



# Work programme 2011-2012

April 2011

# Contents

<b>1</b>	<b>Foreword</b>	<b>1</b>
<b>2</b>	<b>Our role</b>	<b>2</b>
<b>3</b>	<b>Our work in 2011-12</b>	<b>7</b>
<b>4</b>	<b>Measuring success</b>	<b>14</b>
	Terms of reference	15
	Biographies	17
	Delivery plan	19

# 1 Foreword

## Our challenge

- 1.1. **I am delighted to introduce the Legal Services Consumer Panel's second work programme. Our role is to represent the interests of consumers – individuals, small businesses and others who lack buying power – on issues relating to the regulation of legal services. In this document we describe our role, how we work and our key priorities for 2011-12.**
- 1.2. The Legal Services Act designed a new system of regulation to fix three key flaws: a regulatory maze that was too close to the profession, complaint mechanisms that were not fit for purpose and restrictions on business models that stifled competition.
- 1.3. The Panel's work in its first year focused on engaging with a raft of policy initiatives to address these issues and many others. Our advice has been influential in making rules to safeguard independent regulation, creating the Legal Ombudsman and designing a robust licensing framework for alternative business structures (ABS). Once the first ABS firm opens its doors in October 2011, the three key institutional changes brought about by the Legal Services Act – first envisioned by Sir David Clementi in 2005 – will be in place.
- 1.4. Of course, the legal services reforms can only be judged as successful if they deliver real improvements in consumer outcomes. This summer the Panel will publish the first attempt to measure progress across this agenda from the consumer perspective, in our Consumer Impact Report. This is our flagship project, and we believe the initiative is a first for consumer bodies.
- 1.5. Our attention will also turn to some major strategic choices about the future of legal services. These include the first review for a generation of the education and training requirements for lawyers, including the mechanisms needed to ensure career-long competence. A second fundamental issue is deciding which legal services should be regulated, and by what means. On the latter, the Panel will contribute evidence and consumer-focused thinking and an examination of the case for regulating will writing services.
- 1.6. The Consumer Panel's unique role is to ensure that the interests of consumers are central to these important decisions, by highlighting areas of consumer concern, providing high quality evidence-based advice and proposing practical solutions.
- 1.7. We look forward to working with the Legal Services Board and our other partners to bring about change for consumers in line with our vision for a market where everyone can access high quality and affordable legal services that meet their needs.



*Dianne Hayter*

**Dr Dianne Hayter**  
Chair

# 2 Our role

## About the Panel

- 2.1. 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.**
- 2.2. 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 mission

- 2.3. 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.
- 2.4. The Panel has developed a five-point vision which guides all our work (see box). 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.
- 2.5. 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.

- 2.6. Therefore, access to justice is central to our purpose and links together the individual projects in this work programme.

### 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 are placed at the heart of regulation

## Our role

- 2.7. Our role is to provide expert evidence-based advice on the consumer interest. We cannot help individual consumers resolve their legal problems nor 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.
- 2.8. 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".
- 2.9. 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 referral arrangements is an example of this.
- 2.10. 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

- 2.11. The Consumer Panel consists of eight lay people who were 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 are provided on pages 17-18 of this document.
- 2.12. 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.

- 2.13. 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 budget for 2011-12, excluding staff costs, is £48,000.

### Who we represent

- 2.14. 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.
- 2.15. 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.
- 2.16. 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.
- 2.17. Even the most confident of us can be vulnerable when using legal services. However, certain individuals and groups have a higher exposure to risk than others

due to specific circumstances in their lives, such as their economic situation or a physical disability. 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. This year we will increase our focus on such users. This work will be taken forward by developing further our relations with representative bodies and by starting a series of focused studies highlighting the experiences of particular user groups.

### Our policy boundaries

- 2.18. 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.
- 2.19. 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 not for profit 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.

2.20. The Panel, with the agreement of the Legal Services Board, also advises the Legal Ombudsman. Last year our focus was on its draft scheme rules, business processes and performance management. Now that the service is operational, we expect our attention to shift to the user experience, reviewing whether the Ombudsman's jurisdiction and rules remain appropriate in light of complaint trends, and ensuring that providers are learning from complaints in order to improve standards.

2.21. 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. In our first year we highlighted proposals by approved regulators which, in our view, offered inadequate consumer protection. Therefore, the Consumer Panel will continue to take a close interest in their activities, although we are not resourced to advise each of them across the breadth of their work. It is important that the approved regulators have effective consumer engagement mechanisms of their own; we were pleased to note evidence of progress on this front at the end of 2010.

