

Application made by CILEx Regulation for approval of changes to regulatory arrangements to introduce the CILEx Regulation Transparency Rules

A. Introduction

1. This is an application seeking Legal Services Board (LSB) approval for the introduction of the CILEx Regulation Transparency Rules, which will provide consumers with greater information about the legal services our regulated firms offer.
2. Over the last year our Board has adopted a policy of increasing transparency in our activities as a regulator, and we have always believed that we should be setting the agenda for our firms and members on how the legal services market develops.
3. Once the Competition and Markets Authority (CMA) had published its recommendations in its [legal services market study](#), we were therefore keen to engage with other regulators in setting the future strategy for increasing transparency in the legal services market.
4. We believe that the CILEx Regulation Transparency Rules will ensure that consumers have access to the correct information to enable them to make more informed choices about their legal services provider. We believe that they will address the following recommendations:
 - a) ensure that providers disclose price, service, redress and regulatory status;
 - b) support improvement in the quality, utility and prominence of this information on providers' websites;
 - c) publish guidance or introduce regulatory requirements to improve information provided to a consumer when they engage a legal services provider.
5. Whilst these rules will initially be applicable only to the areas of residential conveyancing and probate, we believe they will enable us to commence fulfilling our commitments on implementation as set out in our action plan as assessed by the LSB.

6. The experience we gain from the implementation by our firms and the support and guidance they require, will then inform our approach to extending these rules to further areas of law in 2020.

B. Proposed changes to our regulatory arrangements

7. We did not consider it necessary to change our Code of Conduct (the Code) because Principle 4 of the Code requires our regulated community to comply with their legal and regulatory obligations. This means that we will be able to enforce against the Transparency Rules, should we need to, under Paragraph 4 of the Code.
8. The CILEx Regulation Transparency Rules are attached at **Annex 1**. They will require firms to:
 - publish on their website, or make available on request, price and service information;
 - publish on their website their complaints procedure, including how a complaint may be made to the Legal Ombudsman or CILEx Regulation;
 - publish regulatory information about Professional Indemnity Insurance, access to Compensation arrangements and, on their website, the CILEx Regulation logo relating to the areas in which the firm is authorised to conduct legal services.

C. Rationale for the changes (including timeline)

9. The CMA identified that consumers find it hard to make informed choices about legal services providers because of lack of transparency about price, service and quality. Our objective is that by implementing these rules, consumers should have the necessary information to address these issues.
10. By making these changes in conjunction with the other regulators, this will enable consumers to compare different providers across different regulators and be able to make better informed choices. Whilst clearly these changes are directed at improving the information available to consumers, we have been keen to stress the benefits that this will bring to firms in promoting their businesses and attracting consumers.
11. We believe that it is important for firms to be able to differentiate the benefits to consumers that regulation provides in comparison to those operating in the unregulated sector. Bringing a better focus to provision of this information that consumers value will help address this.
12. CILEx Regulation has been keen to build on opportunities to improve the information that it provides to stakeholders, and also by its firms to the public. This policy has formed its approach to these rules and guidance.

13. In November 2016 we carried out joint research looking at Client Care Letters. This identified key principles around information consumers need and presentation of that information to improve consumers' engagement with the letters. This was carried out with the other legal regulators and the Legal Services Consumer Panel (LSCP) using an external research company.
14. In December 2016 the CMA published its final report on the [legal services market study](#), concluding that the market is not working well for consumers and small businesses and that they find it hard to make informed choices about legal services providers because of lack of transparency about price, service and quality.
15. Following the CMA's final report, to ensure that we accessed a sufficiently large pool and range of opinions and views from the legal sector and consumers, we considered other research conducted by stakeholders. This included the following:

SRA's:

- October 2017 Price transparency in the conveyancing market¹,
- March 2018 Understanding consumers experiences of conveyancing legal services² and
- June 2018 Better information in the legal services market³;

LSCP's:

- Tracker survey briefings, including
 - November 2017 Market transparency in legal services⁴ and
 - March 2017 The development of information Remedies in legal services⁵;

LSB's:

- November 2017 Prices of Individual Consumer Legal Services 2017⁶
- February 2018 The legal needs of Small Businesses 2013-2017⁷
- August 2018 Small Business advice seeking behaviour⁸.

