

HELPING CONSUMERS CHOOSE THEIR LAWYER

CLC response to consultation findings

March 2018

Executive summary

In October to December 2017 we consulted on how to implement recommendations from the Competition and Markets Authority on increasing the transparency of information about service features, quality and price. We received 15 responses in total, with the majority of responses from CLC regulated firms.

The responses highlighted some of the opportunities for better transparency including increasing consumers' understanding of their rights and duties. The responses also raised some of the concerns and challenges that increased transparency may bring.

There was no clear consensus in a number of areas with a variety of views expressed about what should or should not be published. There was strong support for promoting the use of price comparison websites but not making their use mandatory, whilst there was concern about proposals to publish all levels of complaints data.

It is possible that improving transparency will encourage innovation and drive competition amongst firms resulting in improved service and efficiencies for consumers and providers.

Price transparency and comparability

Transparency of price estimates

Obstacles to providing full estimates

Just over half (56%) of respondents believed there to be obstacles to practices providing full estimates when potential clients are shopping around. Some of the issues identified included:

- Firms offering different pricing arrangements for different introducers e.g. Agents/panels dictating which search product to use.
- It may not be until full instructions have been received that the particular complexities of a matter are known e.g. Leasehold properties that require a lease extension.
- The client may not have provided all of the information upfront, potentially because the complexities of the matter are unknown. In some instances, a lot of information is needed to be able to provide an accurate quote which can be a deterrent to some consumers.
- Management company fees can vary significantly.
- There can be excessive and un-recoverable costs for smaller firms.

Of those respondents that did not think that there were any obstacles to providing a price estimate, it was acknowledged that clients need to be asked the right questions and have a certain degree of knowledge and understanding.

Binding estimates

Half of respondents (50%) thought that estimates provided to consumers should be regarded by the firm as binding if they are instructed (subject to any new information emerging that legitimately affects cost). Some felt that many firms already self-ensure this as not doing so may lead to complaints. However it was suggested that estimates should only be binding for a specific period of time.

The Legal Services Consumer Panel (LSCP) believes that binding estimates would help to distribute risk more proportionately between consumers and providers as currently the risk of uncertainty disproportionately lies with the consumer.

As costs can change once the transaction gets underway, one respondent thought that the client care letter would be the most appropriate stage at which the price becomes binding.

Publishing general pricing information

Less than half (44%) of respondents thought that publishing general pricing information would be preferable due to the volume of information needed to provide an accurate quote. Potential additional costs should be made clear and there should be rules as to what must be included to calculate the average fee.

Some respondents said that they didn't agree with the publication of fees at all whereas others suggested that general pricing information may cause confusion and potential complaints if the indicative price was different to the final cost.

The LSCP did not think that general pricing would be preferable as it does not provide comprehensive information for consumers to make informed decisions.

Guidance or rules?

Three quarters (75%) of respondents thought that guidance would be sufficient to implement any proposals around pricing as firms are already required to be clear about the terms and fees in the client care letter. Whilst relying on guidance is likely to lead to a slower adoption, some respondents felt that it is important not to over regulate and allow the market to determine a solution.

Those that thought rules would be necessary, including the LSCP, thought that it would ensure consistency to enable clients to easily compare providers and their services. If rules were implemented, they would need to be properly monitored to ensure compliance with necessary penalties for those that fail to adhere.

Conveyancing proposals

The majority (88%) of respondents agreed, including the LSCP, that inputs used to generate estimates for conveyancing matters need not be specified as long as the outputs meet a common standard.

Online generators should, and can, handle complex and variable inputs and distil them to a standardised output and practices should not be constrained from developing more sophisticated pricing models.

Seven out of ten (71%) of respondents did not think the template contained in our consultation paper would provide a complete and reliable conveyancing estimate. Some of the suggested additions included:

- Referral fee (it should be explained that this is deducted from the legal fee)
- Fee for completing and submitting the SDLT return
- Document storage fees
- ID fees
- Fee for acting in the redemption of the mortgage
- Leasehold fee
- Help to buy equity mortgage fee
- Help to buy ISA £50 + VAT fee
- Shared ownership fee

One respondent suggested that clients should be able to choose, and lawyers to provide, differentiated and unbundled levels of service. Clients could choose a greater level of risk and consequently pay a lower fee. Regulators would have to expressly acknowledge that this kind of service was not inherently negligent or of an unacceptable standard.

Further consultation with the profession was advised along with a request to keep the template under regular review.

Probate proposals

Over half (57%) of respondents agreed that inputs used to generate estimates for probate matters need not be specified as long as the outputs meet a common standard.

However 60% of respondents did not think the template would provide a complete and reliable estimate of the probate services. Respondents thought that the variables are too great and that a true cost can only be given following an interview with the client and careful consideration of the documentation.

Some of the suggested queries that would help to determine cost and which demonstrates the numerous variables, included:

- Is the original will available?
- Is the will valid, properly signed and witnessed?
- Are there any marks or alterations or deletions on the original will?
- Is the estate insolvent or could the value of the estate be less than the gifts?
- Is any real property, asset or beneficiary outside of England & Wales?
- If there are charges on the property, are the gifts subject to those charges?
- Are any of the beneficiaries bankrupt?

Further consultation with the profession was advised along with a request to keep the template under regular review.

Making price information easily available

Firm website

Four out of 10 (38%) respondents agreed, including the LSCP that firms should be required to either use an estimate generator or publish their prices as a list on their website.

Those that disagreed (62%), were concerned about the cost to set up an estimate generator, have ongoing support and keep all of the information up to date. One respondent claimed that many firms have multiple fee scales per referrer and it would be too complex.

