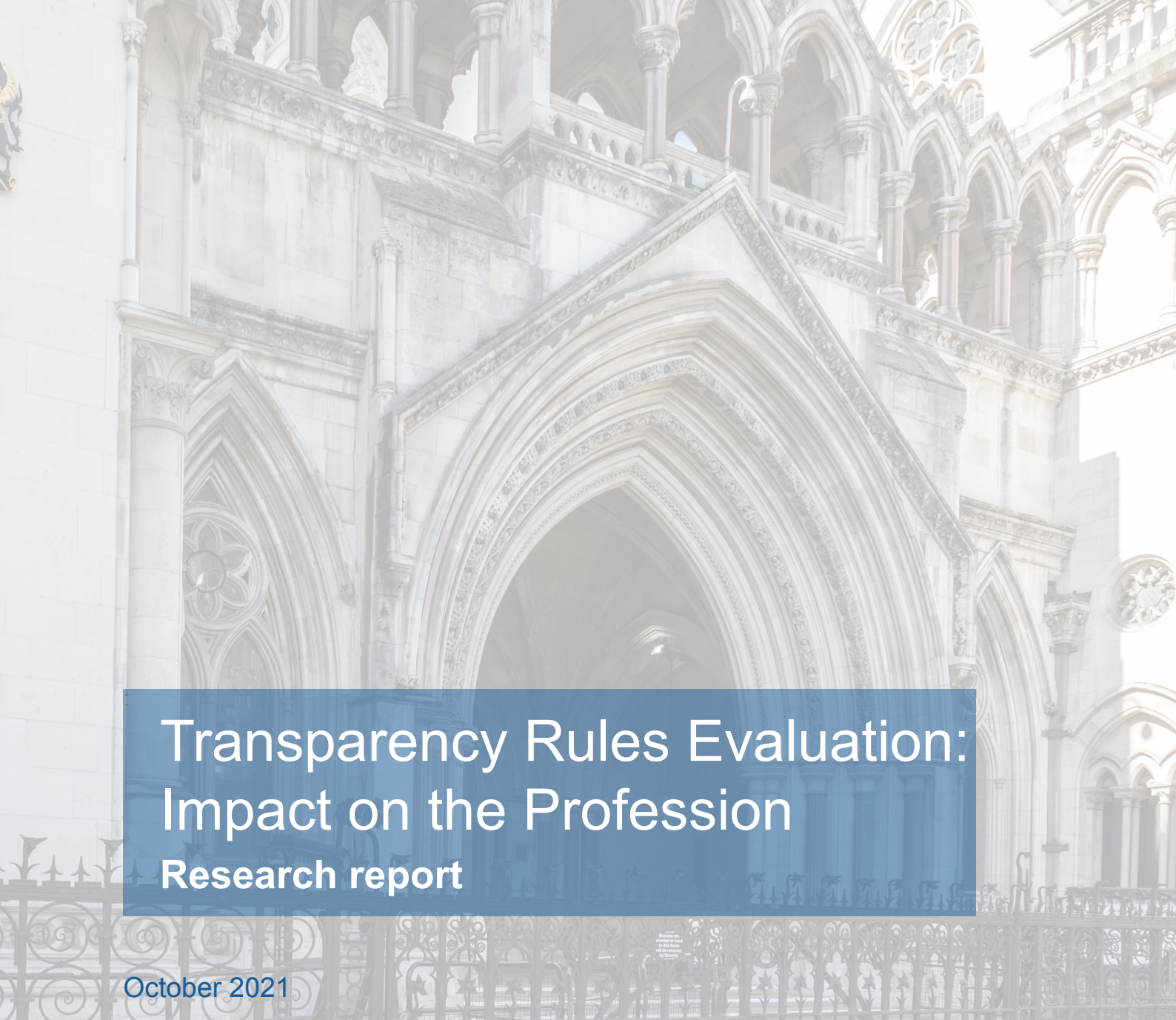




Transparency Rules Evaluation: Impact on the Profession Research report

October 2021

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Executive Summary

Background

- As one of our policy responses to the recommendations of the Competition and Markets Authority (CMA) review of legal services in 2016, the Bar Standards Board introduced new transparency rules for the profession in July 2019 (with compliance required by January 2020). These rules required barristers to provide information on their regulatory status, complaints procedures, services and pricing models either on their websites or as part of a fact sheet for prospective clients.¹ These rules were intended to drive a 'step change' in levels of transparency, following both the research and recommendations by the CMA, and additional research and piloting undertaken by the BSB.
- The BSB committed to undertake a programme of evaluation to assess the impact of the new transparency rules on the profession (both the impact of complying and any subsequent impact on barristers' practices) and on consumers (the extent to which the changes in levels of transparency have led to better levels of understanding, increased shopping around, and better outcomes for legal consumers.) This report assesses the impact on the profession. The consumer evaluation will be undertaken at a later point.
- The scope of the professional side of the evaluation is to evaluate:
 - the levels of compliance with the transparency rules across the profession;
 - the challenges the profession faced in implementing the new rules; and
 - the impact the new rules have had on the profession.
- The evaluation uses three sources of information:
 - A spot check of compliance, with follow-up supervision work, undertaken by the BSB in January 2020 (looking at chambers, entities and sole practitioners)²;
 - Three web sweeps of chambers websites (in 2017, 2019 and 2020) looking at the levels of price information available on chambers websites, and classifying each chambers by the level of detail given on their prices; and
 - The 2021 Regulatory Return , which asked chambers, entities and sole practitioners questions specific to the transparency reforms, asking what action they had taken in response to the reforms, and what impact they had noticed to date.

1. A summary of the transparency rules is given in Appendix 1 of this report.

2. Where this report refers to 'organisations' this covers combined findings across chambers, entities and sole practitioners.

Key Findings

Compliance

- Evidence from the spot check, web sweep and Regulatory Return indicates that the Bar has made progress towards compliance, but has not reached the levels of compliance that might be expected given the time that has passed since the new transparency rules were introduced (Summer 2019) and full compliance was expected with them (January 2020). As of summer 2020, more than one in five chambers, and over one in three sole practitioners, included no information on how fees were calculated on their websites, and thus had not complied with the minimum fee transparency requirements.
- Similarly, the spot check and follow-up supervision work suggest that a substantial proportion of organisations (one in four across all organisations checked, and nearly one in three chambers) were classed as not compliant with the full transparency rules as of October 2020. However, as many of those classed as non-compliant may have made themselves compliant since being spot checked, this is likely to be an over-estimation of levels of non-compliance.
- Despite levels of non-compliance, there has clearly been progress towards greater transparency. The spot check indicates that three in four organisations checked were either fully compliant or partially compliant with the transparency requirements as of October 2020, and compliance levels are likely to have increased since that date due to the follow-up action taken by those assessed as part of the spot check and other ongoing supervision work.
- Significant numbers of organisations have managed to comply with the rules, and this suggests that – given the range of BSB activities aimed at working with the profession to improve compliance with the rules – bringing the profession into full compliance with the requirements is achievable.

Implementation

- The findings above relating to overall compliance suggest that a number of chambers, sole practitioners and BSB entities found compliance with the rules challenging. This is confirmed by a substantial minority of the responses to the Regulatory Return.
- Responses to the Regulatory Return suggested that providing information on indicative fees was one of the greatest challenges. Although this was not a requirement for the whole profession, it was the most commonly cited difficulty highlighted by those who faced challenges in implementing the rules.
- Both the spot check in 2020 and our process of collecting information from the profession through the Regulatory Return exercise in 2021 were key drivers in prompting organisations to seek to comply with the rules. While a number of organisations sought to implement the rules after they were introduced in 2019, the evidence suggests that a number of organisations had not fully engaged with or understood what was required of them until prompted to do so by either the spot

check or the Regulatory Return.

- However, the evidence from the Regulatory Return suggests that the majority of organisations did not face any particular challenges implementing the rules. A significant proportion explicitly noted that they had much of what was required in place before the rules were introduced. The web sweeps in 2017 and 2019 corroborate this, as there was evidence of good practice in terms of transparency before the rules came into force. Organisations who already had a policy of greater transparency are likely to have found implementation of the rules less challenging.

Impact

- The most striking evidence of the impact of the rules is provided by the web sweep exercises undertaken in 2017, 2019 and 2020. These indicate that there has been a substantial change in the levels of fee transparency provided on the websites of chambers and sole practitioners. In both 2017 and 2019, the proportion of websites providing indicative fees was around one in twenty. Following the introduction of the new transparency rules, this had risen to close to one in three organisations. The availability of comparable data from both before and after the introduction of the new transparency rules provides strong evidence that in relation to indicative fees, this change was primarily driven by the new rules.
- There was also a significant drop in the proportion of organisations providing no information at all on how fees were calculated. This dropped from three quarters of chambers' websites in 2017 to slightly over one in five by 2020, following the introduction of the rules. Although the proportion of organisations providing no fee information was already falling prior to the introduction of the rules, the rules are likely to have further encouraged this trend.
- The evidence from the Regulatory Return suggests that the majority of organisations have not yet observed any impact on their practice of implementing the rules. However, nearly a third of organisations observed (or expected to observe in the future) positive impacts from implementing the new requirements. It appears that many organisations feel that implementing changes to comply with the rules has actually been beneficial for their practice, with benefits including a streamlining of their processes and policies; that providing clearer information online benefits their practice; or that having the information available online for clients means they were now better informed about the organisations' fees and services and this made initial discussions about cases easier.
- Given that the introduction of the rules was intended to drive improvements for consumers rather than the profession itself, it is encouraging that a substantially higher proportion of those noting impacts from the changes stated that these were positive rather than negative. This suggests that such positive impacts on the profession may become more widespread as compliance levels improve and more time passes to enable impacts to be observed.

