



## **HELPING CONSUMERS CHOOSE THEIR LAWYER**

### ***SERVICE, QUALITY AND PRICE TRANSPARENCY***

#### **CONSULTATION DOCUMENT**

This consultation closes at 5pm on Friday, 29<sup>th</sup> December.

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## INTRODUCTION

**Dame Janet Paraskeva**

**Chair of the Council for Licensed Conveyancers**

The changes set out in this major consultation and parallel consultations by the other front line regulators of legal services could change the landscape very significantly. The outcomes for consumers promise to be very positive. We want to ensure also that lawyers can take advantage of opportunities for innovation and strengthen their businesses further.

We began in 2016 to discuss with those regulated by the CLC the possibilities for helping consumers choose their lawyer by making more information about the nature quality and price of legal services more easily available.

At that time there was considerable concern that any such steps would trigger a race to the bottom through a focus on price above all else. Now, thanks to the final report of the CMA's Legal Services Market Study and engagement with CLC lawyers over the last year, a different view is emerging which sees the opportunity to engage with clients in new ways to help them understand the value of the legal service they are using and make choices based on quality and not just price.

Our Chief Executive, Sheila Kumar, is chairing the Legal Services Remedies Programme Implementation Group through which the front line regulators are coordinating their action plans in response to the CMA's recommendations. As far as possible, the regulators are moving forward together, but this will not mean that progress will be at the pace of the slowest.

The CLC is determined to take any and all steps that it believes to be appropriate and effective to empower consumers and to continue to foster competition and innovation in the delivery of the legal services we regulate. Our streamlined governance arrangements and complete independence mean that this may be easier for us than for other regulators.

Our discussions with stakeholders and other members of the conveyancing and probate sectors as well as with the wider legal services community lead us to believe that private sector solutions for improving the availability and

comparability of information on price and service will emerge. So, we hope that regulatory action can be limited to setting expectations, monitoring delivery and promoting and supporting compliance.

I am looking forward to hearing from people across the legal sector – not just the lawyers and non-lawyers within conveyancing and probate firms, but also organisations providing their IT and marketing and other support - as well as consumers and their representatives.

A handwritten signature in black ink that reads "Janet Paraskeva". The signature is written in a cursive style with a long, sweeping tail on the final letter.

Dame Janet Paraskeva

## THE MARKET STUDY BY THE COMPETITION AND MARKETS AUTHORITY AND ITS RECOMMENDATIONS

The CMA published its report into the legal services market on 15 December, 2016 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.

At the time of publication of its final report, the CMA was clear its recommendations are designed to make sure consumers can be confident about the price and service they can expect when they hire a lawyer. It said *'Lawyers should be as easy to compare as anything else you buy. Remember to shop around. We're changing the legal market to make hiring a lawyer easier and fairer.'*

Through the recommendations the CMA anticipates the following outcomes:

Enhanced standards set by regulators:

- lawyers will be required to publish pricing information on their websites so that pricing is transparent
- lawyers will be encouraged to engage with reviews and ratings so consumers know how good their lawyer is in advance
- for the first time, customers can be confident they will have the right information at the right time and that the Legal Choices website will provide much richer information

Regulators to make their data available to third parties:

- data will be published by legal regulators to facilitate comparison tools to help customers find the right lawyer

An improved market for everyone:

- the recommendations will make the market more competitive, which will encourage lawyers to make their services and their businesses more efficient and to offer better quality

Customers to have appropriate protection:

- through the CMA recommendation that the government reviews whether customers of unauthorised providers have sufficient access to redress

Regulation that encourages competition and innovation:

- via a government review of the regulatory framework for the longer term

The CMA sees that its recommendations should work together to deliver a step change in transparency, competition and customer engagement. The CMA's analysis is that the current level of information available to customers 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. Therefore, they see that further interventions by regulators may be necessary to improve comparability on

price and services to maximize customer engagement at a point before the customer is already committed, even if not contractually, to the purchase of services.

The CMA has also posited a progressive approach to implementation:

**Step A:** our recommendations relating to the introduction of a minimum standard of provider transparency about price and service, together with improved information about legal choices, will have a significant effect on the market as soon as they are implemented by the regulators.

**Step B:** measures by the regulators to encourage greater use of quality signals will require a change in provider behaviour, the speed of which will be determined by the speed in which both providers and customer engage with these signals.

**Step C:** improving access to regulatory data will provide the building blocks for a greater role for [Digital Comparison Tools] DCTs and intermediaries in encouraging customer engagement. The significance of intermediaries will increase over time with increased entry and more sophisticated models, which will build on the increased levels of information available. As customer awareness of intermediaries' increases, engagement is likely to increase, leading to better outcomes.

**Step D:** reform and refinement of regulatory requirements and the regulatory framework as a whole will support competition in the medium to long term as any subsequent changes are put in place.<sup>1</sup>

An implementation group of all of the front line regulators has been established and is chaired by Sheila Kumar, Chief Executive of the CLC. Action plans were published in June this year.

## CMA MARKET STUDY OF DIGITAL COMPARISON TOOLS

As we finalised this consultation document the CMA completed another market study looking at digital comparison tools. The final report provides some very helpful pointers for the development of DCTs in the legal sector where they are currently little used<sup>2</sup>. “[The CMA has] identified 4 high-level principles for how DCTs should behave, in order to support consumer trust and informed choice between DCTs and between suppliers. DCTs should treat people fairly, by being Clear, Accurate, Responsible and Easy to use (CARE). We set out what these mean in practice in Chapter 5 of the [full final report](#).”

These principles move forward the ‘good practice standards’ for comparison websites set out by the Legal Services Panel<sup>3</sup>. The CLC looks forward to working with the Legal Services Board and the other front line regulators to developing an approach to attainment of the principles by DCTs in the legal sector.

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<sup>1</sup> CMA Legal Services Market Study Final Report p. 276

<sup>2</sup> [Digital Comparison Tools Market Study, Competition and Markets Authority, 26<sup>th</sup> September 2017](#)

<sup>3</sup> [Good Practice Standards for Legal Comparison Websites, Legal Services Consumer Panel, May 2013](#)

## THE CLC'S RESPONSE TO THE CMA'S MARKET STUDY

The CLC supports the recommendations set out by the CMA in the final report of its Legal Services market Study<sup>4</sup>.

