

BAR
STANDARDS
BOARD

REGULATING BARRISTERS

**Bar Standards Board submission to the LSB
regarding the BSB's compliance with the
LSB's Statement of policy on empowering consumers**

Summary and next steps

1. This document provides the BSB's assessment of its compliance with the LSB's 11 April 2022 Statement of policy on empowering consumers ('the Statement').
2. We regard the Statement as providing a useful framework for our overall approach to consumer empowerment, not least because it helps us to audit our delivery of the "Access" element of our strategic aims, as set out in our Strategic Plan 2022-25.
3. The report below highlights the activities that we have undertaken to demonstrate our compliance with the Statement, by reference to its five specific expectations of regulators. We believe that the regulatory arrangements we have in place, together with other activities undertaken, means the BSB complies with both the Statement's general and specific expectations. This is reflected in the more detailed summary of activities in the Annex of this report. In several instances, notably in relation to our price transparency and quality indicators work, we assess the activities we have undertaken to date as going beyond the Statement's specific expectations.
4. Our ambition, as we develop a strategy to the end of the decade, is to go further in promoting a competitive barrister market that works for consumers. To this end, we have also used the Statement to help us identify future interventions. This report and its annex therefore highlight several key planned activities, designed to extend choice and further to enhance the provision of useful information.
5. Our planned activities, including the evaluation of their outcomes, will continue, therefore, beyond the 30 September 2024 Statement compliance deadline and into our next strategic period. We shall consult on our planned strategy shortly.
6. In developing our future plans, we have been mindful, not only of past Competition and Markets Authority recommendations and the LSB Statement, but also of more recent documents, notably the recent report on Consumer Focused Regulation in Legal Services, commissioned by the Legal Services Consumer Panel (LSCP). The illustrative examples of recent and planned activities offered below, and also in the annex, seek to deliver on this report's numerous recommendations.

Public legal education

7. Our Public Legal Education (PLE) strategy, in place since 2022, emphasises both collaboration with other front-line regulators and partnerships with third sector organisations which work closely with consumers in vulnerable circumstances.
8. Over recent years, we have worked with ‘Law for Life’ on projects relating to legal need in the area of employment law, producing a range of civil guides for litigants in person applying for or defending civil actions. With ‘Citizens Advice’, who run the Witness Service on behalf of the Ministry of Justice, we have funded two videos for children giving evidence in the Crown Courts and Magistrates’ Courts.
9. With ‘Refugee Action’ we have supported research into the barriers to complaints faced by those seeking advice on immigration issues. We are now working with the SRA, the Legal Ombudsman (LeO) and the Office of the Immigration Services Commissioner (OISC) to consider how we can help to reduce those barriers by creating printed and website content which will explain the benefits of using a regulated adviser, how to check whether your adviser is regulated, and how to complain if you encounter problems. This can then be hosted on Legal Choices and on other websites and platforms.
10. We are also a “Guardian” supporter of ‘Support through Court’, who offer emotional and practical support (but not legal advice) to the increasing number of people who have to appear in the civil and family courts without legal representation.
11. A variety of metrics are also used to evaluate and report on the effectiveness of our PLE activities. Collaborating with other regulators, we have discussed PLE projects in the Market Transparency Co-ordination and Oversight Group (MTCOG). When we rejoined Legal Choices in September 2023, we also significantly increased our spend on PLE.
12. After rejoining Legal Choices, we now play an active part in its development, including its Regulatory Information Service (RIS). In doing so, we work in partnership with other regulators and the LSB.

Information about price

13. The BSB’s existing price transparency rules and guidance for the Bar are intended to ensure that consumers have access to useful information that best enables effective choice about the price, or potential price, of services offered by the Bar. Taking note of a specific Empowering consumers expectation, we mandate that barristers, chambers and entities must make their pricing models available – including, if they have one, on their website.
14. Additionally, the BSB requires an enhanced mandatory price transparency regime for barristers, chambers and entities that undertake specific types of public access work. The enhanced transparency requirements we mandate for these types of barristers’ service closely align with the price transparency factors specified in the Statement.
15. The BSB has undertaken two large-scale audits of the Bar’s compliance with our transparency rules. The findings of these audits are summarised in two separate

reports, one published in 2020¹ and the second in 2022². Findings from those audits indicate that compliance with our transparency rules has improved over time, reaching 94% full or partial compliant in our most recent (2022) report. Additionally, recent research published by the Legal Services Consumer Panel (LSCP) indicates that the majority of consumers (65.29%) find it 'easy', or 'very easy'³, to find price information about barristers, and to compare prices between barrister providers (75.50%). As noted in our 2022 report, BSB's supervision team continues to check compliance levels whenever they engage with chambers, BSB entities or sole practitioners in the ordinary course of their supervision work.

