



# Work programme 2013-2014

April 2013

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## **Our vision**

**A market where everyone can access high quality and affordable legal services that meet their needs:**

- **Responsive services**
- **High quality advice**
- **A diverse workforce that understands its diverse clients**
- **Quick, fair and cost-effective complaints-handling**
- **Consumers placed at the heart of regulation**

# 1 Foreword

## Our common challenge

- 1.1. **The starting point for this work programme has been our Consumer Impact Report and our assessment of the effectiveness of the legal services reforms from the consumer perspective. Because more than five years down the line from the Legal Services Act we need to look at what has actually changed for the consumer and what that means, not just for what the Panel does but also for how we do it.**
- 1.2. Previous work programmes have been about the potential of change, with alternative business structures around the corner and wider changes being promises or risks rather than realities. But this year is different. Alternative Business Structures have arrived and new online technologies are well and truly taking hold. Our annual tracker survey in 2012 revealed that less than half – 48% – of legal services are now delivered face to face with wide variations across areas of law. How consumers use legal services is changing, with the emergence of self help and DIY law. The number of litigants in person also continues to increase sharply. All of these factors raise new questions for how consumers access legal services, how quality is ensured and how protection can be guaranteed. These are the issues that the Panel is thinking about and which frame our next work programme.
- 1.3. And these issues are potentially all exacerbated further by the changing wider environment: legal, economic and social. When legal aid is removed from a number of case types in April 2013, the number of litigants in person may rise further. Combine this with the wider economic changes taking place and the potential for more consumers to be vulnerable is there for all to see. In 2013-2014 we will need to understand what this means for how consumers choose and use legal services, including the risks they will or they won't be willing to take.
- 1.4. Because we recognise that we're in a new phase of reforms, this year's work programme is also about how we want to evolve our approach as a Consumer Panel. I see no inconsistency between continuing to hold the approved regulators to account whilst also seeking to work with them in a mature partnership. If the Consumer Impact Report casts a spotlight on the reforms, we have to ask ourselves what the Panel's role is in working alongside the regulators to address the very problems and issues that we've highlighted.
- 1.5. There is no doubt in my mind that this is a balancing act. The Legal Services Board's business plan for 2013-2014 has a strong focus on expecting the approved regulators to deliver on existing agendas. From a Panel perspective, we want to hold the regulators to account on behalf of consumers but we also want to provide some solutions and resources. Last year's seminar with the health regulators is a timely example of this – yes, we still have some way to go when it comes to consumer engagement in legal services but we can learn from other sectors and the Panel can

facilitate and bring the approved regulators together to make the most of this learning.

- 1.6. Partnership working won't be an optional extra when it comes to our research base this year either. We will be dependent on co-funding if we are to continue to ground our policy work in such a strong evidence base and in particular to focus on the needs of vulnerable consumers.
- 1.7. Our role as a broker and facilitator in 2013-2014 could be where and how we can add new value. To deliver on this good communication is essential and in the next period this will include: facilitating a Regulators' Forum; regular updates via the e-newsletter which now goes out to over 250 stakeholders; and continuing to build on our regular programme of workshops and seminars as a means of sharing our research and getting input to our projects. Communication was a strong theme in the feedback shared as part of the Ministry of Justice's Triennial Review. We have listened and responded to this in 2012-2013 and we'll continue to do so in the future.
- 1.8. What's really struck me most over the last year have been issues around consumer confidence and trust in the legal profession. Consumer confidence that the rules protect them is increasingly recognised as the single most important factor that explains those markets that work for consumers and those that don't. In reality we are still a long

way off having the empowered and well informed consumers that are becoming a key feature of other professional services markets: the consumers who are able to shop around, who are able to easily compare providers, and who have confidence in making a complaint. View this alongside the fact that only 43% of the public trusts the profession to tell the truth and it's clear that all of us still have some way to go, both in 2013-2014 and beyond.

- 1.9. However, I remain optimistic for the future. The landscape is undoubtedly challenging for consumers and lawyers alike, but it seems like we have identified what most of the key problems are and started to develop solutions to these. The sector now needs to work together in concerted way to deliver on this agenda. In doing this, it should keep as its driving principle the original purpose of the reforms: putting consumers at the heart of legal services regulation. Our role is to help it to do just that.



**Elisabeth Davies**  
*Chair*

# 2 Themes in 2013-14

## Bolstering consumer confidence

**2.1. Our work in 2013-14 is grounded in the changing conditions facing consumers of legal services. This includes the hard economic climate and ongoing change in the wider social landscape, the impact of wider justice reforms to legal aid and litigation funding, changing business models and progress on the legal services reforms. The key challenge we wish to address is to ensure that everyone can access the legal help they need, while strengthening consumer protection so that people can use these services with confidence.**

- 2.2. The Panel's priorities remain underpinned by the three strategic themes that we set out in last year's work programme:
- Equality of access – by ensuring that all consumers, especially those in a position of vulnerability, have access to affordable and high quality advice;
  - Unleashing consumer power – by giving people the information and tools to drive greater competition in the market; and
  - Enhancing the safety net – through improving quality assurance, better financial protection and redress, and consumer-focused regulators.

2.3. Experience has shown us that all three themes are inter-related, for example a comprehensive safety net should embolden consumers to use their market power, while informed consumers are more likely to identify when they have a legal need and access the right support.

### Equality of access

- 2.4. Legislative changes that have narrowed the scope of legal aid are now in force. They arrive in a tough economic climate, when the types of legal need for which public funding is now more limited – for example, family matters and housing disputes – are historically more prevalent. News stories regularly report on the threatened closure of advice services that are relied on to fill the gaps. Decisions on the availability of legal aid lie outside of the Panel's statutory remit, but we do have a legitimate interest in seeking to ensure that any gaps in provision are filled, in support of the regulatory objective to improve access to justice.
- 2.5. No-one quite knows what the real impact of these reforms will be, or the extent to which the market will provide viable substitutes. 'Freemium' models, subscription services and legal expenses insurance all seek to offer more affordable funding options; only time will tell which, if any, will be attractive to consumers. Yet it's already clear that many people will try to meet their legal need without using any professional help. This is most visible in our courts, where there has been a rise in litigants in person – indeed, the Civil Justice Council predicts that such litigants soon will become the rule rather than the exception. The Panel will add value in this area by considering the regulatory implications of this development. On the use of self-help tools more widely, we will help by using research to learn more

about people's experiences of DIY law. Armed with this knowledge, we can understand better the opportunities and risks for consumers – and then begin to address some of the challenges.