Law Society's

- December 2017 Consumer behaviour research⁹

¹ [Price transparency in the conveyancing market](#)

² [Understanding consumers experiences of conveyancing legal services](#)

³ [Better information in the legal services market](#)

⁴ [Market transparency in legal services](#)

⁵ [The development of information Remedies](#) in legal services

⁶ [Prices of Individual Consumer Legal Services](#) 2017

⁷ [The legal needs of small businesses 2013-2017](#)

⁸ [Small Business advice seeking behaviour](#)

⁹ [Consumer behaviour research](#)

16. All the research concluded that consumers want and utilise the types of transparency information that our proposed rules will require our firms to provide. This was further supported in the “Small business advice seeking behaviour” report which found that greater price transparency could lead to an increase in advice seeking from legal services providers by small businesses.
17. Having been encouraged by a large lender stakeholder to pursue provision of a digital logo for our firms, the research finding in “Better information in the legal services market” that more than two-thirds of consumers observed the digital logo on mock-up websites was encouraging and supportive of our decision to introduce these.
18. We drew on the findings from research, such as “Price transparency in the legal services market,” for direction on what to focus on in our guidance and enabled us to strengthen it.
19. In June 2018 we published our consultation on our proposals. This ran for six weeks, closing in August 2018. We liaised with other regulators and stakeholders prior to this period. Details of the consultation and our response to the key points raised can be found in Section H. The formal response is set out in **Annex 2**
20. In September 2018 our Board reviewed and gave its approval to the submission of the CILEX Regulation Transparency Rules to the LSB.

D. Nature and effect of the proposed changes

21. The CILEX Regulation Transparency Rules are a new addition to our regulatory arrangements and are designed specifically to require firms to publish cost and service information on their websites if they provide specified legal services. If firm does not have a website but still offers these services, then they will need to provide this information upon request.
22. We have decided that initially the specified legal services are to be residential conveyancing and probate. We had originally chosen wills rather than probate but with the SRA and CLC rules covering residential conveyancing and probate, it benefited the consumer in being able to make comparisons across the regulated market if we were consistent with the other regulators.
23. We believed that firms in these two areas would be able to assess simply the activities they carry out and be able to provide a total price as an example on their websites. We also believed that probate (and the related estate administration) is an area where better clarity on the protections that regulated firms offer will benefit the consumer and inform their choice of providers.

24. Section 9 of the Transparency rules sets out the definition of Authorised Entities which will allow us to include ABS in the future. The rules do not apply to any unregulated firms operated by CILEx members either as sole practitioners or through corporate entities.
25. We have engaged with all our Authorised Entities throughout the process, not just those offering the proposed areas of law (including the original choice of wills), so that they had the opportunity to inform our approach to the requirements and how best we can support them with implementation. Our firms have welcomed the benefit of us aligning the chosen areas of law with the other regulators and that we will initially concentrate on reserved activities for which they have gained specific authorisation.
26. We believed it was important that the guidance to our Authorised Entities covers ways that they can differentiate themselves by clearly setting out the benefits to a consumer of dealing with a regulated firm. This will enable a clear differentiation on the consumer protections between regulated and unregulated providers.
27. We have five firms out of thirteen that will initially be required to comply with these rules.
28. We will consider carefully which legal service(s) are next included and will take reference of requests that the most vulnerable clients are given priority when making this choice so that they are able to benefit from the increased transparency that these rules will bring.
29. The rules will provide clear definitions of each area that the rules apply to.
30. The rules are targeted at giving a benefit to individual consumers and small businesses rather than large corporates. We have considered carefully how they are drafted and we have sought to avoid them being prescriptive to firms in how the information required is presented.
31. We did consider in detail the expectations for firms of providing information in a prominent position on their website, especially as this was wording we were aware would be adopted by the other regulators. Our concern was how the use of prominent might be interpreted and potentially enforced in future; prominent on a website does not necessarily mean on the home page or directly off the homepage, even if this might be the intention.
32. We believe that it is not possible or practicable for all the required information within the Transparency Rules to be provided on the home page and that firms needed to be able to set out their websites in a manner that was not prescriptive. However, it is important that consumers have easy access to the information and therefore by adopting the wording that the information needed to be on the

homepage or via a link from the homepage, means that information can be clearly signposted to consumers. For example, we believe a clear simple link to prices from the homepage can then give consumers easy access to more detailed information on a following page.