16. We have identified two opportunities to further enhance price transparency for the benefit of consumers. Firstly, in light of insights gathered from our supervisory team, we are considering making changes to our mandatory guidance regarding the prominence of transparency-related information. The intention would be to make it easier for consumers to locate transparency information, including fees information, via 'Plain English' signposting on barristers' websites. Secondly, we are considering amending our guidance to reduce the 14-day maximum period we regard as reasonable for providing quotes for work. We are considering this option in light of research undertaken by the LSCP, which found that one of the biggest price-related difficulties for consumers was the length of time taken to obtain a quote. We plan to undertake testing of consumers' preferences regarding timelines by the end of 2024. The findings from this research will feed into our 'Empowering consumers' consultation.
17. Research tells us that at least 63% of consumers employ barristers via solicitors. We therefore note the SRA's recently commissioned research, and its suggestions that the scope of the SRA transparency rules might be expanded. We further note the recent CILEx Regulation consultation on the same topic. While we await publication of these two regulators' consultation findings / recommendations, we continue to explore this issue independently, ahead of deciding on any next steps. Ongoing activities include our consumer research and DCT / review site market study (both due to conclude in Q4 2024); our recently-launched investigations into both the unbundling and intermediaries market, and our research into the role played by solicitors in barrister selection; and our supervisory activities.

Information about quality

18. To meet the Statement's minimum "quality" information expectations, we already make barristers' disciplinary and enforcement records, including sanctions, available on both our Barristers' Register and also on the "Can you trust your legal adviser" section of the Legal Choices Website. Separately, the Legal Ombudsman (LeO) publishes complaints decisions about legal service providers, including the barristers and other providers regulated by the BSB, on its website.
19. Notwithstanding LeO's independent publication of second-tier complaints findings involving the Bar, we are currently evaluating additional options for making this complaints data more readily accessible. We will shortly begin testing consumers'

¹ Available at: www.barstandardsboard.org.uk/static/3359c36e-ef3e-449d-883e18c5ebeabad6/202006-External-Transparency-spot-check-report.pdf

² Available at: www.barstandardsboard.org.uk/static/c9898093-bbc6-45d5-b3af882dae99e05d/20220727-External-Transparency-RR-and-spot-check-report.pdf

³ Options available to the survey respondents, available at: www.legalservicesconsumerpanel.org.uk/wp-content/uploads/2024/07/LSCP-Tracker-Survey-Data-2024.xlsx

preferences regarding the publication of LeO complaints data. This is in preparation for further work in this area, including engagement with LeO and other key stakeholders. This, in turn, will be followed by a public consultation regarding any proposals we bring forward. Separately, and following the LSB's recent publication of a Statement of policy on first tier complaints, we are currently reviewing further actions we might take in relation to first and second tier complaints reporting.

20. We have actively engaged with other frontline regulators, digital comparison tool (DCT) operators, other stakeholders and prior research, to understand what additional quality indicators are currently available – and viable – in respect of the Bar, beyond those specified in the Statement. We have decided against the adoption of success / loss rates, partially in light of this evidence but also because of the perverse incentive this would create to turn down hard cases and so curtail access to justice. The LSCP and the other parties involved in this field are also sceptical about this particular metric.
21. We have instead focused on developing quality indicators that appear to be more viable and scalable in a standardised format. To that end, we have audited the regulatory data we hold, to identify data fields that might be considered useful quality indicators in line with prior research findings. In our planned 'Empowering consumers' consultation we will seek feedback on plans to make additional regulatory data fields, which may also be used as quality indicators, available to consumers and other stakeholders on an 'open data' basis. These data fields go beyond those quality indicators specified in the Statement.
22. Building on research conducted by our peer frontline regulators and other organisations,⁴ we are about to commence fresh research into consumers' preferences regarding quality indicators. This research will feed into our evaluation of what additional regulatory data we should make available to the public and other stakeholders and the manner in which it should be provided. One element of the research will be exploring consumers' apparent reluctance to leave reviews about barristers. This issue was identified during the pilot phase of our ongoing study into on-line comparison (DCTs) and review websites serving the barristers' market. The findings from this fresh research will help inform our future activities regarding what role reviews might play in assessing the quality of barristers' services.
23. We are currently working with the LSB and other frontline regulators on proposals to further develop Legal Choices and RIS. It is possible that Legal Choices / RIS will evolve to provide an additional, consumer-facing outlet for the regulatory data we collect and published.

