

BAR STANDARDS BOARD

REGULATING BARRISTERS

Compliance with the price, service and redress transparency rules

Summary

1. In July 2019 we introduced the price, service and redress transparency rules, together with [guidance](#) to assist self-employed barristers, chambers and BSB entities in meeting the new requirements by the deadline of January 2020. We have carried out checks at various points since January 2020 to assess levels of compliance at the Bar and provide feedback, where necessary, to achieve compliance.
2. We are encouraged that 94% of those assessed during this period are now either compliant or partially compliant. This represents good progress since our [last report](#) in 2020, in which we reported that 75% of those assessed were found to be either compliant or partially compliant.

| Assessment | Total Assessed | % |
|---------------------|----------------|-----|
| Compliant | 351 | 62% |
| Partially compliant | 177 | 32% |
| Non-compliant | 33 | 6% |

3. The Supervision Team is continuing to monitor action taken to reach full compliance. Having now checked a large proportion of the Bar, we do not propose to conduct any further large-scale spot checks. We will, however, continue to test compliance whenever we engage with a chambers, a BSB entity or sole practitioner in the ordinary course of our supervision work.
4. It is now more than three years since the rules came into effect. Enforcement action will be taken in cases where practitioners and organisations continue to materially fail to meet the transparency requirements.

Mandatory rules requirements – common themes

5. The most common areas of non-compliance with the mandatory rules were failing to provide:
 - information about the factors which might influence the timescales of a case;
 - a link to the BSB Barristers' Register or the link was broken or directed to another webpage; and
 - a link to the public access guidance for lay clients.

Additional transparency rules – common themes

6. The most common areas of non-compliance with the additional rules were failing to provide:
 - indicative fees and the circumstances in which they may vary;
 - likely additional costs, what they cover and either the cost or, if this can only be estimated, the typical range of costs; and
 - a concise statement of the key stages and an indicative timescale for the key stages of the relevant Public Access services.
7. These common areas of non-compliance are consistent with the findings from the 2020 spot-check. This, and the discussions held with those we assessed, indicates that some improvement to the guidance is needed, which we shall be doing.

The Rules

8. The [Bar Transparency Rules](#) came into force on 1 July 2019. The rules are designed to improve the information available to the public before they engage the services of a barrister. Chambers, BSB entities and sole practitioners ("practitioners and organisations") must ensure that they comply with the Rules by publishing the required information on their website (if they have one). They must also have this information in a readily available format, such as a factsheet, to provide to consumers if they do not have a website or where the consumer does not have internet access. [Extensive guidance](#) has been published to assist the Bar in complying with the Transparency Rules.

The Mandatory rules

9. The mandatory rules require that all self-employed barristers, chambers and BSB entities include on their website or in a factsheet (as per [rC161](#) of the Handbook) the following information:
 - a statement making it clear that clients may make contact to obtain a quotation and provide contact details;
 - their most commonly used pricing models for legal services, such as fixed fee or hourly rate;
 - the areas of law and a description of those legal services which they most commonly provide;
 - information about the factors which might influence the timescales of a case;
 - the appropriate "regulated by the Bar Standards Board" text on the homepage;

- information about their complaints procedure (including how to complain to the Legal Ombudsman) and the time limits for making a complaint;
 - a link to the decision data page on the [Legal Ombudsman's website](#); and
 - a link to the [BSB's Barristers' Register](#).
10. Barristers, chambers and BSB entities undertaking public access work must display on their website a link to the [Public Access Guidance for Lay Clients](#) on the BSB's website.

Additional rules

11. If specific public access services are provided, then additional transparency rules apply. These specific public access services are:
- Employment Tribunal cases (advice and representation for employers and employees);
 - Financial disputes arising out of divorce;
 - Immigration appeals (First-tier Tribunal);
 - Inheritance Act advices;
 - Licensing applications in relation to business premises;
 - Personal injury claims;
 - Summary only motoring offences (advice and representation for defendants); and
 - Winding-up petitions.
12. If the additional transparency rules apply, then the websites and factsheets must also include the following in relation to those services:
- their pricing models, such as fixed fee or hourly rate;
 - indicative fees and the circumstances in which they may vary;
 - whether their fees include VAT;
 - likely additional costs e.g. Court fees;
 - a description of the relevant public access services (including a concise statement of the key stages and an indicative timescale for the key stages); and
 - an indicative timescale for the key stages.
13. The required information must be sufficiently accessible and prominent on the websites as well as being accurate and up to date.

