



REGULATING BARRISTERS

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

**Policy Consultation on Transparency Standards**

**October 2017**

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## Foreword by BSB Chair, Sir Andrew Burns KCMG

This consultation paper sets out our proposed response to the Competition and Market Authority's (CMA's) recommendations that we, and the other legal services regulators, introduce new price and service disclosure requirements for all legal services providers.

It is important to highlight from the outset that this consultation is not about **pricing** regulation, it is about **transparency** regulation and seeking views on how we can implement measures that will ensure better access to justice for those that most need it. As part of this, we are required by the CMA to consult the public and the profession about how our regulated professions – in our case, the Bar of England and Wales – can be more transparent with consumers about **their services, their fees and the rights of redress that are available**. We agree with the CMA that making this information available across the legal sector may **encourage competition** and **help the consumers** who most need it, but we are also aware of some of the **unique challenges for the Bar**, in particular with regard to publication of fees. With the requirement to publish information about fees, services and redress, we are also seeking to break down perceptions of barriers and preconceived ideas that engaging the services of barristers is inevitably expensive. Greater transparency should lead to greater understanding of the different services available, and the consumer's ability to shop around. This in turn should have a positive impact on access to justice by making consumers more aware that barristers' services may in fact be accessible to them. Inevitably this will also mean that there is greater competition in the provision of legal services.

This is why we are especially keen to hear your views on our proposed approach to responding to the CMA's recommendations. We want to hear from legal consumers, and organisations representing their interests, about the information that barristers could disclose about their services that would be most helpful, and how this might best be presented. And we want to hear from practitioners about what might or might not be feasible to publish.

We have already had some interesting and informative discussions with consumer organisations, Bar representative groups and individual barristers about the issues raised here. These have helped inform our proposed approach. These discussions, together with our own desk-based research, have helped us identify good practice with regard to transparency already being undertaken by some chambers and by some parts of the Bar. We want to consider how best to build upon this to have the greatest impact in terms of consumer benefit and increasing competition in the provision of legal services in order to address the CMA's recommendations more widely across the Bar.

We want to ensure that our approach is **proportionate** and that any new disclosure requirements are effective, promote competition and are targeted at those consumers who would most benefit from them. With this in mind, the focus of our proposed approach is initially on Public Access barristers. We also consider whether any new requirements should apply to the referral Bar when providing services to clients who are entitled to complain to the Legal Ombudsman (LeO).

As you will see, we have categorised each of the CMA's recommendations in relation to service, price and redress disclosure based on the potential benefits for consumers if they were able to access this information before agreeing to engage the services of a barrister. At this stage, we are proposing that only the recommendations which are categorised as having a "very high" impact on consumers form mandatory rules. For the remaining CMA recommendations, where consumer impacts are assessed as either "high" or "medium", we propose issuing guidance, meaning the publication of such information would not be compulsory. As part of your response to this consultation, we ask you whether you agree with this approach to the categorisation of the CMA recommendations, and whether you agree with how we have assessed the likely consumer impact of each one.

The other very important point to make about our proposed approach is that it would permit a **certain degree of flexibility** for chambers and individual barristers with regard to *how* information about their services is disclosed. Given the wide variety of legal services provided by barristers and the often highly complex nature of their work, we think it would be wrong if we mandated precise forms of wording to be quoted or fixed ways to publish fees. Our proposed approach would not do that, but would instead require parts of the Bar to comply with high-level disclosure requirements, leaving the precise method for doing that up to individual barristers or chambers. However, precise forms of wording could be mandated for some information about redress, as standardisation could help consumers. For example, barristers could be required to display the text "regulated by the Bar Standards Board" on their chambers' website to indicate their regulatory status. Our view is that there must be a balance between not overburdening barristers and chambers and, as far as possible, ensuring information is consistent, accessible and easily understood by consumers. We are keen to hear what you think about this approach.

Finally, it is worth stressing that we are **open-minded** about some of the detail that we propose here. We are required to bring the Bar in line with the CMA recommendations, and

with similar disclosure requirements which will be introduced for other lawyers by their regulators, but the way we go about this for barristers is up to us.

In conclusion, my colleagues on the Board and I do very much want to hear your thoughts on the approach that we outline here. I hope you can spare some time to share your views with us. If you are a barrister or represent a set of chambers and you would like to get even more engaged with these issues, please note that we are looking for volunteers to help us pilot some of these disclosure measures. Please check our website for more information about how to get involved with these pilots.

We look forward to hearing from you.

Sir Andrew Burns KCMG

## Executive Summary

In December 2016, the Competition and Markets Authority (CMA) published the findings of its [market study into legal services](#). Its recommendations fall broadly into four categories:

- delivering a step change in standards of transparency across the market;
- promoting 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).

This consultation contains the Bar Standards Board's (BSB's) approach to the first of these recommendations: **delivering a step change in standards of transparency for consumers**. The BSB will address the other CMA recommendations in the future in accordance with the [action plan](#) that it published in June 2017.

When referring to standards of transparency to help consumers, the CMA described this as the information needed to help them understand the price and service they will receive, what redress is available and the regulatory status of their provider, with the overall aim being to enable them to compare providers.

The CMA required all of the legal regulators in England and Wales **to work collaboratively** when implementing its recommendations in order to ensure a degree of consistency across the market. Consequently, while this consultation paper considers how best to implement the CMA's recommendation to improve transparency standards at the Bar, the other legal regulators will simultaneously be consulting on how to do this with their own regulated professions. The final approach for the Bar will need to be broadly similar to the approaches adopted by the other regulators.

Having said this, the focus in this paper is on **how best to make any new transparency measures work for the consumers of barristers' services**. The BSB's proposed approach – described in detail in this consultation paper – recognises the wide variety of legal services provided by barristers, the complex nature of their work and the unique ways in which barristers' services are engaged (in particular, the way in which many barristers are referred to consumers by other legal service providers).

After a brief introduction in Part I of this consultation paper, Part II outlines the CMA's recommendations on **price, service** and **redress** in more detail. It contains a table showing the minimum disclosure requirements recommended by the CMA.

Part II also summarises **the desk-based research conducted by the BSB** when exploring the current position with regard to information about fees provided by barristers' chambers. This provided evidence of good, transparent, practice in this area undertaken by some chambers. However, the research did find that 75% of chambers' websites made no reference to their fees and gave no guidance to this effect. This part also provides an overview of how we built on the initial research through **wider research**. This involved consultation and engagement with the profession, representative bodies and consumers.

Part III of this paper describes **the purpose and aims of this consultation**. It sets out that whilst the BSB has adopted the CMA's recommendations in principle, it is important to implement an approach that takes into account the unique nature of the Bar. It highlights the BSB's wish to be **proportionate** and explains that the proposal is for any new requirements to apply to barristers and entities undertaking Public Access work and those undertaking referral work for clients entitled to complain to the Legal Ombudsman (LeO). It also sets out next steps, highlighting that any new mandatory measures will be implemented at the end of 2018, following further engagement, research and a rules consultation in Spring 2018.

Part IV of this consultation paper outlines **the BSB's proposed approach to improving transparency standards at the Bar**. The high-level approach has been to assess the likely benefit to consumers of each of the CMA's disclosure recommendations concerning price, service and redress. The likely benefits for each CMA recommendation have been categorised into having a "very high impact", a "high impact" or a "medium impact" for consumers of barristers' services. This part of the consultation seeks your views on the overall approach and on the BSB's assessment of each of the CMA's recommendations. The BSB is proposing that barristers should be required to disclose information about their services whenever the recommendation has been assessed as having a "very high impact". Where the impact is assessed as "high" or "medium", the BSB is proposing to issue guidance for chambers and barristers wanting to disclose this type of information (rather than making it compulsory).

The CMA recommendations that have been categorised as having a "very high impact" are as follows:

- Pricing and charging model (e.g. fixed fee, hourly rates, capped charges, conditional fee agreement/damages-based agreement);
- Hourly fees (where charged) by seniority of barrister or grade of staff;
- (Where offered) indicative fixed fees and factors that may affect these and the circumstances where additional fees may be charged;
- A description of the services that the legal services provider provides;
- Indicative timescales of completing services and factors affecting these;
- Regulatory status, registration details; and
- Complaints process and access to the Legal Ombudsman (LeO).

This Part of the consultation poses a number of questions relating to the above assessments and those categorised as “high” and “medium” impact. It also asks whether you agree that the BSB should introduce guidance (rather than mandatory rules) for recommendations that have been categorised as having “high” and “medium” impact.

Next, the consultation seeks views on a number of additional factors that if they were to be mandated would go beyond the CMA recommendations. The BSB is open-minded about these factors and wants to gauge reactions about whether requiring barristers to disclose this additional information is necessary. These factors include:

- whether the BSB should require publication of first-tier complaints data, and if not, why not;
- whether it would be beneficial to require barristers to display the BSB logo on their websites, and if not, why not;
- whether Public Access barristers should be required to publish the BSB’s Guidance for Lay Clients on their websites, and if not, why not; and
- whether there are any other examples of what you consider to be good practice that you could draw to our attention.

In Part IV, consideration is given to **the scope of the new transparency arrangements** and we invite views on when and to whom the requirements should apply. The proposal is that any new mandatory requirements should apply to barristers and entities undertaking Public Access work, as this is where the need and impact would be greatest. However, the BSB is provisionally of the view that the suggested minimum disclosure requirements should also apply for referred work when the consumer is entitled to complain to the LeO. In addition, we seek your views on whether the requirements should apply to specific areas of work.

The BSB's view is that there must be a balance between information effectively improving consumer understanding on the one hand, and the requirements not overburdening barristers and chambers on the other. Therefore, it is not proposed that barristers undertaking referral work for clients funded by the Legal Aid Agency (for example, in the areas of immigration, crime and family law) would be required to publish legal aid rates. In addition, there is a section in the consultation to recognise a range of situations in which barristers may offer different rates for different types of consumers; for example, to cultivate a new relationship or to grow their reputation outside their core market. The consultation seeks views on these issues and asks when the BSB's suggested minimum disclosure requirements should apply.

Part V of the consultation considers **the implementation of the proposed approach**. It begins by outlining two options for how price information might be published by chambers:

- Option one would be for self-employed barristers in chambers to provide *individual* price and service information on their chambers' website; and
- Option two would be for chambers to publish *blended* price and service information on their websites for all of the barristers in their set. This could take the form of price ranges, indicative fees for standard work, or average fees.

The BSB favours option two as being the more feasible in terms of providing minimum price and service information, but is keen to know what you think.

There are questions about how disclosure might work for BSB authorised entities, and how to ensure that the information disclosed by the Bar is **consistent, accessible and easily understood** by its intended audience. This could include putting information in plain English, highlighting key points and making information available in alternative formats.

This Part of the consultation goes on to consider **the need for flexibility** when requiring barristers to present their pricing models. It considers issues that may arise **around price discrimination, fee disputes and perceptions of value** insofar as the new transparency requirements could encourage consumers to focus disproportionately on price rather than the overall value of a barrister's services.

Part VI of the consultation asks for your views on the BSB's proposed approach to **the supervision and enforcement of the new transparency requirements**. In short, the consultation paper proposes a system of "spot checking" barristers' compliance with the new requirements. If non-compliance is found, this would generally be dealt with, in the first

instance, through supervisory, rather than enforcement, action. This would enable any regulatory action to focus on fixing the situation for the benefit of consumers in the future.

Part VII of the consultation reports that the BSB conducted an **Equality Impact Assessment** (EIA) on its proposals. The EIA 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 is 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 do not have evidence to suggest that the requirements will have any adverse impact on the basis of other protected characteristics under the Equality Act 2010. However, we ask you to make us aware if you think that there could be any such impacts. We have also detailed an action plan for improvement in the EIA.

