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Transparency of the costs of legal services

A notice was served to the Office of Legal Complaints (OLC) from the Legal Services Board (LSB) which confirmed its request under Section 120 of the Legal Services Act 2007 to the OLC in its letter dated 18 June 2013.

The request was in relation to the matter of complaints received by the Ombudsman scheme concerning transparency of the cost of legal services and in particular transparency of damages-based agreements (DBA).

The LSB request stated that it was interested in establishing whether there is evidence of consumer confusion around what is actually covered under certain agreements. It was also interested in identifying any common themes that were driving costs complaints that could be effectively dealt with if lawyers had been transparent about the costs of their services.

The LSB also flagged concern that the introduction of regulations by the Government allowing a greater use of damages-based agreements (DBAs) in civil litigation may result in further consumer confusion.

The notice required the OLC to prepare and give to the LSB an interim report in June 2014 and a final report in April 2015 providing specified information and other qualitative or factual information which the OLC considers relevant to the LSB's investigation.

An interim report in response to the LSB Section 120 request was submitted on 1 June 2014. This report highlighted that transparency around the costs of legal services made up approximately one third of all cases accepted between 1 January 2014 and 30 April 2014. Although the Legal Ombudsman had not seen any issues specifically around DBAs in this time period, the report recognised that there were still challenges around lack of price transparency for other funding models and that therefore this is something that the industry needs to monitor closely.

Based on the findings of the interim report the LSB amended its request and in a further letter of 23 June 2014 asked the OLC to consider a wider scope of transparency of the costs of legal services. This letter is attached for reference at Annex A to this report.

The full request from the LSB is attached for reference at Annex B to this report.

To answer this request, the OLC sought evidence in the form of:

- Quantitative data giving breakdown of cases accepted concerning perceived lack of price transparency and;
- Qualitative information through discussion with the ombudsman that would give some insight into consumer confusion about costs and any common themes around costs complaints.

The Legal Ombudsman has since completed a further set of data collection and analysis for the period of 1 June 2014 and 31 January 2015 and this is the final report setting out the findings which is due to the LSB in April 2015.

Introduction

The Government has endorsed the 'no win, no fee' model and from 1 April 2013 damages-based agreements (DBAs) have been permitted for contentious work (i.e. litigation or arbitration proceedings) in England and Wales.

A DBA is defined as an agreement between a person providing advocacy, litigation or claims management services and the person in receipt of those services. Under these agreements if the recipient obtains

a specified financial benefit in connection with the matter in relation to which the services are provided, they agree to pay the person providing the services a defined amount of the financial benefit obtained.

This means that, for the first time, lawyers can conduct litigation and arbitration in this jurisdiction in return for a share of any damages – alongside conditional fee arrangements. Both offer lawyers the means to make a fundamental promise to their customer: if you don't win the case, you won't have to pay.

The LSB wrote to regulators in February 2013 to request further detail on how they planned to approach managing any risks they had identified in relation to the introduction on this new legislation.

The Legal Ombudsman published a report in January 2014, setting out a number of concerns about the operation of 'no win 'no fee' legal services. With access to legal aid diminishing in many areas of law, these services enable people who otherwise might not be able to afford to, to make personal injury claims, fight unfair dismissal or seek compensation for medical negligence.

The models for both 'no win, no fee' and DBAs could be positive in terms of access to justice, although the potential for detriment arising from unscrupulous marketing approaches was a matter of concern.

Regulators did not generally feel that there was a need for specific guidance on the matter, and that a risk-based regulatory approach was appropriate, noting that it would be necessary, however, to monitor regulation of this area, including tracking complaints, liaising with the Consumer Panel, and noting any planned academic research in the area.

Consumer understanding of risk in this area was very low, which could lead to issues around mis-selling, particularly as the business model for these agreements was itself considered risky. The matter came under the umbrella of price transparency, and this resulted in a request from the LSB to the OLC around these issues.

As noted, the interim report submitted to the LSB on 1 June 2014 did not identify any issues specifically regarding DBAs but it did highlight challenges around lack of price transparency for other funding models.

We continue to receive complaints about conditional fee agreements, and specifically the promise of the ‘no win, no fee’ approach. At the time of the interim report we called for a robust regulatory response to these issues, including asking regulators to review and monitor the issues in the report and propose ways in which there can be greater consistency in standards in this area.

The OLC encourages the LSB as the oversight regulator to continue to monitor and review the use of ‘no win, no fee’ agreements and to seek specific response to the issues raised by the Ombudsman in January 2014 so as to ensure that they do not lead to continued consumer detriment. As we said in that report, a robust regulatory response is needed not least as complaints in this area continue to require redress.

Methodology

After discussion with the LSB about the remit of this Section 120 report request (June 2014) and proposed methodology, and with their agreement, the data and research included in this report covers cases accepted by the Ombudsman scheme concerning transparency of the cost of legal services from 1 June 2014 to 31 January 2015. Annex C outlines the agreed process for collecting the data.

For the purpose of this final report it is worth noting that the Legal Ombudsman systems are designed primarily to resolve complaints and as such the primary purpose of these systems is not as a research tool.

While we have been able, and willing, to collect the majority of information in the request, we have already flagged to the LSB those areas where this has been problematic.

We have also been mindful of the impact on our process – and particularly on the people who come to us with complaints. It is not practical or desirable to ask every person who contacts the Ombudsman scheme about how a legal service is funded, and so for this reason we focused our methodology on complaints that have been accepted into our jurisdiction under Part 6 of the Act: we call these complaints ‘cases’.

In addition, funding is not relevant to the detail of many complaints and in many situations, the person making the complaint may not share how it was funded; this may have impacted on the sample size.

