

Legal Services Board

**Response to quality indicators in the legal
services market discussion paper**

20th April 2021

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1. Introduction

This submission is made by Pitsford Consulting Ltd. We are a niche consultancy, formed in 2013, and focused on developing a range of data products for the residential conveyancing industry.

We do have a product developed to provide a solution to the price and service transparency requirements called Conveyancing Analytics which is live in the market. We mention this so as to make clear our interest.

We have previously discussed a number of these issues with the Regulator community and have a vision of how a Single Digital Register can be brought to market with rich quality and performance metrics.

Having read the Discussion Paper, we have set out our thoughts below and have included as an Appendix our 2020 market study of law firm compliance with the regulations.

We would make one comment on your use of the term DCT. We make reference to it in Q7 below, but we feel there is potential for confusion when using this term as a 'catch all' that includes client review platforms with panel management businesses that serve a small number of firms and charge referral fees. Going forwards, we suggest that a distinction is drawn between the two.

2. Summary

We firmly believe that there is a significant consumer benefit to be derived from successfully implementing a programme of heightened transparency around price and service quality.

We further see the de-coupling of legal services by the CMA in the context of developing new levels of transparency, as a powerful catalyst for moving ahead quickly with residential conveyancing. This is a legal specialism with both a compelling case for improving transparency and importantly, the means and datasets to make this achievable.

We are convinced that these new levels of transparency will only be achieved successfully if the Regulator community takes a proactive stance in defining quality measures and standards and crucially, in facilitating their delivery via a Single Digital Register that acts as a single version of the truth and is made available to all stakeholders.

To carry the profession with them, regulators must, in addition to being seen to be proactive, ensure that these improvements for the consumer don't create a burden for the conveyancer. It is vital that any impositions and costs to firms are kept to an absolute minimum.

3. Detailed response

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?

We think the proposed dimensions of technical quality and customer service certainly cover the ground.

We do though have a concern about the role of outcomes in residential conveyancing.

This concern has four roots.

Firstly, there's the potential for disagreement over the value of a particular outcome by different stakeholders. Is it better to have taken longer to eradicate potential transaction risk or to have moved quickly with greater risk?

Secondly, there is the danger that a focus on outcomes has the potential to frustrate or undermine the other two dimensions. For example, a firm driven to deliver a successful outcome (fast completion) might cut technical corners and fail to keep customers informed rather than risk a transaction failing or being delayed.

Thirdly, it should be the case that firms are judged on those elements of performance over which they have a significant control. The vagaries of chains, lenders and importantly individual buyers' and sellers' behaviours, mean that it's perfectly possible that an exemplary performance by a conveyancer could still result in a poor outcome as other parties cause frictions.

Fourthly, and more practically, how are outcomes in residential conveyancing going to be measured without a) disadvantaging segments of the market (e.g. leasehold or new build specialists) and b) requiring a level of measurement and publication by firms themselves which would likely make compliance poor and subjective.

A possible solution would be to accept that in large part a measure of outcome will be a key feature of the measurement of both technical quality and customer service (e.g. uncovering an unadopted road and explaining the risks to a client may well result in a transaction failing but the same firm scoring highly for technical quality and customer service).

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?

Again, we recognise that these types of information are comprehensive. We would make three observations:

1. Consumer feedback collected and published independently is the proper baseline for consumer feedback. It should be made clear that firms publishing selective and anonymous extracts from client testimonials is highly subjective and is nothing more than a marketing tool.

In our survey of 1,000 conveyancers (appended), 22% of firms used these personally curated reviews as opposed to just 4.5% who used third party platforms.

2. Objective data and general information about law firms should not require sourcing from law firms themselves. This observation is heartfelt and is made for two reasons:

Firstly, the objectivity of this data would be open to challenge and in the absence of a comprehensive (and expensive) validation regime, couldn't be defended. Bluntly firms could 'game' the data and knowing that, wouldn't have complete confidence in their peers' data.

Secondly, non-compliance by firms either objecting to the requirement or unable to service it, will erode confidence in the metric because there would only ever be a partial coverage which would diminish its comparison value.

3. The value of this objective data will be directly related to two key dimensions:

Firstly, to what extent will there be a trusted brand sitting behind or endorsing the dataset? We'd suggest that this almost certainly needs to be either the LSB or individual Regulators.

Secondly, to what extent will the data be packaged in a fashion that is easily understood by a consumer with little or no experience of the intricacies of conveyancing? For example, reporting HMLR requisition data for a firm is pointless. It has no resonance with a consumer. Much better that it forms a component of an overarching standard.