1 Introduction

- 1.1. In December 2016, the Competition and Markets Authority (CMA) published findings from a market study into legal services.³ Its recommendations to frontline legal regulators fall broadly into four categories:
 - Deliver a step change in standards of transparency to help consumers (i) to understand the price and service they will receive, what redress is available and the regulatory status of their provider and (ii) to compare providers. Regulators should revise their regulatory requirements to set a new minimum standard for disclosures on price and the service provided and develop and disseminate best practice guidance. Importantly, this should include a requirement for providers to publish relevant information about the prices consumers are likely to pay for legal services.
 - Promote the use of independent feedback platforms to help consumers to understand the quality of service offered by competing providers.
 - Facilitate the development of a dynamic intermediary market through making data more accessible to comparison tools and other intermediaries.
 - Develop a consumer education hub. The Legal Choices platform should be overhauled to ensure that it can play a major role in empowering legal services consumers, particularly when they first engage with the sector.
- 1.2. To respond to the CMA's recommendations, the BSB established an overarching programme with workstreams corresponding to the four recommendations plus an additional workstream for research to inform the other workstreams, including evaluation. The evaluation project relates to the first of the listed recommendations above, referred to as the transparency workstream in this document.
- 1.3. The first recommendation aimed to develop a step change in standards of transparency amongst legal service providers. The corresponding workstream set up by BSB involved a web-sweep exercise, a programme of research and engagement with consumers and the profession, transparency pilots, a policy consultation, a rule change consultation, a rule change application to the LSB and new disclosure rules introduced in July 2019 (with compliance required by January 2020). A summary of the transparency rules is given in Appendix 1.
- 1.4. The BSB's response to the CMA was informed by several pieces of research and evidence gathering that it undertook in response to the publication of the CMA's recommendations, and consultation and engagement with the profession, representative bodies and consumers. In brief, the research focused on: (i) understanding the current issues and priorities for the profession surrounding price and service transparency, including examples of good practice; (ii) perceived barriers, drivers and potential risks to increasing transparency; and

3. Competition and Market Authority (2016) [Legal Services Market Study: Final Study](#)

(iii) consideration of ways to increase and improve transparency in ways that consumers would find useful. In particular, three pieces of research are discussed below. These are:

- Research commissioned from YouGov and London Economics into the impact of price/service information on consumer understanding and decision-making;
- Interviews with representatives from professional bodies, consumer organisations and providers of barristers' services; and
- A piloting exercise undertaken with a number of chambers, entities and sole practitioners with a trial version of the transparency rules.

1.5. The commissioned research was published in 2018.⁴ The research combined both qualitative and quantitative strands. The qualitative strand consisted of online focus groups with 22 members of the public who had used a barrister in the last two years, while the quantitative strand consisted of an online behavioural experiment with a nationally representative sample of 1,316 participants.

1.6. The focus groups investigated participants' experiences of using barristers' services, with particular focus on the approaches they took to choosing a barrister, the factors they saw as important while making a choice of provider, and the level of information they were provided and their views on the value and clarity of this information. The results of the focus groups suggest that:

- Consumers frequently do not search for a barrister themselves, preferring to use their solicitor's recommendation unless they do not trust their solicitor. Consumers using public access barristers frequently reported that they did so because they did not trust their solicitors;
- Those who looked for a barrister themselves did this mainly via online research and most of those who had a recommendation from their solicitor or friends / family also did some online research to make sure they were satisfied with the recommendation;
- Consumers value expertise and a proven track record. Price is less important than expertise - however, consumers would value price information to help them compare between barristers;
- Consumers often do not find the information they are looking for online; instead they are given information via email or at an initial meeting.
- Consumers have mixed opinions about whether the information they receive is easy to understand.

1.7. The online experiment tested responses to both different levels of transparency, as well as to different approaches to calculating and presenting fees. The experiment used 'mock-ups' of price and service information for fictitious barristers' chambers, and tested participants' decision making, views and understanding of the information provided. These levels were based on the BSB's proposed rules on price and service transparency, ranging from minimum disclosure (which provided

4. BSB (2018) [Consumer Behaviour and Attitudes towards Price and Service Transparency](#)

the least information on price and service) to discretionary disclosure (which provided the most information). In relation to transparency levels, the research found:

- Participants found the minimum disclosure treatment to be the least helpful way of showing price/service information, in terms of information needed to compare between barristers, their confidence in comparing, and overall understanding of information.
- Participants displayed broadly similar levels of confidence and understanding across mandatory and discretionary levels of transparency, although some differences were observed.
- The highest level of transparency made it easier for consumers to correctly identify some elements of the information provided, such as information on how timescales for a case may vary.
- However, the highest level of transparency made it more difficult for consumers to correctly identify other aspects, such as the cheaper option from two alternatives.
- Increasing transparency around price and service offered did not have any negative impact on consumers' opinions of barristers' skill, professionalism or expertise.

1.8. The key findings from the qualitative research with professional bodies, consumer organisations and providers were published as part of our rule change application to the LSB for the introduction of the transparency rules.⁵ These included that a key perceived barrier to transparency is that “one size doesn’t fit all” because of the complexity of each case. The main drivers for increased transparency are perceived to be legal aid cuts and competition by other providers (including better consumer engagement by other providers). While consumer organisations recognised that it is complex to price legal services with accuracy before delivery, they would expect an estimation of the cost (rather than a definite price) to be available on a provider’s website. Most of the providers interviewed – including those who currently publicise price and service information on their website – indicated that they would welcome new regulatory requirements on transparency. However, they expected the BSB to find a balance between overly rigid requirements and minimal requirements that would render the information provided meaningless. Finally, the main risk perceived by the profession was that competition will be driven only by price at the expense of the whole value of the service provided, including a specific expertise or the overall quality of the work.

1.9. Prior to introducing the transparency rules, we conducted a pilot exercise in 2017 with a number of chambers, entities and sole practitioners. We conducted an evaluation of the pilot.⁶ This included collecting feedback from eight pilot participants through a qualitative method of semi-structured telephone interviews. This provided us with some early evidence (although limited) of the impact compliance with the rules might have on organisations.

5. [Amendments to the Bar Standards Board Handbook – Transparency Rules](#)

6. [BSB \(2018\) Transparency Pilot Evaluation](#)

1.10. The evaluation of the pilot found that implementation of the minimum disclosure requirements was perceived as relatively easy by the participants. The key reasons for that were:

- Fee scales and service information were available to them internally prior to the pilot (but not published on websites);
- The high level of expertise in specific areas of law and the small size of the participants' organisations made implementation easy, but some participants speculated that it would not be as easy for larger chambers offering a wider range of services. For some participants, price and service transparency were already part of their marketing strategy, especially with Public Access work.

1.11. A few participants expressed some initial concerns, such as:

- The risk of a 'race to the bottom' i.e. with price transparency the market may end up being solely driven by price information to the detriment of the quality of the service;
- The risk of 'putting off' clients with the display of prices that may look high at first glance;
- The risk that professional clients (e.g. solicitors) perceive price transparency for Public Access work as a competitive threat from barristers.

However, according to the pilot participants, none of these concerns materialised during the pilot.

1.12. The BSB brought the new transparency rules into force on 1st July 2019, with an implementation period until January 2020.⁷ These rules consisted of mandatory rules on price, service and redress transparency for all self-employed barristers, chambers and BSB entities, who were required to provide certain information about price, service and redress on all their websites, or in an alternative format available for clients if they did not have a website. There were additional transparency rules for those undertaking Public Access work, and a requirement for those undertaking public access work in particular areas of practice to provide additional information about pricing, including indicative fees, for these areas of work.

1.13. In 2021, the BSB undertook qualitative research with barrister's clients.⁸ In relation to choosing a barrister, the research found that most clients referred by a solicitor were only recommended one barrister by their solicitor, rather than being given them a choice, and only a few interviewees who were referred to a barrister then independently looked up information on their barrister before they agreed to use him/her. However, virtually all of the public access undertook research and compared barristers before making a choice. In particular, the research found that when presented with barrister's websites to review as part of the research, most participants found them very useful for barrister information (experience, previous cases etc), services information, and price details, so there is a case for directing

7. <https://www.barstandardsboard.org.uk/for-barristers/compliance-with-your-obligations/transparency-rules.html>

8. BSB (2021) [Barristers' Clients Research - Expectations and Understanding](#)

individuals to these sites as part of the decision-making process.

- 1.14. The Evaluation aims to assess the impact of the 2019 transparency rules, both in terms of their impact on the profession (both the impact of complying with the rules and any subsequent impact on their practice) and the impact on legal consumers (the extent to which the changes in levels of transparency have led to better levels of understanding, increased shopping around, and better outcomes for legal consumers.) The new transparency rules were introduced in July 2019. Compliance was made mandatory by January 2020, with evaluation activities originally planned to start in 2020.
- 1.15. The Coronavirus pandemic had a significant impact on the delivery of legal services – particularly for barristers who are predominantly used for representation in court. As a result, for the evaluation work on the impact on consumers, the evaluation timescales were extended into 2021 due to the likely impact of the pandemic on the numbers of clients who had used barristers since the rules had been compulsory (and therefore the difficulty in recruiting a suitably-sized sample of clients who had experience of using barristers after the rules had been implemented).
- 1.16. The pandemic also had an impact on the professional side of the evaluation. The Regulatory Return, which had been planned as a key source of data for this element of the evaluation, had to be delayed due to the pandemic. As a result, while the original timescales planned to complete the professional side of the evaluation by late 2020, this was delayed to 2021 due to the delays in receiving the Regulatory Return data.
- 1.17. This report does not include the evaluation of the impact of the transparency rules on consumers, but focusses on the impact on the profession. The Consumer Evaluation will be undertaken at a later date.
- 1.18. The primary scope of the professional side of the evaluation is to evaluate the effectiveness of actions taken by the BSB to deliver a step change in standards of transparency. In particular, the evaluation looks at:
 - the levels of compliance with the transparency rules across the profession;
 - the challenges the profession faced in implementing the new rules; and
 - the impact the new rules have had on the profession.

2 Methodology

- 2.1. The approach of this evaluation was to use a mix of qualitative and quantitative indicators to answer the key evaluation questions. Using this approach, it was possible to build up an overall picture and enable conclusions to be drawn about the impact(s) on barristers.
- 2.2. There are inherent challenges when measuring the impact of regulatory interventions, including the difficulty of linking cause and effect and allowing sufficient time for measures to have their intended impact. While it was possible to make an assessment of the effectiveness and impact of BSB actions on its segment of the market (i.e. barristers and consumers), the evaluation did not attempt to assess the extent to which BSB's reforms have contributed to changes in the legal market overall.
- 2.3. To evaluate the impact on the profession, three primary sources of data were identified. The first source of data was the spot check of compliance with the full set of transparency rules, undertaken by the Supervision team in January 2020 with follow up work continuing afterwards. The spot check exercise provided evidence of levels of compliance with the full suite of the transparency rules. However, as compliance with the rules was not assessed until after the implementation period, the BSB does not have equivalent statistics for the period before the implementation of the rules.
- 2.4. The data collected as part of the spot check were initially analysed by the BSB Supervision team, with some additional statistical analysis undertaken by the BSB Research team. The evaluation also uses evidence from Supervision follow-ups with organisations that arose from the spot check exercise in 2020.
- 2.5. The second major source of data for the evaluation is several web sweeps of chambers websites undertaken by the BSB Research team. These looked at the levels of price information available on chambers websites, classifying each chambers by the level of detail given on their prices. The BSB has undertaken three web sweeps of chambers websites:
 - in 2017, in order to provide evidence to inform our response to the original CMA transparency recommendations. This only looked at multi-tenant chambers.
 - in 2019, immediately before the BSB's new transparency requirements were introduced. This provided a baseline of price transparency immediately before the BSB's reforms, and looked at all multi-tenant chambers and a sample of sole practitioners.
 - In 2020, one year after the transparency rules had been introduced. This again looked at both multi-tenant chambers and sole practitioners, and was to provide an indication of the impact on price transparency one year on from the introduction of the rules.

