

Price Transparency

– it pays to be clear

Introduction

Legal services come with inherent tensions. Solicitors try to achieve a good balance between offering a public service and running a viable business. They know that the course for many legal transactions is paved with unexpected turns. Clients, however, are hoping that the solicitor can restore certainty to their lives, starting with reassurances about the likely outcome, how long it will take and what it will cost.

When practising solicitors are asked why clients complain, many of them believe that it's "simply to get a reduction in the fees", although recent research from Consumer Scotland concludes that consumers rank price only sixth in their list of priorities when looking for a solicitor. 64% of UK firms responding to a recent Big Hand survey¹ said they were increasingly finding themselves writing off fees. Richard Burcher, a legal pricing consultant from New Zealand, estimates that this "black hole of write-offs"² in the UK possibly amounts to around £1.5 billion annually, largely as a result of client unhappiness.

Clearly, there's a problem. But does the problem lie with the fees, the clients, or practitioners?

This report will outline what we see in complaints relating to pricing and fees, remind you what the relevant rules and guidance say around fees and price transparency, and offer some best practice tips to help you think about how you could better manage your risks and have more contented clients.

¹ Big Hand. Report: Law Firm Financial Insights: [Maintaining Profitability in a Global Recession. August 2022. Accessed online November 2023.](#)

² Burcher, R. Feeing: the elephant and the black hole. Law Society of Scotland Gazette. October 2023. Accessed online October 2023

What does the SLCC see from complaints?

The Law Society of Scotland Rule B1.11 requires solicitors' fees to be "fair and reasonable in all the circumstances". The Society has the power to consider complaints that allege over-reaching and has previously asked firms to tax their bill before proceeding with the investigation of these allegations.

The SLCC cannot rule on the reasonableness of a fee. Our website, and our communications with complainers, tells them what they can do to get more clarity on the fees they were charged. However, we can investigate complaints alleging that the final fee differs substantially from earlier quotations, or that work charged for has not been done, or has been so poorly done that it needs to be rectified. We can direct a reduction or repayment of the whole or part of a fee if we uphold a complaint as unsatisfactory professional service.

Here's a short sample of what we've seen in complaints about prices and fees:

- Poor appreciation of when solicitors will charge, including assumptions that "simple advice" or first consultations are automatically free
- Confusion about what is covered by upfront or "payments to account"
- Uncertainty on what work is included in the fee quoted and/or charged
- Misunderstandings about why extra work may be needed to complete a transaction, and about the consequent increase in the fees charged
- Disagreements on what the final fee should cover, sometimes coupled with clients querying why specific services were not included as standard
- Expectations that reports that the client has paid for will be favourable to their cause, and able to be used to further their interest
- Uncertainty about how fees have been calculated, and why VAT has been applied
- Dissatisfaction that, despite interim payments by the client, a large bill is presented at the end of the matter
- Confusion about the role of law accountants, or about the meaning of drawing, compiling, assessing or taxing a bill
- Allegations that solicitors have delayed, been evasive or outright ignored requests to provide the client with an itemised account and/or arrange a taxation.

These illustrate that many complaints that, at first glance, seem to be about the monetary amount of the fee are in reality about poor communication; that clients were not helped to understand *why* the amounts were charged at all. In the view of cost consultant Richard Burcher, poor communication about pricing and fees also amounts to "appalling commercial management"³.

Commerce aside, there are several other reasons why you should be very clear about your fees.

³ Burcher, R. [Validatum. Article: Don't Blame Your Clients for Write-offs, and Growing.](#) Accessed November 2023.

The regulatory requirements

In 2016, a Competition and Markets Authority (CMA)/ IFF Research report⁴ concluded that poor information about legal prices in England and Wales adversely affected consumer confidence, promoted misperceptions that legal advice would be unaffordable, and actively dissuaded consumers from seeking professional help when they most needed it.

In 2020, a second CMA report, 'Legal Services in Scotland'⁵ echoed the 2016 findings. The CMA found that only 6% of legal service providers in Scotland published relevant information about costs on websites, 18% had no websites where they could consider providing information, and only 16% included any reviews or ratings, which can also be important factors in helping consumers select a solicitor that they feel is right for them. The CMA reiterated that the complexity of legal services, coupled with poor transparency by practitioners, prevented consumers from accessing enough information to make informed choices about what type of services they needed, and to make like-for-like comparisons.

