



Law Society
of Scotland

Price transparency – promoting consumer choice, a consultation by the Law Society of Scotland



May 2018

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1. Introduction from Carole Ford, Regulatory Committee Convener



As the professional body for Scottish solicitors, the Law Society of Scotland has an important duty toward the public interest. As a statutory regulator, we must protect and promote the interests of consumers, access to justice and competition in the provision of legal services.¹

We take these duties extremely seriously and have reflected them in our five-year strategy, *Leading legal excellence*.² A critical part of our strategy is our promise to ASSURE our members' clients by setting and upholding standards that ensure they receive excellent legal and customer service.

Towards achieving our promise, in our annual corporate plan (2017 – 2018), we gave a commitment to:

*'...respond to the issues identified by the Competition & Markets Authority around price transparency and consumer choice in its recent review of the legal services market, through research into international practice in this area; a consultation with our members and stakeholders and developing specific proposals for consideration by our Regulatory Committee.'*³

This consultation, which reflects our annual plan commitment, seeks the views of our members and interested stakeholders. The consultation provides an overview of price transparency; the background, including the Competition & Markets Authority (CMA) study into the supply of legal services; the benefits and potential challenges price transparency brings; and the approach taken in other jurisdictions, in particular, England and Wales.

It is important to note that neither the Law Society Council nor the Regulatory Committee has reached a firm view on price transparency and whether or not any

¹ The regulatory objectives relating to the Law Society are set out in Part 1 of the Legal Services (Scotland) Act 2010

² Leading Legal Excellence Our Strategy 2015 – 2020: <https://www.lawscot.org.uk/about-us/strategy-reports-plans/strategy/>

³ See our Annual Plan 2017-2018: <https://www.lawscot.org.uk/about-us/strategy-reports-plans/annual-plan/>



specific requirements should be introduced. We have published this consultation to stimulate discussion, so that we may consider the views of our membership, the legal profession and all stakeholders in detail, to inform any future consideration and work we may do before any decision is taken.

Carole Ford

A handwritten signature in black ink that reads "Carole Ford".

Regulatory Committee Convener
Law Society of Scotland

2. Background

Price transparency is a recognised and acknowledged factor which influences consumer behaviour and choice in all sectors from retail to banking. It allows the consumer to access provider-specific price information in a meaningful way so as to compare across providers on a like-for-like basis.

Research which we commissioned through Ipsos MORI suggests that 22% of consumers consider price to be an important factor when choosing a Scottish solicitor.⁴ It promotes consumer confidence and choice in addition to being a driving factor towards competition within the marketplace.

It is also recognised that a lack of price information can result in a constraint on competition. Consumers can be disadvantaged in the legal services market by an imbalance of available information. As a result, many potential clients will place more reliance on recommendations from family, friends and peers or on previous experience in order to choose a legal services provider.⁵

To date, the approach by the legal profession has been mixed, with a small number of firms taking the initiative to publish prices for some of those legal services that could be considered as commoditised, eg conveyancing.

Our practice rules,⁶ which we discuss further in section 5, require that solicitors provide certain information to clients in writing at the earliest practicable opportunity upon receiving instructions or when tendering for business. Rule B4 requires that this information includes an estimate of the total fee or the basis upon which the fee will be charged, including VAT and foreseeable outlays. However, there is no requirement for solicitors or firms to publish pricing information proactively and in advance of any client requests.

⁴ Law Society of Scotland research conducted 2014. Results are based on a survey of 1,001 adult respondents conducted by telephone

⁵ CMA Study on the supply of legal services 2017 page 9

⁶ Law Society of Scotland Practice Rules 2011 Rule B4

3. CMA market study on the supply of legal services

In January 2016, and in response to concerns regarding competition, the CMA launched its market study into the supply of legal services in England and Wales. During the life of the study, the CMA looked at a range of different legal services, which included conveyancing, lasting powers of attorney, estate planning – including wills and probate – immigration, family and employment law. The CMA published its final report in December 2016.⁷

As part of the market study, the CMA looked at the barriers to consumers making an informed choice when choosing a legal service provider and the impact this may have on competition.