Our Action Plan<sup>5</sup> sets out the detail of what we will do. Those actions have already begun and are being built in to our business plans for 2018 and beyond. In summary they are as follows:

### **Price and service**

We will consult on detailed proposals, including estimate generator templates, measures of quality and changes to our rules from the autumn of 2017.

### **Regulatory status and redress**

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-regulated firm.

### **Use of independent feedback platforms**

We will be encouraging the use of independent feedback platforms, engaging with providers and helping conveyancing and probate lawyers make the best use of them.

### **Helping consumers navigate legal services**

We are committed to developing the Legal Choices website and already have a well advanced plan worked up with other regulators.

### **Data for intermediaries**

We are working with other regulators to ensure consistency in the data that is available to intermediaries.

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<sup>4</sup> [Legal Services Market Study: Final Report, Competition and Markets Authority, 15<sup>th</sup> December 2016](#)

<sup>5</sup> [Action Plan to implement the CMA's recommendations on information remedies, CLC, 29<sup>th</sup> June 2017](#)



## WHAT WE ARE CONSULTING ON NOW

In this consultation, the CLC is looking at how it should best implement the full range of recommendations made by the Competition and Markets Authority.

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 firms 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.

The recommendations made by the CMA can be broken down under the headings of price, service provided, service quality, regulatory protection, and digital registers. The nature of our response to those recommendations is shaped very significantly by the need to ensure not only that information is more readily available to consumers but also that it provides the basis for genuine comparison between legal service providers.

## WHO SHOULD RESPOND TO THIS CONSULTATION?

We want to hear from the widest possible range of people and organisations with an interest in how the market for conveyancing and probate services operates:

- Providers of conveyancing and probate services
- DCT and other law and property tech providers
- Consumers of conveyancing and probate services, including financial institutions
- Consumer groups and others with particular insight into the needs and experience of clients of legal service providers
- Groups representing vulnerable individuals who might become clients of legal service providers

## HOW TO RESPOND TO THIS CONSULTATION

We have published the full list of questions in an online survey to make responding as easy as possible: <https://www.surveymonkey.co.uk/r/CLC-Helping-consumers-choose-their-lawyer>

You can also respond by email to [stephenw@clc-uk.org](mailto:stephenw@clc-uk.org) or by mail to Stephen Ward, CLC, CAN Mezzanine, 49-51 East Road, London, N1 6AH.

We will be speaking directly with CLC firms, running a series of webinars and running online polls on specific issues to encourage the widest possible participation in this consultation.

**This consultation closes at 5pm on Friday, 29<sup>th</sup> December 2017.**

## IMPLEMENTING NEW APPROACHES

Following this consultation and in liaison with other regulators and the CMA, we will be putting in place revised expectations for the CLC regulated community. We ask below whether those expectations should be set out in the form of new rules as mandatory requirements or whether they are best enshrined as guidance or a combination of the two.

Once the new regime is in place, the CLC will monitor compliance within the regulated community and assess whether new approaches are delivering the benefits sought by the CMA as set out in their steps A-D above. We may take targeted action against firms that are not meeting expectations.

We will also seek to undertake consumer research – ideally as a joint exercise with other regulators – to understand how consumers are responding to greater transparency.

The CLC expects over time to see evidence that consumers are shopping around more for legal service providers and that providers with good quality ratings who are making use of DCT and other tools to bring their services to market are rewarded with more work. This will mean setting some baselines before implementation so that we can measure change over time.

### Overcoming entrenched behaviours

In relation to conveyancing there is a significant challenge to achieving those changes. That stems from the continued reliance on recommendations from friends, family and agents such as mortgage brokers and estate agents when seeking a conveyancer. The CLC is considering undertaking research into this issue alongside this consultation to inform the shape of our final approaches.

## GENERAL CONSIDERATIONS

In relation to each element of transparency, we will need to consider the extent to which it is desirable or useful for information to be collected and published by the legal services regulators or whether it is more appropriately undertaken by the regulated entities themselves or by commercial providers of digital comparison tools (DCT).

Because many of the solutions under consideration by the CLC and the other legal services regulators are online, we will also need to consider how firms that do not have websites could meet any new requirements around transparency and how consumers without internet access could benefit.

We need also to consider what information is likely to be most readily digestible by general consumers and what information they are likely to value and take into account in their assessment of legal service providers. It is likely that we will need to strike a balance between extensive data and what might be focused on as most useful.

### LSCP Criteria for success

The Legal Services Consumer Panel sets out a helpful set of criteria for the success of information remedies in their report of March 2017<sup>6</sup>.

**Appropriateness test:** Regulators should consider whether information remedies are appropriate. This should take into consideration the level of risk and the ability of consumers to adequately comprehend the significance of the information.

**Consumer Testing:** Consumer testing has played a significant role in the design and effectiveness of newer information remedies. In recent times, the CMA has mandated that regulators carry out consumer testing such as Randomised Controlled Testing (RCT) before implementing information remedies. The CMA has also placed an obligation on firms and service providers to participate in such research.

**Accessibility of information:** It is important that information is given at the right time, the right place, and for the intended consumer groups.

**Information overload:** Too much information can make decision-making worse. Regulators should work hard not to create a risk that firms, and even themselves, adopt a 'tick-box' approach to their disclosure regimes. Instead, regulators should design an effective disclosure regime to help consumers understand and engage better.

**Consumer Awareness:** For it to be effective consumers must be aware of the information remedies in the first instance. Information remedies may need to be accompanied with measures around the prominence and timeliness of the disclosure.

**Prescriptive disclosure:** Intervention may need to be prescriptive, particularly where standardisation for the purposes of comparability is an important component of

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<sup>6</sup> [The Development of Information Remedies in Legal Services, Legal Services Consumer Panel, March 2017](#)

effectiveness. There may be a need to dictate more precisely the format in which information is provided.

