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Competition and Markets Authority
By email
(LegalServicesReview@cma.gov.uk)

7th October 2020

Response to Competition and Markets Authority (CMA) call for input

Thank you for the call for input to support your assessment of the implementation and impact of the recommendations of CMA's Market Study of 2016. Please find the Bar Standards Board (BSB) 's responses at Annex 1. The BSB is committed to promoting transparency to facilitate competition in legal services and we have implemented a number of changes to our regulatory requirements in response to the CMA Market Study. We also believe that public legal education will have an important role to play in achieving these objectives. Our response to the call for evidence illustrates the steps we have taken to date (and continue to take). We are also currently scoping some new research to better understand what matters to consumers when instructing a barrister – this will inform our response to these issues.

It is important to note that the BSB's new regulatory arrangements in response to the CMA's Market Study have only relatively recently come into full force (the Bar was given a deadline of January 2020 for compliance.) As a result, it is too early to see the full impact of these reforms on consumers. The Covid-19 health emergency, in addition, has resulted in significant disruption to the work of the Bar and a consequent reduction in clients seeking barristers' services. We have provided you with the available evidence to date, although our assessment of the impact on both consumers and providers will continue well into next year.

As you will appreciate, this is a period of significant uncertainty for both the legal profession and its regulators and this is likely to affect our priorities for the short to medium term – maintaining the supply of barristers by supporting pupillages in this very difficult period is now a heightened priority, for example, and there are reports from surveys undertaken by the profession that significant numbers of barristers may be considering leaving the profession. If this were to happen, there would be an obvious impact on competition at the Bar. We therefore need to think carefully about the necessity and timing of any new regulatory requirements. We feel sure that the CMA will share those concerns and take them into consideration in forming any new recommendations.

My team and I have been grateful for the ongoing discussions that we have had and look forward to continuing them. Please do not hesitate to get in touch with Rupika Madhura (Head of Policy and Research) on RMadhura@barstandardsboard.org.uk should you require any further information.

Yours sincerely,

Ewen MacLeod
(Director of Strategy and Policy)
Bar Standards Board

Annex 1 –response to call for input

Questions regarding information remedies and supply-side developments

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

The BSB's original plan had been to evaluate the impact of the new rules on barristers¹ by Q3 2020. The evaluation work was planned to predominantly rely on three sources of data:

- Supervision spot check exercise looking at compliance with transparency rules (complete);
- Collecting data from websites in 2017, 2019 and 2020 to review levels of price transparency (complete);
- Regulatory Return² data looking at impact on chambers (and their clients) of implementing new rules (ongoing).

However, due to the impact of the Covid 19 pandemic on the profession, the BSB made the decision to postpone the Regulatory Return, which impacted evaluation plans for the profession. The Regulatory Return was launched in September 2020, with organisations given until January 2020 to complete the exercise. As a result, the BSB does not have full evidence of the challenges providers have faced in complying with the new rules, as this was a key question for the evaluation itself, and the evidence from the Regulatory Return was a key source of data for answering these questions. This information will be available in 2021, once our evaluation work is complete.

However, prior to introducing the transparency rules, we conducted a pilot exercise in 2017 with a number of chambers, entities and sole practitioners. We conducted an evaluation of the pilot.³ This included collecting feedback from eight pilot participants through a qualitative method of semi-structured telephone interviews. This provides

¹ The BSB regulates 16,982 practising barristers – 6,285 of these are registered to undertake Public Access work. The majority of barristers are self-employed practitioners, operating out of 409 chambers or as sole practitioners. The BSB also regulates 130 entities. Statistics are correct as of 1 December 2019.

² The Regulatory Return is a way for BSB to assess risk across the Bar and levels of compliance with our rules. It enables us to target our resources at those chambers, entities, individuals or areas that would benefit from supervisory attention. In the Return, we ask a range of questions including views on the risks that the profession faces, information about the processes and controls in key areas of practice, and some questions on specific topics that are currently a priority in our strategic plan, such as dealing with allegations of harassment. Please see our website for more information: [here](#).

³ This is published [here](#).

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us with some evidence (although limited) of the impact compliance with the rules may have on chambers.

The evaluation of the pilot found that implementation of the minimum disclosure requirements was perceived as relatively easy by the participants. The key reasons for that were:

- Fee scales and service information were available to them internally prior to the pilot (but not published on websites);
- The high level of expertise in specific areas of law and the small size of the participants' organisations made implementation easy, but some participants speculated that it would not be as easy for larger chambers offering a wider range of services. For some participants, price and service transparency were already part of their marketing strategy, especially with Public Access work.

A few participants expressed some initial concerns, such as:

- The risk of a 'race to the bottom' i.e. with price transparency the market may end up being solely driven by price information to the detriment of the quality of the service;
- The risk of 'putting off' clients with the display of prices that may look high at first glance;
- The risk that professional clients (e.g. solicitors) perceive price transparency for Public Access work as a competitive threat from barristers.

However, according to the pilot participants, none of these concerns materialised during the pilot.

Q2. Are consumers engaging with the new transparency measures including the availability of price information, e.g. by accessing the pricing information on the provider websites and/or using this information in their interactions with providers? Does this differ between different areas of law?

As the profession was not required to comply with the rules until January 2020, we initially felt that it would be prudent to give at least a year for the impact to be felt by consumers before we evaluate. Given the spot check exercise suggested that the majority of the profession is not yet fully compliant with the new rules, this would also give more time for the profession to adjust to the new requirements, increasing the chance of an observable impact on consumers. However, the Covid-19 situation further complicated the timescales for evaluating the impact on consumers. Given that court work has been heavily impacted by the lockdown in March 2020, it was judged to be highly likely that there will have been less opportunity for an observable impact on consumers, as for a considerable portion of the period where the rules were fully in force, barristers would not have been unable to undertake the majority of their usual court work.