The reporting requirements agreed by the LSB and the Legal Ombudsman/ OLC are included below:

- an assessment of the number and proportion of all cases received by the Legal Ombudsman which concern a perceived lack of price transparency (costs information deficient and costs excessive);
- a breakdown of the cases accepted for investigation by the Legal Ombudsman which concern a perceived lack of price transparency by:
 - type of funding arrangement;
 - type of consumer complaining;
 - type of profession being complained about;
 - the area of law;
 - any common features of the business models (such as claims management services, immigration services and any other models you think relevant) involved in complaints received by the Ombudsman which concern a perceived lack of price transparency that the Ombudsman believes is causing confusion (including where services are being delivered through the web), the extent to which the Ombudsman believes that this confusion may be being deliberately fostered and how the Ombudsman reacts in such cases and;
 - any other information the Ombudsman thinks will assist our understanding of the problems, their frequency, the causes and the impacts regarding complaints received by the Ombudsman which concerns a perceived lack of price transparency.

To enable this analysis, we have used data from our case management system for the period of 1 June 2014 to 31 January 2015. This provided a total sample of 4307 cases. Case studies have also been used within the report to provide illustrative examples of the types of complaints that we have investigated relating to transparency of the costs of legal services.

The LSB and the Legal Ombudsman discussed what was meant by business model and came to the agreement that this would consider models like Alternative Business Structures (ABS), firm size (solo

practitioner, small, medium firms), services delivered through the web, claims management companies and any others the OLC felt was relevant. It was accepted by the LSB that this data is not readily available to the OLC currently and would not be included in the interim report but may be available for the final report, after the introduction of a new case management system in October 2014. As the new case management system was not introduced until December 2014 we have also been unable to include this data in the final report.

Data analysis

All data is inclusive from 1 June 2014 to 31 January 2015.

An assessment of the number and proportion of all cases received by the Legal Ombudsman which concern a perceived lack of price transparency (categorised by 'costs information deficient' or 'excessive costs').

The Legal Ombudsman accepted **4307** cases in this time period of which **1097** or **26%** of cases involved perceived lack of price transparency.

To summarise:

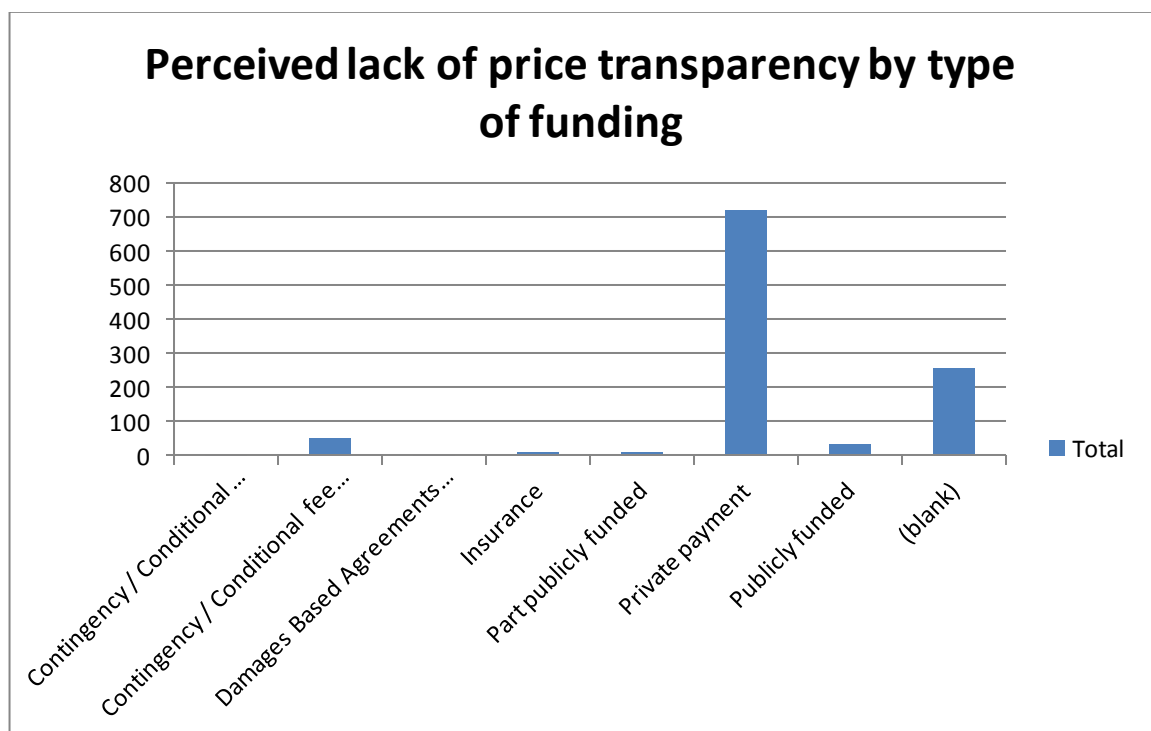
- The method of funding for which we have received most complaints about the lack of price transparency is **private payment**.
- As expected, **members of the public** (types of consumers complaining) and **solicitors** (type of profession complained about) show the highest percentage as the vast majority of our consumers complain about solicitors.
- In the context of price transparency, it would be expected that litigation and employment law would have a high proportion of relevant complaints, especially as conditional fee arrangements are commonly used as funding models within these areas of law. **In contrast family law showed the highest proportion with wills and probate joint second highest with litigation within this seven month period.**

A breakdown of the 1097 cases accepted for investigation by the Legal Ombudsman which concern a perceived lack of price transparency by:

(Note: all figures have been rounded to 2 decimal places which will account for any variations)