**Segmentation and targeting:** There is early evidence that information remedies might affect groups of consumers differently, including vulnerable consumers. There is also emerging recognition that information may need to be targeted differently e.g. to vulnerable consumers.

**Compliance monitoring:** Limited compliance will have an impact on the remedy. Regulators should develop a system to monitor compliance whilst designing and developing information remedies.

**Evaluation:** The design process must build in an evaluation stage which allows regulators to assess effectiveness. This will empower regulators to make adjustments and improve future designs.

### CMA’s view of minimum levels of transparency

The CMA report identified types of information that consumers might find useful<sup>7</sup>:

Price	Service	Redress
Pricing and charging model (e.g. fixed fee, hourly rates, capped charges, Conditional Fee Agreement/Damages-Based Agreement)		
Hourly fees (where charged) by grade of staff	A description of the services that the legal services provider provides	
(Where offered) indicative fixed fees and factors that may affect these and the circumstances where additional fees may be charged	Mix of staff that deliver the service	Regulatory status, registration details
Typical range of costs for different stages of cases (where appropriate)	Key (and discrete) stages of services	Complaints process & access to the LeO data
Scale of likely disbursements (e.g. searches, court fees)	Indicative timescales of completing services and factors affecting these	PII cover
Key factors that determine price (including disbursements)		

<sup>7</sup> CMA Legal Services Market Study Final Report, P. 228

### Consistent approaches by all regulators

The front line regulators have worked closely together to develop their Action Plans and consultations on how they could respond to the CMA's recommendations. We anticipate that following those consultations there will be further discussions between regulators to align approaches where that is necessary or desirable.

In the context of conveyancing and probate it will be in the interests of the consumer, and will be fair to providers of those services, if there is a consistent transparency regime across CLC, SRA and CILEx Regulation. This will support genuine comparability and create a level playing field for providers under the three regulators.

## THE CLC'S CURRENT TRANSPARENCY REGIME

### **Price and service**

We require firms to give their clients full and accurate estimates, including details of any referral fee that may be paid before accepting instruction. Firms are also required to set out their terms and conditions ahead of instruction.

### **Regulatory status and redress**

Firms are required to show that they are regulated by the CLC on their websites, printed materials and letterhead. Our online register provides full details of regulated firms and individuals that clients and others can use to check their regulatory status. Details of regulatory actions taken against firms and individuals are also published on our website in accordance with our Publication Policy.

In early 2017 we launched a secure badge scheme for the websites of CLC-regulated firms. This takes the form of a 'regulated by the CLC badge' that is deployed on the firm's website as a unique piece of code which cannot be copied and used elsewhere without being traced. We have allowed firms a period of voluntary implementation but all firms with a website/online presence must have installed the secure badge on their websites by the 1<sup>st</sup> November 2017.

The secure badge gives consumers added assurance about the status of CLC firms and, by linking to the CLC's site, provides an additional channel for us to engage with consumers. So far, the CLC is the only legal services regulator in England and Wales to use this tool.

Firms are required to signpost the CLC and LeO for conduct and service complaints respectively. They are also required to tell clients about their entitlement to make an application for a grant out of the Compensation Fund administered by the CLC.

### **Helping consumers navigate legal services**

The CLC contributes to funding of the Legal Choices website and is on the editorial board. It will be very important for the success of the Legal Choices website that each of the regulators meets their financial and editorial commitments. We also provide information for consumers about conveyancing and probate services through our own website.

### **Data for intermediaries**

Since 2015 we have made available basic data about CLC firms in a usable format for intermediaries such as comparison websites. The spreadsheet contains the names, office addresses, contact points and the unique identification numbers of CLC firms. It is updated quarterly and published on our website.

## PRICE TRANSPARENCY AND COMPARABILITY

The first element for consideration is transparency of pricing by legal services providers. This of course includes the need for comprehensive presentation of price information when estimates are provided to potential consumers as well as the ease of accessing that information.

The second is comparability of that information as it is presented by different legal services providers. The ambition to ensure that consumers make better informed choices requires that information provided by lawyers about their services is genuinely comparable and so can provide a reliable basis for choice. To this end we are working with the Solicitors Regulation Authority and CILEx Regulation to agree a standard format for the delivery of price estimates for conveyancing and probate work.

Finally, there is the question of the channels through which price information should be made available to potential clients.

### Current arrangements

The CLC currently sets high standards for the transparency of price information through its Estimates and Terms of Engagement code. These are expressed as outcomes in line with our overall approach to regulation and are supported by guidance for firms.

The focus hitherto has been on the estimate provided at the point of instruction. However, we also expect estimates provided less formally to be as complete as possible on the basis of information provided by the potential client. Accordingly, when carrying out our periodic inspections of firms, we review:

1. Whether an estimate is provided
2. The accuracy and completeness of the estimate
3. The correlation between the estimate and the actual charges in the completion statement

Our research found that 90% of all CLC-regulated practices work on a fixed price basis rather than hourly rates. The larger the firm, the less likely it is to work on hourly rates.<sup>8</sup> This would seem to make the provision of reliable estimates easier.

### Proposals - Transparency of price information

CLC firms already achieve high levels of transparency of pricing both when providing initial estimates in response to enquiries from potential clients and when setting out costs at the point that instructions are confirmed with clients. This is arguably more straightforward in relation to conveyancing and probate than some other legal services because of the very wide use of fixed fees cited above.

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<sup>8</sup> CLC's Annual Regulatory Return Analysis 2016: ([http://clc-uk.org/CLCSite/media/Research-Reports/CLC-ARR-2015-16-Report-\(FINAL\).pdf](http://clc-uk.org/CLCSite/media/Research-Reports/CLC-ARR-2015-16-Report-(FINAL).pdf))

The CMA recommendations could be seen as implying that in future, all firms should provide full and accurate estimates to potential clients who are shopping around that the firm would stand by should they go on to be instructed by the consumer.

