

BAR STANDARDS BOARD

REGULATING BARRISTERS

Response to the Competition and Market Authority's Recommendations

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

Executive Summary

1. The BSB issued a policy consultation on the Competition and Market Authority's (CMA's) recommendations relating to new price, service and redress transparency requirements on 2 October 2017. This is available at: https://www.barstandardsboard.org.uk/media/1912954/cma_consultation_va988967.pdf. The consultation closed on 5 January 2018.
2. This report is a summary of the responses received to the consultation. It also contains BSB responses to the points raised by respondents to the consultation, and outlines a way forward in implementing new price, service and redress transparency requirements.
3. The key BSB decisions following the consultation (outlined further at paragraph 17 below) are as follows:

Consumer Testing

- In order to streamline the proposals, we will re-categorise the recommendations into higher impact (mandatory, where appropriate) and lower impact (discretionary). We are also commissioning further research and consumer testing to ensure that our categorisation is robust, and strikes the appropriate balance between mandatory and discretionary information.

Price

- As part of developing a more proportionate approach, we will consider a requirement for chambers' websites to state that professional and/or lay clients (as appropriate) may contact chambers to obtain a quote. We will also consider a requirement for chambers' websites to state their most commonly used pricing models;
- In developing a more proportionate approach, we will prioritise the more commoditised services provided by Public Access barristers; and
- Where it is considered that fee (and further service) disclosure is necessary and appropriate, we are committed to working with the various Specialist Bar Associations to develop tailored guidance.

Service

- We consider it important that there is a minimum standard of service transparency; for example, a requirement for chambers' websites to state the

areas of law in which they most commonly provide services and/or state and provide a description of their most commonly provided services; and

- We will proceed with the requirement for all chambers with Public Access registered barristers to display a link through to the guidance for lay clients on the BSB's website.

Redress

- We will proceed with the proposed requirements for all chambers' websites to display the text "barristers regulated by the Bar Standards Board", and information about any right to complain to the LeO;
- On balance, we agree that the publication of first-tier complaints data would not be the most useful quality of service indicator at this stage. We will therefore consider a requirement for chambers' websites to link to the BSB register to enable clients to search for a barrister's regulatory status and any associated current disciplinary findings by the Bar Tribunals & Adjudication Service (BTAS), in line with the BSB's disclosure policy. We will also explore the feasibility of a similar arrangement complaints which have been upheld by the LeO; and
- We will proceed with the proposal to develop a digital smart badge of the BSB's logo, and consider making it a mandatory requirement for this to be displayed on chambers' websites.

Application to Public Access Work

- In developing a more proportionate approach, one option would be to only apply fee disclosure requirements to those Public Access barristers providing the type of commoditised services most commonly purchased by less experienced and less expert consumers;
- A second option (either instead of, or in addition to, the option outlined above) would be to apply fee disclosure requirements to chambers which have (for example) ten or more barristers providing a significant proportion of their services on a Public Access basis, and commonly to less experienced and less expert consumers (and/or in high-risk practice areas such as immigration and family law);
- More detail on these two options is in our response to question 10. With regard to both options, it is important to note that the consultation suggested those to whom the requirements apply would only need to produce a minimum of three illustrative price and service scenarios.

Application to Referral Work

- We will not seek to apply disclosure requirements in relation to hourly rates and fixed fees to barristers undertaking referral work. However, as above we are considering a requirement for chambers' websites to state their most commonly used pricing models; and
- Our view is that all barristers should be required to meet minimum transparency standards in relation to service and redress.

Introduction

4. The CMA undertook a market study into legal services in 2016, and its final report was published on 15 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 overall aim is to improve consumer understanding, facilitate shopping around and ultimately drive competition.

5. On 2 October 2017, the BSB issued a policy consultation focused on the CMA's recommendation to deliver a step change in standards of transparency. The CMA's report stated that *"in the case of barristers, increased public transparency will be most relevant and beneficial to customers engaging a barrister through the public access scheme rather than issuing instructions via a solicitor. However, we note that the solicitors' role as intermediaries instructing barristers on behalf of clients will be strengthened if there is a general improvement in the level of transparency in the sector"*.¹

Overview of Policy Consultation

6. The policy consultation therefore proposed applying new transparency requirements to both barristers and entities undertaking Public Access work, and those undertaking referral work for clients entitled to complain to the Legal Ombudsman (LeO): broadly, individuals, small businesses and charities. The rationale was to target consumers who would most benefit from being able to access more information about barristers' fees and services.
7. In its final report, the CMA also set out its view of the minimum levels of transparency consumers should be able to expect from legal services providers *before* they are instructed:

Minimum disclosure requirements		
<i>Price</i>	<i>Service</i>	<i>Redress</i>
Pricing and charging model (e.g. fixed fee, hourly rates, capped charges, conditional fee agreement/damages-based agreement)	A description of the services that the legal services provider provides	Regulatory status, registration details
Hourly fees (where charged) by grade of staff	Mix of staff that deliver the service	Complaints process and access to the Legal Ombudsman (LeO)
(Where offered) indicative fixed fees and factors that may affect these and the circumstances where additional fees may be charged	Key (and discrete) stages of services	Professional indemnity insurance (PII) cover
Typical range of costs for different stages of cases (where appropriate)	Indicative timescales of completing services and factors affecting these	
Scale of likely disbursements (e.g. searches, court fees)		
Key factors that determine price (including disbursements)		

Table 7.1, CMA Final Report (2016)

8. However, the CMA stated the list had not been tested with consumers, and that *"it will be for individual regulators to assess their own current regulatory requirements and the*

¹ <https://assets.publishing.service.gov.uk/media/5887374d40f0b659370001a/legal-services-market-study-final-report.pdf>, page 281

relevance of our recommendations to the services that their regulated professionals offer".² Based on the findings of our initial programme of research (see paragraphs 8-15 of the consultation), we therefore attempted to segment the different requirements based on expected consumer benefits. The consultation then sought views on which of the recommendations would have greatest impact for consumers, while also being a proportionate response in terms of scope and feasible in terms of implementation.

9. Specifically, each CMA recommendation was categorised as either very high impact, high impact or medium impact in terms of expected benefit to consumers who may wish to use barristers' services. The consultation proposed that the CMA recommendations which were categorised as very high impact in terms of expected consumer benefit would be the suggested minimum disclosure requirements barristers would be required to publish.
10. The consultation also proposed that the BSB produce guidance with illustrative scenarios for the recommendations which would have high and medium impact. Our proposal was that while these recommendations would not form mandatory rules in the BSB Handbook, the BSB would still expect barristers to use the guidance to determine what additional factors (above the suggested minimum disclosure requirements set out in the rules) would increase transparency and consumer understanding. This would be dependent on the type of client the barrister was offering services to and the type of services they were offering.
11. Finally, the consultation proposed a targeted approach to the way in which information is disclosed by, for example, not prescribing precise forms of wording or fixed ways in which fees must be published. Our view is that there must be a balance between improving consumer understanding and genuinely promoting competition on the one hand, and not overburdening barristers and chambers or producing "information overload" for clients on the other. The proposals in the consultation set out to achieve that balance, but we were open-minded about the best way forward and so sought views from the profession and consumers.

Responses to Policy Consultation

12. The BSB issued the policy consultation on 2 October 2017, and it closed on 5 January 2018. The consultation consisted of 27 questions and we received 25 responses.
13. The full list of respondents is as follows:

20 Essex Street
3 Verulam Buildings
4 Pump Court
7 Bedford Row
Bar Council
Blackstone Chambers
Brick Court Chambers
Chancery Bar Association
Commercial Bar Association
Employment Law Bar Association
Essex Court Chambers
Family Law Bar Association
Fountain Court Chambers
Hardwicke Chambers
Institute of Barristers' Clerks

² <https://assets.publishing.service.gov.uk/media/5887374d40f0b659370001a/legal-services-market-study-final-report.pdf>, page 228

Legal Ombudsman
Legal Practice Management Association
Legal Services Consumer Panel
Lincoln House Chambers
Matrix Chambers
New Square Chambers
Personal Injuries Bar Association
Public Access Bar Association
Technology and Construction Bar Association
1 individual

14. All respondents have given their permission for the responses to be made public. Copies of all the responses are available from the BSB's Professional Standards Team on request.
15. This report is a summary of the responses received to the consultation. It also contains BSB responses to the points raised by respondents to the consultation, and outlines a way forward in implementing new price, service and redress transparency requirements.

Next Steps

16. The scope of the BSB's proposals has changed, and we consider that their more targeted nature would do more to benefit Public Access clients, access to justice and competition. The changed scope of the proposals will be reflected in the further rule change consultation we issue later this year. (This consultation will also revisit our Equality Impact Assessment (EIA), and widen the scope of the action plan for improvement).
17. Following the further rule change consultation, application to the Legal Services Board (LSB) for approval and an implementation period for the profession, the eventual transparency requirements will come into force in May 2019. However, we are not proposing to make compliance with any price transparency requirements mandatory until early 2020. A communications strategy will be developed to support compliance with the requirements, and we are also committed to evaluating the effectiveness of the requirements from December 2020.

Summary of Responses to Questions, and BSB Responses

QUESTION 1: do you agree that the publication of price recommendations 1, 2 and 3 would have the greatest impact in order to improve consumer understanding, facilitate shopping around and drive competition in service provision?

18. The table below indicates how we categorised the CMA's recommendations in relation to price, based on the potential benefits that publication of these factors would have for consumers.

Recommendation	Very high impact	High impact	Medium impact
1. Pricing and charging model (e.g. fixed fee, hourly rates, capped charges, conditional fee agreement/damages-based agreement)	✓		
2. Hourly fees (where charged) by seniority of barrister or grade of staff	✓		
3. (Where offered) indicative fixed fees and factors that may affect these and the circumstances where additional fees may be charged	✓		
4. Typical range of costs for different stages of cases (where appropriate)		✓	
5. Scale of likely disbursements (e.g. searches, court fees)		✓	
6. Key factors that determine price (including disbursements)		✓	

19. Our initial view was that recommendations 1, 2 and 3 in relation to price would have the most impact in terms of improving consumer understanding, facilitating shopping around and ultimately driving competition. Although we categorised the publication of hourly fees (where charged) by seniority of barrister or grade of staff as having a very high impact in terms of expected consumer benefit, we recognised the inherent difficulty in requiring barristers to do so. The setting of hourly fees is not necessarily straightforward and a number of factors in addition to seniority may determine the rate that the barrister chooses to set (for example, type of client, whether the work is likely to have more socially beneficial outcomes and whether the barrister is trying to build business in a new area). We were mindful that by mandating greater transparency we did not inadvertently restrict barristers from offering better rates to more socially beneficial causes. We therefore proposed not mandating a specific pricing model, but rather expected barristers to be transparent about the model they use (which may not necessarily be hourly rates) and the likely costs (whether this is calculated based on an hourly rate, fixed/capped fee or conditional fee/damages-based agreement).