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Given these inherent limitations, and in order to ensure the best possible value for our evaluation work with consumers, the BSB decided that we should not start our consumer-side evaluation of the transparency rules until January 2020 or later. In the meantime, we are scoping research to gain insights into consumers' expectations when instructing barristers.

However, we have some indicative evidence from the pilot evaluation discussed in the response to question one above. This consists of evidence both from provider interviews, who were asked about any observed impact on clients of implementing the transparency requirements, as well as an online survey of clients. Chambers, entities and sole practitioners taking part in the pilot were asked to pass on an online survey link to the solicitors and (where possible) lay clients instructing them during the pilot phase. The aim was to capture clients' feedback on the implementation of the transparency requirements on the providers' websites⁴.

From the interviews with providers, the pilot evaluation found that:

- Participants did not receive any complaints regarding the new information displayed from clients over the duration of the pilot;
- Participants speculated that increased transparency may help to address the public's perception that barristers are expensive and difficult to access. It enables consumers to 'shop around' and compare providers;
- New price information might provide more certainty and clarity to clients on what they are ultimately going to be charged;
- Participants speculated that increased transparency is likely to be of more benefit to lay clients, especially Public Access clients.

When it came to findings from the online survey of the pilot participants' clients, this received 35 responses, which indicated that:

- Respondents were satisfied with the level of information provided by the pilot participants;
- Lay client respondents needed more price and service information than solicitor respondents;
- Lay client respondents were more inclined to 'shop around' and review website information than solicitor respondents;
- Price information provided by the pilot participants was easy to find, useful and understandable, even though further queries were still needed;
- Service information provided by the pilot participants was easy to find, useful and understandable, and further queries on service were less frequent than for price information.

⁴ The transparency rules require information to be published on barristers' websites, whilst also ensuring the required information is readily available in an alternative format. This 'factsheet' must be provided on request (for example, if the barrister does not operate a website, or a prospective client does not have internet access)

**Q3. How effective have transparency measures been in driving competition?
Does this differ across areas of law?**

This question will be a key element of our evaluation of the impact on consumers of the new transparency rules. However, as discussed above, this evaluation will not take place until 2021. As such, the BSB currently does not have any evidence to answer this question.

However, we would expect impacts to vary across different areas of law. The BSB has introduced additional transparency requirements for barristers offering Public Access services in particular areas and consequently these are the areas (listed below) where we would expect our rules to have most impact in driving competition:

- 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); and
- Winding-up petitions.

Our evaluation of the impact on consumers will include a number of indicators that will provide evidence of the effectiveness of the reforms at driving competition, including:

- Proportion of consumers that shopped around when choosing legal services
- Proportion of consumers that found it difficult to find information on price
- Proportion of consumers that found it difficult to find reviews/quality information
- How easy consumers found it to compare prices between providers
- How easy consumers found it to identify information on services provided and timescales when searching for a provider.

Questions supplementing Q1-Q3

1) How satisfactory has progress on transparency been to date?

On price transparency, the BSB web sweep revealed a significant increase in the proportion of chambers providing price information following the introduction of the new rules.

For other elements of the transparency rules, the spot check exercise provided useful evidence on current levels of compliance with the full suite of the transparency rules, but the BSB does not have equivalent statistics for compliance from before the implementation of the rules. So although current levels of compliance are broadly

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encouraging, the BSB cannot provide information on the extent to which this represents an increase in transparency in relation to previous arrangements. The results of the spot checks we conducted to monitor compliance are discussed under supplementary question 4(a).

For price transparency, we have good evidence that – as intended by the introduction of our rules – there has been a ‘step change’ in the levels of price transparency at the Bar. The BSB has undertaken three web sweeps of chambers websites (in 2017, 2019 and 2020) – these looked at all existing chambers, and reviewed their websites where these were available. Of chambers with active websites in 2020, 21.1% of websites provided no information on fees, compared to 75% without any fee information in 2017. In addition, the number of chambers providing numerical information on fees in 2020 – such as indicative hourly rates – had increased by more than eight times since the 2019 web sweep, from 3.8% to 31.9%.

For the web sweep, fee information was assessed as follows:

- A. Included numerical information on fees (e.g. indicative hourly rates, indicative fixed fees, costs for different stages of a case, etc);
- B. Contained some detailed information on how fees were calculated (without containing numerical information (i.e. covered two or more of the following: pricing models such as fixed fees or hourly rates; reasons costs can vary e.g. barrister seniority, case complexity etc; information on additional costs such as charges, expenses, etc);
- C. Basic information on how fees were calculated (covered one of the above);
- D. No information on how cost/fees are calculated.

	2017	2019	2020
A	6%	3.8%	31.9%
B	8%	16.4%	23.7%
C	11%	22.6%	23.4%
D	75%	55.6%	21.1%

2) What are the challenges faced in setting and enforcing transparency rules or guidance?

Following a policy consultation in October 2017 on transparency standards, we published a proposed approach to improving transparency for consumers of barristers’ services in February 2018. This recognised that, because of the bespoke referral services most often provided by barristers, necessarily heavily caveated information may not be useful for consumers of these services and may cause confusion. We also recognised that, compared to other legal services providers who instruct barristers, lay clients are in a weaker position to both negotiate fees and

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understand the kind of service they should be able to expect from a barrister. Our view, therefore, was 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 not be useful and may 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. Our aim was that this would encourage improved price and service transparency, where appropriate, for other Public Access services.

However, we also agreed with the CMA’s view (in its 2016 legal services market study) that solicitors’ roles as intermediaries, instructing barristers on behalf of clients, would be strengthened if there was a general improvement in the level of transparency in the sector. We also considered it important that all barristers should be required to meet minimum transparency standards in relation to price and service. As part of our 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 demonstrated a commitment to transparency and facilitating “shopping around” without either risking consumer confusion or overburdening barristers and chambers.

