



**Implementation of CMA transparency recommendations  
set out in its Legal Services Market Study**

CLC consultation paper

May 2018

## Summary

- I. The Council for Licensed Conveyancer's (CLC) is seeking views on the proposed changes to its Regulatory Arrangements in order to implement the Competition and Markets Authority's (CMA) recommendations set out in its Legal Services Market Study<sup>1</sup> regarding price and service transparency.
- II. The changes aim to provide better transparency for consumers and foster innovation and competition in the legal services market whilst having minimal impact on the regulatory burden on the profession.
- III. Whilst promoting appropriate levels of consumer protection, the CLC's aim in reviewing the Regulatory Arrangements is to:
  - a. Ensure minimal impact on the regulatory burden.
  - b. Provide greater flexibility for CLC Lawyers and Practices to participate in a diverse legal market, increasing access for the public and quality of legal services.
  - c. Provide greater clarity for CLC Lawyers and Practices so that the CLC's expectations are clear.
- IV. The CLC proposes that CLC Practices will be:
  - a. required to provide information on costs on their websites ('Costs Information')
  - b. required to make available on their websites standard information about:
    - the services that they provide;
    - key stages in the delivery of those services; and
    - indicative timescales(together 'Service Information').
  - c. required to make available on their websites standard information about:
    - how to make a complaint;
    - client protection arrangements (details of PII arrangements and access to the CLC Compensation Fund); and
    - regulatory status(together 'Regulatory Information').
  - d. encouraged to consider the benefits and risks of third party feedback platforms and price comparison websites for them and their clients.
- V. We expect any changes to the Regulatory Arrangements to come into force in December 2018.
- VI. This consultation paper sets out the CLC's:
  - a. Action Plan in response to the CMA's proposals.
  - b. Response to the CLC's consultation on 'helping consumers choose their lawyer'.
  - c. Review of Regulatory Arrangements together with draft amendments.
  - d. Next steps and implementation timetable.

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<sup>1</sup> [Legal Services Market Study: Final Report, Competition and Markets Authority, 15<sup>th</sup> December 2016](#)

### **Responding to this consultation**

1. You are invited to respond to our online consultation.
2. A list of all the questions, and proposed changes to the Regulatory Arrangements can be found at the end of the consultation.
3. The CLC reserves the right to publish any response and to refer to it specifically in any further document it publishes following this Consultation. If you wish your response to be treated as confidential please let us know when you respond.
4. You can respond to the consultation by [an online survey](#), email to [Consultations@clc-uk.org](mailto:Consultations@clc-uk.org) or by post to:

The Council for Licensed Conveyancers

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**Submission Deadline: 29 June 2018**

## Statutory Framework

5. The CLC was established by the Administration of Justice Act 1985 and is an approved regulator under the Legal Services Act 2007. The CLC's role is to safeguard the public and consumer interest by regulating providers to deliver high quality and accessible legal services.
6. As an approved regulator the CLC 'must, so far as is reasonably practicable, act in a way which is compatible with the regulatory objectives'<sup>2</sup>, namely :
  - Protecting and promoting the public interest;
  - Supporting the constitutional principle of the rule of law;
  - Improving access to justice;
  - Protecting and promoting the interests of consumers;
  - Promoting competition in the provision of services by 'authorised persons';
  - Encouraging an independent, strong, diverse and effective legal profession;
  - Increasing public understanding of the citizen's legal rights and duties;
  - Promoting and maintaining adherence to the professional principles.
7. The CLC's regulatory regime is underpinned by the Handbook which sets out the regulatory responsibilities of all individuals and practices that we regulate.
8. The Code of Conduct is the parent document of the CLC's regulatory approach. Non-mandatory Guidance, which accompanies many of the Codes, is also available.
9. To effectively secure the protection of, and the provision of choice for, the consumer of legal services, regulated persons must at all times comply with the following Overriding Principles:
  - Act with independence and integrity.
  - Maintain proper standards of work.
  - Act in the best interests of their clients.
  - Comply with your duty to the court.
  - Deal with regulators and ombudsmen in an open and co-operative way.
  - Promote equality of access and service.
10. These Overriding Principles are underpinned by principles of behaviour which must be demonstrated and specific requirements which must be complied with in order to achieve the Overriding Principles.

