

**BAR
STANDARDS
BOARD**

REGULATING BARRISTERS

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

Rules Consultation on Transparency Standards

September 2018

Contents

Executive summary.....	3
PART I: Background and policy consultation on transparency standards.....	5
<i>Background</i>	5
<i>Policy consultation on transparency standards</i>	6
PART II: Purpose of the consultation	7
PART III: Desk research, piloting and consumer testing.....	8
<i>Desk research</i>	8
<i>Piloting</i>	9
<i>Consumer testing</i>	10
Part IV: Proposed new transparency rules	11
<i>Application of transparency rules</i>	11
<i>Rules on price and service transparency for all – what is the BSB proposing?</i>	12
<i>Rules on price and service transparency for all</i>	13
<i>Rules on price and service transparency for all – why is the BSB proposing this?</i>	14
<i>Rules on redress transparency for all – what is the BSB proposing?</i>	18
<i>Rules on redress transparency for all</i>	18
<i>Rules on redress transparency for all – why is the BSB proposing this?</i>	20
<i>Additional rules on price and service transparency for those undertaking Public Access work – what is the BSB proposing?</i>	21
<i>Additional rules on price and service transparency for those undertaking Public Access work</i>	22
<i>Additional rules on price and service transparency for those undertaking Public Access work – why is the BSB proposing this?</i>	24
PART V: Implementation.....	29
<i>Supervision and enforcement</i>	29
<i>Review of transparency standards</i>	30
PART VI: Equality impact assessment	30
PART VII: About the consultation and how to respond	31
<i>Acknowledgements</i>	31
<i>Who should respond to the consultation?</i>	31
<i>How to respond to the consultation</i>	31
<i>List of questions</i>	33
<i>Annex A: Equality impact assessment</i>	35

Executive summary

The Bar Standards Board (BSB) has launched this consultation to seek views about our proposed new rules to improve transparency standards for clients of the Bar.

After a period of consultation last year in response to the Competition and Markets Authority's (CMA's) market study of legal services, the BSB published its revised approach to [improving transparency for consumers of barristers' services](#) in February 2018. The new transparency standards relate to information about the areas of law in which barristers practise, the legal services provided by barristers, what those services cost and a client's right to redress.

The new approach includes introducing new rules to require all self-employed barristers, chambers and BSB regulated entities to publish on their websites:

- their most commonly used pricing models for legal services, such as whether they charge fixed fees or hourly rates;
- a statement making it clear that solicitors/Public Access clients (as appropriate) may make contact to obtain a quotation for legal services;
- the areas of law in which they most commonly provide legal services;
- a description of the legal services which they most commonly provide;
- information about the factors which might influence the timescales of a case;
- the text "regulated by the Bar Standards Board";
- information about complaints procedures, any right to complain to the Legal Ombudsman (LeO) and how to do this, 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.

Barristers undertaking Public Access work will also need to display a link to the [Public Access Guidance for Lay Clients](#) on the BSB's website. If they provide certain Public Access services then, in certain circumstances, their websites will also need to state the following in relation to those services:

- their pricing model(s), such as fixed fee or hourly rate;
- indicative fees and the circumstances in which they may vary;

- whether their fees include VAT;
- likely additional costs e.g. court fees;
- a description of the service, including a statement of the key stages; and
- an indicative timescale for the key stages.

The Public Access services which, in certain circumstances, barristers will need to publish this information are as follows:

- child arrangements arising out of divorce or separation;
- 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.

For the specific circumstances in which Public Access barristers will need to publish this information on their websites, and examples of the required information, see the BSB's Transparency Standards Guidance (published in draft alongside this consultation). When finalised, the guidance will help the Bar to comply with the new rules as they come into force.

The purpose of this consultation is to make sure that the way we have drafted the new rules is clear, and that the guidance will help the Bar to comply with the new rules. There are a number of ways to respond to the consultation, including e-mailing ProfessionalStandards@BarStandardsBoard.org.uk. The deadline for responses to the consultation is **Friday 14 December 2018**.

Following our consideration of responses to this consultation and approval by the Legal Services Board (LSB), the new rules will come into force by May 2019. To ensure compliance with the transparency rules, the BSB will undertake spot-checking from January 2020. This will allow us to evaluate the effectiveness of the new rules. We also hope that applying transparency requirements to certain Public Access services will encourage improved price and service transparency, where appropriate, for other Public Access services.

PART I: Background and policy consultation on transparency standards

Background

1. The Bar Standards Board (BSB) was established in January 2006 as a result of the Bar Council separating its regulatory and representative functions. The BSB is responsible for establishing and implementing a range of regulatory measures to ensure that standards at the Bar are maintained and the interests of consumers are understood, protected and promoted. For the purposes of this consultation, consumers are defined as those who use, have used or may be contemplating using barristers' services, whether on a referral or direct access basis.
2. The Competition and Markets Authority (CMA) undertook a market study into legal services in 2016. Its [final report](#) was published in December 2016. Its recommendations 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 CMA asked each legal services regulator to introduce changes to its regulatory arrangements, but with a degree of consistency across the sector.
3. 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”*.¹
4. 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*

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

*strengthened if there is a general improvement in the level of transparency in the sector”.*²

Policy consultation on transparency standards

5. Following the publication of the CMA’s final report, the BSB issued a [policy consultation on transparency standards](#) in October 2017. While the BSB accepted the CMA’s recommendations in principle, the purpose of the policy consultation was to consider how best to make any new transparency requirements work for consumers of barristers’ services. Our proposed approach recognised the wide variety of legal services provided by barristers, the complex nature of their work and the unique ways in which barristers’ services are engaged (in particular, the way in which many barristers are referred to consumers by other legal services providers). The consultation therefore proposed targeting consumers who would most benefit from being able to access more information about barristers’ prices and services, and doing this by applying price and service transparency requirements to:
 - Public Access barristers, who deal with clients directly; and
 - Barristers working on a referral basis with clients who are able to complain to the Legal Ombudsman (broadly, individuals and small businesses/charities).

6. The consultation closed in January 2018. The following month, the BSB published our revised approach to [improving transparency for consumers of barristers’ services](#). 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 is therefore 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

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

improved price and service transparency, where appropriate, for other Public Access services.

7. 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 revised approach, we therefore agreed 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.
8. The BSB also agreed to undertake further research and consumer testing. The aim was to ensure our approach is robust and that any transparency requirements placed on barristers are reasonable, proportionate and most importantly, will benefit consumers.

