

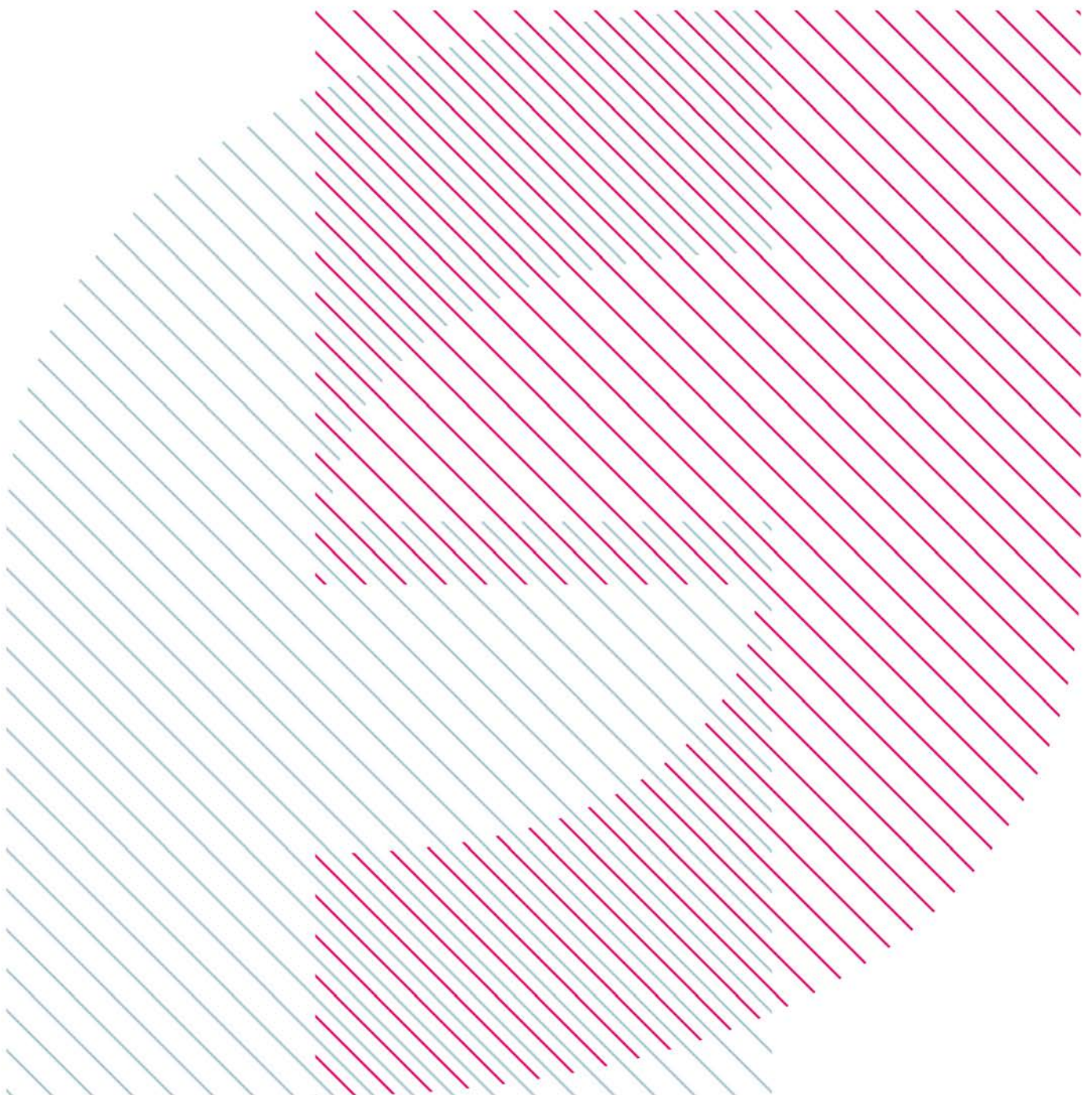


Consultation Response

Regulator transparency

measures:

