

## Response to the Competition and Market Authority's Recommendations

### Summary of Responses to the BSB's Rules Consultation on Transparency Standards

#### Executive Summary

#### Introduction

1. The Competition and Markets Authority (CMA) undertook a market study into legal services in 2016, and its [final report](#) was published on 15 December 2016. Its recommendations for the legal services regulators fall broadly into four categories: delivering a step change in standards of transparency, promotion of the use of independent feedback platforms, making regulatory data more accessible and making better information available to assist consumers (including by reviewing the content of the Legal Choices website). The overall aim is to improve consumer understanding, facilitate “shopping around” and ultimately drive competition.
2. In its final report, the CMA recommended that the regulators deliver a step change in standards of transparency to *“help consumers (i) to understand the price and service they will receive, what redress is available and the regulatory status of their provider and (ii) to compare providers. Regulators should revise their regulatory requirements to set a new minimum standard for disclosures on price and the service provided and develop and disseminate best practice guidance. Importantly, this should include a requirement for providers to publish relevant information about the prices consumers are likely to pay for legal services”*.<sup>1</sup>
3. The report also stated that *“in the case of barristers, increased public transparency will be most relevant and beneficial to customers engaging a barrister through the public access scheme rather than issuing instructions via a solicitor. However, we note that the solicitors’ role as intermediaries instructing barristers on behalf of clients will be strengthened if there is a general improvement in the level of transparency in the sector”*.<sup>2</sup>
4. Following a [policy consultation on transparency standards](#) issued in October 2017, the BSB published our [proposed approach](#) to improving transparency for consumers of barristers’ services in February 2018. This recognised that, with regard to the type of bespoke referral services most often provided by barristers, necessarily heavily caveated information may lack utility and cause confusion for consumers of these services. We also recognised that, compared to other legal services providers who instruct barristers, lay clients are in a weaker position to negotiate fees and understand the kind of service they should be able to expect from a barrister. Our view, therefore, is that price and service transparency requirements are most likely to increase consumer understanding and “shopping around” in the context of the Public Access Bar. However, we also considered that many Public Access services are bespoke and, again, the risk that necessarily heavily caveated information may lack utility and cause confusion for consumers of these services. In developing price and service transparency requirements, we therefore agreed to prioritise the less bespoke services provided by Public Access barristers. We also hope that this will encourage improved price and service transparency, where appropriate, for other Public Access services.

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<sup>1</sup> <https://assets.publishing.service.gov.uk/media/5887374d40f0b6593700001a/legal-services-market-study-final-report.pdf>, page 15

<sup>2</sup> <https://assets.publishing.service.gov.uk/media/5887374d40f0b6593700001a/legal-services-market-study-final-report.pdf>, page 281

5. However, the BSB agrees with the CMA that solicitors' roles as intermediaries, instructing barristers on behalf of clients, will be strengthened if there is a general improvement in the level of transparency in the sector. We also consider it important that all barristers should be required to meet minimum transparency standards in relation to price and service. As part of our proposed approach, we therefore decided to require all chambers' websites to state that professional, licensed access and/or lay clients (as appropriate) may contact chambers to obtain a quotation for legal services. In our view, this demonstrates a commitment to transparency and facilitating "shopping around" without either risking consumer confusion or overburdening barristers and chambers.
6. In addition, for many people legal services are an infrequent and/or distress purchase (a purchase made following an event or situation which may have harmed a consumer or placed them under significant distress such as an accident or divorce). It is difficult for inexperienced, often vulnerable, consumers to know who to turn to for advice and/or representation. This can worsen any legal problems they face<sup>3</sup> and affect their willingness to engage with legal services in the first place.<sup>4</sup> The urgent and stressful nature of many legal problems means that consumers may find it difficult to research their options in an objective and thorough manner. This can increase the imbalance in knowledge and understanding of the law between a provider and their client. A requirement for all chambers' websites to state that appropriate clients may contact chambers to obtain a quotation would therefore improve transparency and encourage consumers to research their options, "shopping around" by comparing providers.
7. The CMA's report stated that it has "*made a commitment to assess at the end of three years [from 2020] whether there is evidence that the actions of regulators have or will address the issues we have found in this sector. If we determine that there has been insufficient improvement, we will decide the most appropriate course of action for us to take. One potential option would be a market investigation which would enable us to use our statutory Order making powers if we decided that that was necessary in order to drive change in the sector*".<sup>5</sup>

## Overview of Rules Consultation

8. The purpose of the [rules consultation](#) was to ensure that the rules we drafted to give effect to our proposed approach to improving transparency were clear, and that the guidance<sup>6</sup> we published alongside the consultation would help the Bar to comply with the new rules.

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<sup>3</sup> Denvir et al. (2013) *When legal rights are not a reality: do individuals know their rights and how can we tell?*, The Journal of Social Welfare and Family Law, 35:1, 139-160

<sup>4</sup> Legal Services Board (2012) *Understanding consumer needs from legal information sources*

<sup>5</sup> <https://assets.publishing.service.gov.uk/media/5887374d40f0b6593700001a/legal-services-market-study-final-report.pdf>, page 283

<sup>6</sup>

[https://www.barstandardsboard.org.uk/media/1952243/transparency\\_standards\\_guidance\\_final\\_1\\_-\\_introduction.pdf](https://www.barstandardsboard.org.uk/media/1952243/transparency_standards_guidance_final_1_-_introduction.pdf)

[https://www.barstandardsboard.org.uk/media/1952247/transparency\\_standards\\_guidance\\_final\\_2\\_-\\_section\\_1.pdf](https://www.barstandardsboard.org.uk/media/1952247/transparency_standards_guidance_final_2_-_section_1.pdf)