The challenges faced in enforcing transparency rules are covered in our responses to the questions below.

a) What are the key learnings from the initial implementation and monitoring of transparency rules or guidance?

Initial monitoring of compliance with the new rules (via the spot check discussed below) has highlighted the areas where organisations are more likely to have struggled with compliance. The most common areas of non-compliance with the mandatory rules (which apply to all barristers) were: failing to provide information about the factors which might influence the timescales of a case; failing to link to the decision data page on the Legal Ombudsman’s website; and failing to link to the BSB’s Barristers’ Register. It was also common for barristers who provided a factsheet (because they did not have a website) to make reference to their complaints procedure without either including this information or attaching it to the factsheet. They were advised that the complaints information must be provided at the same time to members of the public, in order to be compliant.

The most common areas of non-compliance with the additional transparency rules (which apply to certain Public Access services) were failing to provide indicative fees and the circumstances in which they may vary; failing to provide information on likely additional costs such as court fees; and a description of the relevant Public Access services (including a concise statement of the key stages and an indicative timescale for the key stages).

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Following the completion of the spot check in 2020, the BSB felt that further work could be done to continue to raise awareness of the rules and to achieve a higher degree of compliance. Suggested actions included:

- Publishing the results of the spot check, highlighting to the profession the key issues (now complete);
- Carrying out a further spot check, including those who were assessed as non-compliant;
- Continuing to raise awareness through our Supervision activities e.g. through the Regulatory Return and other engagement with chambers.⁵ The Regulatory Return exercise includes targeted questions on the impact of the rules. When assessing the Return in 2021, we will check barristers, chambers and BSB entities' websites (or factsheet if they have no website) for compliance; and
- Continuing to raise awareness through our regular communications with the profession.

3) What more could frontline regulators do to drive increased transparency?

a) What further work is being planned?

We are planning to undertake two strands of evaluation activity, looking both at the impact on the profession, as well as the impact on consumers. That work will inform whether further action is necessary. This work has commenced and will be completed in 2021. We will be publishing the results of our evaluation.

b) Are there any plans to review or change the rules or guidance in place?

Our plans will be guided by the outcome of our evaluation work, which is due to be completed in 2021. Following that, 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, and consider whether further Public Access services should be subject to additional transparency requirements. In applying the criteria to determine this, we will:

- Having conducted desk-based market research, be sensitive to any developments in the market. For example, future changes to legal aid policy may mean that certain services become more (or less) likely to be provided to less experienced, less expert and more vulnerable consumers on a Public Access basis;
- Be sensitive to changes made to the requirements of the other legal services regulators, having regard to the need to promote price comparison, competition and have the greatest possible impact on the legal services market; and
- Seek consumer and practitioner feedback as to whether certain Public Access services (or at least the less bespoke elements of them) are proving to be, or would be, conducive to the provision of indicative fees in the abstract.

⁵ Every time we engage with a chambers for supervision purposes, we do a spot check to ensure compliance

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Applying the criteria above will allow us to assess whether consumers of certain Public Access services are benefiting, or would be likely to benefit, from information remedies in the form of price transparency. If we determine that there should be any changes to 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. As any changes to the price transparency policy statement will not require an application to the LSB, we will aim to complete any further policy development in 2021-22. However, if we determine that there should be any changes to the transparency rules, we will need to apply to the LSB for approval and this may mean that further policy development needs to be completed over a longer timescale.

Where transparency rules have been put in place:

4) Is there sufficient enforcement of the transparency rules by frontline regulators?

a) What levels of compliance have been observed? What do you consider to be the main drivers for non-compliance to date?

Although the rules came into effect on 1 July 2019, an implementation period was granted until January 2020 by which time we expected all self-employed barristers, chambers and BSB entities to be fully compliant. In January 2020, we spot checked 212 sole-practitioners, 34 BSB authorised entities and 193 chambers. Compliance with the rules was assessed via desk-based assessment. Where possible we reviewed the websites of those selected in the sample for compliance with the rules. Where a website was not available, we requested the transparency information in an alternative format such as a factsheet.

Websites and readily available information were assessed as either compliant, partially compliant or non-compliant. The results of the spot check are summarised in the table below, with breakdowns dependent on the sort of organisation. In many cases this impacts on which rules they are subject to, as Public Access barristers practising in particular areas of law are subject to additional requirements. Note that this table reflects the situation in October 2020, rather than after the initial spot check, and therefore reflects the additional follow-up work that has been undertaken with practitioners since the original spot check to ensure compliance.

		Compliance Level			Total
		Compliant	Partially Compliant	Non-compliant	
BSB Authorised Body	Count	12	14	4	30
	%	40.00%	46.67%	13.33%	100.0%

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BSB Licensed Body	Count	1	3	0	4
	%	25.00%	75.00%	0.00%	100.0%
Chambers (all)	Count	50	87	56	193
	%	25.91%	45.08%	29.02%	100.0%
Chambers (not Public Access)	Count	23	33	29	85
	%	27.06%	38.82%	34.12%	100.0%
Chambers (Public Access – no additional transparency requirements)	Count	16	45	26	87
	%	18.39%	51.72%	29.89%	100.0%
Chambers (Public Access - additional transparency requirements)	Count	11	9	1	21
	%	52.38%	42.86%	4.76%	100.0%
Sole Practitioner	Count	98	64	50	212
	%	46.23%	30.19%	23.58%	100.0%
Total	Count	161	168	110	439
	%	36.67%	38.27%	25.06%	100.0%

Those who were assessed as partially compliant were given feedback and referred to the appropriate rules and guidance, in order to ensure future compliance. Those who were assessed as non-compliant have been informed and told they will be assessed again. In the event of persistent non-compliance, we will take regulatory or enforcement action.

