

## **The Council for Licensed Conveyancers' submission to the Competition and Markets Authority's review of the legal services market study in England and Wales**

**30 September 2020**

The Council for Licensed Conveyancers is the regulator of specialist conveyancing and probate lawyers.

In this submission, we have placed together our responses to the questions in the main call for inputs and the supplementary questions for regulators.

### ***Questions regarding information remedies and supply-side developments***

- 1. What challenges have legal services providers faced in complying with transparency measures, and how could these be addressed?**

The CLC engaged closely with firms in preparation for the implementation of the new rules and afterwards. The key challenges firms faced in achieving compliance were practical ones around the updating of web content. Another challenge, but one that arises from the central thrust of the CMA's recommendations to make pricing more transparent, was the development by firms of their approach to price data when they have differential pricing driven by different referral routes or direct access. Some firms also use dynamic pricing to help manage demand for services, so that prices increase as the firm becomes busier.

- 2. Are consumers engaging with the new transparency measures including the availability of price information, e.g. by accessing the pricing information on the provider websites and/or using this information in their interactions with providers? Does this differ between different areas of law?**

The Legal Services Consumer Panel's most recent Tracker Survey found that 30% of consumers of legal services are now shopping around, compared to 23% in 2012 and 25% in 2016. That increase may be slower than some would hope for, but it appears to be sustained and indeed it may be that the increase in shopping around has been speeding up as there was a 2% increase in the first four year period and a 5% increase in the second.

The data that the CLC has from the firms that we regulate appears to align with the LSCP's data. In our [2019 Annual Regulatory Return](#), firms were asked to report the extent to which they felt that their clients had been shopping around when choosing a legal service provider since the introduction of the new transparency rules. Around one-quarter of firms (26%) felt that clients had shopped around either a great deal or slightly more, while just over half (54%) thought there had been no

change. Very few firms (2%) felt that clients had shopped around a great deal or slightly less since the introduction of the new rules. A further 17% of firms said that they did not know. We have not broken this down between conveyancing and probate.

### **3. How effective have transparency measures been in driving competition? Does this vary across different areas of law?**

This is difficult to assess. We would expect the increase in shopping around to be having a competitive effect. However, that has not translated into a reduction in prices in the CLC's regulated community since the introduction of the new rules according to our own research and according to the LSB and CMA's recently published research on prices across the legal sector. In the CLC's 2019 Annual Regulatory Return, around one-third of firms reported having increased their prices in the previous year and a third reported that they intended to increase their prices in the coming year.

It is not possible yet to understand in detail what impact the pandemic has had on competition, but there appears to be evidence of very different impacts on firms since the restrictions began to be relaxed in May. In our regular surveys of the firms that we regulate, there are wide disparities between firms that are very much busier than usual at time of writing and others that are still very much less busy than usual. We need to explore further whether this is due to practical issues around the return to normal operation for the less busy firms or whether other forces are at play such as changes in consumer behaviour.

This pattern in the legal services regulated by the CLC is not surprising, however. The price of these increasingly commoditised legal services, and conveyancing in particular, have been driven down massively in recent decades and we believe that, generally speaking, further reduction could begin to threaten the standards expected for the delivery of those services.

As the CLC has worked with firms to implement the transparency rules we have always stressed the need to compete on other elements as well as price. It is often said that these commoditised services are undervalued by clients, so improved transparency offers an opportunity for those firms willing to take it. For example, we have seen some firms that have embraced independent feedback tools and make good use of them to support their client acquisition.

The CLC is developing an approach to applying quality indicators to conveyancing, in the first instance, to further round out the information available to prospective clients that would help consumers put price information into a fuller context of value.

### ***Supplementary questions for regulators***

#### **1. How satisfactory has progress on transparency been to date?**

The CLC reviewed practices' compliance with the informed choice rules and guidance after it came into force in 2018 and found almost 100% compliance.

In February and March 2020 all practices' websites were reviewed again and a lower rate of compliance was found, primarily with regard to costs information.

During this second review it was observed that although many websites offered a quote generator, a customer is required to provide personal details and contact information in order to use it. In other cases, websites offer costs information in an alternative format which is not considered compliant with the CLC's Informed Choice guidance, for example they have only provided a minimum fee for a service or do not provide adequate information on disbursements.

