined disclosure remedies¹⁷ with sunlight remedies¹⁸, switching remedies,¹⁹ and convenience remedies²⁰.

¹⁵ The FCA didn't just prescribe that the information should be provided, it developed a standardised form that mortgage providers should give to consumers.

¹⁶ [PS15/27 Cash Savings Remedies: Feedback and Policy Statement TO cp15/24 and Next Steps](#)

¹⁷ Aimed at improving the information made available to consumers by firms, both at or before the point of sale and post-sale. These remedies include a standardised summary box, a switching box (showing the potential benefits of shopping around) and improvements to the presentation, frequency and timing of customer communications.

¹⁸ Improving transparency of interest rates available to new and existing customers, aimed at raising awareness of providers' strategies towards their longstanding customers. To achieve this

Information remedies to address information asymmetry

- 3.14. The Food Standards Agency developed a star rating hygiene measure for eateries, as well as traffic light labelling for pre-packed foods. Both schemes enable consumers to engage with previously 'hidden' information - in a way that reduces its complexity - to make more informed decisions at the point of purchase.
- 3.15. The Office of Fair Trading's investigation into the care homes market in 2005²¹ led to a recommendation for improved price information and transparency about and pricing. The OFT found that many people and their representatives lacked information about fees, and that this information is needed 'quickly, prior to making a decision, and in an easily accessible and high quality format'.

Information remedies to encourage shopping around or switching:

- 3.16. Following recommendations arising from the Office of Fair Trading, the Credit Card industry agreed to use new summary boxes to present fees and charges. These were designed to ensure that information was presented in a consistent way across suppliers, including using a tabular format which OFT testing had found consumers preferred. The intention was both to

we are publishing data on the lowest-paying interest rates available on easy-access cash savings accounts and easy-access cash ISAs.

¹⁹ Focused on making the process of switching easier. These remedies included speeding up the cash ISA switching process, and facilitating switching between accounts offered by a firm.

²⁰ With the aim of reducing any significant barriers to allowing customers to manage savings and accounts in one place, regardless of whether those accounts are with different providers.

²¹ [Office of Fair Trading 'Care Homes for Older People in the UK' A market study, May 2005.](#)

improve consumer understanding and ease comparison²²

- 3.17. In 2008, Ofcom noticed a trend for internet service providers (ISPs) to advertise their products based on faster headline speeds, which in reality were rarely achieved by the majority of consumers that bought the service. This disparity led to consumer frustration and confusion. To remedy this, Ofcom published primary research on actually achieved broadband speeds which received wide media attention²³
- 3.18. As noted above, the FCA recently ruled that that the summary boxes used for cash savings should be standardised, to enable better comparability and ease of search. The design of the summary box was informed by consumer testing.

Information Remedies to improve consumer awareness and understanding:

- 3.19. In the bid to tackle opacity in Store Cards, the UK Competition Commission mandated the provision of relevant information in consumers' monthly statements. These provisions went to the extent of stipulating that the font size must not be less than the largest font size for transaction and balance details, and that the current and applicable annual percentage rate must be shown in bold.

- 3.20. Following its market investigation into the private motor insurance market²⁴, the CMA determined that consumers faced a lack of information when purchasing add-on insurance cover. The CMA recommended that, at the point of purchase, consumers must be given a specified set of information to help with their decision making. The specifics of what was required were based on findings from consumer testing of the different ways of providing relevant information.

Information Remedies to prevent consumers being misled

- 3.21. Following a Market Study into general insurance add-ons, the FCA concluded that consumers had poor information on the value for money represented by such add-on products.
- 3.22. One of the remedies it suggested was the publication of a scorecard which incorporated a number of measures of value such as claim frequencies, claims acceptance rates and average claims payout. The FCA said it did not expect this information to be used by individual consumers necessarily; instead it anticipates that it may be used by consumer groups, the financial media, firms and the FCA itself.