Compliance testing

14. The Supervision Team has conducted the following compliance checks at various points since January 2020 to assess levels of compliance at the Bar and provide feedback, where necessary, to achieve compliance:
- Compliance testing of a sample of practitioners and organisations conducted in 2020.
 - Compliance testing of a further sample of practitioners and organisations as part of the Regulatory Return process in 2020-21 and monitoring of follow-up action.
 - Compliance testing of practitioners and organisations whenever a report to the BSB results in a referral (on any matter) to the Supervision Team for regulatory action,

and monitoring of follow-up action. This is ongoing whenever a Supervision case is opened.

- In November 2021, compliance checking the remaining practitioners and organisations that were assessed as non-compliant during the 2020 spot check, that had not otherwise been re-checked as part of the above processes.

15. The work we have undertaken to date to check compliance with the transparency rules has resulted in the Supervision Team checking 86% of all chambers, 75% of public access practitioners and 36% of all BSB entities.

Progress in improving transparency rules compliance

Spot-check 2020 and follow up

16. 438 practitioners and organisations were selected for the spot-check in 2020 with 171 assessed as partially compliant and 108 assessed as non-compliant.
17. Both these groups were given feedback and guidance to ensure compliance and the non-compliant were additionally informed that we would be following up their compliance in 2021.
18. The follow-up check in 2021 found that 81% of non-compliant practices had become compliant or partially compliant since the 2020 spot-check.