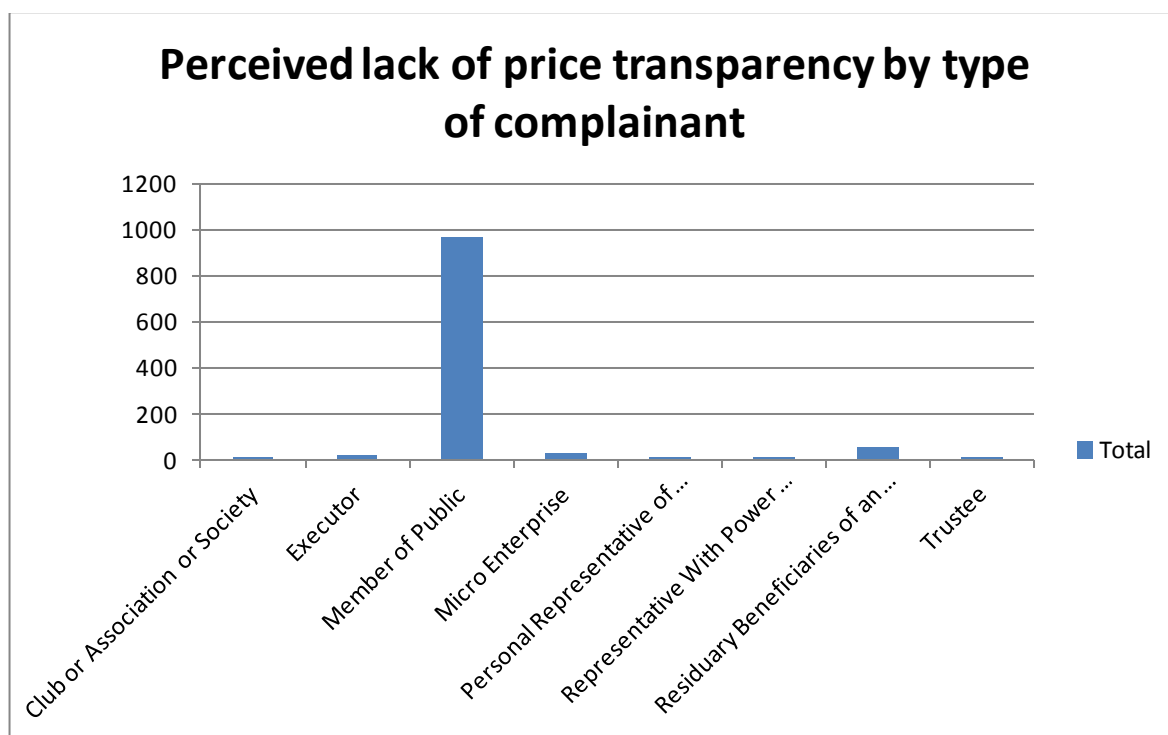
Type of funding arrangement used

Method of funding	Number/ percentage
Contingency/conditional fee arrangement (no win no fee) via claims management company	4 (0.4%)
Contingency/conditional fee arrangement (no win no fee)	52 (5%)
Damage based agreements (DBA)	1 (0.1%)
Insurance	13 (1%)
Part publicly funded	13 (1%)
Private payment	723 (66%)
Publicly funded	34 (3%)
Blank	257 (23%)



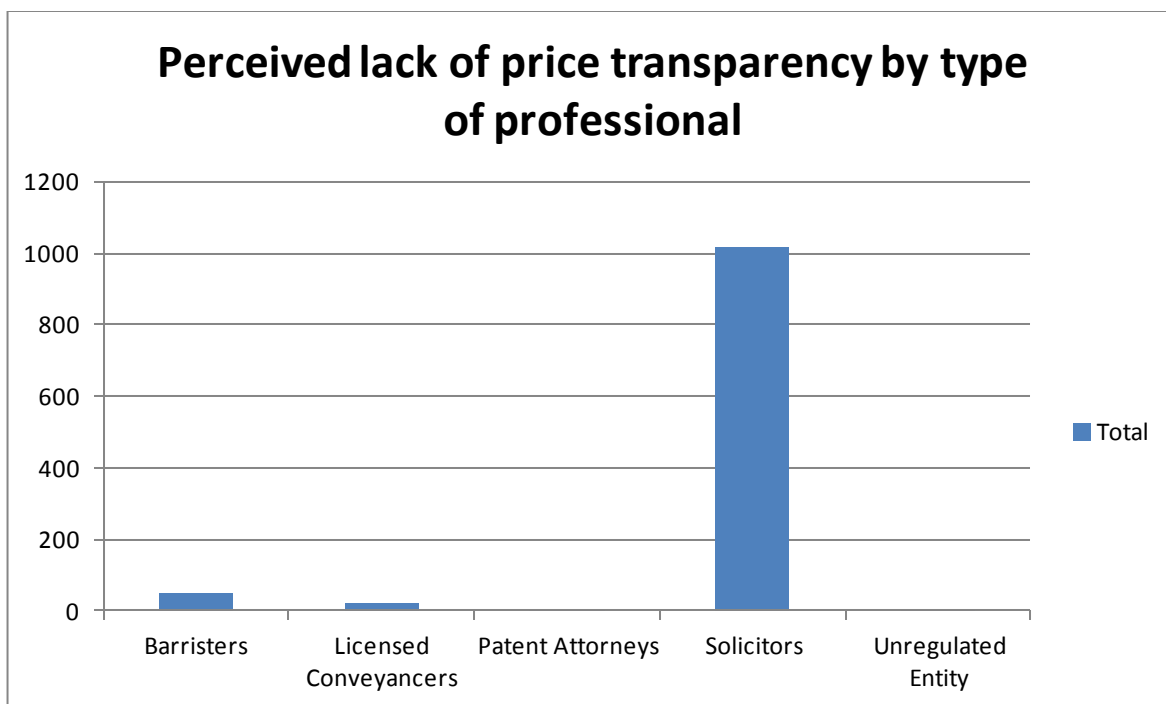
Type of consumer complaining

Complainant type	Number/ percentage
Club or association or society	2 (0.2%)
Executor	23 (2%)
Member of public	973 (89%)
Micro enterprise	33 (3%)
Personal representative of an estate	6 (0.6%)
Representative with Power of Attorney	1 (0.1%)
Residuary Beneficiaries of an estate	55 (5%)
Trustee	4 (0.4%)