Responses

20. Broadly, the LeO felt that the proposed measures in the consultation (and those of other legal regulators) were appropriate to the need and proportionate to the demand from consumers. They were supportive of frameworks which would give consumers of legal services clear information from the outset, provided that the volume is not overwhelming and all information is contextualised. They stated that *“providing more up-front information about costs would...be beneficial in managing consumer expectations about the process. Moreover, if information about how costs are calculated were to be included, this might increase consumer understanding more generally and generate greater confidence in the profession”*. However, they recognised that very often pricing in the legal services market can be complex, depend on a number of factors, and change over time. They therefore stated it is crucial to ensure that these caveats are built into any transparency framework. For this reason,

they were supportive of requiring price to be published with dependencies, and including hourly rates and other similar information in any price transparency requirements.

21. The Legal Services Consumer Panel was concerned about the layers of complexity built into the proposals, and that the categorisations which determine mandatory and discretionary information were primarily based on a regulatory self-assessment. They therefore recommended that the BSB keeps the balance between mandatory and discretionary information under review, as without consumer testing *“it is difficult for the Panel to be certain that the BSB’s assessment is correct”*. They also stated that the BSB should develop a common and consistent approach with other regulators as the most effective way to develop greater transparency.
22. Many responses from the profession disagreed with the premise of the question, stating that a lack of consumer understanding, shopping around or competition in the type of bespoke legal services most often provided by barristers has not been evidenced by either the CMA’s report or the BSB. Matrix Chambers stated *“it happens with great frequency that a firm of solicitors will approach numerous chambers offering the same piece of work and inviting quotes. That enables the firm to compare available individuals and price...public access clients can and do also ‘shop around’ in this way”*.
23. 20 Essex Street, in disagreeing with the proposals, stated that *“real transparency about costs can only be achieved by advising [clients] to engage with chambers and seek estimates about likely cost range based on providing chambers with concrete information about their dispute”*. This is because, at least in the context of commercial law, *“all...legal disputes have their own unique characteristics and actual fees incurred vary widely”*, so there would not be any precision in estimates. The Employment Law Bar Association was concerned that due to the myriad of different factors which may affect price, *“the information provided on Chambers’ websites is, in reality, likely to be too vague to be of use to consumers. The differential between those and accurate quotes provided by clerks with proper information is likely to lead to confusion”*.
24. Many other responses from the profession (including the response of the Bar Council) also noted that while the focus of the CMA’s report was on commoditised legal services, the majority of barristers’ services are bespoke and so require bespoke pricing structures. They therefore argued that the nature of the disclosure envisaged by the CMA’s recommendations is not appropriate to the majority of barristers’ services. However, this view was not universal with regard to all of the CMA’s recommendations 1, 2 and 3.
25. In relation to recommendation 1 (pricing and charging model), the Legal Practice Management Association stated *“it is conceivable that the publication of different pricing models would be helpful to consumers i.e. “we accept instructions under CFA/contingency agreements”*. It is important though that chambers are not obligated to say this. *It could and should be advisory”*. However, many felt a requirement to disclose pricing and charging models would be impractical; Blackstone Chambers stated that in the vast majority of cases, *“the method of charging will depend on the nature of the work and client”*. Their view was that this requirement would only be useful in respect of commoditised legal services, and *“even in such a case, guidance rather than a rule would allow a barrister flexibility in achieving transparency”*. While the Family Law Bar Association agreed that there may be some benefits to chambers’ websites displaying potential pricing and charging models, they questioned whether *“individual chambers’ websites are really the appropriate location for this information. Mandating publication of that information on each website would be onerous and the information could potentially be better provided via the Legal Choices website”*. Another suggestion was for a form of Annex A to the consultation (most common pricing models) to be featured on the Legal Choices website. The Bar Council agreed

that while *“transparency about pricing models...is in principle beneficial to public understanding”*, it may be better for this information to be provided via the Legal Choices website.

26. In relation to recommendations 2 (hourly fees by seniority of barrister) and 3 (indicative fixed fees and factors that may affect these), there was a consensus from the profession that there would be limited utility in requiring the publication of this information. The Bar Council stated *“members across the profession have been emphatic regarding the lack of standardisation or routine in the work that barristers do”*. The Personal Injuries Bar Association was opposed to any mandatory requirements to disclose fixed fees, and could only support the mandatory disclosure of hourly fees in a generic format e.g. a range of hourly rates *“banded by call...and caveated by the actual hourly rate being determined by the type of work undertaken”*. The Public Access Bar Association stated that:

We have no objection to barristers providing information about indicative hourly rates. This could be useful for consumers to be able to compare the cost of engaging barristers from different chambers and of different level of experience and also to make comparison with the cost of engaging a solicitor or other legal service provider. However...there must be sufficient flexibility in the requirement to allow for (for example) the barrister to charge a lower rate in a public interest case...equally there are cases where a barrister is justified in charging a higher than standard rate.

27. The Bar Council stated in relation to Public Access that *“the aim of bringing forward information routinely included in client care letters and putting them on a site is an understandable one, but while some of that information is standard and will be the same in every letter, that is not true about pricing”*. Similarly, the Family Law Bar Association questioned whether, given the many factors affecting hourly and fixed fees, *“estimates can even be given in a way that provides clarity, rather than confusion”*. Others felt that the consultation had not accurately captured the full range of factors which may affect hourly and fixed fees. The Bar Council stated this would *“make the bands that chambers publish so wide that they do not actually give prospective clients any useful indication of likely fees, or enable them to compare different barristers”*. However, they noted that this view was not universal, as one chambers which already publishes hourly rates for Public Access work stated they do enable an accurate gauge of price.

28. In addition, there was a concern that a requirement to publish hourly fees may lead to barristers publishing aspirational, rather than realistic, rates. This may lead to consumers assuming that they cannot afford barristers' services, unless fee information is heavily caveated and websites encourage consumers to contact chambers for a quote (which many do already). The Employment Law Bar Association stated that aspirational rates *“may also have the effect of driving rates up, as the publication of indicative fees may hinder negotiation and reduce the flexibility on fees that barristers are currently willing to offer”*. This concern was particularly acute in the context of referral work, where it was claimed that solicitors are in the dominant negotiating position. As they may seek only to pay the hourly fee at the bottom end of a range, barristers may increase their fees to compensate for this. The Bar Council also stated that:

It is easy to see how a well-intentioned requirement to publish hourly rates (in any form) might end up decreasing transparency. Chambers would publish notional or “headline” ranges of hourly rates, with all market participants except the inexperienced consumer of legal

services aware that those rates would be subject to discounts, depending on the particular case or the particular barrister instructed.

29. The Commercial Bar Association noted that even if the disclosure of recommendations 1, 2 and 3 was made mandatory, *“the client would still need to make a direct enquiry of chambers to determine what rate applied to the case in question”*. The position in relation to fees is therefore likely to remain complex. This led many responses from the profession to suggest that the BSB work with the various Specialist Bar Associations to develop tailored guidance in relation to fees (while generally disagreeing with the proposals to introduce mandatory disclosure requirements).

BSB Response

30. The BSB notes the concerns about the layers of complexity built into the proposals but considers that, to strike the appropriate balance between improving consumer understanding and not overburdening barristers and chambers, it is necessary to consider all of the CMA’s recommendations from first principles. However, in order to streamline the proposals we will re-categorise the recommendations into higher impact (mandatory, where appropriate) and lower impact (discretionary). We are also commissioning further research and consumer testing to ensure that our categorisation is robust, and strikes the appropriate balance between mandatory and discretionary information. The BSB is committed to developing a common and consistent approach with other regulators but notes that, as our proposals need to account for the nature of barristers’ services and clients, our approach may diverge from that of other regulators where appropriate.
31. The BSB also notes the concerns that a lack of competition in the type of bespoke legal services most often provided by barristers has not been evidenced, and that heavily caveated information may lack utility and cause confusion for consumers of these services. We will therefore consider, as part of developing a more proportionate approach, a requirement for chambers’ websites to state that professional and/or lay clients (as appropriate) may contact chambers to obtain a quote. This was suggested by a number of responses to the consultation, and would demonstrate a commitment to transparency and facilitating shopping around without either risking consumer confusion, or overburdening barristers and chambers. It would also help to avoid inexperienced consumers of legal services simply relying on any published rates, without considering that a discount might apply to their particular case.
32. In addition, the BSB notes the views that the nature of the disclosure envisaged by the CMA’s recommendations is not appropriate to the majority of barristers’ services. In developing a more proportionate approach, we will therefore prioritise the more commoditised services provided by barristers.
33. In relation to recommendation 1 (pricing and charging model), the BSB notes the view that while publication could conceivably be helpful for consumers, it should be discretionary rather than mandatory. As above, we are commissioning further research and consumer testing to ensure that our categorisation is robust, and strikes the appropriate balance between mandatory and discretionary information. An alternative could be a requirement for chambers’ websites to state their most commonly used pricing models. We will also consider the suggestion for a form of Annex A to the consultation (most common pricing models) to be featured on the Legal Choices website.
34. In relation to recommendations 2 (hourly fees by seniority of barrister) and 3 (indicative fixed fees and factors that may affect these), the BSB notes the Public Access Bar Association’s comments that indicative hourly rates could facilitate shopping around and drive competition in service provision (particularly where solicitors and other legal

service providers may provide similar services). However, we also note the concerns about potential unintended consequences, and the view that, at least for the bespoke services provided by barristers, there may be limited utility in requiring the publication of this information. As above, we are commissioning further research and consumer testing to ensure that our categorisation strikes the appropriate balance between mandatory and discretionary information. Given their experience of complying with the recommendations, we will also seek the views of our transparency pilot participants at interview, which will add to our evidence-base. Finally, where it is considered that fee disclosure is necessary and appropriate, we are committed to working with the various Specialist Bar Associations to develop tailored guidance.

QUESTION 2: do you agree that the publication of service recommendations 7 and 10 would have the greatest impact in order to improve consumer understanding, facilitate shopping around and drive competition in service provision?

35. The table below indicates how we categorised the CMA’s recommendations in relation to service, based on the potential benefits that publication of these factors would have for consumers.

Recommendation	Very high impact	High impact	Medium impact
7. A description of the services that the legal services provider provides	✓		
8. Mix of staff that deliver the service			✓
9. Key (and discrete) stages of services		✓	
10. Indicative timescales of completing services and factors affecting these	✓		

36. As the CMA’s report states, consumers “need to understand what the service is that providers are offering, [and] how it will be delivered”.³ Our initial view was that recommendations 7 and 10 in relation to service would have the greatest impact in improving consumer understanding, facilitating shopping around and ultimately driving competition.

Responses

37. The LeO was supportive of proposals to introduce requirements in relation to description of service, and timescales in any legal services where price publication is required. The Legal Services Consumer Panel reiterated the need for consumer testing to determine the appropriate balance between mandatory and discretionary information.

38. A number of responses from the profession disagreed with the premise of this question, stating that a lack of consumer understanding, shopping around or competition in the type of bespoke legal services most often provided by barristers has not been evidenced. However, in relation to recommendation 7 (a description of the services that the legal services provider provides) there was general agreement that

³ <https://assets.publishing.service.gov.uk/media/5887374d40f0b659370001a/legal-services-market-study-final-report.pdf>, pages 239 – 240

information on the services provided is important for the consumer. That said, there was also a general view that, in light of the information on barristers' services which is already on the websites of chambers and others, there is no need for regulatory requirements in this area. The Personal Injuries Bar Association stated they *"would oppose any mandatory requirement that chambers or individual barristers should have to provide more than is already the norm"*. Others, including the Bar Council, felt that they would need more information on what requirements are proposed by the BSB in order to form a view. The Bar Council stated that *"from our own analysis and review of barristers' websites, the Bar already provides a great deal of information about the services that they offer...having said that, we would not necessarily oppose the introduction of certain minimum standards in principle"*.