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<sup>2</sup> S.28(2) [Legal Services Act 2007](#)

## Introduction

11. The CMA published its Legal Services Market Study on 15 December 2016<sup>3</sup> following a year-long study. The CMA investigation into the market encompassed the work of all legal professions. It found that there were problems of transparency of price and quality and that consumers did not have the information they needed before employing a lawyer.
12. The CMA report contains recommendations that they said are designed to make sure consumers can be confident about the price and service they can expect when they hire a lawyer.
13. Our Action Plan<sup>4</sup> sets out the detail of what we will do in response to the CMA's recommendations. Actions have been built in to our business plan for 2018-2022<sup>5</sup> and have already begun.
14. We published a 12 week consultation in October 2017 which included detailed proposals based on the CMA recommendations, including estimate generator templates, measures of quality and changes to our rules. The responses<sup>6</sup> have helped to inform the proposed changes to the Regulatory Arrangements contained in this consultation.
15. In this consultation, we are looking at the specific changes we propose to make to the Regulatory Arrangements in order to implement recommendations made by the CMA.

## The CMA proposals

16. The key recommendation from the CMA asks the legal services regulators to *'deliver a step change in standards of transparency to help consumers (i) understand the price and service they will receive, what redress is available and the regulatory status of their provider and (ii) compare providers'*<sup>7</sup>.
17. The CMA thinks that its recommendations should help to deliver change in transparency, competition and customer engagement. The CMA's analysis is that the current level of information available to consumers is low and that even the benefit of increasing the amount and quality of information on price and service may not be sufficient to drive customer engagement to the levels needed for a fully competitive market.
18. The CMA believes that intervention by regulators may be necessary to improve comparability on price and services in order to maximize customer engagement at a point before the customer is already committed, even if not contractually, to the purchase of services.
19. The CMA states that *'for information to be accessible to consumers it should be:*
  - *Prominent: Information should be readily available and easy to find. Websites should similarly be easily navigable.*
  - *Timely: Consumers should be able to find the information that they need at the time that it is relevant, ie they want to have an understanding of price, service and*

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<sup>3</sup> [Legal Services Market Study: Final Report, Competition and Markets Authority, 15<sup>th</sup> December 2016](#)

<sup>4</sup> [Action Plan to implement the CMA's recommendations on information remedies, CLC, 29<sup>th</sup> June 2017](#)

<sup>5</sup> [CLC Strategy 2018-2022](#)

<sup>6</sup> [Summary of responses to Helping consumers choose their lawyer consultation, CLC, April 2018](#)

<sup>7</sup> Para 45(a), page 15, [Legal Services Market Study: Final Report, Competition and Markets Authority, 15<sup>th</sup> December 2016](#)

*quality before approaching a provider so that they can make comparisons. In legal services, this means having information available at the search stage, rather than at the point of engagement.*<sup>8</sup>

### **The CLC's Action Plan and progress to date**

20. The CLC's Action Plan was developed in close cooperation with other regulators through the Remedies Programme Implementation Group that is chaired by the Chief Executive of the CLC, Sheila Kumar.
21. Further to the CMA's proposals, our Action Plan sets out the full detail of what we plan to undertake. Some of those actions have been built in to our business plans for 2018 and beyond and some have already begun
22. Our current position on the CMA recommendations and the actions being taken through our Action Plan are as follows:

#### Price and service

23. We currently require CLC Practices to give their clients full and accurate cost estimates, including details of any referral fee that may be paid before accepting instruction in the letter of engagement.
24. CLC Practices are also required to provide information about the individual and the identity of the team, if applicable, having day-to-day conduct of the matter.

#### Regulatory status and redress

25. CLC Practices are required to show that they are regulated by the CLC on their website, printed materials and letterhead. Our online register provides full details of CLC regulated practices and individuals that clients and others can use to check their regulatory status.
26. Details of regulatory actions taken against CLC Practices and individuals are also published on our website in accordance with our Publication Policy<sup>9</sup>.
27. In 2017 we launched a secure badge scheme for the websites of CLC Practices which gives consumers added assurance about the regulatory status of those practices. This takes the form of a 'regulated by the CLC' badge that is displayed on the practice's website as a unique piece of code which cannot be copied and used elsewhere without being traced. All CLC Practices with a website/online presence were expected to have installed the secure badge on their websites by 1 November 2017.
28. We are exploring what more we can do, through our own channels and the Legal Choices website, to increase consumer understanding of the protections afforded to them by using a CLC Practice.

#### Use of independent feedback platforms

29. Recent research<sup>10</sup> carried out by the Solicitors Regulation Authority found that 40% of all people surveyed were aware of price comparison websites for legal services. Of these, approximately 1 in 3 used such sites to compare conveyancing providers.

