



Consultation – Market Transparency Action Plan

Consultation on ACCA's action plan to implement the recommendations from the Competition and Markets Authority market study into legal services

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Contents

- 1. INTRODUCTION..... 2
- 2. THE COMPETITION AND MARKETS AUTHORITY LEGAL SERVICES MARKET STUDY..... 2
- 3. HOW WE ARE RESPONDING..... 2
- 4. OUR REGULATED POPULATION..... 3
- 5. OUR REGULATORY APPROACH..... 3
- 6. OUR MARKET TRANSPARENCY ACTION PLAN..... 4
 - Scope..... 4
 - Transparency of pricing and quality of service provision..... 4
 - Voluntary requirements versus mandatory rules..... 5
 - Consumer guidance and information on legal services..... 5
 - Regulatory status and complaints..... 6
 - Intermediaries and independent feedback platforms 6
 - General 7
- 7. CONSULTATION 7
 - Consultation questions 8
 - How to respond 8
- 8. APPENDIX 1: ACCA MARKET TRANSPARENCY ACTION PLAN 9

1. INTRODUCTION

- 1.1 ACCA is an approved regulator (**AR**) in respect of probate activities under the Legal Services Act 2007 (**the Act**) and its regulatory arrangements for probate activities were approved by the Legal Services Board (**LSB**) on 18 January 2018 under Part 3 of Schedule 4 to the Act. ACCA introduced regulatory arrangements for probate activities on 1 April 2018.

2. THE COMPETITION AND MARKETS AUTHORITY LEGAL SERVICES MARKET STUDY

- 2.1 The Competition and Markets Authority (**CMA**) issued the final report of its Legal Services Market Study on 15 December 2016 <https://www.gov.uk/cma-cases/legal-services-market-study>
- 2.2 The CMA concluded that competition in legal services for individual consumers and small businesses is not working well. The CMA's main concern was that a lack of information weakens the ability of consumers to drive competition through making informed purchasing decisions. There is not enough information available on price, quality, service and regulation to help consumers obtain the right service at good value. As a result, consumers may struggle to find enough information to help them identify their legal need in the first place, and that need may go unmet.
- 2.3 The CMA recommended that frontline regulators should develop action plans designed to help consumers by increasing transparency in the market. In its response, the LSB identified four high-level outcomes:
- action to 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
 - promotion of the use of independent feedback platforms to help consumers to understand the quality of service offered by competing providers
 - facilitation of the development of a dynamic intermediary market through making data more accessible to comparison tools and other intermediaries
 - making better information available to assist consumers when they are identifying their legal needs and the types of legal services providers (both regulated and unregulated) who can help them.

3. HOW WE ARE RESPONDING

- 3.1 As a frontline regulator of legal services, ACCA is required by the LSB to publish an action plan in response to the recommendations in the CMA report. Our action plan will be subject to periodic assessments by the LSB at appropriate intervals to ensure that it sufficiently addresses the CMA's recommendations.
- 3.2 ACCA fully supports the principle of increasing market transparency. The proposals set out in ACCA's Market Transparency Action Plan (**the Plan**) implement the recommendations from the CMA's report, in particular increasing the transparency of information about service features, quality and price. The Plan is proportionate to, and focused on, ACCA firms undertaking the reserved legal activity of probate. However, some of the proposals within the Plan may suggest areas of best practice that all professional firms may wish to consider.

- 3.3 The Plan was published on 31 May 2018 and submitted to the LSB on 4 June 2018, in line with the CMA's recommendation. The LSB has assessed the Plan as Sufficient¹. However, it highlighted some issues and we are seeking feedback on these specific points as part of this consultation.

4. OUR REGULATED POPULATION

- 4.1 As an accountancy body, ACCA is distinct from most other ARs because it regulates firms of accountants that provide both accountancy **and** legal services. We authorise individuals (ACCA members and non-ACCA members) and firms undertaking the reserved legal activity of probate (ie non-contentious probate) only.
- 4.2 The ability to provide probate services complements the professional services that professional accountants already provide to clients, such as inheritance tax, estate planning and wealth management. Many clients have long and close relationships with their accountants and will appreciate being able to engage that same trusted professional for probate work, rather than have their affairs dealt with by a solicitor with whom they may be less familiar. Clients will therefore benefit from a firm's ability to offer continuity of service, thereby reducing costs, inconvenience and stress.
- 4.3 As qualified accountants, many ACCA members have knowledge and expertise in probate-related work such as estate planning and inheritance tax, and their knowledge of their clients' financial and taxation affairs allows them to provide an effective and efficient service.
- 4.4 Our regulated population is likely to be a mix of firm sizes, but will be predominantly small firms. Currently, we estimate the number of firms authorised by ACCA may rise to approximately 200 to 250.