Finally, Part VII outlines **how to respond to the consultation**. There are a number of ways to respond including emailing [professionalstandards@barstandardsboard.org.uk](mailto:professionalstandards@barstandardsboard.org.uk). The deadline for responses is **Friday 5 January 2018**.

## PART I: Introduction

1. The Bar Standards Board (BSB) was established in January 2006 as a result of the Bar Council separating its regulatory and representative functions. The BSB is responsible for establishing and implementing a range of regulatory measures to ensure that standards at the Bar are maintained and the interests of consumers are understood, protected and promoted (for the purposes of this consultation, consumers are defined as those who use, have used or may be contemplating using barristers' services, whether on a referral or direct access basis). The BSB regulates over 15,000 barristers and 60 specialised legal services businesses in England and Wales.
2. The Competition and Markets Authority (CMA) undertook a market study into legal services in 2016. Its [final report](#) was published on 15 December. Its recommendations fall broadly into four categories: delivering a step change in standards of transparency, promotion of the use of independent feedback platforms, making regulatory data more accessible and making better information available to assist consumers (including by reviewing the content of the [Legal Choices](#) website). The CMA has asked each legal services regulator to introduce changes to its regulatory arrangements but with a degree of consistency across the sector, and recommended that the regulators form an implementation group.
3. At the end of June 2017, the BSB published an [action plan](#) detailing its response to the CMA's recommendations. This included a commitment to issue, by the end of September, a policy consultation focused on the CMA's recommendation to deliver a step change in standards of transparency. This consultation delivers on that commitment (for more information on the BSB's response to the CMA's other recommendations, see the action plan above).

## PART II: CMA recommendation on transparency standards and BSB research

### *The CMA’s recommendations*

4. In its final report, the CMA recommended that the regulators deliver a step change in standards of transparency to *“help consumers (i) to understand the price and service they will receive, what redress is available and the regulatory status of their provider and (ii) to compare providers. Regulators should revise their regulatory requirements to set a new minimum standard for disclosures on price and the service provided and develop and disseminate best practice guidance. Importantly, this should include a requirement for providers to publish relevant information about the prices consumers are likely to pay for legal services”*.<sup>1</sup>
  
5. The report also stated that *“in the case of barristers, increased public transparency will be most relevant and beneficial to customers engaging a barrister through the public access scheme rather than issuing instructions via a solicitor. However, we note that the solicitors’ role as intermediaries instructing barristers on behalf of clients will be strengthened if there is a general improvement in the level of transparency in the sector”*.<sup>2</sup>
  
6. In order to help consumers to understand price, service, redress and regulatory status and in turn, compare providers, the CMA recommended the following minimum disclosure requirements *before* providers are instructed:

<b>Minimum disclosure requirements</b>		
<b><i>Price</i></b>	<b><i>Service</i></b>	<b><i>Redress</i></b>
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

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

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

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)

7. There are ways in which barristers and specialised legal services businesses (known as entities) could go beyond this level of disclosure. This is explored in the consultation. However, the [BSB Handbook](#) currently only requires barristers and entities to confirm the following in writing to clients *after* they have been instructed:

- Acceptance of the instructions and the terms and/or basis on which they will be acting, including the basis of charging (Rule C22.1); and
- The client's right to make a complaint, including their right (if any) to complain to the LeO (Rule C99.1).

## **Desk research**

8. While the BSB Handbook does not prevent disclosure before barristers are instructed, the BSB had limited information on the extent to which this was occurring in practice. As a first step to better understanding the current position, we undertook desk research examining the information which barristers' chambers provide on their websites regarding fees. We looked at 368 chambers in total, 329 of which had websites. The research classified these into four categories:
- Chambers which provide numerical data regarding their fees/prices (20/329, **6%**);
  - Chambers which provide detailed guidance about how fees are typically calculated, but do not provide any numerical data on fees/prices (26/329, **8%**);
  - Chambers which provide simple or basic reference to fees, with no numerical data or detailed guidance about how fees are typically calculated (36/329, **11%**); and
  - Chambers which made no reference whatsoever to their fees and no guidance to this effect (247/329, **75%**).
9. Of the 6% that did provide numerical data a handful provided rates by level of seniority. Of the 8% of chambers that provide detailed guidance about how fees are typically calculated, only one provided examples of costs for a standard type of instructions.
10. While the research should be considered a snapshot, the findings strongly suggest that the majority of chambers do not provide information on their websites regarding fees. Introducing a requirement to disclose fees and charges is therefore likely to represent a significant culture shift for barristers, and indeed likely to require a number of barristers to make changes to the way they communicate the prices of their services. The introduction of new transparency requirements by each regulator is also likely to represent a significant culture shift for the entire legal profession. However, the intention is that the new requirements should lead to improvements for consumers. In 2016, the BSB's [Risk Outlook](#) identified that there is a lack of information to help consumers choose an appropriate lawyer, with little to help them distinguish between lawyers on quality, value and affordability.<sup>3</sup>

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<sup>3</sup> [https://www.barstandardsboard.org.uk/media/1751659/bsb\\_risk\\_outlook.pdf](https://www.barstandardsboard.org.uk/media/1751659/bsb_risk_outlook.pdf), page 42

11. The desk research we undertook also suggests that price and service information is most common in the areas of Public Access and family law. Chambers which either provide numerical data regarding their fees/prices, or detailed guidance about how fees are calculated, are more likely to specialise in Public Access and/or family law. This chimes with the CMA's statement that increased transparency will be most relevant and beneficial to customers engaging a barrister through the Public Access scheme. A recent survey commissioned by the BSB and our oversight regulator, the Legal Services Board (LSB), found that Public Access is most commonly undertaken in the area of family law.<sup>4</sup>

### ***Further research and engagement***

12. To inform this policy consultation, we built on the initial research through wider research involving consultation and engagement with the profession, representative bodies and consumers. In brief, the research focuses on (i) understanding the current issues and priorities for the profession surrounding price and service transparency, including examples of good practice; (ii) perceived barriers, drivers and potential risks to increasing transparency; and (iii) consideration of ways to increase and improve transparency in ways that consumers would find useful.
13. To date, representatives from four professional bodies, four consumer organisations and seven providers have been interviewed for this research, which is still in progress. Four further interviews with providers have been scheduled and a survey of a sample of legal consumers is underway. Some emerging headline findings from the interviews completed so far are outlined below.
14. A key perceived barrier to transparency is that "one size doesn't fit all" because of the complexity of each case. The main drivers for increased transparency are perceived to be legal aid cuts and competition by other providers (including better consumer engagement by other providers). While consumer organisations recognise that it is complex to price legal services with accuracy before delivery, they would expect an estimation of the cost (rather than a definite price) to be available on a provider's website. Most of the providers interviewed – including those who currently publicise price and service information on their website – indicated that they would welcome new

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<sup>4</sup> <https://research.legalservicesboard.org.uk/wp-content/media/Public-Access-FINAL-Report.pdf>, page 22

regulatory requirements on transparency. However, they expect the BSB to find a balance between overly rigid requirements and minimal requirements that would render the information provided meaningless. Finally, the main risk perceived by the profession is that competition will be driven only by price at the expense of the whole value of the service provided, including a specific expertise or the overall quality of the work (this is discussed further at paragraphs **89-90**).

15. These are emerging findings from a small qualitative sample and are intended to inform the approach to consultation and the approach to further piloting. They are not intended to be representative of the views or experiences of the profession as a whole and should be treated as indicative only.

### ***Piloting***

16. Alongside this policy consultation, we will also be piloting the suggested new mandatory transparency requirements. The piloting will test what is set out in this paper in terms of helping to determine not only what will have the greatest impact in terms of consumer benefit and driving competition, but also what will be feasible for the practising Bar to implement. We are keen to learn more about the challenges that may be associated with implementing any new requirements, and will seek to explore this with those who participate in the pilots. Lessons learned from the piloting – for example, the extent to which it helped consumers, and delivered a step change in standards of transparency – and responses to this consultation will be taken into account when developing any new rules.

## **PART III: Purpose of the consultation and next steps**

### ***Purpose and aims of the consultation***

17. The BSB has accepted the CMA's recommendations in principle, as ultimately this will further the regulatory objectives set out in the Legal Services Act 2007 (the 2007 Act). In particular by adopting the CMA recommendations, the BSB will be protecting and promoting the consumer interest, improving access to justice, and promoting competition in the provision of services.
18. Although the BSB is accepting the recommendations in principle, it still recognises the challenges that the practising Bar will face in adapting to any new requirements, as this will be a significant culture shift from current practice. The BSB wishes to be proportionate in its proposed approach and for this reason the scope of any new requirements will be targeted where most needed. Currently it is proposed that any new requirements would only apply to barristers and entities undertaking Public Access work and those undertaking referral work for clients entitled to complain to the LeO. Issues around scope and feasibility are discussed further at paragraphs **57-59 and 67-78**. The consultation also explores to what degree and how the information listed in the CMA report should be disclosed to have the greatest impact for both (i) practice at the Bar and (ii) consumers using barristers' services.
19. The BSB also recognises that the practising Bar is already required to be transparent about price and service information at the point of engagement. Indeed, Rule C22.1 of the [BSB Handbook](#) requires barristers to confirm to clients in writing the acceptance of the instructions and the terms and/or basis on which they will be acting, including the basis of charging. In addition, Rule C125 requires Public Access barristers to confirm to clients in writing, and in clear and readily understandable terms, the work which they have agreed to perform and a number of other particulars (including the limitations of their role). However, the CMA has identified a consumer need for legal services providers to be more transparent about price and service information prior to the point of engagement. This will assist consumers at an earlier point in the consumer journey, and enable them to shop around without necessarily having to contact various legal services providers.
20. It should also be noted that improving standards of price and service transparency is not the only remedy recommended by the CMA, as they have also recommended promoting

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 BSB and the other legal services regulators will be also be working to implement these recommendations between now and the end of 2018 and the aim is that, together with improved transparency standards, they will improve the consumer experience across the sector. For more information on the BSB's response to the CMA's other recommendations, see the [action plan](#).

21. The broad principles of the BSB's approach to improving transparency standards are included in this paper, the findings of which together with the findings from the pilots and the wider programme of research will help to inform and underpin a rule change consultation in March 2018, with new rules eventually coming into force by the end of 2018.
  
22. Our consideration of the most effective way of implementing the CMA's recommendations will also draw on the criteria for success identified in the Legal Services Consumer Panel's (LSCP's) March 2017 report. This concerned the [development of information remedies in legal services](#). The report stated, for example, that information remedies should be appropriate to consumers' ability to understand them, accessible and avoid 'information overload'. The report also stated information remedies may need to be targeted at groups of consumers differently, and that regulators should develop a system to monitor compliance with disclosure requirements.<sup>5</sup> Drawing on the criteria for success identified in the LSCP's report will therefore help to consider:
  - What information should be disclosed to improve consumer understanding (i.e. what the principles and priorities for transparency requirements should be);
  - How the new transparency requirements should be applied proportionately and targeted at consumers who would most benefit;
  - The challenges and opportunities associated with new transparency requirements; and
  - The BSB's strategy for determining compliance with its new transparency requirements.

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[http://www.legalservicesconsumerpanel.org.uk/publications/research\\_and\\_reports/documents/20170322\\_Information\\_Remedies.pdf](http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/documents/20170322_Information_Remedies.pdf), page 5

## Part IV: The BSB's proposed approach

23. The following section is set out in two parts. The first section explores to what extent and how the recommendations in the CMA report can be applied to practice at the Bar, with the aim of improving consumer understanding. The second section goes on to explore how the new transparency requirements should be applied proportionately (for example, to barristers and entities undertaking Public Access and/or referral work).

