

CLC Response to the CMA's Legal Services Market Study Interim Report

19th August 2016

Questions on improving price and service transparency

1. What are the barriers to providers sharing price and service information with consumers and do these vary by legal service?

CLC Response:

There is no regulatory barrier to providers sharing price and service information. There may be process or systemic barriers to the easy publication of such information or the automated provision of reliable, detailed quotes that are tailored to the individual transaction. In order to be truly cost transparent, the clarity and comprehensiveness of the quote is critical. This is somewhat different to what may be easier to achieve in the shorter term which would be for providers to publish the prices (or to indicate the range of prices) of each individual element of conveyancing or probate work.

2. Is there a minimum level of information that providers should either (i) publish or (ii) provide to consumers either in advance or on engagement? Should this be mandatory?

CLC Response:

The CLC sets out clear requirements about price information to be provided on engagement.

In terms of publication or advance provision, see the answer to question 1 above.

The market has not evolved in a way that has encouraged the advance provision of detailed cost information nor the widespread publication of price lists. However, comparison websites with price information are beginning to make inroads so it may be that the proportionate approach is to encourage providers either to publish the information on their own websites or engage with comparison websites. Whether or not this type of price information is beneficial to the client will be dependent on the accuracy and reliability of the quote. Certainly there seems to be no hesitation by practices to provide cost information on demand and other research has indicated perhaps a tendency to focus too much on price in introductory calls.

3. Are there examples of good practice in price and service transparency that could be shared more widely?

CLC Response:

Not that we are aware of. We are currently examining good practice through research with a view to generating such examples.

4. How and when should legal services providers communicate:
 - Fees and rates to clients and
 - Anticipated and actual cost overruns (ie where the fee will exceed an estimate or quote)

CLC Response:

This is set out in our regulations:

<http://www.conveyancer.org.uk/CLCSite/media/PDFs/Estimates-and-Terms-of-Engagement-Code.pdf>

Broadly speaking, our expectation is that communications should be clear and timely and that information on price should be accurate.

5. Are there any measures of quality that can readily be collected by regulators or government (including HM Courts and Tribunals Service in relation to civil actions and probate) on observable trends in quality of legal services?

CLC Response:

It is not easy to identify measures of quality (or proxies for those measures) in relation to legal services. Such kitemarks as exist attest to certain inputs by the firms in question in terms of business processes but do not measure or attest to quality of outputs.

Information about complaints against firms may give an impression of service levels. However, complaints as a proportion of all transactions are low and so information about complaints would need to be presented carefully in order to be genuinely useful to consumers. Of course, where a firm receives a high percentage of complaints, that may be an indicator of poor service.

Questions on addressing barriers to comparison and search

1. What are the barriers to comparison and search?

CLC Response:

A major barrier is entrenched behaviours. Private Client users of legal services still rely overwhelmingly on recommendation by family, friends or intermediaries such as mortgage brokers, financial advisers, estate agents etc. Establishing a culture of comparison and search will take some investment by comparison providers (whether they are independent

providers, regulators or representative bodies) in the form of promotion of their offerings and on the reliability of information provided.

Referral arrangements may also act as a barrier to comparison and search as they incentivise intermediaries to recommend one provider rather than encourage clients to shop around or to enable client choice through the recommendation of, for instance, three providers. However, it is worth noting that intermediaries have a good sense of the service levels of different providers and as such can provide useful advice in place of comparison and search by individual clients.

2. Are those barriers consistent across different legal services (by area of law, activity and extent to which a service is commoditised)?

CLC Response:

Comparison is easier for commoditised services as providers are more likely to work on a fixed fee basis and to publish details of their fees online. 90% of CLC-regulated entities report that they offer fixed fees but few of them carry detailed information about those fees on their websites. A small proportion have basic fee calculators that can be used by potential clients to generate a quote that could be a basis for comparison with other providers.

3. What additional information could be made available by regulators and trade bodies?

CLC Response:

Measures of quality are difficult to identify and provide and are often confused with information about service levels such as speed of transactions. There is one measure of service that could be published; the average time taken to register changes to title at the Land Registry. This could be taken as an indicator of the overall speed and diligence of the firm.

The low level of complaints as a proportion of transactions also means that information about service complaints made to LeO and conduct complaints investigated by the CLC do not provide much meaningful guidance to consumers. The CLC is considering how complaints information could best be used, how the information would need to be presented and the contextualisation that might be needed.

4. What measures would allow consumers to be better able to compare the non-price attributes of legal services providers (such as price or consumer protections)?

CLC Response:

As noted above, measures of quality are difficult to identify and provide in relation to individual entities. More general information such as complaint and redress arrangements is currently promoted on the regulators' own web sites and on Legal Choices. Links from providers' websites to that information could be useful for consumers. However it is

debatable whether they would be used very much ahead of purchase choice rather than at the point of need when something has gone wrong and the consumer wishes to take action.

5. How can intermediaries and those making recommendations better support consumers in selecting a legal service provider?

CLC Response:

It may be preferable for all intermediaries to recommend a range of potential providers as we believe some already do. It would be especially helpful if consumers were given price and possibly other information alongside the recommendation so that they are able to make an easy comparison.

6. Is there any additional information held by government or regulators that if published would assist the development of the comparison sector or assist consumers directly conducting comparisons?

CLC Response:

As mentioned above, there is information about complaints and disciplinary records that might be helpful if correctly presented.