- 2.6. The statistical data from the web sweep exercise were analysed using SPSS, a statistical analysis package. The analysis considered differences across the three years of data collection and further comparisons, such as differences between chambers and sole practitioners, and differences between organisations that did and did not offer public access services.
- 2.7. The third main source of evidence for the evaluation was Regulatory Return data (complete March 2021). In September 2020, the BSB issued a Regulatory Return to a selection of around 350 chambers, BSB entities and sole practitioners. The Regulatory Return is a way for us to assess risk across the Bar and levels of compliance with our rules. It included two questions specific to the transparency reforms, asking what action organisations had taken in response to the reforms, and what impact they had noticed to date – both in terms of changes they had to make in order to comply, and any impact they had noticed so far on either their organisation or their clients. The relevant questions are given in Annex 2.
- 2.8. The qualitative data from the Regulatory Return was analysed using a thematic analysis approach. This is a coding approach to qualitative analysis that involves identifying the key themes that emerge from the data that have relevance to the research question or topic of interest through careful reading of the data. Each question response is then coded if it is judged to refer to a particular theme. Responses were coded using the NVivo software package.
- 2.9. These three sources of information were intended to provide evidence that addressed:
- The level of compliance with the rules (quantitative evidence from the 2020 spot check);
 - The level of improvement of price transparency since the rules were introduced (quantitative evidence from the three web sweeps from 2017, 2019 and 2020); and
 - What impact had been observed by the profession from implementing the rules (qualitative evidence from the 2020 Regulatory Return.)

Limitations

- 2.10. This evaluation uses a mixed methods approach, combining quantitative and qualitative analyses to assess the impact of the new rules on the profession. However, while this has strengths in terms of enabling the use of several data sources to answer the research questions and triangulate findings, there are several limitations in the approach adopted.
- 2.11. The spot check was targeted at a sample of chambers, sole practitioners and entities.⁹ As such, it does not reflect the whole population of the individuals and

9. Where this report refers to 'organisations' this covers combined findings across chambers, entities and sole practitioners.

organisations regulated by the BSB, and there is a chance that the findings from the spot check are not fully representative of the full population. In addition, the exercise was only undertaken after the rules were introduced, so there is no baseline comparator to determine the extent to which the profession provided the information required by the transparency rules prior to their introduction.

- 2.12. In contrast, the web sweep does provide two sets of data from before the rules were introduced (and therefore provides data on the baseline level of fee transparency before the new requirements.) In addition, it looked at all chambers with active websites, so there are no concerns about the representativeness of the chambers sample. However, it only sampled sole practitioners in 2019 and 2020 (and excluded sole practitioners in 2017). In addition, a significant proportion of sole practitioners do not have websites, so the web sweep was restricted to looking at those who did. As a result, the findings in relation to sole practitioners (who make up around 5% of the self employed Bar) may not be representative of the whole population. Although the web sweep provides baseline data for fee transparency, it did not look at the wider provision of service information that is required by the transparency rules, and therefore cannot provide a baseline measure beyond the issue of fees.
- 2.13. As with the spot check exercise, the Regulatory Return was required of only a sample of chambers, sole practitioners and entities. As a result, the findings from the Regulatory Return may not be reflective of the whole profession. In addition, there was considerable variation in the level of detail provided in responses, and the extent to which they discussed compliance, implementation and impact. The findings from the analysis of the Regulatory Returns are therefore focused on the responses that provided relevant detail. The findings may therefore not reflect the views of all the organisations that completed the Regulatory Return, particularly if the organisations which provided more limited detail in their responses differed considerably in their actual views and/or observations than those that provided more detailed and considered responses.

3 Research Findings

Spot Check

- 3.1. Initial monitoring of compliance with the new transparency rules (via the spot check discussed below) has highlighted the areas where organisations are more likely to have struggled with compliance. The most common areas of non-compliance with the mandatory rules (which apply to all barristers) were: failing to provide information about the factors which might influence the timescales of a case; failing to link to the decision data page on the Legal Ombudsman's website; and failing to link to the BSB's Barristers' Register. It was also common for barristers who provided a factsheet (because they did not have a website) to make reference to their complaints procedure without either including this information or attaching it to the factsheet. They were advised that the complaints information must be provided at the same time to members of the public, in order to be compliant.
- 3.2. The most common areas of non-compliance with the additional transparency rules (which apply to certain Public Access services) were failing to provide indicative fees and the circumstances in which they may vary; failing to provide information on likely additional costs such as court fees; and a description of the relevant Public Access services (including a concise statement of the key stages and an indicative timescale for the key stages.)
- 3.3. Following the completion of the spot check in 2020, the BSB felt that further work could be done to continue to raise awareness of the rules and to achieve a higher degree of compliance. Suggested actions included:
 - Publishing the results of the spot check, highlighting to the profession the key issues (now complete);¹⁰
 - Continuing to raise awareness through our Supervision activities e.g. through the Regulatory Return and other engagement with chambers, sole practitioners and entities.¹¹ The Regulatory Return exercise included targeted questions on the impact of the rules. The Supervision team is currently testing compliance by those chambers/entities/sole practitioners who received the Return and were not part of the previous spot check or who were assessed previously as non-compliant or partially compliant. This is in progress;
 - The Supervision team is currently testing compliance by those chambers/entities/sole practitioners who received the Return and were not part of the previous spot check or who were assessed previously as non-compliant or partially compliant. This is in progress;
 - Carrying out a further compliance check by the end of 2021-22 of those who were

10. <https://www.barstandardsboard.org.uk/uploads/assets/3359c36e-ef3e-449d-883e18c5ebeabad6/202006-External-Transparency-spot-check-report.pdf>

11. Every time they engage with a chambers for supervision purposes, the Supervision team undertakes a spot check to ensure compliance.

- assessed as non-compliant during the spot check and were not re-tested as part of the Regulatory Return process or other Supervision work described above; and
- Continuing to raise awareness about the importance of compliance through our regular communications with the profession.

- 3.4. Although the rules came into effect on 1 July 2019, an implementation period was granted until January 2020 by which time we expected all self-employed barristers, chambers and entities to be fully compliant. In January 2020, the BSB spot checked 212 sole-practitioners, 34 entities and 193 chambers.¹² Compliance with the rules was assessed via desk-based assessment. Where possible the Supervision team reviewed the websites of those selected in the sample for compliance with the rules. Where a website was not available, the transparency information was requested in an alternative format such as a factsheet.
- 3.5. Websites and readily available information were assessed as either compliant, partially compliant or non-compliant. The results of the spot check are summarised in table 1 below, broken down by type of organisation. This reflects which rules they are subject to, as Public Access barristers practising in particular areas of law are subject to additional requirements. Note that this table reflects the situation in October 2020, rather than after the initial spot check. This means that it includes additional organisations that had been engaged with and checked for compliance as part of ongoing supervision work (see paragraph 3.4) and there had been follow-up work with some, but not all of the original spot check sample. However, the majority of the organisations that formed part of the original spot check had not been checked again for compliance before October, so the figures below will not reflect any corrective actions that may by then have been taken by many organisations. As a result, compliance levels are likely to be higher than those given below as a proportion of non-compliant and partially compliant organisations will have taken action to make themselves compliant since they were originally checked.

12. As of 1/12/2019, there were 409 chambers, 609 sole practitioners and 125 entities.

Table 1

		Compliance Level			Total
		Compliant	Partially Compliant	Non-compliant	
BSB Authorised Body	Count	12	14	4	30
	%	40.0%	46.7%	13.3%	100.0%
BSB Licensed Body	Count	1	3	0	4
	%	25.0%	75.0%	0.0%	100.0%
Chambers (all)	Count	50	87	56	193
	%	25.9%	45.1%	29.0%	100.0%
Chambers (not Public Access)	Count	23	33	29	85
	%	27.1%	38.8%	34.1%	100.0%
Chambers (Public Access – no additional transparency requirements)	Count	16	45	26	87
	%	18.4%	51.7%	29.9%	100.0%
Chambers (Public Access - additional transparency requirements)	Count	11	9	1	21
	%	52.4%	42.9%	4.8%	100.0%
Sole Practitioner	Count	98	64	50	212
	%	46.2%	30.2%	23.6%	100.0%
Total	Count	161	168	110	439
	%	36.7%	38.3%	25.1%	100.0%

3.6. Those who were assessed as partially compliant were given feedback and referred to the appropriate transparency rules and guidance, in order to ensure future compliance. Those who were assessed as non-compliant were informed and told they will be assessed again, and that in the event of persistent non-compliance, the BSB will take regulatory or enforcement action. Non-compliant organisations are being checked again for compliance as part of the assessment of the Regulatory Returns and other follow-up work, which is taking place up to December 2021.

Drivers for Non Compliance

3.7. The introduction of the new rules and the spot-check was widely communicated via the BSB's website, press releases, social media such as Twitter and the Regulatory Update, which is sent to all members of the profession. Despite this, it became clear during the spot check process that some had not considered the rules at all and for those who had done so, they had not necessarily included sufficient detail in order to become fully compliant.

- 3.8. It is possible that some sole practitioners had not considered their compliance with the transparency rules at all until the point at which they were contacted. Those without websites were given a relatively short time (within 5 days) to provide the BSB with the information in an alternative format, as we considered that the information should be readily available. It was apparent from some of the responses that more time was needed as they were reading and considering the rules for the first time. However, these same barristers were more likely to be compliant with the rules when their factsheets were then assessed. This could be due to the fact that they based their factsheets on the template and so it was relatively easy for them to ensure compliance quickly.
- 3.9. The Coronavirus pandemic had a significant impact on the delivery of legal services – particularly for barristers who are predominantly used for representation in court. As a result, those organisations which had not yet made themselves compliant by January 2020 are likely to have faced additional barriers to compliance due to the associated disruption to their practice caused by the pandemic.
- 3.10. The spot check exercise identified differing levels of compliance for different categories of organisation, and this may indicate some additional barriers to compliance. For example, sole practitioners were more likely to be non-compliant than chambers when they were subject to the additional transparency requirements. This is likely to be the result of lack of time or resource to comply with the rules in comparison with larger sets who have more barristers and staff available. Similarly, chambers who did not undertake any Public Access work were more likely to be non-compliant than Public Access chambers, particularly Public Access chambers who were subject to additional transparency requirements. This may be because non-Public Access chambers were less aware of the fact they needed to change the information provided than those that did Public Access work.
- 3.11. The majority of chambers were receptive to the feedback and either agreed to address the weaknesses as soon as possible or said they were in the process of updating their websites. Sole practitioners were on the whole more likely to query our assessment and need additional help in understanding the rules. A small number of barristers objected to their fees being made public, due to concerns that larger sets would undercut them.
- 3.12. Good practice included being fully compliant with all aspects of the rules, providing the information in a clear and comprehensible way, and the relevant information being provided in an easy to find section of the website to make finding the information easy for consumers. Bad practice included not making any effort to comply with the rules themselves, or providing information in a difficult to find part of the website – this was addressed with those identified by follow-up action.
- 3.13. For information on fees, having the information in an easy to find area of the website (i.e. clearly linked from the homepage) was seen as good practice, as was including more detailed information on costs. Examples included clear information on different hourly rates for different levels of seniority, along with an explanation

of how and why they could vary, including indicative costs for different stages of a case (either as indicative fixed fees or as an expected number of hours where hourly rates were provided), clearly indicating when fees were subject to VAT, and providing information as to when additional costs might be incurred, such as travel costs.

