

Solicitors Regulation Authority
The Cube
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**FAO Juliet Oliver
Crispin Passmore**

20th December 2017

Dear Sirs,

Response of the CLLS Professional Rules and Regulation Committee (“CLLS”) to the SRA Consultation “Looking to the future: better information, more choice” (September 2017).

1. Introduction

1.1 The CLLS has read the SRA consultation paper entitled “Looking to the future: better information, more choice”.

1.2 In January 2016, the CLLS submitted a response to the October 2016 SRA discussion paper entitled “Regulatory data and consumer choice in the legal services” (the “January response”).

1.3 For the most part our comments reiterate those set out in our January response. In summary, the CLLS supports the recommendations set out in the Competition and Markets Authority (CMA) report on the legal services for the provision of better information to sectors of the market where competition is not functioning and to assist individual consumers and small businesses in being able to make better informed choices when selecting solicitors. However, any proposals to publish information either by firms or by the SRA must:

(A) be proportionate;

- (B) not be unduly burdensome to firms; and
 - (C) ensure that the information to be published is objective, properly contextualised and presented in a helpful, clear and understandable manner which is not misleading.
- 1.4 We have provided our response to some (but not all) of the questions raised in the consultation paper. We have grouped our comments under the headings of Price transparency and description of the services provided, Publication of PII data, How to complain to the firm and to the Legal Ombudsman, Creating a digital register, Publishing complaints data and Transparency requirements of individual solicitors working outside LSA regulated firms. For this reason we have not, as requested, submitted our response via the online form.

2. Price transparency and description of the services provided

Question 2: Do you agree with our proposed principles of price transparency?

Question 3: Is there a need for any specific exemption from the price publication proposals for firms dealing exclusively with large commercial clients? If so how should any exemption be defined and operate?

Question 4: Do you agree with our proposals to introduce requirements in relation to description, staff, stages and timescales in any legal services where we decide to require price publication?

- 2.1 The CLLS does not support the SRA proposal to require firms to provide pricing information on the proposed legal services for the following reasons:
- (A) The list of proposed legal services for consumers or small businesses is too broadly defined. Providing pricing information for each type of service within each discipline in the absence of client specific information will be too great a burden for law firms. For example, the definition of residential conveyancing as set out in the Annex 2 guidance sets out fifteen variables. Even if firms were able to provide information for each of these variables on the basis of common assumptions and give price ranges or invest in some form of “quote generator” technology they would still need to caveat this information in order to avoid misleading consumers (or assume the risks of having quoted too low or too high).
 - (B) The way firms describe the services, staff, stages and timescales, necessarily at a highly generic level on their websites (as opposed to the detailed information which they provide in bespoke client engagement letters) will differ and therefore will make any comparison between services and prices difficult for consumers and less likely to be (eventually) picked up by price comparison websites.

- 2.2 This means that the SRA proposals will not achieve the goals set by the CMA report to ensure that information to consumers and small businesses is “clear, accurate and comparable”.
- 2.3 In addition, the requirement to make firms, like those of our member firms, comply with these requirements is excessive and unnecessary. Whilst we would agree that exempting firms whose clients do not require such transparency information would be helpful it is not sufficient to limit this to “firms dealing exclusively with large commercial clients”. This is because clients of the CLLS member firms include high net worth individuals, family offices, entrepreneurs and start-up companies all of whom could be classified either as consumers or small businesses and yet do not experience any difficulties with accessing legal services and may already be sophisticated users of legal services.
- 2.4 Although these types of clients are likely to seek advice on some of the “proposed legal services” including residential conveyancing, drafting of wills or probate or estate administration or debt recovery, employment tribunal work they are likely to require this in combination with other specialist advice (e.g. tax planning or financing) and are therefore seeking to instruct firms with a particular combination of expertise. It is not clear from the proposals what obligations firms would have where some of the proposed legal services are provided in conjunction with other services.
- 2.5 This category of clients have no difficulty in identifying which of the relatively small pool (less than twenty) of law firms which offers high end and specialist private client services best meets their needs, nor in understanding the likely costs involved. They are highly unlikely to conduct research by comparing information set out in law firms’ websites or to seek a price comparison website. As the services provided by member firms are generally bespoke and based on differing variables, attempting to provide any meaningful information will be almost impossible and therefore we anticipate our member firms will refrain from doing so on the grounds that, as the SRA paper correctly states “providing inaccurate information would be worse than providing none at all”. For example, advising on estate planning including preparation of Wills for an individual who is domiciled overseas and resident in various jurisdictions may involve very lengthy and complex advice on overseas succession and heirship etc. issues.
- 2.6 The CLLS does agree that more information should be provided to those for whom it could be helpful and that consumers and small businesses should be encouraged to seek solicitors’ help for legal work.
- 2.7 However it is important to acknowledge that the provision of precise information at the outset of a matter is a very difficult thing to achieve and seems to be contrary to the spirit of the Solicitors’ (Non-Contentious Business) Remuneration Order 2009 where solicitors must ensure that costs are “fair and reasonable having regard to all the circumstances of the case”. Firms, particularly at a time where the economic climate is uncertain should not be required to invest time and expense to try and provide information which may not be of assistance.