33. SRA research found that the amount of effort participants had to expend to find price information affected the quality of decision making. Over two thirds made good choices when prices (and similar information) were readily available on the homepage of the website. This informed our approach and influenced our decision on the choice of the wording used within the rules.
34. We also had to consider that consumers access websites from a variety of electronic devices and this can impact on how information is presented. We will be reinforcing these messages with our firms on the benefits of providing this information clearly and accessibly to consumers.
35. The nature of the authorisation provided by CILEx Regulation means that our firms specialise in reserved areas, so the current proposed areas of law can only be carried out by those entities with the required authorisation. This means that firms maintain their specialisms and only tend to provide services for which they are competent.
36. This approach to authorisation will help our firms be clear on when they are required to provide the information required under these rules in Annex 1. By being specialists in areas of law and so selective on the services they offer, even when an area of law in Annex 1 is an unreserved activity, it should be clear that they have a requirement to provide the information.
37. Because our firms are established to provide discrete legal services in or connected to the area of law they are authorised for, then they are focused on the provision of several key services, rather than a broad range. We believe that this approach means that we will see few instances of firms withdrawing from services rather than advertise prices.
38. We will also make it clear that they are not required to provide examples of total prices for all variations of a particular service that they offer, rather to be encouraged to develop clear transparent information for the key services they offer.
39. We will look to ease the burden of firms by providing clear guidance on approaches to meeting these new requirements. This guidance is attached at **Annex 3** for information only as we are not seeking approval for it. We have ensured that this is not a regulatory arrangement by a thorough review of the wording used and we have received positive feedback on our approach and the content provided to firms. Firms need to be aware of the benefits to the consumer of

providing this information and that by being better informed on the services, cost and redress will help them have better relationships with their future clients.

40. Firms will be required to publish price information which will include the total price of the legal service. In addition, they will also need to include, where appropriate;
- The basis on which the total price is calculated, for example, fixed fee or hourly rate.
 - The services that are included in the published total price, and services that might reasonably be expected to be included in the published total price but are not.
 - The price of all disbursements payable, together with an explanation of the disbursement.
 - The prices and disbursements on which VAT must be paid and the amount of VAT payable.
 - If conditional fee or damages-based agreements are available, then the circumstances in which clients may have to make payments themselves (including from any damages) must be explained.
41. We are aware that there has been resistance to the publication of price information and have sought to make these rules as simple as we can. This is to allow firms the flexibility on how they present this key information for consumers and also to enable them to link it more effectively with information on services, quality and experience. This we see as vital in addressing the concerns about publishing this information.
42. We are aware that other regulators have included requirements for firms to publish information on staff mix and qualifications within their rules and we have considered this in detail both pre and post consultation.
43. We believe that there currently is little knowledge or understanding of the CILEx professional titles amongst the public and within legal and government organisations. This is in part because the title of legal executive is not protected and therefore is often used by members of the profession who are not CILEx members.
44. Most of our firms are sole practitioners, or two partner firms and they already provide information about their background and experience, as they realise that this is important in attracting consumers. Our firms often provide links to the CILEx websites so that qualifications can be verified. However, by requiring them to publish details of CILEx qualifications would provide little benefit to all parties.
45. Promotion of the CILEx professional titles remains a key piece of work for the Group both with stakeholders in the legal profession, where solicitor is often the default for a lawyer, and with the wider public

through mediums such as Legal Choices. We concluded therefore that insistence of publication of staff mix and qualifications would cause confusion for consumers. We will keep this under review.

46. We will require firms to publish a description of the legal services they offer which will need to include details of the key stages of the legal service and the typical timescales for each stage. This is important to increase consumers understanding of legal services and what is involved.
47. Firms will be required to publish details on their websites of their free complaints handling procedure including how and when a complaint can be referred to the Legal Ombudsman and to CILEx Regulation.
48. We will require firms to publish on their websites information relating to their regulatory status and to the protections available for consumers.
49. This will include displaying on the firm's letter headed paper, emails and on the home page of its website the wording that it is 'Authorised by CILEx Regulation for....' followed by the area of law in which it has been granted authorisation for and its Authorisation number.
50. They must also display on the home page of its website the CILEx Regulation logo(s) relating to the area(s) in which the firm is authorised to conduct legal services. We have already launched a digital badge which we believe will assist consumers in confirming information about a firm and the protections it offers.
51. We believe that it is important for consumers to understand the protections that are provided if anything goes wrong whilst dealing with a firm. This will help differentiate regulated firms from those that do not offer comparable protections and so encourage consumers to use them.
52. Firms will publish on their website details of those legal services that are covered by the Authorised Entity's Professional Indemnity Insurance.
53. They will also make clear the area(s) of law in which it provides legal services that:
 - it is authorised for,
 - are covered by CILEx Regulation's Compensation Arrangements (Compensation Arrangements) and
 - are not covered by Compensation Arrangements
54. We will be monitoring compliance with these rules and carrying out a review of firm's websites six months after the rules go live.