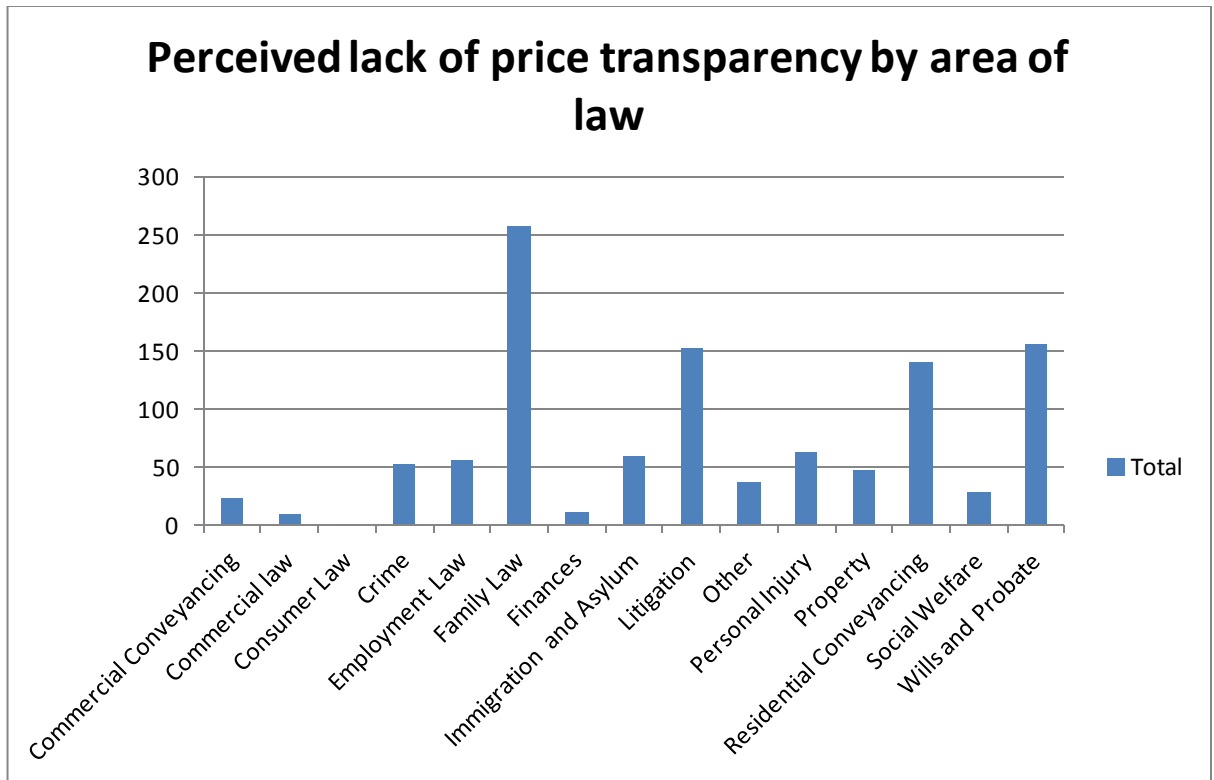
Type of professional being complained about

Profession	Number/ percentage
Barristers	52 (5%)
Licensed Conveyancers	23 (2%)
Patent Attorneys	1 (0.1%)
Solicitors	1015 (93%)
Unregulated Entity	6 (0.6%)



Area of law

Area of law	Number/ Percentage
Commercial Conveyancing	24 (2%)
Commercial Law	10 (1%)
Consumer Law	1 (0.1%)
Crime	53 (5%)
Employment Law	56 (5%)
Family Law	257 (23%)
Finances	11 (1%)
Immigration and Asylum	60 (5.5%)
Litigation	152 (14%)
Other	37 (3%)
Personal Injury	64 (6%)
Property	47 (4%)
Residential Conveyancing	141 (13%)
Social Welfare	28 (3%)
Wills and Probate	156 (14%)



Qualitative analysis

Over a quarter of all cases accepted between 1 June 2014 and 31 January 2015 were about lack of price transparency; which includes instances where cost information was deficient or where the complaint involved excessive costs.

Ombudsmen have identified some common themes that can assist our understanding around issues with lack of price transparency through our qualitative process.

On many occasions Ombudsmen have come across cases where the estimated bill discussed by the lawyer at the first meeting, or included in their client care letter, can differ significantly to the final bill that the client receives. This results in the client complaining to the Legal Ombudsman with the issues often arising where the lawyer has failed to inform their client of incremental costs throughout their work.

Mr D case study – Family law and cost information deficient

Mr D instructed the firm to assist him with family matters following the breakdown of his relationship and for the financial support of his daughter.

In their client care letter in June 2011 the firm estimated their overall costs to be £20,000 plus VAT and disbursements. They sent no further bills until November 2013 when they invoiced Mr D for over £65,000.

The Ombudsman found that, although the firm had carried out sufficient work to justify the additional costs, their failure to provide revisions to the initial estimate amounted to poor service and as such recommended they reduce their final bill by £5,000.

Mr F case study – Wills and probate and cost information deficient

Mr F instructed the firm to draft his will when he was suffering with poor health. He was quoted between £3,500 and £5,000 excluding VAT for the work but came to the Legal Ombudsman to complain when the costs reached £12,000 and the work was still not completed.

The Ombudsman's investigation found that the cost information provided by the firm was poor and clarity was not provided to Mr F of what the matter would eventually cost. The Ombudsman was satisfied that the matter had also exacerbated Mr F's health issues and concluded that the firm should reimburse 25% of their fees as well as paying Mr F £750 in compensation for the effects on his health.