PART II: Purpose of the consultation

9. This rules consultation firstly sets out our evidence base for our transparency proposals. In addition to the evidence base in the CMA's final report, we have undertaken desk research, operated a pilot scheme to test the proposed transparency requirements and commissioned further consumer testing. The consultation then sets 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.
10. The consultation asks for your 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 (published in draft alongside this consultation). 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 have used to determine which Public Access services should be subject to additional price transparency requirements;
- The Public Access services we have 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 the BSB’s Transparency Standards Guidance (published in draft alongside this consultation).

11. The consultation then provides 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 discusses our equality impact assessment of our transparency proposals, which we also ask for your views on. You are welcome to respond only to those consultation questions which are of most interest to you.

PART III: Desk research, piloting and consumer testing

Desk research

12. While the BSB Handbook does not prevent price transparency before barristers are instructed, the BSB had limited information on the extent to which this was occurring in practice. As a first step to better understanding the current position, we undertook desk research in summer 2017 examining the information which barristers’ chambers provide on their websites regarding price. We looked at 368 chambers in total, 329 of which had websites. The research classified these into four categories:

- Chambers which provide numerical data regarding their fees/prices (20/329, 6%);
- Chambers which provide detailed guidance about how fees are typically calculated, but do not provide any numerical data on fees/prices (26/329, 8%);

- Chambers which provide simple or basic reference to fees, with no numerical data or detailed guidance about how fees are typically calculated (36/329, 11%); and
 - Chambers which made no reference whatsoever to their fees and no guidance to this effect (247/329, 75%).
13. Of the 6% that did provide numerical data a handful provided rates by level of seniority. Of the 8% of chambers that provide detailed guidance about how fees are typically calculated, only one provided examples of costs for a standard type of instructions.
14. While the research should be considered a snapshot, the findings strongly suggest that the majority of chambers do not provide information on their websites regarding price. The BSB therefore recognises that introducing price transparency requirements for some barristers is likely to represent a significant culture shift for the Bar, and indeed is likely to require those barristers to make changes to the way they communicate information about their services. The introduction of new transparency requirements by each regulator is also likely to represent a significant culture shift for the entire legal profession. However, the intention is that the new requirements should lead to improvements for consumers.

Piloting

15. Between November 2017 and February 2018, the BSB operated a pilot scheme to test the proposed transparency requirements with nine chambers, entities and sole practitioners. The key findings were as follows:
- The implementation of the proposed transparency requirements was perceived as relatively straightforward by participants;
 - According to the participants, none of their initial concerns regarding price transparency materialised during the pilot;
 - While it was too early to objectively observe any impacts of the pilot on the participants' business, a few positive experiences were observed (which may not have been directly attributable to the pilot) and no negative effects were reported;
 - In terms of positive outcomes, one participant reported that their client conversion had almost doubled over the duration of the pilot. Another participant who had started to display prices in January 2016 observed their largest turnover increase

since, and a significant decline in late payments with the average number of days for payments decreasing by half;

- Participants, mostly their clerking teams, reported receiving fewer basic queries from potential consumers on price and service information;
- Participants considered that increased transparency may help to address the public's perception that barristers are expensive and difficult to access, and provide more certainty to clients on what they are ultimately going to be charged; and
- Most participants indicated that they plan to keep the transparency requirements in place after the pilot.

16. The BSB also carried out an online survey of the pilot participants' clients. The key findings were as follows:

- 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; and
- 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.

17. Further information is available in the evaluation of the BSB's transparency pilot (published alongside this consultation).

Consumer testing

18. The BSB also 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.

19. The study also sought to answer the following research questions:

- How do consumers make decisions in relation to choosing barristers' services?
- How are consumers' decisions affected by the way that price and/or service information is presented by barristers?
- How are decisions affected by different pricing or service models offered by barristers?

20. The key findings of the study were as follows:

- Consumers value having readily accessible information on prices and services, which they can use when comparing between barristers;
- It would help consumers to receive estimates regarding costs and timescales of work, in order to help them understand the information on quote elements, and compare between barristers;
- Consumers prefer information on hourly fees and likely time taken to complete the work in tabular form (albeit less bespoke legal services are more often undertaken on a fixed fee basis). Consumers also find text-based pricing and service models less transparent and easy to understand;
- It is important to carefully consider and select which information to present upfront to consumers; and
- There is a general need to inform and educate legal services users, and those who use barristers specifically, about the implications of regulation and how consumers are protected.

Part IV: Proposed new transparency rules

Application of transparency rules

21. The transparency rules will only apply to self-employed barristers, chambers and BSB entities. Barristers may work for an entity which is authorised by another legal regulator. For example, a law firm authorised by the Solicitors Regulation Authority. In this case, they will need to comply with the transparency rules of the other regulator. Barristers may also work in-house for an employer which is not authorised by a legal regulator. For example, a Government Department or financial institution. In this case, they will not need to comply with the transparency rules.

Scope of transparency rules

22. As above, the transparency rules will only apply to self-employed barristers, chambers and BSB entities. Below we 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.

Rules on price and service transparency for all – what is the BSB proposing?

23. Those regulated by the BSB will 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 will 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.

24. The required information will also need to be readily available in hard copy format, and provided to consumers on request. For the detailed rules and why we are proposing them, please see below.

Rules on price and service transparency for all

D6. Price and service transparency rules for self-employed barristers, chambers and BSB entities

Outcomes

oC36 *Clients* are provided with appropriate information to help them understand the price and service they will receive.

D6.1 Self-employed barristers, chambers and BSB entities

Rules

Publication of information

rC159 Each website of *self-employed barristers, chambers and BSB entities* must, in a sufficiently accessible and prominent place:

.1 state 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 contact details. After sufficient information has been provided, quotations must be provided within a reasonable time period, and in clear and readily understandable terms;

.2 state their most commonly used pricing models for *legal services*, such as fixed fee or hourly rate. Where different models are typically used for different *legal services*, this must be explained;

.3 state the areas of law in which they most commonly provide *legal services*, and state and describe the *legal services* which they most commonly provide, in a way which enables *clients* to sufficiently understand the expertise of the *barrister, chambers or BSB entity*; and

.4 provide information about the factors which might influence the timescales of a case.

rC160 All *self-employed barristers, chambers and BSB entities* must review their website content at least annually to ensure that it is accurate and complies with the transparency requirements referred to in Rules C103, C159 and where applicable, Rules C164 – C168.

rC161 *Self-employed barristers, chambers and BSB entities* must comply with the transparency requirements referred to in Rules C103, C159 and where applicable, Rules C164 – C168 by ensuring the required information is readily available in hard copy format. This must be provided on request (for example, if they do not operate a website, or a *client* or prospective *client* does not have Internet access).