- 2.6. Highlighting vulnerability among specific consumer groups and in certain situations is a constant theme in the Panel's work. Our unique programme of focused studies has led to practical actions designed to break down barriers to access for people who may be very vulnerable, such as the two guidance notes issued by the Law Society on dealing with deaf and hard of hearing clients. This work has been successful in part because of the partnerships we have forged, as here with Action on Hearing Loss. We are now delighted to be working with Mencap and the Legal Services Board on research with people with learning disabilities. Subject to funding, we will also start a new research study with the Solicitors Regulation Authority focusing on the experience of asylum-seekers when accessing and using legal services.
- 2.7. We have had some success in encouraging use of BS Standard 18477 on Inclusive Services among the legal regulators. This is a useful tool which the regulators can use to embed a strong focus on vulnerability in their organisations and among providers. The Legal Services Board recently agreed to invite the regulators and the Legal Ombudsman to demonstrate how they have incorporated the standard into their work. During 2013-14, the Panel will closely monitor progress on implementing this.
- 2.8. In 2013-14, we will:
- Consider the regulatory implications of the rise in litigants in person, building on the work of the Civil Justice Council and others;
  - Explore the use of online self-help tools by conducting research in partnership with the Legal Services Board;

- Complete our research with Mencap and the Legal Services Board on the legal needs and experience of people with learning disabilities, and start new research with the Solicitors Regulation Authority with asylum-seekers;
- Monitor how legal regulators and other bodies use the BSI standard on consumer vulnerability, as invited to by the Legal Services Board; and
- Ensure that consumer vulnerability considerations remain a strong theme throughout our work.

### Unleashing consumer power

- 2.9. When consumers are empowered they are less likely to encounter problems and better able to resolve their issue. They can more easily identify suitable providers, supporting economic growth by voting with their feet. However, our Tracker Survey continues to show that consumers are not exercising their market power – too few shop around, those who do often find it hard to compare offers, and many people lack confidence that their consumer rights will be protected when using lawyers or to make a complaint should things go wrong.
- 2.10. The Panel has recently published interim analysis on what regulators can do to help empower consumers to choose and use legal services with confidence. This work identified a series of strategic choices, for example around striking the right balance between competition and consumer policy, supporting public legal education initiatives, joining-up information provision, reducing regulatory complexity and developing 'choice tools' that consumers can trust. Once the Legal Services Board has considered our interim analysis, it may ask us to undertake further work in this area. This is a large agenda and we expect to pursue a number of these themes this year.
- 2.11. One type of choice tool is accreditation schemes, such as those operated by the

Association of Personal Injury Lawyers and the Law Society. In 2011, the Panel argued that changes were needed to many such schemes to enhance their credibility with consumers. The Legal Services Board has asked us to revisit the schemes, to assess progress made over the last two years.

2.12. In 2013-14, we will:

- Begin Phase Two of our project on empowering consumers; the scope of this work is to be agreed shortly with the Legal Services Board;
- Review progress by accreditation schemes since our report in 2011 which measured their performance against good practice standards; and
- Publish the findings of our third annual Tracker Survey monitoring consumer usage and experience of legal services.

### Enhancing the safety net

2.13. A key finding from our work on empowering consumers is that confidence that the rules protect them is the single most important factor that explains those markets that work well for consumers. This means regulators need to make the consumer protection framework fit for purpose in order to give consumers justified confidence to drive competition in the market. The economic climate makes this both more pressing and challenging. As identified in the introduction to this work programme, the risks that consumers face are constantly shifting and the Office of Fair Trading has highlighted how consumers, especially those on low incomes, the elderly and others in disadvantaged situations, may be particularly susceptible. We also know from our own research, that consumers generally have a low risk appetite in legal services, while there are also worryingly low levels of trust in lawyers as a professional group.

2.14. The linkage between consumer confidence and spending on legal services means that

addressing this is in everyone's interests. Partly this needs to come from having a better understanding of consumer concerns – this is why we are exploring issues around trust in more depth, and importantly, taking this agenda forward in partnership with the profession. However, it must also mean reviewing and enhancing the safety net that protects consumers, for example by strengthening regulation on entry to the profession and widening access to redress.

2.15. There is a long list of initiatives where the Panel will take a leading or contributory role towards enhancing the safety net. This includes completing our review of financial protection regimes and considering more broadly how to achieve the right balance of risk between consumers and providers. In addition, there is a significant external agenda that we will influence, including the regulation of will-writing, self-regulation in other unreserved areas, the Legal Services Board's major project on general legal advice and its review of the regulators' sanctioning regimes, and of course delivery of reforms resulting from the Legal Education and Training Review.

2.16. Improving the complaints system was a key driver behind the Legal Services Act, and has and will remain a high priority for us. The institutions are in place and rules have been strengthened. However, our research with the Legal Ombudsman last year should leave no-one in any doubt about the scale of the challenge to improve how providers deal with complaints. Despite welcome changes to its scheme rules, there is also much scope to widen the jurisdiction of the Legal Ombudsman. The Panel is determined to make further progress on enabling third party complaints in certain situations – holding the Legal Ombudsman to its promise to issue a specimen list of case types for consultation. It is also more urgent than ever that the Ombudsman's voluntary scheme is switched on.

#### 2.17. In 2013-14, we will:

- Provide advice to the Legal Services Board on the extent to which regulators' financial protection arrangements, including compensation, are adequate and the appropriate level of risk that consumers should be expected to bear;
- Publish thinking on regulatory issues around online self-help tools;
- Continue to seek to widen access to redress through the Legal Ombudsman;
- Hold an event with the Law Society on restoring public trust in lawyers; and
- Contribute to the Legal Services Board's investigation into general legal advice.