The focus of the CMA's market study was to: *'...consider the extent to which a matter in relation to the supply of those [legal] services has or may have effects adverse to the interests of consumers, and to assess the extent to which steps can and should be taken to remedy, mitigate or prevent any such adverse effects.'*⁸

Although the CMA considered a failure to provide information on a number of levels (ie level of service, quality, redress and regulatory status), one barrier which took significant focus was price transparency. As part of the study, the CMA asked legal service providers to provide a cost for a standard scenario. The price information provided to the CMA demonstrated a significant difference in prices charged for the same service based on the same case information.

The CMA expressed the view that consumers should be able to access key information on price, in a way that it is meaningful and prominent so as to be able to consider this and take it into account in order to make an informed purchasing decision. It was further recognised that not all legal service providers have a website presence. The CMA's view is that, where this is the case, the legal service provider will be expected to provide price information via social medial or upon request by email.

⁷ CMA Legal Services Market Study Final Report December 2017
<https://assets.publishing.service.gov.uk/media/5887374d40f0b6593700001a/legal-services-market-study-final-report.pdf>
[accessed 30 Jan 2018]

⁸ https://assets.publishing.service.gov.uk/media/569627cfe5274a117500000d/Market_study_notice_legal_services.pdf

The CMA concluded that: *'...we find that the first significant hurdle for consumers is that providers generally do not make their price information accessible, for example by displaying it on their websites. In fact, a study for the Legal Services Board LSB reported that only around 17% of providers [England and Wales] make their prices available on their website. Further, when price information is provided it may be set out in a way that is not easy to understand or compare...this lack of transparency weakens competition between providers and means that some consumers do not obtain legal advice when they would benefit from it. Increasing transparency of price, service and quality is therefore essential for consumers to get a better deal.'*⁹

The CMA expressed the view that the lack of price information is restricting competition and that within the legal services market competition is not working well. Therefore, there is a pressing need within the sector to make information more readily available to consumers. The CMA believes that this can only be addressed through an *'enhanced regulatory baseline'*¹⁰ by regulators requiring those that they regulate to publish price information. This is seen by the CMA as the only option to change supplier behaviour.

The report set out a number of recommendations which are designed specifically to improve transparency from legal firms on price, quality and service. It was recognised that it is important that clients have a full picture of costs and disbursements before instructing their solicitor. The recommendations are targeted at providers and regulators of legal services so as to help customers better navigate the legal services market and get value for money at the same time as promoting competition.

Since publication of its final report, the CMA has been engaging with the Legal Services Board and the eight frontline legal regulators in England and Wales to take the recommendations forward. Whilst the CMA investigation and subsequent report specifically covered the legal services market in England and Wales, the CMA has actively engaged the Law Society and other stakeholders about its conclusions, which it believes have relevance to the Scottish market.

⁹ CMA Legal Services Market Study Final Report Para 3.131

¹⁰ Ibid page 227

In Scotland, the Scottish Legal Complaints Commission (SLCC) consumer panel recently published its eight consumer principles, which it describes as a tool for legal professionals and regulators.¹¹ The principles are targeted at developing and promoting consumer trust and choice in the legal services sector. Within those principles, the SLCC consumer panel recognises that giving customers meaningful choice encourages competition and drives up standards. For the consumer to exercise an empowered choice requires that they are in possession of reliable information on which to base that choice, this includes comparative price information.

To better inform the Law Society of Scotland's thinking and policy development in this area, we would appreciate feedback on the following questions:

Question 1: Do you agree or disagree with the principles of price transparency?

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

Question 3: To what extent do you publish prices on your website?

¹¹ <https://www.scottishlegalcomplaints.org.uk/media/75783/consumer-principles-stakeholder-brochure-final.pdf>
accessed 7 March 2018

4. Pricing models

Solicitors generally charge costs on a case-by-case basis to reflect the unique circumstances of each legal matter. The fee is often bespoke to the client and how matters progress will often lead to fee variation. Generally, the cost is based on an hourly-fee basis, plus disbursements and VAT.