Information about service, redress and regulation

24. Several of our long-standing transparency-related Handbook rules mandate the publication of useful information relating to service, redress and regulation on websites operated by self-employed barristers, chambers and BSB entities. Previously, we undertook regular audits of the Bar's compliance with these specific regulatory arrangements. However, in light of high levels of compliance with our

⁴ For instance, we considered a 2021 study report on quality indicators, commissioned by Legal Utopia, and funded by the University of Edinburgh, with academic collaboration with the University of Aberdeen (Legal Service Provider Scoring System – author: Mr Howard Chen, Contributor: Dr Dewei Yi, Editor: Mr Fraser Matcham.

transparency rules, we now routinely test for compliance in the ordinary course of our supervision work.

How information is made available to consumers

25. Our existing regulatory arrangements place specific transparency-related obligations on regulated individuals and entities, in a manner we regard as appropriate. As noted, our existing transparency rules require that this information be made available in a sufficiently accessible and prominent place on providers' websites. We are considering making further changes to our mandatory guidance, with the aim of encouraging the 'Plain English' signposting of transparency-related information on providers' websites. We note CILEx Regulation's recent proposals in relation to this matter and await the outcome of their consultation with interest.
26. We will shortly undertake testing of consumer preferences about the regulatory data we hold that relates to barristers' levels of experience. Subject to consumer testing, and an equality impact evaluation, we believe this data has the potential to further enhance the provision of comprehensible, appropriate contextual information we make available to consumers and other stakeholders, such as DCTs and review website.
27. Our regulatory arrangements require that self-employed barristers, chambers and BSB entities review their website annually, to ensure that they are accurate and comply with our transparency rules. Our ongoing supervisory activities with the Bar enable us to identify situations where compliance is not occurring, and to work with providers to achieve compliance.
28. Our transparency guidance encourages the Bar to make transparency information available to consumers in standardised formats, with the aim of allowing for easy comparison between providers. The latest research from the LSCP suggests that this outcome is being met for a majority of consumers, with 75.50% finding it 'easy', or 'very easy', to make price comparisons between barristers.
29. We maintain public registers of both individual barristers and BSB entities. With the exception of LeO complaints data, the Barristers' Register already includes barristers' contact information, areas of practice, regulatory status and registration details, and disciplinary and enforcement record (including sanctions). As previously noted, we are currently evaluating options to make LeO complaints data available alongside other quality indicators on our Barristers' Register. We aim to undertake consumer testing of this proposal at the earliest opportunity.
30. We continue to examine the role that on-line comparison (DCTs) and review websites play in relation the Bar, via our DCT pilot (now a market study). To that end, we have extensively engaged with service providers, the Bar and will shortly be doing so with consumers via a new research project. To help us build our evidence base, we actively encouraged the Bar to participate in DCT/review services during our study's pilot phase. Our research to date indicates a complex picture, where few consumers appear to use such services. This is in contrast with widespread usage (and barrister acceptance) of curated lawyer-to-lawyer review services. We will shortly be publishing our findings about this market, which will form the basis for further policy work.

31. Mindful of the minor role played by on-line comparison (DCTs) and review websites in helping consumers to select barristers, we recently agreed to undertake joint research with the SRA to understand the role that solicitors play in this process. Separately, we have recently begun research into the wider intermediaries' market for barristers' services. Finally, we recently initiated research into digital exclusion, in partnership with ICAEW, the CLC and CILEx Regulation. This research will aim to understand the experiences of digitally excluded clients or prospective clients in the legal sector. Collectively, these research activities are intended to provide us with a more holistic understanding of the manner in which consumers engage with the market for barristers' services, beyond a narrow focus on DCTs and review websites.
32. Both our individual barrister and BSB entity registers are made freely available on an open data basis. As part of our commitment to open data, and to facilitate the development of DCTs and review services, will enhance the data we make available on the downloadable version of our Barristers' Register in Q4 2024, to also include areas of practice, Inns of Court details, rights of audience information, conduct of litigation authorisation details, rights of audience details, and information on other entitlements that the authorised person holds – such as administration of oaths, immigration work, and probate activities. Our 'Empowering consumers' consultation will propose making additional barrister contact information available for download on an open data basis – subject to relevant data protection considerations, an equality impact assessment, notice to the profession, and consent to publication.

Bar Standards Board

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Annex

BSB LSB Empowering consumers compliance assessment - further information summary