### Intelligence gathering

2.22. 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 referral fees where the Legal Services Board's proposals respond to consumers' wishes for more transparency.

2.23. 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.

2.24. 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, as part of our Consumer Impact Report.

### Working in Wales

2.25. One of our Panel Members, Elisabeth Davies, leads our work in Wales. 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. In this context, we 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

2.26. Last year we held a series of meetings with stakeholders in Wales to spread awareness of our role and to learn how we can best meet our objectives. We have also ensured that the consumer research we commission includes a robust Welsh sample. We will continue our engagement in 2011-12, for example to inform our work on will writing and build our understanding of the small business experience of legal services.

## The Act – in a nutshell

**The Legal Services Act was passed in 2007 following an independent review by Sir David Clementi.**

The review criticised a confusing regulatory maze; too close a connection between representational and regulatory functions within the professional bodies; a failing complaints system; and unnecessary restrictions on business structures which inhibited competition.

The Act contains three central elements:

- The creation of the Legal Services Board as the single oversight regulator. The LSB oversees approved regulators who authorise and regulate persons to carry on reserved legal activities. The Act passports the existing professional bodies into this role, but requires them to separate their representation and regulation functions. The LSB has made a rule requiring regulatory boards to be formed of a lay majority.
- The creation of an ombudsman scheme to deal with all escalated complaints by consumers about the service provided by regulated lawyers or other persons falling within the voluntary jurisdiction of the scheme. The approved regulators continue to deal with conduct cases.
- The facilitation of alternative business structures, removing restrictions on the type of business structures through which legal services may be provided. A new licensing regime to be switched on in 2011 will allow different types of lawyer to practise together, and lawyers and other professionals to offer legal and other services under one roof. External ownership of law firms will also be permitted.

There are eight regulatory objectives which all these bodies must work towards:

- Promoting and protecting the public interest
- Supporting the constitutional principle of the rule of law
- Improving access to justice
- Promoting and protecting the interests of consumers
- Promoting competition in the provision of services
- Encouraging an independent, strong, diverse and effective legal profession
- Increasing public understanding of the citizen's legal rights and duties
- Promoting and maintaining adherence to the professional principles

# 3 Our work in 2011-12

## A year of milestones

- 3.1. 2011-12 will see the first alternative business structures open for business. Although there may not be a “Big Bang” over the long term they could transform legal services. This year will also see work start in earnest on two fundamental issues that are long overdue for review: the education and training of lawyers, and a proposed framework for assessing where regulation is needed.**
- 3.2.** The Consumer Panel will be closely involved in influencing these developments. During the year ahead, we will also complete our investigation into will writing, publish the first Consumer Impact Report – our pioneering initiative to measure consumer outcomes – and begin new projects in areas such as consumer diversity, quality assurance and the regulation of not-for-profit bodies.

### Putting together our work programme

- 3.3.** Our work programme is informed by a range of sources, including an analysis of business plans and intelligence on the consumer experience including research, complaints and news reports. It is impractical for us to consult formally on a forward work programme as the bodies that we advise do not confirm their own plans until the end of the financial year. However, in November 2010 we held a workshop with stakeholders to learn about their emerging priorities and to gather ideas about areas on which we might work.

### Work programme highlights in 2011-12

- Publish the first Consumer Impact Report to measure outcomes achieved by the reforms
- Complete our major market investigation into will writing
- Conduct focused studies with small charities and with consumers at risk of disadvantage on their needs and experience of legal services
- Provide advice on the regulation of not-for-profit providers
- Develop criteria for, and assess, quality assurance schemes
- Draw up good practice standards for price comparison websites
- Input to major regulatory reviews
- Monitor the impact of ABS
- Work with the Legal Ombudsman to review its jurisdiction
- Keep a watching brief on regulatory independence
- Maintain momentum on enhancing approved regulators’ consumer engagement activities

3.4. Inevitably, there are too many ideas for one year's work, and we need to retain some flexibility to respond to emerging areas of consumer detriment. As last year, we make choices using prioritisation principles, which draw on those used by other organisations, including Consumer Focus and the Office of Fair Trading. For each project idea, 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?

3.5. The Legal Services Board endorsed this work programme in March 2011. Consistent with our memorandum of understanding, the Consumer Panel will ask the Board to endorse any significant new areas of work not included in this document.