One way to improve the price information available would be to publish general price information. We believe that this is unlikely to be workable for conveyancing and probate services for the following reasons:

- General price information may not provide sufficiently comprehensive information for the individual consumer to make a truly informed choice if they are not able to calculate easily the cost of their actual transaction.
- Regulators would need to check that the general price information resulted in consumer understanding of price that is reflected in the final bill. This seems much more difficult to verify than personalised estimates provided by lawyers that respond to the circumstances of the particular transaction.

Personalised and accurate estimates can be provided through online estimate generators, whether on a firm's own website or on a third party website, or in response to direct contact by email, by telephone or in person at the firm's office. The question is whether they should be regarded by the firm as binding, absent any new information being provided by the client or emerging at a later stage that has an impact on cost.

Our expectation will continue to be that estimates should reflect accurately the final price paid by the client unless the client failed to provide the necessary accurate or complete information to drive the generation of the estimate. This is necessary to overcome the risk of sharp practice in the promotion of prices that mention, for example, the legal fee alone and fail to give the complete picture including disbursements etc.

As now, where new information or circumstances arise that will legitimately increase the cost of the transaction, the reason for that will need to be explained clearly to the client and agreed by them.

In the event that work is to be undertaken on an hourly rate, the firm is expected to give an indication of the likely time that will be taken to complete the work and thus the likely final cost.

## **Consultation questions**

### **Question 1**

Is there any obstacle to the provision of full estimates at the point that potential clients are shopping around for a legal service provider?

### **Question 2**

Would it be desirable for the CLC to amend its rules to make explicit that estimates provided to consumers should always be regarded by the firm as binding on them should they be instructed (subject to any new information emerging that legitimately affects cost)?



### Question 3

Would it be preferable to require firms only to publish general pricing information rather than personalised, transaction-specific estimates?

### Question 4

Do you agree that we can rely on guidance to secure greater availability of information rather than creating new rules?

### Comparability

To achieve comparability (as set out in the sixth of the LSCP's 'Criteria for success', 'prescriptive disclosure') the new approach will require consistency across all providers of particular legal services in the way that they gather information to inform the generation of an estimate for a potential client and consistency in the way the estimate is presented and the information it contains.

The CLC has been working with the Solicitors Regulation Authority and CILEx Regulation to set a template for the provision of estimates to ensure that there is comparability for consumers across all providers of conveyancing services. That has been based on a review of current market practice

### Proposals - Conveyancing estimates

Here we set out the information that should be provided as part of a complete price estimate in conveyancing. The estimate could be generated automatically on the basis of information provided by the consumer or by a lawyer, whether based on information provided by the consumer or following a conversation to understand the consumer's needs.

Firms will need to determine what information they need to collect in order to arrive at a full and accurate estimate.

Each firm will need to ensure that it gathers from potential clients all of the relevant information about their transaction that might affect the final cost. This may vary between firms.

The information that is commonly collected to generate an estimate is as follows:

- Whether a first time buyer
- Value of sale/purchase
- Whether a remortgage
- Whether freehold or leasehold
- Whether a new build
- Whether first registration of title
- Whether mortgage or not
- Whether an Islamic mortgage
- In purchase cases, whether primary residence, buy to let or second/holiday home
- Whether multiple owners
- Whether a shared ownership scheme

- Whether using a help to buy scheme
- Whether purchase under right to buy
- Whether purchase at auction
- Whether property has been repossessed

We do not consider that it is necessary to set a template for these cost inputs. They may change over time and firms will need flexibility to change their approach. However, for the sake of comparability, it is necessary to set standard outputs for estimates. We examine the outputs in the next section.

### **Consultation questions**

#### **Question 5**

Do you agree that that the range of inputs that will be used to generate estimates need not be specified as long as the outputs have to meet a common standard?

#### **Question 6**

If you believe that the list of inputs should be standardised, are there any omissions from the list above or any items that should be removed?

## Proposals - Conveyancing estimates template

The following sets out the detail of price information that we propose should be provided, regardless of the channel for communication. Not all transactions will incur a cost against each of the line items below - some firms might not make a charge for electronic transfers, for example. However, the full costs under each item should be included in each estimate.

### **Conveyancer's fees**

- Legal fee
- VAT on legal fee
- Mortgage administration fee (if any)
- Subtotal (or just this figure)

### **Referral fee (if any)**

- Amount of referral fee paid
- Recipient of referral fee

### **Search fees**

- Search fees
- VAT on search fees
- Subtotal (or just this figure)

### **Disbursements**

#### Purchase

- HM Land Registry fee
- HM Land Registry searches
- Electronic money transfer fee
- Subtotal (or just this figure)

#### Sale

- Official copies
- Electronic money transfer fee
- Subtotal (or just this figure)

### **Stamp Duty Land Tax**

- Likely SDLT

**Grand total** (This will give clients a clear understanding of the total cost of the transaction and so the full funds the client will need to complete it.)

## Consultation question

### Question 7

Will the template for conveyancing estimates provide clients with complete and reliable estimates? If not, what changes should we consider?

### Proposals - Probate estimates template

As with conveyancing, probate lawyers will need to collect comprehensive information that will enable them to generate a full and reliable estimate of cost for individual consumers who are shopping around.

We have identified the following potential drivers of cost in probate. As in conveyancing, we believe that it should be left to the firm to decide the inputs it needs in order to provide an estimate.

- Whether there is a will and if it has been located
- Identity of inquirer and if, they are not an executor, whether all executors have died or refused to act
- Estimated value of assets
- Whether there is property in the estate
- Whether any property is outside England and Wales
- Whether the grant of probate is likely to be contested
- number of actual assets/ liabilities apart from properties and value of
- number of properties and value of
- number of beneficiaries
- are any of the beneficiaries mentally incapable or a minor
- are there any trusts in the Will
- is the estate a taxable one or not
- if the estate is not taxable on first light.... enquire as to whether any gifts were made in lifetime that may make estate taxable
- any missing beneficiaries
- or any forensic work needed to create family tree under intestacy

### Consultation questions

#### Question 8

Do you agree that that the range of inputs that will be used to generate estimates need not be specified as long as the outputs have to meet a common standard?

#### Question 9

If you believe that the list of inputs should be standardised, are there any omissions from the list above or any items that should be removed?