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

In our view, one of the most important features of the CMA's December 2020 review was the acknowledgement that consumer and small business legal services could be 'decoupled' so as to allow those areas with the greatest opportunity of improvement to move ahead unfettered by the remainder.

Our focus is firmly on residential conveyancing and we would suggest that this area is far and away the most suitable legal service where progress on quality indicators can be made. This is principally because it is a high-volume transaction (1.33 million conveyances in 2020) so is 'mainstream' but it also attracts the highest proportion of complaints (Legal Ombudsman) – twice the volume of the next largest, personal injury. There are also plenty of objective metrics associated with the conveyancing process and the conveyancing profession.

A healthy approach we would suggest would be to lead with residential conveyancing and then as data repositories develop and new objective data becomes available, bring on other consumer legal disciplines.

Common to all however is the value of independent third-party reviews. One note of caution, if proceeding on this 'decoupled' basis, it will be important to ensure that review platforms can also distinguish between legal disciplines. It would be misleading to consumers if they were researching conveyancing offerings and were exposed to swathes of, for example, personal injury reviews for the same firm.

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?

We feel there are considerable difficulties in establishing a base level across the whole of the legal market. We assume therefore the question uses 'market' to refer to consumer and small business legal services only.

The only reason to impose a base level would be to protect or inform consumers. As the Discussion Paper notes, individual firms are in control of their own destiny and can wax or wane depending on how they manage their businesses and they should be left to do so.

On this basis, the easiest and therefore perhaps the lowest base level could be the adoption of external client reviews. As is acknowledged, these are powerful testaments that carry great weight.

It would still be an aggressive call though to mandate the use by firms of customer service feedback. We don't believe it would be feasible to design, launch and importantly manage, a bespoke client review platform for legal services – especially when there are already major businesses in this area with superior offerings and resource.

Rather, we would encourage the Regulators to 'nudge' firms or otherwise facilitate the uptake of existing client review platforms. Such encouragement might come in the form of some collaboration with these providers that either offered preferential terms (Trustpilot and Review Solicitors both have options that are free) or tailored features – or perhaps more creatively, by sponsoring the development of a Single Digital Register that included reviews and other comparison tools that left firms at a competitive disadvantage if they didn't adopt these reviews.

Any greater levels of transparency are likely to be frustrated by the nature of the legal service. Pricing transparency is certainly possible with residential conveyancing and perhaps will writing but is bedevilled with problems in other areas. So too is performance data in many areas of law where external, objective data sources just don't exist. That they do in residential conveyancing again makes the case for a close focus on moving ahead first with residential conveyancing as a priority service area.

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?

Within residential conveyancing, consumer feedback is very important. As a consumer, largely or completely ignorant of the service they are buying, the reassurance of hearing the experiences of a peer group who have gone before is vital.

The review platform industry has plenty of compelling evidence to demonstrate the value consumers place on reviews and in fact the conveyancing market could have been designed specifically to maximise the impact of client reviews. Conveyancing is an intangible service that is poorly understood, infrequently used and opaque at the point of engagement.

Any potential drawback would perhaps focus on the subjective view of a reviewer who may unfairly or maliciously criticise a firm. While everyone accepts that this will happen from time to time, platforms work hard to offer firms a right of reply or the ability to challenge reviews and in any event, consumers are often perversely reassured to see occasional poor reviews which lends credibility to the overall approach.

The use of objective data and general information about a firm is an important counter balance to consumer feedback. It plays the objective foil to the subjective review. It supports the consumer view and speaks to the operational efficiency, technical reliability and best fit with a firm.

Being able to see where in the country a conveyancing firm is active (and therefore is likely to have expertise in the locality) is important. So too is seeing the volume of work undertaken by the firm. Are they a national firm with polished technology and processes or a small, personal firm happy to meet in person with only a handful of cases? Both will appeal to different consumers. Are they specialists in leasehold? Do they operate predominantly with high or low value properties? How many conveyancing staff do they have? How well qualified are they? Measuring their operational performance and thereby their operational efficiency is perfectly possible – as is understanding their complaints data.

There is however a serious potential drawback with elements of this objective data which is centred around its interpretation. It's one thing to see on a map where the firm has previously bought properties for clients and how many cases they handle. It's quite another to interpret (say) HMLR requisitions data, turnaround times for COT submissions to lenders or post completion timescales. These are detailed measurements of peculiar processes that will only confuse consumers.

There is undoubtedly a need for a quality measure around operational efficiency. Consumers should be helped to differentiate between firms on the basis of their operational prowess. Performances do vary and the disincentive of a poor measurement should also encourage firms to improve.