## Responding to the policy agenda

3.6. Our core role is to provide advice to the Legal Services Board and others about their developing policies. The Legal Services Board has indicated that the 2011-12 period will be a year of transition, marking a movement from its early three priorities – embedding independent regulation, opening up the market and establishing the new complaints-handling regime – to the next phase of the reforms.

3.7. Below we outline those areas where we will prioritise our resources.

### Alternative business structures (ABS)

3.8. The commencement of ABS in October should bring considerable consumer benefits through increased competition and new service delivery models.

3.9. The Consumer Panel's early focus has been to scrutinise proposals by the Legal Services Board and approved regulators to ensure that robust consumer protections are in place. This involved seeking consistent protection across regulated providers without unnecessarily impinging on competition or market entry. This work will continue as ABS is rolled out. As a mandatory consultee, we have a key role in reviewing licensing authority applications.

3.10. Opening up this market will throw up new consumer protection challenges. The licensing framework for ABS has been carefully designed, but no system is flawless and it is impossible to foresee every problem. Therefore, this year the Panel's focus will shift to monitoring the changing legal services market, making use of complaints and other intelligence to identify new areas of detriment. Where necessary, we will suggest improvements to the regulatory framework.

## Complaints

- 3.11. Last year, the consumer redress landscape was redrawn when the Legal Ombudsman started work. However, only once a volume of complaints has entered the new system will it be truly possible to judge whether the design of the scheme is fit for purpose. The Chief Ombudsman has already highlighted issues relating to the scheme's jurisdiction. The Consumer Panel will wish to return to the issue of complaints that are excluded when the person affected by the lawyer's actions is not the client; for example, a consumer cannot complain about legal work on a remortgage arranged by their bank.
- 3.12. The Legal Ombudsman's first responsibility is to resolve complaints between lawyers and consumers. However, an important second role is to use the intelligence from complaints to help raise standards. The Panel will encourage the Legal Ombudsman to explore fully this part of its work. For example, on its consultation on publication of complaints data so as to identify lawyers and firms by name, we have forcibly argued that such a policy would inform consumer choice and provide a strong incentive for lawyers to maintain high standards and respond appropriately to complaints.
- 3.13. Another development in 2010 was the Legal Services Board's requirement that providers must inform consumers at the time of engagement about their route to redress. The effectiveness of approved regulators' arrangements with respect to first-tier complaints handling has been criticised by the Legal Services Board and will be subject to further scrutiny in 2011-12. This will be a priority for the Panel as research by the Ministry of Justice suggests only one in five consumers who are unhappy with their service from a lawyer actually complain to the provider.

## Consumer engagement

- 3.14. Effective consumer engagement improves the quality of decision-making by learning from the ideas and insight that consumers contribute and enabling a proper balance between consumer and producer interests. Engaging consumers also allows regulatory bodies to spot emerging issues that might require a regulatory response and to target resources around consumer priorities.
- 3.15. Following a workshop the Consumer Panel held with approved regulators in June 2010, these bodies have agreed to work together to introduce a public network to give consumers a direct say on legal services regulation. This is an encouraging development; the Consumer Panel stands ready to assist the regulators to put their plans into practice.
- 3.16. However, the proposed network will not be sufficient on its own. Online mechanisms will primarily attract people who are already more likely to engage, and may limit who can participate, especially consumers with limited internet access. It is important that regulators understand the challenges faced by all users of legal services. The Panel will contribute towards building this understanding through its "focused studies" with consumers at risk of disadvantage (see Diversity, page 11).

## Education and training

- 3.17. Legal education and training systems should equip lawyers with the right skills and knowledge to provide high quality legal advice. Such systems have not been reviewed properly for a generation and some commentators view them as out-of-step with the modern market place. Furthermore, satisfying the entry standards to the profession does not guarantee career-long competence, as the law changes and skills can deteriorate.

Three regulators – the Solicitors Regulation Authority, the Bar Standards Board and ILEX Professional Standards – have announced a joint review of legal education and training. This will examine both initial and ongoing aspects. The Consumer Panel will take an active role in the review where our primary focus will be on mechanisms to ensure the ongoing competence of lawyers. The Consumer Panel's report in November 2010 on quality assurance concluded that continuous professional development requirements need strengthening, as most are self-certified, are not linked to external appraisal, and lack sufficient prescription in terms of the practice area or type of training. The report also highlighted the need for debate on more far reaching ways of ensuring competence, including licensing by activity and periodic reaccreditation.