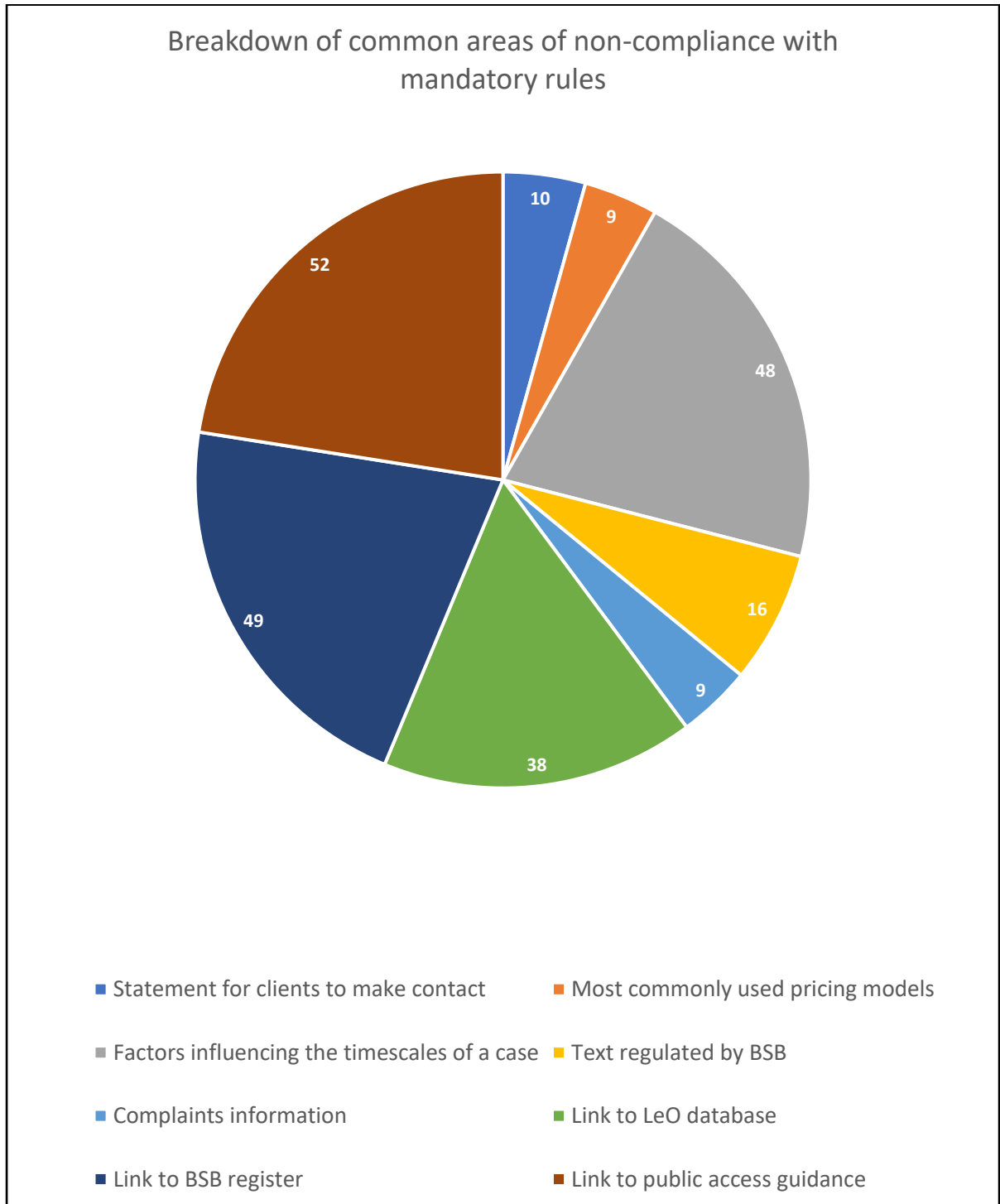
Regulatory Returns

19. In September 2020, we issued a Regulatory Return to a selection of around 350 chambers, BSB entities and sole practitioners. It included a question on the impact of the rules and whether practitioners and organisations were compliant. When the Supervision Team were assessing the Return, they checked the practitioners and organisations' websites/factsheets for compliance and where non-compliance was identified, corrective action was set.
20. The following table shows the overall level of compliance of this cohort as at 17 June 2022.

