

# Empowering consumers

Background paper 2: learning from other sectors

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# 1 Summary

1. The Legal Services Board has requested the Consumer Panel's advice about how regulators can help consumers to play a more active, empowered role in the legal services market. The first paper introduced the theme of consumer empowerment, discussed the potential benefits and limitations of initiatives in this area based on a review of the literature and reviewed evidence from major surveys on levels of empowerment among UK consumers as a whole and in the legal services market.
2. In this second background paper, we consider consumer empowerment initiatives in other sectors to provide legal services regulators with a menu of options and good practice examples. The paper also summarises existing activity by legal services regulators and briefly reviews the role of non-regulatory actors such as industry and the advice sector in relation to information provision.

## **Learning from other sectors**

3. We reviewed policy and practice in aviation, communications, dentistry, energy, financial services, food safety, health and social care, higher education and social housing. These sectors either have similarities with legal services and or there have been recent major consumer empowerment initiatives. This work identified ten themes or trends that that we encourage legal services regulators to consider as they develop their own approaches to empowering consumers:
  - Adopt a strategic approach towards consumer empowerment – real impetus, a coherent approach and measurement of success is more likely to happen when empowering consumers is made an explicit strategic goal
  - Ensure there is adequate generic information provision – there is an expansion of general materials in some spheres, but also ambition to streamline provision through the advice sector in a joined-up way that cuts across regulatory boundaries – this leaves some strategic choices for legal regulators
  - Make it easier for consumers to understand their rights – through simplification of consumer law and increased public awareness, for example via charters. This is really important given perceptions of consumer protection are a precondition of people playing the more active role in markets envisaged for them.
  - Create incentives for consumers to take a more active role – especially in public services, there is a trend to give people more control over decisions affecting them, including by giving consumers a greater financial stake in their choices, emphasising personal responsibility for decisions and involving people directly in the design and delivery of services and their regulation
  - Draw on insights from behavioural economics – increasingly regulators are using insight from this discipline to better understand consumers and design solutions that run with the grain of consumer and provider behaviour

- Open up data about regulatory performance – encouraged by government, regulators are opening up a wide range of complaints and performance data they collect about businesses to inform consumer choice and give powerful incentives for providers to behave fairly. Regulators are also reflecting on the possibilities and limitations of transparency as a regulatory tool
- Share data on open access platforms – government is also encouraging regulators to make data about provider performance available in a format that can be easily reused for other purposes with as few restrictions as possible
- Strengthen choice tools so that consumers can trust them – regulators see the potential for tools such as feedback and comparison websites and trusted trader schemes to inform consumer choice, but recognise the need to support self-regulatory solutions to bolster consumer trust
- Make careful use of information remedies – many regulators require providers to give consumers certain information which has a range of useful purposes, but there is limited evidence as to the effectiveness of these approaches. It should not be assumed that more information results in more empowered consumers. There are some efforts to evaluate when information remedies succeed or fail
- Take targeted action to empower vulnerable consumers – there is a greater general commitment in relation to empowering vulnerable consumers, but this is an underexplored area and requires further work

### **Action in legal services**

4. One of the regulatory objectives is ‘increasing public understanding of the citizen’s legal rights and duties’. The Act does not define this further, although debates during the passage of the legislation suggest quite a narrow interpretation based around the information that clients need in legal transactions. The background paper considers actions by a range of regulatory and non-regulatory actors to support this objective.

#### *Regulatory actors*

5. Empowering consumers has been a strategic objective for the Legal Services Board since its first business plan. Our reading is that its initial focus was twofold: on competition reforms making the market more accessible for consumers (in the broadest sense of the term); and gaining a better understanding of barriers to access and the factors that drive consumer behaviour in the choice and use of legal services, through investing in research to inform policy development. More latterly, it has focused on the provision and transparency of performance information to help approved regulators manage quality risks. In addition, its regulatory standards work includes some measures related to empowering consumers, while it has started to track changing levels of consumer empowerment through its Evaluation Framework.
6. The role of the Legal Ombudsman is interesting to consider because it is the body in the regulatory landscape with the highest public profile and with whom consumers are most likely to come into contact. Its strategy includes, as part of its role to raise standards and prevent complaints, ‘helping consumers become more confident in using legal services’. It has already started to share the learning from its caseload to help consumers avoid problems with costs and advise them about how to complain to providers. The Legal

Ombudsman is understandably keen to maintain its neutrality and avoid 'shopping' for complaints, but it can really add value in relation to using legal services once a provider is engaged – this is important as our impression is that most information provision tends to focus on choosing, rather than using, legal services.

7. The paper reviews current activity by the approved regulators against the ten themes encapsulating learning from other sectors described above. It is important to emphasise that some parts of the market deal with individual consumers to a greater extent than others, while resource levels significantly vary, so consistency of approach is neither desirable nor practicable. We were pleased to find examples of good practice spread across the regulators, for example in relation to client charters (Council for Licensed Conveyancers) and information on the professional registers (Bar Standards Board). Nevertheless, the Solicitors Regulation Authority is the only regulator so far to take a strategic approach to empowering consumers – and it would be the first to concede that it is at the start of a journey on these issues.
8. We think a key issue for the front-line regulators is how much and what information they should provide directly to consumers through their websites. Unsurprisingly, existing information is related to regulation – what lawyers do, expected behaviours, complaints and the role of the regulator. This highlights the broader problem that consumers are left to piece together a complex jigsaw by visiting a series of websites each containing fragments of information that reflect the distinct remits of each organisation rather than the reality of people's lives. Better coordination of information provision is something of a holy grail across markets, but impetus behind joining up public information provision through the advice sector, particularly Citizens Advice in the consumer field, creates new opportunities for regulators to make the most of the efforts of others who have greater reach and communications expertise. Similarly, it would be fruitful to explore links with the Money Advice Service – this has benefited from significant government investment and already includes information on a range of everyday legal issues.
9. As the Panel has written previously in relation to complaints, accreditation schemes and comparison websites, there are opportunities for regulators to open up performance data on open access platforms which intermediaries could combine with other information to give consumers a rounded picture of providers. In addition, there is a potential role for regulators to help choice tools develop in a credible way that would engender consumer trust. The LSB has asked the approved regulators to do more in this area.

#### *Non-regulatory actors*

10. The market is likely to play a growing role in helping consumers to choose and use legal services. This is in relation to generic information about legal issues and, via commercial intermediaries, comparative data on providers. New entrants are marketing services more heavily than traditional law firms and attempting to change the language of law – by positioning legal advice as a life planning tool and removing legal jargon. Despite these benefits of visibility and accessibility, there are risks around the independence and quality of information provided through the market.

11. The representative arms of the approved regulators also provide consumer information. In particular, the Law Society provides guides on areas of law and other materials and it is developing the services it offers to the public, notably a possible expansion of its find a solicitor service to become a trip advisor-style customer feedback website. As with the Legal Ombudsman, the professional bodies are a common touch point for consumers and there would appear potential to harness this brand recognition. However, there are issues to resolve around bias towards recommending use of their members rather than setting out the range of market options in a neutral way.
12. The advice sector provides independent and neutral information on legal issues. Adviceguide.org.uk, run by Citizens Advice, attracted over 11 million visitors in 2011-12 and provides information on rights on a very wide range of matters. In addition, specialist legal information websites, such as Advicenow.org.uk, provide detailed guidance and employ a range of tools to get the message across. Funding cuts are putting pressure on such services, which could limit future availability of this information.
13. In an ideal world, people would identify their legal needs early and take steps to prevent problems occurring – the goals of public legal education. There is public demand for an authoritative one-stop shop information resource, although people say they are likely to use this to resolve problems rather than explore issues in advance. While this is a focus of the statutory objectives, historically the nature of activities pursued by Law for Life and the approved regulators have been very different and there is no agreement about what the role of the latter in this space should be. The most common view is that the scale and nature of public legal education is such that this is more properly a role for government than regulators. However, these issues need to be teased out further and greater dialogue between the various interest groups on this would be welcome.