There are a number of other pricing models also used in the legal services sector, beyond hourly fees, although these are not necessarily published by the legal service provider. These have been acknowledged as pricing models which could all be used to support price transparency. The CMA has therefore suggested that price models could take any one of a number of forms or could be a combination. The view expressed is that the nature of the pricing model adopted is not necessarily as important as ensuring that price information is conveyed in a meaningful way so as to inform the consumer and enable a comparison to be made. In its final report, the CMA said: *'Price information should ultimately provide consumers with (i) an understanding of the total price of their legal service and (ii) what services are included in that price.'*¹²

The CMA also suggests that firms could be free to choose the pricing model(s) best suited to their business structure and to reflect the practice areas undertaken. The CMA view is that *'...given the number of pricing/charging models used in delivering different types of legal services, a "one size fits all" approach would not work in every instance and is neither a realistic nor desirable goal...'*¹³ There are four suggested pricing models: fixed fees, hourly fees, the use of scenarios, and unbundled services. These are further detailed below.

1. Fixed fees

Research quoted by the CMA and carried out by the Solicitors Regulation Authority (SRA) and Legal Services Board suggests that fixed fees are becoming more prevalent than hourly rates in some areas of law, such as will writing, conveyancing, power of attorney and immigration work¹⁴ and for other practice areas which involve less complex legal work.

¹² CMA Legal Services Market Study Final Report para 3.69

¹³ Ibid para 7.47

¹⁴ CMA Legal Services Market Study Final Report para 3.90

For example, the CMA found that 92% of consumers were offered a fixed fee for the preparation of a will.¹⁵ Although it is acknowledged that this relates to England and Wales and may not necessarily be reflective of the legal services market in Scotland, we are aware that some Scottish solicitors do offer fixed fees for conveyancing transactions and some offer fixed fees for family matters, such as uncontested divorce. Where a fixed price model is adopted, it would be necessary to state what is included and what is excluded and in what circumstances the fixed price may be exceeded, for example, additional factors which are identified during the case.

One of the difficulties identified with fixed fees in the legal sector is that the services offered cannot easily be commoditised, a factor recognised by the CMA and discussed further below. Similarly, while in certain circumstances adopting a fixed-fee model might be appropriate from the perspective of both provider and consumer, this will clearly not always be the case.¹⁶

2. Hourly rates

This is the recognised and traditional method of pricing. It is suggested that where hourly-fee rates are to be advertised, then these should reflect the grades and level of all those who may undertake work on the legal matter.

3. Scenario-based pricing

Where hourly rates are used, it may prove problematic to provide consumers with any meaningful information on the overall likely cost of their legal matter. It has been suggested that this could be addressed by providing scenario-based pricing, which itself will reflect the hourly fee to be charged. The use of scenarios could also address the impracticability of fixed pricing for legal services where the factors of the case do not allow for this. This would provide an indication of the overall fee. There are a small number of firms in Scotland that already provide some degree of scenario pricing, in particular, around the area of family law.

¹⁵ Ibid para 3.91

¹⁶ Ibid para 7.47

4. Unbundling of legal work

This involves providing an indicative and typical scale of costs for each stage of a case. This may be helpful where the matter is more complex and costs can vary. Where services are unbundled, separate elements may be offered under both fixed-fee and hourly-based charging models.

Disbursements

In addition to the pricing model adopted, the CMA suggests that the scale of prices attached to disbursements should be clearly provided. For example, searches, registration fees, third-party fees, court fees etc.

Commoditisation

One of the biggest challenges to price transparency, and which relates in particular to fixed pricing, is the commoditisation of a legal service. The complexity of legal matters and the variants that may materialise during the legal matter can make it difficult to determine with any kind of meaningful accuracy how much work will be involved. This is particularly the case with litigation-related matters.

However, there are some areas of legal practice where providers can more easily foresee how much work a particular matter is likely to involve because they have repeated experience of delivering the service and have the ability to foresee complications and therefore control costs. Such practice areas include: conveyancing, will drafting, probate and estate administration, debt recovery, and uncontested family matters.

Question 4: To what extent are pricing models changing within the legal services market?

Question 5: What factors are driving this change?

Question 6: Do any such changes make price transparency more or less viable?

Question 7: Which legal services do you believe lend themselves to proactive price transparency?

5. Current Law Society of Scotland requirements on price publication

There are currently no requirements placed on Scottish solicitors under the Law Society of Scotland Practice Rules 2011 to compel the publication of prices prior to engagement by the client. However, we are aware that some solicitors in Scotland actively promote information about their services, including prices, through online platforms, developing their websites and using social media to provide as much information as possible to consumers.