The case studies illustrate that although there are occasions when cost estimates are exceeded, it is the cost information that is vital in delivering good service. Recent research by consumer organisation Which? highlights that, in the financial services sector, two thirds of people think that companies use fees or charges to trick them into thinking that costs are cheaper than they actually are¹. Although not focussed on the legal services market this 'Stop Sneaky Fees and Charges' campaign (which

¹ <http://www.which.co.uk/campaigns/insurance-bank-card-fees/know-the-issue/>

collected over 45,000 signatures and counting) highlights the increasing importance of price transparency to consumers.

The case studies also highlight an issue Ombudsmen have raised around how realistic costs estimates are. While they recognise that in some, particularly contentious cases, lawyers may not be able to give an absolutely accurate estimate as it is impossible to anticipate which route the case will take and how much work will be required, they would still expect them to utilise their experience to give the client a realistic indication of how much costs will be, depending on how complex the case gets.

In a litigation matter, for example, a lawyer could say to their client that if resolution can be reached by initial correspondence with the other side costs should be £5,000 - £8,000; if mediation is required £8,000 - £12,000 and if a full trial is required £12,000 - £15,000. This ensures that the client has a best and worst case scenario idea of the costs and that the final bill does not come as a shock for them.

As covered in our interim report, with the statutory changes to legal aid and the introduction of new funding models, the Legal Ombudsman has become increasingly concerned about the operation of 'no win, no fee' legal services. Although these agreements can offer customers an affordable and simple solution, as the Legal Services Consumer Panel highlighted in their Consumer Impact Report 2014, the adapting legal services market raises 'challenges around balancing access to justice and consumer protection'.²

We are seeing examples of very poor service in some cases that come to us and have made conduct referrals where service providers have failed to honour agreements with customers or have exploited loopholes in the contracts, with serious consequences for their clients.

Potential issues that the industry needs to be aware of and ensure clarity to the consumer are:

²

http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/documents/Consumer%20Impact%20Report%203.pdf

- Keeping the client regularly informed of increasing costs: it is not enough to have said at the outset or in the client care letter that estimates *may* be exceeded or to expect them to assume they will. If additional work is carried out and subsequently costs are increased the client needs to be informed of this.
- Transfer of risk – there is a structural weakness in the nature of the agreements which allow some lawyers to pass the risk of unrecovered costs onto the consumer. For example: the consumer can still be liable for their own lawyer’s costs if they are not able to obtain damages from the other side.
- Unclear terms and conditions – the agreements are sometimes complex and there is evidence of some lawyers failing to make clear to consumers the financial risks that come with entering into a ‘no win, no fee’ agreement. For example: where the consumer will have to pay for losing a case despite their understanding of ‘no win, no fee’ being that they will not pay if their claim is unsuccessful.

Conclusion

Transparency around the costs of legal services made up over a quarter of all cases accepted between 1 June 2014 and 31 January 2015.

Our data has highlighted that the areas of law with the highest proportion of complaints relating to lack of price transparency are family law and wills and probate (joint second with litigation). As the LSCP highlight, people often are at their most vulnerable when needing legal support but also feel vulnerable when dealing with lawyers ³ and, as the potential for vulnerability is high with these areas of law, the need for close monitoring of this is emphasised.

The Ombudsman has previously stated that it wants to see legal service providers and regulators bring greater consistency in standards across the industry. It is essential that the profession are clear and upfront with consumers about what they are signing up to and take care in explaining

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<http://www.legalservicesconsumerpanel.org.uk/ourwork/vulnerableconsumers/Guide%20to%20consumer%20vulnerability%202014%20final.pdf>

the conditions attached to the 'no win, no fee' agreements. We also called for transparency about any other costs that may be incurred at the outset before agreeing with the consumer about taking on a case, including expenses and any other incremental costs that may occur throughout a case. As our case studies highlighted, often it is not the costs that are the problem but the cost estimates being unrealistic, cost information being unclear and costs rising without the consumer's knowledge.

We also sought some structural responses to the issue in our January 2014 report on 'no win, no fee' agreements. In that report, we concluded that:

- The use of 'no win, no fee' agreements should be monitored and reviewed by regulators to ensure that they do not lead to consumer detriment.
- It is essential that lawyers take care in explaining the conditions attached to 'no win, no fee' agreements and make clear the circumstances where the customer may end up incurring legal costs and;
- Lawyers should also exercise due care before agreeing to take on a case to ensure that the cases are well founded, minimising risk to themselves and their consumer.

Finally, we raised the question as to whether the 'no win, no fee' descriptor of the agreement should be used at all.

Although the Legal Ombudsman has not seen any issues around DBAs or 'no win, no fee' funding methods specifically during this time period, there are still challenges around lack of price transparency for other funding models.

As the legal market continues to adapt and evolve with the introduction of Alternative Business Structures (ABS), the growing market of online legal services and the introduction of claims management into the Legal Ombudsman jurisdiction (in January 2015), the OLC encourages the Legal Services Board as the oversight regulator to continue to monitor and review the use of 'no win, no fee' agreements and to seek specific response to the issues raised by the Ombudsman in January 2014 so as to ensure that they do not lead to continued consumer detriment. As we

said in that report, a robust regulatory response is needed not least as complaints in this area continue to require redress.

Stephen Green
Chair
Office for Legal Complaints
Baskerville House
Centenary Square
Broad Street
Birmingham, B1 2ND



**LEGAL SERVICES
BOARD**

Legal Services Board
One Kemble Street
London
WC2B 4AN

T 020 7271 0043
F 020 7271 0051

www.legalservicesboard.org.uk

23 June 2014

Dear Steve,

Section 120 Notice: Interim report

Thank you for your letter of 2 June 2014 which accompanied the OLC's interim report in response to the formal notice issued by the Legal Services Board under Section 120 of the Legal Services Act 2007 on 18 June 2013 (the Notice). I am grateful for the hard work of colleagues at the Ombudsman in clarifying with us the requirements in the Notice and preparing this interim report.