### Questions for discussion

14. This is a discussion paper designed to provoke debate, not make recommendations. We are interested to hear what others think about the following questions:
- What key areas of learning can legal services take from other sectors?
  - How should responsibility for provision of consumer information be divided between the various regulatory and non-regulatory actors in legal services?
  - To what extent should approved regulators provide information directly to consumers versus lean behind the efforts of others?
  - How can regulators best ensure that information which consumers obtain via the market is credible?
  - What role do the regulators have to support public legal education goals?
  - How effective are information remedies in supporting consumer decision-making?

## 2 Background

### **The Legal Services Board's request for advice**

1. The Legal Services Board (LSB) has requested the Consumer Panel's advice about how regulators can help consumers to play a more active, empowered role in the legal services market. It has asked us to consider the potential for consumer empowerment from a range of perspectives, as follows (quoting from its letter):
  - Competition – Empowerment and competition are clearly linked with one reinforcing the other. How can regulators ensure that consumers play an active role in helping the legal services market work properly?
  - Choice tools – Building on your work to date on price comparison websites and voluntary quality schemes, the investigation should consider what role choice tools have in empowering consumers, and in what areas they have been successfully implemented and executed.
  - 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?
2. This should cover areas where consumers identify a legal need but take no action or handle alone, and look across the regulated and unregulated legal services sectors.
3. The Panel has agreed with the LSB that this work will be undertaken in two phases. Phase One will involve a review of existing literature and data to establish a framework through which to define and understand consumer empowerment. It will also consider initiatives in professional services and other markets where there are information gaps between consumers and providers. The scope of Phase Two will be decided once the LSB has reviewed the findings of this first phase of work, due in April 2013.

### **Our approach**

4. The Panel is publishing two background papers to support Phase One of the project. We have organised a roundtable to discuss these papers, bringing together regulators and consumer bodies from the legal services sector and other relevant markets.
5. The first background paper introduced the theme of consumer empowerment. This covered the potential benefits and limitations of initiatives in this area based on a review of the literature. It also reviewed evidence from major surveys on levels of empowerment among UK consumers as a whole and specifically in the legal services market. This exercise found that legal services consumers are currently not very empowered and vulnerable consumers are worse off across a wide range of measures. We explored how realistic it is to pursue consumer empowerment policies in legal

services given features of the market and the right balance between enhancing the consumer protection framework and facilitating better consumer decision-making.

### **About this background paper**

6. This second paper focuses on consumer empowerment initiatives in other sectors to provide legal services regulators with a menu of options and good practice examples. The Department for Business, Innovation and Skills (BIS) has developed an ambitious consumer empowerment strategy and a reading of Coalition Government white papers shows that other government departments are taking forward its central themes. Whether in health, higher education, housing or elsewhere, there is a strong emphasis on giving patients, students, tenants and others the tools they need to stimulate providers to design and deliver services that are more responsive to their needs.
7. The paper also summarises existing activity by legal services regulators as there is the opportunity to learn from within as well as outside the sector. This aims to provide a benchmark against which to assess the breadth and depth of current practice, and to identify any gaps. We also review the role of non-regulatory actors such as industry and the advice sector, as experience in other markets suggests that regulators tend to act only where the market does not or cannot provide a solution.
8. The paper is divided into three sections:
  - Chapter 3 describes relevant consumer empowerment initiatives in selected economic sectors and draws out learning under ten themes.
  - Chapters 4 and 5 review policy developments in legal services and describe current activity by the approved regulators.
  - Chapter 6 poses some questions.
9. The Panel is keen to hear what stakeholders think about these issues, so this background paper, like the first, asks questions rather than makes recommendations. We will listen to views through our planned event and in bilateral meetings, and then draw together the outcomes of these discussions and the two background papers in a short paper which we will present to the LSB in April.

# 3 Cross-sector learning

## Introduction

1. In this section, we describe relevant consumer empowerment initiatives in selected sectors which may provide some learning for legal services. Due to the differing sizes and focus of the legal regulators, not everything below will be relevant to all bodies, but each should be able to extract useful areas of read across.
2. In our first background paper, we defined consumer empowerment in terms of two dimensions. Firstly, the resources consumers have at their disposal to make better choices. This includes a certain state of mind (confidence and willingness to play an active role), decision-making tools such as good information, and the skills to use these tools to make effective decisions that secure positive outcomes. Secondly, the institutions – for example, the competition regime, consumer protections and regulatory organisations – that support consumers to shape markets. In this paper we focus on the choosing and using dimensions of consumer empowerment.
3. Of course, every sector is different so the context in which regulators operate, and the size of resources at their disposal, means that solutions tried in one part of the economy are not necessarily suitable for other markets. However, regulators face the common challenge that markets are not working optimally because consumers are less powerful and knowledgeable than the providers they deal with – the differences are often ones of degree and consequence. Moreover, the increasing emphasis on regulation by activity in legal services, which cuts across multiple approved regulators, means these bodies should be discussing these issues together and working towards cross-sector solutions.
4. We have reviewed policy and practice in aviation, communications, dentistry, energy, financial services, food safety, health and social care, higher education and social housing. This list was chosen based on similarities with legal services and sectors where there have been recent major consumer empowerment initiatives. From this review, we have identified ten themes that we encourage legal services regulators to consider as they develop their own approaches to empowering consumers:
  - Adopt a strategic approach towards consumer empowerment
  - Ensure there is adequate generic information provision
  - Make it easier for consumers to understand their rights
  - Create incentives for consumers to take a more active role
  - Draw on insights from behavioural economics
  - Open up data about regulatory performance
  - Share data on open access platforms
  - Strengthen choice tools so that consumers can trust them
  - Make careful use of information remedies
  - Take targeted action to empower vulnerable consumers

### **Adopt a strategic approach towards consumer empowerment**

5. A review of corporate documents reveals that some regulators have made increasing consumer empowerment an explicit strategic goal. All consumer-facing regulators will undertake activities that are recognisable as ones that aim to empower consumers to varying extents, even if this is limited to basic information provision on their website. However, real impetus and a coherent approach to consumer empowerment come when this is made central to the regulator's overriding purposes and priorities. Unsurprisingly, our impression is that where regulators have empowering consumers as an explicit goal, they pursue a greater level of activities which support this objective.

#### **Strategic objectives and priorities**

##### ***The Civil Aviation Authority***

To improve choice and value for aviation consumers now and in the future by promoting competitive markets, contributing to consumers' ability to make informed decisions and protecting them where appropriate.

##### ***Food Standards Agency***

Consumers have the information and understanding they need to make informed choices about where and what they eat.

##### ***General Osteopathic Council***

To increase understanding of the importance of the register and to make it more meaningful to patients and others.

##### ***Ofcom***

Promote effective choice for consumers by ensuring that clear information on service, price and quality is available.

