



Legal Services Board Consultation:

*Draft statement of policy on
empowering consumers*

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. As the Approved Regulator under the Legal Services Act 2007, CILEX has delegated these regulatory powers to the independent regulator CILEX Regulation Ltd.
- 1.2. CILEX welcomes the opportunity to contribute to this meaningful body of work, particularly as we look to an uncertain future with ongoing concerns surrounding COVID-19, and the continuing demands on the justice system to meet consumer needs at such a vulnerable time. We applaud the LSB's ambitions for empowering consumers to "*make the right choices [so that] more people [are] able to better access legal services suited to their needs, at better value for money.*"¹ Ongoing dialogue with the regulators, the profession and the wider consumer base (necessarily segmented to take account of the different types of consumer accessing the market) shall be essential in addressing these ambitions as the needs and landscape of legal services continues to undergo rapid transformation.
- 1.3. Arguably, in making legal services more accessible, one primary factor is to simplify the regulatory model; something that might be best achieved by moving towards activity-based regulation. This is something CILEX supports as a means to empower consumers in affording them regulatory protection, and our thoughts on this are examined in more detail below.

2. Question 1 & Question 2:

Do you agree with our approach of using expectations, outcomes and principles? Do you agree that the expectations and outcomes we have identified are the right ones?

Do you agree with the proposed principles to be adopted?

- 2.1 CILEX welcomes the flexible approach adopted in setting out general expectations, outcomes and principles; for example, the recognition that a flexible and permissive approach would best suit early signs of market development in the digital space.²
 - 2.1.1 With the draft policy statement drawing heavily upon the Competition and Markets Authority 2016 Market Study, the LSB are right to be sensitive to more recent changes within the legal landscape, including the impact of the COVID-19 pandemic. These changes will have no doubt impacted consumer habits and needs, and it may therefore be prudent to consider the outcomes of the LSB's parallel work on technological developments³ as they relate to (and perhaps influence the scope of) the stated expectations, outcomes and principles.
- 2.2 In the interests of ensuring consistency of interpretation and alignment of the frontline regulators tasked with realising these aims, CILEX would also welcome greater clarity on the *implementation* of these expectations, outcomes and principles. This clarity is not only necessary to establish baseline standards that consumers can easily understand and navigate, but in providing a regulatory consensus by which collaborative solutions could be jointly delivered through cross-regulator working.
 - 2.2.1 For example, whilst the expectation for "*minimum standards of transparency across*

¹ LSB, *Draft Statement on Empowering Consumers – Consultation Paper*, (2021) p.9. para 28.

² See CILEX Response, *LSB Discussion Paper: Quality Indicators in the Legal Services Market*, (April 2021), p.2, para 2.1 & p.4, para 3.5.

³ See footnote 1, p.9, para 27.

*relevant providers*⁴ is welcome in theory, the LSB astutely notes that in practice, this expectation cannot be uniformly realised across different legal practice areas. Regulatory consensus will therefore be imperative to avoiding disparate standards that could risk creating an even more complex landscape for consumers to negotiate.

2.2.2 Indeed, it is arguable that *simplification* of the regulatory landscape in the first instance, could help to deliver better outcomes on which the current focus on *transparency* would then build. This is particularly as the assumption that more information will automatically lead to greater understanding and therefore more informed decision-making has yet to come to fruition: the LSB's 2020 Prices Research noted little increase in consumers shopping around between 2020-2021 as compared with 2017, notwithstanding a 40% increase in providers displaying price information.⁵

2.2.3 In *simplifying* the regulatory landscape, CILEX notes the benefits of recommendations made by Professor Stephen Mayson for all legal services providers to be included within the fold of regulation under an activity-based model (maintaining low cost and competitive pricing).⁶ This solution would help establish reliable minimum standards for consumers to navigate in practice, and better reflect the current consumer (mis-)understanding that all legal service providers (are)/ought to be regulated. It has the added benefit of being more understandable for consumers; after all, if there is a general perception or expectation that a particular legal service is regulated, then it probably should be.