#### Work programme highlights in 2013-14

- **Conclude our review of whether legal regulators' financial protection regimes are fit for purpose**
- **Publish the findings of our third annual Tracker Survey**
- **Consider the implications for regulation of increasing numbers of litigants in person**
- **Conduct research on self-help tools and highlight the opportunities and risks this causes for consumers**
- **Publish research on the legal needs and experience of people with learning disabilities**
- **Facilitate shared learning on restoring public trust in the legal profession**
- **Review progress by accreditation schemes since our report in 2011**
- **Start new research on access and quality of advice for asylum-seekers**
- **Work with the Legal Ombudsman to switch on a voluntary jurisdiction**
- **Publish guidance for regulators on applying the consumer principles in their policy-making**

# Delivery plan

Quarter 1 April-June 2013	Quarter 2 July-September	Quarter 3 October-December	Quarter 4 January-March 2014
Publish advice on financial protection arrangements and the level of risk that consumers should bear	Hold an event with the Law Society on restoring the public's trust in lawyers	Start review of progress made by accreditation schemes following the Panel's report in 2011	Publish advice on regulatory implications due to the rise in litigants in person
Publish research with the Legal Services Board and Mencap on consumers with learning disabilities	Publish guidance for the approved regulators on applying the consumer principles in policy-making	Publish research with the Legal Services Board on self-help tools	Publish analysis on opportunities and risks around self-help tools
Publish the results of the third annual Tracker Survey			Agree Legal Services Consumer Panel Work Programme for 2014-15

# 3 Projects

## Our focus

- 3.1. **Our core role is to provide advice to the Legal Services Board and others about their developing policies. The Board has decided not to formally seek advice from us in 2013-14, giving us more flexibility to pursue own-initiative projects than in previous years. This enables us to shape the policy agenda, by investigating issues and providing fresh thinking.**
- 3.2. When prioritising projects, we ask:
- Does it fit with our strategic objectives?
  - Is there evidence of significant consumer detriment, an emerging threat or an area that would benefit from fresh thinking?
  - Is consumer detriment likely to continue or increase?
  - Is the Consumer Panel best placed to carry out this work?
  - Is there a realistic prospect that our work will have an impact?
  - Are resources available to deliver the work effectively?
- 3.3. This section sets out the policy areas we plan to work on over the next year.

## Legal Services Board priorities

- 3.4. The Legal Services Board has said it will not make any new formal requests for our advice in its Business Plan 2013-14. This is designed to allow us to respond reactively to its work programme and to proactively identify consumer issues that are not yet on its or the regulators' agendas. This decision also recognises that some of our resources in 2013-14 will be devoted to requests for advice made in 2012-13, namely on the adequacy of financial protection regimes and empowering consumers.

## Financial protection regimes

- 3.5. In October 2012, the Legal Services Board asked for our advice on the extent to which regulators' financial protection arrangements, including compensation, are adequate and the appropriate level of risk that consumers should be expected to bear. We were specifically asked to consider:
- The types of risk faced by consumers and how these vary by type of legal service, provider or transaction;
  - Any evidence on how consumers respond to risk in legal services transactions and the role of their perception of regulatory protection within that;
  - The likelihood of consumers being willing and/or able to insure themselves against some or all of the risks they face; and

- Possible approaches for delivering effective protection and the advantages and disadvantages for consumers with them, both within the current broad regulatory architecture of insurance and fund arrangements and beyond it.
- 3.6. The financial protection regimes provide a crucial backstop for consumers in cases such as fraud, negligence and insolvency. Their importance lies in the severity of detriment in individual cases and their wider role in underpinning public confidence. So far, we have published research on consumer attitudes towards risk and regulation and held a research seminar to discuss the findings. Existing arrangements have also been mapped and are being analysed, while we have met with key participants to build our understanding of the issues. As part of this, we have liaised closely with the Solicitors Regulation Authority to ensure that our work adds value to their own major reviews which have recently commenced.
- 3.7. We expect to publish the conclusions of our analysis in May. This will consist of a report on the adequacy of existing financial protection regimes and a think-piece focusing on consumers and risk.

### Empowering consumers

- 3.8. In October 2012, the Legal Services Board asked the Panel to provide advice about how regulators can help consumers to play a more active, empowered role in the legal services market. It wished us to consider this from a range of perspectives:
- Competition: How can regulators ensure that consumers play an active role in helping the legal services market work properly?
  - Choice tools: What role do these have in empowering consumers, and in what areas have they been successfully implemented?
- Information and education: With Citizens Advice's new role as national coordinator of consumer education, and charities such as Law for Life taking forward public legal education, what role is there for regulation in addressing these issues?
- 3.9. We agreed with the Legal Services Board that this work would be undertaken in two phases. Phase One, which was completed in March, identified that consumers are not currently very empowered and highlighted a series of strategic choices that regulators need to grapple with to make progress in this area. The Legal Services Board is now considering our initial conclusions and may ask us to carry out further work.
- 3.10. In relation to choice tools, the Board has said that it wishes us to review progress made by voluntary accreditation schemes following our report in November 2011. This exercise identified ten characteristics of credible accreditation schemes, which the Board has since endorsed, and assessed a sample of schemes against these criteria. We think that two years is a suitable period of time for the schemes to demonstrate improvement against our findings. We will send a questionnaire to each scheme operator featured in our first report which will ask them to record the changes they have made. This will enable us to assess progress both by individual schemes and across the market as a whole.

### Other priorities

- 3.11. In addition to concluding our work in these areas, there are a series of other initiatives in the Legal Services Board's new Business Plan where our input could add value:
- Testing the risks of general legal advice to individual consumers;
  - Review of regulatory sanctions and appeals processes;

- Ending transitional arrangements for special bodies;
- Taking forward work on will-writing and estate administration; and
- Progress being made by approved regulators on commitments in areas such as immigration, comparison websites, education and training review, consumer engagement and first-tier complaints handling.

3.12. Finally, some of our resource is dedicated to responding to policy issues initiated by the Legal Ombudsman and the approved regulators. In addition, we have supported the establishment of a Regulators' Forum which is co-owned by us and the regulators. Created at the request of the approved regulators, the idea behind this is to initiate a regular, informal space for the regulators to discuss consumer facing issues, often at an early stage of policy thinking, and to encourage collaborative working where this would be of benefit.

### The Panel's own-initiative projects

3.13. This section is organised under lead strategic themes, although many projects cut across the three themes.

#### Equality of access

##### Consumer vulnerability

3.14. We will continue with our programme of work to help build the legal profession's understanding about the needs of the diversity of consumers, especially those who lack market power or who are otherwise in vulnerable circumstances. While consumer vulnerability is a constant thread through our work, we have also focused on specific population groups in detail. Our first research project, conducted in partnership with Action on Hearing Loss and the Solicitors Regulation Authority, provided fresh insight into the experience of

deaf and hard of hearing consumers. This research has also had real impact, leading the Law Society to issue two practice guidance notes for solicitors.

