

Response to Consultation: on the proposed rules setting out the information we require our regulated firms to publish to deliver transparency information for consumers in the legal services market

Summary of responses and CILEx Regulation's response

A. INTRODUCTION

1. Following on from our transparency consultation in 2017, we consulted on the rules we propose to implement which set out the information we require our regulated firms to publish to deliver transparency information for consumers in the legal services market. While our guidance will not be a regulatory arrangement, we provided the draft guidance alongside the rules in the consultation. Our consultation asked whether any issues were foreseen with interpretation or implementation of the proposed rules. Our consultation ran for 6 weeks between 22 June and 3 August 2018.
2. In relation to the rules and or guidance we:
 - engaged with CILEx;
 - engaged directly with eight percent of our regulated firms for views (100% of regulated firms affected were approached);
 - continued to collaborate with the SRA and CLC to achieve consistency of approach with drafting;
 - participated in SRA led consumer focus groups testing together with the CLC;
 - ran a survey with our consumer panel to test a presentation suggested in our draft guidance for consumer access to PII and Compensation Arrangements; and
 - asked our Strategic Risk Committee to review them.

3. This report summarises the key points emerging from the responses together with our response.

B. CONSULTATION AND CILEx REGULATION'S RESPONSE

Written responses

4. We received written responses from:
 - a) CILEx and
 - b) the Legal Services Consumer Panel (LSCP)
5. The LSCP broadly support our position save that their view is that we should require firms to publish staff mix and qualifications.
6. We have considered this both pre and post consultation. There is little knowledge or understanding of the CILEx professional titles amongst the public and within legal and government organisations. We concluded that insistence of publication would cause confusion for consumers. Additionally, the LSCP hopes we progress to a subsequent phase which includes quality indicators. We will keep provision of quality indicators work under review and monitor developments amongst other legal regulators.
7. CILEx supports the principles that the rules are seeking to deliver to consumers and the need for ongoing reviews to assess their impact.
8. CILEx has requested that information about planned reviews of compliance is published or supplied to entities ahead of the actual review; and welcome details of other planned reviews, such as firm and consumer behaviour, complaints data. It has asked whether reviews will involve other regulators for consistency and shared learning.
9. Our current approach to supervision of our firms will extend to monitoring compliance with the transparency rules and our initial approach will be to support and assist our firms in relation to compliance. With the first review planned within six months from the date of implementation, our firms will have been aware of the general requirements for at least twelve to eighteen months. We believe that this is a reasonable timescale for implementation and compliance. We will continue to monitor the wider impact of the transparency rules on the legal sector and continue to engage with the other regulators.

10. CILEx commented that there are issues with interpretation of the proposed price rules. It said that “The requirement to disclose ‘total price’ within the Rules does not appear to leave any margin for the existence of any unforeseen costs that may later arise in the provision of legal services. Read in conjunction with the Transparency Guidance, it is understood that the ‘total price’ can refer to an ‘estimated total price’ or ‘average total price’ subject to disclaimer. CILEx recommends “the wording of the Rules be changed to reflect that the need for disclosure relates to an indicative price, as opposed to an actual price.”

11. CILEx believes that there are issues with interpretation of price rules. CILEx is:

- welcoming of “the range of different approaches that providers can adopt for disclosing price information, as devised by CRL in the Transparency Guidance....it provides flexibility for providers to disclose information in a way that is fitting and relevant to their business context.” However, CILEx suggests that varying options, including the ‘Range of Costs’ option, may create a burden for entities in having to put up a variety of permutations to cover themselves.
- of the view that “The ability for providers lacking in an online presence to provide information upon request further facilitates this flexibility, whilst ensuring that the new requirements do not place excessive burdens on certain providers.”

12. While drafting the rules, we considered the wording relating to price at length. The CMA require a total price of the legal service to be provided and we opted for the proposed wording of the rule for clarity and future enforcement purposes. We believe that this allows firms to be flexible in the way that they provide information, while providing the total cost that the CMA require. Firms will still be able to explain variations to a quoted price on the website, which is meant to be an indication to consumers of the likely price they will pay.

13. CILEx foresees issues with the implementation in relation to Complaints and Redress information. CILEx refers to Law Society research and that the key to improving transparency may not only be disclosure, but consumer awareness that information disclosed is of value. It suggests supplementary measures may be necessary to improve consumer awareness of regulation

of legal services and the impact this has on the availability of complaints and redress mechanisms.