SRA, BSB, CLC, CILEx, IPReg, MoF



Introduction

1. The Legal Ombudsman was established by the Legal Services Act (2007). Our role is two-fold: to provide consumer protection and redress when things go wrong in transactions within the legal services market, and also to feed the lessons we learn from complaints back to the profession, regulators and policy makers to allow the market to develop and improve.
2. We welcome the opportunity to respond to consultations produced by frontline regulators in response to recommendations in the Competition and Markets Authority report on legal services. The Legal Ombudsman has chosen to respond to these transparency measures as a whole, on account of the broad similarity of proposals. In this paper we are responding to consultations published by:
 - Solicitors Regulation Authority (SRA)
 - Bar Standards Board (BSB)
 - Council for Licensed Conveyancers (CLC)
 - CILEx Regulation
 - Intellectual Property Regulation Board (IPReg)
 - Master of the Faculties (MoF)
3. There are a small number of issues raised in individual consultations which are not addressed in others. Among these, we have identified some issues on which we wish to comment. Where these are addressed in the response, we make reference to the relevant consultation.
4. Broadly, the Legal Ombudsman feels that the proposed measures in these consultations are appropriate to the need and proportionate to the demand from consumers. We are supportive of frameworks which give consumers of legal services clear information from the outset, provided that the volume is not overwhelming and all information is clear and contextualised.
5. We also support the efforts made by regulators to avoid burdensome measures. It is not in the interests of the legal services market to make regulation difficult to manage or even detrimental to provision, and as such we believe it is appropriate to allow for flexibility wherever possible.
6. The Legal Ombudsman is keen to continue engaging with frontline regulators on these issues to offer advice, expertise and data (where appropriate) to support these efforts.

Transparency measures

Price transparency

7. We have found that complaints about costs consistently rank within our top five areas of complaint every year. This includes 'cost information deficient' and 'costs excessive', of which the former is particularly pertinent to these measures. While the percentage of complaints about costs have decreased somewhat over the past four years, they still account for around 20% of complaints to the Legal Ombudsman (LeO).
8. Complainants state in some cases that information they receive about costs can be unclear, difficult to follow, or even misleading and this results in higher rates of dissatisfaction with service.
9. We believe that providing more up-front information about costs would therefore be beneficial in managing consumer expectations about the process. Moreover, if information about how costs are calculated were to be included, this might increase consumer understanding more generally and generate greater confidence in the profession.
10. However, in the interests of better facilitating understanding, we believe that giving context to price information is very important. Openness and transparency are highly desirable in any broad conversation with consumers, but this is only valuable if the information made available is meaningful to consumers.
11. Very often pricing in the legal services market can be complex, depend on a number of factors, and change over time. It is therefore crucial to ensure that these caveats are built into any transparency framework. We are supportive of initiatives in these consultations that require price to be published with all of its dependencies. Consumers need to understand what could affect the price they pay and how this might change as the process continues.
12. Therefore we believe that hourly rates, likely disbursements, typical costs ranges and other similar information must be included in any price transparency requirements. If possible, these should also show ranges within the entity or firm, including variations by grade of staff. This will help consumers to see the nuances in costing and give them a better idea of what their final bill might look like.
13. Even in the context of fixed fee work, this should be considered. While very often this work is straightforward, there are specific circumstances in which additional fees may apply. We would be keen to see price information that acknowledges the scope of work

that the fixed fee will cover, and (by necessity) what it does not. In the context of a price that appears to cover everything, exceptions are especially crucial to note.