3.15. Following the template set by this project, we are now partnering with Mencap and the Legal Services Board to commission research focused on people with learning disabilities and exploring issues around accessing legal advice and their experience of the advice itself. Consumers with learning disabilities may be users of general legal services, but there also are specific instances where people with learning disabilities or their carers may particularly require legal advice and assistance, such as: accessing the support they are eligible for; disputes between different local authority social services departments over which one is responsible to provide care; and accessing the right schooling or satisfactory health care. Previous research has found that people with learning disabilities are more likely than the general population to be victims of crime (including hate crime), and may suffer harassment, bullying or serious violence related to their disability. They may also be extremely vulnerable and suggestible. Therefore this group of people may be more in contact with the police, courts and lawyers than the general population (for example as a witness or a victim of crime) – this provides particular challenges for legal advisors.

3.16. In our 2012-13 work programme, the Panel identified the need to undertake research with asylum-seekers. We published a paper demonstrating how such people are often acutely vulnerable as they may be fleeing torture, imprisonment or death in their country of origin. This group may in turn include other very vulnerable individuals such as unaccompanied minors or those who speak/understand little English and so have great difficulty in understanding documents and procedures and making themselves understood. Our needs analysis

identified issues to research around barriers to access and the quality of advice. We will actively seek funding partners to carry out this research and would welcome approaches from interested parties.

### Self-help tools

3.17. A major survey commissioned by the Legal Services Board revealed that nearly a quarter of all legal needs are handled alone, i.e. without professional help. The data suggests that people's confidence in their own ability to sort out the problem is the main reason for this. Largely, this confidence appears justified as only 18% of people say they found things difficult and a large majority say they would do it again. However, cost is another factor that influences the decision to handle a problem alone, especially in areas such as debt and will-writing. As the scope of legal aid narrows, cuts to the advice sector bite and the economic situation continues to squeeze household budgets, it is likely that fewer people will be able to afford or access traditional legal advice. Therefore, more and more people with legal needs are likely to address these alone in future.

3.18. It is a positive development if people become sufficiently empowered to resolve successfully legal issues alone. The law is meant to serve the public, but the legal system is often one designed by lawyers and uses processes and jargon which are overly complex and so shuts out ordinary people. In the areas of probate and lasting powers of attorney, public bodies have attempted to simplify procedures so that people do not need to seek legal advice. Meanwhile, new market entrants have spotted a business opportunity to exploit technological advances by developing self-help tools for consumers to purchase. Automated document services, some of which involve a review by a lawyer, now cover a wide range of areas of law such as family, wills and probate, landlord and

tenant, business and employment. Finally, a range of websites offer general legal information on a wide range of civil law matters which consumers can use to help navigate their way through the legal issues they encounter in their lives.

3.19. The Panel's remit does not extend to commenting on levels of public funding for legal advice, so our starting point is that DIY law is a growing reality. We think there is a need for more research with people who handle legal problems alone to learn about their experiences. Armed with this knowledge, we can understand better the opportunities and risks for consumers – and then begin to address some of the challenges. This might include simplifying common legal processes, improving the quality of self-help tools or highlighting novel consumer protection challenges.

3.20. The research will be jointly commissioned by the Panel and the Legal Services Board.

### Regulatory implications of the rise in litigants in person:

3.21. The Civil Justice Council has predicted that people who represent themselves in court will soon become the rule rather than the exception. Currently it is estimated that half of all private family law cases involve one or more self-represented party. The proportion of litigants in person is set to rise once legal aid is removed from a number of case types – including family law – in April 2013. Individuals may self-represent because of funding difficulties or the belief that they are able to present their case better than with a legal representative. In addition to the consequences for the parties in the case, there are also wider implications for the administration of justice given concerns that cases involving litigants in person tend to take longer and so might create backlogs.

3.22. The Panel wishes to consider the regulatory implications of this development, adding value to the existing and planned work of

other bodies such as the Ministry of Justice, Civil Justice Council and the Administrative Justice and Tribunals Council. There are issues to consider for authorised persons including enabling ‘unbundled’ service delivery (provision of a small discrete piece of advice rather than taking on the whole case) and the responsibilities of opposing advocates towards such litigants. We also wish to look into rules on lawyers acting as McKenzie Friends as there is anecdotal evidence that some practising lawyers are offering assistance to litigants in person in this capacity, either free of charge or at a reduced rate. It is important to ensure any restrictions on lawyers in these matters are justified and do not wrongly limit access to professional legal help, whilst ensuring that litigants in person are making fully informed choices and are appropriately protected.

- 3.23. There is also an emerging market of unregulated McKenzie Friends – these are self-employed persons or organisations which charge litigants in person for their services. McKenzie Friends may provide moral support, take notes, help with case papers and give advice, but they cannot normally speak on someone’s behalf in court. These businesses may provide valuable expertise and charge lower fees than a legal advisor, thus representing a good option for some consumers. However, there is also the potential for consumer detriment, for example in relation to confusion about the limit of help which a McKenzie Friend is permitted to offer, the competence of advisors and escalating fees. There is anecdotal evidence that some individuals acting as McKenzie Friends are struck-off solicitors raising obvious ethical concerns. Of course, should an individual receive poor service from a McKenzie Friend business, there is no recourse to the Legal Ombudsman. This is an emerging market, but one which could grow rapidly. As a first step, we think it would be helpful to draw a picture of these new businesses and the services they offer.

The Panel also wishes to talk with providers and other actors in the justice system, including judges, to hear about their experience on the ground and highlight the opportunities and challenges.