Making this relevant and of value to consumers requires an intervention. Regulators need to do three things. They need to:

1. Agree which performance metrics are valid and give them a weighting. This creates comparability.
2. Bundle these metrics into a basket of performance measures and surface it as an easily understood rating (e.g. a five star rating). This creates understanding.
3. Lend their name or badge to the rating to confer authority. This creates trust.

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?

In conveyancing there isn't any real scope to include success rates (ie completed transaction rates). Transactions abort for reasons almost always outside of the control of the conveyancer – problems with chains, mortgages, surveys and buyer and seller behaviour are all major contributors to transactions falling through.

Complaints data is a valid metric when assessing the performance of a conveyancing firm. The difficulty in using it as an explicit statistic however are the unintended consequences. First tier complaints that Regulators and insurers alike encourage the reporting of, will dry up as firms attempt to manage any issues internally. Rightly or wrongly, firms themselves will also balk at the idea of such a metric being published and Regulators can expect considerable push back and passive non-compliance from firms.

A potential solution, that dovetails with the thrust of our answer to question 5, would be to incorporate complaints data into the weighted basket of operational efficiency presented to consumers as a star rating (or some such). In this way, the real value of the complaints data as an indicator of operational performance can be captured (Regulators could attach a weighting to this data commensurate with their view of its value) without risking any of the perverse outcomes its direct publication could cause.

Other objective data sources that could fuel a consumer's understanding of the fit with their requirements are plentiful in the residential conveyancing market. They include but are not limited to the:

- Number of conveyancing purchase transactions completed in previous 12 months
- Average value of these transactions
- Location of these transactions (represented spatially)
- Mix of purchase cases (tenure, new build)
- Size, experience and qualifications of the conveyancing team

And in terms of quantitative data components of a weighted basket of operational performance metrics (in addition to any complaints data):

- Interventions history
- Adverse credit history
- Insurance claims history

- The average time taken post completion to submit the AP1
- COT submission performance
- Requisitions performance

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?

We would suggest that the definition of DCTs is reworked. As it stands, 'DCTs' is used to encompass both price comparison sites promoting the services of a limited number of conveyancers and charging referral fees (e.g., Really Moving, The Law Superstore, e-conveyancer etc) and also client review platforms (e.g., Trustpilot). These review platforms are not designed to promote comparison. If used in this way, it's an incidental by-product. (Review Solicitors is an exception and is more of a hybrid model, capturing client reviews and encouraging consumers to instruct via their platform). These are very different beasts that are viewed very differently by the market.

With that said, we don't think any one channel alone will be effective in providing access to quality information. A multi-channel approach is required.

The really important point is to make sure that all channels offer the same base information on quality that is sourced independently and can be demonstrated to be objective and trustworthy.

This is the role of a Single Digital Register. This is where the 'single version of the truth' should be held. Other parties or channels can of course add additional metrics should they choose, but the Regulators should ensure that they 'own' the definition of suitable quality metrics and supply the same to the market. This could also include a feed from external customer review sites of consumer feedback on individual firms which would form an integral part of the suite of quality indicators supplied by the Single Digital Register.

This rich data can be supplied to each firm for incorporation in their own web sites and also to any third-party comparison site or indeed any consumer facing site.

The Regulators would also be well advised to supply a direct access to the Single Digital Register through their own channels – including of course the Legal Choices website. This could at its most

basic allow consumers to review or validate the performance of individual firms; it could allow consumers to compare different firms’ performances against these metrics – and as we suggest in Q10 it would also be perfectly possible to allow firms to include price information so that the Regulators could supply a whole of market, referral fee free comparison site.

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?

Our assumption here is that by DCTs, the question is asking about client review platforms.

We have attached as an appendix the survey we conducted in February 2020 that visited the web sites of 1,000 conveyancing firms who were responsible for nearly a quarter (22.5%) of all residential purchase transactions over the period.

The study looked in part at firms use of reviews and the summary table is reproduced here:

2019 cases	Trustpilot	Feefo	Google / Yell / Facebook	Review Solicitors	Own testimonials	No reviews
142,406	15	2	11	16	223	733
22.5%	1.5%	0.2%	1.1%	1.6%	22.3%	73.3%

Nearly three quarters of firms (73.3%) made no use of reviews at all on their web sites. Over a fifth of firms (22.3%) used extracts from positive, anonymous testimonials as marketing collateral and less than 5% of firms (4.2%) actually used a third-party independent review platform.

The position may have changed, although our suspicion would be that firms will not have prioritised this area of their business over the course of the extraordinary 2020.

