

**CILEx Regulation Consultation – ‘on information we propose to 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**

**December 2017**



## **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. In developing this response, CILEx has liaised and consulted with members, particularly those in its Conveyancing and Private Client (covering will-writing) Specialist Reference Groups, as well as organisations operating in the relevant parts of the legal services market.
- 1.3. This response is therefore a distillation of the collective views and reports provided to CILEx in relation to the proposals in the consultation. As the response goes on to say, the outcomes that the proposals are designed to achieve, as well as the parts of the legal services market in which it is proposed they first operate, are not as straightforward as might be supposed and CILEx has encouraged firms to respond individually to the consultation in order that a true picture of the diversity of practice and services can be properly represented.

## **2. General points**

- 2.1. CILEx supports the premise that making more and better information available to consumers will enable them to make more informed decisions around procuring legal services and, ultimately, gain more value from them. There is an unassailable logic to the idea that firms making certain information transparently available to consumers assist in making this happen.
- 2.2. However, as with many seemingly obvious situations, reality is often more complex and variable, and legal problems that at first appear simple can evolve into ones that are more complicated. Therefore, CILEx continues to support means to enable greater public legal education and initiatives that empower consumers to make better more informed choices, but cautions against relying on any single solution that can deliver these outcomes.
- 2.3. The proposals in CILEx Regulation's (CRL) paper rightly seek to offer mechanisms that address the challenges contained in the recommendations of the Competition & Markets Authority's (CMA) report of December 2016, but CILEx believes that the positive ideas put forward require further consideration if they are to be effective. Although CRL acknowledges that

providing an indication of price is easier in some areas of law than others<sup>1</sup>, one size does not fit all and care will have to be taken even in those areas of law that are seemingly susceptible to this approach, being more commoditised, in order to guard against consumers receiving a simplified but wrong impression.

2.4. CRL has a track-record of outcomes-focused regulation<sup>2</sup>; setting down an expectation of high standards, but allowing for flexibility and discretion on how those standards are met in practice.<sup>3</sup> This approach works especially well when regulating specialist providers, and for regulatory matters where practical application presents significant complexity. We are surprised that a more prescriptive approach has been applied to some of the issues here, over the long-standing and effective outcomes-focused approach.

2.4.1. We acknowledge the tacit argument that a degree of alignment with other regulators is appropriate to avoid consumer confusion.<sup>4</sup> However there are many areas of legal practice, including the more commoditised areas captured within these proposals, where unregulated providers hold a sizeable market share. Therefore, efforts from frontline regulators will not mean unanimity of approach between all providers, or unanimity of experience for all consumers.

2.4.2. We therefore suggest that the focus of the overall approach to improving transparency should be on achieving the best outcomes for consumers of entities that fall within CRL's purview, in consideration of their unique characteristics, whilst giving due regard to the activities of other regulators.

2.5. The behaviours and motivations of consumers in making purchasing decisions for legal services are also nuanced and need to be properly understood if they are to both receive and understand the information they need. The Legal Services Consumer Panel (LSCP) has long sought to capture this and continues to do so through its ongoing tracker surveys<sup>5</sup>; but there are other pieces of research that also seek to better understand this<sup>6</sup>, not least of which is the research recently commissioned by the Law Society supporting its submission to the Solicitors' Regulation Authority's (SRA) equivalent consultation<sup>7</sup> in order to understand consumer behaviour and

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<sup>1</sup> Consultation paper, para 21.

<sup>2</sup> Ibid, para 1.

<sup>3</sup> Such as through implementing a Code of Conduct with supplementary guidance, rather than an exhaustive rulebook.

<sup>4</sup> Ibid, para 12.