## Unleashing consumer power

### Consumer Impact Report

- 3.24. In each of the last two years, the Panel has published the Consumer Impact Report – our assessment of the legal services reforms from a consumer perspective. This uses a basket of indicators to measure the direction of travel towards the Panel’s vision for the legal services market. Following a review, involving input from stakeholders, we have decided to publish the Report every other year from now on, with the next edition due in summer 2014. The first phase of the reforms is now complete and we have identified key trends and areas for action in the first two editions. Now is therefore the right time to move to a revised publication schedule allowing stakeholders time to embed changes in response to our findings and affording the Panel greater opportunity to make full use of the Report. For example, we wish to engage more closely with the regulators at Board level to hear how the Report is shaping their work.
- 3.25. Importantly, although the Consumer Impact Report itself will now be published every other year, we will continue to run our Tracker Survey every year – one of the report’s main evidence sources. The Tracker Survey asks a series of questions about public attitudes towards lawyers, patterns of usage of legal services, market trends and satisfaction with experience. Our sample includes boosts for Welsh and BME respondents to ensure we can understand the diversity of consumer experience. Repeating the survey on an annual basis will enable us to continue to track trends and the impact of policy changes.

## Defining the consumer interest

- 3.26. The key motivation behind the legal services reforms was to place the interests of consumers at the heart of regulation. The subtitle of the White Paper, which contained the proposals now enshrined within the Legal Services Act, epitomise this intention: 'Putting Consumers First'. However, there has been a backlash against what some perceive as an over-consumerist agenda. For example, in a speech in early 2013, Lord Neuberger cautioned against the dangers of adopting 'unreflective consumer fundamentalism' in the regulation of the legal profession. At their heart, such concerns appear to reflect a perceived clash of values between professionalism and market forces, for example a view that consumers' focus on price is reducing the quality of advice and threatening the sustainability of the profession, or that the unrestrained pursuit of profit is creating a breeding ground for unethical conduct.
- 3.27. There are, of course, occasions when the interests of individual consumers conflict with the public interest. Someone guilty of a crime may wish to escape justice, or a corporate client might ask their lawyer to behave unethically. However, some of the objections to the 'consumerist' agenda reflect too narrow an interpretation of what the consumer interest actually involves and ignore what the research indicates matters to consumers when using legal services.
- 3.28. The Panel accepts some responsibility for explaining more clearly what the consumer interest in legal services regulation actually means. Many consumer organisations refer to a set of consumer principles (access, choice, safety, information, fairness, redress and representation) when working out where the consumer interest lies on any issue. These are well-established; indeed, they are recognised in the United Nations Guidelines on Consumer Protection. We plan to write a short paper setting out very

simply how regulators can identify, using the consumer principles as a starting point, which policies would benefit consumers.

## Enhancing the safety net

### Complaints

- 3.29. The Panel's joint research with the Legal Ombudsman on complaints revealed why so many consumers don't complain about poor service by a lawyer – people are confused about what to do, get completely thrown by legal jargon, believe they won't get a fair hearing and fear that upsetting their lawyer could have repercussions for their case. Just as bad, a quarter of those who do complain rate their experience as 1 out of 10. This research and other evidence also suggests that many law firms are still failing to comply with signposting rules alerting consumers about routes to redress. Nothing less than a culture change among lawyers towards first-tier complaints handling is required.
- 3.30. The Legal Services Board has given action plans to each of the approved regulators after concluding that progress by them in this area was disappointing. This is very welcome and we will wish to review the regulators' responses very closely. However, this doesn't take away from the point that a step change in standards should come from lawyers recognising the value to them of good complaints-handling. Our research has found that many customers are likely to recommend a lawyer based on a good complaint outcome, despite the initial negative experience.
- 3.31. The Legal Ombudsman is currently unable to help many dissatisfied consumers because their cases involve situations or businesses that fall outside of its jurisdiction. Recent changes to its scheme rules now allow complaints from prospective customers, extend time limits and a higher maximum compensation limit of £50,000. Later in the year, customers of

claims management companies should also be able to access the Legal Ombudsman. Despite these welcome developments, important barriers still remain to be tackled. The Legal Ombudsman has agreed in principle to create a list of specific circumstances when it would be able to consider complaints from third parties – individuals who are not the lawyer's client. This commitment followed a report by the Panel on this issue and in 2013-14 we will be a member of a working group being established to progress this work. Given the Panel's statutory role in relation to extending the Legal Ombudsman's jurisdiction, we will also work with them to explore the creation of the voluntary scheme built into the Legal Services Act.

### Restoring trust in lawyers

- 3.32. The Panel's annual tracker survey suggests that public trust in lawyers is low compared to some other professions. Only 43% of the public say they would generally trust lawyers to tell the truth compared to 80% who would trust doctors and 70% who would trust teachers. The research also tells us that trust varies across the population, including in relation to gender, age, social class, geography and ethnicity. For example, just 26% of Pakistani people say they trust lawyers, while only 34% of Black African people do so. Despite this, 79% of recent users express satisfaction with the professionalism of their own lawyer. This presents something of a conundrum: people see their own lawyer as trustworthy but don't seem to trust lawyers as a professional group.
- 3.33. The Panel has worked alongside the Legal Services Board to commission consumer research to improve our understanding of this apparent trust paradox. These issues are too important to be complacent or fatalistic about our survey results. Consumers have little option but to place their trust in lawyers due to their lack of

expertise on legal matters, and this dependency increases given the emotional context and the potentially severe consequences if things go wrong. Lawyers also perform roles that benefit the public at large and there is a risk that people will not engage with legal services if trust is absent, for example not reporting crimes, asserting their rights when these are infringed or bothering to obtain services that would benefit them, such as writing a will.

- 3.34. There are a wide range of potential reasons why some parts of the population apparently do not trust lawyers. These may include things that the sector can do little about, such as our adversarial system of justice or society's less deferential attitude towards professional wisdom generally. However, there may be issues that the sector can address and we hope this research will uncover things that the profession and regulators can do to help build trust. Trust exists in a relationship – it has to be earned by lawyers and granted by consumers. Listening to what consumers have to say on this subject is crucial to making the relationship work better.
- 3.35. Restoring public trust in lawyers should be seen as a win-win for consumer groups and professional bodies alike. In order to move the debate forward in a positive way, we will hold an event in partnership with the Law Society to take these issues forward.