6. A review of corporate documents indicates that consumer empowerment is more likely to be an explicit strategic goal of economic regulators than those operating in professional services. Instead, the latter tend to focus on protecting consumers through ensuring individual practitioners' fitness to practise. This is natural given the self-regulatory roots of these sectors, but as the role of market forces increases in these spheres so too does the need to become more outward looking and empower consumers. This tension was clear in the OFT's market study into dentistry, which made recommendations to remove restrictions on direct patient access, improve patient awareness to enable effective choice and for the regulator to enforce information provision around patients' entitlement to receive particular treatments on the NHS.<sup>1</sup>

<sup>1</sup> Office of Fair Trading, *Dentistry – an OFT market study*, 2012.

7. Government can encourage regulators to pursue initiatives to empower consumers through high level strategies that set expectations about how regulators should operate. For example, the BIS consumer empowerment strategy makes clear that the Coalition Government expects ombudsman schemes to publish complaints data, while the Cabinet Office led Open Data strategy makes clear that such information should be published in a format that third parties can use. Individual departments may guide regulators to follow consumer empowerment policies. In aviation, the Secretary of State set out the Government's priorities for the Civil Aviation Authority (CAA) over the next two years in a recent letter to the Chair. One of these priorities is: 'to put consumers' interests at the forefront of its regulatory decisions, in particular through promoting greater visibility of information that informs consumer choices'.<sup>2</sup> The CAA's role in this respect will soon have a stronger legislative mandate as the Civil Aviation Act 2012 makes provision for it to promote better public information about airline and airport performance, and about the environmental impact of aviation.
8. One benefit of defining a strategic approach towards consumer empowerment is that it forces the regulator to consider such policies within its overall regulatory approach. In communications, Ofcom published a Consumer Policy Statement<sup>3</sup> which set out its approach to consumer information. This approach, which can be summarised as giving a role for Ofcom to intervene to enable consumers to make effective choices where the market does not deliver the information consumers want or need, has provided clarity for stakeholders and laid the foundations for a range of initiatives – such as publication of quality of service and complaints data – which have taken place in the period since the Statement was published.
9. In addition, adopting a strategic approach also helps regulators to develop an 'attitude' towards consumer empowerment, in particular identifying the right balance between the individual decision-making and institutional elements of this concept, which we highlighted in Background Paper 1. This does not necessarily mean a greater emphasis on the former element; in financial services, the Financial Services Authority (FSA) has indicated that the Financial Conduct Authority (FCA) will intervene early to pre-empt and prevent widespread harm to consumers from happening in the first place, including by adopting a new approach to supervision which will be focused on scrutinising firms' product governance – how they design, operate and sell products.<sup>4</sup> Empowering consumers will still form a central part of the FCA's regulatory approach, but taking a strategic view helps to grapple with this issue and set the overall direction of travel.
10. Finally, where empowering consumers is a strategic goal regulators are more likely to measure the success of policies designed to support this. In communications, Ofcom's Consumer Experience publication reports on how well consumers are served in communications markets.<sup>5</sup> This contains five consumer empowerment metrics: participation, switching, ease of switching, awareness of trusted information sources and ease of making cost comparisons between suppliers. In food safety, the Food

<sup>2</sup> Civil Aviation Authority, *Strategic Plan 2011 to 2016*.

<sup>3</sup> Ofcom, *Ofcom's Consumer Policy: Statement*, 2006.

<sup>4</sup> Financial Services Authority, *Journey to the FCA*, 2012.

<sup>5</sup> Ofcom, *The Consumer Experience 2012*, 2012.

Standards Agency sets performance measures to monitor progress against the six key outcomes it is pursuing in its strategy. Measures for the outcome in the box above include: an increase in the number of consumers using messages about food safety; and adoption of the Food Hygiene Rating Scheme.

### **Ensure there is adequate generic information provision**

11. In a range of sectors there are initiatives to expand generic information provision. This serves multiple purposes including helping people take steps to prevent problems, such as to avoid debt or eat more healthily, to take greater control over decisions affecting their lives, such as social care provision, or to engage more effectively in the market, such as by alerting consumers to common pitfalls.
12. Government has invested in a major expansion of information provision in some areas. For example, in financial services the Money Advice Service is an independent service set up by government to help people make the most of their money (see box). In social care the government is to establish a new national information website to provide a clear and reliable source of information on care and support, and is to provide start up funding of £32.5 million to local authorities to develop new online information about local care and support options. Some regulators are making greater use their websites to provide generic information to consumers. In financial services and communications, both the FSA and Ofcom have re-oriented their websites towards the general public and expanded their content. In aviation, the CAA has launched a dedicated passenger portal on its website which includes comparison tables on the cost of optional extras and charges, advice on issues for passengers to consider when booking a flight, information on their rights should their flight be delayed or cancelled, advice for people of reduced mobility on how to get additional help whilst they are in the airport, and information about making a complaint and how the CAA can assist them with it.
13. An important government priority in this context is to streamline information provision so that people can more easily access the information they need. A main finding of the consumer landscape review was that the current landscape of bodies responsible for empowering and protecting consumers is inefficient and confusing, leaving consumers uncertain who to turn to for help and advice when things go wrong. Citizens Advice has now been given responsibility to provide information and advice about general consumer matters under the motto: 'if you need information or advice, go to Citizens Advice'. More broadly, the new Gov.uk website, which replaces the DirectGov and Business Link websites, is the new definitive source of government policy and information.
14. The Money Advice Service has particular relevance for legal services because its online diagnostic health check and general information provision address what we would understand as 'legal' as well as financial services needs. For example, users are recommended to make a will and advised about the advantages and drawbacks of using regulated and unregulated providers and the likely costs of each option. Other legal issues on which information is available include buying for the first time, benefits, redundancy rights and divorce. This serves as a timely reminder that people do not divide their affairs into neat parcels in the same way that legislation ascribes specific

responsibilities to individual regulators. Indeed, the multi-disciplinary practices envisaged in legal services will only blur these distinctions further; we are already seeing new entrants market their services as life planning tools rather than as legal services, partly in recognition that labelling something as legal makes it intimidating. This poses a strategic question for legal services regulators around the extent to which they should they work with the financial services sector to fill information gaps.

### Money Advice Service

The Money Advice Service is an independent service, set up by government to help people make the most of their money by giving free, unbiased money advice to everyone across the UK – online, over the phone and face to face. The Service is paid for by a statutory levy on the financial services industry, raised through the FSA. It has statutory objectives to enhance the understanding and knowledge of members of the public about financial matters (including the UK financial system), and to enhance the ability of members of the public to manage their own financial affairs.

In the summer of 2011, it launched an online financial health check with a target of reaching 500,000 people by the end of April 2012. This tool allows people to review their finances and create a personal action plan through a series of simple steps that take just a few minutes to complete. Over 520,000 people had used it by the end of the 2011/12 year, 58% creating an action plan with over 100,000 online actions taken immediately. The service is drawing on this data and users' experience of the online tool to improve it even further as part of a service upgrade in the year ahead.

The digital service is very important but is only one aspect of the comprehensive delivery approach that the Service is committed to maintaining and developing. Many people prefer more direct contact by phone or in person, and during the year customers made 84,000 phone calls to telephone-based money advisers and benefited from over 74,000 individual face to face sessions. In future the Service expects to handle even greater volumes of face to face sessions, with a network of over 100 money advisers tasked with meeting at least 88,000 people as part of the overall goal to reach 1.9m individual customers during the course of the year.

This new approach is focused on major life events – like starting a family or planning for retirement – and recognises that people's attitudes to money are a key influence on how they manage their finances. Having researched people's attitudes to money, the likelihood of major life changes, and their service delivery preferences, the Service has a clear picture of the market for its services and how best to make them available. It has identified that around 19 million adults in the UK each year could benefit from a service such as the one provided by the Money Advice Service.