When the two of us, Mike and Adam met on 5 June 2014, we emphasised the importance that the Board attached to accessing and utilising the data produced by the Ombudsman. Having considered the interim report, we said that we would provide comments to help focus your efforts in preparing the final report. This seems to us more productive than reissuing and amending the notice itself, so we therefore continue to require the OLC to provide a final report by 1 April 2015.

As a general introductory comment, we do recognise the limitations of your current systems and the fact that many improvements will "kick in" only towards the end of the period covered. It will therefore be important to be clear about when your judgements are based on hard data, where they are broadly impressionistic in character and where they perhaps involve some mixture of the two.

The interim report identifies that issues concerning the transparency of the cost of legal services make up approximately a third of the cases looked at. This echoes findings in an earlier Ombudsman report on costs and customer service¹ and is, of itself, a very useful fact to have. The challenge now is to generate a broader evidence base, not least to enable better targeting of both regulatory action and the helpful guidance to consumers and lawyers that the Ombudsman has already produced

¹ <http://www.legalombudsman.org.uk/costs/>

In the final report, we would therefore welcome more detail behind this overall judgement. Information on the areas of law and methods of legal service delivery which are particularly susceptible to complaints concerning a lack of price transparency would be very valuable.

It would be helpful to compare levels of representation of areas of law, cost and funding models in cases concerning transparency around the cost of legal services, with the levels of representation of those factors across the total range of cases considered by the Ombudsman in the same period. This will enable us to assess whether there are issues of relative over-representation as well as more high frequency risk.

In the final report, you may also want to pay particular attention to areas where issues with price transparency already appear to be especially high, for example family, wills and probate or litigation and whether there are patterns emerging at a more granular level in these areas. These areas seem worthy of specific investigation as there is the potential for vulnerable consumers to be at particular risk.

As you know, we are also interested in:

- The methods of funding used by consumers in cases where there is a perceived lack of price transparency
- A breakdown of the business models/structures involved, for example firm size (sole practitioners, small, medium, large firms), claims management companies, ABS, services delivered through the web, etc.

I understand the difficulties with collecting information on the funding method used. We were pleased to have confirmation in the annex to the OLC's letter to us dated 15 July 2013 of the changes that would be made to your case management system and that investigators would be asked to ensure this information is collected.

As you had previously told us in the letter of 19 December and the interim report confirms, data to answer the requirement in the Notice on business models and delivery of services through the web was not readily available to the Ombudsman. The 19 December 2013 letter said that you would set out a plan of how it intended to work with relevant stakeholders to obtain this data over the next year. We understand information sharing between the regulators and the Ombudsman has improved in recent months. Does this mean that such data could be included in the final report?

Included with this letter is a copy of the Notice. I can also confirm that, as required under Section 120 of the Legal Services Act 2007, we will be publishing the final report. However, we consider that the interim report is a draft of the final report and will not formally publish this as a stand alone document.

Yours sincerely,



Chris Kenny

Chief Executive



Annex A: Reporting requirement: Section 120 Legal Services Act 2007

1. This Notice is served on the Office for Legal Complaints ("the OLC") by the Legal Services Board ("LSB") under Section 120 of the Legal Services Act 2007 and requires you to prepare and give to the LSB interim and final reports in respect of the matters specified in paragraph 2, within the period specified in paragraph 3.
2. The OLC must prepare and give interim and final reports (in PDF or Word format) providing the following specified information and any other qualitative and factual detail which the OLC considers relevant to the LSB's investigation. The raw data the reports are based on must also be anonymised and provided to the LSB in excel format -
 - An assessment of the number and proportion of all complaints received by the Legal Ombudsman which concern a perceived lack of price transparency (where costs information is deficient) broken down if possible by the type of funding arrangement used (such as damages-based agreements, conditional fee agreements, fixed fee, hourly rates and any other category you think helpful);
 - A breakdown of the cases accepted for investigation by the Legal Ombudsman which concern a perceived lack of price transparency (where costs information is deficient) by:
 - The type of funding arrangement used (such as damages-based agreements, conditional fee agreements, fixed fee, hourly rates and any other category you think helpful);
 - The type of consumer complaining;
 - The type of professional being complained about;
 - The area of law (such as family, personal injury, employment, criminal, immigration and any other categories you think helpful).
 - Any common features of the business models (such as claims management services, immigration services and any other models you think relevant) involved in complaints received by the Ombudsman which concern a perceived lack of price transparency (where costs information is deficient), that the Ombudsman believes is causing confusion (including where services are being delivered through the web), the extent to which the Ombudsman believes that this confusion may be being deliberately fostered and how the Ombudsman reacts in relation to such cases;
 - Any other information that the Ombudsman thinks will assist our understanding of the problems, their frequency, the causes and the impacts regarding complaints received by the Ombudsman which concern a perceived lack of price transparency (where costs information is deficient);

- The reports should be as comprehensive as possible in their time coverage, with each report covering complaints received in at least a four month period. The interim report covering complaints received prior to 31 May 2014 and the final report covering complaints received between 1 June 2014 to 31 March 2015;
- 3. You are required to provide the LSB with an interim report (along with the anonymised raw data used) by 1 June 2014 and a final report (along with the anonymised raw data used) by 1 April 2015.
- 4. The LSB reserves the right to amend or revoke this notice, by giving further notice to the OLC.

Legal Services Board
June 2013

Elizabeth France CBE
Chair
Office for Legal Complaints
Baskerville House
Centenary Square
Broad Street
Birmingham
B1 2ND



**LEGAL SERVICES
BOARD**

The Chairman's Office
Legal Services Board
7th Floor
Victoria House
Southampton Row
London WC1B 4AD

T 020 7271 0043
F 020 7271 0051

www.legalservicesboard.org.uk

18 June 2013

Dear Elizabeth,

Section 120 report: damages-based agreements

This letter includes a formal notice of the requirement for the Office for Legal Complaints to provide interim and final reports to the Legal Services Board for publication under Section 120 of the Legal Services Act 2007, which has been discussed in draft with your team. The request is in relation to the matter of complaints received by the Ombudsman scheme concerning transparency of the cost of legal services and in particular transparency of damages-based agreements (DBA).