In addition to the (Rule B4) requirement to provide an estimate of costs within the engagement letter, the Practice Rules 2011 allow solicitors, subject to certain restrictions directed at protecting the public, to: ‘...*advertise and promote your services in any way you think fit...*’¹⁷ We believe that this helps to promote competition within the sector.

To accompany the practice rules, our guidance provides that where fees for services are advertised:

*‘...either by you or a third party and whether or not you are named in such an advertisement the advertisement must include mention of outlays and VAT with no less prominence than the fees. Where “legal fees” or similar expressions are used, the fees quoted should be the fees to be charged by you and the figure quoted should not conceal a commission or referral fee to be paid to a third party. Any such commission or referral fee should be shown separately...Failure to mention outlays and VAT with no less prominence than the fees may be regarded as misleading and inaccurate and therefore in breach of Rule B3.5. In terms of Rule A4, such a breach may be treated as professional misconduct.’*¹⁸

Although the current requirements may help consumers to understand the cost to them of the legal work, it could be suggested that it does not help consumers to compare the

¹⁷ Law Society of Scotland Practice Rules 2011 B3 3.1
<http://www.lawscot.org.uk/rules-and-guidance/section-b/rule-b3-advertising-and-promotion/rules/b3-advertising-and-promotion/>

¹⁸ Law Society of Scotland Practice Rules 2011 Guidance B3 Advertising Fees



costs across a number of providers before making the informed choice of what firm to engage.

6. Benefits and challenges of price transparency

Benefits

There are a number of recognised benefits that would come with price transparency.

Manage consumer expectations about costs

Providing price information could contribute to managing clients' expectations, helping them to budget and avoiding any stress related to cost escalation. Research suggests that 6% of clients were dissatisfied with the service provided by their solicitors on the basis that charges were not explained and 13% were dissatisfied on the basis that the charges were excessive.¹⁹

Reduced number of complaints relating to costs

Clear and transparent pricing models may significantly reduce the number of complaints made each year relating to excessive fees.

Promotes competition

It is widely recognised that providing price information facilitates consumer choice, which increases competition. It also allows legal service providers to compare their prices with others in the sector. Firms can define the value they add specifically, and quantify it in terms of prices more precisely, because they know where they stand price-wise versus others in the sector.

Easier for consumers to compare providers, potentially saving on costs

Fixed fees and price transparency could facilitate comparisons with other legal service providers. It can allow the consumer to compare on a like-for-like basis. Research also suggests that consumers of legal services can save between 17% and 400% of average weekly income (£80 – £2,000)²⁰ by shopping around.

Promotes access to justice

The lack of price transparency can act as a barrier to access legal services. UK-wide research suggests that 63% of consumers and 83% of small businesses consider that

¹⁹ Law Society of Scotland research conducted 2014. Results are based on a survey of 1,001 adult respondents conducted by telephone

²⁰ LSB Research Summary Prices of Consumer legal services November 2017

<https://research.legalservicesboard.org.uk/wp-content/media/Prices-of-Individual-Consumer-Legal-Services-2017-FINAL-MAIN-1.pdf>

legal services are unaffordable.²¹ Unaffordability, or the perception of it, within the legal sector can raise a barrier to accessing justice. In Scotland, only 15% of those surveyed agreed that the justice and legal system is fair and transparent.²² Price transparency could encourage consumers to seek legal advice by removing the perception of unaffordability.

Increased business and sector growth

Price transparency can be used as a marketing tool to increase client base. Legal service providers will have a more solid basis for defining and quantifying what makes them more attractive and trusted, and what differentiates what they offer (ie levels of quality and service) from competitors within the same sector of legal services.

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

Challenges

In contrast to the moderately large number of benefits that may materialise as a result of price transparency, a small number of challenges may also arise.

Price baiting

There have been suggestions that price transparency within the legal services market may lead to price baiting. Price baiting refers to the practice and advertising strategy used to attract consumers by advertising goods or services at a low price to entice business, which in reality will not be available. Research by the SRA suggests that 59%²³ of (England and Wales) firms are concerned that price transparency will result in some firms using artificially low prices to encourage clients through the door before then increasing the costs applied.