Other practices do not have a website (33 total) and we are currently investigating whether the costs information they are required to provide in hardcopy would be considered compliant with the CLC's rules and guidance.

We have been and continue to work with all practices identified as having non-compliant costs information to bring them into compliance.

We expect this review to be completed around mid-October.

#### **2. What are the challenges faced in setting and enforcing transparency rules / guidance?**

##### **a. What are the key learnings from the initial implementation and monitoring of transparency rules and guidance?**

The primary challenge is obtaining and maintaining a level of consistency and effectiveness in the way that costs information is displayed, while also taking a non-prescriptive, light-touch approach that delivers the expected outcomes while allowing practices adequate flexibility to display costs information in a way that best suits their business.

#### **3. What more could frontline regulators do to drive transparency?**

##### **a. What further work is being planned?**

We are currently working with all practices identified as having non-compliant or only partially compliant costs information. We will then identify why levels of compliance have changed since

the introduction of the rules and review whether our rules or guidance need to change accordingly.

**b. Are there any plans to review or change the rules or guidance?**

We will review our rules and guidance in the light of the latest investigation of compliance. We are also developing an approach to quality indicators that we may trial with volunteer firms. The findings of that trial would inform further rules and/or guidance.

We are also aware that the LSCP tracker survey found that that some consumers find the way price information is displayed as being confusing, however it did not explore in what way they found it confusing. The finding provides some useful insight but we and other Regulators need to consider how best to understand where the confusion arises.

***Where transparency rules have been put in place***

4. Is there sufficient enforcement of the transparency rules by frontline regulators?
  - a. What levels of compliance have been observed? What are the main drivers for non-compliance?
  - b. What steps are taken to enforce compliance with transparency rules?
  - c. What key factors have driven the enforcement strategy to date? Are changes planned for future enforcement?

The CLC reviewed compliance with the rules immediately following their introduction and again at the start of 2020. Each new practice that comes into CLC regulation is assessed for compliance with all the CLC's rules at that time and at a follow-up inspection 12 months later. All CLC practices receive on onsite inspection on a 3-yearly basis and compliance with transparency rules is also assessed as part of these inspections. In addition, the CLC will take action where it receives intelligence that a practice is potentially non-compliant.

Where non-compliance is observed as part of a review such as the one taking place, the CLC will write to the practice outlining the nature of the non-compliance and giving a timeframe to come into compliance. If the non-compliance is discovered during an inspection of the practice, details of the non-compliance will be provided in the inspection report and action plan.

The CLC (generally a Regulatory Supervision Manager) will then support the practice by providing advice and relevant information to enable it to make the necessary changes. If the deadline is not

met, the CLC will consider whether to escalate the case for further investigation and disciplinary action.

The CLC's Rules are contained, for example, in the [CLC Code of Conduct](#) (in Overriding Principle 1, Specific Requirements o. p. and q.):

- O) All business communications, websites and office premises display information confirming the entity is regulated by the CLC and the practice licence number
- P) You display the CLC secure badge in a prominent place on your website
- Q) You provide cost information in a prominent place on your website and by other reasonable means on request.

Additional relevant rules are contained in the [Estimates and Terms of Engagement Code](#) and the [Complaints Code](#).

This year's review of compliance with the price transparency rules revealed that around 50 practices would require follow-up action to become fully compliant.

#### ***Where guidance has been provided instead of transparency rules***

5. Are frontline regulators sufficiently incentivising compliance with the guidance?
  - a. What levels of compliance have been observed? What do you consider to be the main drivers for non-compliance to date?
  - b. What steps are taken to encourage compliance with the guidance?
  - c. What steps have been taken to evaluate the effectiveness of the guidance approach? Are changes planned in future, e.g. a move from guidance to rules?

The CLC has both Rules and Guidance for transparency. The Rules are high-level, and the guidance contains more detail on interpreting and applying the rules. The CLC will generally not take enforcement action for non-compliance with the guidance but because we have made rule and compliance with those is of course mandatory, we are able to take disciplinary and enforcement action as necessary.