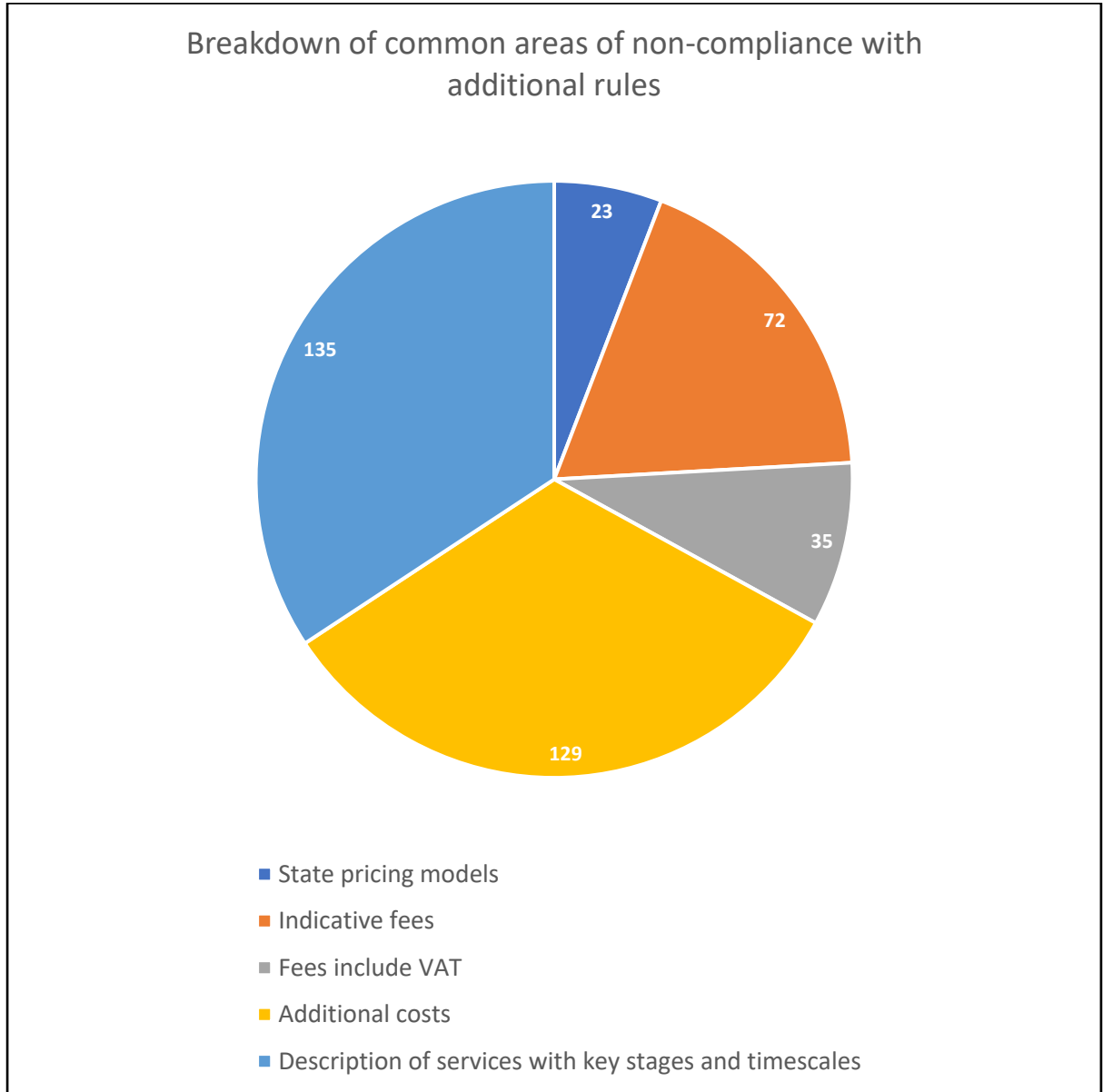
| Assessment | Chambers | | BSB Entities | | Sole practitioners | |
|---|-----------|------|--------------|------|--------------------|------|
| | No. | % | No. | % | No. | % |
| Compliant | 169 | 67% | 10 | 53% | 20 | 45% |
| Partially compliant | 70 | 27% | 9 | 47% | 14 | 32% |
| Non-compliant | 16 | 6% | 0 | 0% | 10 | 23% |
| Total | 255 | 100% | 19 | 100% | 44 | 100% |
| Total compliant as at 17/06/2022 (No / %) | 199 / 63% | | | | | |

21. The most common areas of non-compliance with the mandatory rules were failing to provide:

- Information about the factors which might influence the timescales of a case;
- Link to the BSB Barristers' Register or the link was broken or directed to another webpage; and
- Link to the public access guidance for lay clients.



22. The most common areas of non-compliance with the additional rules were failing to provide:
- Indicative fees and the circumstances in which they may vary have not been set out;
 - Likely additional costs, what they cover, and either the cost or, if this can only be estimated, the typical range of costs; and
 - A concise statement of the key stages and an indicative timescale for the key stages of the relevant Public Access services.



Themes

23. Below are the key points to note from the work on the cohorts tested as part of the Regulatory Returns and the 2021 follow-up:

- a) There has been clear progress towards greater transparency with a significant number of practices now complying with the rules.
- b) The common areas of non-compliance are consistent with the findings from the 2020 spot-check. This, and the discussions held with those we assessed (reflected below), indicates that some improvement to the guidance is needed, which we shall be doing.
- c) The 2021 follow-up group who were assessed as partially compliant only needed limited guidance from the Supervision team to become fully compliant. This means they had co-operated with corrective action set previously and were compliant with most of the rules at the time that the follow-up took place.
- d) A common reason why practitioners and organisations were deemed not to be compliant was that they had not gone far enough with the transparency detail to become compliant. They had made efforts to become compliant and were under the impression that they were already compliant.
- e) Instances of non-compliance were higher with the additional rules compared with the mandatory rules.
- f) We had expected the Regulatory Return cohort to be more compliant with the redress rules given that there was a question in the Return regarding complaints procedures. Furthermore, the complaints rules are not new, and we would expect to see good information about complaints processes already being made available. However, the groups were roughly equal in being non-compliant with the redress rules.
- g) The guidance document titled "[Annexes](#)", which is available on the BSB website, was generally found to be the most useful part of the guidance as it contained examples of best practice. They were thought to be much clearer than the rules and narrative guidance.
- h) Practitioners and organisations providing a factsheet tended to be more likely to be fully compliant as they had mostly followed the template guidance closely.
- i) The Supervision Team spent a lot of time looking for the transparency information on organisations' websites as it was commonly not all in one place. Service, redress and price information were split into different sections with various titles such as:
 - Client service information
 - Policies
 - About us
 - Transparency statement
 - Contact us
 - Instruct Us
 - Fees
 - Complaints
 - Terms and conditions