Several of the Law Society of Scotland's [Practice Rules 2011](#) and guidance mention pricing:

- Rule B1.11 - a solicitor's fee must be "fair and reasonable". If solicitors charge at an hourly rate, they must inform clients of both the rate and any change to that rate.
- Rule B1.9 - a duty to communicate clearly.
- Rule B3 - when advertising fees, firms must also provide details of outlays, VAT and commission or referral fees; failure to do so can be regarded as misleading.
- Rule B4 - information to be provided after confirmation of instructions or when tendering for business. This includes an outline of the work to be done, and an estimate of the total fee, or the basis for charging, including VAT and outlays.
- Rule B4 guidance - information on fees should be "specific enough" to give clients an indication of the eventual cost. More detailed information is required if the work is done on a legal aid basis. This guidance recognises the difficulty of quantifying fees and outlays in advance but emphasises that any "significant changes" to the rates or circumstances should be brought to the client's attention as soon as possible.

The Society's [Price Transparency Guidance](#) came into effect in January 2021. Solicitors are encouraged, but not obliged, to follow this as best practice, but would have to justify their reasons for not following the guidance if complaints relating to fee information were raised. The main intention is to give consumers (which includes prospective clients) an informed understanding of the likely costs, outlays and any other factors that might influence the final charge, both when they are searching and once instructions are accepted. It supplements but does not replace the requirement for terms of business under Rule B4.

⁴ Competition and Markets Authority. 2016. [Legal services market study: Final report \(publishing.service.gov.uk\)](#)

⁵ Competition and Markets Authority. 2020. [Research report - Legal services in Scotland \(publishing.service.gov.uk\)](#)

This guidance leaves the decision on whether and where to publish with each individual firm. Some of the most important points are that:

- any information published must be easily accessible, prominent and understandable for consumers
- consumers must be able to access the information anonymously and freely
- firms can choose whether they publish typical, average, fixed or a range of prices
- if firms choose to name a range of prices, they should also let clients know where, within that range, their matter is likely to fall
- estimates are not binding, but that should be made clear from the start, and clients must be informed of changes to earlier estimates
- any fixed prices quoted must clearly indicate the scope of work and exclusions, and state that the final price will depend on circumstances and complexity
- clients should be assisted in assessing “value for money”.

How well have firms in Scotland embraced price transparency?

When the CMA published its 2020 report on legal services in Scotland, it expressed some doubts whether guidance, as opposed to rules, would sufficiently incentivise practitioners to improve on price transparency. Noting that the guidance was pending at the time, the CMA specifically recommended close monitoring of the impact of the guidance, to assess whether it should be upgraded to rules.

The Law Society of Scotland has not yet issued any analysis on whether the price transparency guidance has been effective or met its aims.

Consumer Scotland, in January 2024, published a report on “Using Legal Services”⁶, based on two separate surveys. One explored public understanding of legal services. The second focused on 1,500 consumers who had used legal services within the past 2 years. The responses from the second survey showed:

- 4% of consumers had no idea how to shop around for legal services
- only 19% had shopped around (compared to 39% in England & Wales, where firms are obliged to publish pricing information) and almost one quarter of those who did shop around found it difficult to make meaningful price comparisons
- 66% of those who, at some point, had managed to find cost information found it easy to understand
- 83% were of the opinion that fixed fees were clearer than hourly rates
- 59% thought the fees they paid were good value for the services offered

To understand better what firms are doing in practice, we carried out a random dip-sample of 30 firms based in different locations around Scotland, to compare the information they were publishing.

⁶ <https://consumer.scot/publications/using-legal-services-in-scotland-html/>. Accessed January 2024.

We found the following:

- Two firms did not have a website and there was no indication on their social media or listings of how to request price information from them.
- 18 firms had websites without any fee or pricing information. We tried using several different search terms such as price, fees, costs, charges, bills, but these returned “not found” results.
- 10 firms offered some kind of fee information, although this was not always comprehensive. Some had fee information that ranged across more than one of the classifications we’ve outlined below:
 - 1 (small) firm specified fees for every category of work, described as either fixed or “from £x”, with clear signposting from the main website page.
 - 1 (large) firm displayed terms of business on their website that gave a clear general description of how their fees would be calculated.
 - 1 (large) firm had links, from the main pages, to their different work areas; some contained fee information under “FAQ”s for that page, but this was not consistent for all the pages.
 - 1 firm provided worked examples of how they would calculate their hourly rates, comparing their exact-minute charge to the more commonly used “unit” billing calculations that other firms tended to use, for different attendances.
 - 1 firm offered a link to a page on fee information. However, this was broken, and nothing was found through their “search for something else” option either.
 - 8 firms said they could offer an option of fixed prices for certain types of work (ranging across undefended divorce, power of attorney, wills and residential conveyancing) but only 4 specified what that price would be.
 - 3 firms explained how Land and Buildings Transaction Tax would be calculated on different value transactions.
 - 1 firm specified the court fees that would be payable.
 - 3 firms explained what a unit charge meant, but did not indicate their hourly charge.
 - 1 firm explained how no-win-no-fee works, but did not give figured examples.
 - 1 firm promised weekly fee breakdowns and said various payment options were available.
 - 3 firms offered the option of appointments for free and “no obligation” legal advice, on application via form or phone message.
 - 6 firms offered free or reduced price first interviews for certain work. Only 1 of these indicated there was no limitation on the length of interview.