<sup>5</sup> [http://www.legalservicesconsumerpanel.org.uk/publications/research\\_and\\_reports/index.html](http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/index.html)

<sup>6</sup> Such as the Ipsos MORI Legal Needs Survey, produced for the LSB and the Law Society last year - <http://www.lawsociety.org.uk/news/press-releases/largest-ever-legal-needs-survey-in-england-and-wales/>

<sup>7</sup> Looking to the future: better information, more choice - <https://www.sra.org.uk/sra/consultations/litf-better-information-consultation.page>

identify the best information to make available to consumers<sup>8</sup>.

- 2.6. For example, a first point might be to understand the specific ways that consumers perceive there to be a lack of choice due to a lack of relevant information to make purchasing decisions.
- 2.6.1. The consultation paper suggests that *'choice making-information is not available at the time consumers need to identify their legal needs and understand and compare the legal services they require, the price of the services on offer and which type of provider could help them'*.<sup>9</sup>
- 2.6.2. However, the LSCP 2017 Tracker Survey<sup>10</sup> itself shows a slight increase in the level of consumers reporting having a *'fair deal or great deal of choice'* (71%, up from 68% in 2016).
- 2.6.2.1. For example, in the area of conveyancing, the reports CILEx has had indicate that a majority of conveyancers already display their fees online or have online quotation systems on their websites.
- 2.6.3. CILEx believes therefore that this may be an indication of (a) the nuanced nature of consumers' perceptions of legal services, of the regulatory framework in which they operate, and the motivations and behaviours they therefore exhibit when purchasing, and (b) the level of inherent potential complexity in many seemingly straightforward legal problems. These subtleties are developed further below in response to specific questions posed in the consultation paper.
- 2.7. A key issue to determine in CRL's approach will therefore be to ensure that the right information is made available to consumers to enable them to make the best purchasing decisions. For example, it is clear that 'price' is a key piece of information but it has to be complemented by consideration of other factors such as 'quality' and 'efficiency of service'.
- 2.7.1. Law Society research has found that vulnerable consumers tend to focus on price (as it is an easy concept to understand)<sup>11</sup> yet, as the consultation paper acknowledges, consumer decisions need to be based on a combination of information<sup>12</sup>; too great an emphasis on price could therefore lead to wrong decisions, potentially affecting the most vulnerable.
- 2.7.2. The impact assessment accompanying the SRA's equivalent consultation also acknowledges that the changes are unlikely to benefit

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<sup>8</sup> Conducted by London Economics and YouGov <http://www.lawsociety.org.uk/policy-campaigns/consultation-responses/sra-consultation-looking-to-the-future-better-information-more-choice-law-society-response/>

<sup>9</sup> Consultation paper, para 7.

<sup>10</sup> Briefing Note: how consumers are choosing legal service; [http://www.legalservicesconsumerpanel.org.uk/publications/research\\_and\\_reports/index.html](http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/index.html)

<sup>11</sup> London Economics/YouGov Consumer Behaviour Research; page vi.

<sup>12</sup> Price, service and redress, consultation paper; para 14.

consumers of a lower social demographic<sup>13</sup>. The research has also indicated that the more complex a legal problem appears, the more likely are consumers to place greater reliance on service/expertise over price/speed. CRL will therefore have to be confident that there are areas of law which are straightforward enough to enable use of a standard one-size-fits-all set of requirements in relation to information transparency. CILEx is not yet confident that any solution is as simple as that.

### 3. Responses to specific questions

Question 1: Should conveyancing and wills be the first areas of law to which transparency requirements apply? and

Question 2: Which areas of law should transparency information be required in next?

- 3.1. CRL proposes that transparency information be applied '*in more commoditised areas of law initially*'. This presupposes that services in this area of law are simple enough for a standardised approach to be successfully applied. In the area of conveyancing, responses to CILEx have overwhelmingly been to highlight that, in practice, it is a potentially complex area of law and therefore any accompanying pricing structure is also complex.
  - 3.1.1. For example, among the possible variables that can occur after an initial price quotation is that a leasehold purchase will quite often turn out to require a lease extension, necessitating further effort and time, and ultimately a further agreement to change the agreed charge for the work. Other variables are affected by the number of linked transactions in the chain, the nature of the property title, and changing circumstances of the parties involved.
  