### ***Priorities for transparency standards***

24. In its final report the CMA sets out at table 7.1 (see paragraph 4) their view of the minimum levels of transparency that consumers should be able to expect from legal services providers. The CMA states that the list is not exhaustive and has not been tested with consumers. They also state that *“it will be for individual regulators to assess their own current regulatory requirements and the relevance of our recommendations to the services that their regulated professionals offer”*.<sup>6</sup>
25. One of the aims of the wider programme of research is to identify perceived barriers to publicising transparency information, along with examples of good practice and suggestions of how to increase and improve transparency (in ways that consumers would find useful). Based on these findings we have attempted to segment the different requirements based on expected consumer benefits. The BSB is now seeking 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.
26. The paragraphs that follow examine the CMA recommendations in relation to price, service and redress. Each CMA recommendation has been 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. In this section the BSB is seeking views on whether it has correctly categorised each of the CMA's recommendations for greater transparency in relation to the Bar. The sections that follow will seek views on the scope and feasibility of the recommendations for those that practice at the Bar.

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<sup>6</sup> <https://assets.publishing.service.gov.uk/media/5887374d40f0b6593700001a/legal-services-market-study-final-report.pdf>, page 228

27. For the purposes of this consultation, the BSB is proposing that the CMA recommendations that have been categorised as very high impact in terms of expected consumer benefit would be the suggested minimum disclosure requirements that barristers would be required to publish. The feasibility of this proposed approach will be tested during the pilots. The recommendations in relation to price, service and redress are discussed in more detail below.

**Price**

28. The table below indicates how we have 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)		✓	

Recommendation	Very high impact	High impact	Medium impact
5. Scale of likely disbursements (e.g. searches, court fees)		✓	
6. Key factors that determine price (including disbursements)		✓	

29. Our initial view is 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. As the CMA’s report states, *“information issues, including both limited awareness of the sector and providers’ lack of transparency, can...lead to consumers believing that they cannot afford legal advice and resorting to doing nothing or resolving their issues themselves, which may not be the best option”*.<sup>7</sup>
30. Within the pricing and charging model, fixed fees and conditional fee agreements (“no win, no fee” agreements) may be more attractive to consumers. However, this may be due to behavioural bias whereby consumers prefer fixed fees because they remove anxiety associated with not knowing how long certain types of work might take (and therefore the cost associated with this). In reality consumers may pay more for fixed fees than they would if they were charged a variable rate, as by charging on a fixed fee basis the provider will be taking on the risk that the work may take longer than expected and so build in premiums to compensate for this. When charging on a fixed fee basis, it is also important for barristers to be clear about the circumstances where additional fees may be charged. As the BSB’s [Public and Licensed Access Review Report](#) notes, it can be hard for barristers to predict the time that will be spent on cases (and this can be more difficult with Public Access cases, particularly as the barrister will ordinarily need to spend more time liaising with the lay client).

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<sup>7</sup> <https://assets.publishing.service.gov.uk/media/5887374d40f0b6593700001a/legal-services-market-study-final-report.pdf>, page 10

31. However, there can nonetheless be transparency as to what different fee levels will be likely to result; for example, “it will cost £X for a certain amount of work, but if a particular situation arises that requires Y action then there will be additional costs of £Z”. This would help to reduce information asymmetries and also manage clients’ expectations.<sup>8</sup> The CMA’s report also includes an example of a ‘menu’ approach, “*whereby a core basic service is offered for a fixed fee with added extras charged at an additional standard rate*”.<sup>9</sup> However, there is a risk that if consumers are not reasonably certain of the timescales involved, they could potentially make mistakes in determining whether this model of charging is more convenient/cost-effective than a linear one (for example, one based on an hourly rate).
32. Although the BSB has 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, it recognises 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). The BSB is mindful that by mandating greater transparency we do not inadvertently have the consequence of restricting barristers from offering better rates to more socially beneficial causes. The BSB is mindful to ensure that it will not mandate a specific pricing model, rather it will expect barristers to be transparent about the model they do 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). The most common pricing models which we believe are used by the Bar are listed at Annex A. How barristers may implement any new requirements and the challenges associated with doing so are discussed further at paragraphs 67-78.

**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?**

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[https://www.barstandardsboard.org.uk/media/1824703/public\\_and\\_licensed\\_access\\_review\\_final\\_report.pdf](https://www.barstandardsboard.org.uk/media/1824703/public_and_licensed_access_review_final_report.pdf), page 38

<sup>9</sup> <https://assets.publishing.service.gov.uk/media/5887374d40f0b6593700001a/legal-services-market-study-final-report.pdf>, page 234

## Service

33. The table below indicates how we have 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	✓		

34. Core service information will be needed alongside core price information to allow consumers to make an informed decision on choosing a provider. As the CMA’s report states, “consumers also need to understand what the service is that providers are offering, [and] how it will be delivered...any disclosure on the service should therefore essentially explain what the ‘problem’ is that the service addresses and how the service addresses that problem or need”.<sup>10</sup> In addition, the LeO’s [guide on good costs service](http://www.legalombudsman.org.uk/downloads/documents/publications/Ombudsman-view-good-costs-service.pdf) notes it is important for consumers to be able to “choose the way of dealing with their case that suits their needs”.<sup>11</sup> For this reason the BSB’s initial view is that

<sup>10</sup> <https://assets.publishing.service.gov.uk/media/5887374d40f0b6593700001a/legal-services-market-study-final-report.pdf>, pages 239 – 240

<sup>11</sup> <http://www.legalombudsman.org.uk/downloads/documents/publications/Ombudsman-view-good-costs-service.pdf>, page 7

recommendations 7 and 10 in relation to service would have the greatest impact in improving consumer understanding, facilitating shopping around and ultimately driving competition. Where hourly fees are charged, the indicative timescales of completing services will also provide an estimate of the total cost. As the LeO notes, “consumers will almost always want to know what the total cost of their case is likely to be”.<sup>12</sup> This was reflected in our engagement with consumer organisations, who recognise that while it is complex to price legal services with accuracy before delivery, they would expect an estimation of the cost (rather than a definite price) to be available on a provider’s website. In addition, it is likely to be useful for chambers’ websites to state 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. It may also be useful for barristers to consider stating that whilst any other charges (for example, court fees) are not included in the pricing and charging model, they could be a key factor that determines price.

**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?**

**Redress**

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

<b>Recommendation</b>	<b>Very high impact</b>	<b>High impact</b>	<b>Medium impact</b>
11. Regulatory status, registration details	✓		
12. Complaints process and access to the LeO	✓		

<sup>12</sup> <http://www.legalombudsman.org.uk/downloads/documents/publications/Ombudsman-view-good-costs-service.pdf>, page 8

Recommendation	Very high impact	High impact	Medium impact
13. PII cover			✓

36. We consider that core information about redress (recommendations 11 and 12) should 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, and ensure their name on the website matches that on the BSB’s [Barristers’ Register](#). In addition, 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. It is noted that the Bar Council already suggests making these disclosures on chambers’ websites to ensure compliance with the Provision of Services Regulations 2009.<sup>13</sup>

37. In relation to complaints process and access to the LeO, there are some existing requirements in place in the Handbook to which barristers need to adhere. After barristers have been instructed, Rule C99.1 of the BSB Handbook requires them to inform clients in writing of their right to make a complaint, including any right to complain to the LeO.<sup>14</sup> Rule C103 also states that chambers’ websites must display information about the chambers’ complaints procedure. These rules may need to be amended to ensure that the client has access to all the necessary information in relation to complaints before instructing a barrister (including the right to complain to the LeO).

**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?**

<sup>13</sup> [http://www.barcouncil.org.uk/media/437394/the\\_provision\\_of\\_services\\_regulations\\_2009.pdf](http://www.barcouncil.org.uk/media/437394/the_provision_of_services_regulations_2009.pdf), page 5

<sup>14</sup> Those clients who are able to complain to the LeO are as follows:

- a) Individuals;
- b) Businesses or enterprises that are micro-enterprises within the meaning of Article 1 and Article 2(1) and (3) of the Annex to Commission Recommendation 2003/361/EC (broadly businesses or enterprises with fewer than 10 employees and turnover or assets not exceeding €2 million);
- c) Charities with an annual income net of tax of less than £1 million;
- d) Clubs, associations or organisations, the affairs of which are managed by its members or a committee of its members, with an annual income net of tax of less than £1 million;
- e) Trustees of trusts with an asset value of less than £1 million; and
- f) Personal representatives or beneficiaries of the estates of persons who, before they died, had not referred the complaint to the LeO.

### ***High and medium impact recommendations***

38. The tables above indicate what we have categorised as having high and medium impact in terms of improving consumer understanding for those wishing to engage barristers' services. The BSB is proposing to produce guidance with illustrative scenarios for the recommendations that would have high and medium impact. 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. In determining whether any additional transparency measures should be adopted, barristers should have regard to the type of client they are offering services to (for example, a client may still be considered vulnerable even if not caught by the LeO definition), and the type of services they are offering (some areas of work may require a greater degree of transparency than others). Illustrative examples should help barristers to understand whether they should adopt additional measures and the type of measures they could adopt.

**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.**

39. In the paragraphs that follow, we have set out our analysis as to why the remaining CMA recommendations have been categorised as having high and medium impact.

### ***High impact recommendations***

40. We have categorised recommendations 4 (typical range of costs for different stages of cases), 5 (scale of likely disbursements), 6 (key factors that determine price) and 9 (key and discrete stages of service) as having a high impact on improving consumer understanding, facilitating shopping around and driving competition.
41. The CMA's report states that "*information on the anticipated stages and timeline of delivery allows consumers to understand how quickly a service will be delivered (and what it is contingent upon)*".<sup>15</sup> In a litigation case, for example, how quickly a service will be delivered may depend on the actions of other parties. More detailed price and service

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<sup>15</sup> <https://assets.publishing.service.gov.uk/media/5887374d40f0b6593700001a/legal-services-market-study-final-report.pdf>, page 240

information can therefore operate together with core information for the benefit of consumers. The LeO's document on [ten questions to ask your lawyer about costs](#) advises consumers as follows: *"don't just ask how much the hourly rate is. Ask for an estimate of how many hours it will take and what's included. Also ask what might cause it to change and see how likely this is. Sometimes you'll be given a range for the costs, but this will help you budget and know where you stand"*.<sup>16</sup> The CMA's report also concluded that providing information on the key factors which determine price (for example, a standard will as opposed to a will involving a trust) is effective at improving consumer understanding.<sup>17</sup>

42. However, where more detailed price and service information does not operate together with core information, this may not work in the consumer's interest. The BSB's Family Law Clients Research Report, for example, found that *"for a clear majority [of clients], the final fees were in line with expectations but almost one in five faced higher fees than they were expecting. Two of these had not factored in the court fees which increased the final fee"*.<sup>18</sup>
43. The CMA's report envisages that more detailed price and service information could operate together with core information by way of scenarios. The report states that *"consumers' ability to anticipate the cost of legal services will be determined both by the pricing model adopted by a provider and the disclosures that the provider makes"*. It continues that *"a well-drafted fixed-fee disclosure will give consumers the greatest level of certainty. This certainty will decrease with the use of hourly rates. However, when accompanied by well-considered disclosures, potentially using scenarios, consumers can get a greater sense of likely charging"*.<sup>19</sup> In this example, the core information (the hourly rate) operates together with the more detailed information; for example, the key (and discrete) stages of services, the typical range of costs for different stages of cases and the scale of likely disbursements<sup>20</sup>. This works in the consumer's interest as it gives the best estimate of total cost and time.