- 3.14. As with transparency generally, bad practice included not making any effort to comply with the rules themselves, or providing information in a difficult to find part of the website. For fees in particular, this generally included not presenting information on fees at all, or simply telling consumers to 'contact the clerks for fees' without providing any information on how fees were charged or calculated.

Spot Check – Summary

- 3.15. The findings of the spot check suggest that compliance with the full suite of transparency rules was mixed, with slightly over a third of organisations categorised as fully compliant with the rules as at October 2020 (although this may not reflect the corrective actions organisations have taken after being checked for compliance). It is worth noting that this reflects the state of play after follow up work done with some spot-checked chambers with the supervision team following the original spot check in January, and therefore that when the spot check originally took place a lower proportion of chambers had fully complied with the rules. Of organisations that were not fully compliant (slightly under two thirds of spot checked organisations), the majority were rated as partially compliant, so had complied with some but not all of the rules. However, more than one in four of all organisations checked for compliance (either as part of the original spot check or as part of later supervision work) were rated as non-compliant, although subsequent corrective action by these organisations is likely to have increased levels of compliance with the rules.
- 3.16. The results of the spot check suggest a number of drivers for the levels of compliance observed. In particular, for many organisations it appeared that a lack of awareness, either of the rules as a whole or of the associated requirements for their organisation, was a factor. This was the case despite the extent of publicity put out by the BSB around the new requirements. It is notable that the highest levels of compliance were observed among those chambers which undertook public access work in the areas of law where the rules required the highest levels of transparency (particularly around fees) – this suggests that these organisations were either more aware that the new rules would require them to update the information they provided, or had more of the information required online before the rules came into force due to the nature of their practice (as they were more likely to provide information online for prospective clients than organisations that did not undertake public access work). The lowest levels of compliance observed were in chambers that did not undertake public access work at all – this may have been driven by the belief that they did not need to make changes to comply with the rules as they were not subject to the requirement to publish indicative fees.

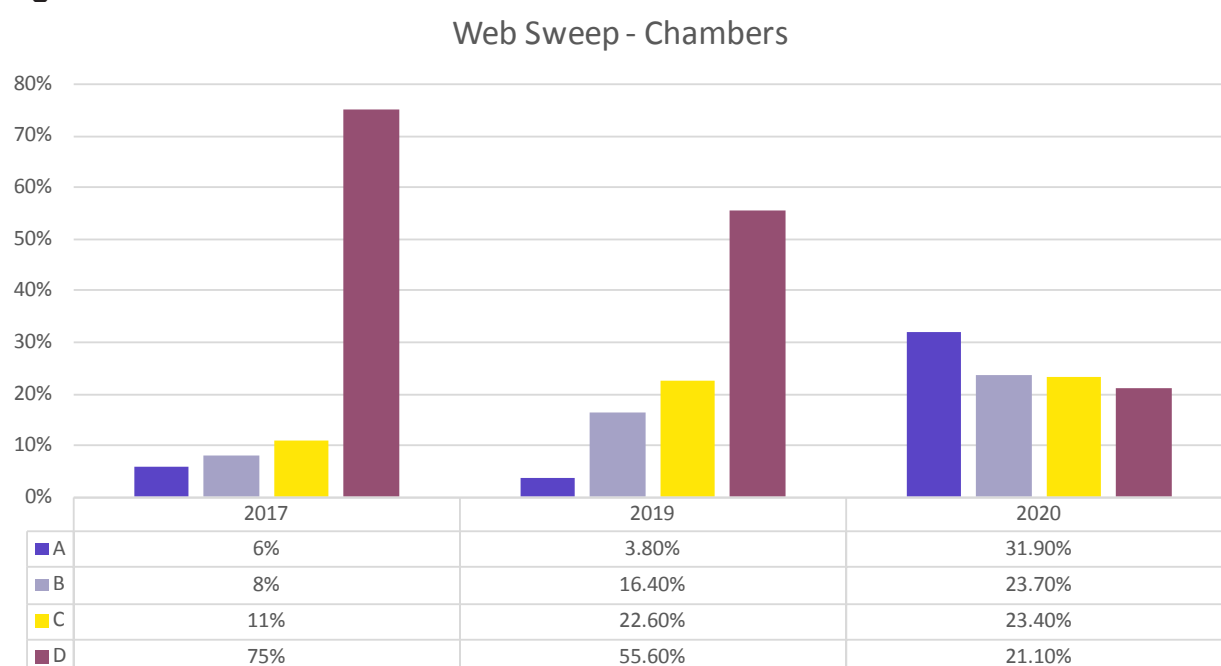
Web Sweep

3.17. The BSB has undertaken three web sweeps of chambers websites, two prior to the introduction of the transparency rules (in 2017 and in 2019) and one a full year after the rules were introduced (in 2020). All three looked at all existing chambers, and the sweeps in 2019 and 2020 also looked at a sample of sole practitioners. The web sweep consisted of reviewing the sections of the websites of chambers and sole practitioners that covered the pricing of their services. The stats below cover chambers or sole practitioners with active websites – where an active website for a chambers or sole practitioner could not be identified, these organisations were excluded from the statistics.

3.18. For the web sweep, fee information was assessed as follows:

- A. Included numerical information on fees (e.g. indicative hourly rates, indicative fixed fees, costs for different stages of a case, etc);
- B. Contained some detailed information on how fees were calculated without containing numerical information (i.e. covered two or more of the following: pricing models such as fixed fees or hourly rates; reasons costs can vary e.g. barrister seniority, case complexity etc; information on additional costs such as charges, expenses, etc);
- C. Basic information on how fees were calculated (covered one of the above);
- D. No information on how cost/fees are calculated.

3.19. The analysis of chambers websites was undertaken by members of the BSB research team. While the 2017 sweep was undertaken by a single member of the team, the 2019 and 2020 sweeps were undertaken by multiple team members. In order to ensure consistency across the coding of websites, a detailed framework and approach to analysis was developed, and a dual coding quality assurance approach was undertaken after the first 15 websites per team member had been coded, with the other coders looking at the previously coded websites to ensure the coding was consistent with the approach they had taken.

Figure 1

3.20. As can be seen from Figure 1 above, there were significant changes in the level of price information provided over the different years. The trend in terms of information provided online had already lead to a decrease in the proportion of chambers that provided no information at all on how prices were calculated prior to the introduction of the rules – this had fallen from 75% to 56% before the transparency rules had been introduced, with a corresponding increase both in the numbers that provided detailed information and basic information on fees. However, prior to the introduction of the rules, there had been little change in the proportion of websites providing actual numerical information on indicative prices – in fact, this actually declined between 2017 and 2019.

3.21. Following the introduction of the new transparency requirements in 2019, the most significant changes observed were in the proportion of chambers providing no information on fees, and the proportion of websites including numerical information on fees. Of chambers with active websites in 2020, 21.1% of websites provided no information on fees, compared to 55.6% without any fee information in 2019. The number of chambers providing numerical information on fees in 2020 – such as indicative hourly rates – had increased by more than eight times since the 2019 web sweep, from 3.8% to 31.9%. This suggests that while the trend prior to the introduction of the rules had been a gradual move towards providing at least some information on prices on websites, the introduction of the rules themselves has led to a significant impact, both a significant increase in the number of chambers that actually provided indicative fees on their websites, and a further hastening of the decline in the number of chambers websites that did not include any information on fees at all.

3.22. In the 2020 web sweeps, organisations that provided numerical fee information were also classified into two categories, simple or detailed. Those that

were categorised as providing 'simple' numerical information and fees were organisations that only had a single cost provided on their website – for example, a single hourly rate, or a single quote or fee for a type of work or consultation. In contrast, organisations classified as providing 'detailed' numerical fee information provided more than one indicative cost, such as indicative prices for a range of different types of work, or examples of hourly rates for barristers of differing seniority. This exercise was not undertaken for the earlier web sweeps due to the small numbers of organisations that provided numerical fee information.

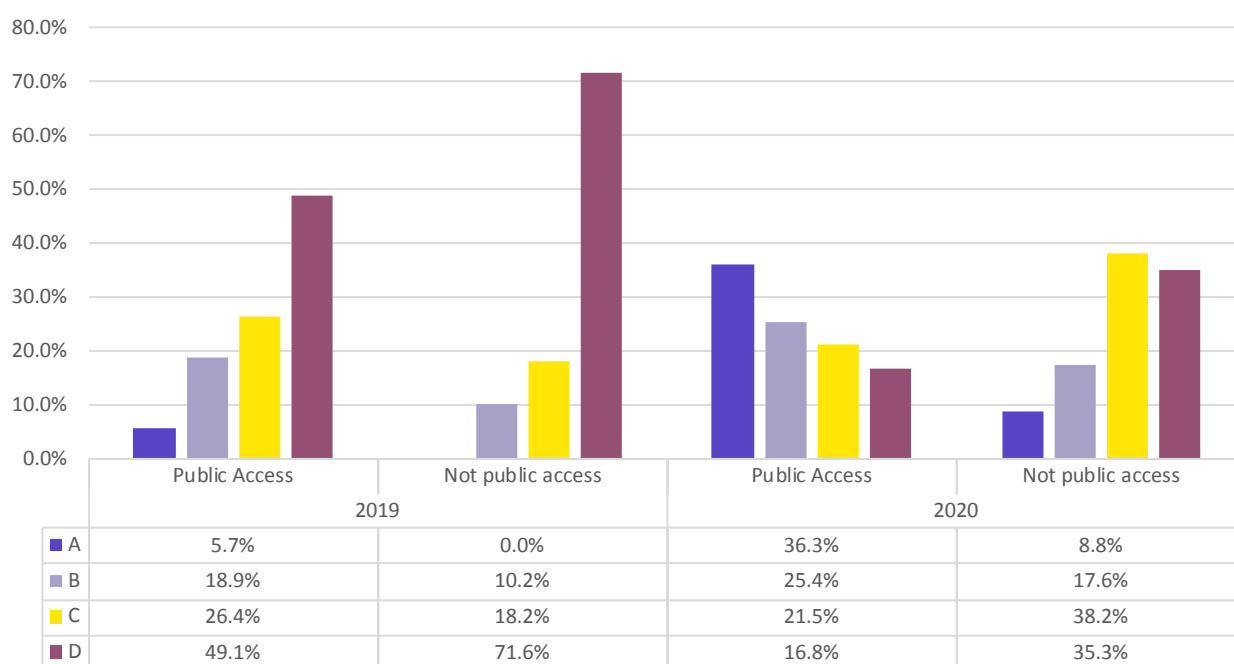
- 3.23. In 2020, close to two thirds (64.3%) of organisations providing numerical price information were classified as 'detailed', so provided more than a single example of costs. The fact that a majority of those providing indicative costs provided more than a single indicative cost is encouraging, as this suggests that the information provided would be of more value to potential consumers, given that it would enable them to have more detailed indicative information available to inform their choice of legal service provider.