[https://www.barstandardsboard.org.uk/media/1952267/transparency\\_standards\\_guidance\\_final\\_3\\_-\\_section\\_2.pdf](https://www.barstandardsboard.org.uk/media/1952267/transparency_standards_guidance_final_3_-_section_2.pdf)

[https://www.barstandardsboard.org.uk/media/1952255/transparency\\_standards\\_guidance\\_final\\_4\\_-\\_section\\_3.pdf](https://www.barstandardsboard.org.uk/media/1952255/transparency_standards_guidance_final_4_-_section_3.pdf)

[https://www.barstandardsboard.org.uk/media/1952259/transparency\\_standards\\_guidance\\_final\\_5\\_-\\_section\\_4.pdf](https://www.barstandardsboard.org.uk/media/1952259/transparency_standards_guidance_final_5_-_section_4.pdf)

9. The consultation firstly set out the evidence base for our transparency proposals. The aim of our evidence gathering was to ensure that our approach is robust and that any transparency requirements placed on barristers are reasonable, proportionate and, most importantly, will benefit consumers. In addition to the evidence base in the CMA's final report, we:
- Undertook desk research in summer 2017 to examine the information which chambers provide on their websites regarding price, and to establish a baseline;
  - Operated a pilot scheme between November 2017 and February 2018 to test the proposed transparency requirements with nine chambers, entities and sole practitioners. We published an [evaluation report](#) of the pilot alongside the consultation. This included the results of an online survey of the pilot participants' clients; and
  - Commissioned YouGov and London Economics to undertake price transparency research, which combined online focus groups and an online behavioural experiment. The main objective of the study was to test different approaches to presenting price and service information, and how they impact consumers' understanding of the choices available, ability to identify cheaper (or preferred) options, and confidence in making a decision. We published a [summary](#), [full report](#) and [technical annex](#) to the research alongside the consultation.
10. The consultation then set out our proposed new transparency rules:
- Rules on price and service transparency for all (by "all", we mean all self-employed barristers, chambers and BSB entities);
  - Rules on redress transparency for all; and
  - Additional rules on price and service transparency for those undertaking Public Access work. This includes self-employed barristers undertaking Public Access work, and BSB entities supplying legal services directly to the public.
11. The consultation asked for views on:
- Whether the proposed rules provide the necessary regulatory framework to deliver increased price, service and redress transparency;
  - The BSB's Transparency Standards Guidance. The guidance aims to (1) support those regulated by the BSB in complying with the mandatory rules and (2) encourage them to go beyond the mandatory rules;
  - The criteria we used to determine which Public Access services should be subject to additional price transparency requirements;
  - The Public Access services we initially determined should be subject to additional price transparency requirements, and the [specific circumstances](#) in which they apply; and
  - Our examples of required transparency for Public Access services. These can be found in [Annexes C-K of the BSB's Transparency Standards Guidance](#).
12. The consultation then provided details of the BSB's implementation plan. The transparency rules will come into force in May 2019, and to ensure compliance we will undertake spot-checking from January 2020. Finally, the consultation discussed our equality impact assessment (EIA) of our transparency proposals, which we also asked for views on.

## Responses to Rules Consultation

13. The BSB issued the rules consultation on 13 September 2018, and it closed on 14 December 2018. The consultation consisted of seven questions and we received 12 responses.
14. All respondents gave their permission for the responses to be made public. The full list of respondents is as follows:  
  
Bar Council  
Chancery Bar Association  
Clerksroom  
Commercial Bar Association  
Employment Law Bar Association  
Family Law Bar Association  
Legal Ombudsman (LeO)  
Legal Practice Management Association  
Legal Services Consumer Panel  
Lincoln House Chambers  
Personal Injuries Bar Association  
1 individual barrister
15. This report is a summary of the responses received to the consultation. It also contains BSB responses to the points raised by respondents to the consultation, and outlines any changes in our approach to implementing new price, service and redress transparency requirements.

## Summary of Responses to Questions, and BSB Responses

***QUESTION 1: do you agree that the proposed rules for all self-employed barristers, chambers and BSB entities provide the appropriate regulatory framework to deliver, in accordance with the BSB's proposals, increased price and service transparency? If not, please state why not.***

16. The consultation proposed that all those regulated by the BSB would need to state on their websites:
  - That professional, licensed access and/or lay clients (as appropriate) may contact them to obtain a quotation for legal services. Websites would also need to provide contact details;
  - Their most commonly used pricing models for legal services, such as fixed fee or hourly rate;
  - The areas of law in which they most commonly provide legal services;
  - A description of the legal services which they most commonly provide; and
  - Information about the factors which might influence the timescales of a case.
17. The consultation also proposed that the required information would need to be readily available in hard copy format, and provided to consumers on request.

## Responses (BSB Responses in Bold)

18. Concerns were raised about the evidence base for our transparency proposals, and specifically the pilot scheme which only tested the proposed transparency

requirements with nine chambers, entities and sole practitioners. The online survey of the pilot participants' clients also only obtained the views of 35 clients. A number of respondents to the consultation stated that the samples are too small to be statistically significant and draw meaningful conclusions from them. However, as Clerksroom, one of the pilot participants, agreed the pilot helped to counter the public's perception that barristers are expensive and difficult to access, and noted their client conversion rate had increased significantly since they participated in the pilot and kept the transparency measures on their websites. They also suggested that, as part of the review of transparency standards from 2020, it would be useful to undertake "mystery shopping" to evaluate the effectiveness of the requirements.