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<sup>16</sup> <http://www.legalombudsman.org.uk/downloads/documents/publications/consume-Guide-Costs.pdf>, page 8

<sup>17</sup> <https://assets.publishing.service.gov.uk/media/5887374d40f0b6593700001a/legal-services-market-study-final-report.pdf>, Appendix D, page 13

<sup>18</sup> [https://www.barstandardsboard.org.uk/media/1838930/family\\_law\\_clients\\_research\\_report\\_11\\_july\\_2017.pdf](https://www.barstandardsboard.org.uk/media/1838930/family_law_clients_research_report_11_july_2017.pdf), page 47

<sup>19</sup> <https://assets.publishing.service.gov.uk/media/5887374d40f0b6593700001a/legal-services-market-study-final-report.pdf>, page 232

<sup>20</sup> Although barristers would not be paying disbursements (as this would amount to handling client money) this would still be relevant information in order for clients to understand their overall costs.

44. Barristers could therefore provide illustrative price and service scenarios on their chambers' website. They could, for example, take their three most common types of case over the past two years (i.e. cases that conformed to a specified scenario) and provide illustrative price and service information for each of them. This could include ranges and average values in relation to the total cost and time for each type of case. The BSB recognises that providing information in this way may cause difficulties for highly diversified chambers with multiple practice areas, but guidance with illustrative examples may help to combat this difficulty. The CMA's report includes an example of an illustrative price and service scenario.<sup>21</sup>
45. Our initial view is that while more detailed price and service information could have a high impact for improving consumer understanding, it will still need to operate together with core information (i.e. the recommendations we are proposing as suggested minimum disclosure requirements) to fully benefit consumers. With regard to illustrative price and service scenarios, the CMA's report notes that "*certainty on pricing decreases with complexity and any element of contested dispute, but again, with appropriate consideration, consumers can be given a sense of the potential scale of costs*". It also notes that "*the use of scenarios can make potentially complicated information easy to engage with*".<sup>22</sup>
46. However, the consumer benefits of providing more detailed price and service information must be balanced against the criteria for success identified in the LSCP's report. The report states that when devising information remedies, regulators "*should take into consideration...the ability of consumers to adequately comprehend the significance of the information*". It also states that regulators should avoid 'information overload' as "*too much information can make decision-making worse*".<sup>23</sup> It may therefore be that in some cases – for example, very complex contested disputes – requiring barristers to provide more detailed price and service information (including illustrative scenarios) would not effectively improve consumer understanding. Adopting these recommendations as mandatory rules may therefore be counterproductive to improving consumer

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<sup>21</sup> <https://assets.publishing.service.gov.uk/media/5887374d40f0b6593700001a/legal-services-market-study-final-report.pdf>, page 237

<sup>22</sup> <https://assets.publishing.service.gov.uk/media/5887374d40f0b6593700001a/legal-services-market-study-final-report.pdf>, page 232

<sup>23</sup> [http://www.legalservicesconsumerpanel.org.uk/publications/consultation\\_responses/documents/Information%20remedies%20Final.pdf](http://www.legalservicesconsumerpanel.org.uk/publications/consultation_responses/documents/Information%20remedies%20Final.pdf), page 5

understanding. As our research found, a key perceived barrier to transparency is that “one size doesn’t fit all” because of the complexity of each case.

### **Medium impact recommendations**

47. We have categorised recommendations 8 (mix of staff that deliver service) and 13 (PII cover) as having a medium impact on improving consumer understanding, facilitating shopping around and driving competition.
48. The mix of staff that deliver the service is less likely to be relevant to the self-employed Bar than, for example, firms regulated by the Solicitors Regulation Authority (SRA). However, it may be a more important factor for those working in BSB regulated entities. Multi-person entities in particular are more likely to operate akin to SRA regulated firms, meaning it is more likely that a mix of staff may be providing services (for example, a paralegal, solicitor and/or barrister). Guidance could clarify that if a mix of staff will be providing services from an entity, this should be made clear to the client (particularly if there is going to be an impact on cost). For the self-employed Bar, the BSB Handbook does permit barristers to outsource work to pupils, “devils” (other barristers in the same chambers) and other third parties subject to rules on confidentiality and outsourcing. However, requiring disclosure on chambers’ websites may not be necessary as the barrister remains responsible to the client for the work.
49. With regard to PII cover, the CMA’s report states that *“while authorised providers may be required to hold PII, the nature and extent of the cover may vary by individual regulators’ requirements and the provider’s choices. We therefore see benefit in providers making this information available to consumers”*.<sup>24</sup> Self-employed barristers are required to be members of the Bar Mutual Indemnity Fund (BMIF) and take out at least the minimum limit of cover (£500,000). BMIF’s maximum limit of cover is £2.5 million and as barristers must have adequate insurance which covers all the legal services they supply to the public, some are required to take out additional cover on the open market.
50. The BSB’s [Public and Licensed Access Consultation](#) (published in June 2017) proposed that after barristers have been instructed, they should be required to inform clients in writing of the level of PII cover they hold. However, as there is no evidence of

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<sup>24</sup> <https://assets.publishing.service.gov.uk/media/5887374d40f0b6593700001a/legal-services-market-study-final-report.pdf>, page 247

widespread under-insurance by Public Access barristers, this may not be necessary. There are also concerns that if a barrister disclosed their level of PII cover, this would be commercially sensitive information which may encourage the pursuit of claims and, for this reason, require the written permission of their insurer(s).<sup>25</sup> This however would only bear relevance in relation to barristers who have sought top-up cover on the open market. The minimum level of PII cover is a matter of public record for each regulator, so this would already be readily accessible information. Public Access clients and clients entitled to complain to the LeO (those to whom the new transparency requirements will be targeted) are also less likely to instruct barristers in matters where more than the minimum level of PII cover is required. A better approach, therefore, may be for barristers to confirm (in accordance with the BSB Handbook) that they have insurance cover for all the legal services they supply. In addition, they could disclose the following on their chambers' website: the name of their insurer(s), their contact details and the territorial coverage of the insurance. This is in any event required to ensure compliance with the Provision of Services Regulations 2009.<sup>26</sup>

51. As the two recommendations discussed above are only likely to have medium impact in terms of expected consumer benefit, it would be disproportionate to mandate these as requirements in rules. Guidance could cover the scenarios in which it would be most beneficial to provide this type of information.

**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.**

***Additional factors to consider beyond CMA recommendations***

52. In addition to the recommendations the CMA has identified, the BSB is of the view that there is other information which may be beneficial to consumers. This includes:
- 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.

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<sup>25</sup> <http://www.legalfutures.co.uk/latest-news/how-much-should-you-tell-clients-about-your-pii>

<sup>26</sup> <http://www.legislation.gov.uk/ukdsi/2009/9780111486276/regulation/8>

### ***First-tier complaints data***

53. 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 consumer benefits of providing this data must be balanced against the risk that 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. (N.B. as part of the BSB's response to the CMA's other recommendations in addition to transparency, we will also be promoting the use of independent feedback platforms and considering our role as a regulator with regard to quality marks. This should provide useful signals of quality and improve the consumer experience. For more information on the BSB's response to the CMA's other recommendations, see the [action plan](#)).

**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?**

### ***Use of BSB logo***

54. A further potential requirement could be for barristers to display the BSB's logo on their chambers' website. 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 or the Barristers' Register, 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. It may also be that barristers displaying the text “regulated by the Bar Standards Board” on their chambers’ website would sufficiently improve consumer understanding of regulatory status.

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

***Providing Public Access Guidance for Lay Clients to all Public Access clients***

55. The BSB’s [Public and Licensed Access Review Report](#) (published in March 2017) recommended that the BSB revisit its [Public Access Guidance for Lay Clients](#), and explore whether to make provision of the guidance to lay clients mandatory for barristers.<sup>27</sup> The guidance has already been user tested, but the report recommended that we should revisit it in light of the evidence which has emerged from the CMA, amend as necessary and then further test the guidance to ensure it remains fit for purpose. 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.

**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.**

56. Apart from the additional potential requirements highlighted above, the BSB would be interested to hear about any other recommendations that may help improve consumer understanding, facilitate shopping around and drive competition. We recognise 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

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[https://www.barstandardsboard.org.uk/media/1824703/public\\_and\\_licensed\\_access\\_review\\_final\\_report.pdf](https://www.barstandardsboard.org.uk/media/1824703/public_and_licensed_access_review_final_report.pdf), page 36

provided both on chambers' websites and on request, and supporting guidance will encourage chambers and barristers to do so.

**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.**

***Scope and application of new transparency requirements***

57. Only self-employed barristers and BSB regulated 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.
58. Beyond this, there are questions about the scope of the compliance requirements for barristers and entities undertaking referral work, and those undertaking Public Access work. The BSB's action plan in response to the CMA's recommendations notes that the CMA *"has 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"*.<sup>28</sup>
59. The BSB's regulation should be targeted at those who need it most. Similarly any new transparency requirements that we impose should be effective, proportionate and targeted. For the purposes of this consultation, we are currently suggesting that the CMA recommendations which would have a very high impact for consumers looking to engage a barrister should be the subject of future mandatory rules. The following paragraphs discuss the extent to which those requirements should apply (under which circumstances and to whom).

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<sup>28</sup> [https://www.barstandardsboard.org.uk/media/1836947/cma\\_-\\_action\\_plan.pdf](https://www.barstandardsboard.org.uk/media/1836947/cma_-_action_plan.pdf), page 3

### ***To whom should the requirements apply?***

60. As set out above, it is clear that the CMA has prioritised Public Access work as opposed to referral work. For this reason, it is proposed that the CMA recommendations which have been identified as suggested minimum disclosure requirements at page 8 of the executive summary should apply to all Public Access barristers. However, the BSB is provisionally of the view that there are situations in which disclosing the suggested minimum disclosure requirements would also be useful for the referral Bar. It is clear that this could strengthen the role of the solicitor to act in the client's best interests. If this additional information is not provided, it may be difficult to strengthen the roles of solicitors and other intermediaries such that there is greater competition in the market for barristers' services.
61. The LSCP's report also states "*there is early evidence that information remedies might affect groups of consumers differently, including vulnerable consumers. There is also emerging recognition that information may need to be targeted differently e.g. to vulnerable consumers*".<sup>29</sup> This suggests that, even if barristers and entities undertaking referral work are not generally required to comply, there may be value in requiring them to comply (along with Public Access barristers) if they undertake work in areas where there are more likely to be vulnerable clients. Family law would be one example, and price transparency is already more common in this area (see paragraph 11). Therefore one way in which to ensure the new requirements are proportionate and effective for those who would most benefit would be to require barristers undertaking referral work to disclose the new requirements only to those clients who would be entitled to complain to the LeO<sup>30</sup>. The BSB recognises that some barristers may be performing a mix of work meaning that only a proportion of their clients would fall into the LeO definition. However, the BSB is of the view that even if a small proportion of work is carried out for clients that fall within the LeO definition, the mandatory rules requiring publication of the very high impact information would still be required. Another potential option would be to target any new rules to more high-risk practice areas; for example, immigration, crime and family. 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 is also not proposed that barristers undertaking referral work for clients funded by the Legal Aid Agency (for example, in the areas of immigration, crime and family law)

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[http://www.legalservicesconsumerpanel.org.uk/publications/consultation\\_responses/documents/Information%20remedies%20Final.pdf](http://www.legalservicesconsumerpanel.org.uk/publications/consultation_responses/documents/Information%20remedies%20Final.pdf), page 5

<sup>30</sup> See footnote 15 for definition of clients that would be entitled to complain to the LeO.

would be required to publish the suggested minimum disclosure requirements in relation to price. However, barristers undertaking this work would be required to comply with the suggested minimum disclosure requirements in relation to service and redress.