### ***Probate estimate template***

The following sets out the detail of price information that we propose should be provided, regardless of the channel for communication. Not all transactions will incur a cost against each of the line items below. However, the full costs under each item should be included in each estimate.

#### **Legal fees**

- Fee for grant of probate only
- Fee for estate administration

#### **Disbursements**

- Likely disbursements

Unlike the conveyancing estimate above we do not believe that it would be sensible to provide at this stage an estimate of any tax that might be payable as that will depend on too many variables within the estate.

### **Consultation question**

#### **Question 10**

Will the template for probate estimates provide clients with complete and reliable estimates? If not, what changes should we consider?

#### **Making price information easily available**

Many firms have on their website estimate generators that allow potential clients to generate an estimate based on information they put into the system themselves. This assists them in shopping around.

Some firms use the same tool internally to generate the estimate when taking instruction from clients. Others rely on a price list - which may or may not be available publicly.

In response to the CMA's recommendations, we need to look at how price information can be made more easily available to potential clients to foster better informed choice of legal service providers.

Price information can be made available through the following channels:

#### **Firms' websites**

The vast majority of CLC-regulated firms operate a website – 85% overall in 2016<sup>9</sup>. We believe that if a firm has a website, price information should be made available there, ideally through an estimate generator on their own website or through a DCT. Failing that, the firm will be required to publish a comprehensive price list of all of the factors that might impact the price of a transaction.

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<sup>9</sup> CLC's Annual Regulatory Return Analysis 2016 ([http://clc-uk.org/CLCSite/media/Research-Reports/CLC-ARR-2015-16-Report-\(FINAL\).pdf](http://clc-uk.org/CLCSite/media/Research-Reports/CLC-ARR-2015-16-Report-(FINAL).pdf))

Firms have expressed strong concerns about a race to the bottom if consumers focus on price alone when selecting their legal service provider. Below we look at service quality information that should be provided alongside price and which will provide a strong basis for firms to differentiate themselves and appeal to clients on grounds other than price.

We propose that it should be mandatory **either** to use an estimate generator **or** publish a price list because use of an estimate generator might be disproportionately expensive for very small firms. However, we must recognise that approach limits the ease of comparison between providers.

### **Consultation questions**

#### **Question 11**

Do you agree that firms should be required either to use an estimate generator or to publish their prices as a list?

#### **Question 12**

Should we make the use of estimate generators – whether on a firm’s own website or through a DCT – mandatory for easier comparison?

#### **Question 13**

How has use of a DCT affected your ability to attract clients?

#### **Question 14**

Is the publication of price lists feasible in your opinion? If not, why not?

### **Direct communications with potential clients**

Firms should be able to provide comprehensive and reliable price information in response to email and telephone queries from potential clients and following face to face meetings. The estimate should meet the standards set out in the template above.

The firm should provide a durable copy of the estimate by email, post or in person as appropriate. We propose that this should be mandatory.

### **Consultation question**

#### **Question 15**

Do you agree that firms should be required to provide written estimates by email, post or in person in response to non-internet queries? If not, please tell us why.

### Via third parties

This includes all kinds of DCT from comparison websites to tools available only to intermediaries who might be making recommendations to their clients of which conveyancer to use.

When we surveyed and spoke directly to CLC lawyers about this possibility in the first half of 2017 there was considerable anxiety about consumers being encouraged by DCT to make their choice on the basis of price alone. In discussions, it also became clear that those concerns would reduce if information about the type and quality of service provided by individual firms were to be provided alongside price information.

Where firms have arrangements with such third parties, the price information they provide will need to meet the same standards as when they are providing it to potential clients themselves. This means that firms will need to make their own pricing data available to those third parties in some way. This might mean proving it directly, or allowing the data to be scraped from their own website.

Consumer choice will be greatest where ease of access to price information and comparison is easiest. The CLC expects that commercial providers will step in to provide DCT at a reasonable cost to firms. This could prove to be a good value route to market for firms if DCTs achieve the greater reach than individual firms that they should.

We do not propose to require firms to make price data available to third parties. We will leave this to the operation of the market. If commercial provision does not attract high rates of participation by CLC firms, we may look at alternatives, including collation of price data and its publication by the CLC.

### Consultation question

#### Question 16

Do you agree that the provision of data by firms to DCT should be on a voluntary basis?

#### Question 17

Are there other issues we should take into account in relation to DCT?

## SERVICE TYPE AND QUALITY

The first element of service for consideration relates to the type of service provided. This includes the area of law in which the firm practices and their mode of delivering the service i.e. whether they provide a high touch, face-to-face service or a highly automated self-service model of delivery or something in between. It also includes information on the mix of staff that will be delivering the service.

The second is around the quality of that service this could be based on consumer perceptions of the services they have received or information available from regulators or other third parties that might provide a proxy measure of service quality full stop

The third area is comparability. In order to drive better informed consumer choice, the information on service type and quality provided by law firms will need to be in a broadly standard format.

### Current arrangements

At the moment, there is no requirement on firms to set out details of the services they provide other than the description of services that will be included in an instruction letter. Nor do we require them to be clear about how that service is delivered. However, we can expect that marketing will make both points clear to potential clients in order to attract clients whose expectations the firm will be able to meet.

The CLC does not currently require firms to publish details of complaints nor client feedback. Some firms do publish such information and some independent services to gather and promote client feedback on their own websites and the feedback service provider's website.

As there are currently no set expectations in this area, comparison between providers is difficult. No standard measures are available to enable comparison and there is little aggregation of such information as does exist to facilitate easy comparison.

### Proposals - Legal services provided

Firms already make clear to potential clients the services that they can provide. They are also required to be very clear about services they may provide that are not regulated by the CLC. They may wish to ensure that these descriptions are easily understood by consumers, but we do not see any need for regulatory action on this point.

We encourage firms to make available clear descriptions of any particular expertise or focus, for example if they have a strong track record in first title registration or leasehold or in dealing with complex trusts in probate. This will greatly aid the consumer in the early stages of making a choice of lawyer.



## Consultation question

### Question 18

Do you agree that no regulatory action is required to ensure that firms make clear to clients the legal service they can provide because firms already provide sufficient information?