5. OUR REGULATORY APPROACH

- 5.1 ACCA is committed to delivering public value and meeting its public interest obligations through the operation of effective, transparent and proportionate regulations and regulatory arrangements for probate which promote high standards of practice and ethical conduct. Our regulatory arrangements support the regulatory objectives set out in the Act and are consistent with the regulatory principles, in particular transparency.
- 5.2 ACCA will adopt a proportionate, targeted and risk-based approach to increasing market transparency that is based on the nature of its regulated firms, the type of clients that they serve, and the services they offer. We shall also have due regard for our wider regulated community. For example, the regulation of those authorised to provide probate services must not be disproportionately burdensome such that it adversely impacts competition between firms of accountants. Our risk assessment is derived from a deep understanding of the firms that we regulate on a statutory or non-statutory basis.

¹ The LSB's assessment of ACCA's Market Transparency Action Plan is available at [http://www.legalservicesboard.org.uk/Projects/pdf/2018/ACCA_-_action_plan_suff_assessment_\(clean_for_publication\).pdf](http://www.legalservicesboard.org.uk/Projects/pdf/2018/ACCA_-_action_plan_suff_assessment_(clean_for_publication).pdf)

6. OUR MARKET TRANSPARENCY ACTION PLAN

6.1 Our Plan sets out the actions that we currently undertake and those that we plan to implement, both initially and over the longer term, to enable our regulated firms to deliver the transparency requirements. The Plan is set out in Appendix 1.

6.2 The Plan has been developed in cooperation with the CMA and LSB, and we have taken account of the LSB's sufficiency assessment of action plans published by frontline regulators². We will also consider the nine principles developed by the Legal Services Consumer Panel (**LSCP**) when developing 'information remedies'³ (where they apply) that are helpful to consumers.

Scope

6.3 The Plan will apply to firms authorised by ACCA for the provision of reserved legal activities. This approach will allow ACCA to assess the success and impact of the initial changes introduced to increase market transparency amongst firms authorised for probate, and to make any necessary amendments before considering rolling these out to other areas of practice.

6.4 In its sufficiency assessment of our Plan, the LSB encouraged ACCA to extend the scope of our transparency guidance to include 'bundled services' ie incorporating other legal or non-legal services (such as estate administration) which are provided with probate services as a package. It is uncertain whether consumers understand the distinction between the reserved and non-reserved activities.

6.5 Ultimately, we should consider extending the scope of the arrangements to all ACCA regulated firms, and encouraging them to consider our market transparency best practice guidance.

Question 1: Do you have any comments on the scope of the Plan?

Transparency of pricing and quality of service provision

6.6 We currently provide guidance and support to ACCA members in public practice on ACCA's website, including factsheets on 'Quoting and Charging Clients', 'Engagement Letters' and 'Use of the ACCA Logo'. This guidance supports clear requirements set out in the *ACCA Rulebook*.

6.7 ACCA will develop outcomes-focused guidance and support on transparency of legal services pricing and quality of service provision (pre engagement and at engagement), including how, when and where information is made available to consumers choosing legal services. Our voluntary best practice guidance will support the achievement of desired outcomes for consumers, while giving firms flexibility.

² The LSB's publication *Increasing market transparency: LSB's sufficiency assessment of action plans published by frontline regulators* (October 2017) is available at http://www.legalservicesboard.org.uk/Projects/pdf/2017/Monday%2012%20Noon/Sufficiency_assessment_document.pdf

³ The nine criteria for success when developing information remedies are contained in the LSCP publication '*The development of information remedies in legal services*' (March 2017). This is available at http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/documents/20170322_Information_Remedies.pdf 'Information remedies' are obligations on businesses to disclose information to consumers, consumer groups, or intermediaries. Information remedies may be provided by regulators, competition authorities, service providers, trade bodies, intermediaries and consumer groups.