### Regulatory independence

- 3.18. A key plank of the new regulatory regime is the requirement for approved regulators to separate their representation and regulation functions. The Legal Services Board has established Internal Governance Rules to ensure independent regulation. These are essential building blocks, underpinning public confidence that regulatory decisions will be taken in the public interest, rather than sectional interests.
- 3.19. There has been controversy over the rule requiring lay majorities on regulatory boards. During 2010 agreement was reached on the timescale by which the approved regulators would comply with this rule. Whilst progress is far slower than the Consumer Panel would wish, there is at least no going back on the principle of lay majorities, which is now accepted by all.
- 3.20. Independence must happen in practice, not just on paper. The Legal Services Board has said its focus in 2011-12 will be the measures that approved regulators have put in place to embed independence. The Consumer Panel will monitor closely this

matter and assume a more active role should progress stall again.

### Rationale for legal services regulation

- 3.21. It would surprise many people to learn that a very small number of legal services can only be delivered by regulated lawyers. For example, anyone can set up a business to prepare a will or offer legal advice on employment matters. Research by Professor Stephen Mayson has shown this situation developed as an accident of history, rather than the consequence of a clear policy rationale.
- 3.22. The Legal Services Board will produce a draft set of criteria for deciding about the scope of regulation. As this will be used to assess where regulation of legal activities is required, it is critically important to ensure that the interests of consumers are at the heart of its framework. The Consumer Panel recognises that regulation offers vital consumer protection, but that unnecessary regulation can reduce choice, prevent innovation and increase prices.
- 3.23. The subtle distinctions in the regulatory landscape are confusing to consumers, who assume all legal services are regulated. Consumers cannot make informed choices if they do not understand the differences in consumer protection attached to competing providers. To help build understanding, we have asked the Legal Services Board to explore the feasibility of a single regulatory badge; we will pursue this idea further in the coming year.

## Setting the policy agenda

- 3.24. Here, we set out the projects where the Legal Services Consumer Panel will have a major role in driving the policy agenda. These include responding to formal requests for advice from the Legal Services Board, providing fresh thinking on old policy areas and investigating issues where there is evidence of consumer detriment.

## Consumer Impact Report

- 3.25. Any assessment of the success of regulation should be firmly rooted in the consumer experience. During the last year, we developed a tool – the Consumer Impact Report – to measure whether the Panel's vision for legal services is being met. The starting point is the list of five outcomes set out on page 2. A basket of indicators will help us measure whether these outcomes are being achieved. The Report will use a mixture of published data and original research, supplemented by a commentary on developments over the previous year.
- 3.26. The Consumer Impact Report will deliver a range of benefits for consumers. These include to: define consumer expectations of the reforms; identify the strengths and weaknesses of the market, acting as a catalyst for improvement; and to improve transparency and accountability for the regulatory organisations.
- 3.27. The first Report, which was previously described as the Consumer Welfare Index, will be published in the summer.

## Diversity

- 3.28. Legal services require a diverse workforce to meet the needs of the diverse community it serves. A legal profession that reflects the wider population can bolster public confidence and give consumers access to the widest possible pool of talent when seeking legal advice. The Legal Services

Board wants to see greater transparency in the make-up of the legal profession as a step to widening diversity.

- 3.29. There are many organisations, including in the third sector, driving changes in the legal workforce. The Consumer Panel can add most value by working on another dimension of diversity: helping to build the profession's understanding about the needs of the diversity of consumers, especially those who lack market power or who are in vulnerable circumstances. To this end, we will begin to look in detail at the experience and demands of specific consumer groups.
- 3.30. Legal advice supports small charities in achieving their objectives. This may be on a specific item of charity law or a more general issue affecting all organisations. However, as far as we know, no-one has asked small charities about their needs and experience as consumers of legal services. Exploratory discussions have highlighted the problems they face in finding affordable, high quality legal advice. We will follow up this early work by carrying out qualitative research with a representative sample of the sector, asking about their legal needs, finding legal advice and their experience of legal services.
- 3.31. After this we will focus on those clients whose interests the third sector promotes, working in partnership with representative bodies. Each study will be different, but will access intelligence held by partner organisations, consumer research and stakeholder interviews. The studies will shed light on consumers whose voices are often not heard and will provide practical advice on how their needs can be better met. The Consumer Panel would welcome contact from third sector organisations interested in working with us.