**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.**

**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?**

**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?**

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

***When should the requirements apply?***

- 62. The BSB is proposing that all Public Access barristers will need to publish the suggested minimum disclosure requirements as a mandatory measure. Similarly, it is suggested that barristers undertaking referral work for clients entitled to complain to the LeO, or potentially working in certain high-risk practice areas, could also be required to publish the suggested minimum disclosure requirements.
- 63. Although the BSB will require some mandatory measures through the introduction of new rules, we recognise that in certain situations barristers may offer different rates for different types of client based on demand led and other factors (for example, they may wish to distinguish between public authority clients and others, and matters that have a pro bono element). The BSB is also aware that at times barristers may wish to offer a lower fee to cultivate a new relationship, or grow their reputation outside of their core market. In addition, it would be reasonable to expect that barristers who operate in

different chambers through associate chambers have different rates in different regions. The BSB will be mindful of these factors when introducing any new rules. Taking this into consideration the BSB is not proposing to mandate a specific pricing model. However, we would expect barristers to be transparent about the model they use and the likely costs. This would allow barristers to take factors that are unique to their practice into account (such as those highlighted above) when setting out any pricing model.

64. For example, the BSB’s Family Law Clients Research Report has shown that *“questions about fees are covered for most clients in [the] first consultation with hourly rates the most often quoted option. Some barristers had shown flexibility and reduced the standard hourly rates to deal with the specific circumstances of a particular client. A higher percentage of direct access clients had a fixed fee option compared to referred clients”*. The research also showed that *“a number of barristers were willing to be flexible and offered a reduced rate on their standard hourly or daily fee...Fixed fees were less commonplace but still offered by a fifth of barristers. Most fees charged to direct access clients were based on a fixed fee package but a few were based on an hourly rate”*.<sup>31</sup>
65. Overall, the BSB’s view is that there must be a balance between information effectively improving consumer understanding on the one hand, and the requirements not overburdening barristers and chambers on the other. This was reflected in the findings of our research. Most of the providers interviewed – including those who currently publicise price and service information on their website – indicated that they would welcome new regulatory requirements on transparency. However, they expect the BSB to find a balance between minimal requirements that would render the information provided meaningless, and overly rigid requirements. The CMA’s report also notes that transparency *“generates a virtuous cycle for competition where providers are driven by informed consumers to compete and innovate in order to improve the value of their offering and to win custom”*.<sup>32</sup> It is therefore possible that, even in areas to which the requirements do not apply, the requirements could lead to greater transparency and in turn, competition in the market for barristers’ services.

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[https://www.barstandardsboard.org.uk/media/1838930/family\\_law\\_clients\\_research\\_report\\_11\\_july\\_2017.pdf](https://www.barstandardsboard.org.uk/media/1838930/family_law_clients_research_report_11_july_2017.pdf), page 10 and page 40

<sup>32</sup> <https://assets.publishing.service.gov.uk/media/5887374d40f0b6593700001a/legal-services-market-study-final-report.pdf>, page 57

66. The BSB's action plan in response to the CMA's recommendations commits us to evaluating the effectiveness of the new transparency requirements from December 2020 (two years after they come into force). This evaluation will include an assessment of whether they have been applied proportionately.

**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?**

## **PART V: Implementing the proposed approach**

67. The following section explores the challenges and opportunities associated with implementing the new transparency requirements. Views on this section of the consultation will help to inform how feasible the BSB's proposed approach is for practice at the Bar. The issues highlighted below will also be tested further during the pilots.

### ***Provision of price information by chambers***

68. This section sets out how the suggested minimum disclosure requirements could be implemented by chambers and entities. The BSB is not proposing a "one size fits all" model to implement any new disclosure requirements. The BSB is proposing to introduce mandatory rules in relation to the suggested minimum disclosure requirements (highlighted at page 8 of the executive summary) but accepts that there may be variations in how barristers choose to provide that information. For example, there are likely to be differences as to what can be provided at a chambers level, compared to what a sole practitioner may be able to provide. Below we discuss options as to how barristers might comply with the disclosure of mandatory pricing information.

### ***Option one***

69. The first option would be for self-employed barristers in chambers to provide *individual* price and service information on their chambers' website. This would be comparable to the option reflected in the CMA's remedies package for their private healthcare market investigation. It may present some competition law risks insofar as greater transparency on individualised rates could potentially foster collusion. For example, as self-employed barristers in Chambers compete with each other, greater transparency requirements could lead to pressure upon members of chambers to co-ordinate with each other to keep prices at a certain level, agree to charge a fixed price or put mechanisms in place for setting prices. When devising the remedies package in the private healthcare market, the CMA did consider the point of collusion but were of the view that the benefits outweighed the risks.

## **Option two**

70. The second option could be for self-employed barristers in chambers to provide *blended* price and service information on their chambers' website. 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 conformed to a specified scenario) and provide illustrative price and service information for each of them based on averages of current prices. Variants of this approach could be to:
- Take the three most common types of case for barristers in chambers specialising in particular areas of law and provide averages of current rates; or
  - Take the three most common types of case for barristers in chambers with less than five years' practising experience, between five and ten years' practising experience and more than ten years' practising experience and provide averages of current rates. Our engagement with the profession found that individual rates are set according to a number of variables, including using the length of their practising experience as a proxy for their expertise.
71. The BSB's view is that option two would be more straightforward to administer than providing price and service information for each individual barrister (as set out in 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. Taking the approaches highlighted in option two would also avoid the 'information overload' discussed in the LSCP's report, and make the information on chambers' websites easier for consumers to understand and compare.
72. The examples which follow are intended to demonstrate how barristers and chambers could comply with the requirements to disclose the information categorised as very high impact. Further examples show how barristers and chambers could build on this by disclosing the information categorised as high impact and/or medium impact, thereby demonstrating best practice. We recognise the examples include a range of legal terminology and will be producing supporting guidance to help barristers ensure that, as far as possible, information is accessible and easily understood by its intended audience. For both the information categorised as (1) very high impact and (2) high and medium impact, there are examples of two different disclosure options:

- Option one: self-employed barristers in chambers provide *individual* price and service information on their chambers' website; and
- Option two: self-employed barristers in chambers provide *blended* price and service information on their chambers' website. This could take the form of ranges, indicative fees for standard types of work or average fees.

**Very high impact disclosure (required) – option one**

**CHERRY TREE CHAMBERS**  
**BARRISTER A**

Mediation services

I can represent you in a mediation and help you to try to resolve your dispute.

You will normally need to instruct me **X** weeks before the mediation (**X** weeks before if complex).

I am able to complete all of the preparation for a fixed fee of **£X – £X** (**£X – £X** if the mediation will be complex). I will agree the fixed fee with you before I start preparation.

I will attend the mediation for a fixed fee of **£X** for the day. If it takes longer than a day, I will charge an additional rate of **£X** per hour.

If the mediation is cancelled more than **X** weeks before, I will charge **X%** of the fixed fee. If it is cancelled less than **X** weeks before, I will charge **X%** of the fixed fee.

All of my fees include VAT. This fee information is correct as of **X**, but is only an estimate. You should contact my clerk **X** on **X** for the best possible fee estimate.

About me and Cherry Tree Chambers

I am regulated by the [Bar Standards Board](#) (BSB). I hold a current practising certificate and my details are displayed on the BSB's [Barristers' Register](#).

I am a self-employed barrister at Cherry Tree Chambers. Barristers in chambers are separate and independent from one another, and are not responsible for one another's work.

Complaints information

If you are not satisfied with the service I provide, you can make a complaint to Cherry Tree Chambers. Information on the chambers' complaints procedure is available on this website.

If you are not satisfied with the response you receive from Cherry Tree Chambers, you can make a complaint to the Legal Ombudsman. This must be done within the time limit of **X**.

The contact details for the Legal Ombudsman are **X**.

73. In this example, barrister A has complied with the requirements to disclose the information categorised as very high impact. They have provided:

- Their pricing and charging model (fixed fees and an additional hourly rate);
- Their hourly fees (where charged);
- Their indicative fixed fees, factors that may affect these and the circumstances where additional fees may be charged;
- A description of the legal services that they offer;
- Indicative timescales of completing services, and the factors affecting these;
- Their regulatory status and registration details; and
- Information about the complaints process and access to the LeO.

## **Very high impact disclosure (required) – option two**

### **CHERRY TREE CHAMBERS – MEDIATION SERVICES**

Our barristers can represent you in a mediation and help you to try to resolve your dispute.

You will normally need to instruct your barrister **X** weeks before the mediation (**X** weeks before if complex).

Your barrister will be able to complete all of the preparation.

If your barrister has less than five years' practising experience, they will complete the preparation for an *average* fixed fee of **£X** (**£X** if the mediation will be complex).

If your barrister has between five and ten years' practising experience, they will complete the preparation for an *average* fixed fee of **£X** (**£X** if the mediation will be complex).

If your barrister has more than ten years' practising experience, they will complete the preparation for an *average* fixed fee of **£X** (**£X** if the mediation will be complex).

Your barrister will agree the fixed fee with you before they start preparation.

Your barrister will attend the mediation for an *average* fixed fee of **£X** for the day. If it takes longer than a day, they will charge an *average* additional rate of **£X** per hour.

If the mediation is cancelled more than **X** weeks before, *on average* your barrister will charge **X%** of the fixed fee. If it is cancelled less than **X** weeks before, *on average* they will charge **X%** of the fixed fee.

All of our barristers' fees include VAT. These fee estimates are correct as of **X**, but each barrister will charge different fees and calculate those fees based on what you want them to do. The average fees for each type of barrister are only estimates and intended to enable comparison. You should contact the clerks on **X** for the best possible fee estimate.

#### About Cherry Tree Chambers

Our barristers are regulated by the [Bar Standards Board](#) (BSB). They all hold current practising certificates and their details are displayed on the BSB's [Barristers' Register](#).

Barristers at Cherry Tree Chambers are self-employed. Barristers in chambers are separate and independent from one another, and are not responsible for one another's work.

#### Complaints information

If you are not satisfied with the service your barrister provides, you can make a complaint to Cherry Tree Chambers. Information on the chambers' complaints procedure is available on this website.

If you are not satisfied with the response you receive from us, you can make a complaint about your barrister to the Legal Ombudsman. This must be done within the time limit of **X**.

The contact details for the Legal Ombudsman are **X**.

74. In this example, the barristers in the chambers have also complied with the requirements to disclose the information categorised as very high impact. They have provided:

- The pricing and charging model used in chambers (their average fixed fees and average additional hourly rate);
- Their average hourly fees (where charged);
- Their indicative (average) fixed fees, factors that may affect these and the circumstances where additional fees may be charged;
- A description of the legal services that they offer;
- Indicative timescales of completing services, and the factors affecting these;
- Their regulatory status and registration details; and
- Information about the complaints process and access to the LeO.

## **High and medium impact disclosure (best practice) – option one**

### **CHERRY TREE CHAMBERS BARRISTER A**

#### Mediation services

I can represent you in a mediation and help you to try to resolve your dispute.

You will normally need to instruct me **X** weeks before the mediation (**X** weeks before if complex). I am able to complete all of the preparation, which may include:

**Preparing the core bundle for a fixed fee of £X – £X (£X – £X if the mediation will be complex). This is normally prepared by one party, so is optional;**

**Preparing your position statement for a fixed fee of £X – £X (£X – £X if the mediation will be complex). A position statement is required; and**

**Attending a pre-meeting for a fixed fee of £X – £X (£X – £X if the mediation will be complex). This is optional.**

I will agree the fixed fees with you before I start preparation.