Question 2: What are the benefits to consumers and challenges for firms on publishing information on pricing and services?

Question 3: In what way do you provide information on pricing to potential clients?

Question 4: How would you suggest pricing information is best presented to consumers?

Question 5: Are there any areas on which you would you require specific guidance in relation to transparency of pricing and services?

Voluntary requirements versus mandatory rules

6.8 The frontline regulators are tasked with delivering a step change in the standards of transparency to help consumers of legal services to understand the price and service they will receive, what redress is available and the regulatory status of their provider, and to compare providers.

6.9 We shall expect ACCA firms authorised for probate to voluntarily comply with our best practice guidance on transparency, as we believe it would be in their interests to do so. An outcomes-focused approach currently works effectively in other areas, such as the ACCA Code of Ethics and Conduct which is closely aligned to the international code of IESBA⁴. We will also require all firms and individuals authorised for probate to comply with the Legal Activities Regulations 2018, Global Practising Regulations 2003 and ACCA's Code of Ethics and Conduct.

6.10 In its sufficiency assessment of our Plan, the LSB noted that voluntary guidance may not create strong enough incentives for providers to disclose the full range of information that consumers need. The view has also been expressed that there is a need to consider consistency across the frontline regulators.

6.11 ACCA will keep this under review and we will consider the need for, and scope of, any further market transparency actions and more prescriptive interventions when we conduct an annual review and impact assessment of our Plan. If evidence shows that a voluntary approach has not delivered the desired transparency outcomes we may need to give serious consideration to mandatory requirements. However, at this point we believe there could be unintended consequences of mandatory rules.

Question 6: Do you believe practitioners will deliver the necessary transparency outcomes on a voluntary basis? Do you believe that prescriptive rules will deliver the desired outcomes? What would be the challenges of a mandatory approach?

Consumer guidance and information on legal services

6.12 We will create and promote a Consumer page on ACCA's Legal Services website, providing information on ACCA firms authorised for probate and a link to an online register where consumers can check a firm's regulatory status. There will also be guidance on the types of consumer redress available to consumers using our regulated firms, including professional indemnity insurance and complaints handling procedures.

⁴ International Ethics Standards Board for Accountants.

- 6.13 We will also participate in the Legal Choices website in order to demonstrate the diversity of legal services providers. In its sufficiency assessment of our Plan, the LSB welcomed ACCA's commitment to ongoing collaboration with the other regulators to develop and market the content of the Legal Choices website.
- 6.14 We are considering the introduction of a new legal activities logo for ACCA firms authorised for reserved legal activities and/or amending the conduct requirements of the Legal Activities Regulations 2018 to require a firm holding a legal activities certificate to state that it is regulated by ACCA.

Question 7: Do you think consumers and/or ACCA firms authorised for reserved legal activities will benefit from a legal activities logo? If yes, what are the potential benefits to consumers and firms?

Question 8: Do you have any further comments on the provision of information on legal services to consumers?

Regulatory status and complaints

- 6.15 We currently publish an online register of ACCA firms authorised for probate. We also intend to work collaboratively with the other regulators to explore the development of a single digital register of legal services providers.
- 6.16 In order to provide transparency around complaints, the Consumer page on ACCA's Legal Services website will provide a link to the publication of regulatory and disciplinary action taken against firms and individuals, which is currently published elsewhere on ACCA's website. We will also explore the feasibility of ACCA firms authorised for probate being required or encouraged to publish further complaints data eg concerning first tier complaints handling, and second tier complaints referred to the Legal Ombudsman.
- 6.17 In its sufficiency assessment, the LSB encouraged ACCA to consider including the data on disciplinary findings on the proposed new online register so that consumers could more easily draw together the information on firms regulated by ACCA for legal activities.
- 6.18 We can explore the feasibility of linking disciplinary information relating to probate cases to the register of ACCA firms authorised for probate. However, we would not want increased transparency around complaints and disciplinary action to have a punitive impact on those firms, as this may be perceived as undermining the publicity provisions throughout ACCA's regulatory and disciplinary regulations, which are founded on the need for transparency.

Question 9: Should firms be required to publish data on complaints received? What are the benefits and challenges of doing this?

Question 10: Do you have any comments about publicity concerning disciplinary and regulatory action?