### **Make it easier for consumers to understand their rights**

15. The first background paper highlighted that UK consumers lack awareness of their rights in comparison to other EU countries. It also highlighted that perceptions of consumer protection are a precondition of people being willing to take risks and play the more active role in markets envisaged for them. BIS has committed to clarifying and simplifying consumer rights as part of a comprehensive package of measures to improve consumer protection. Although the consumer protection regime is considered to be comprehensive, it has developed piecemeal over many decades and as a result it is fragmented, overlapping and often expressed in complex language that is difficult for consumers and business to understand. BIS intends to bring forward legislation written in clear, simple English to reduce the burden on businesses and enhance consumer confidence. It promises that ‘consumer rights will be clearer and easier to understand, so as to create the right conditions for sustainable economic growth.’
16. A subset of expanded generic information provision is telling consumers what their rights are. As well as rewriting laws and codes of conduct in simpler language so that they are easier to understand for consumers and providers, there is a potential role for regulators to translate existing rules into a clear set of behaviours that consumers can reasonably expect providers to demonstrate. In higher education, reforms are putting a greater emphasis on consumer rights through Student Charters. In social care, the government has committed to clearly set out for the first time what people should expect when using care and support, and the roles and responsibilities of different organisations to deliver this. In social housing, the SAFE agent scheme promotes public awareness of choosing a lettings agency with client money protection in place.
17. As in legal services, other sectors are moving away from detailed and prescriptive rulebooks towards more principles-based or outcomes-focused approaches. This is also true in relation to general law as consumer rights increasingly derive from Europe where this model is the norm, e.g. laws on unfair commercial practices, unfair contract terms and general product safety. Ombudsman schemes also decide cases based on what they consider is ‘fair and reasonable’ in all the circumstances of the case. In some respects, principles-based rules are more intuitive for consumers to understand, but a criticism often voiced by businesses is that they are unclear what is expected of them while consumer organisations are concerned that principles-based regulation is more difficult to enforce due to the greater scope for interpretation over what constitutes acceptable conduct. If it is unclear to providers what their obligations are, it is likely to be unclear to consumers what their rights are, so regulators have to work harder to explain to consumers what they are entitled to expect.

### **Create incentives for consumers to take a more active role**

18. The starting point of the BIS consumer empowerment strategy is that in the current economic climate the UK needs a more sophisticated demand side to secure sustainable growth, harnessing consumer purchasing power to drive competition. However, consumers may need to be persuaded to take a more active role, such as by comparing providers, than they have done previously if this dynamic is to transpire. Certainly in legal services, the evidence presented in the first background paper suggests that demand-side pressure is weak: for example, consumers tend not to shop

around but instead stay loyal to a provider they used before or rely on recommendation – either from someone they know or a commercial intermediary – to identify a provider.

19. In public services, there is a trend to give consumers more control over decisions affecting them. In social care, legislation will give people an entitlement to a personal budget as part of their care and support plan, while the use of direct payments is being trialled among people living in residential care. In social housing, the Right to Manage programme is intended to help tenants take the lead by taking over responsibility for managing housing services. In healthcare, the Health and Social Care Act creates a presumption that all patients will have choice and control over their care and treatment. Specific measures include creating freedom of choice in areas where there previously was none, such as for long-term conditions, and giving patients greater access to their care records, which they can then share with potential providers and third parties. Financial incentive is also part of this with the creation of personalised budgets – as well as having the data to shop around, people have the money to exercise their choices.
20. Giving people a greater financial interest in the choices they make may also encourage them to take a more active role, although such policies are controversial. In higher education, the white paper acknowledged that introducing the graduate contributions funding system would create greater incentives for consumers to exercise choice and ensure quality since these reforms mean students would pay a higher proportion of tuition fees. In legal services, our research indicates that 56% of services are privately paid for – other funding methods include legal aid, insurance, no win no fee arrangements and through trade unions or employers. In addition to the narrowing scope of legal aid, changes to litigation funding following the Jackson reforms (enacted in LASPO) – such as allowing Damages Based Agreements – means that in future consumers will have a greater financial interest in choice of provider than they do under the current conditional fee arrangements system. The Panel's role does not extend to commenting on the merits of such reforms, but these funding changes are relevant to a discussion of whether consumers are likely to become more active in the market.
21. Regulators can also encourage consumers to take a more active decision-making role by transferring greater risk to them, for example by removing automatic protections. In commissioning the Panel's advice on financial protection regimes, the LSB expressed concern that consumers assumed that all legal transactions took place in a zero risk environment and were less discerning about their choice of provider as a result. It has asked us to explore options including the likelihood of consumers being willing and/or able to insure themselves against some or all of the risks they face. The Panel is also looking more broadly at the appropriate balance of risk between consumers and providers. In financial services, the Financial Services and Markets Act requires the FSA, when considering the appropriate level of consumer protection, to have regard to the 'general principle that consumers should take responsibility for their decisions'. Although this is an explicit feature of financial services regulation, this tension is present in all markets. The Panel will return to this issue separately in making recommendations on financial protection regimes, which we expect to publish in May 2013.
22. Finally, consumers can be encouraged to be more active if they are directly involved in designing the delivery of services and their regulation. Again, the health and social care

sector provides examples of such approaches, for instance in designing patient pathways for long-term medical conditions. Of greater relevance to regulatory activity, the CQC has an experts by experience programme – people with experience of using care services who work alongside CQC inspectors, gather the experiences and views of people that use those services and feeding them back into the inspection process. The CQC also draws feedback directly from [www.patientopinion.org.uk](http://www.patientopinion.org.uk) (a customer feedback website) thus empowering consumers to play an active role in monitoring service quality and providing information for regulators to act upon to protect others.

### **Draw on insights from behavioural science**

23. Regulators are increasingly drawing on insights from behavioural science. As we explored in the first discussion paper, these theories recognise that not all consumers respond in an economically rational way to financial or other incentives, but instead may fail to act in their own best interests due to innate behavioural traits.
24. For example, in energy, as part of its major Retail Market Review, Ofgem published a paper<sup>6</sup> examining themes from the literature on behavioural economics and how these can help us understand consumer behaviour. For instance, theories around limited consumer capacity highlight that people have difficulties assessing many different options and large amounts of information about them and this can mean they do not search at all, seek out short cuts or select a ‘better’ rather than the ‘best’ option. Status quo bias helps to explain why consumers do not switch providers. Alternatively, theories around loss aversion help explain that consumers attach more weight to monetary losses than to monetary gains and avoid risk taking behaviour. In practice, this means that consumers may search less when energy prices fall than when they rise.
25. The BIS consumer empowerment strategy has drawn directly on behavioural science, as have regulators in financial services and communications. The OFT has considered the implications of behavioural economics for competition policy.<sup>7</sup> Importantly, it concluded that behavioural economics does not question its belief in competition policy as a tool for making markets work well for consumers, but the existence of behavioural biases does have a number of implications for the way in which markets work – on both the demand and supply side. To make markets work well we not only need competition policy, we also need engaged consumers, able to assess, access, and act on information, highlighting the crucial role that consumer policy, and other forms of demand side intervention, plays in driving effective markets. The OFT concluded that in spite of this, behavioural economics does not necessarily imply more intervention. This is because markets can often solve their own problems and even where they cannot, there are dangers inherent in over paternalism limiting consumer choice.
26. In addition to helping explain consumer behaviour, policy makers are using these insights to design interventions which aim to better harness consumers’ market power. For example, in aviation, the European Commission has required airlines to disclose all total charges upfront following evidence of drip pricing practices, which exploit

<sup>6</sup> Ofgem, *What can behavioural economics say about GB energy consumers?*, 2011.