Price colluding (price fixing)

There are some concerns that firms may collude on prices to keep the price of services at an elevated level to restrict the market and make it more difficult for the client to

²¹ Hodge Jones and Allen; UK Perceptions of the legal and Justice System: Innovation in law report 2015 https://www.hja.net/wp-content/uploads/HJA_UNJUST_KINGDOM.pdf accessed 27 February 2018

²² Ibid page 8

²³ SRA: Price Transparency in the Legal Services Market October 2017 – Firm Perspective para 92 <https://www.sra.org.uk/sra/how-we-work/reports/price-transparency-legal-services-market.page>

compare and shop around. This may be illegal and considered as anti-competitive. The CMA has indicated that where this is alleged, it will investigate and prosecute if there is clear evidence of collusion. In the view of the CMA, the risk of price collusion within the legal sector is low given the fragmented nature of the profession.

Complexity of legal work

This may be considered as the biggest challenge, and is one which was discussed earlier in this consultation. Views have been expressed that the nature of legal services makes it very difficult for a 'fixed' fee to be advised. Clients may underestimate the work that their particular case may require and the matter may be more complex than originally envisaged.

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

7. The wider context – looking at other jurisdictions

In England and Wales, the SRA published its consultation in September 2017 (*Looking to the future: better information, more choice*). This was a response to the CMA market study.²⁴ Currently, solicitors in England and Wales are under a duty to provide price information at the point of engagement only. Recent research commissioned by the Legal Services Consumer Panel demonstrated that only 6% of consumers found price information on legal service provider websites.²⁵ The SRA set out a number of proposals, including the suggestion that firms should publish prices for services with the aim of helping consumers and small business to make informed choices. The SRA has committed to produce guidance and resources to help and support firms with price transparency.

The SRA recognised that early access to price information can help consumers in their purchasing decisions and in better understanding the services on offer.

‘Price and service transparency means providing information at the right time to enable clients to make informed decisions about the nature of the legal service they require. Helping clients to make informed choices about legal services that best meet their needs is a key priority for solicitors.’

The SRA proposal is that prices – which must include disbursements and VAT – will be published on firms’ websites and those without a website will be required to provide price information upon request, without the need for a client consultation. Initially, the requirements to publish price will only apply to a small number of practice areas, such as wills, family matters, motoring offences, employment tribunals and residential conveyancing. These areas have been selected for a number of reasons. For example, these, compared to other legal services, can be commoditised; therefore, it will be easier to provide price information. These are also the most common areas amongst consumers and small businesses. The SRA has chosen to start off with a small number of legal services areas to allow evaluation and address any issues or concerns encountered by firms. For those firms which are multi-national practices

²⁴ SRA Consultation Looking to the future: better information, more choice – September 2017 <https://www.sra.org.uk/sra/consultations/ltf-better-information-consultation.page#download> [accessed 26 April 2018]

²⁵ <http://www.legalservicesconsumerpanel.org.uk/news/documents/LSCP%20Press%20release%20Tracker%202017%20-%20Transparency-Wales%20Final.pdf> [accessed March 3 2018]

(MNPs), the requirements will apply to their UK-wide website. The SRA has committed to the introduction of price transparency, although the consultation seeks views on the nature of the services to be covered. The SRA is due to publish the consultation report in spring 2018.

The Chartered Institute of Legal Executives (CILEx), which is also an authorised regulator of legal services in England and Wales, has recently stated its intention to address CMA concerns and to develop transparency rules by early 2019. It plans to support these rules with transparency guidance for regulated firms.²⁶

Anticipating the move towards price transparency, the Law Society (England and Wales) recently published a 'price and transparency toolkit'.²⁷ The purpose of the toolkit is to provide guidance to the profession in considering the best way to deliver information on price and services.

In Ireland, there are no regulations that compel a solicitor to advertise price structures for the legal services they provide; however, they are permitted to do so subject to certain restrictions that operate in the interest of public policy.

