

## BSB's Price Transparency Policy Statement

### Introduction

1. The BSB has introduced mandatory rules on price, service and redress transparency for all self-employed barristers, chambers and BSB entities (Rules C103 and C159 in the BSB Handbook). In relation to price for example, websites must state in a sufficiently accessible and prominent place that professional, licensed access and/or lay clients (as appropriate) may contact the barrister, chambers or BSB entity to obtain a quotation for legal services, and provide their contact details. 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, quotations must be provided. This must be done within a reasonable time period, and in clear and readily understandable terms.
2. This policy statement concerns the further requirement for certain self-employed barristers and/or their chambers and BSB entities to publish information about the prices consumers are likely to pay for legal services (where those services are provided on a Public Access basis). The statement sets out the application and scope of the requirements, and the rationale for them. Further details of the requirements themselves can be found in the BSB Handbook (Rules C164 – C169) and the BSB's Transparency Standards Guidance.
3. The following Public Access services will be subject to price transparency requirements from July 2019:
  - Employment Tribunal cases (advice and representation for employers and employees)
  - Financial disputes arising out of divorce

- Immigration appeals (First-tier Tribunal)
  - Inheritance Act advices
  - Licensing applications in relation to business premises
  - Personal injury claims
  - Summary only motoring offences (advice and representation for defendants)
  - Winding-up petitions
4. For each Public Access service listed, the specific circumstances in which price transparency requirements apply can be found at paragraph 15. An example of the required price and service transparency can also be found in the BSB's Transparency Standards Guidance (Annexes D – K).

#### **Application of price transparency requirements**

5. In its report, the CMA stated that improvements in transparency will have greatest impact where they are required of providers which are engaged directly by consumers or small businesses in a client capacity. As a result, it prioritised Public Access barristers as having the greatest potential impact on transparency rather than the referral Bar. This is because the main focus is on difficulties that consumers and small businesses face in “shopping around”, such as a lack of information about price.
6. The CMA did not make specific recommendations in relation to barristers doing referral work. It did note that the solicitor's role as an intermediary may be strengthened if there are general improvements in the level of transparency in the sector, and indeed the BSB has introduced certain mandatory rules on price, service and redress transparency for all self-employed barristers, chambers and BSB entities.

7. In applying a requirement to publish information about the prices consumers are likely to pay for legal services, we have prioritised the less bespoke services provided by Public Access barristers. It would not be proportionate to apply a requirement to publish information about prices to all Public Access barristers, including where they provide bespoke services via Public Access. However, we hope that applying transparency requirements to certain Public Access services will encourage improved price and service transparency, where appropriate, for other Public Access services.

### **Scope of price transparency requirements**

8. The BSB Handbook states that self-employed barristers undertaking Public Access work and/or their chambers, and BSB entities supplying legal services directly to the public, are required by this policy statement to provide price information in relation to certain Public Access services.
9. In relation to those Public Access services, each website of self-employed barristers undertaking public access work and/or their chambers, and BSB entities supplying legal services directly to the public, must in a sufficiently accessible and prominent place:
  - State their pricing model(s) e.g. fixed fee, hourly rate, etc.;
  - State their indicative fees and the circumstances in which they may vary e.g. a fixed fee and the circumstances in which additional fees may be charged, or an hourly rate by seniority of barrister;
  - State whether their fees include VAT (where applicable);

- State likely additional costs, what they cover and either the cost or, if this can only be estimated, the typical range of costs; and
  - Do so in such form as the BSB determines. Sole practitioners and BSB entities are single economic units. A sole practitioner must therefore provide price information in relation to them as an individual barrister, and a BSB entity must provide price information in relation to the entity. However, chambers are constituted of individual self-employed barristers and are not single economic units. They may therefore provide price information either in relation to individual barristers, or barristers in chambers in the form of ranges or average fees.
10. The BSB recognises that self-employed barristers and BSB entities may not currently be providing the Public Access services listed at paragraph 15 of this policy statement, but may be asked to accept instructions to do so at short notice. In this case, self-employed barristers and BSB entities will not need to comply with the above requirements before accepting instructions. However, they must do so as soon as reasonably practicable after accepting instructions. Self-employed barristers, chambers and BSB entities must also comply with the above requirements by ensuring the required information is readily available in alternative format. This must be provided on request e.g. if they do not operate a website, or a client or prospective client does not have Internet access.

### **Criteria for price transparency requirements**

11. In order to determine which (less bespoke) Public Access services should be subject to these price transparency requirements, the BSB has developed a set of criteria. 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.