Provision of information to the Bar Standards Board

rC162 All *self-employed barristers, chambers and BSB entities* must notify the *Bar Standards Board* of their website address(es) offering *legal services*, and any changes to their website address(es), within 28 days of the creation or change of the same.

Bar Standards Board guidance

rC163 When offering their services to *clients* and prospective *clients*, all *self-employed barristers, chambers and BSB entities* must have regard to guidance published from time to time by the *Bar Standards Board* in relation to price and service transparency [hyperlink].

Rules on price and service transparency for all – why is the BSB proposing this?

25. Requiring “each” website of self-employed barristers, chambers and BSB entities to display price and service information (**Rule C159**) reflects the fact that many barristers operate multiple websites as part of their practice. For example, a self-employed barrister may practise from chambers but operate a separate website for their Public Access practice, or a self-employed barrister may practise as a sole practitioner and also work for a BSB entity. If barristers practise in these ways, they will need to comply with the transparency rules on each website as appropriate.
26. Those regulated by the BSB will 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 (**Rule C159.1**). Websites will also need to provide contact details. This will ensure consumers are aware that they can contact barristers to obtain

quotations, and know how to do so. If a chambers does not have any self-employed barristers undertaking Public Access work, it will be best practice for its website to state that lay clients may not contact them directly to obtain quotations, as solicitors will do this.

27. The BSB recognises that, if it required the publication of price information upfront in relation to the type of bespoke referral services most often provided by barristers, this may lack utility and cause confusion for consumers of those services. Our proposal for websites to state that solicitors/Public Access clients (as appropriate) may contact barristers to obtain quotations therefore demonstrates commitment to increased transparency and facilitating “shopping around”, but without either risking consumer confusion or overburdening barristers and chambers. After sufficient information has been provided, quotations will need to be provided within a reasonable time period, and in clear and readily understandable terms. The test for “sufficient information being provided” is whether the consumer has provided sufficient information such that the barrister can quote a meaningful range for the legal services in question. A “reasonable time period” will normally mean within 14 days, although depending on consumer need/urgency quotations may need to be provided sooner.
28. Requiring those regulated by the BSB to state their most commonly used pricing models for legal services such as fixed fee or hourly rate (**Rule C159.2**) will ensure consumers are aware of the different pricing models that are available. Where different models are typically used for different legal services, this will need to be explained on websites to ensure that consumers understand this.
29. Those regulated by the BSB will also be required to state the areas of law in which they most commonly provide legal services, and state and describe the legal services which they most commonly provide (**Rule C159.3**). This will need to be done in a way which allows consumers viewing websites to sufficiently understand the expertise of the barrister, chambers or BSB entity. It will also ensure that consumers have a basic knowledge of their most commonly provided legal services. The BSB recognises that the Bar will already be providing much of this information about their services on their websites.
30. Finally, websites of those regulated by the BSB will need to provide information about the factors which might influence the timescales of a case (**Rule C159.4**). These factors might include barristers’ availability, the complexity of the case, the approach taken by

the other side and court waiting times. This will help consumers to understand what they can expect from a case and from their barrister, and manage those expectations. However, the BSB recognises that the information will be indicative only and in many cases, specific to practice area. We are therefore not proposing that websites must provide standardised information about the factors which might influence the timescales of a case. Instead, barristers will need to provide this information in a way which is relevant to their practice.

31. Participants in the BSB's pilot scheme perceived the implementation of the proposed transparency requirements as relatively straightforward. Participants, mostly their clerking teams, also reported receiving fewer basic queries from potential consumers on price and service information. This reflects an online survey of the pilot participants' clients, which found that they were satisfied with the level of information provided by the participants.
32. Those regulated by the BSB will need to review their website content at least annually (**Rule C160**). They will need to ensure that it is accurate and complies with the transparency requirements in Rule C103 (redress transparency), Rule C159 (price and service transparency for all) and, where applicable, Rules C164 – C168 (price and service transparency for those undertaking Public Access work). Checklists to help with these reviews can be found in the BSB's Transparency Standards Guidance (published in draft alongside this consultation). It is recommended that copies of checklists are kept. This will allow those regulated by the BSB to demonstrate to us that they have sought to comply with the transparency requirements, and reviewed their website content at least annually.
33. Those regulated by the BSB will also need to comply with Rules C103, C159 and, where applicable, Rules C164 – C168 by ensuring the required information is readily available in hard copy format (**Rule C161**). This must be provided on request; for example, if they do not operate a website, or a client or prospective client does not have Internet access. This will ensure that all consumers are able to benefit from increased price, service and redress transparency. Those regulated by the BSB can provide information in hard copy format in the form of a 'fact sheet'. An example of a fact sheet can be found at Annex A of the BSB's Transparency Standards Guidance (published in draft alongside this consultation).

34. For research, supervision and enforcement purposes, those regulated by the BSB will need to notify us of their website address(es) offering legal services, and any changes, within 28 days “of the creation or change of the same” (**Rule C162**). However, in the first instance self-employed barristers will need to tell us their chambers’ website address(es) during the Authorisation to Practise process for 2019-20, which will take place in February – March 2019. The process is completed using the [MyBar](#) portal. BSB entities will also need to tell us their website addresses during the entity renewal process for 2019-2020, which will take place in February – March 2019.

Transparency Standards Guidance

35. When offering their services to clients and potential clients, those regulated by the BSB will also need to have regard to BSB guidance in relation to price and service transparency (**Rule C163**). As the YouGov and London Economics study found, it is important to carefully consider and select which information to present upfront to consumers. The BSB’s Transparency Standards Guidance (published in draft alongside this consultation) therefore 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.

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.

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.

Rules on redress transparency for all – what is the BSB proposing?

36. Those regulated by the BSB will need to state on their websites:

- The text “regulated by the Bar Standards Board”. This will need to be displayed on website homepages;
- Information about their complaints procedures, any right to complain to the Legal Ombudsman (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.