<sup>7</sup> Office of Fair Trading, *What does behavioural economics mean for competition policy?*, 2010.

behavioural biases meaning that consumers are more likely to buy the product after they have invested time in it. A report found that airlines were frequently including parts of their basic operational costs (handling charges, fuel charges, booking fees) into what appeared to be obligatory "taxes and charges" that did not appear in the headline price revealed by comparison website searches, thus misleading consumers and falsely attracting consumers to buying seemingly cheaper tickets.

27. It is important that legal services regulators reflect on these insights. To this end, we welcome the LSB's decision to commission a paper which sets out the key areas of behavioural economics that are relevant to consumers of legal services, illustrate examples of how particular lessons from the theory can be applied in the behaviour of these consumers, and explore whether behavioural theory provides any insights into the behaviour of 'high-street' partnerships supplying legal services.

### **Open up data about regulatory performance**

28. The BIS consumer empowerment strategy includes a commitment to open up regulatory data by encouraging ombudsmen and regulatory bodies to publish the complaints and performance data they collect about businesses. It sets a clear expectation that this should be the default position of public bodies. These are changes that the Panel has addressed at some length in legal services, particularly in relation to complaints data, as our research highlights that consumers are not playing their role in driving competition between lawyers, in part because they lack information about quality of service which they need to make sensible choices. The publication of ombudsman data is fast becoming the norm across the economy and public services, but in the financial services, communications and energy sectors, regulators have already or are planning to also publish statistics on volumes of first-tier complaints. The structure of these markets – a high concentration of large companies – is very different to legal services, but this information provides a more rounded view of service standards.
29. Of course, complaints data is only the tip of the iceberg as many people choose not to complain for various reasons, often due to negative perceptions about the process. Developments in other sectors involve opening up wide quality of service information held by regulators and combining this with unofficial 'softer' data such as customer feedback. For example, in higher education, UCAS and higher education institutions have made available, course by course, new data showing the type and subjects of the actual qualifications held by previously successful applicants. The main organisations that hold detailed student data, including on employment and earnings outcomes, have also been encouraged to make this publicly available. In addition, higher education institutions are expected to publish online student surveys of lecture courses.
30. In social housing, the regulator is introducing an obligation on landlords to provide timely, useful performance information to tenants. The precise form of information is to be agreed between landlords and tenants as part of the 'local offers' process, but sits within a framework of outcomes-focused standards set by the regulator. Landlords are expected to make robust and honest self-assessments of their own performance, drawing on external validation (such as peer review) as needed. The regulator has powers to intervene where evidence emerges of a serious failure against one or more of

its consumer protection standards. Evidence brought by tenant panels in relation to the quality of performance information could trigger enforcement action.

31. There are often concerns that publication of performance data could be misused by consumers or have unintended consequences. These concerns are often exaggerated and reflect vested interests, but it is important that regulators consider proposals fully. In financial services, in 2008 the FSA launched a debate on increasing transparency as a regulatory tool by publishing a discussion paper.<sup>8</sup> Its aim was to stimulate an informed and energetic debate which recognised the powerful advantages that transparency can offer while at the same time carefully considering the disadvantages and limitations (including statutory barriers) of some forms of disclosure. It developed a framework to allow it to effectively and consistently determine the extent to which transparency is an appropriate tool to use in a particular instance, publishing information in a way that improves how markets function. As part of the creation of the FCA, the FSA has committed to publish a fresh discussion paper which will bring forward proposals to embed regulatory transparency in ways that will deliver real benefits for consumers.

## Unistats

Unistats is the official website that allows students to search for and compare data and information on university and college courses from across the UK. The site draws together comparable information on those areas that students have identified as important in making decisions about what and where to study. The items that students thought were most useful have been included in a Key Information Set.

The site draws on the following official data on higher education courses:

- Student satisfaction from the National Student Survey
- Student destinations on finishing their course from the Destinations of Leavers from Higher Education survey
- How the course is taught and study patterns
- How the course is assessed
- Course accreditation
- Course costs (such as tuition fees and accommodation)

The website contains some general health warnings around use of the data, for example that the information is indicative and each student experience will differ; some of the information is retrospective or for the next academic year; and the differences between courses can be small. To help students interpret the data, the site shows the number of respondents to the survey for each course.

Unistats data is available to third parties through an Open Government Licence.

<sup>8</sup> Financial Services Authority, *Transparency as a regulatory tool*, DP08/3, 2008

### Share data on open access platforms

32. There is a big push not just to increase transparency of public data, but to make this data available in a format that can be easily reused for other purposes. An Open Data initiative is being led by the Cabinet Office. Its White Paper<sup>9</sup> sets out how this work is enabling people to make better choices about the public services they use, holding the government to account on spending and outcomes, providing the raw material for innovative new business ventures and offering feedback for public service professionals to improve their performance. All government departments have published Open Data Strategies which include commitments to publish more data. Departments will also set out how they are going to stimulate a market for its use. By June 2012, 9,000 datasets had been released on the data portal [www.data.gov.uk](http://www.data.gov.uk) that cover health, education, transport, crime and justice. Freedom of information laws have been amended through the Protection of Freedoms Act to make sure that where people are entitled to a dataset, they can ask for it in a format that is useful. In addition to strengthening people's rights to access data, government wishes to create a culture that supports a presumption to publish so that data owners look to release the data they hold as 'business as usual'.
33. These developments are not confined to central government and public services. The BIS consumer empowerment strategy has specified that data should be made available in ways that allow intermediaries to combine this with other information that may be of interest to consumers so it can be presented in a simple format that can inform their choices and encourage businesses to improve their performance without regulatory intervention. midata is a programme of work that the Government is undertaking with leading businesses and consumer groups in order to give consumers access to their personal data in a portable and electronic format. The intention is for consumers to use this data to help them better understand their own consumption behaviours and patterns, as well as make more informed purchasing or consumption decisions. It is also hoped that this pool of information will stimulate innovation as applications and services are developed to support it. Potential applications include people using data on their mobile phone usage patterns to select the best tariff, or past energy consumption to find the best electricity and gas prices for their home.

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<sup>9</sup> Cabinet Office, *Open Data White Paper: Unleashing the Potential*, 2012.

## Social care quality profiles

Every registered residential or home care provider has a provider quality profile on the NHS and social care information website at [www.nhs.uk](http://www.nhs.uk).

At first, the quality profile will contain information such as:

- Basic details about the provider and the type of care and support it offers
- Details on how the care provider meets the Care Quality Commission's essential standards, including its latest inspection reports

By April 2013, it will give people a fuller picture of the quality they can expect from a care provider and will contain information such as:

- Key measures to demonstrate the effectiveness and quality of care, collected as part of the provider transparency and quality compact – including information on falls, staff training, medication errors and pressure sores
- Whether the care provider meets new National Institute for Health and Clinical Excellence (NICE) quality standards, once developed, as well as other recognised quality charter marks, such as My Home Life and the Dementia Care and Support Compact
- Information on complaints
- The views of the users of the care provider, and their families, pooled from high-quality feedback websites
- Feedback and reports from local Healthwatch, if available

Care providers will also be able to add their own information, including pictures and videos, to their quality profile.

The Government will enable open access to the data on the provider quality profile, to support the production of independent quality ratings that are easy to understand and continually updated. It will work with trusted organisations which are already making progress in this area, and with potential new providers, to grow and develop a range of care comparison websites over the next two years.