14. Where estimate generators are used, as suggested in the CLC consultation, there should also be appropriate context given. Consumers should be advised that these calculations are only indicative, and we would prefer to see a price list alongside any such tool, for clarity. While we do not object to the use of estimate generators, we do not believe these should be mandatory, nor act as a replacement for written costs information.
15. In order to encourage consistency of information, we would encourage all regulators to supply prescriptive templates for price publication. Ideally these would be similar across all regulators (which would require collaborative working) to reduce the onus on the consumer's individual interpretation. For consumers to feel the benefit of greater price transparency, there needs to be some comparability in the information published by different providers.
16. Moreover, the complaints that come to the Legal Ombudsman make it clear that work in this area should continue beyond simply displaying likely prices. We emphasise that updates at key points throughout the process should always be provided, especially where costs will have to increase.
17. Communication is crucial to ensuring that consumers are happy at the end of any service provision. We understand the importance of publishing price information to enable 'shopping around', but are keen that this should never come at the detriment of keeping the consumer informed throughout the process once a provider has been instructed.
18. With this in mind, we would not support the CLC in amending its rules to make estimates provided to consumers binding on the firm (should they be instructed). We believe this is likely to make it extremely difficult for CLC-regulated firms to explain a change in cost structure that may be entirely reasonable. Even with the caveat that this would be 'subject to any new information emerging that legitimately affects cost', we foresee problems with consumer understanding and expectations. It might also make the job of the Legal Ombudsman more difficult, as what is considered to be 'reasonable service' and what is required of a CLC-regulated firm may begin to diverge.
19. The aim of price transparency is to make the landscape clearer and easier to navigate for the consumer. We at the Legal Ombudsman fully support this aim and feel it will go some way towards reducing cost-related complaints. However we are eager that none of these measures should come at the detriment of direct communication between providers and their clients.

20. We are keenly aware that price is not a reliable measure of quality and as such, we would encourage providers to ensure that a range of information is posted to their website for consumers to consider. We discuss the importance of contextualisation below, and support the publication of additional information that will provide a much richer level of detail about different service providers' offerings.

Publication of complaints information

21. We are very much in support of requiring service providers to publish details of how to complain on their websites, including how to bring their complaint to LeO should the situation reach that stage. It is important that consumers of legal services understand the complaints process in order to prevent further loss of confidence in service providers. We see no drawbacks to ensuring that this information is publicly available at the earliest opportunity, although this should not replace signposting at the end of the process.

22. We appreciate the difficulties identified by BSB and CLC regarding the publication of first-tier complaints data. In order for this to be a reliable indicator of quality there would need to be some standardisation of what constitutes a complaint as well as consistent reporting of how early in the process a matter had been settled. Such reporting might also fail to reflect any improvements in firm's service or complaint-handling, and might not take account of volumes of work in specific areas of law.

23. Appropriate contextualisation is therefore crucial. Broadly we support SRA proposals to publish first-tier complaints data in the manner they are suggesting, in that publication by the regulator avoids issues around consistency of reporting and data fields. We are pleased to note that a standard definition of complaint has been established to help with this, although research suggests that there are significant inconsistencies in firms' identification and recording of complaints. We therefore suggest that guidance on identifying and recording complaints should be offered to firms before these measures are brought in.

24. We agree that raw complaints data without context is of little value. It would seem appropriate to publish the following information in order to provide this context:

- Size of firm (turnover)
- Number of transactions p/a
- Number of first tier complaints p/a
- Complaint types (to inform consumer choice in types of issues raised, e.g. if excessive complaints about costs, consumers may look elsewhere)
- Link to LeO data on ombudsman decisions

The above will help ensure that larger organisations could demonstrate that higher complaint volumes may be due to the relative size of their organisation. We also

support the proposal to report a maximum of one complaint per client per matter to avoid distortion due to repeat/vexatious complaints.

25. Furthermore, we support the research into complaint information and how this impacts consumer choice proposed by the SRA. We hope that this will ensure that any information published will help adequately inform consumer choice and is not unnecessarily excessive, as this may negatively impact the profession and confuse consumers.
26. In the case of CILEx Regulation, IPReg and MoF, we agree that publishing first-tier complaints information would be of limited value to consumers due to the low numbers of complaints received at first tier. For this data to be a sufficiently reliable indicator of quality, there would need to be greater numbers of complaints to provide some comparison level between firms. Since consumers are unlikely to be able to use this information to inform their choices, we see no reason to encourage its publication.