You have previously highlighted consumer confusion with what is actually covered under certain policies and a common theme in costs complaints, that they could be avoided if the lawyers had been transparent about the cost of their services. As we discussed at the Board's meeting on 23 May, your Annual Report for the year ending 31 March 2013, suggests that the introduction by the Government of regulations allowing a greater use of DBAs in civil litigation may result in further consumer confusion. We share this concern and later in the same meeting my Board discussed the risks relating to DBAs and the wider business conduct issues associated with them, which following market liberalisation, will continue to be of a greater concern for regulators. In particular, the Board noted concerns around cost, service quality and transparency. These are all issues that have also recently been highlighted in the Consumer Panel's report on empowering consumers¹.

The Board believe that along with yourselves and the approved regulators, we should remain cognisant of the risks posed by DBAs and the potential for the use of

¹http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/documents/ChooseUse_Phase1report.pdf

such funding arrangements to increase. You said at the meeting that this was an area which you proposed to monitor closely.

We would welcome the results of your monitoring of complaints about DBAs being in a form where it could inform wider policy making and have outlined, in the attached notice, the information that we would expect to be gathered. We are keen to understand both the totality of complaints made and more detail about those which are accepted for investigation. We would be grateful if you could confirm by 15 July the data that you propose to collect and provide to us in response to this notice. We will of course be willing to revise this notice in the light of your proposed response and alternative suggestions you might make on data that can be collected and published. Tom Peplow is the contact at the LSB in relation to any questions about this request – Tom.Peplow@legalservicesboard.org.uk.

We have also asked the approved regulators to monitor developments in the area of price transparency in general as well as the transparency of DBAs to ensure that good consumer outcomes are secured. I enclose a copy of the letter which we have sent them in parallel.

Yours sincerely,



Chris Kenny
Chief Executive



Annex A: Reporting requirement: Section 120 Legal Services Act 2007

1. This Notice is served on the Office for Legal Complaints ("the OLC") by the Legal Services Board ("LSB") under Section 120 of the Legal Services Act 2007 and requires you to prepare and give to the LSB interim and final reports in respect of the matters specified in paragraph 2, within the period specified in paragraph 3.
2. The OLC must prepare and give interim and final reports (in PDF or Word format) providing the following specified information and any other qualitative and factual detail which the OLC considers relevant to the LSB's investigation. The raw data the reports are based on must also be anonymised and provided to the LSB in excel format -
 - An assessment of the number and proportion of all complaints received by the Legal Ombudsman which concern a perceived lack of price transparency (where costs information is deficient) broken down if possible by the type of funding arrangement used (such as damages-based agreements, conditional fee agreements, fixed fee, hourly rates and any other category you think helpful);
 - A breakdown of the cases accepted for investigation by the Legal Ombudsman which concern a perceived lack of price transparency (where costs information is deficient) by:
 - The type of funding arrangement used (such as damages-based agreements, conditional fee agreements, fixed fee, hourly rates and any other category you think helpful);
 - The type of consumer complaining;
 - The type of professional being complained about;
 - The area of law (such as family, personal injury, employment, criminal, immigration and any other categories you think helpful).
 - Any common features of the business models (such as claims management services, immigration services and any other models you think relevant) involved in complaints received by the Ombudsman which concern a perceived lack of price transparency (where costs information is deficient), that the Ombudsman believes is causing confusion (including where services are being delivered through the web), the extent to which the Ombudsman believes that this confusion may be being deliberately fostered and how the Ombudsman reacts in relation to such cases;
 - Any other information that the Ombudsman thinks will assist our understanding of the problems, their frequency, the causes and the impacts regarding complaints received by the Ombudsman which concern a perceived lack of price transparency (where costs information is deficient);

- The reports should be as comprehensive as possible in their time coverage, with each report covering complaints received in at least a four month period. The interim report covering complaints received prior to 31 May 2014 and the final report covering complaints received between 1 June 2014 to 31 March 2015;
3. You are required to provide the LSB with an interim report (along with the anonymised raw data used) by 1 June 2014 and a final report (along with the anonymised raw data used) by 1 April 2015.
 4. The LSB reserves the right to amend or revoke this notice, by giving further notice to the OLC.

Legal Services Board
June 2013

Annex C

Below we have taken each part of the section 120 request, highlighted issues with the request and proposed ways in which we can collect the information.

It is worth noting that the Legal Ombudsman systems are designed primarily to resolve complaints and as such the primary purpose of these systems is not as a research tool. While we are able, and willing, to collect the majority of information in the request, we have flagged below those areas where this is problematic. We have also been mindful of the impact on our process – and particularly on the people who come to us with complaints. It is not practical or desirable to ask every person who contacts the Ombudsman scheme about how a legal service is funded, and so for this reason we propose to focus our methodology on complaints that have been accepted into our jurisdiction under Part 6 of the Act: we call these complaints ‘cases’. In addition, funding is not relevant to the detail of many complaints and in many situations, the person making the complaint may not share how it was funded; this may impact on the sample size. Finally, please note that any changes to our systems require internal guidance to be drafted and staffed trained.

It is worth clarifying the terminology we use at the Ombudsman as this will assist be specific about the data requested and how we propose to meet the request:

A **contact** is any emails, phone calls or letter received into the assessment centre

A **complaint** is the stage where we have established that there is a matter which we may be able to investigate, but before we have accepted it as a case.