Public Access Providers

- 3.24. In the 2019 and 2020 web sweeps, chambers were also classified as public access chambers as part of the analysis if they offered public access services on their website, either for the chambers as a whole or for specific barristers. Figure 2 below shows the proportions in each price category when comparing public access chambers to those that did not advertise or mention providing public access services.

Figure 2

Web Sweep - Chambers with Public Access comparison



- 3.25. In both 2019 and 2020, there was a marked difference in terms of levels of price

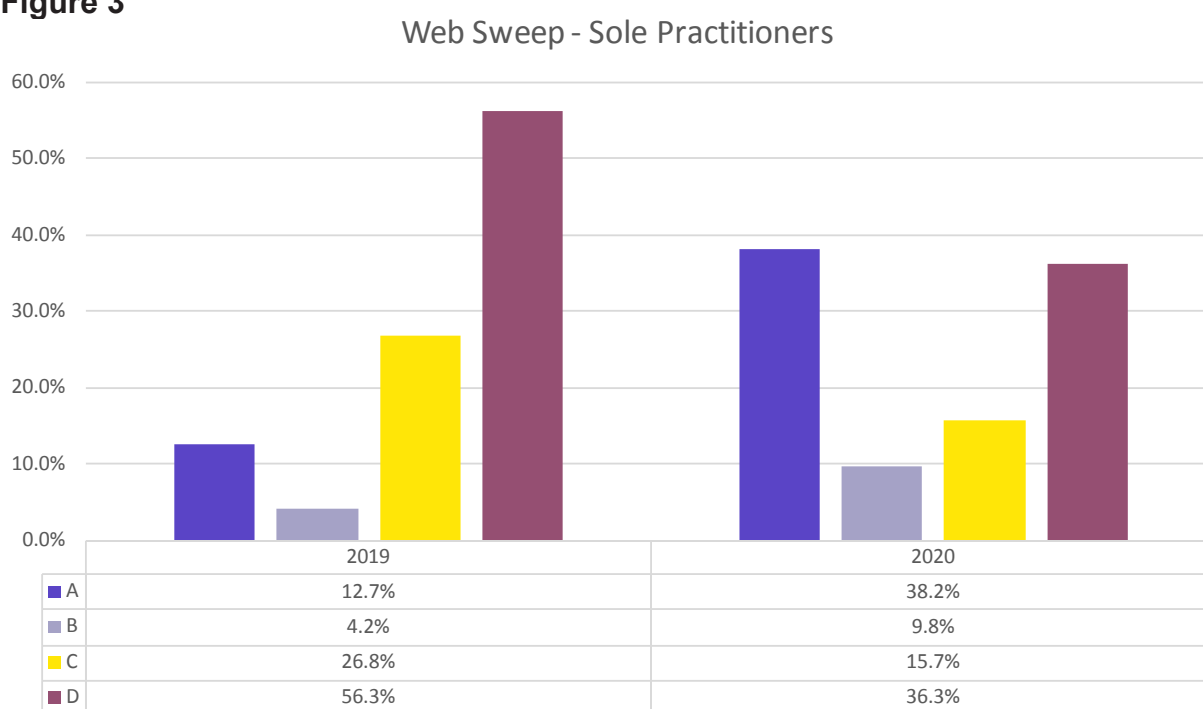
transparency between chambers that advertised public access services and those that did not. It is worth highlighting that in both 2019 and 2020, the majority of chambers with active websites advertised public access services, either for the chambers as a whole or for specific barristers (71% of websites checked in 2019, and 87% of websites checked in 2020).

- 3.26. As shown above, chambers offering public access services were significantly more likely to provide higher levels of price transparency, both in 2019 and in 2020. In particular, chambers offering public access services were much less likely to provide no information on fees, with less than half of websites providing no fees information in 2019 (49.1%, compared to 71.6% of chambers not offering public access services) and less than a fifth of websites providing no fees information in 2020 (16.8%, compared to 35.3% for chambers not offering public access services).

Sole Practitioners

- 3.27. In 2019 and 2020, the web sweep also looked at a sample of sole practitioners. These were selected by a random selection approach, but with the sample weighted to include a roughly equal split between those based inside and outside of London, and public access registered and non-public access registered practitioners. The initial sample size was 100 practitioners, although this was supplemented by additional booster samples to account for the fact that some practitioners did not have websites and to ensure that a total of 100 websites were analysed. They were then coded into the same categories as multi-tenant chambers using the same approach. The results of this analysis are shown below in Figure 3.

Figure 3



- 3.28. As can be seen from Chart 3, there was a similar substantive increase in the proportion of sole practitioners providing price information on their websites, with the increase particularly notable for category A, with 38.2% of sole practitioners providing numerical information on prices in 2020 as compared to 12.7% in 2019. There was a significant decrease (from 56.3% to 36.3%) in the proportion of sole practitioners that provided no information at all on how prices were calculated, although it is notable that the proportion of sole practitioners providing no price information in 2020 was substantially higher than the proportion of multi-tenant chambers (36.3% compared to 21.1%).
- 3.29. In contrast, the proportion of sole practitioners providing numerical price information was higher than that of multi-tenant chambers, at 38.2% compared to 31.2%. While (unlike multi-tenant chambers) we do not have a comparator for 2017 to confirm the direction of travel for price transparency over a longer timescale, it once again appears that the introduction of the rules has led to a substantial increase in the level of price information provided by sole practitioners, and a notable decrease in the proportion providing no information at all on how prices are calculated.

Web Sweep - Summary

- 3.30. The results of the web sweep, in particular the marked change between the results in 2019 and 2020, show that there has been a significant change in the levels of price transparency provided online by chambers and sole practitioners. Of particular note is the step change in the proportion of providers with indicative fees on their websites – while the proportion of organisations providing information on how fees are calculated had been trending upward prior to the introduction of the rules (with a corresponding decrease in those that did not provide fees information at all) the proportion of those that actually provided indicative costs was almost static between 2017 and 2019. However, it rose significantly after the 2019 introduction of the rules, from less than one in twenty organisations in summer 2019 to nearly one in three organisations in summer 2020, which strongly suggests that this was a direct impact of their introduction rather than a continuation of an existing trend that would have taken place anyway.
- 3.31. The other notable change is the large reduction in the proportion of organisations that included no information on how fees were calculated. While in 2017 this made up three quarters of chambers websites analysed, by 2020 this had fallen to slightly over one in five. While this fall is also likely to be in part due to the introduction of the rules in 2019, the fall reflects a trend that was evident before the rules were introduced. However, the fact that more than one in five organisations did not have any information on fees included after the deadline for compliance with the rules is a cause for concern, as the minimum requirements on fee transparency that apply to all chambers require at least a certain amount of information on typical fee models.

Regulatory Return

- 3.32. As detailed in the background section, In September 2020, the BSB issued a Regulatory Return to a selection of around 350 chambers, entities and sole practitioners. A number of chambers or sole practitioners asked to fill in the Regulatory Return were no longer operating, and a small number had still not submitted their responses by the end of April deadline. This left a sample of 295 completed responses for analysis as part of this evaluation. As of August 2021, all the remaining Regulatory Return responses have been received.
- 3.33. The Regulatory Return was a way for the BSB to assess risk across the Bar and levels of compliance with our rules. The Regulatory Return included a range of questions, but for the purposes of this evaluation the analysis was focussed on two questions that were asked about the transparency rules. The first question asked if they were compliant with the new rules, and the second asked what they had done in response to the introduction of the rules, whether they had faced any challenges or barriers in complying with the rules, and whether they had noticed any impact since making the changes. The full questions are given in the annexes.

Compliance

- 3.34. When responding to the question on compliance, a significant portion of responses (93, nearly a third of responses received) noted that they had been spot checked by the BSB in 2020, and gave details of the rating given by the BSB. Among these organisations, the majority (59) had been assessed as partially compliant. The majority of these stated that they had since taken actions to ensure that they were now compliant, and had either had this confirmed by the BSB, or now believed that they had taken into account the reasons given for the partially compliant rating in the spot check and made themselves fully compliant. Compliance is currently being re-assessed by the Supervision team. A range of areas that had not been addressed were given for the original partially compliant rating when assessed by the BSB. These included not linking to the barristers register, LeO decisions or public access guidance for clients on their websites; not providing contact details on the website; not including information on fees and costs for public access clients; and not including information on typical timescales for cases.

“Chambers was assessed as [partially] compliant but the BSB wanted more information on the website regarding factors which might affect the timescales of cases. The changes were immediately carried out.”

“The BSB determined Chambers was ‘partially compliant’ and highlighted a number of areas. Following this communication from the BSB, Chambers took immediate corrective action. To ensure full compliance, Chambers has used the ‘Checklist’ to help with compliance, and information about the BSB’s supervision and enforcement strategy document found on the BSB website.”

- 3.35. Of the responses who mentioned being spot checked by the BSB, 29 (close to

a third) stated that they had been assessed as fully compliant. Only five stated that they had been assessed as non-compliant, and two of these stated that the reason for this rating was due to temporary issues with their website at the time the spot check took place. All chambers who said they had been assessed as non-compliant stated that they had since made changes in response and were now compliant with the rules.

“We had had a new website installed and there had been teething problems which meant we were unable to upload the data within the required timescale. This was remedied the following day.”

“Chambers was deemed non-compliant in implementing the Bar Transparency Rules. We have now addressed the areas of non-compliance and have provided the information regarding price, service and redress as required.”

3.36. Close to two thirds of responses to this question gave details of their compliance based on their own self-assessment, as they had not been contacted by the BSB via the spot check or other checking of their compliance with the rules. Of these, a small proportion stated that they were currently either partially compliant (19 responses) or not compliant (5 responses). The majority of those who stated they were not compliant highlighted issues with their website – either that it was currently being updated and therefore did not include the required information (three responses) that they no longer had access to their website and thus could not update the information (one response). The final organisation that stated it was not compliant was not clear if it was required to add information to its website and stated that it would welcome guidance from the BSB as to what was required (one response). Compliance by this group is currently being assessed by the Supervision team.