Publication of additional information

27. We are supportive of proposals to introduce requirements in relation to description of service, staff, stages and timescales in any legal services where price publication is required. This would have the effect of putting costs in context in a similar way to other measures previously mentioned in this response. We do not believe these points require a template, however, as we see less scope for consumer confusion or individual differences in interpretation.
28. Beyond these aspects, however, we believe that the choice to publish further information should be left to the firms themselves. The Legal Ombudsman recognises that mandatory publication of a large number of data points may become unnecessarily burdensome. Where firms do choose to publish information such as areas of specialism, we would encourage them to make this information clear and concise to facilitate consumer understanding.
29. We do not think that Public Access barristers should be required to publish the BSB's Guidance for Lay Clients on their websites. While we would strongly encourage barristers to highlight that guidance exists, (and perhaps provide a link to it on the BSB's website) we see no reason for a requirement to publish the guidance itself on their own website.

Use of logos/digital badges

30. Broadly we are in favour of regulators developing digital badges or logos to provide clear indication that firms are regulated. However it would seem sensible not to seek to provide a great deal more information through these badges. We are in favour of regulatory status being communicated, but are concerned that any further information could cause greater confusion amongst consumers.

31. More particularly, in response to CILEx Regulation, we would advise that only items a) and b) (that is CILEx Regulation website link and that the firm is authorised) be provided through the digital smart badge they propose.
32. We would encourage further analysis of the effectiveness of digital badges in signposting to consumers. While we are supportive of initiatives that aim to simplify the legal services market for consumers, their utility should be proven through research. As yet it is not clear whether these do facilitate understanding of regulatory status (or any other information). We welcome any opportunities to engage on this matter further, and note SRA proposals to start research into this area.

Single digital register

33. The Legal Ombudsman is fully supportive of efforts to create a single digital register of common fields across all regulators, and we look forward to contributing our own data. We are in favour of a single source which collates several different measures across consistent data fields for use by third party intermediaries. We hope that this will help to avoid mistakes, gaps in information, lack of clarity and poor contextualisation on such third party sites.
34. We are optimistic about the value that comparison websites could add to the legal services market, provided that the information they supply is complete and balanced. There would be no advantage to consumers if such sites claimed to be an excellent way to 'shop around' for a legal service but then failed to represent the range of providers accurately. In particular, we wish to avoid a situation in which complaints are brought to us that relate to inaccurate information displayed on a third party site, for which service providers cannot be held responsible.
35. We are therefore keen to be involved in this project to ensure that information provided will be useful and consistent. We will continue to engage with regulators about the information we could supply to add value to the single digital register, within the parameters of our statutory restrictions.

Legal Choices

36. We believe that refreshing the Legal Choices website would be hugely beneficial for consumers. It was intended as a hub for legal information to increase public understanding and help consumers navigate legal services, and we believe that these are important objectives. We are confident that in working together, stakeholders in this project can develop the website much further and ensure that relevant, up-to-date information is available in a user-friendly manner.

37. As such, we are eager to be involved in the process. We look forward to participating in discussions as part of the steering group for Legal Choices, and to contributing our own data, factsheets and consumer guides for future content.

Conclusion

38. Thank you for the opportunity to comment on proposed transparency measures arising from recommendations of the Competition and Markets Authority legal services market study. In this response we have considered consultations from the following organisations:

- Solicitors Regulation Authority
- Bar Standards Board
- Council for Licensed Conveyancers
- CILEx Regulation
- Intellectual Property Regulation Board
- Master of the Faculties

39. For greater ease and clarity, the Legal Ombudsman has chosen to issue one response to all consultations on this matter. Where particular issues have arisen from specific consultation papers we have made reference to the source.

40. Taken together, we welcome the improvements and innovations put forward in these consultations. We believe that with certain safeguards in place transparency measures should improve consumer experience of legal services and still allow providers to concentrate on delivering their core service.

41. We look forward to discussing these issues further, including in meetings of the Remedies Programme Implementation Group and the Regulators Forum.

For any questions about our response please contact our Parliamentary and Policy Associate at sarah.ritzenhaler@legalombudsman.org.uk.
