

Cardiff & District Law Society's response to LSB Discussion Paper – 'Quality indicators in the legal services market'

(Discussion paper issued 21 February 2021 – response dated 22 April 2021)

The Incorporated Law Society for Cardiff and District trades under the name Cardiff and District Law Society (CDLS). CDLS is the largest local law society in Wales. It has a membership of over 1,000, including solicitors, barristers, legal executives and academic lawyers.

CDLS has a number of specialist committees, including a Regulatory Issues Sub-committee. Through these committees CDLS responds to public consultations on matters which affect the professional lives of solicitors in the Cardiff and District area. CDLS welcomes the opportunity to respond to the Legal Services Board's discussion paper.

Introductory/general comments

In general, whilst we agree that consumers should have access to sufficient information to make informed choices of legal services providers, we have concerns that the LSB's proposals may create an unnecessary layer of regulation on firms, which will be little used by consumers, and which will be costly, with the cost no doubt passed on to the profession. In general, we would prefer to see market-led solutions evolve over time, and wonder whether the LSB's proposals are premature, given the emergence of commercial digital comparison sites (DCTs), including ones (such as Review Solicitors) which focus on the legal profession. We anticipate that there will be further development of such commercial DCTs in future that may meet some of the LSB's concerns, without the need for regulatory intervention.

If there are gaps or difficulties in the information that can be presented by some of the larger commercial DCTs we think that there is probably a good reason for this, in that there are some aspects of legal work that are simply too nuanced to be captured by DCTs, given the wide range of services provided by law firms. Legal services are much more varied than, say, car insurance products.

However, the Legal Choices website perhaps indicates the limitations of a centralised approach by the regulators, as our impression is that the Legal Choices website is little used by consumers. In contrast, consumers are much more likely to use DCTs that provide ratings and comments by clients and former clients.

We also doubt whether consumers of legal services are equipped to form meaningful judgements on the technical quality of the advice and assistance provided by legal professionals, or to be able to rate a professional based on the outcome of a case. We see little benefit in setting rigid quality indicators, therefore, and consider that an overall rating of a professional by the client, backed up by narrative comments should, if verified, provide other consumers with the most meaningful information to decide on who to instruct. The issue of the cost of services is, of course, different, but is met by such requirements as the SRA Transparency Rules.

In addition, many users of legal services are already well placed to make informed choices about who to instruct. In particular, larger business clients will have greater experience of using legal services and will have access to networks to enable them to explore potential advisors. We do not believe that greater regulation is required to provide those users with standardised information, as we think it is both not needed, and will be little used.

Question 1: We are proposing to think about quality in terms of these dimensions: technical quality, customer service and outcomes. What do you think about these elements and are there others we should consider?

As said above, we think that clients and consumers of legal services are not well-equipped to comment on these separate aspects of delivery. Consumers are probably best equipped to comment on customer service but are less well-qualified to rate the technical quality of the work undertaken by the legal professional. Rating the service based on the outcome does not seem appropriate as the rating given by the client may be skewed by the extent to which the client's objectives were met, and this is affected by outside factors, such as whether commercial negotiations conclude successfully, or whether a client is successful in litigation or not.

However, whilst we do not think it would be appropriate to seek separate ratings for legal services providers based on each of the three quality indicators, the indicators could be used as a guide to a client in asking them to provide an overall rating on a DCT and as factors to bear in mind in the comments they post online.

We do not have any suggestions for other elements.

Question 2: We are proposing to encourage use of these types of information: objective data, consumer feedback and general information about providers. What do you think about these types of information and are there others we should consider?

We broadly agree with the three types of information set out by the LSB and have not identified any other types of information that we think the LSB should consider.

However, we have some specific comments on the types of information proposed.

Objective data:

- We have some concerns regarding the publication of complaints data. Information on complaints needs to be presented in a way that provides context – perhaps complaints per fee earner per year. This is because larger firms are likely to have more complaints. The information needs to be presented in a way that acknowledges this. Also, we suspect there are more complaints around contentious work compared with transactional work, and firms who undertake more of the one type of work will have more or less complaints as a result. We do not know how meaningful context could be provided on this point. Our concerns regarding complaints data are also noted in answers to subsequent questions.
- Presumably disciplinary records will include only external disciplinary proceedings and sanctions, and there will be no requirement to provide details of internal disciplinary

proceedings, which are likely to vary greatly from one firm to another, and a firm with a higher number of internal disciplinary cases may in fact be more reliable and conscientious than a firm with a low number or no disciplinary cases. We also address concerns about publication of disciplinary information in answers to subsequent questions.