### Strengthen choice tools so that consumers can trust them

34. The OFT define choice tools as 'structured sources of information, discussion and comparison that help consumers compare and choose between alternative service and product offerings'.<sup>10</sup> Examples include customer feedback and comparison websites, and trusted trader schemes such as those run by local authorities. Therefore, choice

<sup>10</sup> Office of Fair Trading, *Empowering consumers of public services through choice tools*, 2011.

tools can aid comparisons on price, quality and other decision factors such as convenience. Other types of support in this vein provided by regulators include practical tools such as budget calculators, letter templates and decision trees.

35. The BIS consumer empowerment strategy has an emphasis on the market coming up with its own solutions, but acknowledges that these initiatives might not always work in the interests of consumers and recognises that they need to win consumer trust if they are to make a significant impact. Price comparison and customer feedback websites are a specific example included within the strategy. It can be difficult for consumers to know whether they can trust feedback and there are instances of companies deliberately falsifying feedback or threatening to sue consumers for defamation, while websites comparing prices can also be manipulated by businesses and may not always provide a full and comprehensive set of choices. The strategy proposes two approaches: firstly, Government will facilitate the development of a self-regulatory quality mark to support the majority of responsible businesses; secondly, enforcement action is taken against the minority who act illegally and deliberately to undermine these tools. This is a good example of a dual consumer empowerment approach: facilitate tools that help people to make better decisions, but also strengthen the institutional framework to give them the confidence to use these tools.
36. As the Panel has written elsewhere<sup>11</sup>, individual regulators in other sectors have acted to improve the credibility of comparison websites. In financial services, the FSA has consulted on and issued guidance following concerns that comparison websites were not meeting their regulatory requirements. In communications, Ofcom operates an accreditation scheme for price comparison calculators – the PASS scheme. In energy, Consumer Focus operates a voluntary code of practice for online domestic price comparison services. Ofgem will shortly take over stewardship of the code, while it also plans to publish an issues paper on the regulatory framework and activities of third party intermediaries, which play various and evolving roles in this sector. Of note, in aviation, the CAA provides a comparison table on optional fees and charges. In financial services, the Money Advice Service provides comparison tables across a wide range of products despite the availability of heavily advertised commercial alternatives.
37. Building on the open data discussion, regulators can facilitate the development of choice tools by giving providers access to data they hold about regulated entities. For example, registration data enables sites to offer full market coverage offering consumers wider choice, while quality of service information such as complaints data allows consumers to take a rounded view rather than focus only on price. Regulators can use access to data as a lever to improve the credibility of comparison websites, for example by restricting access to sites meeting its licence conditions. However, the OFT has warned about the risks of this creating market concentration, promoting inferior choice tools which become the default option for consumers and limiting providers' ability to innovate and respond swiftly to consumers' needs.

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<sup>11</sup> Legal Services Consumer Panel, *Comparison websites*, 2012.

### **Make careful use of information remedies**

38. Information remedies involve regulators imposing requirements on third parties to provide consumers with certain information, often in a prescribed format. They are a very commonly used tool and serve many purposes, for example product safety warnings aim to protect people from harm, nutritional labelling helps people to make healthy choices, recycling logos help to protect the environment, mandatory information on credit card statements help people to manage their finances, compulsory terms in contracts inform consumers about their rights and duties, and so on. This information is intended to help break down the imbalance of power between providers and consumers, and enable people to take responsibility for their own decisions and thus manage their own risks.
39. Some information remedies are popular with consumers, such as the 'key facts' information on financial products. However, there is generally limited evidence as to the effectiveness of information remedies. Research commissioned by the Better Regulation Executive and National Consumer Council<sup>12</sup> found that consumers rejected much of the information because it was not helpful or was presented in a complex or unappealing format. It also found that providers may comply in ways designed to protect them from litigation rather than genuinely to aid consumers, for example excessive safety warnings. In addition, information remedies that ran counter to business interests were found to lead to creative or minimum compliance responses, for example when rules around the sale of extended warranties required sellers to inform consumers about the availability of alternatives, this information was often buried in the small print of a leaflet handed to consumers after the sale had been made. Moreover, the report identified a sense that policymakers make such interventions their default response or are a relatively easy way to be seen to be doing something, but they can be an irritant for business, due in large part to the complex systems companies have to put in place to ensure compliance.
40. In legal services, there has been much consternation about non-compliance with rules requiring providers to signpost consumers to the Legal Ombudsman. Similar rules exist in the financial services, communications, energy and estate agency sectors, yet user surveys conducted by the redress schemes in all these markets have found that less than 40% of complainants heard about the service through their provider (see first Background Paper). While the SRA has found real evidence of non-compliance, there are clearly issues around non-recall by consumers of information provided to them. The use of information remedies takes on a different dimension in principles/outcomes-based regulatory regimes. Here the requirement is that consumers are informed, with specific information requirements kept to a minimum. The SRA has indicated that compliance is not achieved through simple disclosure of important information; instead disclosure must take place in such a way that consumers are truly informed.
41. We could have selected many examples of information remedies that regulators could learn from, but experience suggests the key message to take away is to use such tools carefully. In communications, Ofcom is undertaking work to evaluate conditions in which

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<sup>12</sup> Better Regulation Executive and National Consumer Council, *Warning! Too Much Information Can Harm*, 2007.

consumer information remedies are most effective. The aim is to produce a framework for assessing whether to use information remedies and what to take into account when designing, implementing and evaluating an information remedy. The work will include the role of information provided by the regulator, product or service provider, and intermediaries such as comparison websites. In food safety, the Food Standards Agency started a Citizens' Forum programme to explore consumer views on information about food and feed business compliance. The main areas of exploration will be: understanding how consumers currently use information when deciding where to eat; understanding consumers' views about openness and transparency; identifying consumers' expectations, needs and interest in relation to information about food compliance; and exploring views about making compliance information available to the public and how this could work in practice.

### **Take targeted action to empower vulnerable consumers**

42. Consumer vulnerability is a constant thread through the Consumer Panel's work and one of our strategic objectives is ensuring that all consumers, especially those in a position of vulnerability, have access to affordable and high quality advice. We have adopted the British Standard on inclusive service provision to help us address these issues and have encouraged legal regulators and other stakeholders to do likewise as part of a wider commitment to have special regard to vulnerable consumers' interests.
43. The BIS consumer empowerment strategy aims to help all consumers but recognises that not everyone will be as engaged, capable or technologically 'savvy' as the most active consumers. People are seen as vulnerable for a range of reasons: their lack of access to the internet; less means or inclination to shop around or complain; more likely to demonstrate behavioural biases; being on a low income constrains choice; and higher susceptibility to unfair selling practices and lack the means or confidence to seek redress. Some measures in the strategy seek to ensure that consumers who are not on the internet can access the benefits that currently are often only available online. Other measures seek to expand out-of-court redress mechanisms. However, there is also an acknowledgment that consumer vulnerability issues have been underexplored, so BIS commissioned Citizens Advice, Citizens Advice Scotland and Consumer Focus to consider and advise on how they, local and central government and other organisations could help empower the very vulnerable as consumers (see Background Paper 1).
44. Our review of regulators' activities also suggests this is an underexplored area, although there are some isolated examples. In communications, Ofcom's Consumer Policy Statement stated that where there is evidence that particular consumers are more likely to be vulnerable to harm than others, it will take this into account when formulating and implementing consumer policy and may give greater weight to the interests of those groups. In energy, Ofgem is proposing a pilot scheme where suppliers offer their vulnerable customers and others who have not switched for some time a personalised estimate on the cheapest tariff from across the energy market. In higher education, one element of the Key Information Set is financial support packages offered by institutions.