Intermediaries and independent feedback platforms

- 6.19 ACCA will continue to work collaboratively with other front line regulators, primarily through the Remedies Programme Implementation Group (**RPIG**), to develop our transparency provisions and ensure a consistent approach to transparency, where appropriate, across the legal services market. We believe this is important in areas where a unified approach would be beneficial, in particular when developing general

information for consumers of legal services and working with third-party intermediaries, such as comparison websites.

- 6.20 ACCA will consider ways to facilitate the development of a dynamic intermediary market by making data more accessible to comparison tools and other intermediaries. We will collaborate with other regulators to investigate and develop the use of intermediaries and ensure appropriate consistency in the data that is made available.
- 6.21 Furthermore, ACCA will encourage regulated firms to use client feedback and independent feedback platforms to help consumers to understand the quality of service offered by competing legal services providers. We will also work with other regulators to investigate and develop the use of independent feedback platforms. To assist firms, ACCA will develop guidance and support on client feedback mechanisms (including how to encourage, engage with and publish client feedback) and engaging with independent feedback platforms.

Question 11: Do you think ACCA should encourage firms to provide data to third-party intermediaries? If so, why and what types of data should be provided?

Question 12: What do you consider to be the advantages and disadvantages of using independent feedback platforms?

General

- 6.22 The Plan is a starting point from which increased market transparency can be delivered and assessed. We will conduct a progress review of the Plan every six months and update planned actions and dates, as appropriate. We would expect to refine the Plan as the number of ACCA regulated firms increases, and we gain insight from external consultation, consumer research and testing, compliance monitoring and learning from a variety of other sources. This may include annual returns, published research and the experiences of other regulators.

Question 13: Do you have any further comments on ACCA's Market Transparency Action Plan?

7. CONSULTATION

- 7.1 This consultation seeks feedback on the Plan and the proposed actions to implement the recommendations from the CMA's report. In particular, we are consulting on the following areas:
- Scope
 - Transparency of pricing and quality of service provision
 - Voluntary guidance versus mandatory requirements
 - Consumer guidance and information on legal services
 - Regulatory status and complaints
 - Intermediaries and independent feedback platforms
- 7.2 ACCA welcomes responses from members, individuals and firms authorised for probate, and other stakeholders including ACCA regulated firms, consumers of legal services, consumer organisations and other interested parties.
- 7.3 The consultation will run for 12 weeks and close on **9 December 2018**.

Consultation questions

Question 1: Do you have any comments on the scope of the Plan?

Question 2: What are the benefits to consumers and challenges for firms on publishing information on pricing and services?

Question 3: In what way do you provide information on pricing to potential clients?

Question 4: How would you suggest pricing information is best presented to consumers?

Question 5: Are there any areas on which you would require specific guidance in relation to transparency of pricing and services?

Question 6: Do you believe practitioners will deliver the necessary transparency outcomes on a voluntary basis? Do you believe that prescriptive rules will deliver the desired outcomes? What would be the challenges of a mandatory approach?

Question 7: Do you think consumers and/or ACCA firms authorised for reserved legal activities will benefit from a legal activities logo? If yes, what are the potential benefits to consumers and firms?

Question 8: Do you have any further comments on the provision of information on legal services to consumers?

Question 9: Should firms be required to publish data on complaints received? What are the benefits and challenges of doing this?

Question 10: Do you have any comments about publicity concerning disciplinary and regulatory action?

Question 11: Do you think ACCA should encourage firms to provide data to third-party intermediaries? If so, why and what types of data should be provided?

Question 12: What do you consider to be the advantages and disadvantages of using independent feedback platforms?/

Question 13: Do you have any further comments on ACCA's Market Transparency Action Plan?

How to respond

7.4 Please email your response to Standards.Department@accaglobal.com by **9 December 2018**. Questions or queries specifically relating to this consultation should also be sent to this email address.

