



Legal Services Board Discussion Paper – “Quality Indicators in the Legal Services Market”

A Response by

The Chartered Institute of Legal Executives (CILEX)

[April 2021]



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. 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.
- 1.3. CILEX welcomes the LSB's discussion paper on quality indicators; looking to empower consumers in their purchasing decisions to better navigate the legal services market, including through the use and integration of digital comparison tools (DCTs). During this time, it is clear to see all sectors undergoing a digital transformation, with legal services marking no exception. In the midst of this transition, and in the wake of the final report from the Competition and Markets Authority (CMA), CILEX has outlined below some of our general thinking in relation to this topic.

2. Approaches to Consumer Engagement: DCTs

- 2.1. As early findings from the Regulators Quality Indicators Pilot suggest, and as rightly recognised by the LSB¹, the landscape of the legal services market has evolved greatly since the original recommendations spawned from the 2016 CMA review with respect to quality indicators and (digital) visibility of service providers. As prompted by the COVID-19 landscape, the transition to digital service delivery (or at the very least, to digital access of legal services) has witnessed organic growth in user engagement of DCTs by both consumers and firms, with more and more providers seeking to bolster use of these tools in the wake of online competition and market pressure. The role of regulators in fostering this change as an *enabler* to the growth and innovation of DCTs is thereby fitting; mirroring the collaborative approach witnessed more generally by the sector for regulatory input to technological innovation.²
- 2.2. For this reason, CILEX supports the first of the two approaches put forth by the LSB; namely that regulators seek to “*support the emergence of a flourishing digital comparison tools (DCTs) market, which would sit alongside a regulator-led single digital register.*”
 - 2.2.1. In so doing, it is hoped that regulators may be able to contribute to what is already a growing comparison industry, helping to encourage uptake of these mechanisms within firm business models, as consumer expectation and demand similarly emphasises the need for greater online competition.

¹ Legal Services Board (LSB), *Discussion Paper: Quality Indicators in the Legal Services Market*, (23 February 2021), Page 2, Foreword by LSB Chair, Dr Helen Phillips.

² Legal Services Board, *Striking the Balance: How legal services regulation can foster responsible technological innovation*, (April 2021) Key lessons including: “*Being open-minded and willing to learn from a wide range of sources...Cooperating and collaborating with other bodies and complementing other regulatory initiatives.*”; DotEveryone Report, “*People, Power and Technology: Launch*”, Webinar (12th May 2020), Roger Taylor (Chair, The Centre of Data Ethics and Innovation) Commentary.

- 2.3. Similarly, in looking to quality indicators from a wider standpoint (separate to DCTs), a collaborative approach between the various regulatory bodies and pockets of the profession shall help safeguard impartiality; ensuring that consumers are still able to choose their lawyer freely, with no inadvertent barriers posed to competition, and with the development of quality indicators remaining independent of any single legal regulator or professional body.
- 2.4. Indeed, some of the current ‘quality hallmarks’ in the sector, such as the Conveyancing Quality Scheme administered by the Law Society, have had adverse consequences to competition, *limiting* consumer choice. Run by a single legal professional body and exclusively for their membership, these accreditations, as adopted by other stakeholders such as lenders, have had the effect of creating minimum thresholds, inadvertently giving rise to market barriers for those other legal professionals not able to access them. To truly mobilise the full extent of legal service provision, and establish a healthy, dynamic and competitive market, it is essential that use and uptake of quality indicators remains accessible and applicable to the full suite of providers on the market.

3. What is quality?

- 3.1. In turn, when reaching an objective assessment of ‘quality,’ it is CILEX’s belief that various factors need to be considered, particularly where quality indicators are utilised in less commoditised areas of legal service. Mechanisms for gathering truly objective information would therefore be preferable: for example, there are risks inherent in judging quality of service through the use of consumer facing language such as ‘outcomes’; risking that positive/negative feedback could be offered on the basis of fact-specific case outcomes, as opposed to the more emotional outcomes that consumers may be seeking.³ 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.
- 3.2. Linked to this and of equal note are the intrinsic limitations of consumer feedback, which is by its own nature *subjective*, and which, in industries such as law may have limited scope/application due to an asymmetry of information. These need to be carefully considered within this discussion, especially when looking to future mechanisms for enforcement of regulatory standards and ongoing competence; striking true to the LSB’s own observations that “*regulatory bodies need to avoid placing disproportionate burdens on providers or creating perverse incentives*” through the adoption of quality indicators.⁴
- 3.3. In short therefore, it would be remiss for these discussions to adopt an overly simplistic notion of ‘quality’ or of assessment. For example, CILEX supports the LSB’s recognition that related variables for determining quality may need to be considered, such as the nature of the service offer itself (where a mix of substitutive, supportive, substantive and practical technologies are used). For CILEX another such variable for securing greater ‘quality’ arises in respect of the

³ For example, commentators such as Richard Susskind have highlighted that the best way to answer ‘what is it that clients want/need’, can often be drawn from an assessment of the emotional **outcomes** that clients are seeking in resolving their dispute (e.g.: following their case, are they hoping to feel security, vindication, assurance etc. (Legal Geek: The Uncertain Decade Series (Webinar Conference), “*General Counsel and In-House following COVID-19*”, (28th May 2020)).

⁴ See footnote 1, p.13, para 35.

education and training of legal service providers. By embedding wider competencies amongst future lawyers, not just on legal knowledge and specialism, but on topics such as business acumen, technological aptitude and ethics, the education and training of providers may help to inform consumers of wider dimensions to quality that are relevant to making informed choices.

- 3.4. In supporting the option of the LSB's 'facilitation' approach⁵, CILEX therefore advocates for the inclusion of objective datasets in principle for determining 'quality' (and not solely subjective consumer feedback); and the need for guidance on which quality factors and related variables may help support the consumer decision-making process. This in itself is an indication of CILEX's further belief in the inherent difficulties of the more 'interventionist' approach⁶: a single digital register (with Legal Choices) would be in competition with commercial DCTs and arguably (a) could limit the right quality factors to include and (b) would never be as agile as those DCTs in ensuring the right data informs an objective quality rating. That said, it would be useful to understand more from the LSB on those objective "*sources of unpublished data, such as error rates on forms, that could be useful indicators of quality*"⁷, to better understand the value that these would bring.
- 3.5. In conclusion, in what remains an evolving market, CILEX favours an iterative approach to enabling the use of DCTs and quality indicators. This should create the space for the right approaches to emerge and be built upon over time and, importantly, demonstrate value to the market itself: CILEX feels that true success in the emergence and harnessing of quality indicators will only be realised when firms see that value and want to engage with these approaches as marketing tools to bolster their own competitive edge. In contrast an overly prescriptive approach risks stimulating resistance where commercial considerations are perceived as not properly acknowledged, and risks establishing a baseline of rigid datasets that provide but a homogenous account of legal services: presenting comparable data but of limited utility. On the other hand, demonstrating the value of quality indicators and DCTs creates incentives for firms to give consumers as much relevant information as possible to differentiate themselves in the market, thus enhancing competition. Regulators are ideally placed to support the emergence of DCTs and signposting requirements, and CILEX welcomes their contributions thus far through initiatives such as the Regulators Quality Indicators Pilot to facilitate this growing industry.

For further details

Should you
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⁵ Para 5(a) of the consultation paper

⁶ Para 5(b), *ibid*

⁷ See footnote 1, p.17, para 51.