19. **As the evaluation report of the pilot scheme states, "*it is difficult to assess the impact of the pilot on [barristers'] business and clients over a short period of time. The impacts reported in the findings are indicative and should not be treated as representative of the definite impacts of the pilot*".<sup>7</sup> However, the evidence base for the transparency proposals is not limited to the pilot scheme as, in addition to the evidence base in the CMA's final report, we undertook desk research in summer 2017 and commissioned YouGov and London Economics to undertake further price transparency research. We have also consulted extensively and, throughout the development of the price transparency proposals, engaged with other regulators, LeO, the Legal Services Consumer Panel and the profession (the Specialist Bar Associations in particular). We will also consider undertaking "mystery shopping" as part of the review of transparency standards from 2020.**
20. *The Legal Services Consumer Panel stated that "putting the onus on consumers to ask a number of providers for pricing information...presumes that consumers have the confidence, know-how, time and desire to contact multiple providers for pricing information...it appears that the BSB has accepted providers' arguments that mandatory publication requirements are inappropriate for individual barristers who offer a different type of service from solicitors; and that it is not possible to price those services in a way that lends itself to price publication".*
21. **Our proposed approach to improving transparency for consumers of barristers' services recognises that, with regard to the type of bespoke referral services most often provided by barristers, necessarily heavily caveated information may lack utility and cause confusion for consumers of these services. Equally, we recognise the urgent and stressful nature of many legal problems means that consumers may find it difficult to research their options in an objective and thorough manner. A requirement for all chambers' websites to state that appropriate clients may contact chambers to obtain a quotation would therefore improve transparency and encourage consumers to research their options, "shopping around" by comparing providers. It would do so without either risking consumer confusion or overburdening barristers and chambers.**
22. The Bar Council agreed with the policy rationale behind the rule that all those regulated by the BSB must state appropriate clients may contact them to obtain a quotation. They stated that it would be helpful for the BSB's Transparency Standards Guidance to tease out the possible difference between a quotation (which can lead to a legally binding agreement on a price) and an estimate, which is an informal indication of the price based on limited information provided by the client. They also

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stated that barristers should not be compelled to give quotations for cases they do not intend to take on. The Legal Practice Management Association sought clarification that it would be appropriate for clerks to provide quotations on behalf of barristers, and on what a “reasonable time period” would be if barrister input was needed to provide a quotation but the barrister had urgent work commitments.

23. **The BSB’s Transparency Standards Guidance will clarify that quotations and not estimates must be provided. This is because the rule intends for consumers to provide sufficient information such that barristers can quote a meaningful range for the legal services in question, whereas estimates are informal indications of price based on limited information. The guidance will also set out the steps barristers can take to ensure that quotations do not lead to legally binding agreements on price.**
24. **The rule will be amended to clarify that “quotations must be provided if sufficient information has been provided by the client, and the barrister, barristers in chambers or BSB entity would be willing to provide the legal services”.**
25. **It will be appropriate for clerks to provide quotations on behalf of barristers, although under the BSB Handbook barristers are responsible for the service provided by their clerks. The rule states quotations must be provided within a reasonable time period, and the guidance clarifies that this will normally mean within 14 days (although depending on consumer need/urgency quotations may need to be provided sooner). If barrister input was needed to provide a quotation, but the barrister had urgent work commitments, it would be acceptable to take longer than 14 days provided the consumer’s expectations were managed. We will clarify this in the guidance.**
26. With regard to the rule that all those regulated by the BSB must state their most commonly used pricing models for legal services (such as fixed fee or hourly rate), the Bar Council’s view was that there is potential for this to create confusion for less experienced consumers, and heighten expectations that a particular pricing model will be available when it may not be. Their view was that this information would be better provided on the Legal Choices website. The Legal Practice Management Association sought clarification on whether it would be acceptable to state that a pricing model is offered, but only available in certain circumstances.
27. **While it will be useful to provide this information on the Legal Choices website, not all clients will view the Legal Choices website and it is important that all barristers should be required to meet minimum transparency standards in relation to price. It will be acceptable to state that pricing models are only available in certain circumstances, and the BSB’s Transparency Standards Guidance will be updated to clarify this.**
28. The Bar Council stated that the requirement for all those regulated by the BSB to state and provide a description of their most commonly provided legal services could be made clearer, either within the wording of the rule or the BSB’s Transparency Standards Guidance.
29. **The BSB’s Transparency Standards Guidance will be updated to clarify the requirement.**
30. With regard to the rule that all those regulated by the BSB must provide information about the factors which might influence the timescales of a case, the Bar Council

queried what is meant by “case” i.e. whether the rule is meant to refer only to a particular piece of work on which the barrister has been instructed, or across a whole case (which can vary significantly). Their view was also that this should not be required for referral cases involving a solicitor, particularly as if a barrister is not conducting litigation it will be difficult for them to have control over timescales. While agreeing that it may be possible to set out some of the factors which might influence timescales prior to instruction, their view was that the requirement would be more appropriate for Public Access cases. They also suggested that this information should be unified and incorporated into the BSB’s Public Access Guidance for Lay Clients (the link to which, it is proposed, will be on chambers’ websites). The Legal Practice Management Association sought clarification on whether it would be acceptable for generic factors which might influence timescales to be listed.

31. **To avoid confusion, the rule will be amended to state that websites must “provide information about the factors which might influence the timescales of their most commonly provided legal services”. It is important that all barristers should be required to meet minimum transparency standards in relation to service. This is because even if a barrister is not conducting litigation and it will be difficult for them to have control over timescales, it will be useful for this to be explained to clients. It will help them to understand what they can expect, and manage those expectations.**
32. **Information on timescales will also be unified and incorporated into the BSB’s Public Access Guidance for Lay Clients, but as above it will be important that all barristers meet this requirement. It will be acceptable for generic factors which might influence timescales to be listed, and the BSB’s Transparency Standards Guidance will be updated to clarify this.**
33. Clerksroom commented that the proposed requirement to review website content at least annually to ensure it is accurate and compliant with the transparency rules should be supplemented with a requirement to keep checklists (to evidence that these reviews have been done). Checklists can be found in the BSB’s Transparency Standards Guidance, but it currently only recommends that checklists are kept. However, Clerksroom felt that transparency supervision would be more effective if there was a requirement to keep checklists. They also commented that the proposed requirement to ensure information is readily available in hard copy format should instead be to ensure information is readily available in alternative format. This is because if a client or prospective client does not have Internet access, they may not only require information in hard copy format.
34. **While the BSB’s Transparency Standards Guidance recommends that checklists are kept, transparency supervision will be primarily desk-based, with the Supervision Team reviewing websites to ensure compliance. It will therefore not be necessary to impose an additional administrative burden on barristers to ensure that checklists are kept. Instead, the checklists should be viewed as a resource which is available to help barristers comply with the transparency rules. The guidance will also be updated to recommend that website pages state the date on which they were last reviewed.**
35. **As suggested, the requirement to ensure information is readily available in hard copy format will instead be to ensure information is readily available in alternative format.**