Drivers for non-compliance

The introduction of the new rules and the spot-check was widely communicated via the BSB's [website](#), press releases, social media such as Twitter and the Regulatory Update, which is sent to all members of the profession. Despite this, it became clear during the spot check process that some had not considered the rules at all and for those who had done so, they had not necessarily included sufficient detail in order to become fully compliant.

It is possible that some sole practitioners had not considered their compliance with the transparency rules at all until the point at which they were contacted. Those without websites were given a relatively short time (within 5 days) to provide the BSB with the information in an alternative format, as we considered that the information

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should be readily available. It was apparent from some of the responses that more time was needed as they were reading and considering the rules for the first time. However, these same barristers were more likely to be compliant with the rules when their factsheets were then assessed. This could be due to the fact that they based their factsheets on the template and so it was relatively easy for them to ensure compliance quickly.

The spot check exercise identified differing levels of compliance for different categories of organisation, and this may indicate some additional barriers to compliance. For example, sole practitioners were more likely to be non-compliant than chambers when they were subject to the additional transparency requirements. This is likely to be the result of lack of time or resource to comply with the rules in comparison with larger sets who have more barristers and staff available. Similarly, chambers who did not undertake any Public Access work were more likely to be non-compliant than Public Access chambers, particularly Public Access chambers who were subject to additional transparency requirements. This may be because non-Public Access chambers were less aware of the fact they needed to change the information provided than those that did Public Access work.

The majority of chambers were receptive to the feedback and either agreed to address the weaknesses as soon as possible or said they were in the process of updating their websites. Sole practitioners were on the whole more likely to query our assessment and need additional help in understanding the rules. A small number of barristers objected to their fees being made public, due to concerns that larger sets would undercut them.

b) What steps are taken to enforce compliance with transparency rules?

In addition to the 2020 spot check exercise detailed above, the Supervision Team will continue to raise awareness of the rules by engaging with the profession as set out below. In addition to the examples below, we will take additional regulatory or enforcement action if there is persistent non-compliance.

Regulatory Return

The deadline for completion of the Regulatory Return is January 2021 and this process, along with the analysis of responses received, will provide another opportunity to engage with the profession on the rules. In particular, the Regulatory Return will have a question on the impact of the rules and will highlight the guidance. When the Supervision Team is assessing the Return, we will check barristers, chambers and BSB entities' websites/factsheets for compliance and where non-compliance is identified, will require corrective action.

Ongoing Supervision activity

Where the Supervision Team is engaged in supervisory activity, we will use this as an opportunity to check the websites of the barrister, chambers or BSB entity concerned for compliance with the transparency rules and corrective action will be set where needed.

Further Spot checks

The barristers, chambers and BSB entities assessed as non-compliant during the review we conducted this year will be assessed again.

c) What key factors have driven the enforcement strategy to date? Are changes planned for future enforcement?

Our approach to compliance around the transparency requirements has been based on constructive engagement – this is in line with our overall Supervision Strategy⁶ which aims to foster a constructive relationship between ourselves and those we regulate. Efficiently run chambers and BSB-regulated entities operating at low risk are in everyone's best interest, resulting in less enforcement action and better protection and promotion of consumers' interests. However, any organisations and individuals who are found to be non-compliant in any of the exercises mentioned and do not engage with us to take corrective action are likely to be referred for possible disciplinary action.

So far there have been no instances of individuals or organisations who have needed to be referred to disciplinary action. This is because all those who have been identified as non-compliant or partially compliant have cooperated with the BSB – responses have been positive, as chambers and practitioners have generally been enthusiastic to address any areas identified in order to ensure they are fully compliant with the requirements. Similarly, the transparency statement on enforcement⁷ highlighted that our focus was not on enforcement action, but on ensuring compliance with the transparency rules – and that referral to enforcement action will be reserved for persistent noncompliance or non-cooperation.

Where guidance has been provided in place of transparency rules:

5) Are frontline regulators sufficiently incentivising compliance with the guidance?

a) What levels of compliance have been observed? What do you consider to be the main drivers for non-compliance to date?

b) What steps are taken to encourage compliance with the guidance?

c) What steps have been taken to evaluate the effectiveness of the guidance approach? Are changes planned in future, eg a move from guidance to rules?

N/A – the BSB has put in place mandatory rules on price, service and redress transparency for all self-employed barristers, chambers and BSB entities. The BSB has also put in place additional transparency rules for those undertaking Public Access work.

⁶ <https://www.barstandardsboard.org.uk/for-barristers/supervision.html>

⁷ <https://www.barstandardsboard.org.uk/uploads/assets/dde798b7-4e7b-41ff-ac89958321b094e6/ee6984ab-45bb-4e95-9bee371e431ddd80/Transparency-Standards-Guidance-5-Section-4.pdf>

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

Good practice included being fully compliant with all aspects of the rules, providing the information in a clear and comprehensible way, and the relevant information being provided in an easy to find section of the website to make finding the information easy for consumers.

Bad practice included not making any effort to comply with the rules themselves, or providing information in a difficult to find part of the website – this was addressed with those identified by follow up action.

For information on fees, having the information in an easy to find area of the website (i.e. clearly linked from the homepage) was seen as good practice, as well as including more detailed information on costs. Examples included clear information on different hourly rates for different levels of seniority, along with an explanation of how and why they could vary, including indicative costs for different stages of a case (either as indicative fixed fees or as expected number of hours where hourly rates were provided), clearly indicating when fees were subject to VAT, and providing information as to when additional costs might be incurred such as travel costs.

As with transparency generally, bad practice included not making any effort to comply with the rules themselves, or providing information in a difficult to find part of the website. For fees in particular, this generally included not presenting information on fees at all, or simply telling consumers to ‘contact the clerks for fees’ without providing any information on how fees were charged or calculated.