14. We are working with the other legal regulators to improve public understanding of these issues through Legal Choices.

15. CILEx foresees issues with interpretation in relation to regulatory information. It suggests that “additional clarity may be necessary in the wording of this rule, given that “we” currently require an authorised “entity” to disclose: a). that it is required to have PII to cover ‘all’ legal services, and yet equally to disclose b). ‘which’ legal services are covered by the Authorised PII. Perhaps requesting itemisation of the legal services that providers offer, coupled with disclosure that these are all required to have PII coverage would be clearer for consumers”.

16. We have considered the wording of rule 5 and believe that it covers two separate issues:

- A firm is required to have PII to cover all legal services it provides; and
- That the firm then communicates to the consumer clearly what legal services are covered by PII.

17. The issue that rule 5 addresses is a firm carrying out a legal service (for example, writing a will) for which it does not have PII coverage and the client being unaware of that.

18. It is our view that as this level of information becomes more commonplace on firms’ websites, then consumers will become more aware of the protections that a firm is making available. We have provided an example of how this information can be communicated by the information provided on the Authorised Entity Directory and in the draft guidance.

Online responses

19. We received 121 individual online responses, mainly from individuals we regulate. A summary of responses, including relevant comments, to the consultation is available at **Annex A**.

20. The majority of respondents did not see major issues with the interpretation and implementation of the proposed rules.

21. While responses were positive to all the questions, for the rules relating to:

- price information, the respondents that did not see issues with interpretation and implementation were 66% and 68% respectively;
- service, complaints and redress, and regulatory information the respondents that did not see issues with interpretation and implementation were all between 81% and 89% respectively.

22. While 30% of respondents remain resistant to provision of price transparency, the comments made relate to opposition to the actual requirement to provide price information, rather than to issues relating to interpretation or implementation of the rules. This is evidenced by such comments relating to:

- commercial sensitivity;
- generating more complaints on price;
- race to the bottom; and
- one price does not fit all.

23. Positive comments were made on the drafting of the proposed rules and draft guidance among the 66% of respondents who were supportive of the price transparency rules.

24. About 82% of respondents said there would be no issues with interpretation and implementation of rules relating to provision of service information. Comments made by the 16% of respondents that did see issues, related to resistance to service information provision rather than interpretation or implementation of the rules and included, “one size does not fit all” and issues with provision of timescales.

25. About 83% and 86% of respondents respectively said there would be no issues for interpretation and implementation of the rules for complaints and redress information. Of those respondents that did, the comments made mainly suggested that publicising these remedies would lead to the making of unfounded complaints.

26. For the rules relating to provision of regulatory information, about 89% of respondents anticipated that there would be no issues for interpretation and implementation respectively. While provision of this information is already required the comments from the 8-9% of respondents who anticipated issues again related to the principle of providing the information and questioned the value to the client.

27. Comments from respondents who did not anticipate issues with interpretation or implementation of the proposed rules, included that they are simple and straight forwards and the guidance is clear.

28. The comments about the draft guidance were all positive, save for one.

29. We consider that based on the responses received, the proposed rules can be interpreted adequately when supported by our draft guidance. We made this recommendation to our Board members at the September Board meeting, who agreed the submission of the rules to the Legal Services Board for approval.

Annex A - summary of responses, including relevant comments, to the consultation.

For further information please contact:

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ON-LINE SURVEY RESPONSES

For

Consultation: on the proposed rules setting out the information we require our regulated firms to publish to deliver transparency information for consumers in the legal services market

Types of respondent	Percentage of all respondents
Individual regulated by CILEx Regulation	80.2%
Employee of firm regulated by CILEx Regulation	9.1%
Member of the public	2.5%
Other	8.3%

The consultation asked:

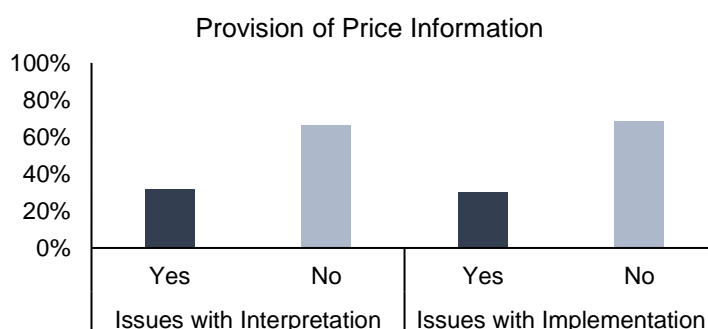
Q1. Do you foresee any issues with the interpretation of the rules in relation to provision of Price information?