²² [Professor Amelia Fletcher 'The role of Demand-side remedies in driving Effective Competition'. A Review for Which? November 2016.](#)

²³ [Opening up data in legal services](#)

²⁴ [CMA, 'Private motor insurance market investigation' September 2014.](#)

4 Information Remedies in Legal Services

- 4.1. **When considering information remedies in the legal services sector, it is important to note that the history and nature of legal services regulation differ from other regulators. Of relevance is the early stage of independent regulation in the legal services sector, with most Approved Regulators being approximately nine years old or younger.**
- 4.2. Also, this sector has not faced some of the catastrophic economic crises experienced in other regulated sectors e.g. financial services, so the use of information remedies to address misleading information, market failure, or market abuse is not comparable.
- 4.3. Moreover, the nature of legal services, often being a one off distress purchase, has also meant that information remedies to promote switching have not featured heavily in this market.
- 4.4. That said, we know that the legal services market shares common features with other regulated sectors: the existence of information asymmetry and an imbalance of information between providers of services and consumers. This is further complicated by the often distressed nature of legal services purchases. We also know that in the legal services market, there is lack of transparency around consumers' key choice factors, e.g price and quality, compared to other markets.
- 4.5. In the recent CMA report²⁵ into the legal services market, the competition authority found that consumers are not empowered with important information to make informed decisions.
- “Overall, we have found that the legal services sector is not working well for individual consumers and small businesses. These consumers generally lack the experience and information they need to find their way around the legal services sector and to engage confidently with providers. Consumers find it hard to make informed choices because there is very little transparency about price, service and quality This lack of transparency weakens competition between providers and means that some consumers do not obtain legal advice when they would benefit from it”²⁶ .
- 4.6. To tackle this finding, the CMA proposed a package of information remedies. Chiefly, the CMA have recommended that regulators introduce new minimum standards on the information that lawyers provide to their customers on websites and in person.
- 4.7. Providers will, for the first time, have to offer prospective clients information at the point of purchase on the price and service they can expect.
- 4.8. The CMA's report means that there is likely to be a proliferation of information remedies in the legal services sector over the next few years.
- 4.9. It is important that these remedies are effective and produce good outcomes for consumers. There is ample evidence across the regulated sectors showing that information remedies have not always been effective, and in some instances, they have led to unintended consequences of confusion and even harm.
- 4.10. Therefore, the implementation of the CMA's demand side remedies will need

²⁵ [CMA, Legal services market study, Dec 2016](#)

²⁶ Ibid,pg 4

careful consideration. The design of solutions and remedies must draw on lessons from comparable sectors that have been through the journey of implementing and evaluating the effectiveness of information remedies.

Information remedies in legal services: an indirect case study

- 4.11. In 2016, the Panel, in conjunction with all the approved regulators, commissioned a qualitative research to understand how consumers engage with Client Care Letters (CCLs), with a view to improving their effectiveness²⁷.
- 4.12. CCLs are usually the first written communication a consumer receives after taking up legal advice. They are not information remedies, in that CCL's themselves are not mandated by the regulators, but they are often used to fulfil a mandate such as providing written information about the complaints process.
- 4.13. A key finding of the CCL research was that information to consumers about how to make a complaint²⁸ is not a priority for consumers, and the form in which the communication was received is not effective.
- 4.14. Although consumers did not say that they did not want information on how to make a complaint, because this was not a priority for them they questioned its prominence in the information given to them.
- 4.15. Consumers themselves suggested that alternative means of conveying this information may be more effective, for example including it in a separate leaflet that consumers could be signposted to.
- 4.16. The research highlighted that consumers only had limited attention

when reading a communication, so that the first page of the CCL was important for engagement. Complaints information was felt to be unworthy of its prominence, and indeed was reported as a turn off to reading the letter in detail.