7.5 Alternatively, send your response to:

Standards Department
ACCA
The Adelphi
1-11 John Adam Street
London
WC2N 6AU

8. APPENDIX 1: ACCA MARKET TRANSPARENCY ACTION PLAN

LSB high-level outcome	Current and planned actions by the frontline regulator	Timings for each action with key milestones	Review date
<p>Action to 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</p>	<p>Current actions</p> <ul style="list-style-type: none"> (1) Consider ACCA's approach to increasing market transparency, develop an action plan and gain approval through our internal governance arrangements (2) Participate in, and contribute to, the Legal Services Remedies Programme Implementation Group (3) Provide guidance to ACCA members in public practice on ACCA's website, including 'Quoting and Charging Clients', 'Engagement Letters' and 'Use of ACCA Logo' <p>Planned actions</p> <ul style="list-style-type: none"> (1) Assess and evaluate the current level of market transparency in legal services: <ul style="list-style-type: none"> (a) Engage with firms authorised for probate to raise awareness of the CMA's transparency requirements (b) Research the current position regarding transparency of legal services pricing and quality of service provision (reserved and non-reserved legal activities) amongst established legal firms through desk-based research and web-sweeps (2) Develop outcomes-focused guidance and support for firms authorised for probate on transparency of legal services pricing and quality of service provision (pre engagement and at engagement), including how, when and where information is made available to consumers choosing legal services. We will expect ACCA firms authorised for probate to voluntarily comply with our best practice guidance on transparency of the reserved legal activity of probate, as we believe it would be in their interests to do so. We require all firms and individuals authorised for probate to comply with the Legal Activities Regulations 2018, Global Practising Regulations 2003 and ACCA's Code of Ethics and Conduct. <p>Price and service</p> <ul style="list-style-type: none"> (a) Expect firms to give consumers information on pricing and quality of service provision pre-engagement to help them make informed choices and improve competition (b) Expect firms to give their clients full and accurate estimates, including details of any referral fee that may be paid, before accepting instruction (c) Expect firms to set out their terms and conditions ahead of instruction 	<p>May 2018</p> <p>From 12 April 2018</p> <p>Ongoing Guidance up to date by September 2018</p> <p>At point of authorisation</p> <p>December 2018</p> <p>December 2018</p>	<p>-</p> <p>-</p> <p>-</p> <p>June 2019</p> <p>June 2019</p>

	<p>Consumer redress</p> <p>(d) Require firms to hold professional indemnity insurance (PII) in accordance with ACCA's Legal Activities Regulations 2018, with a minimum limit of indemnity of £100,000 in respect of each and every claim (regulation 9)</p> <p>(e) Require firms to establish internal complaints handling procedures in accordance with ACCA's Legal Activities Regulations 2018, and signpost to ACCA and the Legal Ombudsman for conduct and service complaints (regulation 15)</p> <p>Regulatory status</p> <p>(f) Provide guidance that firms should show that they are regulated by ACCA for reserved legal activities on their websites, printed materials and letterhead</p> <p>(3) Create and promote a Consumer page on ACCA's Legal Services website</p> <p>(a) Provide guidance on ACCA firms authorised for probate, the benefits of using regulated firms, and what to expect from our regulated firms</p> <p>(b) Explain the types of consumer redress available to consumers using our regulated firms, including PII and internal complaints handling procedures</p> <p>(c) Provide a link to the online register of ACCA firms authorised for probate which clients and other consumers can use to check a firm's regulatory status</p> <p>(d) Provide a link to the publication of regulatory and disciplinary action taken against firms and individuals on ACCA's website</p> <p>(e) Ensure ACCA's Legal Services website and Consumer page feature prominently on the ACCA website and in search engine results</p> <p>(f) Consider providing a link to the Legal Choices website</p> <p>(4) Consider introducing a legal activities logo for ACCA firms authorised for reserved legal activities and/or amending the conduct requirements of the Legal Activities Regulations 2018 to require a firm holding a legal activities certificate to state that it is regulated by ACCA</p> <p>(5) Incorporate market transparency outcomes in the regulatory arrangements for authorisation and monitoring</p> <p>(6) Conduct a progress review of the Plan every six months and update planned actions and dates, as appropriate</p> <p>(7) Conduct an annual impact assessment of the Plan to evaluate the success of changes to increase market transparency in legal services:</p>	<p>October 2018</p> <p>December 2018</p> <p>December 2018</p> <p>Ongoing</p> <p>June 2019</p>	<p>June 2019</p> <p>June 2019</p> <p>June 2019</p> <p>-</p> <p>-</p>
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	<p>(a) Monitor compliance with our best practice guidance and the adoption of market transparency provisions by firms authorised for probate in the areas identified for initial roll out</p> <p>(b) Research the position regarding transparency of legal services pricing and quality of service provision (reserved and non-reserved legal activities), as appropriate (eg desk-based research, web-sweeps, consumer testing and practitioner surveys)</p> <p>(c) Review the market transparency provisions implemented by other regulators, and any other available information, to gain a better understanding of the success and impact of planned actions to increase market transparency</p> <p>(8) Consider the need for, and scope of, any further market transparency outcomes and implement agreed planned actions. This may include mandatory requirements in the Legal Activities Regulations 2018 and/or amendments to the content and scope of voluntary best practice guidance and support.</p>	June 2019	June 2020
<p>Promotion of the use of independent feedback platforms to help consumers to understand the quality of service offered by competing providers</p>	<p>Current actions</p> <p>None</p> <p>Planned actions</p> <p>(1) Develop guidance and support for firms on client feedback mechanisms (eg online reviews), including how to encourage, engage with, and publish client feedback</p> <p>(2) Work with other regulators to investigate and develop the use of independent feedback platforms which align the interests of consumers and firms</p> <p>(3) Develop guidance and support for firms on engaging with independent feedback platforms</p> <p>(4) Provide information on the Consumer page of ACCA's Legal Services website about engaging with independent feedback platforms and providing client feedback in relation to legal services providers</p> <p>(5) Participate in the Legal Choices website, as appropriate</p>	<p>March 2019</p> <p>From June 2018</p> <p>From January 2019</p> <p>From January 2019</p> <p>From June 2018</p>	<p>December 2019</p> <p>June 2019</p> <p>December 2019</p> <p>December 2019</p> <p>June 2019</p>

