

Research Summary

Transparency Rules Evaluation - Impact on the Profession



Research Background

As one of our policy responses to the recommendations of the Competition and Markets Authority (CMA) review of legal services in 2016, the Bar Standards Board introduced new transparency rules for the profession in July 2019 (with compliance required by January 2020). These rules required barristers to provide information on their regulatory status, complaints procedures, services and pricing models either on their websites or as part of a fact sheet for prospective clients.

The BSB is undertaking a programme of evaluation to assess the impact of the rules on the profession (both the impact of complying and any subsequent impact on barristers' practices) and on legal consumers (the extent to which the changes in levels of transparency have led to better levels of understanding, increased shopping around, and better outcomes.) This report assesses the impact on the profession.

The primary scope of the professional side of the evaluation was to evaluate:

- the levels of compliance with the transparency rules across the profession;
- the challenges the profession faced in implementing the new rules; and
- the impact the new rules have had on the profession.

Key Findings

The evaluation uses three sources of information:

- A spot check of compliance, with follow-up supervision work, undertaken by the BSB in January 2020;
- Three web sweeps of chambers' websites (in 2017, 2019 and 2020) looking at the levels of price information available on chambers' websites, and classifying each chambers by the level of detail given on their prices; and
- The 2021 Regulatory Return, which asked chambers, entities and sole practitioners questions specific to the transparency reforms, asking what action they had taken in response to the reforms, and what impact they had noticed to date.

Compliance - Evidence from the spot check, web sweep and regulatory return indicates that the Bar has made progress towards compliance, but has not reached the levels of compliance that might be expected given the time that has passed since the rules were introduced (Summer 2019) and full compliance was expected (January 2020). By the summer of 2020, more than one in five chambers, and over one in three sole practitioners had not complied with the minimum fee transparency requirements.

Compliance - The spot check and follow-up supervision work suggest that a substantial minority of organisations (one in four across all organisations checked, and nearly one in three chambers) were classed as not compliant with the full transparency rules as of October 2020. However, compliance levels are likely to have increased since that date due to actions taken by the profession, as well as follow-up supervision work undertaken by the BSB. Nonetheless, there has clearly been progress towards compliance with the rules, with three in four organisations checked either fully compliant or partially compliant with the full transparency requirements as of October 2020.

Implementation - Evidence from the regulatory return suggests that the majority of organisations did not face any particular challenges implementing the rules. However, some chambers, sole practitioners and entities found compliance with the rules challenging, with providing information on indicative fees the most commonly cited reason for this. Although this was not a requirement for the whole profession, it was the most commonly cited difficulty highlighted by those who faced challenges in implementing the rules.

Implementation – Both the spot check in 2020 and the Regulatory Return exercise in 2021 were clearly key drivers in prompting organisations to seek to comply with the rules. While a number of organisations clearly sought to implement the rules after they were introduced in 2019, the evidence suggests that many had not fully engaged with or understood what was required of them until prompted to do so by either the spot check or the regulatory return.

Impact - Evidence from the web sweep exercises in 2017, 2019 and 2020 indicates that there has been a substantial change in the levels of fee transparency provided on the websites of chambers and sole practitioners. In both 2017 and 2019, the proportion of chambers' websites providing indicative fees was around one in twenty. Following the introduction of the rules, this had risen to close to one in three. There was also a significant drop in the proportion of organisations providing no information at all on how fees were calculated. This dropped from three quarters of chambers' websites in 2017 to slightly over one in five by 2020.

Impact - The majority of organisations have not yet observed any impact on their practice of implementing the rules. However, nearly a third of organisations observed (or expected to observe in the future) positive impacts from implementing the new requirements, and felt that implementing the rules had been beneficial for their practice. A substantially higher proportion of those noting impacts from the changes stated that these were positive rather than negative.

How will the BSB use these findings?

- This evaluation will be used by the BSB to inform to the next phase of its work to ensure all barristers' practices comply with the Bar transparency rules. The BSB will continue regularly to check compliance with the rules and to provide support and guidance to chambers, entities and sole practitioners. However, those who are currently falling short may be subject to enforcement action if they continue to fail to comply with the rules.
- The BSB will be undertaking an evaluation of the impact of the rules on consumers later in the year. This will complement this evaluation to give a complete picture of the impact the rules have had in improving transparency and the extent to which they have met the BSB's objectives, as well as bringing about the improvements to transparency sought by the CMA Review into the legal services market. Following the completion of the consumer side of the evaluation work, the BSB will review the transparency rules to see if any changes are required.

What do the findings mean for key stakeholders?

- The rules require all self-employed barristers, chambers and BSB-regulated entities to publish specified information about their services, including which types of legal service they provide, their most commonly used pricing models (such as fixed fee or hourly rate) and details of their clients' rights of redress. Public Access barristers providing certain types of services are also required to publish additional price and service information. While some organisations said that they faced challenges with the amount of work or resource required to bring themselves into compliance and have not experienced any benefit, others have found it easier and do expect to benefit from it and may already have done so.
- Consumers, on the other hand, will have the clear benefit of being able to see much more easily what services barristers provide, their likely cost and what they can do if things go wrong. Where services are being provided on a referral basis, solicitors will also benefit from having more information. Consumers who are seeking to employ a barrister directly will also be able to shop around more easily with the added benefit that barristers who provide public access must also provide further information about their fees.

The main report can be found at <https://www.barstandardsboard.org.uk/media-centre/research-and-statistics/research-reports/>