

CILEx Regulation Consultation – ‘on the proposed rules setting out the information we require our regulated firms to publish to deliver transparency information for consumers in the legal services market’

A response by

The Chartered Institute of Legal Executives (CILEx)

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1. Introduction

- 1.1. The Chartered Institute of Legal Executives (CILEx) is the professional association and governing body for Chartered Legal Executive lawyers, other legal practitioners and paralegals. CILEx represents around 20,000 members, which includes approximately 7,500 fully qualified Chartered Legal Executive lawyers.
- 1.2. CILEx is the Approved Regulator under the Legal Services Act 2007, and these regulatory powers are delegated to the independent regulator CILEx Regulation Ltd (CRL).
- 1.3. As it contributes to policy and law reform, CILEx endeavours to ensure relevant regard is given to equality and human rights, and the need to ensure justice is accessible for those who seek it.

2. General Points

- 2.1. CILEx supports the principle that greater transparency and access to information shall enable consumers to make more informed purchase decisions and help create a competitive market capable of delivering value for money.
- 2.2. With this in mind, we support the principle that information surrounding price and quality of service should be married together when disclosed to potential consumers. This should help safeguard against the reductionist view of 'price' as the singular most important factor driving purchasing decisions.¹
 - 2.2.1. In the longer term, CILEx believes that integration of reliable rating mechanisms, focused on quality of service, could play a role in disincentivising premium pricing methods that otherwise risk driving prices upwards within certain practice areas.
- 2.3. CRL proposes that application of the Transparency Rules shall initially be limited to the specific areas of residential conveyancing and probate. This reflects the approaches taken by other regulators, so that consistency and clarity may be maintained for consumers in these areas.² CILEx welcomes the decision to limit the initial roll out to fewer legal sectors, utilising a staggered approach that will allow for ongoing review and assessment.³
- 2.4. CILEx supports the need for ongoing reviews to determine the impact of increased information transparency on providers and consumer purchasing patterns, given their complex nature. It is important that developments remain proportional and in line with the principle of outcome focused regulation.
 - 2.4.1. We would therefore request that information on what the planned review of compliance will involve be published or at least supplied to affected entities, as soon as possible ahead of the first proposed review.⁴
 - 2.4.2. We would also welcome further detail about plans for other reviews aside from looking at compliance levels (such as impact on firm behaviour, consumer behaviour, and/or complaints data), and whether such reviews could be held in conjunction with other regulators to enable consistency and shared learning.
 - 2.4.3. It is noted that the current position of other regulators, particularly the Solicitors Regulation Authority⁵, further extend transparency requirements into additional practice areas. Monitoring the implementation, reception and impact of these measures in the context of wider service sectors may be of benefit to informing

¹ Note: research commissioned by the SRA highlighting the importance of other variables in driving purchasing decisions. Economic Insight, *Price Transparency in the Conveyancing Market*, Oct 2017. <https://sra.org.uk/sra/how-we-work/reports/price-transparency-legal-services-market.page>

² Consultation paper, para 11.

³ Consultation paper, para 12.

⁴ Consultation paper, para 13.

⁵ The SRA has chosen to extend its implementation of the CMA recommendations into an additional five other areas: motoring offences; employment tribunal (employer); employment tribunal (employee); licensing applications; debt recovery.

Solicitors Regulation Authority, *Looking to the Future: Better Information, more Choice: Our Post Consultation Position* (June 2018) <https://www.sra.org.uk/sra/consultations/lttf-better-information-consultation.page#headingTwo> ; pages 12,13.

CRL's future intentions of "extending the Transparency Rules to further areas of law."⁶

3. Responses to Specific Questions

Q1. Do you foresee any issues with the interpretation of the rules in relation to provision of Price information? **Yes/No? Please provide comment.**

3.1. The Rules define 'Total Price' as:

"all costs that must be paid for a legal service including, but not exclusively, the legal fees, disbursements, any other costs and VAT on these elements where payable."

3.2. The requirement to disclose 'total price' within the Rules does not appear to leave any margin for the existence of any unforeseen costs that may later arise in the provision of legal services. Read in conjunction with the Transparency Guidance⁷, it is understood that the 'total price' can refer to an 'estimated total price' or 'average total price' subject to disclaimer. Presumably, this tries to acknowledge the potential practical difficulty of providing a properly indicative price in a scenario in which there are a number of variables or degrees of complexity that could arise.

3.2.1. CILEx is concerned, however, that requiring firms to use the language of 'total price' may result in consumers being misled, as there is no provision within the Rules (and only limited provision within the Guidance) for entities to qualify this information. Consumers would reasonably expect a 'total price' to be the final amount they expect to pay in their circumstances, when other factors may quite reasonably change that price. To insist on this approach could mean increased costs to consumers, as firms offer a higher range of prices to ensure they're not out of pocket should consumers insist on the disclosed price, even though their actual case turned out to be more complex.