#### Proposals - Models of service delivery

As models of service delivery continue to diverge, firms may want to appeal to different types of consumer. This means they will need to be clear in their marketing about their service model. This is good business practice as it will make it more likely that they can satisfy client expectations.

We need to consider whether information about models of service should be available alongside pricing information, whether on the firm's own website or on DCT. We believe that it should because it is an important element of consumer choice. However, we believe that the commercial motive will be sufficient to deliver this and so we do not propose to make this mandatory unless evidence emerges that consumers are not being properly informed about service models.

It has been suggested that consumers might find it useful to know about the typical client or transaction profile of a firm to understand whether it is likely to have experience in dealing with people in their situation. Firms should consider making this information available but we do not believe that this should be mandatory.

## Consultation question

### Question 19

Do you agree that no regulatory action is required and that the market will ensure that information about models of service delivery will be communicated to customers as part of firms' marketing efforts? If not, please tell us why.

#### Proposals - Mix of staff delivering legal services

Currently the CLC requires transparency about the identities and roles of individuals and teams providing conveyancing and probate services to be made clear to clients. This will generally be done as part of the letter of instruction. The CMA recommendations require information about the mix of staff to be available at an earlier stage.

We expect that there will be a difference in the information firms will be able to provide in response to general enquiries and when they issue the letter of instruction.

At the general enquiry stage, for all but the smallest firms, it is unlikely to be possible to set out the precise mix of staff that might deliver the service ultimately, should the consumer go on to instruct the firm. At this stage then, we would expect the firm to provide a general description of the team that will deliver the service, their legal qualifications and relevant experience. This information should also be made available on firm's websites.

In the letter of instruction it should be possible to identify the specific teams, and ideally the individuals, who will deliver the service for the client, to detail their legal qualifications and experience and to be clear about who will have the ultimate responsibility for the transaction.

### Consultation questions

#### Question 20

Do you agree that firms should provide general information about their mix of staff when providing cost estimates and on their websites?

#### Question 21

Do you agree that the legal qualifications and experience of the individuals who will actually carry out the work for the client should be set out in the letter of instruction?

### Service quality

It has not easy to find reliable guides to service standards in the legal sector. Most firms seek and secure client feedback for internal purposes and some make use of it in marketing. However, there is very little basis for comparison between firms even when they do publish their client feedback. The challenge is to source or generate information that supports fair and easy comparison to drive choice. We now look at the most likely sources of such information.

### Proposals - Accreditation schemes

Accreditation schemes and panel memberships do not guarantee competence and there have been doubts about their rigour and hence their utility as genuine guides to quality, whether of legal expertise or client service. In 2011 the Legal Services Consumer Panel found that in Voluntary Quality Schemes (VQS):

“...there are few practical checks on technical competence, little lay input in the design and operation of schemes and minimal collection and use of consumer feedback. Moreover, schemes are not validated and so offer no proof that they are delivering on their quality claims: that members are specialists offering added value beyond the minimum requirements of regulators. Finally, information available for consumers about the schemes, and the ease with which it can be found, is by and large quite poor.”<sup>10</sup>

Where membership is not open to lawyers of all kinds across the whole legal sector, such schemes also fail to meet the comparability test. It is our view that independent regulation is the best badge of assurance for consumers and that is why we plan to redouble our efforts to promote the value and nature of regulation by the CLC of specialist conveyancers and probate lawyers and why we have introduced the secure badge scheme for firms' websites.

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<sup>10</sup> [Voluntary Quality Schemes in Legal Services, Legal Services Consumer Panel, November 2011](#)

The ISO 9000 quality standards provide objective and internationally recognised measures of achievement of quality by an organisation and we encourage firms to promote their achievement of those. They might be a measure that DCTs wish to take into account.

### Consultation questions

#### Question 22

Do you agree that accreditation schemes should not be used as a basis for consumer choice?

#### Question 23

Are there accreditation schemes which could be developed that would provide useful information to consumers?

### Proposals – Securing and publishing client feedback

As noted above, there is very little consistency in the way that firms currently seek or publish feedback from clients. Some standardisation would be needed to provide a basis for comparison and there seem to be two possible approaches:

- i. The CLC could set a standard question for inclusion in all client feedback surveys, the results of which firms could be required to publish. That publication could be on firms' own websites or in their marketing materials or through DCT. Alternatively, the CLC could publish the results from all firms and make the data available for use by DCT. A further alternative would be for the CLC to manage the one-question survey for all firms and publish the data periodically. The question could simply be 'on a scale of one to ten where one is extremely unlikely and 10 is extremely likely' how likely is it that you would use firm X again?. Quarterly or annual scores could be published.
- ii. In recent years, new and independent services have emerged that collect and publish client feedback in an objective but sensibly moderated way. Some CLC firms already use these services. The ratings provided by such services do allow for very easy comparison between providers on a clear basis that is already trusted by a lot of consumers. We believe that they provide an easily understood way of expressing the quality of a firm's service. The rating will certainly be easier to digest than highly contextualised information about complaints. In this respect it is important to take account of the LSCP's 'appropriateness test' that asks us to 'take into consideration the level of risk and the ability of consumers to adequately comprehend the significance of the information'.<sup>11</sup>

We do not think that we should require firms to make use of such commercial services, but we do view it as best practice. We intend to promote their use and provide guidance in line with CMA's recommendations for the legal sector.

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<sup>11</sup> The development of information remedies in legal services, LSCP, March 2017

## Consultation questions

### Question 24

Should the CLC require all firms to ask their clients one standard question as part of their wider feedback surveys as a basis for comparisons of quality?

### Question 25

Should the CLC require firms to publish their score on the standard question on their websites?

### Question 26

Should the CLC collate and publish the scores of all firms against the standard question?

### Question 27

Would it be desirable for the CLC to manage the collection of responses to the standard question through a survey that firms should signpost to clients?

### Question 28

Do you agree that the CLC should promote the use of third party feedback platforms as best practice and not make their use mandatory?

### Question 29

Would making use of third party feedback platforms mandatory improve outcomes for consumers?