- 3.2. Whilst a large number of conveyancing firms have online quotation/estimate generators or have their fees structures online to try and give accurate ideas of cost, it is common practice for these to carry detailed disclaimers to accommodate for unforeseen variables such as these.
  - 3.2.1. Other firms operate different branded conveyancing services which have different charging arrangements to reflect the variable and potentially complex nature of the work. For those firms, it would be a challenge to publish standard pricing information and, arguably, it would be undesirable to do so because an unrealistic or over-simplistic impression could be created with consumers. One of the main issues to consider therefore is not the concept of having to provide information to

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<sup>13</sup> London Economics/YouGov Consumer Behaviour Research; pages 11, 13, 22-26.

consumers, but to ensure that it is genuinely 'like-for-like' services are compared where there can be so many variables at play.

- 3.3. Another issue CRL will wish to be mindful of is the complexity of consumer behaviours and motivations. Whilst price might be an initial starting point in the decision-making process, as stated above service/expertise becomes a more prevalent consideration as the complexity of a legal matter becomes apparent.
- 3.4. The third area for potential differentiation, redress, brings in visibility of the consumer protections that apply to a regulated firm. However, this may be an illusory differentiating factor as research has also shown that, whilst consumers value regulation, they tend to assume that all legal services are regulated. There is a real question therefore of the level of understanding that consumers have of information even if it is made available. Most do not 'read the small print' or the information that explains the meaning of regulation of the services they are purchasing<sup>14</sup>.
- 3.5. The consultation paper also discusses the link between making information available to consumers and meeting unmet legal need<sup>15</sup>. Again, it is likely that a more granular understanding of the behaviours and motivations of consumers is required in respect of this linkage.
  - 3.5.1. In the case of conveyancing, whilst there will be various factors affecting the choice of conveyancer, the fact is that this is a necessary service required when buying a house. The factors affecting the purchasing decision therefore have to be placed in that context.
  - 3.5.2. In the case of wills, there is greater discretion for the purchaser and the motivation to acquire those services will be wholly different.

Question 3: What challenges will firms face in publishing transparency information on: website, social media, in print or by email?                      and

Question 4: What opportunities are there for firms by publishing transparency information on: website, social media, in print or by email?                      and

Question 5: What things should be in guidance about publishing information on: website, social media, in print or by email?                      and

Question 6: What challenges are there to firms in publishing price information as set out above in conveyancing, wills and/or other areas of law?

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<sup>14</sup> London Economics/YouGov Consumer Behaviour Research; pages v, 18 and 29.

<sup>15</sup> Consultation paper, para 7.

- 3.6. As stated above, CILEx believes that, whilst it is right that consumers need to have made available to them all the information they need to make decisions to purchase legal services, the main challenge firms will face in publishing that information is to ensure it is in a form that realistically reflects the variables that can affect price, and that sets out in a consumer-friendly way the consumer protections that a regulated firm provides. Even if those challenges are met, it is not guaranteed that consumers will ultimately understand the information provided.
- 3.7. Firms already provide this information for consumers in any case, though we acknowledge to a varied extent. There may therefore be value in adopting a considered approach, in collaboration with practitioners, in order to develop parameters and formats for displaying that information in a way that reflects the realities of practice and might be more effective.
- 3.8. It is also worth acknowledging that control over what information is seen by consumers is not solely in the hands of the entity, including in the early stages. As digital comparison tools (DCTs) become more prevalent, they will be the point of first access to a firm's information – and may not publish all the information that is being mandated here. This may inhibit the effectiveness of this effort.

Question 11: Would firms welcome a more prescriptive approach to presenting price information?                      and

Question 12: Would firms prefer to format information themselves about redress and/or service?                      and

Question 13: Would the provision of a template for firms be useful for redress and/or service information?                      and

Question 14: Should firms be required to use a mandatory template to provide information about service and/or redress?                      And

Question 15: What elements should be included in a template for services and/or redress?

