

Legal Services Consumer Panel – Criteria for Success as applied to CMA Market Study Report Action Plan – June 2017

Criteria for Success	IPReg Commentary ¹
<p>1. Appropriateness test: Regulators should consider whether information remedies are appropriate. This should take into consideration the level of risk and the ability of consumers to adequately comprehend the significance of the information.</p> <p>2. Consumer Testing: Consumer testing has played a significant role in the design and effectiveness of newer information remedies. In recent times, the CMA has mandated that regulators carry out consumer testing such as Randomised Controlled Testing (RCT) before implementing information remedies. The CMA has also placed an obligation on firms and service providers to participate in such research.</p>	<p>The Recommendations in the Market Study Report themselves view information remedies (the Recommendations relating to transparency) as a key output of the Market Study Report and therefore it is incumbent on IPReg to implement them appropriately. However, in respect of each Recommendation, IPReg has considered how implementation can be proportionate, fit for purpose and cost-effective.</p> <p>IPReg supports consumer testing as an essential element of evaluating and monitoring the success of information remedies but considers that, given the relatively small size of the attorney community and its role in the provision of legal services in the context of the Market Study Report, consumer testing in isolation from other Authorised Regulators would be of limited value and would be disproportionate. However, IPReg views consumer testing as essential to maximize the benefits of the Legal Choices website – see IPReg’s Action Plan.</p>

¹ Defined terms taken from IPReg Action Plan

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<p>3. Accessibility of information: It is important that information is given at the right time, the right place, and for the intended consumer groups.</p> <p>4. Information overload: Too much information can make decision-making worse. Regulators should work hard not to create a risk that firms, and even themselves, adopt a ‘tick-box’ approach to their disclosure regimes. Instead, regulators should design an effective disclosure regime to help consumers understand and engage better.</p> <p>5. Consumer Awareness: For it to be effective consumers must be aware of the information remedies in the first instance. Information remedies may need to be accompanied with measures around the prominence and timeliness of the disclosure.</p> <p>6. Prescriptive disclosure: Intervention may need to be prescriptive, particularly where standardisation for the purposes of comparability is an important component of effectiveness. There may be a need to dictate more precisely the format in which information is provided.</p>	<p>IPReg has considered, in the context of the attorney community, how, where and when information remedies should be prescribed particularly in the context of a principles based IPReg Code of Conduct and minimal other rules. A key factor, as can be seen in the Action Plan, is to achieve an appropriately targeted application of the Recommendations to the specialist “business to business” services provided by attorneys.</p> <p>IPReg considers that key to effective implementation of the Recommendations is an iterative, phased approach as set out on its Action Plan, taking appropriate account of the results of actions/pilot schemes of other Authorised Regulators, particularly the SRA, and also any consumer research completed, particularly in the context of the Legal Choices website.</p> <p>CMA has already commented on the potential benefits of coordination of actions by the Authorised Regulators and IPReg awaits with interest any CMA or LSB views (post Action Plan delivery) of the areas in which they consider coordinated action would be most effective. IPReg also welcomes and supports any announcements by CMA/LSB which draw the public’s attention to implementation of all the Authorised Regulators’ actions at the right time.</p> <p>A key factor in implementing the Recommendations is that, as has been recognized by CMA, they do not lend themselves to a “one size fits all” solution. IPReg has been cautious about intervening with an overly prescriptive response, conscious of the fact that over-prescription is not always in the interests of consumers, particularly considering the market segments that attorneys typically serve.</p>

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<p>7. Segmentation and targeting: There is early evidence that information remedies might affect groups of consumers differently, including vulnerable consumers. There is also emerging recognition that information may need to be targeted differently e.g. to vulnerable consumers.</p>	<p>See comments in relation to Prescriptive Disclosure in 6. above. IPReg considers that the attorney community is less likely than some other sectors of the legal market to serve vulnerable consumers, but it has taken account in its Action Plan the diverse range of clients that attorneys serve: see particularly the proposed actions in response to the Recommendation relating to transparency.</p>
<p>8. Compliance monitoring: Limited compliance will have an impact on the remedy. Regulators should develop a system to monitor compliance whilst designing and developing information remedies.</p>	<p>IPReg already has mechanisms to monitor effective compliance with its requirements, including complaints analysis (involving complaints both to IPReg and to the LeO). In respect of the Recommendations, IPReg considers that compliance should be judged in the context of the legal regulated community as a whole, rather than in isolation, as limited compliance in one sector could seriously undermine effective compliance elsewhere.</p>
<p>9. Evaluation: The design process must build in an evaluation stage which allows regulators to assess effectiveness. This will empower regulators to make adjustments and improve future designs.</p>	<p>The comments in relation to Compliance monitoring (see 8. above) are equally relevant in relation to Evaluation. IPReg has considered carefully how best to evaluate the effectiveness of implementation of its actions, including the need for cooperation with other Authorised Regulators to ensure that where appropriate, evaluation of coordinated actions is carried out in the most effective way.</p>