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<sup>8</sup> Para 3.68, page 58, [Legal Services Market Study: Final Report, Competition and Markets Authority, 15<sup>th</sup> December 2016](#)

<sup>9</sup> [CLC Publication Policy](#)

<sup>10</sup> Para 4.13, page 27, [Understanding consumer experiences of conveyancing services, SRA, March 2018](#)

30. We encourage the use of feedback platforms and aim to provide support and advice to practices using those tools.

### **The CLC's consultation 'Helping consumers choose their lawyer'**

31. As part of our Action Plan, we ran a 12 week consultation in October 2017<sup>11</sup> containing proposals about how we could implement recommendations from the CMA on increasing the transparency of information about service, quality and price.
32. We received 15 responses in total, with the majority of responses from CLC Practices<sup>12</sup>. 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.

### **What we are consulting on now**

33. This consultation identifies the proposed changes to the CLC Regulatory Arrangements to implement recommendations made by the CMA.
34. The responses to our previous consultation have helped to inform the proposed changes to the Regulatory Arrangements contained in this consultation.
35. The scope of this consultation covers only those legal services regulated by the CLC: conveyancing and probate services. It also covers those services only in so far as they are delivered to private individuals and small businesses with up to ten employees or that do not have their own legal teams. Corporate purchasers of legal services will have other ways of making choices of legal service provider based on much greater experience and insight into their use and in our view would be unlikely to need the kinds of assistance set out in the CMA's recommendations.
36. Once the changes are in place, the CLC will monitor compliance within the regulated community and assess whether the new approaches are delivering the benefits sought by the CMA.
37. We will carry out a review in the 18 months following the changes coming into force to determine whether any further changes should be made to the Regulatory Arrangements.

### **Cost Information**

38. Currently, CLC Practices must provide a cost estimate to clients at the outset of instructions. Estimates should accurately reflect the total cost the client will pay so that the client is aware when they first instruct the CLC Practice of the total cost they will be charged for the service they receive.
39. As an extension of that requirement, CLC Practices will also be required to make Cost Information, including whether they have referral arrangements, readily accessible on their website<sup>13</sup> and in alternative formats on request (eg by email or post). Whilst we do not

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<sup>11</sup> [Helping consumers choose their lawyer consultation, CLC, October 2017](#)

<sup>12</sup> [Summary of responses to Helping consumers choose their lawyer consultation, CLC, April 2018](#)

<sup>13</sup> 85% of CLC regulated-practices have a website - CLC's Annual Regulatory Return Analysis 2016 ([http://clc-uk.org/CLCSite/media/Research-Reports/CLC-ARR2015-16-Report-\(FINAL\).pdf](http://clc-uk.org/CLCSite/media/Research-Reports/CLC-ARR2015-16-Report-(FINAL).pdf))

intend to prescribe how Cost Information is presented, we will publish best practice guidance with cost estimate templates.

40. Whilst not specifically required, CLC Practices may wish to consider providing an instant online quote generator on its website or on a third party website. They may also consider providing an explanation about when any estimate provided may be changed.

#### Question 1

To help achieve Outcome 3.3 (Clients have the information they need to make an informed decision), we propose including an additional specific requirement at CoC 3(q) to state:

***"You provide Cost Information on your website and by other reasonable means on request."***

**'Cost information' means:**

- a) the total cost of the service or, where not practicable, the average cost or range of costs;
- b) a description of the service offered;
- c) your fee, or where not practicable your average fee or range of fees
- d) whether your fees are determined as a fixed sum or by reference to hourly rates;
- e) a description and the value of disbursements, including Land Tax. Where the actual cost of a disbursement is not known, a range of the likely cost of that disbursement;
- f) whether VAT is payable on your fees or disbursements and if so in each case the amount of VAT payable;
- g) whether you have referral arrangements with third parties, whether a referral fee is paid and, if so, the fee or average referral fee payable.

**'Land Tax' means Stamp Duty Land Tax payable in England or Land Transaction Tax payable in Wales.**

Do you agree?

#### Question 2

To help achieve Outcome 3.3, we propose amending paragraph 8.4 in the Estimates and Terms of Engagement Code to state:

***"8.4 a description of, and likely cost of, any disbursement likely to be included on the basis of the instructions received (with VAT separately itemised). Where applicable, Land Tax should be separately itemised."***

Do you agree?

#### Service Information

41. Conveyancers, as well as other stakeholders, have expressed concerns about a race to the bottom if consumers focus on price alone when selecting their legal service provider.
42. To help consumers take other important factors into account when choosing a conveyancer, CLC Practices should provide service quality information alongside price information. This will increase the opportunity for CLC Practices to differentiate themselves from competitors and appeal to clients on grounds other than just price.