The [CLC's Informed Choice Guidance](#) is found in the [Informed Choice Toolkit](#) on our website. It includes detailed guidance on different ways in which to comply with the Rules, including templates for displaying costs information.

We will be interested to learn about the experience of other regulators that have chosen the mandatory route.

**6. If possible, to illustrate your responses to the questions in the CFI on transparency please provide examples of good and bad implementation of transparency of price/service/quality/redress/regulatory status by providers.**

Some examples of non-compliance include:

- [A practice](#) that has a quote generator that requires personal details to obtain a quote. This is non-compliant as it is considered that the costs information provided by the generator is not displayed in a prominent place, and the alternative costs information only includes minimum fees.
- [A practice](#) that has costs information that is considered non-compliant because the range of costs is too wide and non-specific. I.e. “From £350 for a remortgage to £2500 for sale of a large estate.”
- [A practice](#) that does not display the CLC Secure Badge or its licence number.

**4. To what extent has the legal choices website helped consumers to navigate the legal services sector? To what extent has improved content been actively promoted by regulators, consumer/industry bodies and service providers?**

The Legal Choices Governance Board has submitted a report on the website. As that report sets out, the three-year development programme (2017-2020) has been a resounding success, demonstrating that there is a real appetite for authoritative, public interest information that helps people to navigate the sector. The website is on track to hit the higher end of its target range of 2 to 3 million visitors in its first three years. Those visits to the website are of good quality, with visitors dwelling for several minutes on average.

Legal Choices takes an approach to public legal education that recognises that citizens will seek to inform themselves about legal services at points when they believe they might need them and provides ‘just in time’ guidance. In terms of the products that are available to help consumers, more has been delivered than was initially planned and we are confident that more can continue to be added in the future, in response to identified need.

We are now looking ahead to further development to make sure that Legal Choices realises its potential to make a positive contribution to wider public legal education.

***Supplementary questions for regulators***

**7. What are your views on the future of the Legal Choices website?**

**a. What key challenges has this faced to date?**

We hope and expect that the Legal Choices website will continue to develop and grow. We have a tested process for identifying, developing, and deploying new products on the website that help citizens or their advisors find routes to addressing their problems.

The key challenge has been to secure whole-of-market coverage due to the departure of one regulator. It is our view that, even if other Public Legal Education initiatives are identified as necessary, Legal Choices provides the most effective one-stop shop for citizens at point of need.

**b. What funding and governance arrangements are most appropriate going forwards?**

The current governance arrangements have been agreed to be the most appropriate, following exhaustive exploration of the alternatives. It will be important for funding to be agreed on a rolling three-year basis to allow effective planning of development of the website.

**5. To what extent are quality indicators needed to drive consumer engagement and competition? Which further indicators are needed and what are the barriers to these indicators being developed?**

Quality indicators have the potential to provide a context of value around price data to help guide consumers in choice of legal service provider. This might be as simple as more widespread use of third-party client feedback services but could usefully be extended to other data. In the case of conveyancing, there is data available from HM Land Registry about the location, value and types of property transacted. This could have value for consumers seeking to understand their conveyancer's experience with properties like theirs.

One tool on the market lays out just such data as well as information about the speed of submission of the AP1 form to the Land Registry which it presents as a star rating as a proxy for quality. The CLC hopes that the use of such data might be piloted in a way that would enable assessment of its value to consumers. That might be a pilot that the CLC has to run alone, though a test that included all of the regulators of conveyancing would give a more comprehensive picture.

We do not seek to comment on how quality indicators could be applied to other legal services, but a trial in respect of conveyancing could provide helpful insight as to how useful consumers find such indicators.

***Supplementary questions for regulators***

**8. What further analysis would be most helpful to develop an understanding of what type of quality indicators consumers find useful? What are the main barriers to the successful implementation of quality indicators?**

The CLC is very interested in the work that the LSB is scoping to research quality indicators with consumers. We have given input to that scoping and want to continue working closely with the LSB as the research progresses. We hope that this will help identify which quality indicators or proxies consumers might make use of.