E. Rationale for changes

55. There were three major strands from the CMA report that we have felt compelled to address through the implementation of the new Transparency Rules. These were:

- The difference in knowledge and understanding of legal services between providers and consumers.
- The lack of transparency was weakening competition between providers
- The lack of transparency on price, quality and service means consumers cannot make an informed choice and obtain legal services when needed.

56. We believe that by requiring firms to provide the information on price, service, complaints and redress, and regulation will help address these issues and mean that consumers have access to better information and so are able to make informed choices.

57. This in turn will drive better competition between providers, including between those in the regulated and unregulated sectors, where the differences between firms will be able to be demonstrated more clearly.

F. Statement in respect of the regulatory objectives

Protecting and promoting the public interest

58. The CMA identified an imbalance between the public and providers of legal services. These rules will help address that and ensure they are able to make better, informed choices.

Supporting the constitutional principle of the rule of law

59. This objective is neutral.

Improving access to justice

60. Better price transparency will hopefully address the issue that legal services are seen as unaffordable by both adults and small businesses. The rules will also mean firms will be demonstrating the additional benefits and protections that these services, and the firm, can provide to the consumer.

Protecting and promoting the interests of consumers

61. This objective will clearly be met by the adoption of these rules. The CMA study demonstrated that the legal services market is not working well for consumers and our rules will mean that they have better information with which to make informed choices. Our guidance to

firms has set out how they can present this information in a positive way to consumers.

Promoting competition in the provision of legal services

62. By clearly stating price, services and quality on a website, this will enable consumers to more easily access information at a time to suit them. This will help consumers to access a wider choice of providers than they do now. This in term should help increase competition in provision of legal services.

Encouraging an independent, strong, diverse and effective legal profession

63. With the support and guidance that we provide, we do not see that the overall diversity of the profession should be impacted. CILEx has a highly diverse membership and we will continue to provide a positive message as to the benefits to both the consumer and the firm of the provision of this type of information.
64. This support and guidance will be important as the scope of these rules are expanded to other areas of law with higher BAME representations.
65. We believe that CILEx members and CILEx practitioners will see the benefits of communicating their experience and specialism to consumers, which has always been a key part of the CILEx route. This will demonstrate the importance of having experienced, qualified professionals carrying out the work for consumers.

Increasing public understanding of the citizen's legal rights and duties

66. The rules will ensure clients are better informed about their rights to exercise complaint and seek redress. If comparison websites start to emerge then we would expect that that rights and duties will form part of the information provided to the public and so their understanding will increase.

Promoting and maintaining adherence to the professional principles

67. We believe the rules are neutral on this objective, but we will be monitoring how greater competition impacts on professional principles.

G. Statement in respect of the better regulation principles

Proportionality

68. The research that has underpinned the conclusions reached by the CMA identified key issues that affect the way that consumers are able

to access legal services. Given that there needed to be a fundamental change to the way that information was presented by consumers, then we believe that the adoption of additional rules is a proportionate response.

69. We did consider whether this should be rolled out to all areas of law at the outset but considered it to be more proportionate initially to implement them across areas of law common to those provided by firms of other regulators.

70. Finally, we have tried to avoid any unintentional consequences on firms to their pricing or charging models.

Accountability

71. We have taken on board the thoughts of the various stakeholders involved in this work and ensured that we have met our obligations as set out in our action plans.

72. These rules will mean that our firms are more accountable for their charging of consumers and how that is communicated.

Consistency

73. We do not believe that there are any reasons for these rules not applying to all firms that we regulate, and the only exceptions will be temporary based upon the role out of the areas of law as set out in Annex A of the rules.

Transparency

74. We have been transparent throughout the process on the reasons for these changes being proposed and the benefits that we believe will be available to both consumers and firms from the provision of more information on firm's websites.

Targeted

75. The rules have been targeted to address the issues raised by the CMA in their study, whilst giving the firms the widest possible scope on how they meet these requirements.

76. We changed our choice of initial areas of law to be in line with the other regulators as this meant that consumers would be able to make comparison across the widest choice of providers.

H. Consultation and Stakeholder engagement

77. As well as engaging directly with stakeholders, including consumers and our entities to understand their experience and help inform our

proposals, we issued a consultation on the draft rules and our proposed guidance.

78. To raise awareness of the consultation we published a press release on:

- our website and our social media, reaching over 9,000 people;
- Legal Futures, circulated via their social media;
- our public relations contacts and our consultees list;
- Regulation Matters; and
- the CILEx Member Newsletter.

79. We received 125 responses to the online survey and the large majority were positive about the interpretation and implementation of the rules, including comments that they are simple and straightforward, and the guidelines are clear.