# 4 Measuring success

## Focused on impact

- 4.1. **The Legal Services Consumer Panel has as its overriding purpose the goal of improving outcomes for consumers of legal services. We are an advisory body; it is for others to make the decisions. However, as the discrete body created to champion the interests of consumers it is important that we measure the effectiveness of our contribution towards the delivery of these outcomes.**
- 4.2. The Consumer Impact Report, described in the previous section, is our primary tool to measure the impact of policy decisions towards improving consumer outcomes. We have now moved to publishing this every two years, but continue to repeat our Tracker Survey annually.
- An effective Consumer Panel**
- 4.3. Our success will depend on the quality of our advice and on how effectively we use statutory and other tools to influence those who make change happen.
- 4.4. The Consumer Panel uses six success factors as indicators of our effectiveness:
- We have intelligence that keeps us in touch with the consumer experience;
  - We are respected for the quality of our advice which is timely, constructive and evidenced-based;
  - We can demonstrate that our recommendations have influenced policy decisions;
  - We are the first place that people go to learn the consumer perspective on legal services;
  - We operate transparently by publishing our activities and involving stakeholders in setting our priorities; and
  - We deliver value for money.
- 4.5. The Consumer Panel has also put in place a series of measures to assess whether we are delivering against these criteria. We will:
- For each project, clearly identify the outputs, impact and outcomes that we want to achieve for consumers;
  - Account for our activities in an annual report, which will include a record of policy and practice that has changed as a result of our work;
  - Maintain a record of our meetings with stakeholders and invitations to address key audiences, for example in board meetings and on public platforms;
  - Conduct regular surveys with colleagues at the Legal Services Board to test the usefulness of our advice; and
  - Conduct occasional reputation audits with selected stakeholders.

# 5 Our role

## About the Panel

- 5.1. The Legal Services Consumer Panel was established under the Legal Services Act 2007 to provide independent advice to the Legal Services Board about the interests of consumers of legal services in England and Wales. We investigate issues that affect consumers and use this information to influence decisions about the regulation of legal services.**
- 5.2. The Consumer Panel is a central feature of a regulatory framework which is designed to transform the legal services market around the needs of its users following centuries of self-regulation by lawyers. As a permanent, discrete champion for consumers, we have an important responsibility to ensure that regulators are able to consider the user perspective alongside the interests of providers of legal services.

### Our vision

- 5.3. Our vision is of a market where everyone can access high quality and affordable legal services that meet their needs:
- Responsive services
  - High quality advice
  - A diverse workforce that understands its diverse clients
  - Quick, fair and cost-effective complaints-handling
  - Consumers placed at the heart of regulation

### Our mission

- 5.4. Our mission is to ensure the regulation of legal services is shaped around the needs of consumers by influencing decision-makers and the behaviour of providers.
- 5.5. The Panel has developed a five-point vision which guides all our work. These aspirations for the market are our key reference points; we return to them constantly when determining priorities, formulating our policy advice and assessing the impact of change on consumers.
- 5.6. Access to justice lies at the heart of this vision. We want to see a fully inclusive market where regulators work to both empower consumers and dismantle barriers to access. Many factors contribute to access to justice, so it would be false to treat this goal in isolation. Instead, each element of the Panel's vision contributes towards this overriding objective. For example, markets which are responsive to consumer needs offer the best chance of helping people to identify when they might benefit from legal advice and connect them to services which deliver good and just outcomes. A diverse workforce helps the profession to deal sensitively with consumers' differing cultural needs or physical access requirements.
- 5.7. Therefore, access to justice is central to our purpose and links together the individual projects in this work programme.

## Our role

- 5.8. Our role is to provide expert evidence-based advice on the consumer interest. We cannot help individual consumers resolve their legal problems, nor may we recommend a legal advisor. However, we are interested to learn about the problems that individual consumers face, in order to promote change that will benefit consumers as a whole. We mainly do this by conducting consumer research and by building links with complaint bodies and other organisations which deal directly with consumers on a daily basis.
- 5.9. We differ from traditional consumer organisations by being embedded within the regulator we advise. This allows the Legal Services Board and its staff to access expert consumer insight from the very start of projects and at critical stages thereafter. By sitting on the Legal Services Board's shoulder, acting as a critical friend, we help colleagues to "get things right first time".
- 5.10. On occasion, the Legal Services Board will formally request our advice. The Consumer Panel will then investigate the issue by applying a set of consumer principles to intelligence about the experience and preferences of users, and publish our conclusions. It is then for the Legal Services Board to reach a decision about a course of action. Our investigation into will-writing services was an example of this.
- 5.11. Our "insider" status is a key strength, but we are acutely conscious of the need to be, and be seen to be, independent in all we do. Our independence is bolstered both by the independent nature of the Panel's membership and also statutory powers which enable us to make representations on any issue within our remit and to publish our advice. Should the Legal Services Board disagree with our advice, it has a legal duty to publish its reasons. In addition, the Legal Services Act gives us some specific responsibilities (see box opposite).

## Our statutory responsibilities

**Consultation** – certain bodies have duties to consult us:

- The Legal Services Board on applications from bodies to become approved regulators, and licensing authorities for the alternative business structures regime
- The Legal Services Board on proposals to apply certain sanctions against approved regulators
- The Office of Fair Trading on relevant competition investigations

**Initiate change** - the Panel can ask certain bodies to examine an issue:

- The Legal Services Board in relation to the scope of reserved activities
- The Legal Ombudsman in relation to the jurisdiction of its scheme
- The Legal Ombudsman in relation to the maximum compensation limit

## The Panel Members

- 5.12. The Consumer Panel consists of eight lay people who are appointed following open competition by the Legal Services Board with the approval of the Lord Chancellor. They bring rich expertise and insight from a range of professional backgrounds and user perspectives, including the third sector, local government, trade unions, small business and consumer affairs. Biographies of the Panel Members and Secretariat are provided on pages 21-22 of this document.
- 5.13. The Consumer Panel meets formally six times a year. In addition, unlike some governance boards, Panel Members are actively involved in developing and articulating policy advice on an ongoing

basis. This embraces a wide range of activities, from shadowing projects to speaking on public platforms.

- 5.14. The Consumer Panel is supported by a small policy secretariat and is funded by the Legal Services Board as part of its annual levy on the approved regulators. Our operational budget for 2013-14, excluding staff costs, is £41,000.