***QUESTION 2: do you have any comments on the BSB’s Transparency Standards Guidance (published in draft alongside this consultation)? We are particularly***

***interested in how the guidance can (1) better support those regulated by the BSB in complying with the mandatory rules and (2) better encourage them to go beyond the mandatory rules.***

36. The consultation proposed that all those regulated by the BSB would need to have regard to BSB guidance in relation to price and service transparency. The BSB's Transparency Standards Guidance (published in draft alongside this consultation) aims to (1) support those regulated by the BSB in complying with the mandatory rules and (2) encourage them to go beyond the mandatory rules. There are four main sections to the guidance:
- Section 1: mandatory rules on price, service and redress transparency for everyone (all self-employed barristers, chambers and BSB entities, but not employed barristers);
  - Section 2: additional transparency rules for those undertaking Public Access work (self-employed barristers undertaking Public Access work, and BSB entities supplying legal services directly to the public);
  - Section 3: additional best practice on transparency for everyone (which goes beyond the mandatory rules); and
  - Section 4: checklists to help compliance with the transparency rules, and information about the BSB's supervision and enforcement strategy.

#### **Responses (BSB Responses in Bold)**

37. The Bar Council stated the guidance provides useful context to the transparency rules, and that the checklists will be particularly helpful in assisting barristers to comply with the rules. They noted that it is unusual for the BSB to publish guidance on best practice (as the role of the regulator is usually to set universal minimum standards), and the potential for duplication of effort with the Bar Council in its representative capacity. They stated that it would be helpful for them to have a constructive dialogue with the BSB to ensure duplication is avoided. The Legal Practice Management Association also sought clarification on whether the best practice section of the guidance would be used in enforcement of the transparency rules. While noting the existing requirement in the BSB Handbook for barristers to have regard to any relevant guidance issued by the BSB, the Commercial Bar Association was concerned that the BSB might to seek to introduce substantive transparency requirements in guidance without consultation.
38. **In its final report, the CMA recommended that the regulators develop and disseminate best practice guidance.<sup>8</sup> It is also necessary for the BSB to publish best practice guidance in this instance as the additional transparency rules will only apply to those undertaking Public Access work, not to those undertaking referral work. However, the guidance for those undertaking Public Access work will still be best practice for those undertaking referral work, necessitating one cohesive set of documents published by the BSB. We would welcome a dialogue with the Bar Council to ensure that duplication is avoided. The best practice section of the guidance will not be used in enforcement of the transparency rules, and the BSB will not seek to introduce substantive transparency requirements in guidance without consultation. Any substantive changes to the transparency requirements would be subject to consultation and a rule change application to our oversight regulator, the Legal Services Board (LSB).**

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<sup>8</sup> <https://assets.publishing.service.gov.uk/media/5887374d40f0b6593700001a/legal-services-market-study-final-report.pdf>, page 15



39. The Commercial Bar Association suggested the guidance should clarify that only certain clients have a right to complain to LeO (individuals and, broadly speaking, small businesses and charities). They also suggested that rather than stating information should be in a standard size font (which may not be appropriate for website design), the guidance should state the following: *“the information should be in a font size that enables it to be easily read. This will ensure the information is easy for consumers to find and read”*.
40. Clerksroom commented that it would be useful for the best practice guidance to include information for lay clients on (1) the variables which barristers may take into account in setting fees, and (2) how best to engage with barristers and clerks when seeking legal advice and/or representation.
41. **We agree with the Commercial Bar Association and Clerksroom’s suggestions and will update the BSB’s Transparency Standards Guidance accordingly.**

***QUESTION 3: do you agree that the proposed rules provide the appropriate regulatory framework to deliver, in accordance with the BSB’s proposals, increased redress transparency? If not, please state why not.***

42. The consultation proposed that all those regulated by the BSB would need to state on their websites:
- The text “regulated by the Bar Standards Board” (which would need to be displayed on website homepages);
  - Information about their complaints procedures, any right to complain to LeO, how to complain to LeO and any time limits for making a complaint;
  - A link to the [decision data](#) on the LeO’s website, allowing consumers to see which providers received an ombudsman’s decision in the previous calendar year; and
  - A link to the [Barristers’ Register](#) on the BSB’s website, allowing consumers to see whether a barrister (1) has a current practising certificate and (2) has any disciplinary findings.
43. The consultation also proposed that the required information would need to be readily available in hard copy format, and provided to consumers on request. In addition, the text “regulated by the Bar Standards Board” would need to be stated on all e-mail and letterheads.