37. The required information will also 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” will need to be stated on all e-mail and letterheads. For the detailed rules and why we are proposing them, please see below.

Rules on redress transparency for all

D. RULES APPLYING TO PARTICULAR GROUPS OF REGULATED PERSONS

D1. Self-employed barristers, chambers and BSB entities

Outcomes

~~oC26 Clients know that they can make a complaint if dissatisfied, and know how to do so.~~
Clients are provided with appropriate information about redress, know that they can make a complaint if dissatisfied, and know how to do so.

D1.1 Complaints rules

Rules

Provision of information to clients

~~rC103 Chambers' websites and literature must display information about the chambers' complaints procedure. A BSB's authorised body's website and literature must carry information about that BSB entity's Complaints Procedure.~~

Each website of *self-employed barristers, chambers and BSB entities* must display:

- .1 on the homepage, the text "regulated by the Bar Standards Board" (for sole practitioners) or "barristers regulated by the Bar Standards Board" (for *chambers*) or "authorised and regulated by the Bar Standards Board" (for *BSB entities*); and
- .2 in a sufficiently accessible and prominent place:
 - .a information about their complaints procedure, any right to complain to the Legal Ombudsman, how to complain to the Legal Ombudsman and any time limits for making a complaint;
 - .b a link to the decision data on the Legal Ombudsman's website [hyperlink]; and
 - .c a link to the Barristers' Register on the BSB's website [hyperlink].
- .3 All e-mail and letterheads from *self-employed barristers and BSB entities*, their *managers* and employees must state "regulated by the Bar Standards Board" (for *self-employed barristers*) or "authorised and regulated by the Bar Standards Board" (for *BSB entities*).
- .4 *Self-employed barristers, chambers and BSB entities* must have regard to guidance published from time to time by the *Bar Standards Board* in relation to redress transparency [hyperlink].

Rules on redress transparency for all – why is the BSB proposing this?

38. Requiring those regulated by the BSB to ensure that consumers are aware of this **(Rule C103.1)** will give consumers confidence. As research commissioned by the Legal Services Consumer Panel demonstrates, consumers prefer using regulated providers.³ The YouGov and London Economics study also found that there is a general need to inform and educate legal services users, and those who use barristers specifically, about the implications of regulation and how consumers are protected. The appropriate “regulated by the Bar Standards Board” text will therefore need to be displayed on website homepages as a minimum.
39. Other redress information required by the transparency rules will need to be displayed “in a sufficiently accessible and prominent place” **(Rule C103.2)**. This means that in most cases, the required information should either be on the website’s homepage, or one or two clicks away from the homepage (one way to achieve this is to have a ‘quick links’ page). The information should also be in a standard size font. This will ensure that it is easy for consumers to find.
40. The websites of chambers and BSB entities are already required to display information about their complaints procedures. This is being extended to require the display of information about any right to complain to the Legal Ombudsman (LeO), how to complain to LeO and any time limits for making a complaint **(Rule C103.2.a)**. This will ensure that consumers know about the LeO and how to complain to them. The CMA’s final report found that legal services providers often do not provide clear information on their complaints procedures, including information about the LeO.⁴
41. Requiring websites to display a link to the [decision data](#) on the LeO’s website **(Rule C103.2.b)** will allow consumers to see which providers received an ombudsman’s decision in the previous calendar year. In each case, the data shows whether the LeO required the provider to give the consumer a remedy. Linking to the [Barristers’ Register](#) on the BSB’s website **(Rule C103.2.c)** will allow consumers to see whether a barrister (1) has a current practising certificate and (2) has any disciplinary findings, which are

3

http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/documents/Vanilla%20Research%20Risk%20and%20Regulation%20final.pdf, page 3

⁴ <https://assets.publishing.service.gov.uk/media/5887374d40f0b6593700001a/legal-services-market-study-final-report.pdf>, page 72

published on the Barristers' Register in accordance with our [policy](#). Linking to these pages will help consumers to make informed decisions about whom to instruct.

42. Those regulated by the BSB will also be required to ensure that those they are corresponding with are aware of this **(Rule C103.3)**. This will provide reassurance to consumers, as they will know that the Bar is a properly regulated profession. Others will also be able to find information about the BSB and our regulatory standards. The appropriate "regulated by the Bar Standards Board" text will therefore need to be stated on all e-mail and letterheads.
43. Finally, those regulated by the BSB will need to have regard to BSB guidance in relation to redress transparency **(Rule C103.4)**. 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. The guidance includes additional best practice on transparency to help them to do that.

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.

Additional rules on price and service transparency for those undertaking Public Access work – what is the BSB proposing?

44. On their websites, those undertaking Public Access work will need to display a link to the [Public Access Guidance for Lay Clients](#) on the BSB's website.
45. If they provide the Public Access services listed in the BSB's price transparency policy statement (published in draft alongside this consultation), their websites will 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.

46. This will 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.

47. Websites will 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.

48. In addition, the required information will need to be readily available in hard copy format, and provided to consumers on request. For the detailed rules and why we are proposing them, please see below.

Additional rules on price and service transparency for those undertaking Public Access work

D6.2 Self-employed barristers undertaking public access work and BSB entities supplying legal services directly to the public

Rules

Public Access Guidance for Lay Clients

rC164 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 display a link to the Public Access Guidance for Lay Clients on the BSB's website.

Price transparency policy statement

rC165 *Self-employed barristers* undertaking public access work and/or their chambers, and *BSB entities* supplying *legal services* directly to the public, must comply with the *Bar Standards Board's* price transparency policy statement insofar as it applies to them [hyperlink].