3.2.2. CILEx therefore recommends, for the sake of clarity, that the wording of the Rules be changed to reflect that the need for disclosure relates to an indicative price, as opposed to an actual price; i.e.: the price of a typical straightforward (low complexity) case. This could be done in an outcomes-focused way by allowing entities to 'qualify' price information where to do so would aid consumer understanding and avoid consumer confusion or complaints about inaccuracy.

3.2.3. Alternatively, other regulators⁸ have accommodated this by phrasing price disclosure as "the total cost of the service or, where not practicable, the average cost or range of costs", which may be preferred for purposes of consistency.

⁶ Consultation paper, para 13.

⁷ Transparency Guidance, Annex B

⁸ Council for Licensed Conveyancers (CLC), *Implementation of CMA Transparency Recommendations set out in its Legal Services Market Study*, Consultation Paper, (May 2018) <https://www.clc-uk.org/wp-content/uploads/2018/05/180529-CLC-rule-changes-consultation-FINAL.pdf>; page 8, para 40, question 1 ; Solicitors Regulation Authority (SRA), *Better Information, more choice: Post Consultation Rules*, (June 2018) <https://www.sra.org.uk/sra/consultations/lttf-better-information-consultation.page#headingTwo> ; SRA Transparency Rules, s.1.5(a).

Q2. Do you foresee any issues with the implementation of the rules in relation to provision of Price information? *Yes/No? Please provide comment.*

- 3.3. CILEx welcomes the range of different approaches that providers can adopt for disclosing price information, as devised by CRL in the Transparency Guidance. Not only does this reaffirm the stance that one size does not fit all, but it provides flexibility for providers to disclose information in a way that is fitting and relevant to their business context. CRL may wish to still be mindful that the varying options, including the 'Range of Costs' option, may create a burden for entities in having to put up a variety of permutations to cover all potential degrees of complexity and variables that may arise to cover themselves.
- 3.3.1. The ability for providers lacking in an online presence to provide information upon request further facilitates this flexibility, whilst ensuring that the new requirements do not place excessive burdens on certain providers.
- 3.3.2. With specific regard to Rule 2(f), CILEx appreciates the recognition of alternative pricing structures such as conditional fee and damage-based agreements. Further consideration may be warranted to determine whether this flexibility goes far enough in accommodating for the whole range of fee arrangements that might apply.
- 3.4. CILEx recognises the benefits of CRL's decision to initially roll out the Transparency Rules to sectors of legal service which: a). may be more easily commoditised, and b). are relevant to individuals (and to some extent small businesses). However, with regards to long term implementation, potential issues may arise when extending these rules to: a). legal services less susceptible to commoditisation, or b). legal providers of medium to large enterprises. In these circumstances, pragmatic challenges may act as a barrier against compliance with the rule. As such, CILEx maintains its caution against relying on any single solution to deliver outcomes.
- 3.4.1. In light of our previous comments with regards to even highly commoditised areas of law, CILEx further hopes that CRL be mindful of the difficulties stated in standardising pricing structures where complex variables are at play.

Q3. Do you foresee any issues with the interpretation of the rules in relation to provision of Service information? *Yes/No? Please provide comment.*

- 3.5. CILEx welcomes that CRL's approach to disclosure of service information is not overly prescriptive, whilst also recognising that it mirrors the approaches taken by other regulators.⁹ As above, it is recognised however, that potential issues may arise when extending these rules to legal service areas which are more difficult to commoditise.
- 3.6. CILEx notes the benefits of Rule 3(c), whereby the requirement to disclose "typical timescales" rightly provides leeway for any unforeseen factors that may later affect service delivery.

⁹ See footnote 8; CLC Consultation Paper, page 9, para 45.

Q4. Do you foresee any issues with the implementation of the rules in relation to provision of Service Information? *Yes/No? Please provide comment.*

- 3.7. CILEx is in agreement that there exists a need to divulge greater information than just price, whereby the ability for consumers to correlate price and service quality is essential to informing purchasing decisions. To this end, CILEx believes that the CRL has taken a proportionate stance in requiring providers to disclose only the relevant information necessary for consumers to understand the services that they are purchasing and how they shall be delivered.
- 3.7.1. With this in mind, CILEx once again reiterates that CRL may wish to be mindful of the long-term challenges that implementing disclosure rules will pose, in the context of legal services which are more complex in nature.
- 3.8. To supplement service information, the Transparency Guidance further suggests as good practice, for providers to disclose information on the “*mix of staff providing the work and their qualifications.*”
- 3.8.1. It is welcomed that this has been left on a discretionary basis given the practical and cost challenges that this may impose on smaller firms with limited resources, and larger firms with greater staff members. The flexibility reiterates CRL’s outcomes-based approach, allowing scope for providers to flesh out the manner in which they disclose information on staff and specialisms, in reaction to market and consumer demand.
- 3.8.2. It is CILEx’s belief that this less prescriptive approach is well balanced, permitting that in situations where disclosure of all staff members proves to be too onerous, a more general stance can be taken, e.g.: stating typical levels of staff expertise and specifics on the overall case manager/supervisor.¹⁰
- 3.8.3. To recognise the full potential of this disclosure, there is a need for increased consumer awareness surrounding the different types of qualifications and legal providers available. Equipped with this knowledge, consumers shall be better positioned to weigh up their different options.
- 3.8.4. CILEx recognises the benefits that prior knowledge surrounding the expertise of providers and their staff members, with regards to both experience and qualifications, can have in achieving the outcome of driving informed purchasing decisions. CRL may therefore wish to include ‘experience’ as well as ‘qualifications’ in the guidance.