Q2. Do you foresee any issues with the implementation of the rules in relation to provision of Price information?

Q1 - Q2:

Issues with Interpretation	Yes	31.4%
	No	66.1%

Issues with Implementation	Yes	29.8%
	No	68.6%



Issues with interpretation included:

- Price provision will lead to undercutting and increased costs at the end of the case.
- Competitive pricing by firms will devalue legal work.
- Providing a total price at the outset is not always possible and how do firms address cases where unforeseen issues arise which increase the total price.
- Price is just one element of legal services and consumers may be annoyed if they discover that the legal service they need for their situation is not available at the headline price.
- Provision of a clear indication of price prior to a full client discussion is impossible.
- It will lead to a "rush to the bottom" and to cases being handled by unqualified or inexperienced fee earners and cutting of corners.
- Price is commercially sensitive information.

Where no issues were seen with interpretation this was because:

- Some firms are already transparent about prices and this was viewed as how it should be.
- The draft rules are relatively concise and straightforward and the information provided is comprehensive.

Issues with implementation included:

- The large range of variables in conveyancing services, especially if a lease extension is required, will make it hard to publish a price in the way required by the rules.
- Queries about how implementation will be policed.
- Concerns that consumers will assume that the total price published is fixed, but no "one size fits all."
- Exact pricing ahead of work being done, is difficult because the amount of work involved is unknown.
- Flexibility is needed because pricing is complex. Firms, with offices in different locations may have separate pricing for each office.
- Clients are often secured through customer service provided while providing a quote. Publishing prices on a firm's website may feel impersonal.
- Firms may not voluntarily publish prices fully and effectively.

Where no issues were seen with implementation this was because:

- The rules seem clear for implementation.
- The guidance is helpful, especially the provision of examples.

The consultation asked:

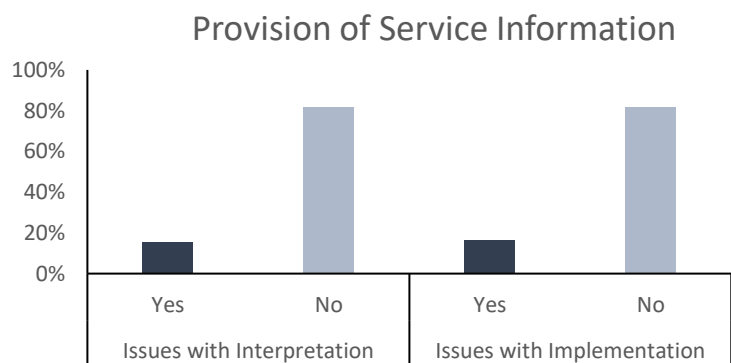
Q3. Do you foresee any issues with the interpretation of the rules in relation to provision of Service information?

Q4. Do you foresee any issues with the implementation of the rules in relation to provision of Service Information?

Q3 - Q4

Issues with Interpretation	Yes	15.7%
	No	81.8%

Issues with Implementation	Yes	16.5%
	No	81.8%

**Issues with interpretation included:**

- A firm may offer something, but not actually deliver what they offer.
- Uncertainty about what would be covered.
- The service provided is client specific and adequately covered in the client care letter.
- Timescales are always problematic particularly in leasehold. Firms will need to emphasise possible delays at an early stage.
- "One size fits all" does not work for legal service.
- There are too many unforeseens in probate to provide timescales.

Where no issues were seen with implementation this was because:

- The rules seem quite simple, straightforward and the wording seems quite clear. The guidelines are clear
- Firms should be transparent about this information, so interpretation should not be problematic.

Issues with implementation included:

- There could be an issue because the rule states "typical." It maybe difficult for some clients to understand that their case may not be typical.
- It appears that insufficient service information is seems to be obligatory to enable consumers to make an informed choice.

- Legal services are not "one size fits all."

Where no issues were seen with implementation this was because:

- Client care letters and terms of business are already a blueprint for this information.
- Firms should want to advertise such information, so this should not cause problems.
- Useful examples on how to describe services is given in the guidance and firms should aim not to over complicate the information they provide.
- As professionals lawyers should be able to get to grips with providing the information required.