43. At the point of engagement, CLC Practices are currently required to provide a description of their services, details of the individual who will have day-to-day conduct and supervision of the matter and complaints and redress information to the client.
44. We propose to extend these requirements so that service information is published on the practice's website and otherwise made available on request.
45. The service information CLC Practices will be required to provide on their website includes:
- (i) a description of services that they provide;
  - (ii) key stages in the delivery of those services<sup>14</sup>; and
  - (iii) indicative timescales.
46. Whilst not prescribed, CLC Practices may also wish to include:
- information about the staff mix and their qualifications
  - mode of delivering the service (eg. face-to-face or online)
  - specific areas of expertise or focus (eg first title registration, leasehold, remortgage),
  - the practice's typical client profile (eg first time buyers)
  - feedback from clients (on third party platforms eg. Trustpilot)
- to provide further transparency to consumers when choosing their legal service.

### Question 3

To help achieve Outcome 3.3, we propose amending paragraph 13.3 in the Estimates and Terms of Engagement Code to state:

***"13.3 the name, experience and, if applicable, qualifications of the individual having day-to-day conduct of the matter and, where applicable, of the individual responsible for its overall supervision."***

Do you agree?

### Question 4

To help achieve Outcome 3.3, we propose including an additional paragraph in the Estimates and Terms of Engagement Code to state:

***"13.5 a clear description of the services included in the price, including***

***a) the key stages of the transaction;***

***b) indicative timescales for the transaction;***

***c) a summary of services included in the price; and***

***d) a summary of services which are not included in the price."***

Do you agree?

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<sup>14</sup> Only 55% of respondents remembered being given details of the legal process, Table 5.1, page 35, [Understanding consumer experiences of conveyancing services, SRA, March 2018](#)

## Complaints and redress

47. CLC Practices are currently required to provide clients with details of their complaints process and information about the Legal Ombudsman (LeO) at the outset of a matter. However recent research found that only 31% of consumers were likely to remember receiving information about how to complain<sup>15</sup>.
48. CLC Practices are required to notify clients in prescribed terms of their entitlement to make an application for a grant out of the Compensation Fund administered by the CLC.
49. There is currently no specific requirement to provide information to the client about the professional indemnity insurance (PII) arrangement the CLC Practice has in place (although legal services cannot be provided unless PII cover is in place).
50. We propose that the current requirements are extended so that complaints, redress and PII information is published on the practice's website and otherwise made available on request.

### Question 5

To help achieve Overriding Principle 6 (Promote equality of access and service), we propose including an additional paragraph in the Estimates and Terms of Engagement Code to state:

***"13.9 in respect of paragraphs 13.5-13.8, this information must also be made available on your website and by other reasonable means on request."***

Do you agree?

### Question 6

To help achieve Overriding Principle 6, we propose amending CoC 6(j) to state:

***"From the outset you advise Clients in writing of their right to make a complaint, how to make it, to whom, and the timeframes involved and also make this information available on your website and by other reasonable means on request."***

Paragraph 12 of the Complaints Code would also be updated to reflect the amendment.

Do you agree?

### Question 7

To help achieve Overriding Principle 6, we propose amending CoC 6(k) to state:

***"You advise Clients in writing of their right to have their complaint escalated to the Legal Ombudsman and provide them with contact details and timeframes of that body. You also make this information available on your website and by other reasonable means on request."***

Paragraph 13 of the Complaints Code would also be updated to reflect the amendment.

Do you agree?

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<sup>15</sup> Para 5.9, page 37, [Understanding consumer experiences of conveyancing services, SRA, March 2018](#)

## Regulatory status

51. CLC Practices are currently required to confirm that they are regulated by the CLC and provide the names of the Managers on all business communications, websites and in the office premises. We think the practice licence number should also be included in this information.
52. We propose that CLC Practices be required to embed the CLC secure badge on their website. We will continue to develop the secure badge landing site as a resource for consumers which includes details about PII cover, the CLC's Compensation Fund, the complaints process and access to LeO.

## Question 8

We propose amending CoC 1(o) to state:

*"All business communications, websites and office premises display information confirming the entity is regulated by the CLC, **the practice licence number**, and the names of the Managers (identifying those who are Authorised Persons)."*

- a) Do you agree?

We are also considering removing the requirement to display the names of the Managers in CoC1(o) on the basis that it is for each CLC Practice to determine whether it considers that this is information which consumers will wish to see on their website.

- b) Do you have any comments?

## Question 9

We propose adding a specific requirement to CoC 1(p) to state:

*"**You must display the CLC secure badge in a prominent place on your website.**"*

**'Secure badge' means:**

**A validation logo supplied and controlled by the CLC which enables consumers easily to check that the practice is regulated by the CLC.**

Do you agree?