80. We did receive concerns about the impact that these rules would have on firms, particularly around the provision of price information, and have considered these in reaching our final proposal.

81. The concerns made related to opposition to the actual requirement to provide price information, rather than to issues relating to interpretation or implementation of the rules. This was evidenced by such comments relating to:

- commercial sensitivity;
- generating more complaints on price;
- race to the bottom; and
- one price does not fit all.

82. With recent research in the small business sector highlighting the importance of price transparency in driving advice seeking, we believe that requiring the total price to be quoted is vitally important in ensuring that consumers engage further with legal services. To that end we have linked price and service in our guidance, so that firms can demonstrate the value (such as experience, knowledge, accessibility, protection) that a consumer gets for the price they pay.

83. A concern was raised as we have adopted a slightly different definition to the SRA and CLC requiring 'the total price of the legal service', rather than 'the total cost of the service or, where not practicable, the average cost or range of costs'. It was queried whether this allows a firm to charge unforeseen costs.

84. We believe that whether quoting a range or average, these are still required to be the total cost, and therefore we are maintaining the flexibility for firms to present the information as best suits them.

85. While drafting the rules we considered the wording relating to price at length. The CMA require a total price of the legal service to be provided

and we opted for the proposed wording of the rule for clarity and future enforcement purposes. We believe that this allows firms to be flexible in the way that they provide information, whilst providing the total cost that the CMA require. Firms will still be able to explain variations to a quoted price on the website, which is meant to be an indication to consumers of the likely price they will pay.

86. Concerns on service information related to the principal of providing the information rather than interpretation or implementation of the rules and comments included, “one size does not fit all” and issues with provision of timescales. We believe again that this information is key in helping consumers become better informed about legal services, their timescales and what is involved in concluding a problem.
87. Some respondents felt that publicising information on how to make a complaint would encourage an increase in unfounded complaints which would then cause the firm to divert scarce resources to resolving them. Firms already have an obligation to provide information about how and when a complaint can be escalated to the Legal Ombudsman and providing this information will help consumers understand their rights to complain. This information should be provided throughout the time a client is with a firm, and with evidence that consumers struggle to recollect it having been provided, then providing this information on a firm’s website will make it easier for consumers to access it, if something goes wrong. We also believe an open approach to complaints should demonstrate a firm that will actively engage with consumers.
88. Some respondents objected to the basic principle of providing regulatory information and questioned the value to the client. We will be reinforcing this established principal for our firms.
89. We believe that as this level and type of information becomes more commonplace on firms’ websites, consumers will become more aware of the protections that firms make available. We have already launched our digital badge and will continue to develop our communications strategy around the benefits that transparency can provide to firms as well as the consumer.

I. Statement in relation to the impact upon other approved regulators

90. The CMA recommendations encompassed all the frontline legal services regulators and, whilst we currently have a small number of firms, we were keen to take an active role in shaping the approach of the legal sector to addressing these issues. We have been active in the collaboration between regulators through the Remedies programme implementation group (RPIG). This has been at both executive and manager/officer level.

91. We have actively sought to engage with other regulators both to ensure that we meet the obligations that the CMA and LSB expect and to enable a consistent approach to the areas of law that are covered by the rules at the outset. By working with the Solicitors Regulation Authority and the Council of Licensed Conveyancers, we have been able to ensure that at the outset consumers benefit from being able to compare firms across the three regulators for residential conveyancing and probate. We have shared our approach to rules and guidance with the SRA and CLC, developing our own templates, looking to make sure that the benefits to consumers and firms are fully realised.

92. We have also engaged with the Office of the Immigration Services Commissioner to start considering our approach to other areas of law especially those that may have a particular impact around vulnerable people.

J. Timetable for implementation

93. We are current planning to bring the new CILEx Regulation Transparency Rules in to force at the beginning of January 2019. As our firms have been engaged throughout the process, we believe that this will provide them with time to prepare whilst ensuring we meet our commitments to the CMA on implementation.

94. The digital badge has already been made available to firms to use and we will be expecting this to be fully adopted by our firms at the beginning of January 2019.

95. We will continue to refine the attached guidance which we believe will help firms to both understand the benefits of providing the required information to consumers and help them to comply with the new rules. This includes templates which will help them with the presentation of information. We have ensured that the guidance does not become a new regulatory arrangement.

K. Contact details

96. The contact details for this application are as follows:

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L. Annexes to the application

97. The following are annexed to this application:

- Annex 1 – CILEx Regulation Transparency Rules

- Annex 2 – Consultation response
- Annex 3 – Guidance (for information)