**6. To what extent are DCTs currently operating in the legal services market? What are the main barriers to greater use of DCTs in legal services and how can they be overcome?**

As is well-known, referral remains the most common route to choosing a provider of conveyancing or probate services either because an acquaintance has recent experience or because consumers feel that other advisors (estate agents, funeral directors) with whom they come into contact earlier in the relevant process are well-placed to make a recommendation. There are also other factors at play which may influence consumers' understanding of the role of referral fees such as the National Trading Standards Estate Agent and Lettings Team guidance. We await their report to Ministers to see what further action, if any, may be introduced to ensure greater transparency on referral fees which may reduce consumers' reliance on them and so drive them to other channels such as DCTs

Given the operation of the market at present, we expect increase in shopping around and growth in use of DCTs to be fairly slow. That process could potentially be speeded up by the adoption of quality measures and/or consumer feedback services and the inclusion of that data in DCTs.



**Supplementary questions for regulators**

**9. Is there more that regulators could do to encourage the development of DCTs?**

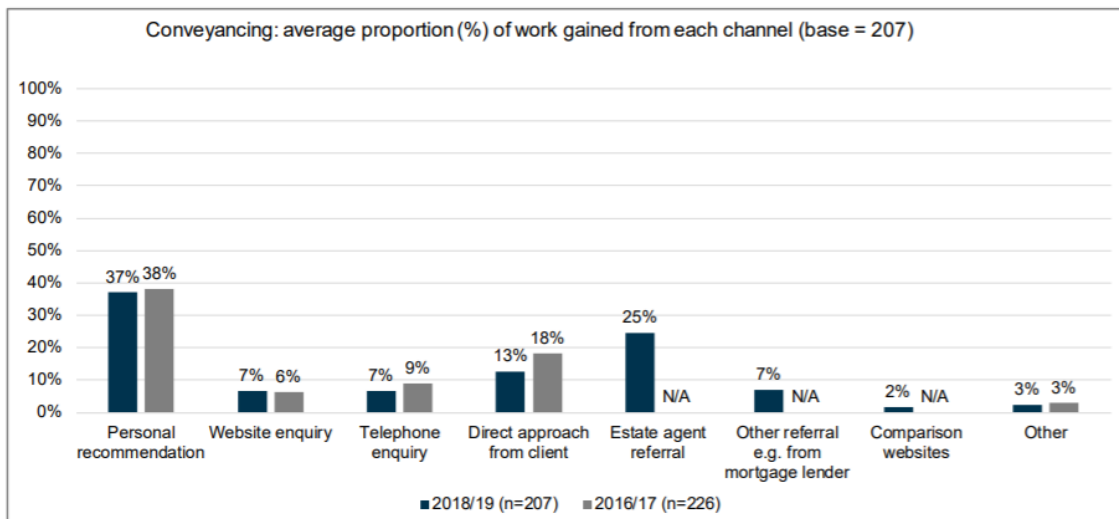
The CLC already makes available basic data about its regulated community to help populate DCTs' databases. If regulators could agree an approach to quality indicators that would generate data that DCTs could obtain and present fairly easily this added dimension could make them more attractive to consumers.

**10. To what extent are providers engaging with DCTs?**

**a. Has this improved since the market study? If not, why not?**

The figure below shows the findings of our 2019 Annual Regulatory Return in relation to the channels by which new instructions reach CLC firms. As can be seen, the share from DCT is very low. We do not know whether there has been any increase since the ARR was in the field, in early summer 2019, but this is information that we will seek in future surveys.

**Figure 5.2 Conveyancing: average proportion (%) of work gained from each channel (base = 207)**



A15 Thinking about your firm's [work area], what proportion is gained through the following channels?

**7. What impact have ABSs and lawtech had on driving innovation in the legal services sector?  
Are there any barriers deterring further innovation?**

We have seen from LSB research that ABS firms are slightly more likely to innovate than traditional firms. This could be a reflection of other aspects of their business models or the fact that ABS on average tend to be larger than traditional firms and more able to invest in innovation.

The CLC is working very closely with lawtech providers for conveyancing and probate services. The pandemic has, anecdotally, hastened the adoption of some digital tools – especially for remote ID verification. Our discussion paper [Conveyancing 2030](#), published in January 2020, looks at a range of possible scenarios for the adoption of new processes and tools that could benefit the consumer and legal service provider. We believe that the prospects are good for major innovation in conveyancing and probate.