Questions on improving consumer information

1. How and what information should be provided by a central information hub?

CLC Response:

Information about the regulation of legal services, routes of redress and the form of financial protection available. This should be presented alongside general information about legal services and how to make the best use of your lawyer. This is largely what Legal Choices sets out to provide.

2. Should Legal Choices act as the central information hub for legal services in England and Wales or would an alternative website be more appropriate?

CLC Response:

It is a joint venture between the regulators and contains clear and impartial information. Legal Choices exists and therefore there should be no need to create another hub. However, the resources dedicated to Legal Choices will need very significant increase to ensure that it reaches consumers effectively.

3. How should any central information be promoted
 - Should frontline regulators, representative bodies and self regulatory bodies be asked to promote an information hub
 - Should legal service providers be obliged to link to an information hub?

CLC Response:

Both these approaches are desirable. The CLC already promotes Legal Choices on its consumer pages and contributes to the work to promote the site in other ways.

4. Should Legal Choices include information on unregulated and self-regulated providers?

CLC Response:

It is important to avoid confusing consumers and providing information on unregulated or self-regulated providers on the same site as regulated providers could create such confusion.

It may be that as the regulator with the market overview there is a role for the LSB in relation to unregulated providers which complements the work that is focused on frontline regulators.

5. What materials should be developed to aid in comparing and selecting a provider?
 - Should materials be made available through channels other than a central information hub (such as Citizens Advice)?

CLC Response:

Legal Choices sets out such information very clearly. It would be helpful if other organisations helped to promote the site to their clients.

Questions on improving client care information and increasing access to redress

1. How can client care communication be improved to better protect consumers' interests and are there examples of client care communication that provide succinct and relevant information?

CLC Response:

This is the subject of research currently underway that has been commissioned jointly by the front-line regulators. Early indications are that timing of the provision of information is as important as the content and format.

2. What would be the consumer protection benefits and impact on competition of restricting the use of the title 'lawyer'?

CLC Response:

Restricting use of the title 'lawyer' to lawyers subject to independent regulation would help to ensure that consumers understood whether they were protected when using a legal services provider. It might harm the ability of non-regulated providers to secure work.

This step might be less necessary if the question of 'reserved' legal services was addressed and the system rationalised so that regulation and consumer protection measures were aligned with risk to consumers. At the moment, the pattern of regulation is not based on risk.

3. What are the barriers to using LeO and are there any benefits in amending the scope, jurisdiction or approach?

CLC Response:

CLC practices are required to signpost consumers to LeO and to the CLC and so we do not believe that there are any barriers to using LeO. That said, current work to review the approach to client care communications will include consideration of that signposting.

The major change that is needed is the accreditation of an ADR provider in this sector and LeO would seem to be the natural home.

We do not believe it would be desirable for it to handle complaints against unregulated legal service providers because that will blur the lines for consumers.

4. Are the current arrangements for ADR in legal services clear and readily understandable to consumers and is there scope for greater use of ADR?

CLC Response:

No. It would be preferable for LeO to be the ADR provider in legal services and for legal services providers to be required to accept ADR if that is the consumer's choice.

5. Should legal services providers be provided with additional guidance on communicating redress options?

CLC Response:

We hope that the insight from the client care research will enable us to provide fresh guidance for firms.

6. Do any additional redress mechanisms need to be introduced for unregulated providers?

CLC Response:

Not by the organs of the regulated sector.

Questions on the regulatory framework

1. Are the high level criteria for assessing the regulatory framework that we have identified appropriate?

CLC Response: The high level criteria set out at Table 1 (page 101 of the Report) provide a useful starting point. However, these can only be agreed once the scope and objectives of the review have been agreed. Three objectives have been identified at paragraph 7.6:

- Reducing the regulatory burden
- Focusing regulation on activities where consumer protection risk is highest
- Considering the case for extending regulation to specific unregulated activities where there is clear evidence of detriment to consumers.

We believe there should be a more fundamental approach:

- agreeing the principles justifying the need for regulation
- applying those principles determining:
 - The classes of clients which need the regulatory protection
 - whether such protection can be achieved most effectively by lawyer (title) or by legal service (activity)
 - whether all regulated legal services need to have the same scope of regulation
- the scope of regulation: whether it should include:
 - the power to discipline licensees and/or entities resulting from failure to comply with regulatory requirements
 - the power to intervene into an entity where the interests of clients is at immediate risk
 - the ability of clients to access a second tier complaints process (such as the Legal Ombudsman)
 - the requirement for entities to have indemnity arrangements
 - The requirement for regulators to have arrangements of last resort to compensate clients for loss

2. Does the current regulatory framework prevent, restrict or distort competition?

CLC Response: we believe that there is a risk that the current regulatory framework distorts competition. There is an uneven understanding by suppliers as to the scope of the regulatory framework. The unregulated sector is currently estimated to be less than 5% market. There is the potential for it to increase rapidly over a short period (3-4 years) to the substantial detriment of consumers who have a tendency to assume that legal services have the same safeguards whether or not they are delivered by regulated or unregulated providers. Self-regulated suppliers distort that perception further because they may or may not have some or all of the safeguards which are characteristics of the regulated market.

Furthermore there are mechanisms that operate as regulatory measures without the benefit of regulatory checks and balances, including those which may increase the regulatory burden or indeed which are in conflict with the regulators own codes (which may be more competition friendly). We shall make further submissions to the CMA on this point.

3. Would the potential changes to the regulatory framework we have identified promote competition?

CLC Response: we believe any changes would be difficult to identify.

4. Is a further review of the regulatory framework justified on the basis of competition concerns?

CLC Response: we believe so.