

Prostrations to the Gods of the Market Place

Richard Harrison reaches for some copybook headings in assessing the new Transparency Rules

A short stroll from my office, from which we engage in highly regulated business, is a market of long standing, where various traders engage in the provision of a variety of goods and services. If I need a haircut, I can see one barber who charges £19 for a standard cut. Just round the corner, under the railway arches, is one who charges £26. I must say I usually go to the first; I would go to the second if the wait appeared shorter and I had time issues, or if I perceived that their ability to produce a satisfactory tonsorial effect was more reliable. At the same market, there are a number of very high quality meat stalls where you can take a view on how much you want to pay for your sirloin steak. The price is displayed; the decision is made based on variable factors such as length of queue, visual impression and past experience.

Prices on display

The concept of 'price display' looms large in the Transparency Rules recently introduced by the Solicitors Regulation Authority (SRA). The idea derived from a market study produced by the Competition and Markets Authority which had concluded that the legal services sector was not working well for individual consumers and small businesses because people find it hard to make informed choices when there is little transparency on things like price, quality and service.

The SRA will require firms to publish price information and a description of their offerings for various types of legal services. The proposal went out to a substantial consultation process. It appears from the results that a minority of respondents, including consumer groups, some law firms, comparison website providers and representative groups, supported the proposals. There was, it seems, a positive Twitter poll. However, many of the respondents giving reasoned commentary—primarily firms, individual solicitors and law societies—did not agree with the proposals. They, quite correctly, referred to the fact that much legal work involves bespoke services which cannot be commoditised. An accurate price estimate cannot be given before the solicitor has spoken to the client to understand the type of service the client needs. You would have thought there was some force in that: those who provide services on a professional



basis are best placed to understand what can best be provided by way of transparency.

Compliance concerns

Whether it is going to be useful to anyone or not, compliance is certainly a challenge. For instance, I have tried to formulate wording which will enable a firm to comply with the rules. I have, in particular, looked at the 'costs information' which needs to be provided for debt recovery services up to the value of £100,000.

Just think about what such debt recovery might entail. Someone has not been paid what they think they are owed. Most unpaid debts arise from insolvency. But where there is a dispute with a solvent party, the factual background is crucial. There is always a story. There is no recurring pattern. The real issues which underlie the dispute only emerge with the pressure of time and events. And they are always to do with factors of human characteristics and behaviour. These greatly affect the nature of the legal advice given and the resource needed to deliver it.

What is the greatest variable in planning the provision of legal services? It is so often the conduct, aptitude and co-operation of the client. Any experienced lawyer will confirm this but may not feel able, diplomatically, to put in their client information and engagement letter. Essentially the message should be: it depends on what the advice needs to be and how sensible you are in accepting it.

Counting the costs

We are asked to specify a range of costs for such a debt recovery. On a purely indicative basis, this can vary from between £500 to over £100,000 depending on the nature of any dispute and the instructions we receive.

We are asked to set out the basis of our charges. What can we say? There is generally an hourly rate which ranges from £150 to £450 depending on the nature of the case and seniority of the person acting. As to the 'experience and qualifications of anyone carrying out the work', we can only say that, in the main, work is carried out by qualified solicitors or trainee solicitors.

And then comes the real poser: we have to provide details of what services are included in the prices 'displayed'. But, of course, we do not provide service according to price; we price according to the services provided. The services which need to be undertaken may vary with the specific circumstances and these cannot be assessed until we have a basic understanding of the issues. Key stages and likely timetables will differ depending on the individual matter. It is therefore not possible to provide general information.

Factors which affect overall costs can include:

- ▶ inconvenient historical evidence which may need to be understood and rationalised;
- ▶ action taken prior to our involvement which may be inconsistent with an ideal path towards resolution;
- ▶ documents which may be inconsistent with the allegations made; and
- ▶ irrational and obstructive behaviour by the counterparty and their representatives.

Copybook headings

Rudyard Kipling in his poem *The Gods of the Copybook Headings* contrasted the benefits of long-established wisdom with the meretricious attraction of market-driven ideas: good old fashioned common sense as against management-speak. I am pretty sure that supporters of the new transparency rule would find sceptics lacking in 'Uplift, Vision and Breadth of Mind'. Something about the new rules put me in mind of the 'Gods of the Market Place' whose ever-mutable prescriptions need to be considered very carefully against the age-old wisdom of 'it depends on the facts'. The providers of haircuts and steaks do not need to worry about this issue: they display their prices and sell their product. The SRA thinks that solicitors can do the same, and they are, quite simply, wrong.

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