Under the Solicitors Acts, 1954 to 2002 Solicitors (Advertising) Regulations, 2002,²⁸ a solicitor regulated by the Law Society of Ireland is permitted to publish the particulars of any charge or fee for the provision of any specified legal service.²⁹ The regulations also provide that solicitors are not permitted to advertise words or phrases such as 'no win no fee', 'free first consultation', 'most cases settled out of court', 'insurance cover arranged to cover legal costs' or other words or phrases of a similar nature which could be construed as meaning that legal services involving contentious business would be provided by the solicitor at no cost or reduced cost to the client.³⁰

²⁶ Consultation: on information we propose to require our regulated firms to publish to deliver transparency information for consumers in the legal services market September 2017

https://www.cilexregulation.org.uk/~media/pdf_documents/cilex-regulation/consultations/closed-consultations/cmaconsultation.pdf?la=en

²⁷ The Law Society Price and service transparency toolkit

<http://www.lawsociety.org.uk/support-services/advice/articles/price-and-service-transparency-toolkit/> accessed 27 February 2018

²⁸ <http://www.irishstatutebook.ie/eli/2002/si/518/made/en/print> accessed 9 May 2018

²⁹ *Ibid* regulation 4(b)(iv)

³⁰ *Ibid* 9(a)(i)

Where an advertisement refers to personal injury legal services or any subcategory, such as medical negligence, the advertisement must bear the disclaimer ‘in contentious business, a solicitor may not calculate fees or other charges as a percentage or proportion of any award or settlement’.³¹

Our research further afield suggests that no jurisdiction expressly requires the legal sector to publish costs. In Canada, for example, the Federation of Law Societies of Canada places no requirement on its members to publish prices, but where prices are advertised they must be ‘reasonably precise’ and set out what other disbursements may be incurred.³² Separately, a number of other provincial law societies in Canada, although placing no duty on members to publish their fees, do encourage potential clients to shop around, for example, the Law Society of Alberta.³³

Similarly, the State Bar of California³⁴ has no mandatory requirements that fees be advertised, but does provide that where fees are advertised the legal service provider must conform to that fee for a period of one year after the fee is advertised. In Australia, there are no mandatory requirements relating to publication of fees, although the Law Society of Western Australia produces a costs toolkit for its members when dealing with family-related matters.³⁵ The New Zealand Law Society publishes ‘charge-out rates’³⁶ as a guide to its members, based on professional qualified experience (PQE), which can act as a guide as to what members should be charging. These can be accessed by members of the public, which may allow prospective clients to ascertain a costing and to query any charges above this rate.

Within the EU member states, the majority of professional bodies allow their members to advertise fees, with certain restrictions which mirror those contained in the Law Society of Scotland Practice Rules 2011. In Slovenia, the legal profession is bound by any fee advertised, but again there are no mandatory requirements to publish fees. In Greece, the legal profession is permitted to advertise fees but expressly prohibited

³¹ Ibid 8(a) and (b)

³² Model Code of Professional Conduct 4.2 <https://flsc.ca/wp-content/uploads/2014/12/conduct1.pdf> accessed 8 May 2018

³³ <https://www.lawsociety.ab.ca/resource-centre/public-resources/working-with-a-lawyer/understanding-fees/> accessed 8 May 2018

³⁴ <http://www.calbar.ca.gov/Attorneys/Conduct-Discipline/Rules/Rules-of-Professional-Conduct/Current-Rules/Rule-1-400> accessed 8 May 2018

³⁵ <http://lswa-web.apsolutions.net/page.php?id=218> accessed 8 May 2018

³⁶ <http://www.lawsociety.org.nz/practice-resources/the-business-of-law/human-resources-and-remuneration/charge-out-rates-for-employed-solicitors,-june-2016> accessed 29 March 2018

from comparing these with other legal services providers³⁷ and any breach of these rules results in a significant financial penalty.³⁸

In Belgium, the position is set out in the Code de Droit Economique,³⁹ which applies to all professional occupations, including the legal profession. This provides that the consumer must be provided with certain information prior to entering a contract, such as the total price of goods or services, including disbursements and tax. Any failure on the part of the lawyer to follow the code may result in disciplinary procedure against the lawyer.