### Price comparison websites

- 3.32. Price comparison websites are used increasingly by consumers to help choose suppliers for their energy, communications, financial services and other needs. They make it easier to compare lawyers and increase people's understanding and confidence in dealing with professionals. However, they have yet to take off in legal services, despite 42% of consumers surveyed by the Legal Services Board saying they want them.
- 3.33. It seems only a matter of time before this situation will change. Our enthusiasm for this development is tempered by an awareness of problems that have dented trust in websites in other sectors including limited coverage of the market, lack of transparency around commercial relationships, manipulation of consumer choice and privacy concerns.
- 3.34. The Consumer Panel is keen to ensure that price comparison websites in legal services do not fall into the same traps. We wish them to be a source of reliable information from the beginning, rather than have to rely on regulators to fix problems later. We will draw up a set of good practice standards drawing on experience from other arenas and then measure services against them.

### Quality schemes

- 3.35. The specialised nature of legal services means consumers face difficulties in judging the technical quality of advice. The Panel's research shows that consumers make numerous assumptions about the competence of lawyers and the degree to which regulators check the quality of work.
- 3.36. Quality schemes are designed to help address this imbalance in information. They act as signals of quality, enabling consumers to choose providers with confidence, especially in specialist areas of law. Such schemes should have sufficient

coverage of the market to enable consumers to exercise choice and the standards that sit behind them should offer meaningful guarantees. However, there is low consumer awareness of existing schemes and a high level of scepticism about the credibility of quality marks across the economy. The Panel's report on quality assurance identified a wide variation in standards, for example in the number of CPD hours, levels of checking, reaccreditation periods and sanctions.

- 3.37. At the request of the Legal Services Board, the Panel will build on this work by identifying the characteristics of robust quality schemes and will measure existing schemes against these criteria.

### Regulating not for profit providers

- 3.38. Third sector organisations are important providers of legal services. They offer a vital pathway to justice that would be difficult to replace, especially given declining funding of legal aid. Some areas of law, such as immigration advice, are highly dependent on not-for-profit involvement.
- 3.39. There is debate about whether not-for-profit bodies should continue to be permitted to conduct reserved legal activities without authorisation once ABS is introduced. The present position is preserved under transitional provisions until April 2013. In the meantime, the Legal Services Board must decide whether such "special bodies", as they are defined in the Act, will have to be licensed in order to continue these activities. If the transitional protection is removed, which is the Legal Services Board's current view, licensing authorities would still be able to take a different approach to regulating them compared with other ABS firms. The Legal Services Board has said it will ask the Panel for advice on how consumer protection requirements could differ.

3.40. There is no clear answer, and the Consumer Panel will work closely with stakeholders both within the third sector and beyond to develop its thinking. On the one hand, it is important to ensure the advice provided by these bodies to their clients, who are often in very vulnerable situations, is of suitable quality. On the other hand, not-for-profit bodies do not have the same profit motives as companies, and their funding often comes from commissioning bodies which define and monitor quality standards. Another factor is the impact of the costs of regulation on the finances of those special bodies, especially in the current climate. The challenge is to strike the right balance between promoting access to justice and securing good levels of consumer protection.

#### Will writing

3.41. Will writing is not one of the legal activities that can only be done by regulated lawyers. Although solicitors write the majority of wills, consumers can choose other providers such as banks, internet companies, trade unions and will writing businesses. There is particular concern about the latter, in relation to poor quality wills and unfair sales practices. Such concerns, together with the decision to make will writing a reserved activity in Scotland, have prompted the Legal Services Board to seek the Panel's advice on the issue.

3.42. The Consumer Panel has set out to research evidence on all of the different problems, both current and potential, experienced by consumers wishing to write a will. The investigation will seek to find out how widespread each problem is, or could be, why it happens and what the impacts are on the testator and their executors and beneficiaries. It will also consider whether existing consumer protections are capable of addressing any consumer harm or whether new solutions are needed, including what the advantages and

disadvantages of various ways of regulating will writing may be for consumers.

3.43. The Consumer Panel issued a call for evidence in September 2010. The response included nearly 400 case studies submitted by members of the public, lawyers, representative bodies and others. Further evidence will come from a shadow shopping exercise commissioned by the Legal Services Board in partnership with the Office of Fair Trading, the Solicitors Regulation Authority and the Consumer Panel. Any proposals for additional regulation must be grounded in robust evidence, as the Legal Services Board will only recommend any restriction on the type of providers who may undertake will writing services if there is compelling evidence of systemic failure and if existing tools cannot provide adequate protection.