### Who we represent

- 5.15. The legal services reforms were primarily designed to benefit individual consumers. The specialised nature of legal services, combined with the fact that people need legal advice rarely but often at times of distress, means consumers suffer from an imbalance of power in their dealings with lawyers. The Consumer Panel helps to rebalance the scales by ensuring the consumer voice is heard loud and clear by decision-makers.
- 5.16. However, individuals are not the only consumers who face this problem. Small businesses, charities and others all spend vast sums on legal services each year from a similar position of vulnerability. It was the clear intent of Parliament that we should represent the interests of different types of consumer. The Consumer Panel's membership reflects this wide user base.
- 5.17. Government, big business and bulk purchasers of legal services (including those acting on behalf of individual users) are also consumers. However, they possess greater knowledge and purchasing power than other consumers, and so have less need for our help. Therefore, the Consumer Panel will generally prioritise the interests of those consumers who are less able to give voice to their own interests.
- 5.18. The Panel adopts the BSI standard on inclusive services. This recognises that all consumers are different, with a wide range of needs, abilities and personal circumstances. These differences can put

some consumers in a position of vulnerability or disadvantage during certain transactions and communications, potentially putting them at risk from financial loss, exploitation or other detriment. The standard identifies 'risk factors' which could increase the likelihood of this. The actions of providers can also increase consumer vulnerability. Regulators must understand the challenges facing people who are at a greater risk of disadvantage and introduce policies and practices which protect and promote the interests of those for whom the market does not adequately cater. Vulnerability will remain a defining theme across all our work and is a core feature of many individual projects.

### Our policy boundaries

- 5.19. Our policy boundaries reflect the framework set out in the Legal Services Act. The Panel's focus is on the regulation of legal services. Issues such as the funding of the justice system or the administration of courts, except where they touch on regulatory matters, lie outside of our remit.
- 5.20. The Consumer Panel's remit does however include legal services that lie outside the scope of regulation as well as those activities which are "reserved" to the profession. For example, anyone can set up a business to prepare wills or provide advice on a divorce. Moreover, advice provided by non-commercial organisations such as trade unions and local authorities also falls outside of the regulatory net. These freedoms may be appropriate as reserving activities to lawyers can restrict competition. However, it is important to know whether users are getting competent advice and fair treatment from such services. If not, it may become necessary for regulators to step in to improve consumer protection. The Consumer Panel can alert the Legal Services Board to such issues, which may lead to the scope of reserved activities being altered.

- 5.21. The Panel has a special relationship with the Legal Ombudsman. We meet regularly, provide policy advice, jointly commission research and mine their complaints data. This year we plan to work together on proposals for a voluntary jurisdiction, third party complaints and ensuring progress on first-tier complaints handling following our joint research on this last year.
- 5.22. A series of “approved regulators” are responsible for the day-to-day regulation of the different types of lawyer. As they make and enforce the rules that lawyers must follow, their work has a significant impact on consumers. We have recently supported the establishment of a Regulators’ Forum – an informal space for the regulators to discuss consumer issues with us at an early stage of policy thinking. We are also keen to work in partnership as appropriate, as we are planning to do this year with the Solicitors Regulation Authority on research with asylum seekers.

### Intelligence gathering

- 5.23. The Panel needs to be in touch with the consumer experience to identify problems that require attention and to ensure that our advice is informed by the needs and preferences of users. The value of an evidence-based approach was seen in our work on will-writing; our evidence base has built a compelling case for regulating this activity and won broad stakeholder support.
- 5.24. We represent the interests of many different types of consumers whose experiences will relate to their own unique circumstances. Legal advice is provided by a wide variety of individuals and organisations operating in very different environments. The law also underpins most relationships in society - personal, commercial, between individuals and the state. A great many people and organisations therefore have an interest in legal services and could hold information that we would find useful or would benefit from access to the knowledge we hold.

- 5.25. A key source of intelligence will be complaint trend data held by the Legal Ombudsman. However, this cannot tell the whole story, so it is important that the Panel has a direct dialogue with consumers. The Legal Services Board funds research on issues where it is seeking our advice, whilst we also input to its overall research strategy and specific research exercises. The Consumer Panel has a small budget for its own research. This is mainly used to fund an annual tracker survey on consumer views and experience.

### Working in Wales

- 5.26. We are determined to ensure that our advice is sensitive to any differences in the experiences and needs of consumers in Wales compared to those in England. Our annual tracker survey always includes a dedicated Welsh sample and this enables us to both track changes in consumer attitudes in Wales and to highlight differences with the experiences of consumers in England. All of our research involving focus groups always includes a focus group with Welsh consumers. In this context, in 2013-14 we will continue to pursue two objectives:
- To ensure our remit and priorities are clearly understood across Wales; and
  - To ensure we understand and can take account of issues specifically facing consumers in Wales

### Committed to communication

- 5.27. We are committed to actively sharing the results of our work widely and continuing to build our understanding of the changing market. This includes a programme of workshops and seminars along with a quarterly e-newsletter on our latest news and priorities. We would encourage anyone with an interest in consumer issues and regulation to join the distribution list by contacting the Panel Secretariat.

# Terms of reference

## Purpose

1. The Legal Services Consumer Panel ('the Panel') is established by the Legal Services Act 2007. The Panel contributes towards the achievement of the regulatory objectives by representing the interests of consumers of legal services. The Panel acts independently of the Legal Services Board ('the LSB') and the Office for Legal Complaints ('the OLC').
2. The Panel is deliberately comprised of members who are able to provide evidence of the experience of the wide range of consumers of legal services. The Panel will prioritise its work around those consumers who it considers are less able to give voice to their own interests. The Panel will have particular regard to the interests of consumers who may be in a position of vulnerability when using legal services.
3. The principal focus of the Panel will be on activities falling within the jurisdiction of the LSB and the OLC. However, the Panel will also have a remit on legal services matters that do not fall within the remit of the LSB or the OLC.
4. The Panel has an advisory role and does not have decision-making responsibilities. The key activities of the Panel are (in no order of importance):
  - (a) To help the LSB and the OLC to understand fully, and take account of, the interests of consumers in its policy development and decisions;
  - (b) To respond to relevant consultations as appropriate;
  - (c) To carry out research, as agreed with the LSB, and gather other intelligence and evidence to understand the consumer experience of the legal services market;
  - (d) To provide the LSB and the OLC with feedback from a consumer perspective on the effectiveness of its policies and practices;
  - (e) To help the approved regulators develop their own approach to consumer engagement to inform their work;
  - (f) To speak out publicly on behalf of consumers as appropriate in order to positively influence outcomes for consumers of legal services; and
  - (g) To maintain an overview of developments in the legal services market, and related developments affecting consumers in other markets, in order to best deliver the other activities listed above.