I will attend the mediation for a fixed fee of **£X** for the day. If it takes longer than a day, I will charge an additional rate of **£X** per hour.

**If agreement is reached, I am also able to draft the mediation agreement for a fixed fee of £X – £X (£X – £X if the mediation will be complex).**

If the mediation is cancelled more than **X** weeks before, I will charge **X%** of the fixed fee. If it is cancelled less than **X** weeks before, I will charge **X%** of the fixed fee.

All of my fees include VAT. This fee information is correct as of **X**, but is only an estimate. You should contact my clerk **X** on **X** for the best possible fee estimate.

#### Room hire

**You can hire rooms at Cherry Tree Chambers for the mediation. This costs £X per day. You can also hire rooms at X for £X per day.**

#### About me and Cherry Tree Chambers

I am regulated by the [Bar Standards Board](#) (BSB). I hold a current practising certificate and my details are displayed on the BSB's [Barristers' Register](#).

I am a self-employed barrister at Cherry Tree Chambers. Barristers in chambers are separate and independent from one another, and are not responsible for one another's work.

**I have insurance cover for all the legal services I supply, and hold professional indemnity insurance with the [Bar Mutual Indemnity Fund Ltd](#) (BMIF). The coverage is worldwide subject to their terms, which are available on their website. The contact details for the BMIF are X.**

#### Complaints information

If you are not satisfied with the service I provide, you can make a complaint to Cherry Tree Chambers. Information on the chambers' complaints procedure is available on this website.

If you are not satisfied with the response you receive from Cherry Tree Chambers, you can make a complaint to the Legal Ombudsman. This must be done within the time limit of **X**.

The contact details for the Legal Ombudsman are **X**.

75. In this example, barrister A has complied with the requirements to disclose the information categorised as very high impact (see above). They have also built on this by disclosing *all* of the information categorised as high impact and medium impact (in bold). They have provided:

- Their typical range of costs for different stages of cases (where appropriate);
- The scale of likely disbursements;
- The key factors that determine price (including disbursements);
- The key (and discrete) stages of services; and
- Information about their PII cover.

76. However, barristers should consider carefully whether disclosing this further information would benefit consumers, and ensure that they avoid 'information overload'. Some types of client (for example, more vulnerable clients) and some areas of work may require a greater degree of transparency than others.

## **High and medium impact disclosure (best practice) – option two**

### **CHERRY TREE CHAMBERS – MEDIATION SERVICES**

Our barristers can represent you in a mediation and help you to try to resolve your dispute.

You will normally need to instruct your barrister **X** weeks before the mediation (**X** weeks before if complex).

Your barrister will be able to complete all of the preparation, which may include:

**Preparing the core bundle for an average fixed fee of £X (£X if the mediation will be complex). This is normally prepared by one party, so is optional;**

**Preparing your position statement for an average fixed fee of £X (£X if the mediation will be complex). A position statement is required; and**

**Attending a pre-meeting for an average fixed fee of £X (£X if the mediation will be complex). This is optional.**

Your barrister will agree the fixed fees with you before they start preparation.

Your barrister will attend the mediation for an average fixed fee of £X for the day. If it takes longer than a day, they will charge an average additional rate of £X per hour.

If the mediation is cancelled more than **X** weeks before, *on average* your barrister will charge **X%** of the fixed fee. If it is cancelled less than **X** weeks before, *on average* they will charge **X%** of the fixed fee.

All of our barristers' fees include VAT. These fee estimates are correct as of **X**, but each barrister will charge different fees and calculate those fees based on what you want them to do. The average fees are only estimates. You should contact the clerks on **X** for the best possible fee estimate.

#### **Room hire**

**You can hire rooms at Cherry Tree Chambers for the mediation. This costs £X per day. You can also hire rooms at X for £X per day.**

#### **About Cherry Tree Chambers**

Our barristers are regulated by the [Bar Standards Board](#) (BSB). They all hold current practising certificates and their details are displayed on the BSB's [Barristers' Register](#).

Barristers at Cherry Tree Chambers are self-employed. Barristers in chambers are separate and independent from one another, and are not responsible for one another's work.

**Our barristers have insurance cover for all the legal services they supply, and hold professional indemnity insurance with the Bar Mutual Indemnity Fund Ltd (BMIF). The coverage is worldwide subject to their terms, which are available on their website. The contact details for the BMIF are X.**

#### **Complaints information**

If you are not satisfied with the service your barrister provides, you can make a complaint to Cherry Tree Chambers. Information on the chambers' complaints procedure is available on this website.

If you are not satisfied with the response you receive from us, you can make a complaint about your barrister to the Legal Ombudsman. This must be done within the time limit of **X**.

The contact details for the Legal Ombudsman are **X**.

77. In this example, the barristers in the chambers have complied with the requirements to disclose the information categorised as very high impact (see above). They have also built on this by disclosing *all* of the information categorised as high impact and medium impact (in bold). They have provided:

- Their average costs for different stages of cases (where appropriate);
- The scale of likely disbursements;
- The key factors that determine price (including disbursements);
- The key (and discrete) stages of services; and
- Information about their PII cover.

78. However, barristers should consider carefully whether disclosing this further information would benefit consumers, and ensure that they avoid 'information overload'. Some types of client (for example, more vulnerable clients) and some areas of work may require a greater degree of transparency than others.

**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.**

### ***Entities***

79. Entities could provide prices at entity level as they are a single economic unit (known in competition law as a 'single undertaking').<sup>33</sup> This would place BSB regulated 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.

**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?**

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[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/482193/Open\\_Letter\\_to\\_private\\_medical\\_practitioners.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/482193/Open_Letter_to_private_medical_practitioners.pdf), page 4

## ***Accessibility of information provided***

80. The LSCP's report notes that accessibility is a key criterion for the success of information remedies. It states that *"for it to be effective consumers must be aware of the information remedies in the first instance. Information remedies may need to be accompanied with measures around the prominence and timeliness of the disclosure"*.<sup>34</sup> It is 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. It is also suggested that it should be a requirement for the necessary price and service information to be updated regularly. Chambers should take steps to ensure that information is easily understood by its intended audience. This could include 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. In addition, chambers may wish to consider including information on whether they are willing to offer innovative price structures (such as capped fees or the first hour for free).
81. It may also be useful to include core information on the BSB's website; for example, practice area information. Such information could be linked to the BSB Barristers' Register. If the BSB did choose to provide information more centrally, this would allow third parties to access it in a consistent way to make comparison easier for consumers. Another option would be for core information to be included on third party sites, which would also allow consumers to access all of the relevant information in one place (the Bar Council's Direct Access Portal, for example, already allows consumers to search for barristers by practice area). Ultimately both of these options could make it easier for consumers to shop around.

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

**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?**

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[http://www.legalservicesconsumerpanel.org.uk/publications/consultation\\_responses/documents/Information%20remedies%20Final.pdf](http://www.legalservicesconsumerpanel.org.uk/publications/consultation_responses/documents/Information%20remedies%20Final.pdf), page 5

## **Consistency of information provided**

82. 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 and compare. The LSCP's report notes that information remedies *"may need to be prescriptive, particularly where standardisation for the purposes of comparability is an important component of effectiveness. There may be a need to dictate more precisely the format in which information is provided"*.<sup>35</sup> It would be straightforward for most of the core redress information categorised as very high impact at paragraph 36 (regulatory status, registration details, the complaints process and access to the LeO) to be standardised across chambers' websites. However, it would be more difficult to standardise some of the core price and service information listed as very high impact, the more detailed price and service information (including illustrative scenarios) listed as high impact and the other information listed as medium impact.
83. The CMA's report notes the difficulty with standardising illustrative scenarios in particular. It states that *"the usefulness of scenarios in aiding shopping around may at least in part be determined by how consistently providers of the same service adopt the same approach. However, even where the scenarios used are not identical they will give an indication of a supplier's likely prices, which can help consumers decide whether to use that supplier"*.<sup>36</sup> As discussed at paragraph 46, it may be that in some cases – for example, very complex contested disputes – requiring barristers to provide illustrative scenarios may not in fact improve consumer understanding. Nonetheless, the CMA's report states 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"*.<sup>37</sup> The extent to which rules relating to the provision of price, service and redress information can (and should be) prescriptive will therefore be tested in the piloting of the new transparency requirements.

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

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[http://www.legalservicesconsumerpanel.org.uk/publications/consultation\\_responses/documents/Information%20remedies%20Final.pdf](http://www.legalservicesconsumerpanel.org.uk/publications/consultation_responses/documents/Information%20remedies%20Final.pdf), page 5

<sup>36</sup> <https://assets.publishing.service.gov.uk/media/5887374d40f0b6593700001a/legal-services-market-study-final-report.pdf>, pages 237-238

<sup>37</sup> <https://assets.publishing.service.gov.uk/media/5887374d40f0b6593700001a/legal-services-market-study-final-report.pdf>, page 238

### ***The need for flexibility***

84. The piloting and design of the new requirements will also take account of the need for flexibility in the delivery of legal services. The Law Society's [price and service transparency toolkit](#) (published in December 2016) notes that *"as each client will have differing circumstances it may not be possible to advertise prices that match every possible scenario. Some firms publicise their fee for a standard package, while explaining that the cost of the service may have to be adapted due to the situation faced by the client. They then invite potential clients to contact them to receive the most accurate possible fee estimate"*.<sup>38</sup> Similarly, the disclosure requirements in the CMA's report (see paragraph 6) only relate to the provision of indicative price and service information. It is therefore 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). Indeed, self-employed barristers should not be setting prices at chambers level, as this could constitute a breach of competition law.
85. Flexibility on price can also work in the consumer's interest. The BSB's Family Law Clients Research Report found that *"questions about fees are covered for most clients in [the] first consultation with hourly rates the most often quoted option. Some barristers had shown flexibility and reduced the standard hourly rates to deal with the specific circumstances of a particular client"*.<sup>39</sup> This underlines the importance of the new requirements taking account of the need for flexibility.

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

### ***Price discrimination***

86. There is an inherent practical difficulty in that price flexibility in the legal services market often takes the form of price discrimination in relation to different types of consumers. However as highlighted earlier in the consultation, whilst the BSB would be introducing

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<sup>38</sup> <http://www.lawsociety.org.uk/support-services/advice/articles/price-and-service-transparency-toolkit/>, page 5

<sup>39</sup> [https://www.barstandardsboard.org.uk/media/1838930/family\\_law\\_clients\\_research\\_report\\_11\\_july\\_2017.pdf](https://www.barstandardsboard.org.uk/media/1838930/family_law_clients_research_report_11_july_2017.pdf), page 10

mandatory rules in relation to the suggested minimum disclosure requirements which would require publication of core information, we acknowledge the fact that barristers may in certain circumstances wish to charge different prices. This would be acceptable, but the BSB would still 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. These different rates could be advertised and in fact, it may be in the interests of barristers to publicise that they do charge different rates if they are seeking to attract different types of work/client.