- 4.17. The research also highlighted difficulties around how firms communicate with consumers, particularly vulnerable consumers.
- 4.18. Consumers found most of the CCLs tested to be complex and difficult to read. Initial impressions were often that they were unnecessarily lengthy and included largely generic information.
- 4.19. When prompted to read these communications, consumers tended to find it difficult to pick out the key information due to a lack of signposting, dense bodies of text, unfamiliar terms and heavily caveated language. Worryingly, these concerns were heightened for the most vulnerable consumers, for example those with low literacy levels, visual impairments, or for whom English was a second language.
- 4.20. To combat the problems identified, the researchers recommended eight things to encourage engagement with CCLs and the information provided within them:
- Show a clear purpose – provide a clear rationale as to the role of the letter and the importance of reading it upfront
 - Keep it concise – recognise that the ideal length for consumers would be 1-2 pages. If this is not feasible, break information down into bite size chunks and use a short to the point sentence structure

²⁷ [Optimisa Research 'Research into Client Care Letters' October 2016](#)

²⁸ Which is a regulatory obligation

- Put it in plain English – seek to avoid using legal terms, archaic or complex language. Minimise the use of vague and / or heavily caveated sentences
- Prioritise information – focus on the information which is perceived to be most relevant to the consumer and ensure a logical flow
- Personalise information – provide details on the consumer’s specific case, for example their estimated costs rather than general estimated costs. Tailor the letter so that irrelevant information is excluded. Use personal pronouns so it is clear you are talking to the individual
- Make it easy to read – use line spacing and a large font size (minimum size 12). Use headings to make the letter easy to navigate and avoid dense paragraphs. Break down information by using tables or bullet points
- Highlight key information – use visual tools such as bold text, headers, summary boxes, tables or diagrams, to make it easier for consumers to pick out key points
- Consider additional opportunities to engage consumers – finally, while there should be a clear reference to the complaints procedure in the CCL, consider whether more detailed coverage is better delivered in separate leaflets; or whether reminders could be

4.21. This example is the closest the Panel found to an evaluation of information remedies in the legal services sector. The research findings suggest that firms may need considerably more support in providing information which is effective. It also raises substantial concerns about the lack of consumer testing and evaluation in the sector.

Table: Summary of some information remedies

Solicitors Regulation Authority	Bar Standards Board	Council for Licensed Conveyancers
Authorised persons or firms must state that they are regulated by the Solicitors Regulation Authority on every letterhead, website, or email communication.	Barristers are required to confirm in writing acceptance of instructions, the terms and/or basis on which the barrister will be acting, including costs.	Entities must state that they are regulated by the CLC on every letterhead, website, email communication and office premises.
The SRA impose obligations on Solicitors to provide information about the firm's VAT number	If a Barrister has material commercial interest in an organisation to which they are planning to refer their client, they must notify the client in writing of the interest before referring.	Clients must be advised and informed in writing if an authorized person or entity is offering and providing services which are not regulated by the CLC. Clients must be informed that such activity is not covered by CLC-approved professional indemnity insurance or the CLC-administered Compensation Fund.
SRA places an obligation on providers to inform clients, in writing, and at the outset of their matter, of their right to make a complaint and details on how to do so, including their right to complain to the Legal Ombudsman.	BSB places an obligation on providers to inform clients, in writing and at the outset of their matter, of their right to make a complaint and details on how to do so, including their right to complain to the Legal Ombudsman.	CLC places an obligation on providers to inform clients, in writing and at the outset of their matter, of their right to make a complaint and details on how to do so, including their right to complain to the Legal Ombudsman.
SRA places an obligation on providers to provide information about their indemnity insurance (PII). This includes the contact details of the insurer or guarantor and the territorial coverage of the insurance or guarantee.	Barristers must inform public access client in writing of details of the work which has been agreed upon, obligations under the Handbook, authorization to conduct litigation, employment status, intermediaries, expectations, fee information, contact details and complaints procedure.	Clients must be informed in writing of the terms on which the instructions are accepted, a complete, accurate estimate of fees and disbursements to be charged, and if and when they are likely to change
The SRA places an obligation on solicitors or firms to provide additional information if solicitors choose to offer financial services. These include explicit information stating that the firm, where applicable is not covered by the Financial Conduct Authority and the nature of the regulated activities that can be delivered by the firm.	Barristers are under a duty to inform professional client/clients as far as reasonably possible and in sufficient time if it becomes apparent to the barrister that they will not be able to carry out the instructions in the time requested, or within a reasonable time, after receipt of instructions or where there is an appreciable risk the barrister may not be able to undertake the instructions.	Clients must be provided with Terms of Engagement with a request that the Client confirms their agreement to the terms.
Under SRA's Handbook, clients must be given the best possible information about the cost of their matter, both at the start of the retainer and throughout.	Unregistered barristers, when supplying legal services to any person or employer for the first time, must inform them that they are not practicing as a barrister or registered European Lawyer.	There is an obligation to provide the following specific information and wording "If you make a valid claim against us for a loss arising out of work for which we are legally responsible, and we are unable to meet our liability in full, you may be entitled to claim from the Compensation Fund administered by the Council for Licensed Conveyancers (from whom details can be obtained".
	A Barrister must not cease to act or return instructions without either obtaining the client's consent or clearly explaining to the client/professional client the reasons for doing so.	