<p>Facilitation of the development of a dynamic intermediary market through making data more accessible to comparison tools and other intermediaries</p>	<p>Current actions</p> <p>(1) Publish details of ACCA's regulatory and disciplinary processes on ACCA's website, including the complaints process, notices of hearings, decisions of all Committees and Regulatory assessors, and Committee guidance notes for members of the public</p> <p>Planned actions</p> <p>(1) Publish an online register of ACCA firms authorised for probate which clients and other consumers can use to check a firm's regulatory status</p> <p>(2) Publish basic data about ACCA firms authorised for probate in a usable format for intermediaries such as comparison websites eg firm name, address, contacts and firm reference number</p> <p>(3) Explore the feasibility of ACCA firms authorised for probate publishing further data (eg concerning first tier complaints handling, and second tier complaints referred to the Legal Ombudsman)</p> <p>(4) Work with other regulators to ensure appropriate consistency in the data that is available to intermediaries</p> <p>(5) Work with other regulators to explore the development of a digital joint register</p>	<p>Ongoing</p> <p>From July 2018</p> <p>From July 2018</p> <p>From December 2018</p> <p>From July 2018</p> <p>From July 2018</p>	<p>-</p> <p>June 2019</p> <p>June 2019</p> <p>June 2019</p> <p>June 2019</p> <p>June 2019</p>
<p>Making better information available to assist consumers when they are identifying their legal needs and the types of legal services providers (both regulated and unregulated) who can help them</p>	<p>Current actions</p> <p>None</p> <p>Planned actions</p> <p>(1) Initiate contact with the Legal Choices website team at the SRA</p> <p>(2) Review the content of the Legal Choices website and identify opportunities for ACCA to provide relevant information for consumers</p> <p>(3) Work with other regulators to develop and market the content of the Legal Choices website and ensure it reflects <u>all</u> types of legal services provider, including accountants providing legal services</p> <p>(4) Engage with the Legal Choices Governance Group</p> <p>(5) Engage with the Legal Choices Editorial Board</p> <p>(6) Agree funding structure for the Legal Choices website with the SRA and other regulators</p> <p>(7) Provide a link on the Consumer page of ACCA's Legal Services website to the Legal Choices website</p>	<p>June 2018</p> <p>September 2018</p> <p>From June 2018</p> <p>From June 2018</p> <p>From June 2018</p> <p>From June 2018</p> <p>December 2018</p>	<p>-</p> <p>June 2019</p> <p>June 2019</p> <p>-</p> <p>-</p> <p>-</p> <p>-</p>