Q4. To what extent has the Legal Choices website helped consumers to navigate the legal services sector? To what extent has improved content been actively promoted by regulators, consumer/industry bodies and service providers?

We are disappointed that the CMA continues to focus solely on Legal Choices in considering the need for greater public legal education. We believe that enabling the public to navigate legal services requires a coherent strategy which starts from consumers’ own preoccupations and issues and engages the third sector and other organisations already trusted by consumers as sources of advice. We see this as a much more effective way of delivering public legal education than trying to win public trust and support for yet another website in what is already quite a crowded market for legal advice online. We do not think that the market failure here is always a lack of online legal advice but more the difficulty of navigating around the advice that is available. While Legal Choices may contribute to a strategy, similar to any other single website, it does not constitute a public legal education strategy in itself and it has not yet demonstrated that it can win the long term support of consumers. We have, therefore, been seeking to develop a wider strategic approach partnering with

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bodies that already have that support while seeking to maintain a dialogue with other regulators.

The previous experience of the financial services sector is relevant here. The Money Advice Service changed its initial strategy from working on its own to working with allies having sought unsuccessfully to attract visitors through its advertising and website.

We promote the Legal Choices website on the front page of our own website, and also link to it elsewhere on our website where we have thought appropriate. In addition, our best practice transparency standards guidance encourages those we regulate to link to Legal Choices on their websites. However, the Legal Choices website is not used to the extent that we hoped it would be when we were contributing to its funding, and our engagement with consumer bodies suggests that their awareness of the website remains low. We therefore took the decision to discontinue funding the Legal Choices website as, given the significant investment being made, our view was that (i) it was not sufficiently helping consumers to navigate the legal services sector, and (ii) working with organisations directly engaged with consumers (Law for Life, Support through Court, Citizens Advice and others) would be a better, more cost effective way of helping consumers.

The BSB was also represented on a Legal Choices review group which made recommendations in relation to improving the content of the website. One of the group's key recommendations was that Legal Choices should work more closely with consumer bodies in developing content for the website. While an advisory panel had already been established for this purpose, in our view it would be beneficial for the panel to be engaged more frequently.

Our work with Law for Life has already borne fruit. Law for Life: the Foundation for Public Legal Education runs the Advicenow service which in 2019-20 attracted 2,211,532 pageviews, a 12% increase on the previous year. This represents 1,265,996 visits by 968,975 users from England and Wales. There is also a possible multiplier factor here in that 25% of users are helping someone else with a problem.

In recent years Advicenow has won both the Access to Justice through IT Award at Legal Aid Lawyer of the Year 2017 and a Plain English Campaign award, and been shortlisted for the BIMA Awards, Product and Service Design: Conscience category.

Law for Life helped us to rewrite the "For the Public" area of our own website which has seen a considerable rise in traffic: up to 31 March 2020 we had received an average of 32,476 unique visitors to our new website per month since it launched on 15 October 2019 compared to a monthly average of 27,877 between 1 April and 14 October 2019 and 19,071 unique visitors also visited our pages on the new Bar transparency rules after 15 October.

We have also supported the following Law for Life activities:

Guidance for litigants in person in the civil courts covering:

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A survival guide to going to court when the other side has a lawyer and you don't - <https://www.advicenow.org.uk/guides/when-other-side-has-lawyer-guide-litigants-person-0>

Hearings - <https://www.advicenow.org.uk/know-hows/hearings-civil-claim>

Interim applications - <https://www.advicenow.org.uk/know-hows/interim-applications-how-ask-civil-court-do-something>

Legal costs and who pays them - <https://www.advicenow.org.uk/know-hows/legal-costs-and-who-pays-them>

Suing in the civil court - an overview of the process - <https://www.advicenow.org.uk/know-hows/suing-civil-court-%E2%80%93-overview-process>

Before you sue : things you need to know about court procedure - <https://www.advicenow.org.uk/before-you-sue-things-you-need-know-about-court-procedure>

Evidence needed to sue someone - <https://www.advicenow.org.uk/know-hows/evidence-needed-sue-someone>

How to settle a claim - <https://www.advicenow.org.uk/know-hows/how-settle-claim>

Workshops for women-led organisations supporting highly vulnerable women These have involved extending Law for Life's community education to help meet the needs of organisations supporting vulnerable women (including migrants, victims of abuse, victims of trafficking, disabled women, and sex workers). The aim has been to provide training to build capacity within the non-legal organisations that support them to help these vulnerable litigants in person to deal with housing and homelessness and welfare benefits decisions. The aim of the training has been to help recognise the legal component of the issue, improve referrals to organisations that can help and extend the reach of Law for Life's online provision through the intermediaries.

These workshops have been successfully delivered remotely during the pandemic and we will now be extending them, the organisations with whom Law for Life have been working having told them that they need to be better able to support their members and users to understand their housing rights specifically in relation to joint tenancies, and the effect of different actions that are taken as a result of domestic violence and relationship breakdown.

We firmly believe that this work is of more direct value and that Law for Life and other groups with whom we are discussing partnerships including Citizens Advice, Refugee Action and Support through Court can reach and help many more people in

need of legal education than Legal Choices can do. That is not to belittle all the hard work and investment that has gone into supporting Legal Choices over the years but merely to say that we think that those on the frontline of providing PLE are better able to identify, talk to and reach those in legal need than are legal regulators.

Question supplementing Q4

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

a) What key challenges has this faced to date?

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

Since the BSB is no longer contributing to the funding of the Legal Choices website, in our view it would not be appropriate for us to comment on its future strategic direction, funding and governance. The key challenges that have been faced to date are also covered in our response to the question above. However, we will continue to offer content to the Legal Choices website and promote it on our website.