## Procedure

5. Panel members are appointed by the LSB, with the approval of the Lord Chancellor, in accordance with Nolan principles, to represent the interests of consumers.
6. The Panel shall determine its ways of working, and may appoint sub-committees and make other arrangements for regulating its procedure. Sub-committees may include persons drawn from outside of the Panel, but all sub-committees shall include at least one member of the Panel.
7. The Panel and the LSB shall agree an annual programme of work for the Panel. The Panel may carry out such additional work, as agreed with the LSB, in response

to developments in the legal services market.

8. The Panel shall ordinarily publish its representations, advice and research. However, it may choose not to publish its representations, advice and research if it considers that to do so would be likely to impact adversely on the interests of consumers.
9. The Panel shall publish the agenda and minutes of its meetings.
10. The Panel shall publish an Annual Report on its work.
11. The Panel and LSB shall review the Panel's terms of reference annually.

# Biographies

## Consumer Panel Members

### Elisabeth Davies (Chair)

Elisabeth Davies became the Legal Services Consumer Panel's second Chair in the summer of 2011. Elisabeth's career, combining professional and voluntary commitments, has centred on consumer engagement and a deep-seated belief in developing services that are truly consumer-focussed. She has worked across the charitable and public sectors with a particular focus on the needs of health and social care users. She is currently an Interim Director at Arthritis Care. Former roles include at Carers UK, Age UK, the World Cancer Research Fund and as the founding Chief Executive of the UK Breast Cancer Coalition.

Within the NHS, Elisabeth has combined executive and non-executive roles. She was Head of Policy, Planning and Partnerships at the NHS National Patient Safety Agency, leading on patient and public reporting. Non-Executive roles include former Deputy Chair of Wandsworth Primary Care Trust and prior to this Joint Chair of South West London Community NHS Trust.

Elisabeth has also worked across the advice giving sector. She was previously Director of Policy and Development at the Refugee Council and is a former Trustee of the Immigration Advisory Service. She is also a former Chair of Wandsworth Citizens Advice Bureaux.

### Jeff Bell

Jeff is a Trading Standards Consultant based in Stockton-on-Tees. Formerly, he was Chief Trading Standards Officer at Redcar and Cleveland Unitary Council, and worked as a Trading Standards Officer at County authorities in Cleveland, Northumberland, Tyne & Wear, and Durham; including various managerial posts in Cleveland. In these roles he brought three major projects to the North East: Consumer Direct; the Scambuster Team and the Illegal Moneylending Team, managing the latter two through their inception, recruitment and foundation period. He was also Chair of the North East Trading Standards Association and a Member of the North East Electricity Consumers' Committee. Recently Jeff was appointed as one of the Independent Members for Stockton Unitary Council.

### Graham Corbett

Graham Corbett is a member of the Employment Tribunal Services and is a sessional tutor running courses organised through the Northern College in Barnsley. He also does part time lecturing work on human resources related issues for the Leeds Metropolitan University. Graham was working as a Senior National Officer at the Public and Commercial Services Union (PCS) before taking voluntary redundancy at the end of 2009. Formerly he was Deputy Head of Legal Services at the PCS and a civil servant at the Department of

Environment and Transport. He previously chaired the Departmental Trade Union Side for negotiations and was a senior lay representative at the Civil and Public Services Association.

### **Emma Harrison**

Emma is Assistant Director of External Relations at Mencap. She brings experience of working within the charity sector specialising in equality issues. She has a strong background in the consumer movement as former Principal Public Affairs Officer at Which? and Campaign Manager at Consumers International. She was also previously a Research Manager and Political Advisor at the European Parliament.

### **Frances Harrison**

Frances is a specialist in consumer affairs. In 2011 she was appointed to the Financial Services Consumer Panel. She also sits on the Finance and Leasing Association's Code of Practice Monitoring Group as well as the Registry Trust's Consumer Panel. In addition to paid employment, Frances is a Vice Chair of Brighton and Hove Citizens Advice Bureau and a policy consultant to the Prince's Trust. She was Head of Policy Research and Development at the National Consumer Council in 1999–2003, and has extensive experience in policy analysis with a number of national bodies.

### **Paul Munden**

Paul is an experienced general counsel and chartered director. He is lead governance tutor with the Institute of Directors, leading a number of their board development courses designed to provide an in-depth view of the key duties, roles and legal responsibilities of directors and corporate governance. Paul is also chairman of the National Youth Music Theatre. Over the last ten years he has held a number of senior board posts at the

Business Link operation in London, served as non executive chairman of a Bafta award winning educational software house and was a founding director of Customer First UK. Until recently Paul was on the board of the NHS North Essex Cluster Primary Care Trust and board advisor to the General Teaching Council for England.

### **Neil Wightman**

Neil is Head of Housing Needs at the London Borough of Lambeth and is Joint Chair of the Association of Housing Advice Services. He was a member of the Beacon Advisory Panel between 2003 and 2009 and a Trustee Director of Kilburn Youth Service for 10 years. He has worked in local government for over 20 years and before that as an advice worker at Sheffield and Clapham Citizens Advice Bureaux.

### **Karin Woodley**

Karin is the Chief Executive of ContinYou, one of the UK's leading education charities. Formerly, she was Chief Executive of the Stephen Lawrence Charitable Trust; Director of the Tabernacle Trust; Deputy Director of the Arkwright Arts Trust; Partner, Keya Associates; and Chief Executive of Minorities Arts Advisory Service. She was also previously Chair of Kensington and Chelsea Metropolitan Police Independent Advisory Group on Race, and Adviser to the Scotland Yard Gold Task Group for the Notting Hill Carnival Policing Strategy.

## Secretariat

### Steve Brooker

Steve was formerly Head of Fair Markets at Consumer Focus where he managed a policy and public affairs team working on a wide range of issues including financial services, the digital economy, consumer law and sustainable consumption. Prior to that, he led the National Consumer Council's policy work on regulation and civil justice. His previous career was in university administration with roles at Keele and the London School of Economics.

### Harriet Gamper

Harriet was previously a consultant at Civic Consulting, an economic and public policy consultancy based in Berlin. Here she focused on consumer policy and had responsibility for pan-European evaluations in the areas of e-commerce and unfair commercial practices. Prior to this she worked for the European Commission (DG SANCO), the Office of Fair Trading, and the UK Home Office. Harriet holds a postgraduate Masters in consumer affairs.





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