It was suggested that requiring clients to contact the practice directly for a quote provides them with an initial indication of the service they may expect from the firm, for example, how quickly do they respond, if they respond at all? And is their response clear and easy to understand?

Only 13% of respondents agreed, including the LSCP, that estimate generators – whether on a firm’s own website or through a Digital Comparison Tool (DCT) – should be mandatory to facilitate easier comparison. There was concern about the cost and administrative impact on smaller practices.

Respondents deemed it feasible to publish price lists but thought that it should be standardised to allow a fair comparison. Whilst it would improve transparency for consumers, it may create an additional burden for firms to regularly update the information in order to remain competitive.

Direct communications with potential clients

All respondents agreed that firms should be required to provide written estimates by email, post or in person in response to non-internet queries. Many thought this was already required.

Via third parties

All respondents agreed that the provision of data by firms to DCT should be on a voluntary basis. There was concern about the regulation of DCTs to ensure they have all the data required to enable consumers to make a fair comparison and that they do not give preferential treatment.

Service type and quality

Legal services provided

The majority (86%) of respondents did not think that regulatory action would be required to ensure firms are clear about the legal services they provide and models of service delivery. Regulatory action would be required if a firm was seen to be misleading clients regarding service provision.

Mix of staff delivering legal services

Many respondents did not think that clients are interested in the mix of staff but if the information is provided, it should be clear and meaningful to the client. One respondent commented that in larger practices and prior to inception, it is not always known which team will receive the new matter.

One respondent noted that many transactions are carried out by junior staff under a partner's name but provided the required supervisory arrangements are in place, this need not concern the client.

Half of respondents agreed that the legal qualifications and experience of the individuals carrying out the work should be set out in the letter of instruction. This may be difficult in larger practices where a transaction is broken down into component parts and different teams.

A couple of respondents stated that qualifications may not mean much to consumers who may be more concerned about experience, however if staff aren't qualified, that shouldn't be hidden.

Accreditation schemes

All respondents agreed that accreditation schemes should not be used as a quality proxy to assist consumers with their choice. Some stated that accreditation does not give an indication of the level of service or expertise of a firm as the quality of schemes varies considerably.

Securing and publishing client feedback

Over half (57%) of respondents felt that firms should not be required to ask their clients a single standard question as part of their feedback surveys as a basis for comparisons of quality. A single score would not give the full picture of the client's experience and firms should be able to decide how they use feedback.

One respondent noted that feedback can be unbalanced as dissatisfied clients are more likely to give feedback than those that are satisfied. On the other hand, a single score does provide a minimum standard that would allow consumers to easily compare practices' ratings.

The LSCP thought that it would be helpful to develop a more comprehensive set of questions to give a better overall picture of service quality.

Only 13% of respondents thought that firms should be required to publish their standard question score on their websites. One respondent thought that if asking clients a standard feedback question is mandated, then the CLC should publish the results.

None of the respondents thought that the CLC should manage the collection of responses to a standard feedback question. It was felt that it would not be cost effective and proportionate and the information would be quickly out of date.

71% of respondents agreed that the CLC should promote the use of third party feedback platforms as best practice but not make their use mandatory. Those that disagreed cited the potential cost implications and the existing availability of feedback information. Only 14% of respondents thought that making the use of third party feedback platforms mandatory would improve outcomes for consumers.

Complaints information

All respondents, except for the LSCP, agreed that publication of data on first tier complaints by practices should not be mandatory as it is not important in informing consumer choice. It could

mislead the consumer as most complaints are dealt with satisfactorily by the firm. One respondent argued that the regulatory burden and costs involved potentially outweigh the benefit to the client.

Nine out of 10 (88%) respondents agreed that the publication of second tier complaints data by firms should not be mandatory. It could lead to firms inappropriately settling early to avoid the complaint going to the Legal Ombudsman (LeO) and being published.

Several respondents noted that it is difficult to interpret complaints data without knowing the background to the complaint and potentially having some legal knowledge. If practices are required to publish complaints and disciplinary data, it should be contextualised and easily understood by consumers as most will not understand the complexities of the issues.

Seven out of 10 (71%) respondents did not think that firms should be required to publish disciplinary information as the relevant data is currently available in the CILEx Journal and the Gazette. One respondent thought that if the CLC is satisfied to grant a licence to the firm, publishing disciplinary information may appear to undermine or contradict a firm's fitness to practise, causing confusion to consumers.

Regulatory protections - PII

All respondents, including the LSCP, agreed that the publication of a firm's level of PII cover does not help inform consumer choice. Consumers should not be concerned about PII unless firms are transacting on properties above their level of cover.

The level of PII cover could be published on an exception basis, for example, where the consumer would be exposed or where a high excess level has been agreed.

The LSCP suggested that regulators may consider working together to develop a logo to show that the provider has PII and contributes to a compensation fund. Accompanying information about possible implications for the consumer should also be provided.

Enhancing the digital register of CLC lawyers

The majority of respondents (90%) disagreed that first tier and second tier complaints data should be added to the digital register of CLC-regulated firms.

One respondent thought that DCTs should be able to use any information that is currently publicly available on the LeO's website, but an explanation about the degree and context of the complaint is essential. Any complaints information should be presented as a % of work carried out by the practice and correlated against a universal scale to be rigorously enforced and verified by the regulators.

Eight out of 10 (83%) respondents agreed that information about conduct matters should be signposted from entries on the digital register.

86% agreed that under the presumption of innocent until proven guilty, the CLC should not publish information about individuals or firms under investigation.

86% also thought that the CLC should not add service ratings to its digital register of firms. Consumers may wrongly assume that the ratings were the view of the CLC, even if it was made clear that this was not the case. Consumers already have third party rating websites like Google and Trust Pilot and additional ratings may cause more confusion.