Q5. To what extent are quality indicators needed to drive consumer engagement and competition? Which further indicators are needed and what are the barriers to these indicators being developed?

The BSB agrees that quality indicators may help drive consumer engagement and competition. Since the publication of the CMA's legal services market study in December 2016, we have:

- Published guidance encouraging barristers to follow good practice when receiving feedback;
- Published a guide for the public on using and leaving feedback about barristers;
- Required chambers' websites to link to the decision data on LeO's website;
- Required chambers' websites to link to the Barristers' Register, allowing consumers to see any disciplinary findings;
- Revamped our Public Access guidance for lay clients, so clients have a better idea of what to expect;
- Required barristers undertaking Public Access work to link to this guidance on their websites; and
- In our best practice transparency standards guidance, set out how barristers can help clients to assess quality.

It may be useful for other regulators to take similar measures where appropriate. We will also be publishing content on our website, setting out the full range of tools

clients can use to assess the quality of prospective providers. We plan to work with external stakeholders to ensure that this information reaches clients prior to them instructing barristers. Our ongoing assuring competence project is also considering the role of accreditation schemes and training provision in giving the BSB, the public and external stakeholders confidence in the competence and service of barristers. The barriers to the development of further quality indicators are covered in our response to the question below.

Question supplementing Q5

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

In our view, the main barrier to the successful implementation of quality indicators in the legal services sector is that compared to other sectors, it is more difficult for a client to assess the quality of the services they have received. For example, clients may sometimes simply equate the quality of their barrister with whether they won their case. In addition, the relatively small number of barristers providing services directly to the public (compared to, for example, solicitors) may mean that a lack of critical mass hinders the development of quality indicators that rely on volume of consumer feedback to provide meaningful results. Where barristers are not providing services directly to the public and solicitors are acting as intermediaries, it may also be difficult in practice for clients to distinguish between the services provided by barristers and those provided by instructing solicitors.

We believe that, at least initially, quality indicators are likely to be easier to establish and add greater value in relation to more standardised, higher-volume legal services. It would be helpful for the legal services regulators to take a joint approach to identifying the types of less bespoke legal services (i) which would be most conducive to the development of the quality indicators, and (ii) where there would be a critical mass of service providers to support this development. This should be supplemented by consumer research to ensure that consumers would find the development of these quality indicators useful.

Q6. To what extent are DCTs currently operating in the legal services market? What are the main barriers to greater use of DCTs in legal services and how can they be overcome?

It would appear that no significant DCTs are operating in the parts of the legal services market where services are most often provided by the Bar and accordingly, few barristers are featured on DCTs.

Questions supplementing Q6

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

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As stated above, it would be helpful for the legal services regulators to take a joint approach to identifying the types of less bespoke legal services (i) which would be most conducive to the development of DCTs, and (ii) where there would be a critical mass of service providers to support this development. Once these legal services have been identified, the regulators should ensure that their policies and practice in relation to the publication of regulatory data are not hindering the development of DCTs.

10) To what extent are providers engaging with DCTs?

See answer to Q6 above.

a) Has this improved since the market study and if not, why not?

This does not appear to have increased since the market study and we attribute this to (i) DCTs being less useful for the more bespoke services most often provided by the Bar, and (ii) the relatively small number of barristers providing services directly to the public (compared to, for example, solicitors) meaning that there may be a lack of critical mass hindering the development of relevant DCTs.

Q7. What impact have ABSs and lawtech had on driving innovation in the legal services sector? Are there any barriers deterring further innovation?

The BSB is the regulator of 118 lawyer-owned entities and, as a licensing authority under the Legal Services Act 2007, also the regulator of a further 12 ABSs. We launched our entity regulation regime in 2015 and became a licensing authority in 2016, and since that time our experience has been that lawyer-owned entities in addition to ABSs have a role to play in driving innovation (and that ABSs are not necessarily more innovative than lawyer-owned entities). Entities which have been authorised by us have included a company which was a registered charity and provided legal services to clients pro bono, and entities operating in areas where there are few traditional law firms. In addition, we have authorised a number of entities which were established by recently qualified barristers and solicitors who were unable to obtain places in chambers and law firms. These entities have improved access to legal services for consumers, and a number of the entities we regulate have stated that the structures through which they work have enabled them to have lower operating costs, which they have passed on in the form of savings to consumers (these entities tend to be in areas of law where there have been reductions to legal aid in recent years). We have also seen novel ownership structures – one ABS we regulate, for example, is majority owned by a practice manager.

In relation to lawtech, the BSB Risk Outlook 2019 recognised a key risk theme for the BSB was that “innovation and disruption in the legal services market offered threats and opportunities for the profession and for the public”. It went on to say that the BSB’s role in respect of this theme was to “work closely with the profession to ensure we understand the risks and opportunities arising from the changes we have identified. The BSB needs to gain insight into these areas and will seek to build good

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relationships with subject matter experts. Where necessary, we will act quickly to mitigate the risks, but will also work to enable the profession to adapt and hence take advantage of the opportunities described here. We can do this by keeping our rules flexible to facilitate innovation”. Since the publication of the Risk Outlook, we have engaged with other bodies with an interest in this area such as the Legal Practice Management Association, LawTech UK, the Regulators & AI Working Group and other legal services regulators. Our current Regulatory Return to chambers, entities and sole practitioners also includes a question on the use of technology and the support and training available, which will improve our evidence base in this area.