- It is worth noting that regulators already publish information about the disciplinary history of any individual or authorised entity and we think this is sufficient. If there were to be further publication, the question would be, how is it published? Would it be published against an individual practitioner or would it be published against the entity they worked for at the relevant time, and/or the firm they currently work for? This would seem prejudicial to firms who may not have been guilty of wrong-doing – for example, if someone received a fine for a conviction for drink driving, would that be shown against the employer’s details as well? This could even result in a situation where anyone with regulatory decision against them becomes effectively unemployable.
- Also, who will be responsible for compiling the objective data? This should not be a requirement imposed on firms as it is much more efficient for this to be undertaken at a centralised point by the regulator. It also avoids the problem of non- or poor compliance by individual firms. As well as being inefficient, we do not think it is proportionate to require all firms to source this information independently.
- There are concerns over the cost of gathering this information, compared with the benefits. We are concerned that the regulators will seek to pass the costs on to the profession. Imposing additional costs for limited benefit would again not be proportionate.
- We wonder how useful the ‘error’ rates published by public bodies will be, and we think the only merit may be that they are objectively measurable.
- The discussion paper is not clear on what the sources from public bodies might include. We think there should be an opportunity to comment on a full list of proposed sources, rather than the full list being developed by the LSB and the other regulators without consultation. Some sources may not be a good indicator of quality – for example, the number of ‘stops’ on probate applications by the Probate Service. A firm with a higher number of stops may have that higher number because the firm is a specialised probate firm which also deals with higher value and more complex estates that are more likely to present issues.

Consumer feedback

- We agree this is an important source of information for consumers but have the usual concerns about verifying that feedback. There is also the potential for a few disgruntled clients to skew overall ratings for a firm, although we would hope that consumers are becoming more sophisticated in their reading of online reviews. We are less concerned about ‘fake’ reviews, for the reasons indicated in our answer to question 9 below, particularly the professional conduct obligations which require professionals to act with honesty and integrity.

General information about providers

- We think this information could be useful but would have concerns if the required information became overly and unduly detailed, as this would not be proportionate – being a burden to the profession, and less likely to be comprehensible to, or useful for, consumers.

Lastly, as a general point, there should be a policy setting out what information is included (and for how long) and an appeal process to challenge its inclusion.

Question 3: Which groups of consumers and/or types of provider should action in this area focus on?

We agree with the proposals that regulatory intervention should focus on individual consumers and small businesses. In particular, we agree that larger commercial clients are more likely to be frequent purchasers of legal services and will be better able to make their own assessment. Commercial clients also tend to be well-networked and able to seek recommendations from their peers.

Question 4: Should there be a base level of transparency on quality across the market and enhanced transparency in priority service areas? What should a base level of transparency on quality consist of?

The recommendations in the CMA report (para 4.6) refer to “minimum levels of price, service, redress and regulatory status transparency”. For the purpose of considering what information is relevant for a base level of transparency on quality we consider that service and regulatory status transparency are relevant.

With regard to regulatory status, as referred to in the response to question 2 above, we assume that only external disciplinary proceedings and sanctions would be published. We note that the SRA publishes data on regulatory decisions, and we do not believe that it would be appropriate to publish any broader information than this. Further, we are of the view that the information published by the SRA should remain the sole, authentic source of such data although we accept that consumers may not be aware that such information is available or where they can find it. For that reason we would suggest that if firms are to be required to publish information on the regulatory status of firms and individual solicitors that this is best achieved by publishing a link to the relevant section of the SRA’s website. We believe that requiring firms and solicitors to re-publish the information itself on their websites would not add anything to the information available and is fraught with risks. Firstly, the risk of a firm missing some information or not publishing it promptly meaning that their website may not have the relevant information when checked by a consumer and secondly, that firms would need to be rigorous about their retention of that data. The SRA generally retains information on regulatory decisions on its website for three years. We think it would be unfair to an individual solicitor whose record appears clean at the SRA to still have such information published on a firm’s website. Checking and removing such out-of-date data could be onerous for a firm and if the firm neglects to remove data that is out-of-date it could open the firm up to a claim from the individual solicitor.