#### **Responses (BSB Responses in Bold)**

44. The majority of the respondents to the consultation agreed with the proposed rule that all those regulated by the BSB must display the text “regulated by the Bar Standards Board” on website homepages. LeO was pleased to see the comprehensive nature of the information that providers will be required to supply about complaining to them (which was echoed by the Legal Services Consumer Panel). However, the Family Bar Association was concerned that, as an unintended consequence of the rules, dissatisfied lay clients may contact LeO before they have received a chambers’ final response to their complaint.
45. **The BSB’s Transparency Standards Guidance will be updated to suggest websites state that clients should only contact LeO if they have received the chambers’ final response, or if the chambers have not responded within the time limit.**

46. LeO clarified that the decision data on their website covers a twelve-month rolling period (rather than the previous calendar year), and is updated every quarter. The Bar Council and the Legal Practice Management Association both stated that rather than requiring all those regulated by the BSB to link to the decision data on LeO's website, it would be better for the BSB to link to this on its own website. They were also concerned that, as this will not be required by the Solicitors Regulation Authority (SRA), it could place barristers at a competitive disadvantage. The Family Law Bar Association was concerned about the potential for the decision data to discourage clients from selecting a particular barrister simply because a number of complaints have been made against them, even if not upheld.
47. With regard to the proposed rule that all those regulated by the BSB must link to the Barristers' Register on the BSB's website, the Bar Council and the Legal Practice Management Association again stated that, as the SRA will not require those it regulates to link to a register setting out practising status and disciplinary findings, this could place barristers at a competitive disadvantage.
48. The Legal Services Consumer Panel were concerned about *"the BSB's plan to require providers to provide a link on their website to the Legal Ombudsman's decision data; and then another link to the Barristers' Register on the BSB's website...[we are] of the strong opinion that the BSB should bring together its regulatory information and the Legal Ombudsman's decisions. Providers can then link to one place, which will save consumers from navigating from one link to another"*.
49. **The BSB's Transparency Standards Guidance will be updated to clarify that the decision data on LeO's website covers a twelve-month rolling period, and is updated every quarter. While it will be useful for the BSB's website to link to LeO's decision data, not all clients will view the BSB's website. We note that LeO's decision data include complaints received alongside complaints upheld, but the useful figure for clients will be complaints upheld and we believe there is a public interest in giving clients access to this information. The requirement should also incentivise barristers to ensure that complaints, insofar as possible, are effectively handled and resolved at the first-tier stage. We consider it unlikely that the absence of a similar obligation on solicitors will place barristers at a competitive disadvantage. We will consider bringing our regulatory information and LeO's decision data together when our respective information systems permit this.**

***QUESTION 4: do you agree that the proposed additional rules for those undertaking Public Access work provide the necessary regulatory framework to deliver, in accordance with the BSB's proposals, increased price and service transparency? If not, please state why not.***

50. The consultation proposed that those undertaking Public Access work would need to display a link to the [Public Access Guidance for Lay Clients](#) on the BSB's website. If they provide the Public Access services listed in the BSB's price transparency policy statement (published in draft alongside the consultation), their websites would also need to state the following in relation to those services:
- Their pricing model(s), such as fixed fee or hourly rate;
  - Their indicative fees and the circumstances in which they may vary. For example, a fixed fee and the circumstances in which additional fees may be charged, or an hourly rate by seniority of barrister;
  - Whether their fees include VAT (where applicable); and

- Likely additional costs.
51. The consultation proposed that this would need to be done:
- By a sole practitioner, in relation to them as an individual barrister;
  - By a BSB entity, in relation to the entity; and
  - By a chambers, either in relation to (1) individual barristers, or (2) barristers in chambers in the form of ranges or average fees.
52. Websites would also need to state a description of the legal services (including a concise statement of the key stages), and an indicative timescale for the key stages. In addition, the required information would need to be readily available in hard copy format, and provided to consumers on request.

### Responses (BSB Responses in Bold)

53. In relation to the drafting *“each website of self-employed barristers undertaking public access work and/or their chambers”* in the proposed Rules C164-168, the Commercial Bar Association stated that if, where barristers are in chambers, it is sufficient for chambers to set out information collectively, it would be better to use the conjunction *“or”* rather than *“and/or”*. They also stated that the drafting *“may be required by the Bar Standards Board’s price transparency policy statement”* in the proposed Rules C166 and C168 should be amended to *“are required by the Bar Standards Board’s price transparency policy statement”* (in accordance with the BSB’s policy intention).
54. **Where barristers are in chambers, it is sufficient for chambers to set out information collectively. However, the conjunction *“and/or”* will still be used instead of *“or”*, as members of chambers may operate separate websites (to facilitate separate Public Access practices, for example) which will also need to comply with the transparency rules. The drafting *“may be required by the Bar Standards Board’s price transparency policy statement”* in the proposed Rules C166 and C168 will be amended to *“are required by the Bar Standards Board’s price transparency policy statement”* (in accordance with the BSB’s policy intention).**
55. The Bar Council agreed with the proposed rule that those undertaking Public Access work must display a link to the Public Access Guidance for Lay Clients on the BSB’s website.
56. With regard to the proposed requirement to state pricing model(s) (such as fixed fee or hourly rate) in relation to certain Public Access services, the Bar Council reiterated its response to Question 1. In their view, there is potential for this to create confusion for less experienced consumers, and heighten expectations that a particular pricing model will be available when it may not be. In relation to the proposed requirement to state indicative fees and the circumstances in which they may vary, the Bar Council stated the extent to which meaningful fee information can be provided in advance is highly dependent on the type of case and the level of standardisation (while noting that the BSB has targeted Public Access work which is commonly purchased by less experienced or vulnerable consumers). In their view, there is considerable variation in the level of standardisation in the Public Access services earmarked for price transparency. The Legal Practice Management Association’s view was that the upfront publication of prices can work for more commoditised services, but there will be exceptions and chambers’ websites will need to highlight those exceptions and various provisos.