## Proposals - Proxies for quality

It may be that data already available could be used to rate firms as a proxy for quality. Two examples that are currently being talked about in the conveyancing community is the data held by HM Land Registry about how quickly after completion of a transaction firms inform HM Land Registry of the revised title information or the number of requisitions a firm receives. We understand that HM Land Registry is working towards publication of the latter for use by third parties.

If law firms themselves or DCT wanted to use such data that could be helpful to consumers. However, it would need to be clearly based on objective assessments by organisations that are independent from the firm or the DCT and will need to be standardised or set within a standard context so that consumers can use it easily.

## Consultation question

### Question 30

What measures of quality or proxies would help consumers choose the right legal service provider for them?

## Proposals - Complaints information

### ***First tier complaints***

Information about first tier complaints (those dealt with by the firms themselves) and the second tier complaints dealt with by the CLC as regulator (conduct) or the Legal Ombudsman (service) have long been promoted as potential indicators of service quality that should be made available to help inform consumer choice. At the moment, the CLC collects that data for regulatory purposes but does not publish the data other than in aggregated forms that allow commentary on trends and general complaints handling practice.

The legal profession has expressed concerns about the publication of complaints data in response to our survey and in face to face discussions. It is clear to the CLC as regulator that bald information about complaints could be misleading without some context such as an indication of the proportion of a firm's transactions that give rise to complaints.

The CLC currently requires firms to keep a register of complaints received and how they were resolved. We also ask firms to report headline data on that and make those registers available to us on request. Although we have collected such data from firms in the past, we have used it internally for regulatory purposes only.

We are concerned that moving to the publication of complaints data could create a disproportionate regulatory burden. The CLC would need to oversee reporting by firms very closely to ensure that there is even application of a standard definition of 'complaint' by the firms that we regulate so that we can be sure comparisons can be made fairly. Although we have collected such data from firms in the past, we have used it internally for regulatory purposes only. We would not feel able to stand behind the publication of that data without a great deal of costly compliance work that we believe outweighs the benefits of publication. Those benefits might also be limited in light of the LSCP's 'appropriateness test', as mentioned above as the raw information would require significant contextualisation even if it could be reliably standardised and it is not clear that it would provide the easily accessible and useful guide to service that it needed.

As outlined above, we believe that there are other ways of collecting and publishing client feedback through third party services that will generate information that will be more readily useful to consumers. Therefore we do not propose to make the publication of complaints data by law firms mandatory unless those alternatives fail to deliver the desired outcomes.

## Consultation questions

### Question 31

Do you agree that publication of data on first tier complaints by law firms should not be mandatory?

### Question 32

If you believe that first tier complaints data should be published by law firms, what steps can the CLC take to ensure that it provides a reliable basis for comparison between firms without raising the regulatory burden disproportionately?

### Question 33

How important would comparable first tier complaints data be in informing consumer choice?

### *Second tier complaints*

Although complaints referred to the regulators and the Legal Ombudsman can be reported more easily than first tier complaints and with a high degree of comparability, they nonetheless require the same degree of contextualisation and so are likely to fall foul of the 'appropriateness test'.

## Consultation questions

### Question 34

Do you agree that publication of data on second tier complaints by law firms should not be mandatory?

### Question 35

If you believe that second tier complaints data should be published by law firms, what steps would need to be taken to ensure that consumers could use them easily to inform their choice of legal service provider?

## Proposals - Disciplinary information

Information about conditions on the licences of individual lawyers and firms and other disciplinary sanctions is published on the CLC website. The numbers of these are small. We consider that transparency requires that firms themselves publish the same information on their own websites or in their reception areas if they do not have a website.

## Consultation question

### Question 36

Do you agree that firms should be required to publish disciplinary information about their lawyers and the firm?

## REGULATORY PROTECTIONS

In relation to the regulation of lawyers and communicating more effectively to consumers about the purpose and outcomes of that regulation there are two elements to consider.

The first is ensuring that the consumer is aware of the regulatory status of particular legal service providers they may consider engaging.

The second is to ensure that consumers understand the protections afforded to them through regulation and are aware of how to exercise their rights to complain or to seek compensation.

### Current regime

CLC-regulated firms are required to highlight their regulated status on letterhead and on their websites. This is reviewed when we inspect firms.

The CLC has recently introduced a secure badge scheme for websites which provides reassurance for consumers and helps protect the profession and consumers against fraud by identifying sites holding themselves out as CLC-regulated. Use of the secure badge is monitored remotely in real time.

Firms are also required to signpost their own complaints procedure and beyond that the right to take up issues with the CLC and Legal Ombudsman.

When we inspect firms, we assess the following:

- a. Policies and procedures are in place
- b. Complaints log
- c. Type of complaint and trends
- d. Timelines for dealing with complaints
- e. Whether complaints are being dealt with at an appropriate level

### Proposals

We do not believe that any significant enhancement of the promotion of their regulated status or promotion of redress is needed from CLC firms. The CLC's current expectations are high and clear. The one exception is whether firms should publish their level of Professional Indemnity Insurance cover. This might reassure clients that the firm's PII would provide adequate cover for their particular transaction.

However, it will be important for consumers to understand and make use of new data and tools to help them choose their lawyer following the outcomes of this consultation.

The CLC will increase its own consumer-facing activity through Legal Choices and its own channels to improve consumer understanding of choosing and using conveyancing and probate services.

## Consultation question

### Question 37

Do you think that there is merit in firms publishing their level of PII cover to help guide consumer choice?

## ENHANCING THE DIGITAL REGISTER OF CLC LAWYERS

### Current arrangements

The CLC already maintains a digital register of regulated entities and individuals. This includes details of head and branch offices, contact details and regulatory ID numbers of firms and names, licence details and numbers of individuals. This data is already made available to DCTs and panel managers.

The question for us now is what further information could be added to that digital register to inform consumer choice either through direct use of the register or by the manipulation of that data by commercial providers of DCT.

Here also it will be necessary to consider how data can be standardised across all legal sector regulators so that the data provided is standardised and easily understood by consumers or intermediaries. Work on that is already underway.