87. The CMA's report found that *"the lack of transparency in the legal services sector and the limited extent to which consumers compare providers (only 22% did so in the CMA's quantitative survey of individual consumers)...allows some providers to price discriminate rather than committing to standard (uniform) pricing for the same service"*.<sup>40</sup> The CMA report goes on to state that *"consumers may be unaware that price discrimination is occurring or of the alternative prices that may be available to them. Consequently, price discrimination may allow providers to charge higher prices to those with greater willingness to pay"*.<sup>41</sup> While this is undesirable, on the other hand price discrimination does allow practitioners to charge lower prices to those with less willingness/ability to pay. As discussed, the BSB's Family Law Clients Research Report found that some barristers had shown flexibility and reduced their hourly rates for particular clients. The ability of practitioners to charge lower prices to those with more limited means may be particularly important in areas where there have been cuts to legal aid (including family law).
88. As discussed, the disclosure requirements in the CMA's report only relate to the provision of indicative price and service information. However, the new transparency requirements may mean that in some cases, price discrimination may not be possible where the market has converged to a focal price<sup>42</sup> (for example, the headline published

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<sup>40</sup> <https://assets.publishing.service.gov.uk/media/5887374d40f0b6593700001a/legal-services-market-study-final-report.pdf>, pages 9 – 10

<sup>41</sup> <https://assets.publishing.service.gov.uk/media/5887374d40f0b6593700001a/legal-services-market-study-final-report.pdf>, page 93

<sup>42</sup> The CMA consider the risk of this happening as low. In their report they state *"we concluded that this risk was low, particularly given the fragmented nature of the sector. We note that in areas of law where there is greater transparency such as conveyancing, no parties provided evidence or suggested that such practices occur"* (page 289).

rate). While this would work in the interests of consumers with greater willingness/ability to pay, it is plausible that (at least in the short term) those with more limited means may be priced out as the uniform prices become too high for them. In the medium to long term, some practitioners may recognise the impact on those with more limited means and lower their uniform prices. They would also retain the flexibility to charge lower prices to some clients. However, if this price flexibility is not referred to on their chambers' website, those clients may assume that they cannot afford legal advice or representation.

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

### ***Perceptions of value***

89. 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, as the Law Society's price and service transparency toolkit notes, the key to transparency *"is to provide the right information which allows those seeking legal services to assess the value of the service. It is important to stress that price is not the sole arbiter of how potential clients make a decision. Most clients of legal services are interested in value and understand that something can be more expensive and good value, and conversely, cheap and poor value"*.<sup>43</sup> Ultimately it would be for the client to decide what their priority is when making a decision on which legal services provider to choose. The information available should empower consumers to make an informed decision by shopping around and drawing useful comparisons.
90. Naturally some consumers will be less concerned about affordability than others. Other consumers may be more likely to consider price as an important criterion – if not the most important criterion – and therefore perhaps assume that they cannot afford legal advice and representation from barristers. The BSB's Family Law Clients Research Report found *"there is a perception that barristers charge higher fees than solicitors and other legal services providers: 83 per cent of respondents believed that barristers charge*

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<sup>43</sup> <http://www.lawsociety.org.uk/support-services/advice/articles/price-and-service-transparency-toolkit/>, page 3

*higher fees*".<sup>44</sup> 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.

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

### ***Fee disputes***

91. 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 importance of clear explanations and clarity of language was underlined by [Optima Research's Qualitative Research Report on Client Care Letters](#) (published in October 2016). The BSB and other legal services regulators commissioned this jointly with the LSCP to understand how consumers engage with client care letters. The research identified principles key to encouraging engagement with client care letters and the information provided within them. These are as follows:

- Show a clear purpose;
- Keep it concise;
- Put it in plain English;
- Prioritise information;
- Personalise information;
- Highlight key information;
- Make it easy to read; and
- Consider additional touchpoints (which provide further information).<sup>45</sup>

92. An example of an additional touchpoint would be to provide the BSB's Public Access Guidance to lay clients. This would ensure that all clients have the same basic level of understanding about Public Access, and reduce the amount of information which needs to be included in client care letters. While the focus of the research was on information

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[https://www.barstandardsboard.org.uk/media/1838930/family\\_law\\_clients\\_research\\_report\\_11\\_july\\_2017.pdf](https://www.barstandardsboard.org.uk/media/1838930/family_law_clients_research_report_11_july_2017.pdf), page 8

<sup>45</sup> [https://www.barstandardsboard.org.uk/media/1794566/client\\_care\\_letters\\_research\\_report\\_final\\_021116.pdf](https://www.barstandardsboard.org.uk/media/1794566/client_care_letters_research_report_final_021116.pdf), page 37

which is provided to clients after providers have been instructed, the principles key to encouraging client engagement with information (clear explanations, clarity of language, etc.) are also relevant to price and service transparency. The new transparency requirements are therefore 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).

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

## **PART VI: Supervision and enforcement of new transparency requirements**

93. This section focuses on the BSB's proposed approach to supervising compliance with the new transparency requirements, and any supervisory or enforcement action in the event of non-compliance.
94. 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. The BSB's action plan in response to the CMA's recommendations states that supporting guidance and a communications strategy will be developed to support compliance with the new requirements.
95. The [action plan](#) also states that the BSB's [supervision strategy](#) and [enforcement strategy](#) will be reviewed to ensure compliance with the new transparency requirements and the interface with competition law. The BSB's risk-based approach to supervision means that resources are targeted at chambers, entities, individuals or areas which present the greatest risk. In addition, it is intended to encourage more effective risk management by chambers and entities, and contribute to improvements in the level of compliance with regulatory requirements. Where issues are identified through supervision the BSB seeks, where possible, to address them with the chambers, entity or individual concerned, without resorting to enforcement action.
96. 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. One option would be to perform spot-checks and take the same risk-based approach that the BSB takes to CPD supervision. This is explained in detail in the BSB's [CPD guidance](#).
97. If the BSB 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 such as immigration, crime and family law (which are likely to have a high impact on vulnerable consumers).

98. 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. For example, corrective actions could be for barristers to ensure that the necessary information is:

- Uploaded to/updated on their chambers' website within a reasonable time period;
- Made sufficiently prominent on their chambers' website; and
- Corrected so that it does not mislead clients and potential clients, which would breach Rule C19 of the BSB Handbook.

99. 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.

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

## **PART VII: Equality impact assessment**

100. An equality impact assessment (EIA) of the proposals in the consultation has been carried out and can be found at Annex B. The EIA 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 is 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 do not have evidence to suggest that the requirements will have any adverse impact on the basis of other protected characteristics under the Equality Act 2010, and have detailed an action plan for improvement in the EIA. Furthermore, rules relating to prominence and consistency of disclosure will assist consumers with disabilities (and indeed consumers more widely) to access, understand and compare information.

**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?**

## **PART VIII: About the consultation and how to respond**

### ***How has the consultation been developed?***

101. We are extremely grateful to members of our [Advisory Pool of Experts](#) for their contribution. Their expertise was invaluable to the development of the consultation.

### ***Who should respond to the consultation?***

102. We are particularly interested in hearing from:

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

### ***How to respond to the consultation***

103. The deadline for the consultation is **Friday 5 January 2018**. You do not need to wait until the deadline to respond to the consultation.

104. A response does not need to be a comprehensive written document, although it can be if you wish. It can also be short form answers to the specific questions we have posed. It is however far more useful to us (and we are better able to take your views into account) if you are able to address the questions we have posed specifically, rather than, for example, simply stating your general view. We will of course never exclude consideration of a response, whatever its form or content.

105. We want to hear your views on all of the questions posed, and will take all of the responses into account.

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

Email: [professionalstandards@barstandardsboard.org.uk](mailto:professionalstandards@barstandardsboard.org.uk)

Tel: 020 7611 1444

Professional Standards Team

The Bar Standards Board

289-293 High Holborn

London

WC1V 7HZ



*List of questions*

**QUESTION 1: do you agree that the 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?**

**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?**

**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?**

**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.**

**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?**

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

**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.**

**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.

**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.

**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?

**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?

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

**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?

**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.

**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?

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

**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?**

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

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

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

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

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

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

**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?**

## ***Annex A: Most common pricing models***

### ***Brief fee and refresher***

A brief fee is a fixed fee which covers all of the preparation for a trial and the first day. A refresher is a fixed fee for each subsequent day of the trial (which includes ongoing preparation).

### ***Capped fee***

A legal services provider will charge an amount of money per hour (an hourly rate), but agree with the client that the total amount will not exceed a set level.

### ***Conditional fee agreement***

A client will only pay a legal services provider for work if they receive compensation as result of the proceedings. Conditional fee agreements are popular with consumers and often referred to as “no win, no fee” agreements.

### ***Damages-based agreement***

A client will only pay a legal services provider for work if they receive compensation as result of the proceedings – the fee will normally be an agreed percentage of the compensation received. Damages-based agreements are also known as contingency agreements.

### ***Fixed fee***

A legal services provider will charge a client a set amount of money for work. Consumers often prefer fixed fees because they remove anxiety associated with clients not knowing how long certain types of work might take (and therefore the cost associated with this). In reality consumers may pay more for fixed fees than they would if they were charged a variable rate, as by charging on a fixed fee basis the provider will be taking on the risk that the work may take longer than expected and so build in premiums to compensate for this. There may also be circumstances where additional fees are charged, and it is important for the provider to be clear about this.

***Hourly rate***

The amount of money that a legal services provider charges a client per hour. The setting of hourly fees is not necessarily straightforward and a number of factors may determine the rate that the provider chooses to set; for example, seniority, type of client, whether the work is likely to have more socially beneficial outcomes and whether the provider is trying to build business in a new area.

***Retainer***

A client will pay a legal services provider a set amount of money in advance to ensure that they will undertake work when required to do so. Retainers are often paid on a monthly or annual basis.

***Volume purchase discount***

A client will pay a legal services provider for work in bulk and so receive a discount.

## Annex B: Equality impact assessment

Date of Assessment	September 2017.
Assessor Name & Job Title	Joseph Bailey – Senior Policy Officer. Kuljeet Chung – Policy Manager (Professional Standards).
Name of Policy/Function to be Assessed	Response to the Competition and Market Authority’s Recommendations – Policy Consultation on Transparency Standards.
Aim/Purpose of Policy	<p>The Competition and Markets Authority (CMA) undertook a market study into legal services in 2016. Its <a href="#">final report</a> was published on 15 December. Its recommendations fall broadly into four categories: delivering a step change in standards of transparency, promotion of the use of independent feedback platforms, making data more accessible and making better information available to assist consumers.</p> <p>In its final report, the CMA recommended that the regulators deliver a step change in standards of transparency to “<i>help consumers (i) to understand the price and service they will receive, what redress is available and the regulatory status of their provider and (ii) to compare providers. Regulators should revise their regulatory requirements to set a new minimum standard for disclosures on price and the service provided and develop and disseminate best practice guidance. Importantly, this should include a requirement for providers to publish relevant information about the prices consumers are likely to pay for legal services</i>”.<sup>46</sup></p> <p>At the end of June 2017, the BSB published an <a href="#">action plan</a> detailing its response to the CMA’s recommendations. This included a commitment to issue, by the end of September, a policy consultation focused on the CMA’s recommendation to deliver a step change in standards of transparency.</p> <p>Although the BSB is accepting the recommendations in principle, it still recognises the challenges that the practising Bar will face in adapting to any new requirements, as this will be a significant culture shift from current practice. The BSB wishes to be proportionate in its proposed</p>

<sup>46</sup> <https://assets.publishing.service.gov.uk/media/5887374d40f0b6593700001a/legal-services-market-study-final-report.pdf>, page 15

approach and recognises the need to ensure that any new requirements are targeted and effective.

The policy consultation therefore explores to what degree and how the price, service and redress information listed in the CMA report should be disclosed, and also tests the feasibility and suitability of such requirements for practice at the Bar. It seeks views on which of the recommendations would have greatest impact for consumers, whilst also being a proportionate response in terms of scope and feasible in terms of implementation. Each CMA recommendation has been 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.

Only self-employed barristers and BSB regulated 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 questions about the scope of the compliance requirements for barristers and entities undertaking referral work, and those undertaking Public Access work.