- 2.8 We think that the proposals by the SRA are a case of “too much too soon”. We would recommend that the SRA adopt a more measured and cautious approach to price transparency by:
- (A) Making the disclosure of pricing information voluntary and therefore to remove the requirement to disclose pricing information from the Draft Registers, Roll and Information Regulations; those who compete in a price sensitive market involving the provision of fairly standardised services, so which are available from hundreds of law firms, may find they need to elect to provide pricing information to compete – which is fine; and
 - (B) Providing guidance to firms of types of work where pricing comparison would actually be helpful. This would include commoditised services which can be clearly defined without having to consider too many variables, such as routine and relatively low value conveyancing, straightforward English wills and the administration of relatively low value estates based in England and Wales. The market is likely to self-procure that firms offering these types of services (and who are likely already to be offering fixed prices) will want to set out this information on websites (or risk losing the business).
- 2.9 By adopting a voluntary approach, firms who participate in these sectors may well start to see the advantage of providing clear information and may start providing information on other types of services. It would also mean that firms (such as our member firms) who do not wish to participate in these types of market and who, in any case generally offer services which cross different disciplines on the same matters, are not required to provide information that their clients do not want or need.

3. Publication of PII data

Question 8: Do you agree with our proposals on the publication of PII details?

- 3.1 As indicated in the consultation paper, firms are already required to provide this information under the Provision of Services Regulation 2009 – Part 2, Chapter 1, Regulation 8 (n).
- 3.2 Under these Regulations, where a provider of a service is subject to a requirement to hold any professional liability insurance, information about the insurance and in particular the contact details of the insurer and the territorial coverage of the insurance should be made available. Information is “available” if it is easily accessible to the recipient electronically by means of an address supplied by the provider.
- 3.3 In light of the above it is necessary for the SRA to require firms to publish information when they are already required to do so by law?

4. How to complain to the firm and to the Legal Ombudsman

Question 9: Do you agree with the proposal for firms to publish details of how to complain?

Question 10: Do you agree with our proposal that firms should publish details of how to complain to the Legal ombudsman?

4.1 Again, the Provision of Services Regulation 2009 – Part 2, Chapter 1, Regulation 7 require a provider of a service must make available contact details to which all recipients of the service can send a complaint or request for information about the service. Many firms therefore provide information about their client complaints procedure and details of how to complain to the Legal ombudsman on their websites.

4.2 In light of the above, it is necessary to require firms to publish information when they are already required to do so by law?

5. Creating a digital register

Question 11: What are your views on the proposed content for the digital register?

The CLLS agree with the proposed approach to create a digital register and to hold key regulatory data and regulatory and disciplinary decisions.

6. Publishing complaints data

Question 13: Do you agree with our proposed approach to publishing complaints data and if you do not agree what do you propose?

Question 14: If we do publish first-tier complaints data, what (if any) context should we provide?

6.1 In our January response we noted that whilst we support the SRA collecting information about complaints in order to respond to any thematic or specific risks, our view is that publishing first-tier complaints data, given the number of vexatious complainants prevalent in the private client market, could be misleading to consumers. It may also have the undesirable and unintended consequence of causing personnel to be reluctant to come forward within law firms when they have an issue. Thus rather than improving the position for clients by putting data into the market, it might have the reverse effect of causing issues to be suppressed even from the management of law firms.

6.2 Given the subjective nature of what amounts to a complaint, in the event that the SRA decides to publish complaints data, the CLLS maintain (as set out in their January response) that only complaints that are upheld (and already published) by LeO or the SRA should ever be made public on an SRA register.

6.3 Should the SRA proceed with publishing first-tier data it must ensure that in doing so the information is properly contextualised and balanced; the views of both the law firm and the complainant would need to be represented to avoid consumers only seeing the views of, say, a vexatious complainant. In this respect we would agree that in respect of a single matter only one complaint per client should be counted and that the overall number of complaints or claims should be made by reference to the particular practice area and by reference to the numbers handled in that particular area. This information should above all be presented in a clear and understandable manner which is not misleading.

7. Transparency requirements for solicitors working in non-LSA regulated firms

Question 15: Do you agree with our proposal to require solicitors working in non-LSA regulated firms to inform clients of the absence of the requirement to hold compulsory PII?

Question 16: Do you agree with our proposal to require solicitors working in non-LSA regulated firms to inform clients of the absence of the availability of the Compensation Fund?

7.1 The CLLS agree that solicitors working in non-LSA regulated firms should provide certain information to their clients so that these clients are aware that a number of protections which they would be entitled to when receiving services from a regulated firm do not apply to them.

7.2 In this context it is important that clients are informed not only that these solicitors working in an unregulated environment do not have to carry insurance but they should make it clear whether or not insurance is in fact available.

7.3 Similarly, the CLLS agree that these solicitors should inform their clients that they would not be entitled to recover funds from the Compensation Fund and what that is.

7.4 The SRA should also consider whether further transparency obligations should be imposed on solicitors working in non-regulated firms. For example, should these solicitors also make it clear that privilege will not apply (if the case) to communications with their clients and the possible impact this may have? If so, care should be taken not to impose this requirement on in-house lawyers in respect of communications with their own in-house clients (where privilege should be available).

Yours sincerely

City of London Law Society

Professional Rules & Regulation Committee

The individuals and firms represented on this Committee are as follows:

Jonathan Kembery (Freshfields Bruckhaus Deringer LLP) (Chairman)

Julia Adams (Slaughter and May)

Tracey Butcher (Mayer Brown International LLP)

Roger Butterworth (Bird & Bird LLP)

Raymond Cohen (Linklaters LLP)

Annette Fritze-Shanks (Allen & Overy LLP)

Antoinette Jucker (Pinsent Masons LLP)

Mike Pretty (DLA Piper UK LLP)

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