3.37. For organisations who had assessed themselves as partially compliant with the rules, a number of responses highlighted that undertaking the Regulatory Return itself had brought to their attention areas where they had not complied with the transparency rules. Other responses mentioned that they had reviewed the BSB report detailing the results of the spot check exercise and that this had brought to their attention that some of the common issues around compliance identified in the report were areas they had failed to address as part of making themselves complaint, and that they were in the process of addressing this. Others stated that their website was currently being updated and that once this was completed, they would be compliant with the rules. Several mentioned specifically that the area they still needed to address was including indicative fees on their websites.

“In reviewing our answer to this question, we have found two errors on our website that have now been resolved.”

“In the course of writing this return we have carefully reviewed the contents of the relevant part of the BSB website and the report following the review of the Bar transparency rules, and revisited our website.”

“Individual public access barristers do not display their hourly rate / indicative fees. The website is in the process of being updated and this information will be changed on the profiles of individual barristers as that is undertaken.”

3.38. The remainder of those who assessed their own compliance with the rules stated that they were compliant. This made up over half of all responses to this question, or over 150 organisations. Of these, slightly over a third merely stated that they were compliant with the rules without providing any details.

3.39. However, the remainder of those who stated they were compliant with the rules provided details, such as providing information on how they complied with individual aspects of the rules, detail on the actions or process they had undertaken in order to make themselves compliant, directions or links to the relevant sections of the organisation’s website, or information on reviews or checks they had done in order to ensure themselves that they had met the requirements. Some organisations mentioned that they had involved external consultants or contractors, such as to update their website or review their compliance with the rules. As with some of the organisations that had assessed themselves as partially compliant, a number of organisations noted that they had reviewed the BSB report detailing the results of the spot check exercise and that this had brought to their attention common issues around compliance that enabled them to check or correct their own approach. Some organisations highlighted the fact that they adhered to both the mandatory elements of the rules but also the additional rules (even where they were not required to) and/or guidelines.

“The Information was already available on chambers website through the terms and conditions and each barristers profile but we have, on reflection added a new page that provides links to the relevant information and should make the information easier to access.”

“Chambers reviewed its processes and updated the website following the introduction of the transparency rules. A consultant was used... to assist us with this process, and gave a presentation at the AGM.”

“Upon publication of the rules we undertook a major review of the new requirements and how to ensure compliance. We enlisted the help of an outside source [to provide guidance on] regulatory compliance.”

“We ensure that we are not only compliant with the mandatory rules but also the additional rules so that we remain as transparent as possible to our clients.”

3.40. A small number of organisations (seven) did not provide a response to this question at all. A further three organisations stated that they believed they were not required to take any action to comply with the transparency rules at all due to the nature of their practice.

“We have not implemented the above because we do not undertake direct access or conduct litigation. We practise only in legally aided family law.”

“At the moment I do not engage with consumers or the public and I do not have a website. I think rC161 allows this.”

Regulatory Return - Compliance Summary

- 3.41. Overall, the responses given to the question on compliance suggest that significant proportions of the Bar had not managed to fully comply with the rules by the original deadline given (January 2020), further supporting the findings of the Transparency spot check in early 2020. Notably, both the spot check and the process of responding to the Regulatory Return clearly meant many chambers either identified themselves areas where they had not fully complied with the rules or had them brought to their attention by the BSB, and then took further action to ensure they met the requirements.
- 3.42. The Regulatory Return responses also indicate that there are some chambers who have identified that they were still not fully compliant with the requirements by the deadline for responding to the Regulatory Return at the end of March 2021, 15 months after the original deadline for complying with the rules. While the numbers are relatively small, they still made up a noticeable proportion of organisations that replied to the Regulatory Return - 24 organisations, approaching one in ten of those that responded to the Regulatory Return, stated either that they were not complaint or not fully compliant with the rules at the time of the submission of their response. Supervision is currently working with these to ensure full compliance.

Implementation

- 3.43. Around two thirds of respondents (188) provided information in their responses as to whether their organisation had found it challenging to implement the transparency rules. Of the organisations that provided this information, slightly over a third (68) stated that their organisation had faced challenges in implementing the rules. Broadly, these fell into two categories – the amount of work or resource required to bring themselves into compliance, or the difficulty faced in complying with particular elements of the rules.
- 3.44. Reasons given for resource and time challenges included the cost of making the changes (in particular the costs associated with updating websites and printed materials such as letterheads); challenges in collecting all the information required (particularly for chambers with large numbers of tenants with different fee scales and practice details); the extent of the changes an organisation was required to make in order to be fully compliant with the rules, and the amount of work required to update all the relevant sections of an organisations website.

“There was a significant time and financial cost to make the necessary changes through re-coding the website and re-printing all of our hard copy materials.”

“Each member of chambers was required to update their webpage so that it complied with the requirements for transparency. The main challenge was getting the relevant information from members.”

“Initially we found absorbing a new raft of requirements challenging alongside fulfilling other regulatory obligations.”

- 3.45. In relation to compliance difficulties, organisations highlighted challenges in presenting information that covers the full range of work undertaken by the organisation; and the difficulty in understanding what was required to comply with the rules. In particular, a number of organisations cited the requirement to publish fee ranges as particularly challenging for them. Over a third of organisations that mentioned challenges in complying with the rules mentioned difficulties in providing information on fees. In particular, organisations highlighted that fees could vary considerably across different members of their organisation or types of work they undertook, that fee ranges had to be fairly wide given the range of factors that could influence cost (and therefore less likely to be useful for clients), that presenting fee information in a way that would be easy to understand for lay clients was difficult, and that keeping fee information up to date could be a challenge.

One of the challenges for us is that we are a multi-disciplinary set, so it is difficult to set a generic suite of fees that can apply to all, and often direct access clients don't always know themselves what form their legal action can take.

It is very difficult to provide a pricing structure on our website due to the complexities associated with individual cases and the amount of time and expertise that is required. It is noted that in order to provide a price list on the website, the categories would have to be so broad that it would not be useful for clients.

- 3.46. Although a considerable proportion of chambers flagged challenges they had faced in complying with the rules, the majority (close to two thirds) of those who covered whether the rules had been a challenge to implement stated that they had not faced any particular challenges or barriers to complying with the rules. For many, this was because they were already in compliance with most or all of the rules before they were introduced, and therefore the changes required were fairly minimal for their organisation. Three organisations mentioned the fact that they had been involved in the initial piloting of the rules, and therefore had already implemented the requirements and were particularly familiar with the rules.

“Chambers has been able to implement and comply with the rules without encountering any particular challenges or barriers.”

“We were already compliant with most of the regulations, but we updated parts of our website in relation to information on indicative fees, and the wording of other parts of our website were also reviewed, to ensure that these met the expected standards.”

“We are very familiar with the Transparency Rules, as [our organisation] was one of the Chambers used in the Pilot and I was a member of the BSB Transparency Standards Task Completion Group.”

- 3.47. Nearly half of responses (140) mentioned the BSB guidance. Of these, the overwhelming majority (around nine in ten responses) stated that the guidance was

helpful to their organisation. However, the remaining tenth raised issues with the guidance, such as a lack of clarity, a lack of relevance to their practice, or a lack of detail around particular elements of the rules and what was required to comply with them.

“The BSB information and guidance about the new rules was clear and easy to implement.”

“In respect of public access services, Chambers did not find the BSB guidance and templates particularly useful as these were often very generic and not sufficiently tailored to the practice area.”

Regulatory Return - Implementation Summary

3.48. The Regulatory Return responses suggest that the majority of organisations did not face any particular challenges or difficulties in complying with the rules. For some, this was because they already had much of what was required in place, and therefore the extent of the changes they needed to introduce was relatively minor. Most found the BSB guidance helpful, and some referred to additional resources from the BSB (such as the report on the spot checks) to identify areas of compliance that other organisations had found challenging in order to review their own approach in this area.

3.49. However, a significant proportion of organisations clearly faced difficulties complying with the rules, in particular those where (presumably due to the level of information they provided before the rules came into force) they had to make more substantive changes in order to comply. A particular issue for many was providing indicative fee information (suggesting that a large proportion of those that found compliance more difficult were subject to the additional transparency requirements covering certain types of public access work). Respondents who highlighted issues in this area regularly mentioned the challenges in providing fee scales that both accurately reflected the wide range of fees that could be charged due to the range of factors that could influence cost, and the difficulties in providing this information in a sufficiently simple way to be of use to lay clients in particular.

Impact

3.50. The majority of Regulatory Return responses (232 out of 295) provided views on the impact they expected or had observed since making changes in response to the transparency rules. Of these, most (nearly two thirds) stated that they had not observed any impact to date on the operation of their chambers once they had made the changes. Several provided reasons why they would not have expected to observe any changes. For some, this was because their practice was predominantly based on legal aid clients, and therefore providing (for example) additional information on fees would be unlikely to change much for lay or solicitor clients as such fees were set by the Legal Aid Agency and Government. Similarly, others highlighted aspects of their practice – for example the fact they did limited public access work or had a limited or established client base – that meant that

they would expect limited impact from introducing the new requirements.

“We haven’t noticed any particular impact, but this is almost certainly because all save a tiny minority of our work is governed by the Advocates Graduated Fee Scheme or the CPS Scheme.”

There has been no positive or negative impact on Chambers, likely because Chambers does very little public access work, and the public access work Chambers does carry out is usually with large companies as opposed to members of the public.

- 3.51. Others noted that they would not have expected to see much impact as they had already provided much of the information and therefore the actual changes involved were relatively minor. For others, they highlighted that there had been little time to observe any impact given the relatively short period of time since they had made the changes (a few particularly highlighted the disruption caused by the Coronavirus pandemic on the normal operation of chambers as an additional reason that observing any impact was likely to be challenging or delayed).

We have not seen any noticeable impact since these changes have been introduced as the changes have not been in place for very long, and most of the information was already recorded online (we have simply made it easier to find and more in line with other chambers).

It is too early to say whether long term effects of the changes will have a positive effect or otherwise, but this will continue to be monitored.

Since the implementation of course there has been the pandemic and so this has interrupted all work and any impact has not yet been seen in full.

- 3.52. Several organisations stated that there had been no observable impact to the changes because prospective clients did not use or look at the website in detail before getting in touch, and therefore the provision of additional information on the website made no real difference.

We have not... noted any impacts. The details are prominent in our direct access pages, [but] few people who approach us have concerned themselves to look at the pricing structures.

Many enquiries do not come from our website and are due to the reputation of our members or the chambers as a whole or from referrals from other professionals such as solicitors. We do not think public access clients spend time looking at the detailed narrative information on the website or trying to compare costs across different chambers.