## 4 Action in legal services

1. In this section, we review high-level activity by the LSB, Legal Ombudsman and others so far to support consumers to choose and use legal services with confidence. We have divided this into regulatory and non-regulatory actors, since experience in other sectors suggests that regulators tend to intervene only where there are gaps which the market is not likely adequately to fill. This section does not provide a comprehensive overview of current information provision and related initiatives, but instead offers a flavour of the range and extent of activity across a wide range of actors.

### Regulatory actors

#### Legal Services Act 2007

2. The Act contains eight regulatory objectives which bind all actors in the regulatory framework. One which is perhaps of most relevance to this project is ‘increasing public understanding of the citizen’s legal rights and duties.’ Other relevant objectives are ‘improving access to justice’ and ‘protecting and promoting the interests of consumers’.
3. Parliamentary debates during the passage of the legislation provide little clue as to how Ministers intended the first mentioned objective to be pursued. The Government’s White Paper suggests a quite narrow interpretation based around the information that clients need in legal transactions: ‘*all partners in the regulatory framework have a duty to ensure that providers set out for clients their rights, their choices and the consequences of these. And to promote, inform and empower the public in understanding what they are doing.*’<sup>13</sup> The National Consumer Council urged Sir David Clementi to develop a definition that went beyond information to encapsulate wider elements of empowering consumers. In his final report, Sir David Clementi agreed with this point and emphasised that ‘*the regulatory system should be concerned with education, advice and redress as well as information*’. However, he also cautioned that it was ‘*important not to impose upon the framework more than it could possibly deliver*’ and that education about legal rights presupposed basic educational standards beyond the reach of legal regulators.<sup>14</sup>
4. Therefore, the Legal Services Act was enacted based on wide consensus about the need for an objective to inform consumers, but with little clarity about what was intended by it. Furthermore, this was always going to be a second order priority given the need to

<sup>13</sup> Department for Constitutional Affairs, *The Future of Legal Services: Putting Consumers First*, 2005.

<sup>14</sup> Sir David Clementi, *Review of the regulatory framework for legal services in England and Wales, Final Report*, 2004

first establish the three main pillars of the new regime: independent regulation, the Legal Ombudsman and the licensing framework for alternative business structures.

### Legal Services Board

5. The LSB defined its initial priorities in its first Business Plan 2009/10.<sup>15</sup> This document set out the Board's overall goal to '*reform and modernise the legal services market place in the interests of consumers, enhancing quality, ensuring value for money and improving access to justice across England and Wales*'. It also described a vision of the way it wanted to see the market deliver for consumers in five years time. One of the six components of this vision was '*empowered consumers receiving the right quality of service at the right price.*' Elaborating, it said: '*We expect to see a shift in the power balance from the professional provider/client relationship to an empowered consumer/commercial provider relationship. We want to see consumers of legal services make the same demands of their legal services providers in terms of quality, price and customer care as they do in any of their many other commercial transactions.*'
6. Under a heading of developing research and public legal education strategies, it set three medium-term aims, such that by 2013:
  - Consumers will be more knowledgeable about how to access legal advice from a range of sources and be better equipped to find the answers they need on any given issue
  - The legal services market will work more effectively for them, thanks to better interaction between practitioners and researchers in highlighting challenges, evidence and solutions
  - The LSB and ARs will produce ever more creative and practical solutions on policy issues, thanks to the development of a strong research, evaluation and application culture
7. It appears to us from reviewing the LSB's early work, that its initial emphasis was twofold: firstly, on competition reforms making the legal services market more accessible for consumers (in the broadest sense of the term); and, secondly, gaining a better understanding of barriers to access and the factors that drive consumer behaviour in the choice and use of legal services, through investing in research to inform policy development. At this early stage, there was little direct activity on the public legal education or problem prevention aspects of empowering consumers.
8. The LSB's second business plan<sup>16</sup>, covering the 2010/11 period, made some tentative steps in this direction by committing to explore the potential for a 'legal direct' advice and signposting service and to consider the impact of comparison websites. In relation to the first of these commitments, in 2012 it published research on how consumers are using the internet to deal with their legal needs.<sup>17</sup> This identified strong public support for a reliable, independent and trustworthy one-stop shop resource containing a basic

<sup>15</sup> Legal Services Board, *Business Plan 2009/10*.

<sup>16</sup> Legal Services Board, *Business Plan 2010/11*.

<sup>17</sup> Vanilla Research, *Consumer needs from legal information sources*, 2012.

level of information, on which consumers could make more confident decisions and have more informed conversations. However, participants did not think they would use it to explore what legal problems they might face, but rather help with the problems they did have. The LSB has taken forward work on comparison websites following the Panel's report on this issue. It has encouraged the approved regulators to engage with such sites and placed a particular emphasis on opening up the professional registers.

9. During 2010/11, the LSB also set out its view on what the regulatory objectives mean.<sup>18</sup> There was a continued emphasis on facilitating a market that improves access to justice with a successful market being one '*where clients are empowered to make informed choices about quality, access and value between a plurality of legal service providers*'. In relation to increasing public understanding of the citizen's rights and duties, the LSB concluded that the infrequent and distressed nature of most legal services meant that it was unrealistic to expect consumers to know their legal rights and duties in all situations. However, it saw a role for it to '*encourage, with approved regulators and legal service providers, a better understanding by consumers of "rights and responsibilities" and for them to be confident about where to turn to identify them and their application in a particular situation*'.
10. More recently, the LSB has set out three new strategic priorities for 2012-15 which include '*helping consumers to choose and use legal services with confidence*'.<sup>19</sup> At the same time, it developed 17 measures which form an Evaluation Framework<sup>20</sup> to help it assess the impact of the Act and the Board's interventions. One of these measures is: '*Consumers are confident and empowered in their dealings with legal services*'. The LSB has used the data collected for the Panel's Consumer Impact Report as the basis for monitoring developments against this outcome.
11. The LSB has developed a Regulatory Standards framework<sup>21</sup> to assess whether the approved regulators are acting in ways that are compatible with the statutory requirements they have been given by the Act and that they are not allowing, or risking, unacceptable consumer detriment in the markets they regulate. This document is a key reference point for the approved regulators so it should have sufficient regard to activity directed towards empowering consumers. Two standards are relevant for our purposes. Firstly, an indicative factor in relation to outcomes-focused regulation is that the regulators '*have reliable evidence from a range of sources about how all groups of consumers need and use the legal services they regulate*'. Secondly, in relation to capacity and capability, an indicative factor is '*clear and consistent leadership at Board and senior management level that ensures that the whole organisation has strong consumer engagement and consumer focus*'.

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<sup>18</sup> Legal Services Board, *The regulatory objectives*, 2010.

<sup>19</sup> Legal Services Board, *Strategic Plan 2012-15 and Business Plan 2012/13*.

<sup>20</sup> Legal Services Board, *Market impacts of the Legal Services Act 2007 – Baseline Report (Final) 2012*.

<sup>21</sup> Legal Services Board, *Developing Regulatory Standards*, 2012.