Publication of information

rC166 *Self-employed barristers* undertaking public access work and/or their chambers, and *BSB entities* supplying *legal services* directly to the public, may be required by the *Bar Standards Board's* price transparency policy statement to provide price information in relation to certain *legal services*. In relation to those *legal 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:

- .1 state their pricing model(s), such as fixed fee or hourly rate;
- .2 state 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*;
- .3 state whether their fees include VAT (where applicable); and
- .4 state likely additional costs, what they cover and either the cost or, if this can only be estimated, the typical range of costs.

rC167 In compliance with the requirements of Rule C166 above:

- .1 a sole practitioner must provide price information in relation to them as an individual *barrister*;
- .2 a *BSB entity* must provide price information in relation to the entity; and
- .3 a *chambers* may provide price information either in relation to (1) individual *barristers*, or (2) *barristers* in *chambers* in the form of ranges or average fees.

rC168 *Self-employed barristers* undertaking public access work and/or their chambers, and *BSB entities* supplying *legal services* directly to the public, may be required by the *Bar Standards Board's* price transparency policy statement to provide service information in relation to certain *legal services*. In relation to those *legal 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:

.1 state and describe the *legal services*, including a concise statement of the key stages, in a way which enables *clients* to sufficiently understand the service of the sole practitioner, *barristers in chambers* or *BSB entity*, and

.2 provide an indicative timescale for the key stages of the *legal services*.

rC169 *Self-employed barristers* undertaking public access work, and *BSB entities* supplying *legal services* directly to the public, may be asked to accept *instructions* to provide the *legal services* listed in the *Bar Standards Board's* price transparency policy statement at short notice. In these circumstances, you are not required to comply with Rules C166 – C168 above before accepting the *instructions*. However, you must do so as soon as reasonably practicable after accepting the *instructions*.

Additional rules on price and service transparency for those undertaking Public Access work – why is the BSB proposing this?

49. Each website of self-employed barristers undertaking Public Access work and/or their chambers, and BSB entities supplying legal services directly to the public, will need to display a link to the [Public Access Guidance for Lay Clients](#) on the BSB's website (**Rule C164**). This will help members of the public to understand how the Public Access scheme works, and explain how they can use it to instruct barristers directly.
50. Those undertaking Public Access work will also need to comply with the BSB's price transparency policy statement insofar as it applies to them (**Rule C165**). This can be found at Annex B of the BSB's Transparency Standards Guidance (published in draft alongside this consultation). Those undertaking Public Access work may be required by the statement to provide additional price and service information in relation to certain Public Access services, but only in specific circumstances. The statement sets out the application and scope of these additional requirements, and the rationale for them. In summary:
- The CMA 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. The BSB also operated a pilot scheme to test proposed transparency requirements, and carried out an online survey of the pilot participants' clients. This found that lay client respondents needed more price and service information, and were more inclined to "shop around" and review website information, than solicitor respondents. The YouGov and London Economics study also found that consumers value having readily accessible information on prices and services, which they can use when comparing between barristers;

- 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; and
- 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.

51. 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 Solicitors Regulation Authority (SRA) and the other legal services regulators where appropriate.

52. However, a Public Access service would not need to meet all of these criteria in order to be subject to price transparency 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.

53. By applying the criteria above in this way, the BSB has initially determined that the following Public Access services should be subject to price transparency requirements. For each of these Public Access services, the specific circumstances in which price

transparency requirements apply and an example of the required transparency can be found at Annexes C – K of the BSB’s Transparency Standards Guidance (published in draft alongside this 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)

54. It will be important for those undertaking Public Access work to have regard to the specific circumstances in which price transparency requirements apply, and the examples.

55. As above, those undertaking Public Access work may be required by the BSB’s price transparency policy statement to provide additional price information in relation to certain Public Access services, but only in specific circumstances. In those circumstances, they will need to state the following on their websites:

- Their pricing model(s), such as fixed fee or hourly rate (**Rule C166.1**). This will ensure that consumers are aware of the pricing model(s) which those undertaking Public Access work use for the service in question;
- Their indicative fees for the service and the circumstances in which they may vary (**Rule C166.2**). For example, a fixed fee and the circumstances in which additional fees may be charged, or an hourly rate by seniority of barrister. Fees may also vary depending on where barristers are located (say a regional annex of chambers), or the client’s needs – fees may be higher if the client has a more complex case and/or needs a more experienced barrister. This information will help consumers to “shop around” for the service. The BSB recognises that fees will be indicative only, and this should be stated on websites. For example, *“all information is correct as of X, but*

fees are estimates only. For the most accurate fee estimate, please contact the clerks”;

- Whether their fees include VAT, where applicable (**Rule C166.3**); and
- State likely additional costs (for example, court fees), what they cover and either the cost or, if this can only be estimated, the typical range of costs (**Rule C166.4**). This information will help consumers to budget, and understand what indicative fees do and do not cover.

56. Participants in the BSB’s pilot scheme considered that increased transparency may help to address the public’s perception that barristers are expensive and difficult to access, and provide more certainty to clients about what they are ultimately going to be charged. Those undertaking Public Access work will need to comply with Rule C166 as follows:

- A sole practitioner will need to provide price information in relation to them as an individual barrister (**Rule C167.1**);
- A BSB entity will need to provide price information in relation to the entity (**Rule C167.2**); and
- A chambers will need to provide price information either in relation to (1) individual barristers, or (2) barristers in chambers in the form of ranges or average fees (**Rule C167.3**).

57. Sole practitioners and BSB entities are single economic units. A sole practitioner will therefore need to provide price information in relation to themselves as an individual barrister, and a BSB entity will need to provide price information in relation to the entity. However, chambers are made up of individual self-employed barristers and are not single economic units. They can therefore provide price information either in relation to (1) individual barristers, or (2) barristers in chambers in the form of ranges or average fees. If chambers provide price information in relation to the latter, they can do so on the basis of all barristers in chambers, by seniority of barrister or by annex of chambers. They should consider which type of price information would be most useful for their clients.

58. In any event, those regulated by the BSB will need to ensure that self-employed barristers in chambers remain able to compete with each other. This means that chambers must not set fees as a standard offering, and barristers must not co-ordinate with each other to keep prices at a certain level, agree to charge the same prices or put mechanisms in place for setting prices. Doing so could risk breaching competition law.

Further guidance on this can be found in the BSB's Transparency Standards Guidance (published in draft alongside this consultation).

59. Those undertaking Public Access work may also be required by the BSB's price transparency policy statement to provide additional service information in relation to certain Public Access services. In relation to those Public Access services, they will need to include the following on their websites:

- A statement and description of the service in question (**Rule C168.1**). The description will need to include a concise statement of the key stages, and be written in a way which allows consumers viewing websites to sufficiently understand the service of the sole practitioner, barristers in chambers or BSB entity; and
- An indicative timescale for the key stages of the service in question (**Rule C168.2**). This will help consumers to understand what they can expect from a case and from their barrister, and manage those expectations. The BSB recognises that timescales will be indicative only. The YouGov and London Economics study found that it would help consumers to receive estimates regarding timescales of work, in order to help them understand the information on quote elements, and compare between barristers. For each of the Public Access services subject to additional transparency requirements, an example of the required transparency can be found at Annexes C – K of the BSB's Transparency Standards Guidance (published in draft alongside this consultation).