# 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. Nevertheless, we are the discrete body created to champion the interests of consumers and so it is important that we measure the effectiveness of our contribution towards the delivery of these outcomes. Below we explain how we measure our success.**

4.2. The Consumer Impact Report, described in the previous section, will be the primary tool to measure the impact of policy decisions towards improving consumer outcomes. This is a shared responsibility across all partners in the regulatory system, including the Consumer Panel. Our success will depend on the quality of our advice and on how effectively we use the statutory and other tools to influence those who make change happen.

### An effective Consumer Panel

4.3. 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
- We deliver value for money

4.4. 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
- Conduct occasional reputation audits with selected stakeholders

# 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

### Dianne Hayter (Chair)

Dianne was Chair of the Property Standards Board, the BSB Consumer Panel and of the Actuarial User Committee of the Financial Reporting Council. She was also a member of the Board for Actuarial Standards, the Insolvency Practices Council, the Determinations Panel of the Pensions Regulator, the Financial Services Consumer Panel, and the National Consumer Council.

Prior to that she was the Chief Executive of a number of organisations, including Alcohol Concern, the European Parliamentary Labour Party and the Pelican Cancer Centre, as well as Director of Corporate Affairs at the Wellcome Trust. She was Chair of the Labour Party's National Executive Committee, is a trustee of a number of charities and was a JP for over a decade. She is now a Member of the House of Lords.

### 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 local authorities in Cleveland, Northumberland, Tyne & Wear, and Durham. 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.

### Graham Corbett

Graham Graham is a member of the Employment Tribunal Panel and 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.

### Elisabeth Davies

Elisabeth is Director of Partner Relations at Age UK, where she works closely with over 100 local Age UKs across England and supports the work of Age Cymru, Age Northern Ireland and Age Scotland. She is also a Trustee of the Immigration Advisory Service, the former Chair of Wandsworth Citizens Advice Bureaux, and was previously Deputy Chair of Wandsworth Primary Care Trust. Her career includes a series of senior roles in the health arena including at the NHS National Patient Safety Agency, where she led on patient safety in Wales and worked closely with the Welsh Assembly Government. She is the former Chief Executive of the UK Breast

Cancer Coalition and was also previously Director of Policy at the Refugee Council.

### Emma Harrison

Emma is Director of External Affairs at the Royal National Institute for the Deaf. She brings experience of working 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.

### Paul Munden

Paul is an experienced general counsel and chartered director. Over the last ten years he has held a number of senior board posts at the Business Link operation in London. He is an accredited 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. He has also served as non executive chairman of a Bafta award winning educational software house and a founder non executive director of Customer First UK, which is responsible for the national Customer First quality accreditation framework. He is currently on the board of NHS Mid Essex and the National Youth Music Theatre.

### Neil Wightman

Neil is Deputy Head of Housing Needs at the London Borough of Camden 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 20 years and before that worked as an advice worker at Sheffield and Clapham Citizens Advice Bureaux.

### Karin Woodley

Karin is the Chief Executive of ContinYou having ended her role as Chief Executive of the Stephen Lawrence Charitable Trust in 2009. Formerly, she was 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.

### Alanna Linn

Alanna was formerly a Policy Analyst at the Royal College of Midwives. Prior to this, she worked on regulatory policy for government departments in New South Wales, Australia - at the Department of Water and Energy, and Department of Premier and Cabinet. Before this, she was a Project Officer at the Australian Mekong Resources Centre based at the University of Sydney.

# Delivery plan

Quarter 1 April-June 2011	Quarter 2 July-September	Quarter 3 October-December	Quarter 4 January-March 2012
Publish first Consumer Impact Report	Publish advice on regulation of will writing	Publish advice on price comparison websites	Publish advice on consumer protection in relation to not-for-profit providers
Publish annual report	Publish advice on credible quality schemes	Publish research report on small charities as consumers of legal services	Agree Legal Services Consumer Panel Work Programme for 2012-13
Respond to second Legal Ombudsman consultation on publishing decisions	Respond to Legal Services Board consultation on the proposed framework for the scope of regulation	Commence focused study on an identified 'at risk' consumer group	







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