## Use of independent feedback platforms and price comparison websites

53. CLC Practices are encouraged to consider the benefits and risks of third party feedback platforms and price comparison websites for them and their clients.
54. At this time we do not propose to change the Regulatory Arrangements to require CLC Practices to utilise these commercial services.
55. Further research and consumer engagement is required to inform future decision making.

### Next steps and implementation table

56. This consultation will be open until **29 June 2018**. During this period, the CLC will proactively target and facilitate discussions with key stakeholders, including CLC Practices.
57. The timetable for implementation is as follows:

Consultation on rule changes and guidance	Start	30 May 2018
	End	29 June 2018
Council approve rules		July 2018
Application to Legal Services Board		August 2018
Publication of Rules and Guidance		September 2018
Rules and Guidance in force		December 2018

## Annex A: List of consultation questions

### Question 1

To help achieve Outcome 3.3 (Clients have the information they need to make an informed decision), we propose including an additional specific requirement at CoC 3(q) to state:

*"You provide Cost Information on your website and by other reasonable means on request."*

'Cost information' means:

- a) the total cost of the service or, where not practicable, the average cost or range of costs;
- b) a description of the service offered;
- c) your fee, or where not practicable your average fee or range of fees
- d) whether your fees are determined as a fixed sum or by reference to hourly rates;
- e) a description and the value of disbursements, including Land Tax. Where the actual cost of a disbursement is not known, a range of the likely cost of that disbursement;
- f) whether VAT is payable on your fees or disbursements and if so in each case the amount of VAT payable;
- g) whether you have referral arrangements with third parties, whether a referral fee is paid and, if so, the fee or average referral fee payable.

'Land Tax' means Stamp Duty Land Tax payable in England or Land Transaction Tax payable in Wales.

Do you agree?

### Question 2

To help achieve Outcome 3.3, we propose amending paragraph 8.4 in the Estimates and Terms of Engagement Code to state:

*"8.4 a description of, and likely cost of, any disbursement likely to be included on the basis of the instructions received (with VAT separately itemised). Where applicable, Land Tax should be separately itemised."*

Do you agree?

### Question 3

To help achieve Outcome 3.3, we propose amending paragraph 13.3 in the Estimates and Terms of Engagement Code to state:

*"13.3 the name, experience and, if applicable, qualifications of the individual having day-to-day conduct of the matter and, where applicable, of the individual responsible for its overall supervision."*

Do you agree?

#### Question 4

To help achieve Outcome 3.3, we propose including an additional paragraph in the Estimates and Terms of Engagement Code to state:

*“13.5 a clear description of the services included in the price, including*

- a) the key stages of the transaction*
- b) indicative timescales for the transaction*
- c) a summary of services included in the price, and*
- d) a summary of services which are not included in the price.”*

Do you agree?

#### Question 5

To help achieve Overriding Principle 6 (Promote equality of access and service), we propose including an additional paragraph in the Estimates and Terms of Engagement Code to state:

*“13.9 in respect of paragraphs 13.5-13.8, this information must also be made available on your website and by other reasonable means on request.”*

Do you agree?

#### Question 6

To help achieve Overriding Principle 6, we propose amending CoC 6(j) to state:

*“From the outset you advise Clients in writing of their right to make a complaint, how to make it, to whom, and the timeframes involved. You also make this information available on your website and by other reasonable means on request.”*

Paragraph 12 of the Complaints Code would also be updated to reflect the amendment.

Do you agree?

#### Question 7

To help achieve Overriding Principle 6, we propose amending CoC 6(k) to state:

*“You advise Clients in writing of their right to have their complaint escalated to the Legal Ombudsman and provide them with contact details and timeframes of that body. You also make this information available on your website and by other reasonable means on request.”*

Paragraph 13 of the Complaints Code would also be updated to reflect the amendment.

Do you agree?

### Question 8

We propose amending CoC 1(o) to state:

*“All business communications, websites and office premises display information confirming the entity is regulated by the CLC, the practice licence number, and the names of the Managers (identifying those who are Authorised Persons).”*

a) Do you agree?

We are also considering removing the requirement to display the names of the Managers in CoC1(o) on the basis that it is for each CLC Practice to determine whether it considers that this is information which consumers will wish to see on their website.

b) Do you have any comments?

### Question 9

We propose adding a specific requirement to CoC 1(p) to state:

*“You must display the CLC secure badge in a prominent place on your website.”*

‘Secure badge’ means:

A validation logo supplied and controlled by the CLC which enables consumers easily to check that the practice is regulated by the CLC.

Do you agree?