Regulatory barriers are not cited by innovators and indeed we have worked with lawtech providers and conveyancers to test new tools, providing assurance that their impact and effect is properly understood. Such an approach also allows us to identify the features that novel tools need so as to maintain standards of consumer protection while delivering services in new ways.

Other barriers do exist however, and these relate to the standards and processes employed by other organisations involved in the conveyancing transaction, and lenders in particular. A great deal of work is in hand through the Home Buying and Selling Group, of which the CLC is part, to identify and address those barriers.

The CLC has committed publicly to facilitating innovation that is compatible with consumer protection and the public interest. To that end, our revised Accounts Code gives CLC lawyers greater flexibility on some points and sets out how Third Party Managed Accounts can be used to replace client account.

**8. Are there other developments which have had or will have a significant impact on competition?**

The major development is likely to be the pandemic. As mentioned above, there are significant disparities in how CLC firms benefiting from the very buoyant property market. Generally speaking, larger firms seem to be busier than smaller firms compared to the same time last year.

The property market is being supported by pent-up demand and an SDLT holiday that ends in March 2021. The economic conditions in spring 2021 will be key to the future development of the market. In our most recent survey of the impact of the pandemic on CLC firms, two-thirds of firms felt that the full impact had not yet been felt and the vast majority of those believed that the impact would be felt fully between six to twelve months from the date of the survey (in late August 2020) in other words in Spring to Autumn of 2021. There significant risk that many firms will find that period challenging and that could have a significant impact on competition in the medium term.

We have also seen a degree of consolidation in the market for conveyancing firms and the pandemic is likely to make an impact on that process as some businesses leave the market and their workload is taken up by other firms, whether by acquisition or more organically.

**9. Are further measures needed to drive engagement and competition?**

We consider that the measures so far discussed in this call for inputs (quality indicators, greater use of DCT) will go a long way to driving better engagement and will help us to understand better the right next steps.

**10. Should any specific issues be considered to drive competition for small businesses?**

We are not aware of any.

***Questions regarding redress and regulation***

**11. What measures can be taken to develop a more flexible and proportionate regulatory framework within the LSA without requiring any, or only light touch, legislative change, for example a review of the reserved activities being considered by the LSB?**

A review of the reserved legal services could be very useful. Professor Mayson's report covers this issue in detail. The LSB would need to lead the development of a framework for assessing the risk of different legal services so that the system of reservation could reflect the varying levels of risk more closely.

It is not immediately obvious that other changes to the regulatory framework would improve competition, especially as the liberalizing measures brought in by the 2007 Act have yet to have their full impact.

**12. Would such measures be sufficient to deliver effective change that can promote competition and optimise consumer outcomes in the longer term?**

We will continue to identify new opportunities for supporting innovation and improving the operation of the market as the market itself evolves. So we cannot say that the changes mentioned above will be sufficient in the longer term.

**13. To what extent is there merit in extending the regulatory framework to include unauthorised providers? What evidence is there of consumer detriment from unregulated providers, or other rationale, to warrant this?**

Regulation should be reflective of the risks arising from the services provided. While there is significant evidence of detriment arising from poor will-writing, the government rejected the LSB's proposal that the service should be regulated. It would seem that if we are to address that issue again, we will need to set out more clearly the risk framework. We cannot speak about other unregulated services.

***Supplementary questions for regulators***

**11. What are the main options for short-term regulatory reform that require no, or limited, legislative amendment?**

- a. What are the advantages and disadvantages of each?
- b. What issues would remain without longer term reform?

The CLC has long considered that aligning the system of reservation of legal services with the risk relating to each individual service is the most important immediate step that could be taken. As already set out, well-writing was an obvious candidate for reservation. Developing a framework for assessing risk might help to make a clearer case for amending the list of reserved services.

The CLC sees no pressing need for reform to the regulation of legal services at the moment. The liberalizing measures of the 2007 Act are still feeding through. The different approaches taken by the frontline regulators help to explore the benefits and disadvantages of differing approaches and supports innovation. Increasing cooperation between regulators, especially through Legal Choices, helps to address any possible consumer confusion arising from the current framework.