5 What hasn't worked

- 5.1. **Evidence suggests that information remedies can both work and fail. Increasingly, regulators or competition authorities embarking on these remedial actions are investing in appropriate research to evaluate their effectiveness.**

Examples of effective information remedies

- 5.2. Store Cards: A referral by the Office of Fair Trading to the Competition Commission (CC) led to an investigation which found that most store cards had Annual Percentage Rates (APRs) that were clustered around 30 per cent, significantly higher than credit cards, and that most store cards' APRs had remained unchanged since the mid-1990s, despite falls in funding costs.
- 5.3. The CC imposed an information remedy requiring that warnings be given for store cards with an APR above 25 per cent. In its evaluation of this remedy, it said that the warning led to the proportion of store cards with an APR above 25 per cent falling significantly, from 70 per cent of all cards to 43 per cent. Publicity, clarity, timing and prominence of the information were factors for its success²⁹.
- 5.4. The Office of Fair Trading's (OFT) investigation into the care homes market in 2005 led to a recommendation for improved transparency and price information. At the time, the OFT said many people and their representatives lack information about fees, and that this information is needed 'quickly, prior to making a decision, and in an easily accessible and high quality format'. The OFT later commissioned an impact assessment. The assessment found that price transparency had contributed to an increase in improved quality³⁰.
- 5.5. In research published in 2009, it was projected that disclosure of product-specific price information about life and pensions investment products, mandated by the Securities and Investments Board in 1995 in the UK, increased the extent to which consumers consider a variety of providers of these products before making purchasing decisions, as they made use of the newly disclosed information. The paper concludes that this is likely to have led to an increase in the efficiency of both consumers' consumption and firms' production³¹.
- 5.6. In its evaluation of the introduction of text alerts for banking customers who were about to go into unarranged overdraft³², the FCA found that annual summaries, as designed by the banks, had no effect on consumer behaviour in terms of incurring overdraft charges, altering balance levels, or switching to other current account providers.
- 5.7. However, signing up to text alerts or mobile banking apps reduces the amount of unarranged overdraft charges incurred by 5% to 8%, and signing up to both services resulted in a total reduction of 24%.
- 5.8. It is also particularly interesting that the FCA, in its evaluation, segmented consumers and found that text alerts

²⁹ [Understanding past Market Investigation Remedies, Store Cards, Competition Commission, 1 March 2011.](#)

³⁰ [Open Data in Legal Services, February 2016.](#)

³¹ *ibid*

³² [Financial Conduct Authority 'Messaged Received? The Impact of annual summaries, text alerts and mobile apps on consumer banking behaviour, March 2015.](#)

had the most impact on consumers aged 40-59.