60. Finally, the BSB recognises at **Rule C169** that those undertaking Public Access work may not currently be providing the services subject to additional transparency requirements, but may be asked to accept instructions to do so at short notice. In these circumstances, those undertaking Public Access work will not need to comply with the additional transparency requirements (Rules C166 – C168) before accepting instructions. However, they will need to do so as soon as reasonably practicable after accepting instructions.

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.

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.

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.

PART V: Implementation

Supervision and enforcement

61. 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. The BSB has published checklists to help those regulated by us to comply with the transparency rules. These can be found in the BSB’s Transparency Standards Guidance (published in draft alongside this consultation). It is recommended that copies of checklists are kept. This will allow those regulated by us to demonstrate that they have sought to comply with the transparency rules. Further information on our supervision and enforcement strategy in respect of transparency can also be found in the BSB’s Transparency Standards Guidance.

Review of transparency standards

62. 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.
63. 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.

PART VI: Equality impact assessment

64. An equality impact assessment (EIA) of the proposals in the consultation has been carried out and can be found at Annex A. The EIA identified that, 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. They may therefore find complying with the new requirements more administratively burdensome. Our view is that this is justified given the expected benefit to Public Access clients, access to justice and competition in the provision of legal services. However, we will review whether there has been any adverse impact for different groups as part of the evaluation of the requirements from 2020. We have also produced comprehensive Transparency Standards Guidance (published in draft alongside this consultation) to support barristers in complying with the requirements. The guidance includes examples of required transparency for Public Access services.
65. In addition, we have taken steps to ensure that, for those returning from maternity leave, the requirements will not act as a barrier to restarting their practice. We also do not have evidence to suggest that the requirements will have any adverse impact on the basis of other protected characteristics under the Equality Act 2010.

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.

PART VII: About the consultation and how to respond

Acknowledgements

66. We are extremely grateful to members of our [Advisory Pool of Experts](#) and a [Task Completion Group](#) for their contribution. Their expertise was invaluable to the development of the consultation. We are also extremely grateful to those Specialist Bar Associations which reviewed the examples of required transparency for Public Access services for technical accuracy.

Who should respond to the consultation?

67. We are particularly interested in hearing from:

- Barristers, particularly those undertaking Public Access work;
- Users of barristers' services, particularly Public Access clients and including solicitors;
- Members of chambers' business management, including practice managers and clerks;
- Bar special interest networks and associations;
- Consumer organisations;
- Individual consumers; and
- Students: current law students, BPTC students and anyone interested in a career at the Bar.

How to respond to the consultation

68. The deadline for responses to the consultation is **Friday 14 December 2018**. You do not need to wait until the deadline to respond to the consultation.

69. A response does not need to be a comprehensive written document, although it can be if you wish. It can also be short form answers to the specific questions we have posed. It

is however far more useful to us (and we are better able to take your views into account) if you are able to address the questions we have posed specifically, rather than, for example, simply stating your general view. We will of course never exclude consideration of a response, whatever its form or content. You are also welcome to respond only to those consultation questions which are of most interest to you.

70. You do not have to respond to the consultation in writing. If you would like someone from the BSB to meet you or the organisation you represent, to listen to and accurately record your views, then as far as possible we will try to accommodate this request. Please contact us either by email, telephone or post as soon as possible if you would like to do this.
71. **Whatever form your response takes, we will normally want to make it public and attribute it to you or your organisation, and publish a list of respondents. If you do not want to be named as a respondent to the consultation, please set this out in your response. If parts of your response are confidential, please identify these and supply a non-confidential version of your response that we can publish with an explanation as to why the identified information is confidential.**
72. Please send your response, or otherwise get in touch, as follows:

Email: ProfessionalStandards@BarStandardsBoard.org.uk

Tel: 020 7611 1444

Professional Standards Team

The Bar Standards Board

289-293 High Holborn

London

WC1V 7HZ

List of questions

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.

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.

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.

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.

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.

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.

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.

Annex A: Equality impact assessment

Date of Assessment	June 2018.
Name of Policy/Function to be Assessed	Response to the Competition and Market Authority’s Recommendations – Rules Consultation on Transparency Standards.
Aim/Purpose of Policy	<p>The Competition and Markets Authority (CMA) undertook a market study into legal services in 2016. Its final report was published on 15 December. Its recommendations fall broadly into four categories: delivering a step change in standards of transparency, promotion of the use of independent feedback platforms, making data more accessible and making better information available to assist consumers.</p> <p>In its final report, the CMA recommended that the regulators deliver a step change in standards of transparency to <i>“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”</i>.⁵</p> <p>In February 2018, the BSB published our approach to improving transparency for consumers of barristers’ services. 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 is therefore 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</p>

⁵ <https://assets.publishing.service.gov.uk/media/5887374d40f0b6593700001a/legal-services-market-study-final-report.pdf>, page 15

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, and applied requirements to the following Public Access services:

- Child arrangements arising out of divorce or separation
- 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

We also hope that this will encourage improved price and service transparency, where appropriate, for other Public Access services.

In addition, 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 consider 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 agreed 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.

In summary, we have proposed:

	<ul style="list-style-type: none">• 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.
--	---

1. Evidence

The BSB's data on the profession collected through the Authorisation to Practise (AtP) process has been used to inform this equality analysis. Specifically, the data has been cross-referenced with our data on Public Access registrations. This has allowed us to determine, in relation to each of the protected characteristics in the Equality Act 2010, the percentage of the Public Access Bar which undertakes work in certain practice areas. We have used these figures as proxies for the percentage of the Public Access Bar which may be providing the services to which we have applied additional transparency requirements. In turn, this has allowed us to assess the potential equality impact of applying additional transparency requirements to these Public Access services. What follows is a list of the Public Access services to which we have applied additional transparency requirements and, in italics, the corresponding practice areas:

- Child arrangements arising out of divorce or separation (*practice area: family – children*)
- Employment Tribunal cases (advice and representation for employers and employees) (*practice area: employment*)
- Financial disputes arising out of divorce (*practice area: family – other*)
- Immigration appeals (First-tier Tribunal) (*practice area: immigration*)
- Inheritance Act advices (*practice area: chancery – contentious*)
- Licensing applications in relation to business premises (*practice area: licensing*)
- Personal injury claims (*practice area: personal injury*)
- Summary only motoring offences (*practice area: crime*)
- Winding-up petitions (*practice area: insolvency*)