To date, it would appear that more disruptive lawtech is less common at the Bar than in other sectors, like the solicitor and conveyancing professions. This may be driven by (a) volume and type of work, and (b) the relationship between a client and a conveyancer or solicitor, where consumers are more likely to engage directly, creating opportunities for technology to improve the delivery of services to consumers. For many of these services, there are likely to be greater opportunities for AI, the use of big data and process automation to deliver cost benefits. Client engagement on the part of barristers is more likely to be via solicitors or other intermediaries. That said, ‘matchmaking’ services are starting to appear online, enabling individuals to be connected to lawyers (possibly including barristers) who might be able to provide the required legal service. We have also started to see some examples of barristers looking to use technology to engage differently with consumers, or to use AI to improve initial handling and decision making.

Below we have summarised the examples for each of the three points made i.e. matchmaking, engagement with consumers, and use of AI:

Matchmaking

myBarrister: Founded by a Barrister, myBarrister is an online matchmaking service between clients and barristers. It is a portal on which “barristers can present their skills to the world, and where the world, in turn, can find the exact legal expert they need”.

Consumers

Sparqa Legal: Founded by a barrister in 2016, Sparqa legal provides online legal advice, including bespoke online contracts and answers to legal problems. A monthly or annual fee provides access to dedicated Q&As, legal guidance, and document assembly applications.

Use of AI

St John’s Buildings barristers’ and Advanced (Legal software specialist): Advanced partnered with Keoghs Solicitors and St John’s Buildings barristers’ chambers, to create “the first truly automated end-to-end digital solution for insurers, solicitors and counsel using AI.” AI is now used to either litigate RTA personal injury cases

electronically or to identify a case as requiring a barrister without the need for human intervention.

We acknowledged in our Risk Outlook 2019 that advancements in online justice and technology in courts could also give rise to concerns about access to justice for the most vulnerable, along with concerns about the technological capability of barristers which would be required to make use of the technology. While chambers were swift to adapt to remote working during the COVID-19 pandemic, it did pose challenges for barristers in relation to technology. In the future it is likely that the online provision of services will accelerate and form a major part of barristers' working practices, with options for paperless or 'paperlite' solutions and less demand for in person conferences with clients. Engagement with our stakeholders also indicates that our regulations are not perceived as barriers deterring innovation, and we have a general power to waive or modify any requirements of our Handbook in such circumstances and to such extent as we may think fit, should we identify any barriers to innovation that would be in consumers' interests. A number of barristers have been granted waivers from BSB Handbook requirements where they have been able to demonstrate that this would not be prejudicial to the BSB's regulatory objectives, and work is underway to promote the availability of this waiver application process more widely. This will be done with the aims of reducing the regulatory burden on barristers where appropriate and driving innovation.

Q8. Are there other developments which have had or will have a significant impact on competition in the sector?

The BSB agrees with the CMA that it would be useful to improve understanding of consumer behaviour in response to transparency remedies to facilitate better remedy design and, subject to the caveats in our responses above, explore the development of quality indicators and any barriers to the further development of DCTs. The legal services regulators should ensure that their policies and practice in relation to the publication of regulatory data are not hindering the development of quality indicators and DCTs. We also note the work of the LSCP on quality indicators and it is important that the legal services regulators continue their joint work in this area.

Q9. Are further measures needed to drive consumer engagement and competition in legal services in addition to the areas we have identified above?

Improving understanding of consumer behaviour in response to transparency remedies certainly has the potential to facilitate better remedy design. As part of this it would be useful to explore whether consumer behaviour in response to transparency remedies differs according to the type of legal service, or area of law a legal service is provided in. While not part of our work on transparency standards, in April 2018 we published a user guide for barristers working with vulnerable adult immigration clients to help them identify, assess and manage client vulnerabilities in

line with good practice.⁸ The user guide demonstrates, based on research, where the standard ‘client journey’ for barristers’ clients may differ for immigration clients, and therefore highlights how barristers can help to address client vulnerabilities in this area of law. Similarly, consumer segmentation has the potential to facilitate better design of transparency remedies based on the type of legal service, or area of law a legal service is provided in.

Improved public legal education is also essential to driving improved consumer engagement and decision-making in legal services. The key questions which consumers need to be better equipped to answer are (i) whether they have a legal problem, (ii) if so, what the nature of that legal problem is, (iii) which type of legal provider would be best placed to assist and (iv) how to go about choosing that legal provider. Different types of legal problem in different areas of law will often require different types of legal provider; for example, barristers are mostly specialist providers of expert advice and advocacy services. As Public Access work constitutes a small (albeit increasing) proportion of barristers’ work,⁹ barristers’ services will most often not be interchangeable with those of solicitors. Solicitors will seek to resolve their clients’ legal problems and will most often only instruct a barrister on their clients’ behalf if those problems cannot be resolved outside of court or without specialist advice. In our view, it is important that the legal services regulators work jointly in the area of public legal education where this is effective in helping consumers to navigate the legal services sector. It is also important that third sector organisations trusted by consumers are engaged so that key messages are amplified effectively.

Q10. Are there any issues specific to the provision of legal services for small businesses that should be considered in order to improve competition for such customers?

The evidence we have reviewed indicates small businesses are similar to individual consumers in that they perceive legal services as expensive, both in absolute terms and relative to other service providers – cost is perceived as a barrier that might limit access to legal services by more than 60% of small businesses (including 70% of sole traders).¹⁰ Research has also found that among small businesses, awareness of which legal service providers (beyond solicitors) are able to assist with legal issues is low.¹¹ In response, the BSB has applied price and service transparency requirements to the following Public Access services which are likely to be used by small businesses: (i) Employment Tribunal cases (advice and representation), (ii) licensing applications in relation to business premises and (iii) winding-up petitions. As part of our evaluation of the transparency measures we have introduced, we will

⁸ <https://www.barstandardsboard.org.uk/uploads/assets/196ca72c-464d-4b59-9d3f95ef4569b233/immigrationvulnerabilityguidance2018.pdf>

⁹ As of 1/12/19, 37% of the Bar are registered to undertake Public Access work, but only one in ten barristers earn 10% or more of their fee income from this type of work

¹⁰ Price transparency in the legal services market (SRA 2018)

¹¹ CMA Small Business research (CMA 2017)

consider whether further Public Access services should be subject to price and service transparency requirements, and in this we will consider the needs of small businesses in addition to individual consumers. When considering whether further legal services should be subject to transparency requirements it will also be useful to work jointly with the other legal services regulators, in order to improve competition across the market for both small businesses and individual consumers (and not just the market for barristers' services).