39. In relation to recommendation 10 (indicative timescales of completing services and factors affecting these), there was general agreement among the profession that this is more relevant to commoditised legal services, whereas the majority of barristers' services are bespoke. Consequently, most were of the view that indicative timescales would need to be so caveated as to lack utility for consumers (especially in more complicated cases). Lincoln House Chambers stated that *"this information would be beset with disclaimers on the website and would be likely to confuse rather than assist"*. The Bar Council stated that timescales about the length of litigation are *"more within the province of solicitors, but in in any event it is very difficult to predict the likely length of any litigation, which can be influenced by a far greater number of external factors than other types of non-contentious work"*. They also noted that the majority of barristers are self-employed and agree to undertake work personally, whereas in other sections of the legal sector there may be multiple lawyers and paralegals undertaking work on the same case. This enables them to have greater control over timescales.
40. However, the Family Law Bar Association noted that *"with the advent of standard contractual terms, many chambers already publish guidance as to timescales for certain types of work"*. In addition, the Legal Practice Management Association stated that while providing indicative timescales can be useful for the consumer, this should not be a prescriptive requirement. By way of example:

We know in general that a small claims case may go to trial within 18 months and we could advise a client that depending on the court this could be longer or shorter depending on waiting times...on the other hand where a commercial dispute is involved with a potential 3 weeks' trial this could take anywhere from six months to 5 years. This sort of timescale is not particularly helpful.

41. Blackstone Chambers also stated that providing indicative timescales could be useful for consumers in some contexts: *"to the extent that the BSB is of the view that greater transparency is required with respect to commoditised legal services...the BSB should introduce best practice guidance, acting in combination with the relevant SBA, rather than rules to allow flexibility"*. The Bar Council's suggestion was that:

A more practicable alternative might be for chambers to provide information about the factors that might influence the timescales on a case such as complexity etc. This could be provided on a website in a standardised format and may be able to manage the client's expectations so that they can be alive to the realities of the sometimes unpredictable nature of litigious work.

BSB Response

- 42. In relation to recommendation 7 (a description of the services that the legal services provider provides), the BSB notes the general view that, in light of the information on barristers' services which is already on the websites of chambers and others, there is no need for regulatory requirements in this area. However, we consider it important that there is a minimum standard of service transparency; for example, a requirement for chambers' websites to state the areas of law in which they most commonly provide services and/or state and provide a description of their most commonly provided services. This minimum standard would need to be defined.

- 43. In relation to recommendation 10 (indicative timescales of completing services and factors affecting these), we note the general agreement that this is more relevant to commoditised legal services, whereas the majority of barristers' services are bespoke. We will therefore consider re-categorising this recommendation to lower impact (discretionary). As above, we are commissioning further research and consumer testing to ensure that our categorisation strikes the appropriate balance between mandatory and discretionary information. Where it is considered that further service disclosure is necessary and appropriate, we are also committed to working with the various Specialist Bar Associations to develop tailored guidance. Finally, we note the Bar Council's suggestion that chambers could provide standardised information about the factors which might influence the timescales of a case such as complexity, etc., and we will consider this as part of defining a minimum standard of service transparency. We will also consider featuring this information on the Legal Choices website.

QUESTION 3: do you agree that the publication of redress recommendations 11 and 12 would have the greatest impact in order to improve consumer understanding, facilitate shopping around and drive competition in service provision?

- 44. The table below indicates how we categorised the CMA's recommendations in relation to redress, based on the potential benefits that publication of these factors would have for consumers.

Recommendation	Very high impact	High impact	Medium impact
11. Regulatory status, registration details	✓		
12. Complaints process and access to the LeO	✓		
13. PII cover			✓

45. Our view was that core information about redress (recommendations 11 and 12) would have the most impact in terms of improving consumer understanding. It would be straightforward for barristers to display the text “regulated by the Bar Standards Board” on their chambers’ website to indicate their regulatory status. In relation to complaints process and access to the LeO, Rule C103 of the BSB Handbook states that chambers’ websites must display information about the chambers’ complaints procedure. However, there is currently no requirement for chambers’ websites to display information about any right to complain to the LeO.

Responses

46. The LeO was fully supportive of the proposals, as was the Legal Services Consumer Panel. However, the Panel was also of the view that information about professional indemnity insurance cover could be equally important to consumers’ pre-and even post engagement.
47. Some responses from the profession stated that as information about access to the LeO is already provided on most chambers’ websites, there may not be a need for a regulatory requirement. The Chancery Bar Association also stated they “do not believe that consumers shop around based upon what will happen should things go wrong”. However, the vast majority were supportive of the proposals. The Bar Council stated “if consumers can see at the outset that they are looking at a regulated provider, it could provide them with a degree of confidence”.

BSB Response

48. While consumers may not shop around based on what will happen should things go wrong, it is reasonable to assume that, all else being equal, consumers would prefer to instruct regulated providers. The BSB also agrees with the vast majority of responses that it would be straightforward for all chambers’ websites to display the text “barristers regulated by the Bar Standards Board”, and information about any right to complain to the LeO. We will therefore proceed with these proposals. We will also consider a requirement for barristers’ e-mails and letterheads to include the text “regulated by the Bar Standards Board”. We do not agree that information about professional indemnity insurance cover is likely to be as important to consumers’ engagement of barristers. This is because consumers are likely to correctly assume that, as regulated providers, barristers are required to be insured for all the legal services they supply. However, the BSB’s position could change over time if evidence emerges that consumers are beginning to use the level of professional indemnity insurance cover as a method of selecting a legal services provider.

QUESTION 4: do you agree that the BSB should introduce guidance (rather than mandatory rules) for the CMA recommendations that have been categorised as having high and medium impact for consumers? Please explain your answer.

QUESTION 5: do you agree with the BSB’s analysis of why the high and medium impact recommendations should not be adopted as mandatory rules? Please explain your answer.

49. The tables above indicated what categorised as having high and medium impact in terms of improving consumer understanding for those wishing to engage barristers’ services. Our proposal was that while these recommendations would not form mandatory rules in the BSB Handbook, the BSB would still expect barristers to use the guidance to determine what additional factors (above the suggested minimum disclosure requirements set out in the rules) would increase transparency and consumer understanding. This would be dependent on the type of client the barrister was offering services to and the type of services they were offering.

Responses

50. The LeO stated that *“likely disbursements, typical costs ranges and other similar information must be included in any price transparency requirements...this will help consumers to see the nuances in costing and give them a better idea of what their final bill might look like”*. However, they also recognised that the mandatory publication of a large number of data points may become unnecessarily burdensome, and were of the view that the publication of further information should be discretionary. The Legal Services Consumer Panel reiterated their concerns about the complexity of the proposals, and that the categorisations which determine mandatory and discretionary information were primarily based on a regulatory self-assessment.
51. Responses from the profession to these questions were divided. Some stated that, as a lack of competition in the type of bespoke legal services most often provided by barristers has not been evidenced, there is no need for mandatory rules or guidance. They also argued that the nature of the disclosure envisaged by the CMA's recommendations is not appropriate to the majority of barristers' services. The Commercial Bar Association noted *“it is very difficult to predict how litigation will unfold, not least because that will depend on the actions of the counterparty whose interests are often (if not usually) diametrically opposed”*. Consequently, their view was that disclosure in the form of illustrative price and service scenarios would not be beneficial for consumers. However, this view was not universal with regard to disclosure of all the CMA's recommendations. For example, some had no objection to providing the information about professional indemnity insurance cover suggested in the consultation. Others questioned whether this information would improve consumer understanding, and noted that some chambers may experience difficulties given their members use different top-up insurers.
52. Other responses from the profession agreed the BSB should introduce guidance (rather than mandatory rules) for the CMA recommendations that have been categorised as having high and medium impact for consumers. Lincoln House Chambers stated that guidance *“would assist in allowing chambers to productively consider the relevance of the recommendations in the context of their own areas of practice, with a view to providing transparent and useful fee information for prospective clients”*. 7 Bedford Row stated that from the perspective of a chambers which does have highly diversified practice areas, it would be preferable for the BSB to introduce guidance to help capture the many different price and service scenarios that may apply.
53. In addition, the Legal Practice Management Association stated that *“many of the recommendations could be considered to be good practice and their use could be distinguishing factors”* for chambers with the administrative capacity to implement the guidance. This point was echoed by the Bar Council. Others also stressed that the guidance should be practicable and cost-effective to implement. Finally, the Family Law Bar Association considered that in determining whether any additional transparency measures should be adopted (at their discretion), barristers should and would have regard to the type of client they are offering services to; for example, vulnerable clients in the context of family law cases. They noted that many Public Access barristers already do this.

BSB Response

54. The BSB notes the view that, as a lack of competition in the type of bespoke legal services most often provided by barristers has not been evidenced, there is no need for mandatory rules or guidance. However, where it is considered that fee and further service disclosure (for example, in the form of illustrative scenarios) is necessary and appropriate, we are committed to working with the various Specialist Bar Associations to develop tailored guidance. As above, in developing a more proportionate approach we will prioritise the more commoditised services provided by barristers. We are also committed to ensuring that the guidance is practicable and cost-effective to implement.

QUESTION 6: (a) do you think the BSB should require publication of first-tier complaints data? Please explain your answer.

(b) are there any other quality of service indicators which you think we should consider?

55. In addition to the recommendations the CMA identified, we were of the view that there is other information which may be beneficial to consumers. This included providing first-tier complaints data, using the BSB logo and providing the BSB's Guidance for Lay Clients (when undertaking Public Access work) to all Public Access clients.

Publication of first-tier complaints data

56. The consultation suggested that barristers could be required to provide first-tier complaints data on their chambers' website (i.e. data on complaints which have been made to them directly in the first instance (before they may have been made to the LeO)). This could take the form of the previous 3 years' worth of data, allowing consumers to see any trends over time. This data could potentially be a useful signal of quality for consumers. However, the consultation also stated that the consumer benefits of providing this data must be balanced against the risk it could be misinterpreted. A barrister who undertakes a higher volume of standardised and transactional work, for example, may have more first-tier complaints made to them than other barristers, and so appear to be providing a poorer service when this is not in fact the case. The volume of Public Access work may also skew the data as there may be a greater proportion of complaints in relation to such work than referral work. If consumers do not understand how first-tier complaints made to barristers are categorised on chambers' websites, providing this data may also lead to "information overload" and not effectively improve understanding.