12. In relation to the final criterion (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 Solicitors Regulation Authority (SRA) and the other legal services regulators where appropriate. This will allow price transparency requirements to have the greatest impact on the legal services market, increasing consumer understanding and competition and minimising regulatory arbitrage. If price transparency in relation to a service is required by the SRA or another legal services regulator, this would therefore be one reason for the BSB to require the same.

13. However, the BSB is a regulator of specialist legal services. Its particular focus is on the specialised regulation of advocacy and related litigation services and expert legal advice. The BSB's price transparency requirements therefore need to be consistent with the types of legal services provided by its regulated community in practice. If price transparency in relation to a service is required by the SRA or another legal services regulator, the BSB would not require the same if the service is not in practice provided by barristers e.g. conveyancing.

14. More broadly, a Public Access service would not need to meet all of the criteria at paragraph 11 in order to be subject to price transparency requirements. If for example a service is not offered in a practice area with more vulnerable clients, but

price transparency would nonetheless benefit consumers, the service could still be made subject to the requirements. No one criterion is considered more important than another and so in applying the criteria, the BSB has taken a holistic approach with the policy objective of having the greatest impact on the legal services market, increasing consumer understanding and competition.

### **Public Access services subject to price transparency requirements**

15. By applying the criteria at paragraph 11 in this way, the BSB has determined that the following Public Access services should be subject to price transparency requirements:

#### Employment Tribunal cases (advice and representation for employers and employees)

- Providing advice and representation to employees in relation to their bringing of a claim before the Employment Tribunal against their employer; and/or
- Providing advice and representation to employers in relation to defending claims before the Employment Tribunal brought by an employee.

Note that additional price transparency rules only apply in relation to actions for ordinary unfair dismissal and/or wrongful dismissal. Additional price transparency rules do not apply where there are other claims brought in addition to ordinary unfair dismissal and/or wrongful dismissal.

#### Financial disputes arising out of divorce

By “financial disputes arising out of divorce”, we mean where the parties cannot agree on financial matters during the process of obtaining, or following, a divorce. For example:

- How assets should be divided;

- Whether to sell the matrimonial home or other assets;
- Maintenance payments; and
- Pension sharing.

Note that additional price transparency rules only apply where the parties have joint assets which are worth less than £300,000.

#### Immigration appeals (First-tier Tribunal)

- Preparing applications in relation to appeals against Home Office visa or immigration decisions; and/or
- Providing advice and representation at the First-tier Tribunal (Immigration and Asylum Chamber) in relation to appeals against Home Office visa or immigration decisions.

Note that additional price transparency rules do not apply to asylum appeals.

#### Inheritance Act advices

- Providing advice to clients in relation to potential claims under the Inheritance Act 1975; and/or
- Providing advice to clients in relation to defending claims under the Inheritance Act 1975.

Note that additional price transparency rules only apply where the deceased person's estate is worth less than £300,000.

#### Licensing applications in relation to business premises

Note that additional price transparency rules only apply in relation to a) local authority hearings and appeals to the Magistrates' Court, and b) licensing applications for:

- The sale or supply of alcohol;
- Change of opening hours; and
- Entertainment purposes.

#### Personal injury claims

- Providing advice and representation to clients in relation to personal injury claims (claims for physical injuries, diseases or illnesses, or psychological injuries or illnesses).

Note that additional price transparency rules only apply in relation to claims which are allocated to the fast track (generally, claims which are not worth more than £25,000).

#### Summary only motoring offences (advice and representation for defendants)

Note that additional price transparency rules only apply in relation to summary only motoring offences under Part I of the Road Traffic Act 1988 and/or s89 of the Road Traffic Regulation Act 1984. For example:

- Driving while disqualified;
- Driving without insurance;
- Careless driving;
- Failing to stop or report; and
- Speeding.

#### Winding-up petitions



- Providing advice and representation to clients in relation to winding-up companies which owe them monies; and/or
- Providing advice and representation to companies in relation to defending winding-up petitions issued against them.

16. These Public Access services will be subject to price transparency requirements from July 2019. For each Public Access service listed, an example of the required price and service transparency can be found in the BSB's Transparency Standards Guidance (Annexes D – K).

### **Review of price transparency requirements**

17. From 2020, the BSB will evaluate the effectiveness of all mandatory rules on price, service and redress transparency for self-employed barristers, chambers and BSB entities.
18. As part of this evaluation programme, we will review the Public Access services which are subject to additional price transparency requirements to ensure that the criteria at paragraph 11 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 price transparency requirements, we will publish a revised version of this policy statement, and revised examples of the required price and service 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.

**Bar Standards Board**

**July 2019**