If digital comparison tools are adopted then we would similarly suggest that such information as may be made available on regulatory status should be limited to that information published by the SRA, with the information ceasing to be made available when it is no longer available from the SRA website.

The question of what information would be relevant to publish on quality is much harder to answer. We refer again to our answer to question 2 above and note that context is important. The framework on page 5 of the discussion paper refers to the following under the heading of Defining quality:

Technical quality – quality of advice, comprehensiveness, accuracy

Service quality – quality of client care, communication

Outcome – desired outcome of casework

We believe that technical quality is the most difficult to benchmark by reference to any objective standard and the most difficult for any consumer to judge. We note the priority areas that are suggested by the CMA and suggest that any such data is limited to the most commoditised of legal services. That would include routine conveyancing, but we are concerned that the complexities and variables (as acknowledged by the LSB as paragraph 70 of the discussion paper) mean that it is very difficult to compare the quality of work done by different firms without a significant amount of explanation as to its context – all of which would increase the burden on firms to the point where it is disproportionate to any benefit to consumers. Family, employment and wills and probate all encompass a broad range of work of varying complexity.

We believe that information on service quality is most likely to be obtainable through consumer feedback. It is still early days in the development of DCTs but in our view, if there is a demand for this service from consumers then the market will address it itself without the need for regulatory intervention.

We do not have any suggestions for information to publish on outcomes as we are not entirely sure what this is meant to encompass, given the very different kinds of work undertaken by legal professionals on behalf of consumers.

Question 5: How useful could consumer feedback, objective data and general information about providers be in informing consumer choice? What are the benefits and drawbacks of these types of information?

As stated in our response to question 4, we believe that consumer feedback could be useful to consumers in understanding how well a firm or a solicitor performs on service quality. We do not believe that it will provide much useful information to inform consumers on technical quality as consumers are less likely to be able to assess things like how well a document has been drafted unless a problem arises with it. However, consumers are likely to know whether they have had efficient responsive service or whether a solicitor has communicated with them in plain language that they have been able to understand.

We would introduce one note of caution into the desire to make consumer feedback more available. Some areas of legal work (such as conveyancing, debt collection and some personal injury claims) are very price competitive and firms are already working to extremely tight margins. There is often a balance between the individual consumer's desire for information and updates and the need for solicitors to keep their costs down. A solicitor may not always have any information to update a client with and may work on the basis that they will only communicate if there is something to say. We are concerned that the increase in reviews from consumers, whether on a firm's website or via DCTs, may place added stress on individual solicitors who are concerned to get good reviews but have little time to update clients and are unlikely to recover their costs of doing so.

With regard to objective data, as noted in the response to question 2, we believe that some of the benefits of such data are simply that it is available and objectively measurable (e.g. error rates), but it will not necessarily inform a consumer's choice. In relation to complaints information (both internal complaints and LeO), again as noted above, we believe that the information should be presented in such a way that the context can be understood. For example:

- Size of a firm is one key piece of contextual information, as it would be natural to expect that the larger the firm the greater the number of complaints.
- The type of work undertaken by a firm is also relevant as some types of work generate more complaints than others e.g. litigation of whatever type is likely to result in at least one party not achieving its desired outcome.
- A firm that does relatively little work for consumers will have few, if any complaints about it to the LeO and yet that does not necessarily mean that it is of higher quality than another firm that has more complaints to the LeO but does significantly more work for consumers who are eligible to complain to the LeO.

Question 6: What role, if any, should success rates and complaints data have in informing consumer choice? Is there other quantitative data that would be helpful to inform consumer choice?

We believe that Quality/Kite marks from the Law Society and other area specific organisations, such as Resolution and APIL, are more of a sign of proven quality than vague percentage success rates or complaints data that is not contextualised. Other accreditations, such as Lexcel, are an indication that a firm is well-run, and is a mark of quality, although not of the technical quality of the firm's work. Regulators could do more to encourage consumer understanding and awareness of accreditations. Providing more information on such accreditations would arguably be a better use of resources than regulating client reviews.