Responses

57. The Legal Services Consumer Panel, in agreeing with the suggestion, stated that the publication of first-tier complaints data (as a proxy for quality) has the potential to improve market transparency, aid consumers in making informed decisions and act as a deterrent against poor practice. They also stated that while *"there are challenges around capacity to collect, analyse, and contextualise complaints data in a meaningful manner... these challenges are not insurmountable. Other regulators have successfully mitigated against similar risks, and gone on to overcome comparable difficulties"*. The LeO appreciated the difficulties we had identified regarding the publication of first-tier complaints data, and stated that *"for this to be a reliable indicator of quality there would need to be some standardisation of what constitutes a complaint as well as consistent reporting of how early in the process a matter had been settled"*. The LeO therefore supported the Solicitors Regulation Authority's (SRA's) proposal (in their consultation) for the SRA to publish first-tier complaints data, which the LeO stated would avoid issues around consistency of reporting and data fields.

58. Responses from the profession (including the response of the Bar Council) disagreed with the suggestion, largely due to the issues identified in the consultation. In addition, the Employment Law Bar Association stated *“the fact that someone has complained does not necessarily mean that there has been any failure by the barrister in question. This means the mere fact of a complaint is not helpful for consumers assessing the quality of barrister’s services”*. It was also noted that more first-tier complaints which lack merit may be made to barristers in certain practice areas. They could therefore appear to be providing a poorer service than other barristers when this is not in fact the case. Furthermore, the Commercial Bar Association stated *“fairness would demand that as far as the barrister is concerned, he or she should be permitted to explain or respond to the complaint”*, but then there were concerns about the “information overload” discussed in the consultation. There were also concerns about barristers being prevented from responding to the substance of complaints on websites due to the duty of client confidentiality in the BSB Handbook. Finally, 7 Bedford Row stated that a finding of “no fault” at a first-tier level would *“not benefit from the same kind of respect afforded to Ombudsman decisions, because there may be the perception (rightly or wrongly) that chambers’ internal investigations are not as robust and independent in comparison”*.

BSB Response

59. On balance, the BSB agrees that the publication of first-tier complaints data would not be the most useful quality of service indicator for users of barristers’ services, for the reasons identified both in the consultation and in the responses. However, we also agree with the Legal Services Consumer Panel that the challenges related to the publication of complaints data are not insurmountable. We note the LeO’s view that for complaints data to be a reliable indicator of quality, there needs to be some standardisation of what constitutes a complaint as well as consistent reporting.
60. We will consider a requirement for chambers’ websites to link to the BSB register to enable clients to search for a barrister’s regulatory status and any associated current disciplinary findings by the Bar Tribunals & Adjudication Service (BTAS) in line with the BSB’s disclosure policy. We will also explore the feasibility of a similar arrangement for complaints which have been upheld by the LeO. More work will be undertaken to assess the practical implications of these proposals, and any technical improvements that might be necessary, before finalising any draft new rules. This would address the need for standardisation of what constitutes a complaint, and give assurance to both barristers and users of their services that complaints are only required to be published if they have been upheld by an independent body. It would also be the most effective way of helping consumers to make informed decisions, and act as an additional deterrent against poor practice.
61. Responses to the consultation did not suggest any other quality of service indicators which should be considered. However, the Legal Practice Management Association stated it is *“through encouraging feedback, listening to it and acting upon it that you continue to improve the services offered”*. The BSB agrees and, as part of our response to the CMA’s recommendations, we will be developing and publishing guidance for providers on engaging with both indirect feedback (such as online reviews) and direct feedback from clients. One way to seek direct feedback from clients is to include feedback forms in the complaints information which must be sent to clients. We are also committed to considering the regulatory role of the BSB with regard to quality or transparency marks, and assessing the proportionality and necessity for action in this area.

Use of the BSB logo

QUESTION 7: do you think it would be beneficial for barristers to display the BSB's logo on their website? Please explain your answer.

62. The consultation stated that while the BSB's current policy is to not allow use of its logo for web, promotional or marketing material, this could change if it was considered useful for improving consumer understanding of regulatory status. The logo could also link through to the homepage of the BSB's website, which would make it easier for consumers to engage with regulatory information such as the guide on using a barrister, the BSB Handbook and whether the barrister holds a practising certificate. However, if the logo did link through to the BSB's website, the BSB would need to develop a digital smart badge as logos can be fraudulently used to give credence to fake websites. In contrast, a digital smart badge would provide assurance to a consumer that the barrister was in fact regulated by the BSB.

Responses

63. The Legal Services Consumer Panel acknowledged that a logo can be a useful and easily recognisable visual symbol for consumers, but warned against the proliferation of logos in the sector. As legal services regulation is already a complicated landscape, their concern was that multiple logos could add to consumer confusion. However, they had no objection to a digital smart badge which links through to a regulator's website and confirms regulatory status. The LeO was also in favour of digital badges which link through to regulators' websites, and do not themselves seek to convey further information.
64. Some responses from the profession doubted that displaying the BSB's logo on chambers' websites would improve consumer understanding of regulatory status. Others thought that displaying the logo may confuse consumers into thinking that barristers and chambers are in some way part of the BSB. However, most did not oppose the proposal provided that a digital smart badge is developed. The Legal Practice Management Association stated that while it would be helpful for the logo to link through to the BSB's website, this should not be mandatory. The Bar Council stated *"we can see some benefit to displaying the logo, as a clear and memorable visual cue that consumers will learn to look for from site to site as a mark of assurance"*.

BSB Response

65. The BSB agrees that a digital smart badge is the best and most secure way for the logo to link through to the BSB's website, confirm regulatory status and make it easier for consumers to engage with regulatory information. However, these benefits will not be widely realised unless there is a mandatory requirement for barristers to display the digital smart badge on their chambers' website. As the BSB's logo includes the text "regulating barristers", we consider it unlikely that this would either not improve consumer understanding of regulatory status, or confuse consumers into thinking barristers and chambers are in some way part of the BSB. We will therefore proceed with the proposal to develop a digital smart badge, and consider making it a mandatory requirement for this to be displayed on chambers' websites.

Publication of Public Access Guidance for Lay Clients

QUESTION 8: do you think Public Access barristers should be required to publish the BSB's Guidance for Lay Clients on their websites? Please explain your answer.

66. The consultation stated that making provision of the guidance mandatory could usefully ensure that all clients have the same basic level of understanding about Public Access, reduce the amount of information which needs to be included in client care letters and reduce the need for frequent communication between barristers and Public Access clients. One way of achieving this would be to require Public Access barristers to publish the guidance on their websites.

Responses

67. The Legal Services Consumer Panel agreed with the proposal, and also suggested that the guidance should be provided to clients before Public Access work commences. The LeO stated that while they *"would strongly encourage barristers to highlight that guidance exists, (and perhaps provide a link to it on the BSB's website)"*, they saw *"no reason for a requirement to publish the guidance itself on their own website"*.
68. Most responses from the profession reflected the LeO's view, in that while they agreed consumers should be provided with the guidance, they thought displaying a link through to the guidance on the BSB's website would suffice. The Bar Council stated that the requirement would be *"a sensible and worthwhile one"*. However, the Public Access Bar Association stated that *"the Public Access Rules require barristers to only accept instructions if the client is capable of doing what is required of them...there is no evidence that guidance such as this is required by a relatively sophisticated clientele"*. The Commercial Bar Association also suggested updating the guidance to identify costs that are typically borne by the client in addition to the costs of the barrister.

BSB Response

69. A significant proportion of the enquiries the BSB receives are either from members of the public who have or are seeking to instruct a Public Access barrister, or solicitors who are acting on the other side to a Public Access barrister. These enquiries tend to relate to the nature and scope of Public Access work. There is therefore evidence to suggest that making provision of the guidance mandatory could usefully ensure all parties (including other legal representatives) have the same basic level of understanding about Public Access. We agree that the requirement should be for all chambers with Public Access registered barristers to display a link through to the guidance on the BSB's website, and to facilitate this we will create a page on which the latest version of the guidance is always accessible. As suggested by the Commercial Bar Association, we will also update the guidance to identify costs that are typically borne by the client in addition to the costs of the barrister. However, we do not agree that it should be a mandatory requirement for the guidance to be provided to Public Access clients before work commences. While some responses from the profession stated that they do so, the Public Access Rules already require barristers to notify their clients in writing of a number of particulars, and much of this information is in the guidance too. A mandatory requirement could therefore lead to unnecessary duplication, especially for repeat and more experienced Public Access clients.

QUESTION 9: in terms of the provision of information, are there any other examples of what you consider to be good practice that you could draw to our attention? We would be particularly interested to hear about examples of what you consider to be good practice in terms of providing information to consumers with additional needs.

70. We were interested to hear about any other recommendations that may help improve consumer understanding, facilitate shopping around and drive competition. The consultation recognised that, as far as possible, information should be accessible and easily understood by its intended audience. This could mean putting information in plain English, highlighting key points and making information available in alternative formats (including in different languages where that may be beneficial to meeting consumer need). Alternative formats could be provided both on chambers' websites and on request.

Responses

71. 7 Bedford Row provided a helpful list of suggestions:

(a) links to legal charities; Citizens Advice; solicitor partnerships and the LAA (for means testing);
(b) explanation of services for the blind, hearing impaired and foreign language speakers (translation services) should also be readily available; and
(c) full information re accessibility for those with disabilities e.g. numbers of steps, width of doorways, parking, bathroom facilities, hearing loops etc, so that those affected would not need to phone ahead before coming to chambers, should also be provided.

72. Other suggestions from the profession included barristers' directory recommendations, links to practice-related publications and materials generated by barristers, the advantages of instructing barristers, how to contact chambers and instruct barristers and the terms on which barristers undertake work. The Legal Practice Management Association also stated that many chambers find it useful to provide copies of their reasonable adjustments policy (which they are required to have under the Equality Rules in the BSB Handbook). However, other responses from the profession stated regulatory intervention in this area was neither necessary nor proportionate; in particular, there was a concern that the good practice identified in the consultation should not be made mandatory requirements.

BSB Response

73. The BSB does not propose making the good practice identified in the consultation or by the responses mandatory requirements. As stated in the consultation, the BSB will be producing supporting guidance for barristers and chambers in line with our regulatory role to encourage good practice. We thank all of those who made helpful suggestions and will consider including them in the guidance. In relation to reasonable adjustments, we note our supporting guidance on the Equality Rules already states "*chambers should state on its website and in any publicity material that reasonable adjustments will be made and should identify the person or persons to whom requests should be made*". As stated by the Legal Practice Management Association, chambers may also find it useful to provide copies of their reasonable adjustments policy. While these are not and will not be made mandatory requirements, this does not affect the duty to make reasonable adjustments under the Equality Act 2010.

QUESTION 10: do you agree that the BSB's suggested minimum disclosure requirements should apply to all barristers undertaking Public Access work? Please explain your answer.

74. The BSB's action plan in response to the CMA's recommendations noted that 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 lack of information about price, difficulty in judging quality, etc. The CMA did not make specific recommendations in relation to barristers doing referral work. It does, however, note that the solicitor's role as an intermediary may be strengthened if there are general improvements in the level of transparency in the sector".⁴

75. The consultation therefore proposed that the CMA recommendations which we had identified as suggested minimum disclosure requirements should apply to all Public Access barristers. However, we were provisionally of the view that there are situations in which disclosing the suggested minimum disclosure requirements would also be useful for clients of the referral Bar. This was on the basis that it could strengthen the role of the solicitor to act in the client's best interests. The consultation proposed requiring barristers undertaking referral work to disclose the new requirements only to those clients who would be entitled to complain to the LeO: broadly, individuals, small businesses and charities.
76. Another potential option explored in the consultation was to target any new rules to more high-risk practice areas; for example, immigration, crime and family law (although if this approach were to be adopted, it is likely that the majority of clients seeking advice/representation in these areas of law would fall into the LeO definition in any event). It was also not proposed that barristers undertaking referral work for clients funded by the Legal Aid Agency would be required to publish the suggested minimum disclosure requirements in relation to price. However, the consultation did propose that barristers undertaking this work should be required to comply with the suggested minimum disclosure requirements in relation to service and redress.