- 5.9. Signing up to both services (text and mobile banking) also had the most impact on 30-39 year olds, a total reduction of 28% (£1.38).
- 5.10. The FCA went on to state that it is difficult to design disclosures that help consumers navigate markets better, but that testing disclosures beforehand can help ensure that they effectively achieve their intended outcomes. Where this is not possible, rigorous ex-post evaluation can be undertaken to understand the true impact of disclosures.

Examples of ineffective information remedies

- 5.11. There are a number of cases in which disclosure remedies have been found to be ineffective, chiefly because there has been lack of compliance in the solutions proposed or lack of consumer awareness and engagement.
- 5.12. Extended warranties: on 3 October 2008, the OFT published an independent report evaluating the impact of the Supply of Extended Warranties on Domestic Electrical Goods Order 2005, which was implemented following a Competition Commission inquiry under the monopoly provision of the Fair Trading Act 1973. The report found that, although there have been a number of benefits for consumers as a result of intervention, some electrical goods outlets were not complying with the rules.
- 5.13. Another popular example of ineffective information provision sited across numerous reports is Ofgem's attempt to provide consumers with needed information on energy tariffs. A subsequent consumer survey by Ofgem found that just 18 per cent of consumers recalled seeing the tariff comparison rates. This lack of awareness and, in turn engagement, was attributed to the complexity of the information provided.
- 5.14. The CMA has recommended that Ofgem engage in consumer testing – using Randomised Controlled Trials (RCTs) where appropriate - and implement measures to give consumers information to help them engage in the retail energy markets. To support this, the CMA has provided a draft licence condition for Ofgem to implement (following consultation) that will enable Ofgem to require domestic suppliers to participate in RCTs .
- 5.15. The OFT's evaluation of care homes market study found that care homes had improved in terms of providing information on prices and also providing inspection reports on request. But it also found that consumers had limited awareness of fees, and the evaluation found no evidence of downward pressure being exerted on fees due to increased transparency. Moreover, the report found that consumers were not making use of the inspection reports, partly because they were given too late in the process and care homes were not proactively making them available.

6 Lessons for legal services regulators

6.1. We have highlighted examples of effective and ineffective information remedies drawing on other markets. This in itself is a lesson: information remedies must be evaluated. This review stage is critical to understanding whether the remedy is effective or what needs to be adjusted to make it so. Regulators can also use such reviews to inform subsequent remedies.

Lessons from behavioural science

- 6.2. It is important to emphasise that consumers' response to information cannot be predicted, nor can it be assumed.
- 6.3. While information remedies have developed out of a need to empower consumers with information, there is widespread acceptance that this empowerment cannot happen unless consumers engage with the information. Behavioural factors sometimes interfere with how consumers interact with information. Regulators must therefore understand and use this knowledge to develop effective remedies.
- 6.4. The behavioural factors that impact on consumer behaviour have been explored by academics in the field of behavioural economics. Their findings and theories are now applied by progressive regulators in the development of demand side remedies.

- 6.5. We cannot analyse in depth the volume of work available, nor can we do justice to its development and application across the regulated landscape. Instead, we refer again to the most recent literature review for Which?³³.
- 6.6. There are, however, are important lessons to be learnt which we briefly note here.
- 6.7. Behaviour economists show that behaviour is driven by two sets of factors, cognitive (System 1) and more conscious behaviour (System 2). System 1 behaviours are fast, unconscious and automatic. System 2³⁴ are more considered behaviours; they are deliberate and slower
- 6.8. Consumers use both systems when purchasing. System 1 might rely on intuition, or acceptance of default suggestions (insurance add-ons for example). System 2 on the other hand requires effort and time; it may require consumers to search, gather, compare and then make an ideal decision based on their findings, assuming they can understand what they found.
- 6.9. System 2 is costly, as it requires time, knowledge and analysis. And most consumers have limited time and energy to invest in what it takes to make a System 2 decision.
- 6.10. Concerns therefore arise when consumers use System 1 behaviour that may significantly diverge from what they might do if they were using System 2, especially when these are used to make important or life changing decisions (in