Although the rules require the information to be accessible (found within one or two clicks) this did not translate practically to many websites reviewed. There is a real concern that a consumer would struggle to find the transparency information. We would encourage practitioners and organisations to think about how the required information can be provided more accessibly and without jargon.

- j) People struggled with formulating case timescales. Timescales are impacted by court backlogs, which Covid has exacerbated further, ie issues not under their control, which make them difficult to predict. Where they found it difficult to be precise, they tended to put a wide timescale on their website eg. 6 months to 2 years for a particular matter. The 2021 consumer evaluation research identified that for those who made use of a barrister to deal with their legal issue, the third most important factor was speed of dealing with an issue. There was some concern that long timescales may be unhelpful or off-putting without being clearly explained. On the other hand, the research shows that complaints to the Legal Ombudsman about case timescales have reduced since the rules were introduced, which may indicate that setting realistic expectations, even with a wide timescale, may be more helpful than not.
- k) In discussions, there was some push back on publishing indicative fees as people felt they would be undercut by competitors. This is reflected in some of the written responses to the Return, which is addressed in the consumer impact evaluation report.
- l) Some organisations found it difficult to understand what was expected in relation to displaying 'additional costs'.
- m) A number of barristers conducting public access work, either as sole practitioners or outside their chambers administration, use third party marketing platforms. Use of such websites is referenced in the guidance, which says:

"The BSB's transparency rules do not apply to non-regulated, third-party providers. However, barristers who have appointed marketing or advertising businesses and/or obtain work from third party introducers may wish to consider their arrangements with such providers in light of their own transparency obligations. For example, barristers may wish to only enter into arrangements with providers which comply with the spirit of the BSB's transparency rules. In any event, barristers are encouraged to undertake appropriate due diligence on third parties and how their services operate before agreeing to use them. This includes considering whether practices lack transparency for clients and are potentially anticompetitive."

As this is stated as good practice rather than a requirement, it was difficult for Supervision to set required actions when we assessed them as non-compliant. We are reviewing whether this guidance goes far enough, given that some barristers who engage in public access work outside of their chambers, or as sole practitioners, do not maintain their own websites and the third party platforms are their primary means of displaying information about their services. We have seen a reasonable quantity of marketing information on websites that is not compliant. We think that there is an opportunity to further drive up transparency standards on such platforms.

- n) We found that some practices previously assessed as compliant became only partially compliant when websites were updated. Practitioners and organisations should use the [checklist](#) in the guidance when updating their website, to ensure they remain compliant.

Next steps

- 24. We are pleased to see the progress the Bar has made in ensuring compliance with the transparency rules. 94% of those assessed have been rated compliant or partially compliant.
- 25. The Supervision Team is continuing to monitor action taken to reach full compliance. Having now checked a large proportion of the Bar, we do not propose to conduct any further large-scale spot checks. We will, however, continue to test compliance whenever we engage with a chambers, a BSB entity or sole practitioner in the ordinary course of our supervision work.
- 26. Enforcement action will be taken in cases where practitioners and organisations continue to fail to meet the transparency requirements in material respects despite corrective actions set by the Supervision team.
- 27. We will review the guidance on our website to make it more user-friendly.
- 28. We will consider whether we need to amend any rules or guidance where barristers use third party marketing platforms, particularly where that is the primary means through which barristers share information about their services.

July 2022