

## SLCC response to: “Price transparency – promoting consumer choice”

### Introduction

We are grateful for the opportunity to respond to the Law Society of Scotland’s consultation on price transparency.

Issues around pricing occur frequently in complaints made to us. We have also commented on price transparency in our #ReimagineRegulation papers in 2016 and in our evidence submission to the Independent Review of the Regulation of Legal Services in 2018.

In this response, we will:

- Set out some of the issues around price transparency we see in complaints.
- Revisit some of our earlier comments on the issue in our #ReimagineRegulation work.
- Consider evidence from England and Wales.
- Give some recommendations on price transparency.

Our responses to the specific consultation questions are in the Appendix.

### Evidence from complaints

While we have limited powers to intervene in complaints concerning fees, issues surrounding them are common in the complaints made to us.

Very often they are connected to consumer expectations around fees. The information provided is at the point of instruction, i.e. when terms of engagement are signed and the work is agreed. In our experience, firms almost always provide an estimate of fees or information on how they firm will calculate them, in keeping with the Law Society of Scotland’s rules.

The complaints we see tend to come from situations where:

- The total fee has increased significantly from the estimate given
- The details about the basis of fees has not been clear or understood

In considering what lessons can be learned from complaints for price transparency, there are a few strands.

1. There is a lack of understanding of fees and other costs. Giving an hourly rate is not always helpful if the consumer doesn’t know what the multiplier is. They are not aware how long a given piece of work might take. A sample or average price of a ‘typical’ piece of work would be more helpful.

2. Certain costs regarding communication are a frequent cause for concern. It's not just the rate that needs to be clear; information about what will be billed for (e.g. answering emails or calls) can also be important. This is particularly acute when the cost comes from communication with third parties.
3. In civil litigation or executries work, where fees can be particularly unpredictable, a lack of information about factors that can increase the bill can lead to unpleasant surprises.
4. Fees for work carried out under "no win no fee" arrangements or legal insurance can have particular challenges, as there may be even less up-front clarity on what can go wrong (e.g. uncertainties outside the firm's control).
5. Clarity about who in a firm will be doing the work is also important. Where firms have significant numbers of non-solicitors in their staff, we see complaints where the issue is "I expected a solicitor to be dealing with my case". This is particularly concerning when the firm has charged the client the fee for a fully qualified solicitor.
6. Firms should provide pricing information in an easily accessible format and with the right level of detail expressed in plain English. We believe that information contained in a 20-page terms of engagement is not clearly communicated.

## #ReimagineRegulation

There are a number of issues we flagged in our *#ReimagineRegulation* paper and our follow up, *A Roadmap for Change* that are relevant to this consultation.

### Consumer principles

It is heartening to see the consultation paper recognise the SLCC consumer panel's work on applying the international consumer principles to legal services in Scotland. In particular, the principles of choice and information. In *#ReimagineRegulation* we highlighted that these areas had been neglected<sup>1</sup>. It is good to see that balance redressed.

We also made clear that applying these principles was an opportunity for increased consumer confidence and spending in the sector<sup>2</sup>. Transparent pricing won't just help those who go to a solicitor – it will help those who think, perhaps wrongly, that they can't afford one.

### Challenging fees

While this is not in the scope of the current consultation, there are several barriers for clients who want to challenge fees. Firms can charge for a detailed breakdown of fees and the only way to challenge the fee itself is through the taxation process which is highly legalistic and has a risk of further costs associated with it.

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<sup>1</sup> [https://www.scottishlegalcomplaints.org.uk/media/65853/1\\_reimagine\\_regulation\\_-\\_slcc\\_priorities\\_for\\_a\\_consultation\\_on\\_legal\\_services\\_regulation\\_v1.00.pdf#page=9](https://www.scottishlegalcomplaints.org.uk/media/65853/1_reimagine_regulation_-_slcc_priorities_for_a_consultation_on_legal_services_regulation_v1.00.pdf#page=9)

<sup>2</sup> [https://www.scottishlegalcomplaints.org.uk/media/65853/1\\_reimagine\\_regulation\\_-\\_slcc\\_priorities\\_for\\_a\\_consultation\\_on\\_legal\\_services\\_regulation\\_v1.00.pdf#page=12](https://www.scottishlegalcomplaints.org.uk/media/65853/1_reimagine_regulation_-_slcc_priorities_for_a_consultation_on_legal_services_regulation_v1.00.pdf#page=12)

Anything that increases consumer confidence in the bills they will receive is positive and pricing transparency can form a part of this.

### **Outcomes focussed regulation**

The example we gave of the benefits of outcome focussed regulation revolved around price transparency.

*“The SLCC has previously publicly supported an approach which focusses on principles and outcomes for consumers (although delivered through a rules framework). The idea is that rules should not be framed in terms of the process or professional interest:*

*for example, “you shall provide the following information to the client in writing...an estimate of the total fee to be charged for the work, including VAT and outlays which may be incurred in the course of the work”*

*but the outcome for the client:*

*for example, “you must ensure the client understands and has a record of...an estimate of the total fee to be charged for the work, including VAT and outlays which may be incurred in the course of the work”<sup>3</sup>*

It is paramount that any new rules take this into account.

## **Evidence from elsewhere**

### **Solicitors Regulation Authority**

The Solicitors Regulation Authority has conducted consumer behavioural research on price transparency<sup>4</sup>, specifically in conveyancing.

The conclusions included:

- When all other factors were equal, people didn't always make decisions based on price alone.
- There may be a benefit to making consumers aware that pricing was something they could consider when choosing a law firm.