³³ <http://www.staticwhich.co.uk/documents/pdf/the-role-of-demand-side-remedies-in-driving-effective-competition-456067.pdf>

³⁴ Daniel Kahneman (2011) Thinking fast and slow

the case of some legal services purchases).

- 6.11. Consumer biases, observed across sectors, cannot be attributed merely to consumer laziness, or lack of responsibility. Consumers have to manoeuvre in markets where there is not only information asymmetry, but an imbalance of power, where their purchase is likely to be a distress one (in the case of legal services), and where the purchase is also likely to be an infrequent, if not once in a lifetime, purchase. Such an imbalance is compounded by the sheer complexity of the legal services sector.
- 6.12. The literature on behavioural economics has identified a number of cognitive biases that affect the way consumers engage with information. Some of the biases that can affect consumers' ability to access and act on information include:
- present bias (consumers do not like to defer gratification and overvalue the present over the future)
 - overconfidence (consumers might be overconfident about the accuracy of their judgment)
 - framing (the way information is framed matters; in particular, consumers weigh losses more heavily than gains)
 - being influenced by other people e.g. family and friends, a key choice factor for consumers choosing their provider in legal services for example
- 6.13. These issues can restrict consumers' capability and willingness to engage

with firms or regulators, but it has also been noted that this knowledge offers an opportunity to provide information to consumers in a way that is likely to be effective.

- 6.14. The goal in any information remedy development is to ensure that more consumers use System 2 - and to ensure that providers of services do not purposefully or inadvertently use known behavioural weakness or inertia to their advantage.
- 6.15. For the purposes of this report, one of the lessons from behavioural economists is that information must be Easy, Attractive, Social and Timely (EAST) for it to be effective – for consumers to engage.
- 6.16. The recognition of these behavioural biases are now widely explored by regulators and competition authorities. The FCA has a unit dedicated to understanding and applying behavioural economics to a range of regulatory actions, including simple remedial actions like reviewing how different types of letters nudge consumers towards engaging with information.



“I want the FCA to bring a more human face to the regulation of financial services; a more pragmatic approach to regulation. Not only to defend against sharp practice but also to encourage better decision making among consumers”³⁵.

Lessons from consumer testing

- 6.17. Consumer testing has played a big role in the design of newer information

³⁵ Martin Wheatley, FCA chief executive, London School of Economics in his first speech since the FCA came into operation on 1 April 2013.

remedies, and importantly, a role in their effectiveness.

- 6.18. Following its recent market investigation into retail banking, the CMA recommended that the FCA undertakes further work to identify, research, test and, as appropriate, implement measures to increase customers' engagement with their overdraft usage and charges³⁶.
- 6.19. The CMA acknowledges that regulators may be constrained by providers of services in carrying out research, so there is also an increasing obligation on firms to cooperate with research³⁷. This will be facilitated by an Order to require banks to cooperate with the FCA in its research programme, including RCTs.
- 6.20. The rationale and need for consumer research and testing arises because what is understandable to a sophisticated reader may not be to the average consumer.
- 6.21. In designing information remedies, consumer testing can therefore be very valuable, as was shown in designing of the Packaged Retail and Insurance-based Investment Products (PRIIPs) Key Information Document (KID)³⁸ and in the work done to evaluate the response to the proposed summary boxes and to gauge consumer understanding and awareness of savings terminology³⁹.

Lessons from too much information

- 6.22. Too much information can potentially make decision-making harder.

Information overload can quickly undermine the benefits of other features in communications.