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

³⁷ Lawyers' Code (Act 4194/2013)

³⁸ any violation of the provisions of this article also constitutes a disciplinary offense, punishable by a fine of between 1,000€ and 10,000€ for each offense

³⁹[http://www.ejustice.just.fgov.be/cgi_loi/loi_a1.pl?language=fr&la=F&cn=2013022819&table_name=loi&&caller=list&F&fromtab=loi&tri=dd+AS+RANK&rech=1&numero=1&sql=\(text+contains+\(""\)\)#Art.XIV.2](http://www.ejustice.just.fgov.be/cgi_loi/loi_a1.pl?language=fr&la=F&cn=2013022819&table_name=loi&&caller=list&F&fromtab=loi&tri=dd+AS+RANK&rech=1&numero=1&sql=(text+contains+() accessed 8 May 2018

8. How could price transparency be introduced?

At this stage, we are consulting with members and stakeholders to collate views and comments on price transparency so as to inform further consideration and work. We have not considered in any detail if and how transparency within the Scottish solicitors' profession could or would be introduced.

It is possible that, if price transparency were to be taken forward, it could be introduced by an amendment to the Law Society of Scotland Practice Rules 2011, which would require approval by our Regulatory Committee and the consent of the Lord President.⁴⁰ We are not proposing any specific changes to rules or guidance at this stage.

Requiring members to publish prices via rule changes is the process proposed by CILEx. The rules approach is also one which the SRA is proposing to adopt. The draft SRA rule, which is subject to member consultation, states:

'6.1 An authorised body must publish on its website in a way that is accessible:

- (a) accurate and up to date details of the type of services offered by it and the cost of those services, in the circumstances, manner and form as may be prescribed.*

If an authorised body does not have a website it must make the information set out in 6.1 available on request.⁴¹

However, the Intellectual Property Regulation Board, which is authorised as a regulator by the Legal Services Board to regulate patent attorneys and trade mark attorneys, proposes to introduce price transparency through guidance. This is subject to consultation with its members.

As part of the work in considering price transparency, we will also need to consider how we ensure compliance with any price transparency requirement which may be set out in the Law Society of Scotland practice rules, how this will be monitored, at what level, and what and how sanctions could be applied. At this stage, we have not considered how we could monitor and ensure compliance.

⁴⁰ Required under section 34 Solicitors (Scotland) Act 1980

⁴¹ See Annex 4 Draft Register, Roll and Information Regulations

<https://www.sra.org.uk/sra/consultations/ltf-better-information-consultation.page#download>

Currently, we do not actively monitor for a breach of the practice rules, with the exception of those relating to client accounts. Breaches of the practice rules are generally identified as a result of a complaint made to the SLCC or as a result of annual account inspections.

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

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

9. Telling us what you think

As mentioned in the introduction, neither the Law Society Council nor the Regulatory Committee has reached a firm view on price transparency and whether or not any move to a requirement to publish pricing is right for the Scottish solicitor profession.

At the moment, we are consulting to seek views only on the principle of price transparency. It would be helpful, therefore, if you could please direct any response and comments to answering the questions. A summary of the questions can be found in section 10.

So that we may gauge the views of respondents accurately, please confirm in your response if you are responding as an individual, on behalf of a firm or organisation or as a stakeholder. Please also tell us the name of the firm, organisation or stakeholder on whose behalf you are responding.

This is a 12-week consultation. The deadline for response submission is 11.59pm on Monday 13 August 2018.

You may view the consultation and complete your response electronically at:

www.lawscot.org.uk/pricetransparency

You may email your response to: consultation@lawscot.org.uk

Alternatively, you may submit your response in writing to:

Brian Simpson
Law Society of Scotland
Atria One
144 Morrison Street
Edinburgh
EH3 8EX

If you have any questions relating to this consultation, please contact Brian Simpson:
briansimpson@lawscot.org.uk

10. Summary of questions

1. Do you agree or disagree 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?
3. To what extent do you publish prices on your website?
4. To what extent are pricing models changing within the legal services market?
5. What factors are driving this change?
6. Do any such changes make price transparency more or less viable?
7. Which legal services do you believe lend themselves to proactive price transparency?
8. What other benefits or opportunities may arise for firms by publishing price transparency information on their website?
9. What other challenges may arise for firms by publishing price transparency information on their website?
10. Are there any other jurisdictions we should look at more closely where price transparency has been considered or introduced?
11. What would be the most appropriate way to introduce a requirement to publish price information?
12. What would be the most appropriate way to monitor that firms are complying with any requirement to publish price information?

For further information, please contact:

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