57. **With regard to the proposed requirement to state pricing model(s) in relation to certain Public Access services, it will be acceptable to state that pricing models are only available in certain circumstances. The BSB's Transparency Standards Guidance will be updated to clarify this. Whether the level of standardisation in the Public Access services earmarked for price transparency is conducive to the upfront publication of prices is covered in our discussion of Question 5. We agree with the Legal Practice Management Association that the publication of prices can work for more commoditised services. In our examples of required transparency for Public Access services (Annexes C – K of the BSB's Transparency Standards Guidance), we have set out any exceptions to the requirements and suggested provisos which should be explained to clients.**
58. With regard to the proposed requirement to state likely additional costs in relation to certain Public Access services, the Bar Council stated that as barristers (unlike solicitors) do not incur disbursements on behalf of their clients, it is difficult to see what the requirement is intended to achieve. They noted that it may be possible to publish generalised information about likely additional costs; for example, court fees. However, they were concerned about the administrative burden for chambers in reviewing and updating website content. They also noted that some information about likely additional costs will already be available on other websites.
59. **The purpose of this requirement is to help consumers to budget, and understand what indicative fees do and do not cover (which will be even more important in the absence of a solicitor). While there will be some administrative burden for chambers in reviewing and updating website content, there will already be a requirement to review website content at least annually to ensure it is accurate and compliant with the transparency rules. Some information about likely additional costs will already be available on other websites, but not in all cases and in any event, it will be more useful for consumers to have this information available in one place. That said, there is no reason why chambers' websites should not be able to link to external websites (for example, the court and tribunal fees section of gov.uk) in complying with this requirement. The BSB's Transparency Standards Guidance will be updated to make this clear.**
60. The Bar Council reiterated that the requirement to state a description of the legal services (including a concise statement of the key stages) could be made clearer. The Legal Practice Management Association stated that they consider this requirement to be a positive move.
61. **The BSB's Transparency Standards Guidance will be updated to clarify the requirement.**
62. With regard to the proposed requirement to state an indicative timescale for the key stages, the Bar Council reiterated their view that information on timescales should be unified and incorporated into the BSB's Public Access Guidance for Lay Clients (the link to which, it is proposed, will be on chambers' websites). They conveyed concerns that it would be difficult to publish indicative timescales in advance as barristers (unlike solicitors) typically provide unbundled legal services, and there are a number of unpredictable factors such as the complexity of the case and the expertise and experience of the particular barrister (this was also the concern of the Legal Practice Management Association). However, the Bar Council agreed that it may be possible to publish broad ranges for more commoditised work. The Legal Services Consumer Panel stated that *"we know from our annual tracker survey research that almost half of consumers using barristers (43%) cannot find service level information...therefore, we are pleased with the proposals from the BSB in this regard"*.

63. **As above, information on timescales will be unified and incorporated into the BSB's Public Access Guidance for Lay Clients. We agree that it is possible to publish ranges for more commoditised work, and our examples of required transparency for more commoditised Public Access services (Annexes C – K of the BSB's Transparency Standards Guidance) set out how this can be done.**
64. The Legal Services Consumer Panel also noted the proposed exemption for those who may not currently be providing the services subject to additional transparency requirements, but who may be asked to accept instructions to do so at short notice. The proposed rule states that in these circumstances, those undertaking Public Access work will not need to comply with the additional transparency requirements before accepting instructions. The Legal Services Consumer Panel stated that *"this is clearly convenient for the provider who accepts the business with no responsibility to be transparent, but does not necessarily meet the needs of a client who may be seeking to use the provider's services under conditions of stress"*.
65. **This rule clarifies that if barristers are not currently providing the Public Access services subject to additional transparency requirements, but clients wish to instruct them to do so at short notice, the transparency requirements will not be a barrier to barristers accepting instructions. The rule states that barristers will need to comply with the transparency requirements as soon as reasonably practicable after accepting instructions. It also ensures that, for those returning from maternity or similar leave, the transparency requirements will not be a barrier to restarting their practice.**

***QUESTION 5: do you have any comments on the BSB's price transparency policy statement? (This can be found at Annex B of the BSB's Transparency Standards Guidance, published in draft alongside this consultation). We are particularly interested in your views on:***

***(1) The criteria we have used to determine which Public Access services should be subject to price transparency requirements; and***

***(2) The Public Access services we have initially determined should be subject to price transparency requirements, and the specific circumstances in which they apply. For each Public Access service, the specific circumstances in which price transparency requirements apply can be found at Annexes C – K of the BSB's Transparency Standards Guidance.***

66. The BSB's draft price transparency policy statement stated the following factors would indicate that a Public Access service should be subject to price transparency requirements:
- The service is most commonly purchased by less experienced and less expert consumers;
  - The service is offered in a practice area with more vulnerable clients;
  - Consumers would likely benefit from an information remedy in the form of price transparency; and
  - Transparency would promote competition and allow consumers to compare barristers' prices for the service with those of solicitors and other legal providers. The BSB's policy objective is to align with the approaches of the SRA and the other legal services regulators where appropriate.

67. However, the draft statement said that a Public Access service would not need to meet all of these criteria in order to be subject to price transparency requirements. We considered no one criterion to be more important than another and so, in applying the criteria, we took a holistic approach with the policy objective of having the greatest impact on the legal services market.
68. By applying the criteria above in this way, we initially determined that the following Public Access services should be subject to price transparency requirements. For each of these Public Access services, (1) the specific circumstances in which it was proposed price transparency requirements would apply and (2) an example of the required transparency could be found at Annexes C – K of the BSB's Transparency Standards Guidance (published in draft alongside the consultation):
- Child arrangements arising out of divorce or separation (Annex C)
  - Employment Tribunal cases (advice and representation for employers and employees) (Annex D)
  - Financial disputes arising out of divorce (Annex E)
  - Immigration appeals (First-tier Tribunal) (Annex F)
  - Inheritance Act advices (Annex G)
  - Licensing applications in relation to business premises (Annex H)
  - Personal injury claims (Annex I)
  - Summary only motoring offences (advice and representation for defendants) (Annex J)
  - Winding-up petitions (Annex K)