- 6.23. It is noteworthy that the FCA has a 'smarter consumer communications initiative, whereby it is reviewing the information disclosures it requires firms to make in order to ensure that they are effective'⁴⁰.
- 6.24. This ongoing initiative has already identified a number of principles for designing an effective disclosure regime: one that is that a remedy is not burdensome for consumers or indeed does not impose an undue cost on business.
- 6.25. The FCA also strives to guard against rules that could harm consumer decision-making because they create a risk that firms adopt a 'tick-box' approach to information remedies, rather than designing a disclosure regime to help their target customers understand the scope and cost of their service.

Lessons from monitoring and evaluation

- 6.26. As noted above, the OFT's 2008 evaluation of the impact of the remedies proposed in 2005, by the Competition Commission in relation to extended warranties on domestic electrical appliances found that the ineffectiveness of the requirement to provide information on price, duration and the optional nature of warranties failed because of poor compliance and monitoring.

³⁶ CMA, 'Retail banking market investigation', August 2016.

³⁷ Ofgem 'CMA remedies implementation strategy' August 2016

³⁸ A person who advises a retail investor on a PRIIP or sells a PRIIP to a retail investor must provide the retail investor with a KID in good time before any transaction is concluded.

³⁹ Optimisa, 'Cash Savings Remedies', Research Report, June 2015.

⁴⁰ <https://www.fca.org.uk/publication/feedback/fs16-10.pdf>

6.27. Regulators must therefore think through how they propose to monitor compliance whilst developing information remedies.

Lessons about consumer awareness

6.28. For it to be effective consumers must be aware of the information disclosure in the first instance.

6.29. Low consumer awareness can make information remedies ineffective. The examples given above highlighting low consumer awareness of energy tariff comparison rates, and cheapest tariff messaging bears this out.

6.30. This reality means that in reality information remedies often need to be complemented with measures around the prominence and timeliness of the disclosure. A key principle from the FCA smart communication guidelines is that *'information should be provided at an appropriate time to bring an issue to the attention or prompt action'*.⁴¹

Outcome focused or prescription?

6.31. Various examples have shown that intervention may need to be prescriptive, especially where standardisation is an important component to effectiveness. Standardised information may be important, if not crucial for meaningful, useful and comparisons across the market where relevant.

6.32. In some cases, simply relying on the outcome based approach will not be sufficient. There may be a need to dictate more precisely the format in which information should be provided as seen in the FCA Cash ISA remedies (Summary boxes) and the Mortgage information all providers are obligated to give consumers.

Lessons about presentation.

6.33. A 2015 research by the Financial Services Consumer Panel⁴² highlighted the following key presentational principles:

- Information should be independently and accurately produced, drawing on up-to-date professional assessment and representative user views.
- Be developed into a single composite index or small set of indices.
- Be depicted in a straightforward visual way such as star ratings or similar.
- Enable consumers to benchmark and compare providers.
- Enable further drill-down into score/s if consumers so wish.
- Be incorporated into existing decision-making channels such as price comparison websites
- Ideally be developed into a recognisable brand such as food hygiene scores on the doors or energy efficiency ratings.
- Be included in providers' branches and general communications.

⁴¹ <https://www.fca.org.uk/publication/feedback/fs16-10.pdf>

⁴² <https://www.fs-cp.org.uk/sites/default/files/consumers-coregulators-research-2015.pdf>