Although small, our dip sample suggests a disappointing conclusion that potentially around 10%, but certainly less than 25% of firms in Scotland are abiding by the letter and spirit of the guidance, which has been in effect for more than three years. Our assessment of the general levels of information being provided by solicitors suggests that few are offering sufficiently meaningful price indicators to enable consumers to make like-for-like comparisons or to give them “an informed understanding” of their options.

In light of CMA’s doubts, in 2020, on the effectiveness of guidance alone, and Consumer Scotland’s 2024 conclusion that consumers would still benefit from new ways to encourage and enable them to shop around, access and compare information, we believe this matter deserves attention.

Towards greater transparency on pricing

Quite apart from what rules or regulations say, no solicitors should ignore the increasingly higher expectations of consumers, and the opportunities (and challenges) that new technology now presents to change the nature of legal services, not least in reducing the time traditionally billed on many tasks. Many potential clients will be looking for firms that can offer something different and better tailored to their specific requirements in terms of pricing. So, it makes sense to try to bring your communications more in line with their expectations. We offer a few tips, directed at different stages of a transaction, as a starting point.

1. Thinking about it

In the experience of solicitor Austin Lafferty, the guidance “is not handcuffs, it is a help”⁷ – because taking a good look at how you describe your pricing, and considering how clear that description could be to someone who’s never used legal services, is the first step towards better transparency. Pricing consultant Richard Burcher agrees⁸, saying that although setting pricing (and communicating it effectively) has in many firms been traditionally regarded as a rudimentary administrative task, it deserves attention and skill, since getting it right offers long-term benefits to the firm. A move to transparency also allows for better insight into your own cost structures and helps you to identify and address any areas of inefficiency.

In our view, it makes sense to start by thinking about any past feedback from clients, including anything recorded in your complaints register. Think about whether you’re using language that clients can easily understand. For instance, your billing system may be set up to charge by the unit for photocopies, but won’t the client better understand a charge per page? Will a client have any doubts whether they will get the personalised service your marketing promises if they see phrases like “we always charge £x” or “we apply our standard

⁷ Lafferty, A. [Making the most of price transparency](https://www.lawscot.org.uk). Blog, 7 April 2021. Accessed at <https://www.lawscot.org.uk>.

⁸ Burcher, R. Article: Run it past the firm’s pricing manager. <https://validatum.com/articles/run-it-past-the-firms-pricing-manager-the-firms-what>. Accessed November 2023

procedure”? It’s also important to ask yourself how well clients will understand the scope of the work from the information you publish.

2. Communicating your pricing effectively

The Law Society of Scotland’s price transparency guidance aims to encourage firms to provide clearer and earlier information on legal service options and pricing, to assist consumer choice. Timing, content and clarity are all important factors affecting choice. Whilst the decision whether, and what, to publish currently rests with individual firms, we urge firms to consider these points:

- Around 83% of potential clients look online for information about legal services. If you aren’t represented in that space, you stand to lose out to those who are.
- Clarity of information may be the only deciding factor between you and your competitors. Make your information easy to find, comprehensive, and easy for an average reader to understand. However, depending on your target market, you might also want to provide easy-read or translated versions.
- Potential clients will find it easier to make like-for-like comparisons if, in addition to your own fee information, you include details of known, or even possible outlays.
- Expressions such as “starting from £x”, or quoting a range of prices, without clarifying where a matter is likely to fall within that range, can be misleading.
- Consumers find it difficult to equate hours spent with value achieved, without further explanations.
- Providing examples, particularly for no-win-no-fee arrangements, can help consumers understand the likely charges and potential outcomes.
- Check what other firms in your area are publishing. If, for instance, most advertise free first interviews, consumers might expect them from you too, unless you cover off that point clearly. Highlighting how (and why) your services differ can also assist better comparisons and choice.