2. Impact on Equality

Race	<p>As of June 2018, 77% of the Public Access Bar are white and 15.3% are BME (we have no information for the remaining 7.7%). There is a statistically significant difference in that disproportionately more BME barristers undertake Public Access work in immigration (the corresponding Public Access service to which we have applied additional transparency requirements is immigration appeals at the First-Tier Tribunal).</p> <p>BME barristers may therefore be more likely to be required to comply with the additional transparency requirements we have applied to immigration appeals at the First-Tier Tribunal (when undertaken on a Public Access basis). In turn, they may find complying with the new requirements more administratively burdensome. Our view is that this is justified given the expected benefit to Public Access clients, access to justice and competition in the provision of legal services. However, we will review whether there has been any adverse impact as part of the evaluation of the requirements from 2020. We have also produced comprehensive Transparency Standards Guidance (published in draft alongside this consultation) to support barristers in complying with the requirements. The guidance includes examples of required transparency for Public Access services.</p> <p>In addition, the Transparency Standards Guidance encourages barristers, where it may be beneficial to meeting consumer need, to consider providing website content in different languages and information about translation services (and the cost of those services).</p>
Gender	<p>As of June 2018, 65.7% of the Public Access Bar are male and 33.6% are female (we have no information for the remaining 0.7%). There are statistically significant differences in that disproportionately more female barristers undertake Public Access work in the following practice areas:</p> <ul style="list-style-type: none"> • Family – children (<i>corresponding Public Access service to which we have applied additional transparency requirements: child arrangements arising out of divorce or separation</i>) • Family – other (<i>financial disputes arising out of divorce</i>)

	<p>There are also statistically significant differences in that disproportionately more male barristers undertake Public Access work in the following practice areas:</p> <ul style="list-style-type: none"> • Chancery – contentious (<i>corresponding Public Access service to which we have applied additional transparency requirements: Inheritance Act advices</i>) • Crime (<i>summary only motoring offences (advice and representation for defendants)</i>) • Insolvency (<i>winding-up petitions</i>) • Licensing (<i>licensing applications in relation to business premises</i>) • Personal injury (<i>personal injury claims</i>) <p>In each case, male or female barristers (as appropriate) may be more likely to be required to comply with the additional transparency requirements we have applied to certain Public Access services. They may therefore find complying with the new requirements more administratively burdensome. Our view is that this is justified given the expected benefit to Public Access clients, access to justice and competition in the provision of legal services. However, we will review whether there has been any adverse impact as part of the evaluation of the requirements from 2020. We have also produced comprehensive Transparency Standards Guidance (published in draft alongside this consultation) to support barristers in complying with the requirements. The guidance includes examples of required transparency for Public Access services.</p>
Disability	<p>As of June 2018, 1.9% of the Public Access Bar have declared a disability and 43.7% are not disabled (we have no information for the remaining 54.4%). There are statistically significant differences in that disproportionately more disabled barristers undertake Public Access work in the following practice areas:</p> <ul style="list-style-type: none"> • Employment (<i>corresponding Public Access service to which we have applied additional transparency requirements: Employment Tribunal cases (advice and representation for employers and employees)</i>) • Insolvency (<i>winding-up petitions</i>) • Personal injury (<i>personal injury claims</i>)

	<p>In each case, disabled barristers may be more likely to be required to comply with the additional transparency requirements we have applied to certain Public Access services. They may therefore find complying with the new requirements more administratively burdensome. Our view is that this is justified given the expected benefit to Public Access clients, access to justice and competition in the provision of legal services. However, we will review whether there has been any adverse impact as part of the evaluation of the requirements from 2020. We have also produced comprehensive Transparency Standards Guidance (published in draft alongside this consultation) to support barristers in complying with the requirements. The guidance includes examples of required transparency for Public Access services. It is also important to note that barristers will not be required to have a website as a result of the requirements – if they do not have a website, they will need to ensure the required information is readily available in hard copy format, and provide it to consumers on request.</p> <p>In addition, the Transparency Standards Guidance encourages barristers to provide a copy of their reasonable adjustments policy on their website (they are required to have a policy under the Equality Rules in the BSB Handbook). It also encourages barristers to consider whether consumers would struggle with small font sizes, colours, jargon they cannot be expected to understand or, if accessing their website via a mobile device, small buttons. Finally, even if a barrister has a website, they will still need to ensure the required information is readily available in hard copy format, and provide it to consumers on request.</p>
Age	<p>As of June 2018, 14.6% of the Public Access Bar is under 35 and 68.2% is over 35 (we have no information for the remaining 17.2%). There are statistically significant differences in that disproportionately more barristers under 35 undertake Public Access work in the following practice areas:</p> <ul style="list-style-type: none"> • Crime (<i>corresponding Public Access service to which we have applied additional transparency requirements: summary only motoring offences (advice and representation for defendants)</i>) • Family – children (<i>child arrangements arising out of divorce or separation</i>) • Family – other (<i>financial disputes arising out of divorce</i>) • Immigration (<i>immigration appeals (First-tier Tribunal)</i>)

	<ul style="list-style-type: none"> • Insolvency (<i>winding-up petitions</i>) • Personal injury (<i>personal injury claims</i>) <p>In each case, barristers under 35 may be more likely to be required to comply with the additional transparency requirements we have applied to certain Public Access services. They may therefore find complying with the new requirements more administratively burdensome. Our view is that this is justified given the expected benefit to Public Access clients, access to justice and competition in the provision of legal services. However, we will review whether there has been any adverse impact as part of the evaluation of the requirements from 2020. We have also produced comprehensive Transparency Standards Guidance (published in draft alongside this consultation) to support barristers in complying with the requirements. The guidance includes examples of required transparency for Public Access services.</p>
Sexual Orientation	We do not have evidence to suggest that the new transparency requirements will have any adverse impact on the basis of sexual orientation.
Religion/Belief	We do not have evidence to suggest that the new transparency requirements will have any adverse impact on the basis of religion or belief.
Gender Reassignment	We do not have evidence to suggest that the new transparency requirements will have any adverse impact on the basis of gender reassignment.
Pregnancy/ Maternity	Barristers who are on maternity leave and not practising will not be required to comply with the new transparency requirements. We also recognise at Rule C169 that those undertaking Public Access work may not currently be providing the services subject to additional transparency requirements, but may be asked to accept instructions to do so at short notice. In these circumstances, those undertaking Public Access work will not need to comply with the additional transparency requirements before accepting instructions. However, they will need to do so as soon as reasonably practicable after accepting instructions. This means that, for those returning from maternity leave, the requirements will not act as a barrier to restarting their practice.
Marriage and Civil Partnership	We do not have evidence to suggest that the new transparency requirements will have any adverse impact on the basis of marriage and civil partnership.