The consultation asked:

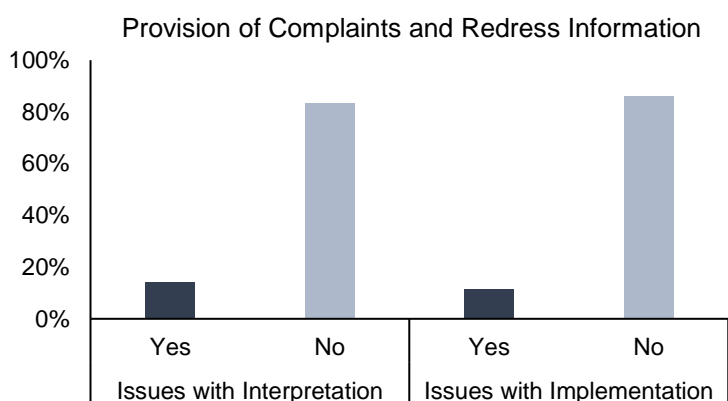
Q5. Do you foresee any issues with the interpretation of the rules in relation to provision of Complaints and Redress information?

Q6. Do you foresee any issues with the implementation of the rules in relation to provision of Complaints and Redress information?

Q5 - Q6

Issues with Interpretation	Yes	14.0%
	No	83.5%

Issues with Implementation	Yes	11.6%
	No	86.0%



Issues with interpretation included:

- This is sensitive information, publication of which could impact on winning business. Firms will consequently be reluctant to publish it. They will aim for loose interpretation to release the least information possible.
- The ability to differentiate insurance from a compensation fund.
- Un-founded complaints may increase because some clients may interpret the information as encouraging them to complain. It might be best not to work for clients who focus on complaints procedures.
- The CILEx Code of Conduct already requires that clients are provided with details of the complaints procedure.

Where no issues were seen with implementation this was because:

- Firms should already provide clear details of their complaints and redress procedure at the beginning. A good firm should be happy to give this information.
- The rules are clear, so there should be no issue with implementing them.

Issues with implementation included:

- The prominence of and the way this information should be presented should be made clearer to avoid information being buried on a website so it is not easy to find.
- Clarity about what constitutes a genuine complaint is required.

Where no issues were seen with implementation this was because:

- Provision of complaints information has been required for so many years now that there should not be any issues.

The consultation asked:

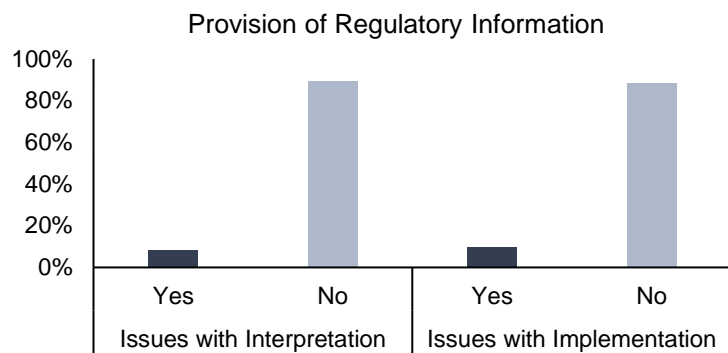
Q7. Do you foresee any issues with the interpretation of the rules in relation to provision of Regulatory information?

Q8. Do you foresee any issues with the implementation of the rules in relation to provision of Regulatory Information?

Q7 - Q8

Issues with Interpretation	Yes	8.3%
	No	89.3%

Issues with Implementation	Yes	9.9%
	No	88.4%



Issues with interpretation included:

- There will not be a comparison of the same legal services, so this will not work.
- Consumers may interpretation complicated information in different and even incorrect ways.

Where no issues were seen with implementation this was because:

- Firms know exactly what is required and should already by providing this information. The rules are clear.
- Good firms that provide good customer service should not have any problems publishing regulatory information.

Issues with implementation included:

- Too dull - the clients will not read it or care - adversely affects the look of the website
- Unworkable.

Where no issues were seen with implementation this was because:

- This is simple and clear with good examples in the guidance, so it ought to be straight forward.
- This information is highly important.

The consultation asked:

Q9. Do you have any comments on the transparency guidance provided to support firms in implementing the Transparency Rules?

Comments on the guidance included:

- While transparency of service, complaints and redress are straightforward and should not cause issues, transparency on price is going to be very hard to comply with.
- There needs to be clarification about whether estimates are still permissible.
- The approach taken appears to be reasonable and proportionate.
- Regulators do not understand how delivering legal services really works.
- The guidance is comprehensive, informative and clear.