3. Confirming your price

The price transparency guidance also includes some strategies that firms can use to onboard new clients and help them understand both how you calculate your charges, and also how their own behaviour can impact on the final bill.

Price information must be given in your terms of business. Our 2023 [report](#) concluded that while most firms did comply with this requirement, many of the terms of business in our sample showed a heavy emphasis on regulatory aspects and limitation of liability, but ideally could have explained the “who, what and how much” requirements of Rule B4 more clearly.

Terms of business should be neither the first nor last time for firms to discuss fees. Irrespective of whether firms have chosen to publish fee information online, early and frank discussions about fees will help prospective clients to be fully informed before confirming their instructions to you.

The Service Standards call for clarity “from the perspective of the consumer” and that means:

- Longer and more densely-typed terms of business probably won't be read. That is a missed opportunity for you to manage expectations, with a higher risk of complaints.
- Clients will more easily understand logical and succinct grouping of all relevant information about fees, including how and when to pay.
- Clear definition of scope is vital to managing expectations. This point is consistently emphasised across Rule B4, the price transparency guidance and recommendations from every cost consultant.
- It's worth asking yourself whether terms of business that reserve the right to add “uplifts” or amend quotations retrospectively, according to complexity or urgency, are consistent with the spirit and principles of the price transparency guidance. Clients are likely to take this kind of news badly unless they've been consulted before you make this decision.

4. Ongoing transparency

A silent client is not necessarily a happy client. Given that many complaints to the SLCC allege either that costs did not stay within the range indicated at the start, or that clients received insufficient **regular** updates on the financial status, it's important to agree how frequently each client wants progress reports on the fees, as well as the ongoing progress of their transaction.

These points can help to enhance transparency during an ongoing transaction:

- Make every attempt to minimise “bill shocks”. Have a focused discussion with the client before revising initial estimates, or before implementing any changes from one method of billing to another (such as fixed fee to hourly billing).
- Remember that clients may not have read or remembered every detail of your terms of business. If you are implementing annual hourly rate increases, remind the client before sending out the next bill.
- Encourage all staff to keep written records of any discussions about fees and consider whether it would help to provide amended terms of business or payment options.
- For any client who has multiple ongoing matters, clearly record whether any payment options or agreements apply across the board, or only to specific instructions.
- Implement systems that can compare and track budgets and fee estimates against real-time costs. This enables you firstly to keep client expectations on track, and secondly to track and address any internal inefficiencies contributing to cost inflation.
- Regularly review the information you publish, particularly if you become aware of any feedback that suggests it's not been well understood or received.
- Prompt and comprehensive responses to any queries about fees will minimise your risk of complaints. So, if a client says they don't understand your bill, find out what level of detail they'll need to help them understand when and why they've been charged, and why it's reasonable.

- It's worth bearing in mind that sometimes a decision to waive the fees you could charge for providing further explanations, fee breakdowns or assessments can bring greater rewards in terms of client loyalty.

Conclusion

Best practice is not an abstract concept. If you have any concerns about a dwindling client (or staff) base, increasing competition or more frequent complaints, perhaps it's time to consider what you need to do differently.

Annual reviews from legal commentators such as Lexis Nexis and Legal Futures predict that processes, billing models and pricing will all change in response to client expectations. Several cost and management consultants writing in legal journals and blogs, including Burcher, predict that many "traditional" firms will be put under pressure to produce more innovative responses on transparency and pricing. Although this falls outside the scope of this report, debates are ongoing whether the best and most predictable results for both firms and clients can be achieved from hourly billing or different, more flexible approaches like fixed fees, event-based pricing, milestone billing, speculative fee arrangements, retainer or subscription-based fees, value-based pricing, or unbundled services schemes that could be similar to those trialled in England in 2022 in family law matters.

Several other jurisdictions have already implemented rules on price transparency. As yet, there is no consensus on how "the right levels" of transparency look. We believe more work needs to be done in Scotland, given strong recommendations for more transparency from the CMA, the SLCC Consumer Panel, Consumer Scotland, and recent debates in the Scottish Parliament.

Overall, greater transparency builds trust because it increases credibility and accountability. Better access to legal services follows from better information. Better-informed consumers can make a connection between pricing and value, and thus have more reasonable expectations. Better management of expectations contributes to fewer complaints. That can only impact positively on your reputation, your time and your personal career satisfaction.

Isn't price transparency worth a try?