**12. What are your views on the options for extending redress to customers of unauthorised providers, such as extending access to LeO, or industry-run 'kite schemes' requiring that providers direct consumers to ADR schemes?**

Such schemes would need to be self-funding, so as not to create new burdens on regulated providers. Perhaps more importantly, those schemes would need to find ways to make very clear to consumers the limited protections that they would offer. Consumers of legal services have been found to assume that all lawyers are regulated and that clients are protected through regulation from any harm that might arise by acts or omissions of their legal service provider.

Given that these schemes would complicate rather than simplify the regulatory landscape, it might be worth considering delaying them until there is a need for more far-reaching reform of which they could become a coherent part.

**13. What are the key emerging regulatory challenges, for example with respect to lawtech?**

**a. To what extent can these be addressed under the existing regulatory framework?**

The CLC engages closely with lawtech providers to understand how the tools they are developing and deploying could affect the delivery of the legal services we regulate and change the profile of risk to the client and public interest.

The key challenges for regulators are:

- Understanding the nature of risks posed by new ways of working or new tools and ensuring that client protection is maintained while supporting useful innovation.
- Ensuring lawyers understand the limitations as well as the benefits of new tools and that they remain responsible themselves for their advice and service to the client.
- Reviewing lawyers' education to prepare for a changed landscape which may offer less scope for traditional on the job learning that is based on beginning with tasks that will in future be carried out by machines.
- Considering digital monitoring of compliance, which has the potential for a more granular view of firms' work being available with less burden on those firms in terms of providing evidence of compliance.

These challenges can be met within the current framework, but a review of the reserved services would of course help to ensure that new delivery methods continue or even novel services, are provided to consumers with the correct levels of protection.

**14. What evidence is available on the experiences of customers of unauthorised providers?**

We have not undertaken any research into that area.

**14. Is a review into the independence of regulators from the profession and from government still merited?**

The LSB's recent work on the Internal Governance Rules has been significant and its impact needs to be understood better over a longer period before any other review of independence from the profession is undertaken.

### **15. What work has been undertaken to reduce the regulatory burden on providers? What impact has this had?**

The CLC has taken very significant steps to reduce the financial burden of regulation on the firms it regulates.

In 2020, we reduced practice fee rates by 30%. This was in addition to a 20% cut made in 2016 and 10% in 2018. At the same time, the CLC made a 60% cut in Compensation Fund contribution rates.

The move reflects the effectiveness of CLC's specialist regulation in maintaining high standards of compliance, as well as its careful budget management. It will also help the CLC deliver its longer-term plan to manage a reduction in the level of reserves in the practice fund – the money which covers the cost of regulation.

The base Compensation Fund contribution had been stable at 0.4% of turnover since 2011 but reduced to 0.16% in 2019.

The Council of the CLC found that it could safely consider reducing the cost of practising further while maintaining high standards of consumer protection for three main reasons:

- The CLC's proactive approach to securing compliance minimises the number of failures that result in harm to clients and expensive corrective work.
- As a result of cost management and the sale of properties owned in the past by the CLC, reserves were at a level that should be reduced closer to the minimum level of £1m set by the Council.
- Despite uncertainty in the housing market, CLC-regulated firms were performing well in business terms, so the CLC did not need the same levels of reserves in hand to deal with the potential impact of wider economic instability on the firms it regulates and the CLC is running a deficit budget for a period to reduce those reserves.

In 2021, the pandemic is changing the landscape in ways that are still not possibly to understand fully. This year, the Council made no changes to regulatory fee rates or compensation fund contributions recognising that there is a significant chance of medium-term economic challenge that could affect the conveyancing market in ways that would increase the CLC's costs.

In addition to these significant price cuts, the CLC has begun reviewing its regulations and guidance to maximise flexibility for firms to meet our standards in ways that best suit their business model and service delivery. The new Accounts Code comes into force on 30<sup>th</sup> September and is the first fruit of this work, which will now continue with other sections of the rule book.

**16. What impact has allowing solicitors to practice in unauthorised firms had on the availability of lower cost options in the sector?**

The CLC has no evidence on this issue.