3. Question 3: Do you agree with the proposed expectation around public legal education?

3.1 CILEX recognises that central to consumer empowerment is a greater awareness of legal services and legal services regulation; the ability to distinguish between legal service providers; and a better understanding of legal rights and processes. We therefore agree that further development of public legal education (PLE) would be beneficial in improving consumer competence and confidence when accessing legal services at what is often an unexpected or highly sensitive time of a person's life. As such, it is only right that PLE, whether in collaboration or as separate initiatives, is included within the outcomes proposed in the draft policy statement.

3.2 That said, PLE is a concept that the sector has grappled with for some time, with good practice developed on the topic, and a range of initiatives established to help drive this forward; but significant progress yet to be made. Whilst we agree that these initiatives should continue, it is recognised that the LSB occupies a unique role in this space and would benefit by providing sector leadership through a clearer framework of expectations and recommended activities to support the regulators, and others in the sector, in coming forward to progress this agenda. PLE is a sector-wide issue and we do not, therefore, agree that the sole accountability and responsibility for its delivery should rest with the frontline regulators alone.

⁴ See footnote 1, p.10, para 36.

⁵ See footnote 1, p.6, para 20. *This is set against a year (2020-2021) where digital engagement/online shopping by consumers has generally increased as a result of wider external factors (COVID-19, lockdown and remote working).*

⁶ Professor Stephen Mayson, *Reforming Legal Services: Regulation Beyond the Echo Chambers*, Final Report of the Independent Review of Legal Services Regulation, (June 2020), See Long-Term Recommendations 3 & 5 in particular.

3.3 In addition, it is CILEX's belief that PLE cannot be the sole basis on which consumers are afforded assurance that their legal service provider of choice will deliver suitable quality services. Reforms to extend regulatory oversight to all legal service providers, as proportionate to the activities that the provider engages in, would safeguard that even those consumers with low to little PLE are still confident in the market. This is important to consider against the backdrop of more vulnerable consumers, who, despite increased PLE efforts by the sector, may still find it difficult to negotiate the complexity of the legal services market.⁷

4. Question 4: Do you agree with the expectations set out in the statement of policy around minimum levels of information about price, service and quality?

4.1 As seen within paragraph 2.2 above, whilst CILEX does welcome transparency in the market, there is a need to establish consistency across the information made available. For example, whilst CILEX appreciates the sentiment behind the LSB proposal for "regulators [to] aim to go beyond" minimum levels set⁸, it is important in practice that consumers have sufficiently comparable datasets to inform their decision-making process.

4.1.1 That said, the consultation paints many complex scenarios for legal regulators to navigate in establishing which practice areas should be required to display what information. Factors including geographical location, size of firm and practice area will necessarily influence the volume and ability of providers to present price, service and quality information upfront and need to be taken into account. It is for this reason that CILEX maintains the benefits of outcomes-based regulation; an approach that establishes consistent standards, whilst remaining true to the full diversity of providers in the market.

4.2 With specific regards to quality indicators, CILEX would like to reiterate that the impetus should be placed on objective indicators such as disciplinary records in ascertaining 'quality' of service. This is because subjective indicators such as customer feedback, particularly if left unstructured, risk arbitrary factors (for example fact-specific case outcomes) forming the basis on which positive/negative feedback is made. The risk here lies in the longer-term impacts that this may have on how the market reacts to cases which are less likely to 'succeed' in terms of outcome, notwithstanding that this may be in the best interests of justice. After all, in a contested legal scenario, the best quality of service may, for a variety of reasons, not produce the outcome the consumer desires.⁹

5. Question 5: Do you agree with the expectations around making information available to consumers?

5.1 CILEX welcomes the LSB's approach to Digital Comparison Tools (DCTs), recognising the role of regulators as *enablers* in supporting the development of a market that is already growing through organic market forces. As a result, healthy competition can be stimulated in line with public interest goals where legal regulators are able to work in collaboration with that market.