Responses

77. The Legal Services Consumer Panel agreed that the BSB's suggested minimum disclosure requirements should apply to all barristers undertaking Public Access work. A minority of responses from the profession also agreed. For example, 7 Bedford Row stated that "*lay clients are obviously in a far weaker position to negotiate fees and understand the kind of service they should be able to expect from a barrister compared to professional clients/solicitors*". They therefore stated that in the context of the Public Access Bar, the minimum disclosure requirements could operate effectively and increase consumer understanding and competition.
78. However, the majority of responses from the profession disagreed. Concerns that the nature of the disclosure envisaged by the CMA's recommendations is not appropriate to the majority of barristers' services were repeated in the context of Public Access. The Bar Council stated, "*the limited areas in which [price transparency] is realistic mean that regulatory action is unjustified and disproportionate*". The Family Law Bar Association also repeated concerns that indicative prices would need be so caveated as to risk confusion for Public Access clients. Matrix Chambers agreed, although they

⁴ https://www.barstandardsboard.org.uk/media/1836947/cma_-_action_plan.pdf, page 3

did state in relation to Public Access work that they would have no difficulty with a requirement to disclose service and redress information.

79. Many, including the Bar Council, also questioned whether it was necessary or proportionate to apply the new requirements to all barristers undertaking Public Access work. Blackstone Chambers noted that Public Access services may be provided to a lay client (for example, a large company) which is *“every bit as astute or experienced in litigation as a lay client using a solicitor or with an in-house capacity”*. Finally, a number of responses expressed the view that if the new requirements only applied to Public Access, this would be a disincentive for barristers to undertake such work; in turn, this could have a negative impact on access to justice and competition. The Technology and Construction Bar Association stated that if the new requirements only applied to Public Access, *“this would lead to a number of our members withdrawing from the Public Access scheme which would...rather defeat the underlying purpose of the proposals, i.e. increasing competition”*.

BSB Response

80. The BSB agrees that, compared to professional clients, 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. We therefore agree that, in the context of the Public Access Bar, fee disclosure requirements could operate effectively and increase consumer understanding and competition. (We are also of the view that all barristers should be required to meet minimum transparency standards in relation to service and redress. See our responses to questions 2 and 3).
81. However, we note the concerns that the nature of the disclosure envisaged by the CMA’s recommendations is not necessarily appropriate to the bespoke services provided by barristers (including via Public Access), and that it would not be proportionate to apply fee disclosure requirements to all barristers undertaking Public Access work. As above, in developing a more proportionate approach to price and service transparency we will prioritise the more commoditised services provided by barristers. One approach would be to only apply fee disclosure requirements to those Public Access barristers providing the type of commoditised services most commonly purchased by less experienced and less expert consumers. Those services would need to be defined, and consumer testing undertaken to ensure that disclosure in these areas would be appropriate and useful for consumers.
82. However, we note the concerns that if fee disclosure requirements are only applied to Public Access, this would be a disincentive for barristers to undertake such work; in turn, this could have a negative impact on access to justice and competition. It appears to us that the same logic could apply to only introducing fee disclosure requirements for a small section of the Public Access Bar. Responses to the consultation stated that Public Access barristers providing more commoditised services tend to be junior members of the Bar. It is therefore conceivable that, if fee disclosure requirements are only introduced in relation to more commoditised Public Access services, chambers could withdraw from providing these services. While there would be a commercial incentive for (particularly more junior) barristers to continue to provide these services, chambers management could seek to dissuade them on the basis that (a) such services only constitute a small proportion of chambers’ total services, and (b) continuing to offer them would require chambers to comply with more administratively burdensome transparency requirements. Chambers withdrawing from providing more commoditised Public Access services could have a negative impact on access to justice, competition and opportunities for progression among more junior members of the Bar.

83. Another approach (either instead of, or in addition to, the approach outlined above) would be to apply fee disclosure requirements to chambers which have (for example) ten or more barristers providing a significant proportion of their services on a Public Access basis, and commonly to less experienced and less expert consumers (and/or in high-risk practice areas such as immigration and family law). What is 'significant' for these purposes would need to be defined, but it would make compliance with the proposals easier as MyBar will collect data on the proportion of services provided on a Public Access basis. The BSB could then identify which chambers the fee disclosure requirements apply to on an annual basis, and proactively work with them to achieve compliance. As these chambers would have a certain number of barristers, they would be more likely to have the administrative capacity to implement the proposals. In addition, they would already be providing a significant proportion of their services on a Public Access basis, and so would be less likely to withdraw from providing these services. It is likely that this second approach would do more than the first to achieve the CMA's recommendation of delivering a step change in standards of transparency. However, we will consider the risk of unintended consequences should a 'cliff edge' of additional regulatory requirements be introduced only for chambers above a certain size.
84. With regard to both approaches, it is important to note that the consultation suggested the chambers to which the requirements apply would only need to produce a minimum of three illustrative price and service scenarios. The proposed requirement for chambers' websites to state that clients may contact chambers to obtain a quote would also help them to understand fee information is indicative only. As above, we are committed to working with the various Specialist Bar Associations to develop tailored guidance. We will also seek the views of our transparency pilot participants at interview, as they have already produced illustrative price and service scenarios and many have done so in relation to Public Access work. This will add to our evidence-base.

QUESTION 11: do you think that the BSB's suggested minimum disclosure requirements should apply to barristers undertaking referral work, either:

- (a) when dealing with clients that are entitled to complain to the LeO?;**
(b) by reference to high-risk practice areas?; or
(c) a combination of (a) and (b) above?

85. The Legal Services Consumer Panel was of the view that the BSB's suggested minimum disclosure requirements should apply to barristers undertaking referral work, both (a) when dealing with clients which are entitled to complain to the LeO, and (b) by reference to high-risk practice areas such as immigration, crime and family law. They stated that "*the lack of transparency in areas of high consumer vulnerability e.g. immigration services, could have a disproportionate effect or compound the challenges faced by consumers navigating these areas*". A minority of responses from the profession also agreed that, in relation to referral work, the requirements should apply when dealing with clients which are entitled to complain to the LeO. However, Lincoln House Chambers could not support the requirements applying by reference to high-risk practice areas, as they were unclear on the nature of a high-risk practice area and how it had been defined. Others were concerned that restricting the requirements to only certain areas of practice would run the risk of confusion.
86. However, the majority of responses from the profession did not support either proposal (a) or (b). The Family Law Bar Association noted the BSB's concern that there may be circumstances in which additional information could strengthen the role of the solicitor to act in the client's best interests, but considered that "*solicitors are likely to ask for such information where appropriate, and to advise their lay clients accordingly should it not be provided*". Many were also of the view that, in relation to referral work, there was no lack of competition which required a regulatory response. The Bar Council

stated that as the CMA's report did not point to *"any evidenced deficiency in how referral cases currently work...we cannot agree that any case has been made out for applying disclosure requirements to referral cases"*. The Employment Law Bar Association also stated that solicitors *"are experienced in seeking quotes from clerking teams and "shopping around"...they frequently seek a range of quotes to strengthen their hands in negotiation. The upshot is that solicitors are necessarily in the stronger bargaining position"*. In addition, concerns were raised about the scope of proposal (a). As clients who are entitled to complain to the LeO include individuals and small businesses, many were of the view that the proposal was too broad and would, in effect, apply to all barristers undertaking referral work. However, Matrix Chambers repeated in the context of referral work that, while they could not support the disclosure of indicative prices, they would have no difficulty with a requirement to disclose service and redress information.

87. In disagreeing with proposal (b), the Personal Injuries Bar Association stated *"generally, there should be one set of coherent rules that apply to all subject areas...this is important not least so as to reduce the administrative overhead within chambers where both areas of practice are undertaken"*. Others repeated the view that, as barristers undertaking referral work are instructed by solicitors, there is no need for further consumer protection, and the Family Law Bar Association was concerned by the potential emphasis for family law clients on price rather than quality. The Bar Council was also concerned that immigration and criminal law clients would focus on price rather than quality at a time when their *"personal stakes are often frighteningly high"*. In suggesting a way forward, Blackstone Chambers stated that a better approach would be to narrow the scope of the proposals to less experienced and less expert consumers. They then suggested *"undertaking a sectoral investigation, with the assistance of SBAs ideally, as to whether any sector: (a) has an appreciable number of consumer parties; (b) contains commoditisable litigation services; and (c) presents informational problems, before looking to develop best practice or, only if necessary, mandatory sectoral rules"*.

BSB Response

88. On balance, the BSB agrees with the view that as barristers undertaking referral work are instructed by solicitors, there is no need for significant further consumer protection. We will therefore not seek at this stage to apply disclosure requirements in relation to hourly rates and fixed fees to barristers undertaking referral work. However, as above we are considering a requirement for chambers' websites to state their most commonly used pricing models. We are also of the view that all barristers should be required to meet minimum transparency standards in relation to service and redress (see our responses to questions 2 and 3). We have considered Blackstone Chambers' helpful suggestions with regard to the scope of the proposals in the context of Public Access work (see our response to question 10).

QUESTION 12: regarding work funded by the Legal Aid Agency, do you agree that the BSB's suggested minimum disclosure requirements:

- (a) should not apply in relation to price?; but**
(b) should apply in relation to service and redress?

89. The vast majority of responses to the consultation agreed that, with regard to work funded by the Legal Aid Agency, the BSB's suggested minimum disclosure requirements should not apply in relation to price. In each case, the responses as to whether the requirements should apply in relation to service and redress were aligned with the responses to question 2 (on service) and question 3 (on redress).

BSB Response

90. The BSB agrees with the vast majority of responses that, with regard to work funded by the Legal Aid Agency, disclosure requirements should not apply in relation to price. As to whether the requirements should apply in relation to service and redress, our view is that all barristers should be required to meet minimum transparency standards with regard to service and redress. See our responses to question 2 (on service) and question 3 (on redress).

QUESTION 13: are there any other options (other than those discussed above) to ensure any new rules are targeted, proportionate and effective?

91. As above, Blackstone Chambers made helpful suggestions with regard to the scope of the proposals. The Commercial Bar Association agreed that the BSB “*must identify commoditised legal services provided by barristers to consumers for which such barristers could provide data...comparable with that provided by alternative (i.e. non-barrister) legal service providers*”. Similarly, the Bar Council suggested that the BSB should adopt two key principles from the CMA’s report: that upfront pricing information should be 1) comparable with that of other legal service providers, and 2) accurate as far as possible, which is difficult in the context of bespoke services. In addition, Lincoln House Chambers stated that “*when considering how to target the new rules, some emphasis should be placed on addressing those entities that have previously had pricing issues and/or complaints raised with the BSB, SRA or LeO*”.