Questions regarding redress and regulation:

Q11. What measures can be taken to develop a more flexible and proportionate regulatory framework within the Legal Services Act 2007 without requiring any, or only light touch, further legislative change, for example a review of the reserved activities as being considered by the LSB?

In our view, the scope and nature of regulation should be governed by an analysis of risk. In that context, we agree that the reserved activities should be reviewed. With the exceptions of exercising rights of audience and the conduct of litigation, the BSB's experience of analysing the risk of barristers' services is that, from a public protection perspective, risk often does not neatly align to the current reserved activities. Consumer impact should be a key consideration in determining whether legal services should be reserved or unreserved. The current reserved activities can be complex even for practising lawyers to understand. For example, the definition of 'the conduct of litigation' relies on a detailed understanding of case law and it can be difficult for regulators to state categorically what does and does not amount to litigation. Similarly, rights of audience are not required uniformly across all courts and tribunals. Any review should seek greater clarity as to what is and is not a reserved activity, as such lack of clarity presents a risk to consumers. It should also consider whether there are any areas of high risk not currently captured by the requirement for authorisation. The emergence of paid McKenzie friends, for example, is an area where we believe regulation is needed in the public and consumer interest.

Q12. Would such measures above be sufficient to deliver effective change that can promote competition and optimise consumer outcomes in the longer term?

That remains to be seen – we would recommend making the changes suggested above and doing what can be done within the current statutory structures before reviewing the impact.

Q13. To what extent is there merit in extending the regulatory framework to include unauthorised providers? What evidence is there of consumer detriment from unregulated providers, or other rationale, to warrant this?

We agree that there may be merit in extending the scope of the Ombudsman scheme (subject to that scheme operating effectively and having the capacity to absorb the additional caseload) or directing consumers to equivalent schemes. Regulation should be linked to an assessment of risk and should be proportionate to

that risk – this should be the key factor in determining whether to extend the regulatory framework to include unauthorised providers.

There is significant evidence of consumer detriment from unregulated providers, which was captured in the IRLSR. The 2016 report for the LSB by Economic Insight, ‘unregulated legal service providers: understanding supply-side characteristics’, is also helpful for understanding the unregulated legal services sector.¹²

Questions supplementing Q11-Q13

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

a) What are the key advantages and disadvantages of each?

b) What issues would remain without longer term reform?

This has been covered in our responses to questions 11 and 12 above.

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

This has been covered in our response to question 13 above.

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

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

The key emerging regulatory challenges with respect to lawtech have been covered in our response to question 7 above. We agree in principle that regulation should cover all providers of certain services (where that is based on a risk analysis) so that consumers have consistent protections. To the extent that the provision of such services using lawtech may not be covered by current regulation (because not provided by an authorised individual or entity, for example) any review of legislation should bring this within the scope of regulation where appropriate.

14) What evidence is available on the experiences of consumers of unauthorised providers?

This has been covered in our response to question 13 above.

Q14. We recommended a review of the independence of regulators both from the profession and from government, to the MoJ in the CMA market study. Is that review still merited, taking into account, for example, the work that has been undertaken by the LSB on IGRs and the arguments put forward by the IRLSR?

¹² <https://ipreg.org.uk/sites/default/files/Economic-insight-in-depth-unregulated-research.pdf>

We note the work that has been undertaken by the LSB in respect of the new IGRs, which has strengthened regulatory independence from the profession. It would make sense to review the impact of these changes before considering further legislative change. The BSB has satisfied itself that it operates independently of the representative body.

Question supplementing Q14

15) Is there any more work that can be done within the existing regulatory framework to strengthen regulatory independence?

We note the work that has been undertaken by the LSB in respect of the new IGRs. In response, we have negotiated and agreed internal governance arrangements with the Bar Council which are compliant with the new rules and are sufficient to ensure our regulatory independence.

Q15. What work has been undertaken by regulators to reduce the regulatory burden on providers of legal services for individual consumers and small businesses? What impact has this had?

Since the publication of the CMA's legal services market study in December 2016, the BSB has continued to remove prescriptive regulations in favour of regulatory requirements that are more outcomes focused. We have, for example, removed the requirement for experienced practitioners to undertake a prescribed number of continuing professional development (CPD) hours per year and now each barrister takes responsibility for the type and amount of CPD that they do. The changes to the rules in this area underpin a CPD scheme which is now more flexible for barristers, but still allows the BSB to take supervisory and enforcement action when necessary.

The BSB is currently reviewing its Code of Conduct, which will simplify the obligations on barristers and remove unnecessary rules. In the meantime, we continue to be able to waive or modify any requirements of our Handbook where unjustified regulatory barriers to innovation exist. A number of barristers have been granted waivers from BSB Handbook requirements where they have been able to demonstrate that this would not be prejudicial to the BSB's regulatory objectives, and work is underway to promote the availability of this waiver application process more widely. This will be done with the aims of reducing the regulatory burden on barristers where appropriate and driving innovation.

Question supplementing Q15

16) Are there remaining areas where there is scope to significantly reduce regulatory costs?

a) If so, what plans are in place to tackle these?

See our answer to Q15 above.

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Q16. What impact has the removal of restrictions to allow solicitors to practise in unauthorised firms had on the availability of lower cost options in the sector?

The BSB does not have any evidence to contribute.

END.