Criteria for success

1. **Appropriateness test:** Regulators should consider whether information remedies are appropriate. This should take into consideration the level of risk and the ability of consumers to adequately comprehend the significance of the information.
2. **Consumer Testing:** Consumer testing has played a significant role in the design and effectiveness of newer information remedies. In recent times, the CMA has mandated that regulators carry out consumer testing such as Randomised Controlled Testing (RCT) before implementing information remedies. The CMA has also placed an obligation on firms and service providers to participate in such research.
3. **Accessibility of information:** It is important that information is given at the right time, the right place, and for the intended consumer groups.
4. **Information overload:** Too much information can make decision-making worse. Regulators should work hard not to create a risk that firms, and even themselves, adopt a 'tick-box' approach to their disclosure regimes. Instead, regulators should design an effective disclosure regime to help consumers understand and engage better.
5. **Consumer Awareness:** For it to be effective consumers must be aware of the information remedies in the first instance. Information remedies may need to be accompanied with measures around the prominence and timeliness of the disclosure.
6. **Prescriptive disclosure:** Intervention may need to be prescriptive, particularly where standardisation for the purposes of comparability is an important component of effectiveness. There may be a need to dictate more precisely the format in which information is provided.
7. **Segmentation and targeting:** There is early evidence that information remedies might affect groups of consumers differently, including vulnerable consumers. There is also emerging recognition that information may need to be targeted differently e.g. to vulnerable consumers.
8. **Compliance monitoring:** Limited compliance will have an impact on the remedy. Regulators should develop a system to monitor compliance whilst designing and developing information remedies.
9. **Evaluation:** The design process must build in an evaluation stage which allows regulators to assess effectiveness. This will empower regulators to make adjustments and improve future designs.

7 Conclusion

- 7.1. There is new and emerging evidence to suggest that if information remedies are designed with due care and consideration, they have the potential to address information asymmetry in the legal services sector. However, information remedies are not a panacea for the complex deficiencies highlighted in the CMA's report. Regulators may have to make a judgement call about whether to adopt a mixed approach, using multiple demand side remedies, or by combining demand and supply side remedies.
- 7.2. The evidence we have gathered shows that it is difficult to predict how consumers are likely to respond to information remedies. Linked to this, there is arguably a responsibility on regulators to ensure that groups of consumers are not left behind. For example, it has been argued that information targeted at price comparison websites (PCWs) may drive down online prices, but drive up offline prices. Those who do not or cannot use PCWs may therefore be at a disadvantage.
- 7.3. Regulators may need to make provision to meet the needs of specific groups. There are examples showing how regulators or competition authorities have segmented consumers to understand a problem. The CMA's consideration of issues facing pre-payment consumers in the energy market, and its consideration of consumers who use overdraft facilities in the banking sector are prime examples. We have also seen that information remedies may have different impact on different consumer groups. It is therefore our strong contention that consumer segmentation can be a useful tool when considering solutions like information remedies.
- 7.4. We have emphasised that it is difficult to predict how consumers might respond to information remedies. But it is also difficult to predict how the supply side might react to information remedies. This paper has shown that information remedies fail where suppliers do not comply, and or where monitoring is ineffective.
- 7.5. We also know that suppliers may comply with the letter of the instruction to provide information, yet the provision may be ineffective because it becomes a tick-box exercise, intentionally or inadvertently. The Client Care Letter research is one example. Although information was routinely given, its effectiveness was found wanting under evaluation due to the manner of compliance. Similarly, all the regulators we assessed place a requirement on their regulated communities to provide clear estimates and even accurate costings, yet the CMA found a widespread lack of transparency in this area.
- 7.6. Regulators, including the oversight regulator, will need to work hard and together to ensure that the CMA recommendations truly deliver good outcomes for consumers. To aid this process, the Panel has provided a set of criteria that will help in the development, implementation and evaluation of information remedies. We have given examples of why information remedies work and fail. We have highlighted the positive impact of pre- and post-implementation testing.
- 7.7. The Panel looks forward to continuing to support the Oversight Regulator and Approved Regulators in addressing the CMA's recommendations regarding information remedies.

The Legal Services Consumer Panel was established under the Legal Services Act 2007 to provide independent advice to the Legal Services Board about the interests of consumers of legal services in England and Wales. We investigate issues that affect consumers and use this information to influence decisions about the regulation of legal services.

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