Published complaints data carries inherent difficulties due to the nature and diversity of the legal profession and the work it undertakes. It may give an unfair representation of the service of a firm as a whole, particularly if complaints are rare, or stem from the actions of an individual. Also, the reputational damage created by such providing such unrepresentative information to small firms in particular could have a huge negative impact, which in turn adversely affects equality and diversity, due to the higher proportion of small firms owned by black, Asian and minority ethnic solicitors.

Firm accreditations, on the other hand, demonstrate legal practices consistently meet the highest standards of technical expertise and client service in specific areas of law. These accreditations should provide assurance to clients that a particular firm has met the quality indicators for accreditations and are much better tool to inform consumer choice.

Question 7: Which of these different channels – law firms’ websites, DCTs, a single digital register – do you think could be most effective in providing access to information on quality? Are there other channels we should consider?

The Legal Needs Survey 2020 and consumer panel research shows that consumers still rely heavily on reputation and recommendations when assessing quality of service and this can be complemented by information provided via DCTs and law firm websites. A digital register seems likely to be the least effective channel. The Law Society’s “Find a Solicitor” site and Legal Choices (although thus far little used) could play a part in imparting information on quality.

Question 8: Do you have evidence on current usage of DCTs not mentioned in the paper? How could we best encourage engagement by consumers and law firms with DCTs? What are your views on the specific potential solutions, such as requiring law firms to signpost to DCTs, embed ratings, or prompt consumers to leave a review?

We understand from our members that the use of DCTs has increased. Its evolution appears to have been hastened by the Transparency Regulations, as firms seek differentiators other than price to inform consumer choice. It continues to be a developing area with more firms choosing to engage with DCTs and embed ratings in their websites. We do not believe that further regulation is desirable or necessary and consider that the best approach would be to allow this to continue to be market-led. Also many firms are reorganising themselves currently as a result of the effects of the pandemic and are developing new ways of working. This process should be given an opportunity to settle down and bed-in ahead of any consideration of initiatives to implement further change and the introduction of any increased regulation.

Question 9: What, if any, steps should regulatory bodies take to help consumers and legal services providers engage with DCTs safely?

It is our view that there is no need for regulatory bodies to take steps to help consumers and legal services providers engage with DCTs safely. There is already a significant body of rules which protect client/consumers in their dealings with regulated entities/persons.

By way of examples:

- There are requirements to act in the best interests of clients (many (if not all) regulators include potential clients within the definition of clients);
- Even where potential clients are not clients per se, there are regulatory requirements for regulated entities/bodies not to take advantage of third parties;
- There are requirements of honesty and integrity (false or misleading claims on DCTs would be covered by these requirements);
- There are requirements only to undertake work in which you have the relevant competency and skills.

Question 10: What range of quality information, if any, would it be appropriate to hold on a single digital register?

As set out above, we do not believe that a single digital register is the appropriate way forward. However, if there is a single digital register there should be a policy setting out what is included (and for how long) and an appeal process to challenge its inclusion.

Question 11: What are your views on the relative merits of a market-led approach compared with standardised regulator-led approach?

It is our view that it would be sensible to allow a market-led approach. The regulatory framework in place already includes safeguards (as set out above in answer to question 9) which would apply to the use of DCTs and other tools for highlighting service levels etc. it is noted that the research undertaken by the LSB suggests take up for DCTs is low amongst consumers of legal services.

Question 12: Do you have any further comments on our analysis and approach to determining suitable quality indicators?

The issue is not necessarily what are suitable quality indicators but how they are objectively judged. Of the three areas identified (technical quality, service quality and outcome), two of those (technical quality and outcome) can only really be assessed by fellow professionals in the specific field. For example, an employment contract could look technically right to a consumer or conveyancing professional but when considered by an employment professional it would be wholly inadequate for its purpose. Likewise, a conveyancing service may on the face of it end in a positive outcome (the purchase of a house quickly and efficiently) but it may be many years before any issues arising from poor advice arise.

It is also noted that assurance marks are available for specific areas of law (as well as more general accreditation via Lexcel or other quality marks). An alternative to the proposals may be to educate clients and consumers on the use of these various marks so they can understand their relevance rather than to “re-invent the wheel”.