- 3.9. The consultation paper acknowledges that '*there is a potential regulatory burden to firms complying with transparency requirements*'<sup>16</sup>. CILEx agrees that there is a risk that firms will incur extra costs in meeting any requirements that come out of these proposals. This might at least include those around seeking advice on how to best reconfigure their current presentation of the

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<sup>16</sup> Consultation paper, para 36

information on their websites and various other media, up to possibly having to upgrade their websites or the platforms they are on to enable full compliance.

- 3.10. Ultimately of course, such extra costs are passed on to the consumer. In the case of the highly competitive conveyancing market, most firms are already operating at extremely tight margins which does not permit much room for manoeuvre in that regard. Increased costs could also be ongoing as firms will have to regularly update and maintain their published information. Care will have to be taken that this does not disproportionately affect small firms in particular.
- 3.11. For this reason, we reiterate our view that an outcomes-focused approach may achieve the desired effect without ‘over-engineering’ or being overly restrictive. In relation to CILEx-regulated firms in particular, as the consultation paper recognises, this is a small but growing number of firms; however, CILEx-regulated firms will be new to market and care will have to be taken that this requirement does not become a barrier to entry to those CILEx-regulated firms.
- 3.11.1. It is not clear to CILEx how a more prescribed approach could reduce this burden<sup>17</sup>. Given the complexities of both legal services and consumers’ needs and behaviours mentioned above, there is a risk that a prescriptive approach will exacerbate the misconception that ‘one size fits all’, requiring over time large amounts of detailed information to be published that the average consumer will not read or understand.
- 3.12. CILEx therefore agrees a ‘*range of approaches*’<sup>18</sup> are likely to be the best way for firms to meet CRL’s requirements, with an outcomes-focused approach accompanied by guidance which provides sufficient discretion to present the information as suits their practice and is therefore clearest to consumers of its services.

Question 16: What information should be provided through the digital smart badge (tick all that apply)?

- a) CILEx Regulation website link;
- b) firm is authorised;
- c) areas of legal specialism;
- d) other areas of law provided (unregulated);
- e) professional indemnity insurance (PII);
- f) CILEx Regulation compensation arrangements for the firm’s specialism and other areas of law offered.

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<sup>17</sup> Consultation paper, para 36

<sup>18</sup> Ibid, para 30



3.13. There is no doubt that having some sort of regulatory imprimatur on firms' websites which links to CRL's website could be of benefit to consumers in confirming the bona fides of those firms. Given the lack of awareness amongst consumers of regulation generally, referred to above, care will have to be taken that the information provided in this way is clear and intelligible. There is otherwise a risk that the information so accessed is meaningless or at least not seen to be relevant.

3.13.1. An example of this would be the disclosure of where the entity provides services in unregulated areas of law, but due to the entity's regulated status a consumer may generally assume all areas of law are regulated, which could create confusion. In this circumstance, CRL may wish to consider what level of disclosure should be discretionary.

3.13.2. The same could be said of references to professional indemnity insurance (PII) cover and compensation arrangements. A firm having both of these attributes is implicit in it being a CRL-regulated firm in the first place and, given consumers general low understanding of regulation generally, is often expected to be in place even if the detail is not readily understood. Therefore, any publication of related information would have to be offered in consumer-friendly language and made as clear as possible.

3.13.2.1. For example, as the consultation paper itself points out<sup>19</sup>, unreserved areas of law are covered by PII but not by the Compensation Fund. Also, it may need to be clear that the Compensation Fund makes discretionary payments in certain prescribed circumstances, unlike other compensation schemes consumers may have come across in other sectors.