BSB Response

92. As above, we have considered Blackstone Chambers’ helpful suggestions with regard to the scope of the proposals in the context of Public Access work. In developing a more proportionate approach to price and service transparency, we will prioritise the more commoditised services provided by barristers. One approach would be to only apply fee disclosure requirements to those Public Access barristers providing the type of commoditised services most commonly purchased by less experienced and less expert consumers (for full details, see our response to question 10). With regard to Lincoln House Chambers’ suggestion, the consultation stated that spot-checking would focus on barristers who are at higher risk of non-compliance with the new transparency requirements.

QUESTION 14: do you have any comments on when the BSB’s suggested minimum disclosure requirements should apply to Public Access barristers and those undertaking referral work for clients entitled to complain to the LeO?

93. Following a further rule change consultation and application to the LSB for approval, the new transparency requirements will come into force in May 2019. The consultation stated that we are committed to evaluating the effectiveness of the requirements from December 2020. This evaluation will include an assessment of whether they have been applied proportionately.

Responses

94. The Legal Practice Management Association and Lincoln House Chambers both suggested that there should be a minimum six-month implementation period before barristers are required to comply with the new transparency requirements. The Family Law Bar Association agreed: “*it should be recognised that not all chambers have the resources and/or business development strategies to react swiftly to mandatory website changes or rebuilds*”. Lincoln House Chambers also stated that engagement with the profession will need to be undertaken to ensure compliance with the requirements.

BSB Response

95. The BSB agrees that there should be an implementation period before barristers are required to comply with the new transparency requirements. Following a further rule change consultation, LSB application and implementation period, the requirements will come into force in May 2019. However, we are not proposing to make compliance with any price transparency requirements mandatory until early 2020. The consultation stated that a communications strategy will be developed to support compliance with the requirements. As above, we are also committed to evaluating the effectiveness of the requirements from December 2020.

QUESTION 15: do you agree that option two would be more feasible in terms of providing minimum price and service information? Please explain your answer.

96. The BSB is not proposing a “one size fits all” model to implement the new transparency requirements. While we propose to introduce some mandatory rules, the consultation acknowledged that there may be variations in how barristers choose to provide information. The first option set out in the consultation paper was for self-employed barristers in chambers to provide *individual* price and service information on their chambers’ website. The second option was for self-employed barristers in chambers to provide *blended* price and service information on their chambers’ website. We suggested this could take the form of ranges, indicative fees for standard work or average fees. Chambers could, for example, take the three most common types of case for *all barristers in chambers* (i.e. cases that conform to a specified scenario) and provide illustrative price and service information for each of them based on averages of current prices. There are also a number of possible variants of this approach (for full details, see paragraph 70 of the consultation).
97. We recognised that whilst sole practitioners and BSB entities would only be able to comply with option one (as they are a single economic unit), our view was that chambers could comply with option one *or* two. However, as a general principle the larger the chambers and the more different practice areas its barristers have, the more appropriate it would be for them to provide blended price and service information (option two). In addition, our view was that option two would be more straightforward to administer than providing price and service information for each individual barrister (option one). Ease of administration is important, as price and service information would need to be updated regularly to ensure it is useful for consumers. Option two would also avoid “information overload”, and make the information on chambers’ websites easier for consumers to understand. To illustrate these points, the consultation included various examples of disclosure using options one and two.

Responses

98. The Legal Services Consumer Panel understood the unique position of barristers working in chambers, and appreciated that this may pose specific difficulties. However, they were not convinced that the provision of blended price and service information (option two) would be sufficiently meaningful to consumers. They therefore suggested that this approach is consumer tested before implementation.

99. Similarly, the Legal Practice Management Association stated in relation to option two that *“it is debatable how much...broad ranges would assist consumers in their deliberations on choice”*. The Family Law Bar Association stated that one can imagine a consumer questioning why a quote for their case is higher than the average figure given. The profession also raised concerns that, due to the type of bespoke legal services most often provided by barristers, they would struggle to take the most common types of case for all barristers in their chambers and provide illustrative price and service information. The Bar Council stated that *“the notion of “most common cases is overly optimistic in practice – most chambers do a staggeringly broad range of work”*. In addition, there were concerns about the administrative burden which would be imposed by option two, particularly if, as stated by Essex Court Chambers, *“separate “information sheets” had to be produced, on a “blended” basis, for each stage of each type of case in each practice area”*. Finally, the Public Access Bar Association queried *“how option two would sit with the Code of Conduct requirement that chambers’ websites should not make it look like the chambers is an entity or partnership”*.
100. Nevertheless, where responses to the consultation expressed a preference, there was general agreement (including from the Bar Council) that option two would be more feasible than option one. The Legal Practice Management Association stated that option two *“is the better one and would provide a clearer pathway for consumers whilst also avoiding significant and complicated changes by chambers”*. Lincoln House Chambers agreed that the provision of individual price and service information (option one) would be too difficult to practically administer and maintain. Matrix Chambers also stated that *“forced publication of individual pricing information would risk creating focal hourly rates for certain types of work which are higher than those that would otherwise prevail in individual negotiations”*. Rather than express a preference for option one or two, the Family Law Bar Association thought it important that each chambers should have discretion as to how to comply with the eventual requirements.

BSB Response

101. While the BSB’s view remains that option two would be more feasible than option one, we also agree each chambers should have discretion as to how to comply with the eventual requirements (although supporting guidance will clarify that the larger the chambers and the more different practice areas its barristers have, the more appropriate it would be for them to use option two). In addition, we will undertake consumer testing to ensure that disclosure using both options one and two would be appropriate and useful for consumers.
102. In relation to option two, we recognise that a consumer may question why a quote for their case is higher than the average figure given. However, we consider the proposed requirement for chambers’ websites to state that clients may contact chambers to obtain a quote would help them to understand fee information is indicative only. Many of the concerns raised about option two are also ameliorated given that, in developing a more proportionate approach to price and service transparency, we will prioritise the more commoditised services provided by barristers. One approach would be to only apply fee disclosure requirements to those Public Access barristers providing the type of commoditised services most commonly purchased by less experienced and less expert consumers (for full details, see our response to question 10). This should make it easier for those to whom the new transparency requirements apply to identify the most common types of case for all barristers in their chambers, and provide illustrative price and service information. In addition, it is important to note that the consultation suggested those to whom the requirements apply would only need to produce a minimum of three illustrative price and service scenarios. As above, we are committed to working with the various Specialist Bar Associations to develop tailored guidance. We will also seek the views of our transparency pilot participants at interview, as they

have already produced illustrative price and service scenarios. This will add to our evidence-base.

103. However, given that price and service information would need to be updated regularly to ensure it is useful for consumers, we recognise the administrative burden the new transparency requirements may impose. While it is important information is not misleading to potential clients (as this would breach Rule C19 of the BSB Handbook), we propose a rule/guidance to the effect that information should be reviewed and updated at least annually. This should strike the appropriate balance, but we will seek views as part of a further rule change consultation. Finally, as the Public Access Bar Association noted it is important that chambers' websites do not create the appearance of an entity or partnership. The consultation stated it would be useful for websites to clarify that self-employed barristers in chambers are separate and independent from one another, and not responsible for one another's work. This suggestion will form part of the supporting guidance we produce for barristers and chambers.

QUESTION 16: are there any other issues in relation to entities providing the suggested minimum disclosure requirements (other than those highlighted above) that the BSB should consider?

104. The consultation stated that entities could provide prices at entity level as they are a single economic unit. This would place BSB entities on a similar footing to SRA regulated firms as, for example, they can generally set collective fees for their employees/partners as a standard offering for the firm. More complex scenarios may arise where barristers have involvement in different chambers and entities. This could potentially be the subject of future guidance. The consultation also asked whether there are any other issues in relation to entities that the BSB should consider.

Responses

105. The Legal Practice Management Association stated that *"where a barrister entity is regulated by the SRA and the individual barristers working in that entity are regulated by the BSB, care must be taken to avoid contradictory regulatory requirements being placed on the individual barrister"*. The Family Law Bar Association also stated if a barrister provides services using more than one vehicle, it would seem to *"be an unnecessary duplication of administration to require that individual to repetitiously publish information which is available elsewhere (such as in a barrister's chambers at their principal place of business)"*.

BSB Response

106. The consultation stated that only self-employed barristers and BSB entities will need to comply with the new transparency requirements. Barristers employed in entities regulated by other approved regulators will need to comply with the requirements of the relevant regulator. Beyond this, there are two scenarios to consider: 1) where a barrister practising through a BSB entity is a member of a chambers, and 2) where a barrister is practising in a dual capacity, both as a self-employed member of a chambers and through a separate BSB entity.
107. In the case of 1), our initial view is the barrister would not need to provide additional information on their chambers' website beyond that which the other (self-employed) members provide. This was endorsed by the Bar Council in their response to the consultation. However, in the case of 2), our initial view is that the barrister would need to provide information on websites as it relates to both their self-employed practice and practice through a BSB entity. This is because the barrister's fees and services may

differ depending on the capacity in which they are practising and the two types of practice are legally distinct units.

QUESTION 17: are there any other issues in relation to accessibility of information (other than those highlighted above) that the BSB should consider?

108. The consultation noted that accessibility is a key criterion for the success of information remedies. It therefore suggested that it should be a requirement for the necessary price, service and redress information to be made sufficiently prominent on chambers' websites; for example, by requiring that there is a dedicated page or section. The consultation also asked whether there are any other issues in relation to accessibility of information that the BSB should consider.

Responses

109. There were concerns about the requirement being overly prescriptive. The Bar Council stated that *"either a rule would include the term "prominently" which is a value judgment and which would result in uncertainty, or the Handbook would have numerous provisions going into excessive depth about website layouts"*. The Family Law Bar Association therefore stated that *"each chambers should have the discretion as to where to present any information required...and in what format"*. The Legal Practice Management Association agreed that flexibility would be in keeping with the BSB's outcomes-focused regulatory approach. Lincoln House Chambers stated that *"consideration needs to be given to those...that do not have websites. There is currently no suggestion as to how they will comply with these regulations"*.

BSB Response

110. While we recognise that flexibility is an important part of an outcomes-focused approach, we consider there should be some requirement for the necessary information to be made sufficiently prominent and accessible on chambers' websites. If there was no such requirement, this would risk technical compliance with new transparency rules whereby the necessary information is displayed, but not in such a way that it is accessible to consumers (thus undermining the outcome that it should be accessible). However, it is important that the requirement is not unduly prescriptive, and we will seek views on this as part of a further rule change consultation.

111. In addition, the consultation stated that where the new transparency requirements apply to barristers, they will be expected to comply with them by providing the necessary information on their chambers' website or, if they do not have a website, providing the necessary information to consumers on request (in the form of a "fact sheet"). Barristers should also provide the necessary information on request where consumers do not have Internet access. This will form part of the supporting guidance we produce for barristers and chambers. Our communications strategy will also seek to improve consumer understanding of the information they can request.

QUESTION 18: do you think it would be useful to provide core information on either the BSB's website or through other third party sites?