Addressing this weak uptake, we would repeat the relevant part of our answer to Q4:

We don’t believe it would be feasible to design, launch and importantly manage, a bespoke client review platform for legal services – especially when there are already major businesses in this area with superior offerings and resource.

Rather, we would encourage the Regulators to ‘nudge’ firms or otherwise facilitate the uptake of existing client review platforms. Such encouragement might come in the form of some collaboration with these providers that either offered preferential terms (Trustpilot and Review Solicitors both have options that are free) or tailored features – or perhaps more creatively, by sponsoring the development of a Single Digital Register that included reviews and other comparison tools that left firms at a competitive disadvantage if they didn’t adopt these reviews.

On the specific options raised, all three are ‘sticks’ designed to effectively mandate that firms incorporate external client reviews into their communications with prospective clients. As such, we suspect firms would object strongly to this interference in their businesses; would passively resist and set themselves against the broad thrust of quality indicators.

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

Our response is limited to client review platforms as opposed to lead generating price comparison sites.

Regulators may care to work with the review platforms in order to reassure members on issues of concern such as redress. We would expect these businesses would be quick to offer support and training to explain and promote their use.

Whilst most providers already have a free to use service level, there may also be the opportunity for the Regulators to negotiate discounted fees for members as an additional incentive to participate.

Regulators could help drive adoption by promoting reviews on their own platforms, including Legal Choices.

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

We would repeat our answer to Q6 above:

- *Number of conveyancing purchase transactions completed in previous 12 months*
- *Average value of these transactions*
- *Location of these transactions (represented spatially)*
- *Mix of purchase cases (tenure, new build)*
- *Size, experience and qualifications of the conveyancing team*

In addition to which, the Regulators' own measure of operational efficiency, derived from a basket of metrics described in Q6 should also be included at a summary level (the component metrics themselves wouldn't be published, just the resulting rating).

It would also be perfectly possible to invite firms to supply pricing information so as to allow Regulators to promote a unique whole of market price and service transparency comparison function.

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

We firmly believe that success depends on a sympathetic and symbiotic relationship between the market and its regulators. In such a relationship it is the regulators who have to set the ground rules and act as a catalyst to 'prime the pumps' and it's principally the market that then should be asked to supply solutions that manage the interface between consumers and law firms.

Both parties are mutually dependent. Neither can deliver a successful solution alone. Without the regulators, the market will devise a multitude of competing quality indicators that obfuscate and are slow to grow. Without the market, regulators will be flat-footed in the design and deployment of suitable platforms.

Success has two fundamental pre-requisites:

1. a critical mass of uptake by the profession.
2. a framework for comparison

Both of these require the Regulators to lead. The market must be told what is held to be a base level of quality indicators – and ideally be supplied with that data and law firms must be encouraged to promote them.

Such encouragement using a Single Digital Register could include the proactive supply of quality metrics to firms and the active promotion of comparison.

Thereafter, with the ground rules set and the pump primed with data from the Single Digital Register, the market should be free to deliver and innovate. Price comparison sites can use the rich quality data on their platforms whilst continuing with their referral fee model, consumer organisations can tap into the quality dataset and marketing firms can help law firms make best use of the data on their own websites.

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

No, we believe we have been able to fully articulate our views that the optimum solution lies in our answer to Q11.