5.2 When looking to voluntary accreditation schemes, it is equally as essential that this be created collaboratively between the frontline regulators as enablers. This is to ensure that any such scheme stays inclusive of the full range of providers in the market, empowering

⁷ This might be due to any number of reasons, such as: digital exclusion, disability or learning difficulties.

⁸ See footnote 1, p.16, para 64.

⁹ See footnote 2.

consumers to exercise freedom when selecting their legal services provider.¹⁰

5.3 Indeed, in acknowledging the diversity of legal service providers, CILEX would welcome greater clarity as to what content the LSB are envisaging will be contained on the single digital register of regulated providers. As the LSB are no doubt aware, the landscape of legal services regulation can be daunting to understand and unpick for the average consumer¹¹ with different types and levels of regulation made on a voluntary through to a statutory basis. With this in mind, it would be useful to know whether the register is expected to reflect more granular information (such as an individual's authorisation under the Legal Services Act 2007 to act in a certain capacity) or to take a broader snapshot of those individuals that are regulated by frontline regulators (and therefore subject to certain requirements with availability of after-the-event regulation).

6 Question 6: Do you agree with our proposed plan for implementation?

6.1 CILEX appreciates that the LSB are looking to implement a final policy statement with immediate effect after assessment of feedback. Nonetheless, implementation of the outcomes and expectations outlined by the policy statement will no doubt require a transitional period and time to embed.

6.1.1 As noted above (paragraph 1.2) ongoing dialogue, research and investigation with the wider sector will no doubt form part of this process, with subsequent engagements providing the frontline regulators with the necessary evidence-base to support actions taken. CILEX would therefore welcome greater clarity on the timeframes associated with the delivery of these outcomes and expectations.

7 Question 7 & Question 8:

Do you have any comments regarding equality impact and issues which, in your view, may arise from our proposed statement of policy? Are there any wider equality issues and interventions that you want to make us aware of?

Do you have any comments on the potential impact of the draft statement of policy, including the likely costs and anticipated benefits?

7.1 The consultation acknowledges that both consumers and providers alike may not possess a digital presence and/or may prefer to operate in a non-digital fashion. Indeed, there will be financial impacts for smaller firms and individual providers in developing online websites or providing price, quality and service transparency for their clients. Whilst the LSB expects regulators to best assess and quantify these impacts based on activity, and to take a proportionate approach in response, any initial guidance from the LSB would be welcome in providing greater clarity to the market to help them better anticipate and prepare for these changes against such an uncertain (and financially sensitive) landscape.

7.2 From a consumer perspective, there is additional concern that by increasing regulatory burden on the regulated sector, the subsequent increase to costs could well see consumers attracted to the more competitive prices of the unregulated market with its associated risks.

¹⁰ See footnote 2, p.3, para 2.4: certain 'hallmarks'/accreditation schemes have been known to create inadvertent barriers to competition as a result of being 'owned'/dependent on a single legal regulator/professional body.

¹¹ Part of the reason for CILEX's calls for all legal service providers to be included within the scope of the regulatory framework under an activity-based model. It is our belief that such a model would be less complex for an average consumer to navigate.

Unbeknownst to many, this could disempower consumers by incentivising them out of the protection afforded by the regulatory framework.

- 7.2.1 Indeed, this speaks to remaining concerns surrounding the unregulated provider base and lack of consumer understanding that not all legal services are regulated. As stated above, whilst PLE has a role to play in this narrative, as does transparency of information through the single digital register of regulated providers, both of these solutions place the impetus on the consumer to better understand this complex system to be afforded the baseline level of protection that regulation has to offer. In acknowledgement of more vulnerable consumers, it is arguable that consumer empowerment is not enough to provide adequate protection, and that wider regulatory reform would be needed.

8 Question 9: Do you have any further comments?

- 8.1 CILEX has no further comments at this time but would welcome ongoing dialogue with the LSB and frontline regulators as greater clarity is established around implementation of the policy statement's outcomes and expectations.

For further details

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require any
further
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