112. Following the launch of MyBar, the BSB will collect practice area information for the first time. The consultation stated that it may be useful to include practice area information on the BSB's Barristers' Register. As well as making additional information available to consumers, this would allow third parties to access it via the csv file of the Barristers' Register. Another option would be for practice area and potentially other information to be included on third party sites. The Bar Council's Direct Access Portal, for example, already allows consumers to search for barristers by practice area.

Responses

113. Matrix Chambers disagreed that practice area information should be included on the Barristers' Register, as barristers already *"have every incentive to provide sufficient information to enable potential clients to identify them as suitable providers"*. While agreeing that it should be included on the Barristers' Register, Lincoln House Chambers stated that practice area (and potentially other) information should not be included on third party sites. This is because providing information through third party sites may be problematic in terms of reliability, impartiality and information being kept updated. The Legal Practice Management Association stated that on both the BSB and Legal Choices websites, *"general information about how barristers work, their duties, their price structures and complaints handling procedures should be published"*.

BSB Response

114. While it is in barristers' and consumers' interests for barristers to provide sufficient information to consumers, the BSB also considers that it would be in consumers' interests for key practice area information to be displayed on the Barristers' Register. Key practice area information for solicitors is already displayed on the Law Society's website, and helps potential clients to identify suitable solicitors to instruct. There would also be no issues in terms of reliability, as barristers would provide this information to the BSB themselves (possibly via an additional question on MyBar, in accordance with Rule S59.5 of the BSB Handbook). We would clarify on the Barristers' Register that barristers are permitted to undertake work outside of their key practice areas provided they are competent to do so, and will also seek views on this proposal as part of a further consultation. We will in particular consider how this might apply to more junior practitioners, who might not yet have established areas of practice in which they specialise. Once such information is in the public domain, it could be accessed by third parties (for example via the file that is already accessible and regularly updated on the BSB website) and we will consider what further work may need to be done to ensure that any third parties seeking to access register data are using accurate and up-to-date information.

QUESTION 19: are there any other issues in relation to consistency of information (other than those highlighted above) that the BSB should consider?

115. The consultation stated it is important that there is some degree of consistency in the information on different chambers' websites, as this will make it easier for consumers to understand. While it would be straightforward for redress information (regulatory status, the complaints process and access to the LeO) to be standardised across chambers' websites, we recognised that it would be more difficult to standardise price and service information. The CMA's report noted the difficulty with standardising illustrative scenarios in particular. The consultation therefore recognised that in some cases (for example, very complex contested disputes) requiring barristers to provide illustrative scenarios may not in fact improve consumer understanding. However, the CMA's report also stated that *"for services which are more bespoke, or are delivered in stages, alternative forms of disclosure may be possible, such as setting out the likely costs of each stage under certain circumstances"*.⁵

Responses

116. Responses from the profession agreed that the display of redress information should be standardised across chambers' websites. The Family Law Bar Association stated that we should aim for *"a harmonised presentation by chambers of their regulated*

⁵ <https://assets.publishing.service.gov.uk/media/5887374d40f0b6593700001a/legal-services-market-study-final-report.pdf>, page 238

status by the BSB, their complaints procedure, and a client's prospective right of recourse to the LeO". However, responses from the profession (including the response of the Bar Council) did not agree that it is possible to standardise price and service information, at least in respect of the bespoke legal services most often provided by barristers. The Commercial Bar Association also disagreed with the CMA's assertion that alternative forms of disclosure may be possible for services which are more bespoke. They stated that:

Whilst it is possible to set out the likely costs of each stage (e.g. for the purposes of cost-budgeting), this is only possible once the barrister has been provided with detailed information about the case...it is not possible to provide the likely costs of each stage of litigation on a generic basis for any type of dispute, let alone on a standardised basis.

BSB Response

117. The BSB notes the responses that the display of redress information should be standardised across chambers' websites, and we will proceed on this basis. We also note the difficulty with standardising price and service information, particularly in respect of the bespoke legal services most often provided by barristers. However, as above we intend to develop a more proportionate approach to price and service transparency, and prioritise the more commoditised services provided by barristers. One approach would be to only apply fee disclosure requirements to those Public Access barristers providing the type of commoditised services most commonly purchased by less experienced and less expert consumers (for full details, see our response to question 10). Standardising information would be easier for these types of services, and as above we are committed to working with the various Specialist Bar Associations to develop tailored guidance.
118. While we will be prioritising the more commoditised services provided by barristers, we consider it important that all barristers and chambers meet a minimum standard of service transparency. For example, we have proposed requirements for all chambers' websites to:
- State that professional and/or lay clients (as appropriate) may contact chambers to obtain a quote;
 - State their most commonly used pricing models;
 - State the areas of law in which they most commonly provide services and/or state and provide a description of their most commonly provided services;
 - Provide information about the factors which might influence the timescales of a case such as complexity, etc.;
 - Display the BSB's logo in the form of a digital smart badge;
 - Display a link through to the guidance for lay clients on the BSB's website (for all chambers with Public Access registered barristers); and
 - Make the necessary information sufficiently prominent and accessible.
119. We consider that it would be fairly straightforward to standardise the above information. However, it is important that the requirements are not unduly prescriptive,

and we will seek views on how to strike the appropriate balance as part of a further rule change consultation.

QUESTION 20: are there any other issues in relation to the need for flexibility (other than those highlighted above) that the BSB should consider?

120. The consultation stated that as the proposals only relate to the provision of indicative price and service transparency, it is unlikely that the new transparency requirements will compromise the need for flexibility in service delivery, or risk barristers undervaluing work which they are then obliged to undertake at a set price (except in the case of fixed fee agreements, where this is already a risk). The consultation also asked whether there are any other issues in relation to the need for flexibility that the BSB should consider.

Responses

121. Responses from the profession reiterated concerns that requirements to publish fees may lead to barristers publishing aspirational, rather than realistic, rates. The Commercial Bar Association's view was that this may lead to consumers assuming that they cannot afford barristers' services, when *"in reality a barrister might be willing to waive his/her fees or act on a heavily discounted basis, as a result of the personal circumstances of the consumer"*. The Technology and Construction Bar Association also stated that *"all clients will inevitably seek to pay an hourly rate/indicative fee at the bottom end of the range and, insofar as solicitors are concerned, given their negotiating position it is difficult to see how a clerk could negotiate successfully against that"*. In turn, barristers may increase their fees to compensate for this.

122. In addition, responses from the profession raised concerns that requirements to publish fees may impact on barristers' career opportunities. The Technology and Construction Bar Association stated that:

A solicitor or consumer may decide not to ask about a particular barrister because of their hourly rates when a conversation with that barrister's clerk might reveal a willingness to offer more flexible terms because, by way of example, the barrister is intending to apply for silk and therefore needs more advocacy opportunities, the barrister is returning from leave and the case would be particularly high profile and/or give them a good basis on which to 'restart' their practice [or] the barrister has caring responsibilities and is able to complete the work around his/her caring responsibilities.

BSB Response

123. As above, the BSB intends to develop a more proportionate approach to price and service transparency, and prioritise the more commoditised services provided by barristers. One approach would be to only apply fee disclosure requirements to those Public Access barristers providing the type of commoditised services most commonly purchased by less experienced and less expert consumers. At this stage, the scope of the proposals is more limited than proposed in the consultation, and the BSB therefore considers it unlikely that they would impact on barristers' career opportunities in the ways set out above (although we have recognised a risk to opportunities for progression among more junior members of the Bar. For full details of how this could be mitigated, see our response to question 10). It is also important to note that the consultation suggested those to whom the requirements apply would only need to produce a minimum of three illustrative price and service scenarios, thus further reducing the scope for the requirements to impact on barristers' career opportunities.

124. In addition, we consider that the proposed requirement for chambers' websites to state clients may contact chambers to obtain a quote would help them to understand fee information is indicative only. This text could also be accompanied by an explicit statement that fees are only estimates, intended to enable comparison and that for the best possible fee estimate, consumers should contact the barrister or their clerk (we will suggest this in the supporting guidance we produce for barristers and chambers). We consider that if these steps are taken, it is unlikely a consumer would decide not to enquire about a particular barrister and assume they cannot afford their services. Finally, the CMA's report considered the risk of the market converging to higher focal prices and concluded that this was low, particularly given the fragmented nature of the legal sector. They noted that "*in areas of law where there is greater transparency such as conveyancing, no parties provided evidence or suggested that such practices occur*".⁶ We therefore consider it unlikely that requirements to publish fees would lead to barristers publishing aspirational, rather than realistic, rates (and in any event, a barrister publishing a fee that they would in no circumstances charge would be misleading potential clients, thus breaching Rule C19 of the BSB Handbook). Instead, our view is that requirements to publish fees (where necessary and appropriate) would improve consumer understanding, facilitate shopping around and ultimately drive competition in service provision.

QUESTION 21: are there any other issues in relation to price discrimination (other than those highlighted above) that the BSB should consider?

125. Price flexibility in the legal services market often takes the form of price discrimination in relation to different types of consumers. While the BSB will be introducing some fee disclosure requirements (where necessary and appropriate), the consultation acknowledged that barristers may wish to charge different prices in certain circumstances. However, the consultation also stated that we would expect a certain degree of transparency around the circumstances in which this might arise. An example would be practitioners setting different hourly rates depending on the client: low for Government bodies, medium for non-departmental public bodies and high for corporate bodies. Barristers may also wish to charge a different price for something that is of wider social value, or due to their desire to cultivate new business and establish a reputation in a new practice area for them.

Responses

126. There was a consensus view that requiring transparency around the circumstances in which price discrimination might occur would not itself benefit consumers. However, Matrix Chambers stated that:

There is a tendency to regard price discrimination as 'bad'. That view is misconceived. Price discrimination is in general economically efficient, and it is a feature of many highly competitive markets...the consultation identifies various good reasons why the price of services provided by barristers will vary. Price discrimination is often in consumers' interests.

⁶ <https://assets.publishing.service.gov.uk/media/5887374d40f0b6593700001a/legal-services-market-study-final-report.pdf>, page 239

127. The Commercial Bar Association also stated that “it is difficult to see how any useful information for the consumer could be provided: categorising the different rates by type of client is only one factor”. Their concern was that “it will be impossible to set down all the factors and impractical to do it in any useful way in advance of the case arising and being considered”. With regard to whether there are any other issues that the BSB should consider, the Bar Council stated that:

The BSB should have regard to the scientific research concerning consumer behaviour when thinking about if and how to frame any regulatory requirements concerning price. We would not wish for any transparency requirements concerning price to lead prospective clients away from the other significant advantages that come with instructing a barrister such as quality and expertise, regulatory status, professional indemnity insurance and legal professional privilege.

BSB Response

128. On balance, the BSB agrees that requiring transparency around the circumstances in which price discrimination might occur would not necessarily benefit consumers. It may also lead to “information overload” and not effectively improve consumer understanding. We will therefore not proceed with a requirement for transparency around the circumstances in which price discrimination might occur at this stage. Instead, we are proposing a requirement for chambers’ websites to state clients may contact chambers for a quote. As above, this text could be accompanied by an explicit statement that fees are only estimates, intended to enable comparison and that for the best possible fee estimate, consumers should contact the barrister or their clerk (we will suggest this in the supporting guidance we produce for barristers and chambers). We consider that this would most effectively improve consumer understanding of the circumstances in which barristers may wish to charge different prices.
129. Finally, we agree with the Bar Council that it is important to have regard to the research when framing regulatory requirements concerning price. As above, we are commissioning further research and consumer testing to ensure that our price transparency proposals are robust, and strike the appropriate balance between mandatory and discretionary information. We will also ensure that other factors relevant to instructing a barrister are given equal weight in any new transparency requirements.