#### **Responses (BSB Responses in Bold)**

69. With regard to the criteria, the Bar Council agreed that the BSB should focus on services which are commonly purchased by less experienced, less expert, or more vulnerable consumers. They stated these types of client would most greatly benefit from the price transparency requirements, and that this approach aligns with the intentions of the CMA's market study (which was echoed by the Legal Practice Management Association). The Legal Services Consumer Panel's view was all Public Access services should be subject to price transparency requirements and, therefore, that there should not be criteria applied to determine which services should be subject. The Family Law Bar Association disagreed that services commonly purchased by less experienced, less expert and more vulnerable consumers points towards a greater need for price transparency, as in their view these types of client may be most susceptible to confusion arising from price transparency requirements. The Chancery Bar Association saw merit in all of the criteria, but disagreed with the proposal that a Public Access service would not need to meet all of the criteria in order to be subject to price transparency requirements. They stated that *"otherwise the price transparency requirements could be extended effectively without limit because it is felt, for example, that consumers would benefit or that competition would increase"*.
70. **We agree that price transparency requirements should be targeted at Public Access services which are commonly purchased by less experienced, less expert and more vulnerable consumers. We have also published comprehensive Transparency Standards Guidance which focuses on how best to provide price, service and redress information to consumers. We will maintain our position that a Public Access service would not need to meet all of the criteria in order to be subject to price transparency requirements, as this will support the BSB's overriding policy objective of having the greatest impact on the legal services market. However, if following the review of transparency standards we consider**

**that there may be a case for applying price transparency requirements to more Public Access services, we will proceed carefully and consult the relevant professional and consumer bodies.**

71. In relation to child arrangements arising out of divorce or separation (Annex C), the Bar Council and Family Law Bar Association stated that cases concerning child arrangements arising out of divorce or separation are not standardised, and can vary dramatically depending on the circumstances of the particular case.
72. **We agree that cases concerning child arrangements arising out of divorce or separation are not conducive to providing indicative fees in the abstract. We will therefore not pursue price transparency requirements for cases concerning child arrangements arising out of divorce or separation.**
73. With regard to Employment Tribunal cases (Annex D), the Employment Law Bar Association suggested clarifying that the additional price transparency rules only apply in relation to actions for wrongful dismissal, and ordinary unfair dismissal claims. The latter are claims where compensation is subject to a statutory cap, as distinct from automatic unfair dismissal claims (for example, whistleblowing claims) where compensation is not subject to a statutory cap and, in their view, the complexities involved mean it is more difficult to provide accurate indicative fees. The Employment Law Bar Association also suggested clarifying that the additional price transparency rules only apply where there are no other claims being brought in addition i.e. only ordinary unfair dismissal and/or wrongful dismissal.
74. **We agree with the Employment Law Bar Association's suggestions and will make the necessary amendments to Annex D.**
75. In relation to financial disputes arising out of divorce (Annex E), the Bar Council, Family Law Bar Association and Legal Practice Management Association noted that the SRA has not pursued price transparency requirements for this service. Noting the BSB's policy objective to align its approach with that of other regulators to maximise competition within the market and minimise regulatory arbitrage, the Bar Council stated additional price transparency requirements should not apply to financial disputes arising out of divorce. In their view, "*as a matter of principle... barristers should [not] be subject to higher transparency requirements in areas of law where they compete with other legal service providers*" (which was echoed by the Family Law Bar Association).
76. However, the Bar Council also stated that these disputes range depending on how straightforward the division of the assets is likely to be in practice. While the issues can be straightforward (for example, whether to divide the assets in a modest former home 50%/50% or 45%/55%), they can also involve issues such as offshore trusts, third party interveners, company valuations, expert evidence and/or interim applications for freezing injunctions.
77. **While the SRA not applying price transparency requirements to this service may inhibit comparison and competition to some extent, we propose to continue to do so. This is because doing so will provide less experienced, less expert and more vulnerable clients with beneficial information remedies. It will also support the BSB's overriding policy objective (in our price transparency policy statement) of having the greatest impact on the legal services market.**
78. **However, in relation to financial disputes arising out of divorce, we propose to limit price transparency requirements to cases where the parties have joint**

**assets worth less than £300,000 (Annex E already states that “fees may be towards the higher end of the range if you need a more experienced barrister and/or you have assets over £300,000”). This is based on practitioner feedback that if joint assets are above this level, it will be more difficult to provide accurate indicative fees.**

79. With regard to immigration appeals (Annex F), the Bar Council stated that immigration cases and asylum cases in particular are not commoditised.
80. **Price transparency requirements are limited to (1) preparing applications in relation to appeals against Home Office visa or immigration decisions (excluding asylum appeals), and (2) providing advice and representation at the First-tier Tribunal (Immigration and Asylum Chamber) in relation to appeals against Home Office visa or immigration decisions (excluding asylum appeals).**
81. In relation to Inheritance Act advices (Annex G), the Bar Council and Family Law Bar Association also noted the SRA has not pursued price transparency requirements for this service and therefore stated that on principle, additional price transparency requirements should not apply. They also stated that Inheritance Act work can vary depending on the number of beneficiaries, the number of parties to the dispute and the value of the estate. The Family Law Bar Association in particular was of the view that Inheritance Act work (including proceedings) is bespoke by nature.
82. **The proposal in relation to Inheritance Act work is to only apply price transparency requirements to Inheritance Act advices, where clients receive advice on making and defending claims under the Act. While the SRA has not applied price transparency requirements to this service, we will continue to do so as consumers would still benefit from an information remedy. However, we propose to limit the application of price transparency requirements to cases where the deceased person’s estate is worth less than £300,000. This is again based on practitioner feedback that if the estate is worth more than this, it will be more difficult to provide accurate indicative fees.**
83. No respondents to the consultation made representations with regard to licensing applications for business premises (Annex H).
84. In relation to personal injury claims (Annex I), the Bar Council and Legal Practice Management Association also noted that the SRA has not pursued price transparency requirements for this service. The Bar Council therefore stated that on principle, additional price transparency requirements should not apply to personal injury claims.
85. **We will continue to apply price transparency requirements to personal injury claims as, while the SRA has not done so, consumers would still benefit from an information remedy in the form of price transparency. Annex I states that additional price transparency rules will only apply in relation to claims which are allocated to the fast track (generally, claims which are not worth more than £25,000).**
86. No respondents to the consultation made representations with regard to summary only motoring offences (Annex J).
87. In relation to winding-up petitions (Annex K), the Bar Council stated they are usually standardised enough to enable the publication of a fixed fee which will apply to ordinary cases (and that this reflects market practice).