### Proposals - Complaints information

As set out above, information about first tier complaints (those dealt with by the firms themselves) and the second tier complaints dealt with by the CLC as regulator (conduct) or the Legal Ombudsman (service) have long been promoted as potential indicators of service quality that should be made available to help inform consumer choice.

Many professions have had concerns about the publication of complaints data and it is clear to the CLC that bald information about complaints could be misleading without some context such as an indication of the proportion of a firm's transactions that give rise to complaints.

The CLC currently requires firms to keep a register of complaints received and how they were resolved. We also ask firms to report headline data on that and make those registers available to us on request. Although we have collected such data from firms in the past, we have used it internally for regulatory purposes only.

We are concerned that moving to the publication of complaints data could create a disproportionate regulatory burden as regulators would need to oversee that reporting closely to ensure that there is even application of a standard definition of 'complaint' by the firms that we regulate so that we can be sure comparisons can be made fairly. Although we have collected such data from firms in the past, we have used it internally for regulatory purposes only.



In relation to second tier complaints handled by LeO or the CLC as front line regulator, there is clearly less difficulty about consistency of data capture and reporting. However, the challenge around providing easily digestible context to inform consumer choice would remain. We consider that complaints information does not fall into the category easily understood information on service quality that can help consumers.

However, the CMA has recommended that complaints data should be published as part of digital registers of lawyers maintained by the regulators. We therefore need to consider how complaints data could be made available in ways that are useful.

### **Consultation questions**

#### **Question 38**

Do you think that data about first tier and second- tier complaints should be added to the digital register of CLC-regulated firms as a useful resource for DCT and others?

#### **Question 39**

If you agree that that complaints data should be added to the register how should we make clear to consumers the relevant context and the degree of reliance that can be placed up comparison of those figures?

#### **Question 40**

How can data about complaints be made available in other ways?

### **Proposals - Disciplinary information**

We propose to enhance the CLC's digital register by providing direct links from the entries for regulated firms or individuals to any information about sanctions placed on them by the CLC for conduct breaches. This will only apply to breaches that have been the subject of a decision by the Adjudication Panel or take the form of conditions on a licence. This information is already published on the CLC website.

We have considered whether we should provide information on firms or individuals that are a current cause for concern or under investigation as that could sway consumer choice. We have decided not to as that could blight a career or a business unjustly before a full conclusion has been reached and any breach confirmed and a rectification or sanction has been confirmed. Where there is an immediate risk of consumer harm, the CLC acts to protect the consumer, for example by intervening in a practice or suspending an individual licence.

### **Consultation questions**

#### **Question 41**

Do you agree that information about conduct matters should be signposted from entries on the digital register?

#### **Question 42**

Do you agree that the CLC should not publish information about individuals or firms under investigation?

### Proposals: Service ratings

The CLC could gather and publish on its register of CLC firms the data on service ratings however those are generated – whether by third parties, firms themselves or the CLC, as above. It would need to be made plain that this rating was not the judgement of the regulator, but of clients of the firm.

### Consultation question

#### Question 43

Should the CLC add service ratings to its digital register of firms?

## COMPENDIUM OF ALL QUESTIONS IN THIS CONSULTATION

We have published the full list of questions below in an online survey to make responding as easy as possible: <https://www.surveymonkey.co.uk/r/CLC-Helping-consumers-choose-their-lawyer>

You can also respond by email to [stephenw@clc-uk.org](mailto:stephenw@clc-uk.org) or by mail to Stephen Ward, CLC, CAN Mezzanine, 49-51 East Road, London, N1 6AH.

We will be speaking directly with CLC firms, running a series of webinars and running online polls on specific issues to encourage the widest possible participation in this consultation.

**This consultation closes at 5pm on Friday, 29<sup>th</sup> December 2017.**

### **Question 1**

Is there any obstacle to the provision of full estimates at the point that potential clients are shopping around for a legal service provider?

### **Question 2**

Would it be desirable for the CLC to amend its rules to make explicit that estimates provided to consumers should always be regarded by the firm as binding on them should they be instructed (subject to any new information emerging that legitimately affects cost)?

### **Question 3**

Would it be preferable to require firms only to publish general pricing information rather than personalised, transaction-specific estimates?

### **Question 4**

Do you agree that we can rely on guidance to secure greater availability of information rather than creating new rules?

### **Question 5**

Do you agree that that the range of inputs that will be used to generate estimates need not be specified as long as the outputs have to meet a common standard?

### **Question 6**

If you believe that the list of inputs should be standardised, are there any omissions from the list above or any items that should be removed?

### **Question 7**

Will the template for conveyancing estimates provide clients with complete and reliable estimates? If not, what changes should we consider?

### **Question 8**

Do you agree that that the range of inputs that will be used to generate estimates need not be specified as long as the outputs have to meet a common standard?

**Question 9**

If you believe that the list of inputs should be standardised, are there any omissions from the list above or any items that should be removed?

**Question 10**

Will the template for probate estimates provide clients with complete and reliable estimates? If not, what changes should we consider?

**Question 11**

Do you agree that firms should be required either to use an estimate generator or to publish their prices as a list?

**Question 12**

Should we make the use of estimate generators – whether on a firm’s own website or through a DCT – mandatory for easier comparison?

**Question 13**

How has use of a DCT affected your ability to attract clients?

**Question 14**

Is the publication of price lists feasible in your opinion? If not, why not?

**Question 15**

Do you agree that firms should be required to provide written estimates by email, post or in person in response to non-internet queries? If not, please tell us why.

**Question 16**

Do you agree that the provision of data by firms to DCT should be on a voluntary basis?

**Question 17**

Are there other issues we should take into account in relation to DCT?

**Question 18**

Do you agree that no regulatory action is required to ensure that firms make clear to clients the legal service they can provide because firms already provide sufficient information?

**Question 19**

Do you agree that no regulatory action is required and that the market will ensure that information about models of service delivery will be communicated to customers as part of firms’ marketing efforts? If not, please tell us why.

**Question 20**

Do you agree that firms should provide general information about their mix of staff when providing cost estimates and on their websites?

**Question 21**

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