A **case** is any complaint that has been accepted for investigation by the Ombudsman Scheme

Request from LSB	Issue	Proposed solution
1) Preparation of interim and final reports including raw data (anonymised) in excel format.	We will provide this for all aspects of the request, except for common features of business models and any other information to assist LSB understanding about this issue. As we explained prior to receiving the formal request we are unable to collect this data quantitatively. There are some difficulties to putting in place mechanics to collect qualitative data in this way; we will manage this.	We will share anonymised case studies and any other relevant qualitative data in relation to this aspect of the request.

<p>2) An assessment of the number and proportion of all complaints received by the Legal Ombudsman which concern a perceived lack of price transparency broken down if possible by the type of funding arrangement used.</p>	<p>This aspect of the request asks us to report on complaints that have not been accepted by the Ombudsman for investigation. We are able to meet this request by making changes to our case management system. However, we do not propose to make this a mandatory question, both for cost reasons as well as the potential impact on complainants. It does not seem proportionate to focus our attention on what are – out-of-jurisdiction cases.</p> <p>This means that we are likely to collect this information on a proportion of complaints.</p>	<p>We will provide the data we collect at our assessment stage; as noted this is likely to only be on a proportion of complaints.</p> <p>Rather than reporting this data as a proportion of all complaints, it may be more helpful to report it against the number of contacts where this data is captured. So instead of saying ** per cent of all complaints are about a lack of price transparency, a more meaningful statement would be **% of all complaints about lawyers were about a lack of price transparency.</p> <p>6/12/13 Agreed that we ask when we accept in as case about method of funding</p>
<p>3) ... broken down if possible by the type of funding arrangement used (such as damages-based agreements, conditional fee agreements, fixed fee, hourly rates and any other category you think helpful).</p>	<p>We record 'method of funding' for cases accepted for investigation.</p> <p>However:</p> <ul style="list-style-type: none"> • this is not a field that is mandatory to complete in the case management system; and • the current list of funding methods does not include all of the methods of funding listed and combines contingency (damages-based) and conditional fee agreements are in 	<p>We will make changes to our case management system to allow us to collect this information. We will confirm the list of types of funding arrangements with the LSB.</p> <p>For cost reasons, we will not make this field mandatory – but we will monitor levels of completion and ask investigators to seek to ensure this information is collected. It is probable that a little less data will be collected using this method, to make the field mandatory would require</p>

	the same field and this will need to be added – it is this in part that will add the resource flagged previously.	additional cost in changing the case management system which seems disproportionate given we are about to commence tender process for a new system. The change in the process would require new guidance to be written and some level of communication/ training.
A breakdown of the cases accepted for investigation by the Legal Ombudsman which concern a perceived lack of price transparency by (each aspect is taken in turn below):		
4) The type of funding arrangement used.	This will require changes to our case management and reporting systems as outlined previously.	We will make changes to the case management system in the most cost effective way.
5) The type of consumer complaining.	We will categorise the type of consumer against the people eligible to complain as set out in Chapter 2 of our scheme rules.	We capture this information and classify types of consumer as member of the public, charity, trust, or micro enterprise (as set out in the scheme rules) and will report against this.
6) The type of professional being complained about.	We can provide information broken down by entity regulator (rather than by individual authorised person).	We will report on entities (firms or sole practitioners) by regulator that are recorded within our system and are within our jurisdiction. In other words, we will provide information by regulator (whether the firm is regulated by the SRA, BSB, etc).
7) The area of law.	No issues.	Area of law is data we capture and are able to report against in relation to DBAs.
8) Any common features of the business models (such as claims	We do not record information on our systems regarding business models – this	We need more guidance from the LSB on what they mean by 'business model.' We do not record this

<p>management services, immigration services and any other models you think relevant) involved in complaints received by the Ombudsman which concern a perceived lack of price transparency that the Ombudsman believes is causing confusion (including where services are being delivered through the web), the extent to which the Ombudsman believes that this confusion may be being deliberately fostered and how the Ombudsman reacts in relation to such cases.</p>	<p>information is not provided to us by the regulators and so we cannot identify a firm's business model.</p> <p>We will only be able to report on claims management companies when they come into our jurisdiction.</p> <p>As we explained previously, we record 'immigration' as an area of law; however, we do not record whether or not firms only provide these services. We would not record information on immigration firms who are regulated by OISC.</p>	<p>information on our case management system so any analysis would have to be qualitative or anecdotal.</p> <p>Following further discussions with the LSB to understand what is meant by 'business models' the following options may be considered:</p> <p>Option 1 – qualitative review of Ombudsman decisions where the complaint type is 'costs information deficient'. This would require additional resources being dedicated to this research.</p> <p>Option 2 - We would prefer to remove this aspect but if the LSB requires this, we will report qualitatively but this has some risks, possibly a small, unrepresentative sample size and a degree of human error as we are not able to systematise identifying these cases</p> <p>Option 3 – Remove this requirement.</p> <p>For reasons of cost as well as the likely level of insight that is able to be provided in this area, our preferred option is number 3 – to remove this element from the request.</p>
<p>9) Any other information that the Ombudsman thinks will assist our</p>	<p>This type of information is not recorded quantitatively and we will need to put in place manual processes to</p>	<p>We will produce a qualitative report and note the risks of inconsistency and un-representativeness</p>

<p>understanding of the problems, their frequency, the causes and the impacts regarding complaints received by the Ombudsman which concern a perceived lack of price transparency.</p>	<p>gather qualitative evidence. This has some risks in terms of sample size and consistency of application.</p>	<p>– any other option will be out of proportion with our available resources.</p>
<p>10)The final report covering complaints received between 1 June 2014 to 31 March 2015 should be provided by 1 April 2015.</p>	<p>This does not allow sufficient time for analysis of data, drafting of report and approval processes.</p>	<p>We will endeavour to collect four months of data within a time frame that allows us to factor in analysis and reporting time. With this in mind we will need to have collected data by 30 April 2014.</p>