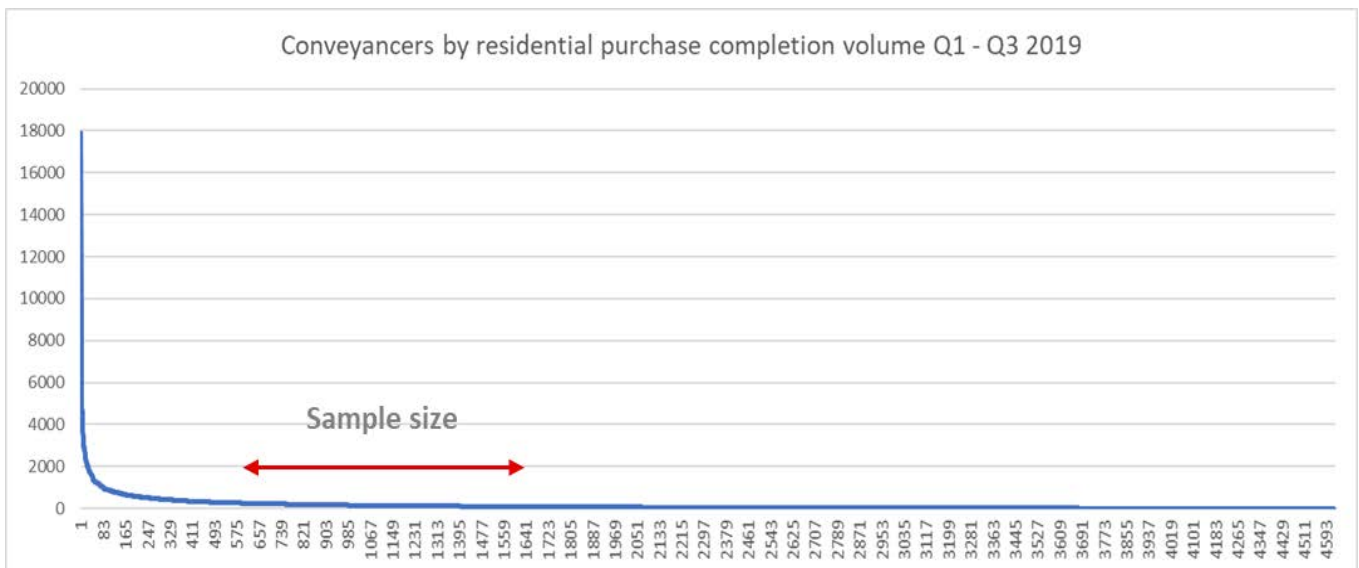
Appendix 1

Price & service transparency review

In February 2020 Pitsford Consulting reviewed the websites of 1,000 conveyancing firms in England & Wales.

Firm selection was based around the average number of residential purchase completions by all firms (136 cases) between 1 January 2019 and 30th September 2019. The survey looked at the 500 firms above this figure and the 500 firms below it. The range of residential completions by individual firms stretched from 244 cases down to 79 cases in the period.

These 1,000 firms represent a snapshot of the ‘engine room’ of the profession. The largest firm was ranked 610th and the smallest 1,610th. Together, these firms bought 142,406 residential properties in the period, representing 22.5% of all purchases. This therefore excludes the high volume ‘factory’ conveyancers at the one end and the 1,153 firms at the other end who each completed less than 10 residential purchases in the 9 months.



The Review

Each firm’s website was interrogated to establish:

- 1) how the firm has dealt with the requirements to provide pricing information for residential conveyancing.
- 2) whether the firm publishes client reviews on their website.

In terms of pricing information, firms were categorised as either:

- Providing a quote personalised to a visitor’s particular circumstances without requiring the visitor to supply any contact details.
- Providing a quote personalised to a visitor’s particular circumstances in return for the visitor supplying contact details.
- Inviting visitors to submit their details in order to subsequently receive a communication with a personalised quote.
- Providing indicative fee scales and disbursement schedules.
- Failing to offer any guidance on the cost of their conveyancing services.

In terms of client reviews, firms were categorised as either:

- Using recognised third-party review sites (principally Trustpilot, Feefo, Review Solicitors or Google / Facebook / Yell).
- Using their own testimonials.
- Not publishing any client reviews.

Findings

1. Fees

Almost a quarter (24.1%) of firms in the sample offer prospective clients the opportunity to calculate a conveyancing fee. The balance of just over three quarters, (75.9%) do not.

Just over another quarter (26.6%) offer prospective clients no guidance at all on likely costs.

The 44.1% that offer indicative fee guidance cannot be said to be maximising the value to prospective clients. Details are typically squirrelled away in impenetrable tables reached by innocuous hyperlinks often placed away from residential conveyancing tabs.

The dislocation between compliance and client value is sharply apparent. 68.2% of the sample can be judged to be compliant with the Transparency regulations, but only 6.3% of firms are delivering a quote without requiring prospective clients to register with them.

2019 cases	quote without capture	quote with capture	quote request	indicative fee guidance	no guidance
142406	63	178	52	441	266
22.5%	6.3%	17.8%	5.2%	44.1%	26.6%

2. Client reviews

There is little or no evidence of objective, third party reviews making inroads with this segment. Almost three quarters of the sample (73.3%) gave no client reviews at all on their sites.

The 22.3% who did include client reviews they had collected themselves, typically included only a handful of quotes, always anonymous and always glowing.

Reviews by their nature are subjective, but the curation of these reviews by firms is obviously part of a marketing presentation, not an attempt to give an honest insight.

Only 4.4% of our sample can be said to be presenting an independent view of their service levels.

2019 cases	Trustpilot	Feefo	Google / Yell / Facebook	Review Solicitors	Own testimonials	No reviews
142,406	15	2	11	16	223	733
22.5%	1.5%	0.2%	1.1%	1.6%	22.3%	73.3%