**QUESTION 6: do you have any comments on the examples of required transparency for Public Access services? (These can be found at Annexes C – K of the BSB’s Transparency Standards Guidance, published in draft alongside this consultation). We are particularly interested in how the examples can better support those undertaking Public Access work in complying with the additional rules.**

**Responses (BSB Responses in Bold)**

88. The Bar Council stated the examples usefully bring to life the possible ways that barristers can comply with the transparency rules, which was echoed by the Legal Practice Management Association.
89. With regard to Annex G (although their comments are applicable to all of the examples), the Chancery Bar Association noted that it suggests that fixed fees will always be charged. They stated a fixed fee may not be appropriate in all cases, but that a Public Access client may expect that the work in their case to be charged on this basis (which could lead to unrealistic expectations). They therefore suggested amending “we charge fixed fees” to “we may charge fixed fees”, and “your fixed fees may be towards the higher end of the range if...” to “if we charge fixed fees, these may be towards the higher end of the range if...”.
90. **We agree with the Chancery Bar Association’s suggestion and will make the necessary amendments to the examples of required transparency for Public Access services.**

**QUESTION 7: do you agree with the analysis in the EIA, and our view that although, in respect of different Public Access services, Public Access barristers who are BME, male/female, disabled and under 35 may be more likely to be required to comply with additional transparency requirements, this is justified given the expected benefit to Public Access clients, access to justice and competition? Please explain your answer.**

**Responses (BSB Responses in Bold)**

91. The Bar Council agreed that the impact of the proposals is justified given the expected benefit to Public Access clients, access to justice and competition. They stated that “*the issue of fees is one of the most potent deterrents to those who need representation seeking to obtain it. Of such groups of potential clients those with protected characteristics or who are vulnerable can be assumed to represent a significant proportion*”. They also stated that the proposals “*seem on their face to be relatively straightforward and not unduly onerous. Much of the work required will be done by chambers’ administration in any event and the availability of support in the form of guidance for those individuals who also have to take personal steps to comply is noted*”.
92. However, the Family Law Bar Association and the individual barrister’s response stated that the proposals may have a disproportionate impact on female barristers (who tend to have greater child care responsibilities) and sole practitioners. The latter undertake a higher proportion of Public Access work and are therefore more likely to be required to comply with additional transparency rules, but will not have the resources of chambers administration and support available to them.
93. Finally, the individual barrister’s response questioned whether it was appropriate to assess the likely impact of the proposals based on whether a barrister is under or over 35. They stated that “*many barristers are now coming to the Bar as a second career, at a much later age, and are likely, even though over 35, to be in the first 10-12 years*

*of practice. Although they may have some financial cushion to fall back on, they are more likely to be encumbered by financial, family and childcare commitments”.*

94. **We will review whether there has been any adverse impact for different groups as part of the evaluation of the requirements from 2020, and assess the impact of the proposals based on a wider range of ages (not simply whether a barrister is under or over 35). We have also produced comprehensive Transparency Standards Guidance to support barristers in complying with the requirements, which includes examples of required transparency for Public Access services. This will particularly help those who do not have the resources of chambers administration and support available to them.**

### **Next Steps**

95. If approved by the LSB following our application, the transparency rules will come into force in May 2019. To ensure compliance with the transparency rules, the BSB will undertake spot-checking from January 2020. This will focus on barristers who are at higher risk of non-compliance with the transparency rules, supplemented with a random sample of self-employed barristers and BSB entities. Higher risk will be established, among other things, with reference to a barrister’s history of regulatory compliance. Spot-checking may also take place:
- In higher risk practice areas such as immigration and family law, which are likely to have more vulnerable consumers;
  - In practice areas with less bespoke services, where price transparency is particularly useful for consumers;
  - In relation to the Public Access services which are subject to additional price transparency requirements, as set out in the BSB’s price transparency policy statement (Annex B); and
  - In relation to the requirement that information must be readily available in alternative format, and provided on request e.g. if barristers do not operate a website, or a client or prospective client does not have Internet access.
96. From 2020, the BSB will also evaluate the effectiveness of all mandatory rules on price, service and redress transparency for self-employed barristers, chambers and BSB entities.
97. As part of this evaluation programme, we will review the Public Access services which are subject to additional transparency requirements to ensure that the criteria in the BSB’s price transparency policy statement still apply. In doing so, we will be sensitive to any developments in the market and changes made to the requirements of the other legal services regulators. If we determine that there should be any changes in the Public Access services which are subject to additional transparency requirements, we will publish a revised version of the policy statement, and revised examples of the required transparency. We will also review whether applying additional transparency requirements to certain Public Access services has encouraged improved price and service transparency, where appropriate, for other Public Access services.
98. The CMA’s report also stated that it has *“made a commitment to assess at the end of three years [from 2020] whether there is evidence that the actions of regulators have or will address the issues we have found in this sector”*.<sup>9</sup>

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<sup>9</sup> <https://assets.publishing.service.gov.uk/media/5887374d40f0b6593700001a/legal-services-market-study-final-report.pdf>, page 283