- 3.53. Although some respondents highlighted why they felt they had not observed any impact from introducing the rules to date, the majority of those who stated that they had not observed any impact did not give any explanation as to why they felt no impact had been observed. Several highlighted the lack of any feedback

from clients or prospective clients as an indication that the rules had little impact. However, a small number of respondents stated that they would not expect any impact as they felt the changes were unnecessary, either as the information was of limited use to clients, or they felt that clients or prospective clients were provided with all the information they needed before the rules came into place and therefore the rules were unnecessary.

I am not aware of any discernible impact on chambers or our clients following the introduction of the rules either by way of an increase in the volume or nature of enquiries by lay clients.

It is our view that before the transparency rules, all clients were able to obtain the information they required from chambers in any event. No clients have in the past ever said 'transparency rules' were required or that we were not being transparent, or that we were not responding to queries or that we were not voluntarily providing information.

3.54. In contrast to those that stated no impact had been observed, a small proportion of respondents (less than one in twenty of those who commented on impact) highlighted negative impacts to their chambers from complying with the rules, although in some cases this was based on what they expected to happen rather than anything they had observed to date. There were a range of impacts given by these organisations. Two stated that the increased visibility of complaints information had led to chambers receiving an increased number of complaints, or that they expected this to be the case going forward. Three organisations stated that they had restricted the types of public access instructions they were prepared to accept so as to avoid falling under the additional transparency rules that require the publication of indicative fees, or that some members of chambers had decided to stop undertaking public access work altogether in response to the rules. Several mentioned that complying with the rules was time-consuming, and therefore had a negative effect on their chambers. Several highlighted that complying with the rules had put them at a competitive disadvantage to other organisations who had not complied with the rules. One organisation highlighted issues around ensuring clients were provided with their complaints policy, and that they expected this could lead to a drop in cases as solicitors were not willing to undertake this additional administration (however, this requirement is not part of the 2019 transparency rules and has been in place for a longer period).

The only impact this has had on Chambers is that lay clients are making more complaints. These have been mostly dealt with in Chambers following our complaints procedures

The new transparency rules led to a number of members re-evaluating whether they wished to continue to undertake public access work and a number decided that they did not.

Compliance with the additional transparency rules is proving to be enormously time-consuming and it is difficult to see any real benefit for direct access clients.

It is very frustrating to be a chambers that takes such matters seriously and has to invest time and money in adhering to the rules gains no obvious advantage over those who do not. Until those who have failed to adhere to the rules see some consequence, there will be no obvious benefit to adhering to the rules for those who do.

We have found it extremely challenging... to ensure lay clients are provided with our complaints policy... The clearest negative impact on Chambers is we must ask our clients to undertake this administrative burden as we do not typically have direct contact with lay clients and in most cases this is not practical, appropriate and/ or not in our solicitor clients' interest.

- 3.55. Several organisations mentioned a concern over increased fee transparency leading to other providers undercutting their prices, or leading to a 'race to the bottom' on price that would negatively impact on their organisation. In some cases this concern referred to the fact that other chambers or organisations (including solicitors firms) were not providing comparable information, either as they were not complying with the rules (other chambers) or because they were not required to publicise fees in the same level of detail (solicitors firms).

We feel that as a small bespoke set it is not in our interests to be forced to advertise our fee scales publicly as it makes it difficult to compete with larger sets who can potentially undercut us because our charges are now visible to them.

I am concerned however that the exercise is simply leading to a race to the bottom with bargain basement pricing winning the instruction. It is a concern to me that not all solicitors appear to be complying with the same candour as the Bar.

- 3.56. In contrast to the organisations that highlighted negative impacts, a significant proportion of organisations (close to a third of those that commented on the impact of introducing the rules, and nearly six times as many as those that noted negative impacts) stated that they had observed or expected to observe a positive impact on their organisation from complying with the rules. One of the most common reasons given was that the process of implementing the changes had led to the organisation revising its approach to setting or communicating fees, and that this had improved the way they approached this.

The impact has been positive, encouraging both members of Chambers and the Clerking Team to review the way in which cases were charged and billed. The rules promoted active debate and led to the creation of a significantly improved policy.

The transparency guidance was useful providing structured template examples and has had a positive impact for members when discussing fee quotations with the senior Clerk and how these are communicated to direct public access clients and solicitors.

- 3.57. Others stated that implementing the rules had prompted a new approach to how they communicated with clients, or had prompted them to review and update their website in a way that made it more user-friendly. Several highlighted that having a section setting out details such as fees, or types of work undertaken, or typical

timescales, was beneficial when it came to dealing with clients or clerks – either as they had already reviewed this information before contacting them and thus were better informed, or because they could be directed to these sections of the website and that this saved clerks or other chambers staff time. Some stated that this impact had also been observed with professional clients, thus making fee negotiations with solicitors run more smoothly.

This exercise additionally helped Chambers identify that having a dedicated Public Access page that can be reached directly from the front page of our website would increase our transparency and assist clients easily find the information they need.

It has been evident that through the changes made under the rules, particularly with regards to indicative fees and the general availability of information, that clients are more informed at the outset which makes things smoother.

There are several internal benefits as a direct result of the changes. It is very easy to direct clients to guidance just by pointing them in the direction of the relevant sections of our web site rather than being required to go into depth on cases that are unlikely to result in an instruction. The fact the fees and work areas are very clearly set out is also a very useful tool for clerks.

3.58. Other positive impacts included that the increased transparency around fees had resulted in a decrease in disputes about charges made to clients. Others mentioned that they had noticed an increase in Public Access and/or solicitor clients since making the changes, and some of these noted that these clients frequently referenced the information on the website when getting in touch.

On the positive side, I found that making fee structures clearer actually avoids clients seeking to haggle about fees as they are stated with clarity on the website and provides for greater consistency.

We also noted an increase in clients who had done a quick search and gone through our website and found the information that we had provided to be informative enough that they would make contact and seek to provide instructions to the barrister of their choice.

We do seem to have had an increase in direct enquiries as well as enquiries that come via the Bar Council Portal from clients needing to book a barrister direct.

I have however, observed some changes in the amount of work I am now instructed on and the amounts of enquiries from prospective clients that I have received since the changes were introduced. I cannot categorically say that these positive changes have been as a direct result of the changes made, but on reflection my website is clearer, more informative and easier to navigate for the client.

Regulatory Return - Impact Summary

3.59. The evidence from the Regulatory Return suggests that the majority of organisations have not noted any impact on their practice since introducing changes in response to the new rules. Among those who said they had not seen

any impact, some cited the nature of their practice, or the limited time since they had made the changes, as the reason no impact had been observed, but the majority offered no further explanation. However, a small number of respondents were explicit in stating that they did not expect the rules to have any impact, or that they felt they were unnecessary. The proportion of organisations noting actual negative impacts was relatively small, with issues such as an increase in complaints or damaging the competitiveness of their organisation being among those cited.

- 3.60. In contrast, the fact that nearly a third of organisations observed or expected positive impacts on their organisation is noteworthy, in particular given that the main aim of the rules was to improve clarity for clients and prospective clients rather than to directly benefit barristers and chambers. It appears a significant proportion of organisations feel that the increased transparency has helped them to streamline their processes, provide clearer information online in a way that benefits their practice, and leads to easier and smoother dealings with clients and prospective clients as they are better informed. For a few respondents, this appears to have led to an increase in instructions due to the increased visibility of information about their practice.

4 Summary and Conclusions

Compliance

- 4.1. Evidence from the spot check, web sweep and Regulatory Return indicates that the Bar has made progress towards compliance, but has not reached the levels of compliance that might be expected given the time that has passed since the rules were introduced (Summer 2019) and full compliance was expected (January 2020). The web sweep indicated that as of Summer 2020, more than one in five chambers, and over one in three sole practitioners, included no information on how fees were calculated on their websites, and thus had not complied with the minimum fee transparency requirements of the rules. The spot check looked at compliance with the rules more widely, and similarly found relatively high levels of non-compliance, with one in four of all organisations - and nearly one in three chambers - checked as part of the original spot check or subsequent supervision work classed as not compliant (although many of these organisations are likely to have taken subsequent corrective action that will have led to improved levels of compliance with the rules). In the Regulatory Return, where evidence of compliance with the rules for many respondents is based on their own assessment, around one in ten stated that they were still – as of March 2021 – not fully compliant with the transparency rules.
- 4.2. The BSB Supervision Team has been working with organisations identified as non-compliant or partially compliant to make sure they receive the information and support they need to address any remaining issues, but it seems clear that more work is needed, both from the BSB and the profession itself, to ensure that all those that fall under the purview of the rules have met the requirements. There were clear concerns stated by some organisations in the Regulatory Return that organisations who did not comply with the rules could gain a competitive advantage over those that did. The Supervision team is currently assessing compliance of all those that submitted a Regulatory Return. This includes reviewing follow-up action taken by those assessed as partially- or non-compliant in the earlier spot check. Any that were previously assessed as non-compliant that are not part of the Regulatory Return cohort will also be reviewed this year to ensure they have taken corrective action. Once this work is complete, we will publish the results.
- 4.3. However, despite relatively high levels of non-compliance, there has clearly been progress towards compliance across the profession. The spot check indicates that three in four organisations checked were either fully compliant or partially compliant with the transparency requirements as of October 2020. Compliance levels are also likely to have increased since that date due to the follow up work undertaken

by the Supervision team, both with additional organisations not checked as part of the initial spot check exercise, and further work undertaken with organisations that were either non-compliant or partially compliant as of October 2020. Overall, over a third of spot checked organisations were classed as fully compliant, with higher levels of compliance notable for certain chambers (over half of those subject to the higher levels of transparency were fully compliant) and sole practitioners (close to half of sole practitioners were assessed as fully compliant). This indicates that significant numbers of organisations have managed to comply with the rules, and suggests that – given the range of BSB activities aimed at working with the profession to improve compliance with the rules – bringing the profession into full compliance with the requirements is achievable.