A later study<sup>5</sup>, run jointly with the **Legal Ombudsman concluded that:**

- Where regulatory information (including where to get redress) was provided, consumers used it.
- Three types of information were particularly useful in choosing a firm:
  - Prices;
  - A description of the services offered; and

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<sup>3</sup> [https://www.scottishlegalcomplaints.org.uk/media/65856/2\\_reimagine\\_regulation\\_-\\_slcc\\_appendices\\_to\\_our\\_main\\_paper\\_v1.00.pdf#page=17](https://www.scottishlegalcomplaints.org.uk/media/65856/2_reimagine_regulation_-_slcc_appendices_to_our_main_paper_v1.00.pdf#page=17)

<sup>4</sup> <https://www.sra.org.uk/sra/how-we-work/reports/price-transparency-legal-services-market.page>

<sup>5</sup> <https://www.sra.org.uk/sra/how-we-work/reports/better-information.page>

- The regulatory status and protections available to consumers (with links to click to regulators websites)

### **Law Society of England and Wales**

The Law Society of England and Wales has also carried out behavioural research<sup>6</sup> to try and model consumer behaviour in choosing a law firm.

The conclusions included:

- In addition to prices, information about the regulatory status of a firm was also important.
- Consumers do not read the small print of documents.
- Information on possible pitfalls during a transaction could change the survey participants' decisions.
- There was a poor understanding of differing insurance cover or the protections available.

### **Council for Licensed Conveyancers**

The Council for Licensed Conveyancers has recently consulted<sup>7</sup> on how to implement the Competition and Marketing Authority's recommendations on price transparency.

The proposals are that its regulatees be required to:

- Provide information on costs on their websites.
- Make available on their websites standard information about:
  - the services that they provide;
  - key stages in the delivery of those services; and
  - indicative timescales
- make available on their websites standard information about:
  - how to make a complaint;
  - client protection arrangements (details of PII arrangements and access to the Council for Licensed Conveyancers Compensation Fund); and
  - regulatory status

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<sup>6</sup> <https://www.lawsociety.org.uk/policy-campaigns/consultation-responses/sra-consultation-looking-to-the-future-better-information-more-choice-law-society-response/>

<sup>7</sup> <https://www.clc-uk.org/lawyers/helping-consumers-choose-their-lawyer/>

## Recommendations

There should be a requirement for price transparency information on websites.

This should be accessible and well signposted from the homepage.

There should be a standardised format including a link to the Law Society of Scotland's guidance on this format.

It should cover:

- Pricing type (e.g. fixed fee, hourly rate, mixed);
- Rate or fee;
- Which staff carry out which work and what level of qualification they have; and
- Regulatory protection information with links, including to the SLCC

It could also include more detailed information for different business areas.

A link to an online version of the firm's complaints procedure would also be helpful. This would bring law firms in line with other sectors and professions.

The same information could be available as a one-page attachment to terms of engagement.

Consumers should not have to pay for a detailed breakdown of fees.

## Appendix – consultation question answers

### **1. Do you agree or disagree with the principles of price transparency?**

We agree with the principles of price transparency.

### **2. Do you agree or disagree with the CMA's view that failing to provide transparency on price is detrimental to the consumer?**

We agree. It deprives consumers of information needed to make a meaningful choice. It may also deter some consumers from using solicitors' services entirely.

### **3. To what extent do you publish prices on your website?**

N/A.

### **4. To what extent are pricing models changing within the legal services market?**

We do see fixed fee pricing most often in conveyancing, will-writing, trusts, power of attorney and simple divorce. Outside of these areas, hourly billing based on time recording is still the most common pricing arrangement.

However, we note that some of the firms offering fixed fees are completing large numbers of transactions and consider that the total market share of fixed fee engagements may be higher than the number of firms offering it suggests.

### **5. What factors are driving this change?**

More research is needed on this.

### **6. Do any such changes make price transparency more or less viable?**

Even if firms offer fixed fees more widely, giving transparent and fair pricing information is still important.

The trends hinted at in question 4 also means that more consumers may be expecting price transparency, due to earlier experiences with other firms.

### **7. Which legal services do you believe lend themselves to proactive price transparency?**

Proactive price transparency should be the norm across all areas of legal services. In more complex areas, firms should use scenario pricing (including what can go wrong) to give a clear indicative price.

Proactive price transparency is particularly important for areas of law where individual and small business consumers need legal services. Larger businesses can tender for legal services and have more influence over price.

**8. What other benefits or opportunities may arise for firms by publishing price transparency information on their website?**

Increased client numbers could be one benefit. Consumers may have avoided using solicitors because they believed that the costs were either too high for them or be out of their control. Price transparency will reduce these concerns.

Firms may benefit from a general increase in consumer confidence in the sector and a more trusting relationship with individual clients.

**9. What other challenges may arise for firms by publishing price transparency information on their website?**

Lack of public awareness of how firms carry out billing is still a challenge. There needs to be more information for the public on how unit pricing based on time recording and hourly rates operates.

Also, if information about factors that can increase fees isn't provided, consumers will lack the whole picture.

**10. Are there any other jurisdictions we should look at more closely where price transparency has been considered or introduced?**

The Council for Licensed Conveyancers proposals mentioned above.

**11. What would be the most appropriate way to introduce a requirement to publish price information?**

There should be a rule setting out a minimum requirement to publish, in plain English:

- Pricing type (e.g. fixed fee, hourly rate, mixed);
- Rate or fee;
- Which staff carry out which work and the level they're qualified at; and
- Regulatory protection information with links to the Law Society of Scotland and SLCC's websites

The LSS should also promote, by way of guidance or advice, standard information layouts, explanatory information and a summary of other information that firms could publish (e.g. information for each business area, scenario pricing, the firm's complaints procedure).

**12. What would be the most appropriate way to monitor that firms are complying with any requirement to publish price information?**

The Law Society of Scotland should include website and promotional information audits in its financial inspection regime and raise any non-compliance as a complaint with the SLCC.