Q5. Do you foresee any issues with the interpretation of the rules in relation to provision of Complaints and Redress information?

Yes/No? Please provide comment.

¹⁰ The suggestion was iterated by the Solicitor’s Regulation Authority in their consultation on transparency measures in legal services. Solicitors Regulation Authority, *Looking to the Future: Better Information, More Choice: Consultation*, (September 2017), <https://www.sra.org.uk/sra/consultations/lttf-better-information-consultation.page> ; para 61.

Q6. Do you foresee any issues with the implementation of the rules in relation to provision of Complaints and Redress information?

Yes/No? Please provide comment.

- 3.9. In recognition of research findings commissioned by the Law Society¹¹, key to improving transparency may not only be disclosure, but consumer awareness that information disclosed is of value. In line with previous responses, CILEx recognises that for this rule to achieve its maximum impact, supplementary measures may be necessary to improve consumer awareness around the regulation of legal services¹², and the impact that this has on the availability of complaints and redress mechanisms.

Q7. Do you foresee any issues with the interpretation of the rules in relation to provision of Regulatory information?

Yes/No? Please provide comment.

- 3.10. Additional clarity may be necessary in the wording of this rule, given that it currently requires authorised entities to disclose: a). that it is required to have PII to cover 'all' legal services, and yet equally to disclose b). 'which' legal services are covered by the Authorised PII. Perhaps requesting itemisation of the legal services that providers offer, coupled with disclosure that these are all required to have PII coverage would be clearer for consumers.

Q8. Do you foresee any issues with the implementation of the rules in relation to provision of Regulatory Information?

Yes/No? Please provide comment.

Q9. Do you have any comments on the transparency guidance provided to support firms in implementing the Transparency Rules?

- 3.11. CILEx welcomes the publication of Transparency Guidance to facilitate interpretation of the new Transparency Rules and assist in their application and implementation. The inclusion of examples of how information may be disclosed in accordance with the rules (found within the Annexes), are useful tools which shall help streamline implementation.

- 3.12. CILEx would however welcome reconsideration of the language used in the introduction to the guidance where CRL "recommend that you exceed the minimum

¹¹ London Economics and YouGov Behaviour Research <http://www.lawsociety.org.uk/policy-campaigns/consultationresponses/sra-consultation-looking-to-the-future-better-information-more-choice-law-society-response/>; para 37.

¹² Note: Legal Services Consumer Panel Tracker Survey 2018 found that 39% of respondents believed "Businesses have to be regulated in order to provide ALL types of legal service to the public" in addition to 26% who didn't know. Only 30% were aware that regulation is necessary only for certain legal services. http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/

transparency requirements...”. As currently worded, this could be construed as placing an expectation that further action is required, and therefore failure to do so could result in regulatory action, but without the benefit of defining an outcome, or even outlining specific rules to comply with.

3.12.1. We believe that CRL’s intentions here are honourable, and that the purpose of this section of the guidance is to clarify that minimum standards are not intended to prevent firms from implementing other transparency measures, and that to do so could have further benefits.

3.12.2. Other regulators are proposing to use language that cover this same point in a more practicable way, such as: “Note that these are minimum standards... We encourage firms to provide additional information where they consider that it would aid their clients, potential clients or the public in understanding the services on offer”.¹³

3.13. With regards to promoting the use of Client Feedback, the Transparency Guidance notes the benefits of using independent services or third-party platform providers. CILEx appreciates that this is in accordance with the recommendations published within the CMA Report, however stresses the need to have protections in place against sponsored listings that may risk distorting the market.

3.13.1. Care must also be taken that these independent services or third-party platforms are capable of representing the entire community of legal service providers, not solely limited to those holding specific titles.

For further details

Should you
require any
further
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¹³ Solicitors Regulation Authority, *Annex Two: Draft Guidance on Price and Service Transparency*, (September 2017), <https://www.sra.org.uk/sra/consultations/litf-better-information-consultation.page> ; page 1.