The policy consultation proposes that, as a mandatory measure, all Public Access barristers will need to publish the BSB's suggested minimum disclosure requirements i.e. those which have been categorised as very high impact in terms of expected benefit to consumers. Public Access barristers will therefore need to publish the following price, service and redress information on their chambers' websites:

- Pricing and charging model (e.g. fixed fee, hourly rates, capped charges, conditional fee agreement/damages-based agreement);
- Hourly fees (where charged);
- (Where offered) indicative fixed fees and factors that may affect these and the circumstances where additional fees may be charged;
- A description of the services that the legal services provider provides;

- Indicative timescales of completing services and factors affecting these;
- Regulatory status and registration details; and
- Complaints process and access to the Legal Ombudsman (LeO).

Similarly, the policy consultation proposes that barristers undertaking referral work for clients entitled to complain to the LeO will also need to publish the BSB's suggested minimum disclosure requirements. Those clients entitled to complain to the LeO are as follows:

- Individuals;
- Businesses or enterprises that are micro-enterprises within the meaning of Article 1 and Article 2(1) and (3) of the Annex to Commission Recommendation 2003/361/EC (broadly businesses or enterprises with fewer than 10 employees and turnover or assets not exceeding €2 million);
- Charities with an annual income net of tax of less than £1 million;
- Clubs, associations or organisations, the affairs of which are managed by its members or a committee of its members, with an annual income net of tax of less than £1 million;
- Trustees of trusts with an asset value of less than £1 million; and
- Personal representatives or beneficiaries of the estates of persons who, before they died, had not referred the complaint to the Legal Ombudsman.

Following analysis of responses to the policy consultation and piloting of the new requirements, a rule change consultation will be launched in March 2018. New rules will then come into force by the end of 2018.

## 1. Evidence

What evidence will you use to assess impact on equality?

The dataset from our annual [report on diversity at the Bar](#) (which was last published in December 2016) has been used to inform this equality analysis. Specifically, the data has been cross-referenced with our data on Public Access registrations, allowing us to determine the percentage of the practising Bar which is Public Access registered in relation to each of the protected characteristics in the Equality Act 2010. As of December 2016, 35% of the practising Bar is Public Access registered. Of these, the vast majority (96.1%) are self-employed barristers – the others are dual capacity barristers (self-employed and employed), employed barristers in BSB regulated entities and registered European lawyers.

The BSB does not have data for the percentage of the practising Bar which undertakes referral work for clients entitled to complain to the LeO in relation to each of the protected characteristics in the Equality Act 2010. While the percentage of the practising Bar which undertakes this referral work is likely to be significantly higher than the 35% which is Public Access registered, this does not necessarily mean that the requirements will have no adverse impact for different groups. However, the BSB's action plan in response to the CMA's recommendations includes a commitment to evaluate the effectiveness of the new transparency requirements from December 2020 (two years after they come into force). As part of this review, we can collect equality data specific to the segment of the practising Bar which undertakes this referral work.

## 2. Impact on Equality

<p>Consider whether the evidence listed above shows the potential for differential impact, either adverse or positive, for different groups. If there are negative impacts, explain how you will attempt to mitigate these. Mitigating actions can be described in more detail in your Action Plan (Section 4).</p>	
Race	<p>As of December 2016, 42.8% of practising BME barristers are Public Access registered compared to 34.1% of practising white barristers (a statistically significant difference). BME barristers will therefore be somewhat more likely to be required to comply with the 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. Our view is that this is justified given the expected benefit to Public Access clients, access to justice and competition in the provision of legal services. However, this will be reviewed as part of the evaluation of the requirements from December 2020.</p> <p>Barristers will also be encouraged to provide price, service and redress information in different languages where that may be beneficial to meeting consumer need.</p>
Gender	<p>As of December 2016, 36.3% of practising male barristers are Public Access registered compared to 32.6% of practising female barristers (a statistically significant difference). Male barristers will therefore be somewhat more likely to be required to comply with the 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. Our view is that this is justified given the expected benefit to Public Access clients, access to justice and competition in the provision of legal services. However, this will be reviewed as part of the evaluation of the requirements from December 2020.</p>
Disability	<p>We do not have evidence to suggest that the new transparency requirements will have any adverse impact on the basis of disability. However, we will explore the possibility of offering targeted support to disabled barristers where that may assist in complying with the requirements (N.B. barristers will not be required to have a website as a result of the transparency requirements – if they do not have a website, they will be required to provide the necessary information to consumers on request). We will also review whether there has been any adverse impact for disabled barristers as part of the evaluation of the requirements from December 2020.</p>

Age	<p>As of December 2016, 37% of practising barristers over 35 are Public Access registered compared to 29.8% of practising barristers under 35 (a statistically significant difference). Barristers over 35 will therefore be somewhat more likely to be required to comply with the 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. Our view is that this is justified given the expected benefit to Public Access clients, access to justice and competition in the provision of legal services.</p> <p>However, we will explore the possibility of offering targeted support to barristers where that may assist in complying with the requirements (N.B. barristers will not be required to have a website as a result of the transparency requirements – if they do not have a website, they will be required to provide the necessary information to consumers on request). We will also review whether there has been any adverse impact for older barristers as part of the evaluation of the requirements from December 2020.</p>
Sexual Orientation	We do not have evidence to suggest that the new transparency requirements will have any adverse impact on the basis of sexual orientation.
Religion/Belief	We do not have evidence to suggest that the new transparency requirements will have any adverse impact on the basis of religion or belief.
Gender Reassignment	We do not have evidence to suggest that the new transparency requirements will have any adverse impact on the basis of gender reassignment.
Pregnancy/ Maternity	Barristers who are on maternity leave and not practising will not be required to comply with the new transparency requirements.
Marriage and Civil Partnership	We do not have evidence to suggest that the new transparency requirements will have any adverse impact on the basis of marriage and civil partnership.
Other Identified Groups	The BSB is mindful that by mandating greater transparency we do not inadvertently restrict barristers from offering better rates to more socially beneficial causes. For this reason the BSB will not mandate a specific pricing model, rather it will expect barristers (where the requirements apply to them) to be transparent about the model they do use and the likely costs.

	In addition, we do not have evidence to suggest that the new transparency requirements will have any adverse impact on those with caring responsibilities.
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How does the policy advance equality of opportunity?

The BSB is seeking to target our regulation where it can have the greatest positive impact. The policy consultation therefore proposes that all Public Access barristers will need to publish the BSB's suggested minimum disclosure requirements as a mandatory measure. Similarly, it is suggested that barristers undertaking referral work for clients entitled to complain to the LeO, or working in certain high-risk practice areas, could also be required to publish the BSB's suggested minimum disclosure requirements.

The new transparency requirements will therefore assist less expert and more vulnerable consumers (including those from lower socio-economic backgrounds) to access, understand and compare price, service and redress information about barristers' services. Given that this information has hitherto not been so widely available, the requirements could lead to improvements in access to justice. For example, some consumers (particularly in areas where there have been cuts to legal aid) may assume that they cannot afford legal advice or representation when this is not in fact the case. Increased price transparency, particularly by Public Access barristers, may therefore assist consumers in securing legal advice and representation. In 2015, the BSB commissioned, jointly with our oversight regulator the Legal Services Board (LSB), an independent research specialist (Pye Tait) to undertake supply-side research into the Public Access scheme (surveying and interviewing Public Access barristers). The report (published in April 2016) found that "The types of law in which the public access scheme is most commonly used are: family, chancery, employment, general common law and commercial law (litigation and property)". As a result of the new transparency requirements, we would expect to see the most pronounced improvement in access to justice in the areas of family and employment law. As employment claims often relate to discrimination on the grounds of protected characteristics, we would also expect the new requirements to have a positive equality impact.

In addition, the policy consultation suggests 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. This will assist consumers with disabilities (and indeed consumers more widely) to access, understand and compare information. Where consumers are not able to access information on chambers' websites, barristers will be required to provide this information to them on request. Supporting guidance will also encourage barristers to take steps to ensure that information is easily understood by its intended audience.

This could include putting information in plain English, highlighting key points and making information available in alternative formats.

Furthermore, the policy consultation states 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 (including those with disabilities) to understand and compare. However, some of the core price and service information categorised as very high impact (in terms of expected benefit to consumers) may be difficult to standardise. The extent to which rules relating to the provision of information can (and should) be prescriptive will therefore be tested in the piloting of the new requirements.

Finally, the requirements will be a good opportunity for barristers to improve client communication and in turn, reduce disputes and complaints about fees (which can have an adverse impact for clients and barristers).

How does the policy promote good relations between different groups?

N/A.

### 3. Summary of Analysis

Now you have considered the potential impacts on equality, what action are you taking? (Mark 'X' next to one option and give a reason for your decision)		
a. No change to the policy (no impacts identified)	Your analysis demonstrates that the policy is robust and the evidence shows no potential for discrimination. You have taken all appropriate steps to advance equality and foster good relations between groups.	
b. Continue the policy (impacts identified)	Continue with the proposal, despite any adverse impacts, provided it is not unlawfully discriminatory and is justified.	X
c. Adjust the policy and continue	Take steps to remove barriers, mitigate impacts or better advance equality before continuing with the policy.	X
d. Stop and remove the policy	There are adverse effects that are not justified and cannot be mitigated. The policy is unlawfully discriminatory.	
Reason for decision:		
<p>Barristers who are BME, male and over 35 will be somewhat more likely to be required to comply with the 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. Our view is that this is justified given the expected benefit to Public Access clients, access to justice and competition in the provision of legal services. We also do not have evidence to suggest that the requirements will have any adverse impact on the basis of other protected characteristics.</p> <p>In addition, rules relating to prominence and consistency of disclosure will assist consumers with disabilities (and indeed consumers more widely) to access, understand and compare information.</p>		

#### 4. Action Plan for Improvement

Give an outline of the key actions that need taking based on any challenges, gaps and opportunities you have identified. Include here any action to address negative equality impacts or data gaps.			
<b>Action Required</b>	<b>Desired Outcome</b>	<b>Person Responsible</b>	<b>Timescale</b>
In the piloting of the new transparency requirements, test the extent to which rules relating to the provision of information can (and should) be prescriptive.	Testing this would help us to determine whether a lack of prescription may have any adverse impact for different groups (for example, those with disabilities).	Professional Standards and Research Teams.	November 2017 – February 2018.
Explore the possibility of offering targeted support to, for example, disabled barristers.	This would assist barristers in complying with the requirements.	Professional Standards, Supervision and Equality and Access to Justice Teams.	March 2018 – December 2018.
In supporting guidance, encourage barristers to take steps to ensure that information is easily understood by its intended audience. This could include 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.	This would assist non-English speakers (or those for whom English is a second or third language) in accessing, understanding and comparing information.	Professional Standards and Communications and Public Engagement Teams.	March 2018 – December 2018.
Review whether there has been any adverse impact for	This would allow us to determine whether the	Professional Standards and Research Teams.	From December 2020 (two years

different groups, particularly barristers who are BME, male and over 35 (who are more likely to be Public Access registered and Public Access sole practitioners).	requirements have any adverse impact for different groups and, if so, seek to mitigate the impact.		after the new transparency requirements come into force).
<b>Action Required</b>	<b>Desired Outcome</b>	<b>Person Responsible</b>	<b>Timescale</b>
Collect equality data on the segment of the practising Bar which undertakes referral work for clients entitled to complain to the LeO.	Collecting this data would allow us to determine whether the requirements have any adverse impact for different groups and, if so, seek to mitigate the impact.	Professional Standards and Research Teams.	From December 2020 (two years after the new transparency requirements come into force).