3.13.2.2. In addition, particularly in the case of will-writing being provided by unregulated providers, sufficient explanation of the difference/additional value of a CILEx-regulated entity having PII may prove beneficial – although this might be more a reflection of a general need for better public legal education than it is for regulated firms to have to take on as well.

Question 17: Do you agree, that it is in the public and profession's interest, that information is published if a regulated person has a misconduct case to answer?

3.14. CILEx appreciates that, on the face of it, there is an obvious linkage between responding the CMA's recommendations to improve transparency information made available to consumers and the publication of information that specifically relates to disciplinary hearings. However, whilst the CMA report

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<sup>19</sup> Ibid, para 49

recognises that publication of information about disciplinary action could be relevant data that would be useful to consumers if it was made more widely available<sup>20</sup>, CRL already does this through publishing disciplinary findings and notice of disciplinary hearings. It does not automatically follow therefore that these further proposed changes are required.

3.15. The proposal in this current consultation paper, to go beyond current publication arrangements and publish allegations, is a change to the current disciplinary process which is subject to CILEx Regulation's Enforcement (formerly Investigation, Disciplinary and Appeals) Rules.

3.15.1. CRL has powers available to them up to, and including, intervention in cases where they believe the public are at risk from a provider. If the regulator believes the public should be protected from a provider, it follows that these existing powers are a more effective way of addressing the concern. To publish allegations that prima facie present a case to answer could have the effect of tarnishing legitimate entities that are subject to erroneous complaints.

3.15.2. If CRL wish to amend the rules around publication that fall under the auspices of the Enforcement Rules, CILEx believes that this would be better dealt with by a specific consultation to propose amendment to those rules, rather than bound up in this CMA-driven set of proposals.

Question 18: What should any guidance about client feedback and/or online reviews cover?

3.16. CILEx is of the view that any guidance to firms in relation to encouraging feedback and engaging with online reviews should be properly researched and based in the realities of practice<sup>21</sup>, provide the right balance between informing consumers without giving them an unrealistic or simplistic idea of the legal services on offer, and recognise prevalent consumer behaviours<sup>22</sup> and awareness<sup>23</sup>.

Question 19: Do you agree with our approach to first-tier complaints data?

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<sup>20</sup> CMA Report, para 7.181, page 267

<sup>21</sup> Many firms already use online systems which publish recommendations and/or customer feedback. An understanding of what those systems are, and which are the most effective is essential. For example, a number of firms use Trust Pilot which enables them to integrate customer reviews with their quotation and other processes in an objectively moderated way ie in a way that enables other consumers to see all reviews, good and bad, and enables firms to respond to comments and engage with customers who leave them.

<sup>22</sup> For example, that price and quality are both factors in purchasing decisions with the latter increasing in importance and the complexity of a matter increases.

<sup>23</sup> I.e. that there is not very clear understanding with many consumers of what constitutes regulated as opposed to unregulated legal services etc.

3.17. CILEx agrees with the incremental approach outlined in the consultation paper<sup>24</sup> to develop the approach to publishing complaints data as it becomes available as the number of CILEx-regulated firms increases, and taking into account how the sector deals with the issue.

#### 4. Conclusions

- 4.1. CILEx welcomes any initiatives which facilitate greater transparency of information for consumers to enable them to make more informed decisions around procuring legal services and, ultimately, gain more value from them. Such proposals are entirely logical and highly desirable; however, they may not be simple.
- 4.2. Care will have to be taken that the right information is provided to consumers in an intelligible form and in a manner that is sensitive to the levels of understanding consumers generally have and how they use that and any information they are provided. We believe that an outcomes-focused approach has the potential to strike this balance.
- 4.3. CILEx looks forward to being able to offer insights and support from the profession to CILEx Regulation as they develop practical recommendations, rules and/or guidance which will inform entities' efforts in getting the most effective systems in place to deliver that transparency.

Please contact the individual below for further contributions that may be required from the answers provided.

#### For further details

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<sup>24</sup> Consultation paper, para 52.