Implementation

- 4.4. The findings above suggest that a number of chambers, sole practitioners and entities found compliance with the rules challenging. Evidence from the Regulatory Return suggests that while the majority of organisations did not face particular challenges in complying with the rules, a substantial proportion did find complying with some elements of the transparency rules challenging. Some organisations highlighted the additional financial and time costs of making themselves compliant, such as extensive updates to their website that had to be paid for, or collecting information from a large number of tenants in order to have all the information they needed. Perhaps the most challenging area highlighted was providing information on indicative fees. While this aspect of the rules only applied to a particular subset of organisations – those providing public access services in certain areas of law – it was the most commonly cited area in responses that mentioned challenges implementing the rules. Those highlighting issues around fee scales often cited the complexity of giving indicative fees – in particular given the significant variation of complexity and time required even in a single area of law, and the range of factors that could influence cost. Respondents regularly mentioned the challenges in providing fee scales that were both specific enough to provide accuracy in terms of likely costs, while still being presented in a way that was clear enough to be useful for potential clients. Interestingly, the findings from the spot check suggest that organisations subject to the requirement to provide indicative fees were more likely to be compliant than other organisations – this suggests that while these organisations may have found implementation more difficult than others, the work required may well have led to these organisations engaging with the rules and guidelines in more detail and thus being more likely to be fully compliant.
- 4.5. Both the spot check in 2020 and the Regulatory Return exercise in 2021 were clearly key drivers in prompting organisations to comply with the rules. While a number of organisations clearly undertook the work to implement the rules after they were introduced in 2019, the evidence from the spot check and the Regulatory Return clearly suggests that a number of organisations had not fully engaged with or understood what was required of them until prompted to do so by either the Supervision spot check or the process of responding to the Regulatory Return. This then brought to their attention what was required of them by the rules, or flagged areas where they had not yet made themselves fully compliant. This suggests that

the ongoing work from the Supervision team in engaging with chambers, entities and sole practitioners, both following up with those who are not yet fully compliant, and undertaking additional spot checks for compliance with organisations who were not part of the initial spot check exercise, will be a key driver in improving compliance in the future.

- 4.6. Despite the challenges noted above for some organisations around complying with elements of the rules, or awareness of the totality of what was required for compliance, it is worth noting that the evidence from the Regulatory Return suggests that the majority of organisations did not face any particular challenges implementing the rules. Given that the main difficulty highlighted among those that did was the issue of providing indicative fees, one factor behind this may well be that for organisations that were not required to provide this information, the changes required to comply were not particularly extensive. A significant proportion of those responding to the Regulatory Return explicitly noted that they had much of what was required in place before the rules were introduced, and therefore little additional work was required from them in order to make themselves compliant.
- 4.7. The findings of the web sweeps in 2017 and 2019 provide a source of corroborating evidence on this point. While these exercises only focused on price transparency, it is clear that before the rules came into force there was already considerable variation between chambers in terms of the level of transparency available on their websites. While some provided no information on how fees were calculated at all, others provided detailed information on how they were calculated or published indicative fees. As such, it is important to note that there was some evidence of good practice in terms of transparency before the rules came into force.

Impact

- 4.8. The most striking evidence of the impact of the introduction of the rules is provided by the web sweep exercises undertaken in 2017, 2019 and 2020. These indicate that there has been a substantial change in the levels of fee transparency provided on the websites of chambers and sole practitioners. While in both 2017 and 2019 the proportion of websites providing indicative fees was around one in twenty, following the introduction of the rules this had risen to close to one in three. The availability of comparable data from before and after the introduction of the rules provides solid evidence that in relation to indicative fees, this change was primarily driven by the rules themselves – although there was a trend towards greater fee transparency before the rules were introduced, there seems to have been little move towards actually providing indicative fee information until the rules made it a requirement for organisations undertaking particular types of legal work.
- 4.9. There was also a significant drop in the proportion of organisations providing no information at all on how fees were calculated – making up three quarters of chambers websites in 2017, but having dropped to slightly over one in five by 2020 following the introduction of the rules. While the 2019 web sweep indicates that the proportion of organisations providing no fee information was already falling

prior to the introduction of the rules, the rules are likely to have further contributed to this trend, given that all chambers, sole practitioners and other organisations authorised by the BSB were required to provide information on their most common fees models as part of the transparency requirements. In relation to indicative fees in particular, this appears to have met the rules' objective of driving a 'step change' in terms of levels of transparency across the profession. While the impact of this greater transparency on clients and potential clients is outside the scope of this report, this greater transparency around price has the potential to drive improvements for consumers by providing more information online and making it easier to shop around and compare providers - assuming that consumers make use of the information given online by legal service providers.

- 4.10. The evidence from the Regulatory Return suggests that the majority of organisations have not noted any impact on their practices to date. To an extent this is not particularly surprising – the introduction of the rules was intended to drive changes for consumers rather than the profession itself. A number of responses in the Regulatory Return give additional reasons why they would not have expected any impact on their practice – these included: the nature of their practice and the limited range of clients they predominantly dealt with; that for some the changes made in response to the rules were fairly limited as much of the requirements were already in place; that changes had been brought in fairly recently and therefore there had been limited time to observe any impact; or that the pandemic had disrupted their practice to the extent that observing impact due to the transparency rules was challenging. A small number of organisations responding were explicit in stating they felt the rules were unnecessary and therefore they did not expect to see any impact as a result. In contrast, a small number of those responding to the Regulatory Return actually noted negative impacts, although this represented a very small proportion of those responding.
- 4.11. However, nearly a third of organisations observed (or expected to observe in the future) positive impacts on their practice from implementing the new requirements. Impacts noted included: that implementing the rules has helped or prompted them to streamline their processes; that they provide clearer information online in a way that benefits their practice; or that having the information available for clients or potential clients had eased dealings with these groups as they are now better informed about the organisations' fees and services. A small number of respondents even noted that the changes appear to have led to an increase in instructions due to the increased visibility of information about their practice. While the majority have not noted such positive impacts, it is still encouraging that a substantially higher proportion of those observing impacts stated that these were positive rather than negative, and suggests that such positive impacts on the profession will become more widespread as compliance levels improve and more time passes to enable impacts to be observed. Further increases in the visibility and use of online service information by clients and potential clients of the Bar may further drive positive impacts for both them and the profession itself.

5. Appendices

Appendix 1 - Transparency Rules

There are mandatory rules on price, service and redress transparency for all self-employed barristers, chambers and BSB entities, who must comply by providing information about price, service and redress on all their websites (this includes any individual websites which barristers operate separately to their chambers' website). If you do not have a website, you must comply by ensuring the required information is readily available in alternative format. The mandatory rules require you to:

- state that professional, licensed access and/or lay clients (as appropriate) may contact an individual barrister, chambers or BSB entity to obtain a quotation for legal services;
- provide contact details;
- state an individual barrister's, chambers' or BSB entity's most commonly used pricing models for legal services, such as fixed fee or hourly rate;
- state the areas of practice in which an individual barrister, chambers or BSB entity most commonly provides legal services;
- state and provide a description of the barrister's, chambers' or BSB entity's most commonly provided legal services;
- provide information about the factors which might influence the timescales of the barrister's, chambers' or BSB entity's most commonly provided legal services;
- display the appropriate "regulated by the Bar Standards Board" text on the homepage: for sole practitioners, "regulated by the Bar Standards Board", for chambers, "barristers regulated by the Bar Standards Board" and for BSB entities, "authorised and regulated by the Bar Standards Board";
- display information about the complaints procedure, any right to complain to the Legal Ombudsman (LeO), how to complain to the LeO, and any time limits for making a complaint;
- link to the decision data on the LeO's website; and
- link to the Barristers' Register page on our website.

The required information must be sufficiently accessible and prominent on websites, accurate and up to date and (whether or not you have a website) readily available in hard copy format. All professional e-mail and letterheads must also display the appropriate "regulated by the Bar Standards Board" text.

Additional transparency Rules for Public Access Work

If any barristers practising from a chambers are undertaking Public Access work, or if a BSB entity is supplying legal services directly to the public, websites must link to (or you must provide in alternative format) the Public Access Guidance for Lay Clients on the

BSB's website. If you provide the Public Access services listed in the current version of the BSB's price transparency policy statement then, in certain circumstances, you must also comply with additional transparency rules in relation to those services. The relevant Public Access services are:

- Employment Tribunal cases (advice and representation for employers and employees);
- Financial disputes arising out of divorce;
- Immigration appeals (First-tier Tribunal);
- Inheritance Act advices;
- Licensing applications in relation to business premises;
- Personal injury claims;
- Summary only motoring offences (advice and representation for defendants); and
- Winding-up petitions.

If you provide these Public Access services then, in certain circumstances set out in the policy statement, the rules require you to:

- state pricing model(s), such as fixed fee or hourly rate;
- state indicative fees and the circumstances in which they may vary;
- state whether fees include VAT (where applicable);
- state likely additional costs, what they cover and either the cost or, if this can only be estimated, the typical range of costs; and
- state and provide a description of the relevant Public Access services, including a concise statement of the key stages and an indicative timescale for the key stages.

A sole practitioner will need to provide price information in relation to themselves as an individual barrister; chambers will need to provide price information either in relation to (1) individual barristers, or (2) barristers in chambers in the form of ranges or average fees; and a BSB entity will need to provide price information in relation to the entity.

Appendix 2 - Regulatory Return Transparency Questions

Are you compliant with the price, service and redress transparency rules?

Relevant rules and guidance

Rules C103 and C159-169 of the BSB Handbook set out the information that you must provide to clients directly or via your website in order to meet the price, service and redress transparency rules, which came into force on 1 July 2019.

Guidance on the rules is available on our website.

Why are we asking this question?

It is just over a year since the Bar transparency rules came into force. The rules were introduced to improve the information available to the public before they engage the services of a barrister by helping consumers understand the price and service they will receive, what redress is available, and the regulatory status of their provider.

Earlier this year, we carried out a review to assess the progress made so far by the profession in implementing the rules. 75% of those assessed during our review were found to be either compliant or partially compliant, which represents good progress but there is more work to be done to ensure that everyone is compliant.

Your response will help us to assess the extent to which the Bar is now fully compliant with the rules.

Guidance to assist with your response

If we were in contact with you as part of the review earlier this year and you were assessed as compliant, you simply need to say that in your response.

If we were in contact with you as part of the review earlier this year and you were assessed as partially compliant or non-compliant, please tell us if you have addressed the areas of non-compliance in the feedback that we gave you and are now compliant.

If we have been not in contact with you on this subject, it means that you were not part of the sample that we reviewed. Before you respond to this question, please look at our report on the common themes that emerged from the review, in conjunction with our guidance, and take another look at the information you are providing to check whether it is compliant with the rules.

What changes have you made in response to the new transparency rules, and what (if any) impact have you observed since these changes have been introduced?

Relevant rules and guidance

Rules C103 and C159-169 of the BSB Handbook set out the information that you must provide to clients directly or via your website in order to meet the price, service and redress transparency rules, which came into force on 1 July 2019.

Guidance on the rules is available on our website.

Why are we asking this question?

Your response, when combined with responses from others, will help us to evaluate the impact that the new rules have had, both within chambers/BSB entities and on consumer understanding. It will also help us to evaluate how easy or difficult it has been for the Bar to comply with the rules.

Guidance to assist with your response

Your response should address the following:

- Any challenges or barriers that you faced implementing or complying with the rules.
- How useful you found the BSB information and guidance about the new rules.
- Any positive or negative impacts on your chambers that you have noted.
- Any positive or negative impacts on clients or prospective clients that you have noted.