Other Identified Groups	<p>We are mindful that by mandating greater transparency we do not inadvertently restrict barristers from offering better rates to more socially beneficial causes. The BSB’s Transparency Standards Guidance (published in draft alongside this consultation) therefore states that if a barrister’s clients are less experienced and less expert consumers, and/or instruct them on a Public Access basis, it may be particularly useful for the barrister to highlight any potential price flexibility on their website.</p> <p>In addition, we do not have evidence to suggest that the new transparency requirements will have any adverse impact on those with caring responsibilities.</p>
-------------------------	---

<p>How does the policy advance equality of opportunity?</p> <p>The BSB is seeking to target our regulation where it can have the greatest positive impact. We are therefore proposing 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. We have also applied additional transparency requirements to the following Public Access services:</p> <ul style="list-style-type: none"> • Child arrangements arising out of divorce or separation • 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 <p>We have applied the following criteria to determine that these Public Access services should be subject to additional transparency requirements:</p> <ul style="list-style-type: none"> • 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 Solicitors Regulation Authority (SRA) and the other legal services regulators where appropriate.

The new transparency requirements will therefore assist less expert and more vulnerable consumers (including those from lower socio-economic backgrounds) to access, understand and compare price and service information about barristers' services (particularly more common Public Access services). Given that this information has hitherto not been so widely available, the requirements could lead to improvements in access to justice. For example, some consumers (particularly in areas where there have been cuts to legal aid, such as family and immigration) may assume that they cannot afford legal advice or representation when this is not in fact the case. Increased price transparency, particularly in relation to the Public Access services to which we have applied additional transparency requirements, may therefore assist consumers in securing legal advice and representation.

In 2015, the BSB commissioned, jointly with our oversight regulator the Legal Services Board (LSB), an independent research specialist (Pye Tait) to undertake supply-side research into the Public Access scheme (surveying and interviewing Public Access barristers). The [report](#) (published in April 2016) found that "The types of law in which the public access scheme is most commonly used are: family, chancery, employment, general common law and commercial law (litigation and property)." As a result of the new transparency requirements, we would expect to see the most pronounced improvement in access to justice in the areas of family and employment law, and indeed we have applied additional transparency requirements to the following Public Access services: child arrangements arising out of divorce or separation, financial disputes arising out of divorce and Employment Tribunal cases (advice and representation for employers and employees).

In addition, the information required by the transparency rules will need to be displayed in a sufficiently accessible and prominent place on barristers' websites. This means that in most cases, the required information should either be on the website's homepage, or one or two clicks away from the homepage. The information should also be in a standard size font. This will ensure that it is easy for consumers to find, and assist them with understanding and comparing information. Barristers will also need to ensure that the required information is readily available in hard copy format. This must be provided on request; for example, if they do not operate a website, or a client or prospective client does not have Internet access. This will ensure that all consumers are able to

benefit from increased price, service and redress transparency. Information can be provided in hard copy format in the form of a 'fact sheet'. An example of a fact sheet can be found at Annex A of the BSB's Transparency Standards Guidance (published in draft alongside this consultation). The guidance also encourages barristers to take steps to ensure that information is easily understood by its intended audience. This includes putting information in plain English, highlighting key points and making information available in alternative formats, such as audio visual content.

Finally, the requirements will be a good opportunity for barristers to improve client communication and in turn, reduce disputes and complaints about fees. In 2016/17, both "excessive costs or poor costs information" and "poor communication" were in the top five complaint types raised about barristers to the Legal Ombudsman (LeO). This has remained consistent over time. In addition, 41% of barrister cases resolved by the LeO in 2016/17 involved a barrister instructed via Public Access. Of those, around 34% were upheld, which is significantly higher than the overall percentage of complaints upheld against barristers (25%). Consequently, there is scope to reduce disputes and complaints about fees, particularly in relation to Public Access. This will be beneficial as disputes and complaints about fees can have an adverse impact for both clients and barristers.

How does the policy promote good relations between different groups?

N/A.

3. Summary of Analysis

a. No change to the policy (no impacts identified)	Your analysis demonstrates that the policy is robust and the evidence shows no potential for discrimination. You have taken all appropriate steps to advance equality and foster good relations between groups.	
b. Continue the policy (impacts identified)	Continue with the proposal, despite any adverse impacts, provided it is not unlawfully discriminatory and is justified.	X
c. Adjust the policy and continue	Take steps to remove barriers, mitigate impacts or better advance equality before continuing with the policy.	
d. Stop and remove the policy	There are adverse effects that are not justified and cannot be mitigated. The policy is unlawfully discriminatory.	

Reason for decision

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. They may therefore find complying with the new requirements more administratively burdensome. Our view is that this is justified given the expected benefit to Public Access clients, access to justice and competition in the provision of legal services. However, we will review whether there has been any adverse impact for different groups as part of the evaluation of the requirements from 2020. We have also produced comprehensive Transparency Standards Guidance (published in draft alongside this consultation) to support barristers in complying with the requirements. The guidance includes examples of required transparency for Public Access services.

In addition, we have taken steps to ensure that, for those returning from maternity leave, the requirements will not act as a barrier to restarting their practice. We also do not have evidence to suggest that the requirements will have any adverse impact on the basis of other protected characteristics under the Equality Act 2010.

4. Action Plan for Improvement

Action Required	Desired Outcome	Person Responsible	Timescale
<p>Review whether there has been any adverse impact for different groups, particularly Public Access barristers who are BME, male/female, disabled and under 35. In respect of different Public Access services, these groups may be more likely to be required to comply with additional transparency requirements.</p>	<p>This would allow us to determine whether the requirements have any adverse impact for different groups and, if so, seek to mitigate the impact.</p>	<p>Professional Standards and Research Teams.</p>	<p>From 2020 (after the new transparency requirements come into force in May 2019).</p>