QUESTION 22: are there any other issues in relation to perceptions of value (other than those highlighted above) that the BSB should consider?

130. The consultation noted one view is that the new transparency requirements could encourage consumers to focus disproportionately on price rather than the overall value of barristers’ services (including a specific expertise or the overall quality of the work). However, ultimately it would be for the client to decide what their priority is when deciding which legal services provider to choose. The information available should empower consumers to make an informed decision by shopping around and where possible, drawing useful comparisons. In addition, the consultation noted the perception that barristers charge higher fees than solicitors and other legal services providers. This may often be the case, not least because barristers are more likely to offer specialist legal services than solicitors and other providers. However, where barristers are not charging higher fees than other providers for the same services, price transparency is a good opportunity to demonstrate the value of their services. The consultation also asked whether there are any other issues in relation to perceptions of value that the BSB should consider.

Responses

131. The Family Law Bar Association agreed that the new transparency requirements could encourage consumers to focus disproportionately on price rather than the overall value of barristers' services. They gave the example of a barrister's advice at an early stage in a case – or by way of early neutral evaluation – narrowing the issues between two parties, which may result in a significant saving of time and legal costs to the parties in the future. In this case, the overall value of the barrister's advice would be more important to the consumer than the cost of the advice itself. Matrix Chambers agreed that price and overall value are not necessarily the same, which they stated supported the case against mandatory fee disclosure.
132. The Legal Practice Management Association agreed there is a perception that barristers charge higher fees than solicitors and other legal services providers, which is clearly not always the case. Indeed, there was a consensus that due to the lower overheads applicable to barristers' services, they often charge lower fees than solicitors. However, the Technology and Construction Bar Association stated that price transparency will not be a good opportunity for their members to demonstrate the value of their services, as *"solicitors are not being required to provide the same information in relation to the services which they provide which are comparable to our members' services"*.

BSB Response

133. The BSB agrees that price and overall value are not necessarily the same, but maintains it is ultimately for the client to decide what their priority is when choosing a legal services provider. It would also be open to barristers to go beyond a minimum standard of service transparency (for example, a requirement for chambers' websites to state the areas of law in which they most commonly provide services) to demonstrate the overall value of their services. Many barristers already do this by providing details on their chambers' website of cases that they have undertaken, their directory recommendations and links to practice-related publications. Providing additional service information alongside fee information (for example, the benefits of early advice) would help clients to assess the overall value of barristers' services. We therefore do not agree that the difference between price and overall value is a reason not to require any fee disclosure.
134. As above, the BSB also intends to develop a more proportionate approach to price and service transparency, and prioritise the more commoditised services provided by barristers. One approach would be to only apply fee disclosure requirements to those Public Access barristers providing the type of commoditised services most commonly purchased by less experienced and less expert consumers (for full details, see our response to question 10). Applying price and service transparency requirements to these legal services would be most likely to facilitate comparisons with those provided by solicitors and others, and thus allow barristers to demonstrate the value of their services.

QUESTION 23: are there any other issues in relation to fee disputes (other than those highlighted above) that the BSB should consider?

135. The consultation noted that disputes about fees are one of the most frequent complaints. Our engagement with the profession found that this is often due to different types of fees which are not explained to clients (for example, brief fees and refreshers), and a lack of clarity as to what fees do and do not cover. The consultation therefore stated that new transparency requirements are a good opportunity to improve client communication and in turn, reduce disputes and complaints about fees (which can have a negative impact upon clients and barristers).

Responses

136. Responses from the profession generally disagreed that new transparency requirements were a good opportunity to reduce disputes and complaints about fees. For example, while agreeing with the importance of clarity in respect of fees, Matrix Chambers stated *“that is not a factor in favour of publishing information (a) because such clarity emerges in individual consultation and (b) because...there will almost always be departures from published prices such as ‘average’ prices”*. They therefore stated that new transparency requirements would give rise to further risk of confusion and disputes.

BSB Response

137. As above, we consider that the proposed requirement for chambers’ websites to state clients may contact chambers to obtain a quote would help them to understand fee information is indicative only. This text could also be accompanied by an explicit statement that fees are only estimates, intended to enable comparison and that for the best possible fee estimate, consumers should contact the barrister or their clerk (we will suggest this in the supporting guidance we produce for barristers and chambers).
138. 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 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. In implementing new transparency requirements, the BSB intends to help with this by, for example, considering a requirement for chambers’ websites to state their most commonly used pricing models. We will also consider featuring a form of Annex A to the consultation (most common pricing models) on the Legal Choices website. These measures should improve consumer understanding of different types of fees. The supporting guidance we produce for barristers and chambers will also suggest how to improve clarity as to what fees do and do not cover.

QUESTION 24: do you have any comments on the BSB’s proposed strategy for compliance with the new transparency requirements?

139. The consultation stated that while the BSB does not propose to fundamentally revise its approach to supervision and enforcement to ensure compliance with the new transparency requirements, a compliance strategy will need to be in place. Our preferred option would be to perform spot-checks and take the same risk-based approach that we take to CPD supervision. This is explained in detail in our [CPD guidance](#).
140. If we adopted this approach, spot-checking would focus on barristers who are at higher risk of non-compliance with the new transparency requirements, supplemented with a random sample of those practising at the self-employed Bar and from entities. Higher risk would be established, among other things, with reference to a barrister’s history of regulatory compliance. Targeted spot-checking/thematic reviews could also take place in high-risk practice areas, which are likely to have a high impact on vulnerable consumers.
141. Non-compliance would generally be dealt with in the first instance through supervisory action. This would include recommendations (referred to as ‘corrective action’) where barristers appear not to have met the requirements of the new rules on transparency.

This means that our focus would not be on enforcement action, but on ensuring that barristers comply with the new transparency requirements. This would be a more effective approach as well as being a more proportionate use of regulatory resources. Referral to enforcement action would be reserved for persistent non-compliance or non-cooperation.

Responses

142. The Legal Services Consumer Panel supported and commended the proposed compliance strategy. Responses from the profession (including the response of the Bar Council) also generally agreed with the strategy, and the fact that our focus would be on compliance rather than enforcement action. However, the Bar Council did state that *“focusing on “high risk” areas or vulnerable clients is likely to unfairly burden practitioners in those areas”*, and may neglect to secure compliance by areas of the Bar where price may actually matter more. A number of responses also requested more detail on when non-compliance or non-cooperation would result in referral to enforcement action.

BSB Response

143. The BSB notes the comments in support of the compliance strategy and, as it is in the public and consumer interest that all barristers meet minimum transparency standards, will proceed as proposed. However, we note the Bar Council’s comment that in some areas price may actually matter more, and we will bear this in mind when developing the strategy. When the eventual requirements are agreed, we will also develop an assessment framework. This will set out in detail what is considered compliant, and when non-compliance or non-cooperation is likely to result in referral to enforcement action.

QUESTION 25: do you agree with the analysis in the EIA, and our view that although barristers who are BME, male and over 35 will be somewhat more likely to be required to comply with new transparency requirements in respect of Public Access work, this is justified given the expected benefit to Public Access clients, access to justice and competition? Please explain your answer.

QUESTION 26: do you consider that the requirements will have any adverse impact on the basis of other protected characteristics under the Equality Act 2010? If yes, please explain your answer.

QUESTION 27: do you have any comments on the action plan for improvement in the EIA?

144. An EIA of the proposals carried out as part of the consultation, identified that barristers who are BME, male and over 35 will be somewhat more likely to be required to comply with new transparency requirements in respect of Public Access work. They are also more likely to be Public Access sole practitioners, and therefore may find complying with the new requirements more administratively burdensome. However, our view was that this is justified given the expected benefit to Public Access clients, access to justice and competition in the provision of legal services. We also did not have evidence to suggest that the requirements would have any adverse impact on the basis of other protected characteristics under the Equality Act 2010, and detailed an action plan for improvement in the EIA.

Responses

145. The Legal Services Consumer Panel agreed with the analysis in the EIA and our view that the impact is justified. However, responses from the profession generally did not

agree that the impact is justified, as in their view either the proposed transparency requirements would not benefit Public Access clients, access to justice and competition, or any benefit had been evidenced. The Bar Council stated that *“if BME barristers are more likely to do Public Access work...there is a possibility that the effect of complying with transparency requirements could exacerbate pay differentials between BME and white barristers”* (for example, if clients seek to pay an hourly rate/indicative fee at the bottom end of a range). They also stated that, while male barristers will be somewhat more likely to be required to comply in respect of Public Access work, anecdotally more female barristers provide the type of commoditised services to which price transparency requirements are more amendable. There could therefore be a disproportionate impact on BME and female barristers, in respect of both the administrative burden and the effect on income.

146. The Technology and Construction Bar Association stated that *“the requirements may have an adverse impact on practitioners returning from leave or with caring responsibilities (usually women) because the publication of the required information could...limit the steps a barrister could take to ‘restart’ and/or maintain their practice”*. A number of responses also raised concerns about the impact on disabled practitioners (who may find complying with the new requirements more administratively burdensome), and the opportunities for income and progression among more junior members of the Bar.
147. Blackstone Chambers did not disagree with the analysis in the EIA, but noted that it would need to be revisited if the scope of the proposals changed. The Legal Practice Management Association stated that the scope of the action plan for improvement should be widened to include those with other protected characteristics under the Equality Act 2010, which was echoed by the Bar Council. The Commercial Bar Association stated that *“the required action to “explore the possibility of offering targeted support to, for example, disabled barristers” should be more positive”*. Their view was that *“disabled barristers have been highlighted but the support should be available to other potentially disadvantaged groups. The BSB should clearly identify the objective criteria to be applied to determine who will benefit from its targeted support”*.

BSB Response

148. The scope of the BSB’s proposals has changed, and we consider that their more targeted nature would do more to benefit Public Access clients, access to justice and competition. In addition to revisiting the EIA, we will widen the scope of the action plan for improvement to include those with other protected characteristics under the Equality Act 2010.
149. However, as the scope of the proposals is more limited than proposed in the consultation, the BSB considers it unlikely that they would impact on those with protected characteristics in the ways set out above (although we have recognised a risk to opportunities for progression among more junior members of the Bar. For full details of how this could be mitigated, see our response to question 10). It is also important to note that the consultation suggested those to whom the requirements apply would only need to produce a minimum of three illustrative price and service scenarios, thus further reducing the scope for the requirements to impact on those with protected characteristics.
150. In relation to those who may find complying with the requirements more administratively burdensome, as set out in our response to question 10 one option is for the BSB to identify which chambers the fee disclosure requirements apply to on an annual basis, and proactively work with them to achieve compliance. This could mean that the BSB does not need to offer targeted support to those with protected

characteristics, as the BSB would be working with all those to whom fee disclosure requirements apply. We are also committed to evaluating the effectiveness of the requirements from December 2020. This evaluation will include an assessment of whether they have been applied proportionately.