12. Much of the LSB's policy activity touches on themes of empowering consumers, but the most directly relevant to this project is its consultation, *Approaches to quality*.<sup>22</sup> The aim of this exercise was to generate a discussion on the kinds of interventions that might assist regulators to ensure that the quality of legal services is maintained. The LSB concluded that a key theme in relation to the management of quality risks is provision and transparency of performance information to allow a greater understanding of where issues in relation to quality exist. Improved information provision on the quality of legal services was seen to encourage providers to focus on the areas of their work in need of improvement and help consumers to more easily identify the outcomes they can expect. This does not however remove the responsibility of regulators who are ultimately accountable for ensuring that individuals and entities are competent to deliver the services they are authorised to provide.
13. The LSB asked the approved regulators to provide evidence of the issues identified in its paper being addressed in the action plans developed for the regulatory standards work. It outlined the following success criteria in relation to transparency:
- Regulators publish information held on quality issues directly and, where appropriate mandate entity level publication, both in terms of specific research and more granular routine information (including information on disciplinary action)
  - Regulators make available information on individual and entity level authorisation, including details of specialism, panel membership and quality marks where applicable
  - Information sharing between approved regulators and providers of legal services "choice tools", for example professional registers made available to price comparison websites
  - Regulators use consumer feedback information in assessment of quality risks where appropriate
  - Regulatory arrangements support the provision of performance information

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<sup>22</sup> Legal Services Board, *Approaches to quality: Summary of responses to consultation and LSB response*, 2012.

## Legal Services Consumer Panel

One of the three strategic themes in the Panel's work programme is unleashing consumer power – by giving people the choice tools to drive greater competition in the market. In fact, empowering consumers has been a constant in the Panel's priorities since our inception. Some of our initiatives to support this are:

- The Consumer Impact Report tracks levels of consumer empowerment based on survey data, for example on shopping around and ease of comparing providers. The second edition of the report identified some evidence of consumers beginning to exert their buying power, but found that consumers are generally unempowered, especially so among certain population groups
- We successfully encouraged the Legal Ombudsman to begin a policy of naming providers subject to formal ombudsman decisions and in other situations where naming would be in the public interest
- Our report, *Quality in Legal Services*, highlighted that quality factors were not strongly influencing consumer choice and set out an agenda for quality focusing on transparency of performance data, credible quality assurance mechanisms and helping consumers to more easily identify regulated providers
- We developed ten characteristics that should underpin accreditation schemes to make them more credible with consumers and measured 13 schemes against these. The LSB has since endorsed the characteristics and encouraged us to consider progress made by the schemes. The report also considered some of the competition and regulatory issues concerning such schemes
- Similarly, we developed 20 standards for comparison websites which have started to emerge in the legal services market. These standards are intended to underpin consumer trust and avoid some of the problems experienced in other sectors. Again, the LSB has endorsed the standards and asked the approved regulators to engage with the issues and open up their professional registers.
- We have commissioned in-depth research with groups of consumers who are less empowered, including small charities and deaf consumers. This work has led to practical steps to help these groups, for example the Charity Commission now has a dedicated area of its website targeted at small charities.

### Legal Ombudsman

14. The Legal Ombudsman's primary role is to resolve disputes between consumers and providers. It also has a secondary role to use the intelligence from complaints to help drive up standards. Therefore, the service does not have an explicit role to empower consumers, although this is an implicit aspect of its raising standards remit and is part of a wider goal to prevent complaints arising in the first place. The Legal Ombudsman's 2011-14 Strategy notes that its role in facilitating such improvements might be in '*helping consumers become more confident in using legal services*'.<sup>23</sup>
15. The Legal Ombudsman is the body in the regulatory landscape with the highest public profile and with whom consumers are most likely to come into contact. Clearly, it should aim for consumers to be aware of how to access redress, but its unique position makes it worthwhile to consider the extent to which a wider information provision role is merited. For example, costs have been the single most common reason for people contacting the Legal Ombudsman. Following a review of its caseload, it has produced a guide, 'Ten questions to ask your lawyer about costs', to help consumers ask the right questions and avoid problems in the first place. The Legal Ombudsman has also published tips for consumers on how to complain about poor service through the law firm's in-house complaints procedure and on buying conveyancing services. The website includes examples of its caseload across areas of law which help consumers to see the sorts of issues that it deals with and its approach to resolving complaints. Finally, of course, it has started to publish complaints data which might be used by consumers to inform their choice of provider.
16. Against this wider role, the Legal Ombudsman is neutral and not a consumer champion. Its strategy document also recognises there is a balance to be struck between making sure those who wish to use its services know it exists and not advertising its presence so vigorously that it generates complaints that would not otherwise be made.
17. We have discussed these issues with the Legal Ombudsman. Its current view is that its communications about its service should focus on users of legal services (rather than the wider general public, although obviously the wider its reach the better) and focus on the point at which consumers access legal services. It is therefore a key objective of the organisation to engage with the approved regulators and representative bodies to improve signposting and communication about its services by lawyers. However, the Legal Ombudsman is also aware that the level of signposting currently varies significantly across the profession and is particularly concerned with ensuring that underrepresented groups have access to its services. It recognises that it does not have sufficient resources to effectively promote awareness in the wider public domain, so actively engages with other access routes (such as Citizens Advice Bureaux) whilst seeking opportunities to promote its service and raise consumer awareness with the wider general public through the visibility of its Chief Ombudsman online, in print and in broadcast media.
18. The Act requires the Legal Ombudsman to have regard to any principles appearing to it to represent best practice in other ombudsman schemes. The Financial Ombudsman

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<sup>23</sup> Legal Ombudsman, Strategy 2011-14 and Business Plan 2011-12.

Service produces factsheets on issues that are a common source of complaints. These set out the problems that the service sees, explain issues that fall inside and outside of its jurisdiction and highlights factors it considers when adjudicating a complaint. Similarly, Ombudsman Services' website states it aims to improve the way that services within its jurisdiction are provided to customers. It helps consumers to learn from the experiences of others through case studies and factsheets which describe the issues, what consumers can do to help avoid problems and how the service can help.

19. This analysis suggests that the Legal Ombudsman can, and to some extent already does, make an important contribution to helping consumers choose and use legal services with confidence. In particular, by sharing the experience of others so that consumers can avoid falling into the same traps, it can really add value in relation to using legal services once a provider is engaged – this is important as the information provided by other regulatory actors focuses more on choosing providers.

## Non-regulatory actors

### Representative arms of the approved regulators

20. The Law Society has recently revamped its website to include a dedicated area aimed at members of the public. This includes:
- Guides to 12 common legal issues such as getting a divorce, renting a home and setting up a business
  - The find a solicitor service – a searchable database of individual solicitors and firms which provides contact details, areas of specialism including membership of accreditation schemes and service features such as languages spoken and wheelchair access
  - A guide on using a solicitor including what to expect from your solicitor, from initial appointments to giving instructions and completing the matter
  - A guide on paying for legal services
21. The Law Society is developing the services it offers to the public. This includes exploring the option of creating a trip advisor-style website for its members, reviewing its accreditation schemes and potentially introducing new schemes in other areas of law. It has sought to increase the visibility of these accreditation schemes by creating a directory of members through a new website, [lawsocietyapproved.com](http://lawsocietyapproved.com).
22. The Bar Council's website also contains information targeted at the general public about instructing barristers. There is a Public Access Directory for consumers who wish to engage a barrister directly, which is searchable by practice area and location.
23. The LSB has also asked us to look at the unregulated sector. The most organised sector is will-writing where there are two main trade associations. The Institute of Professional Willwriters' (IPW) website contains quite detailed advice on making a will,

including options people might wish to consider such as leaving a gift to a charity. As a specialist body, it might be expected to cover legal issues in more detail than professional bodies for practitioners operating across a wide range of areas. The IPW's member directory includes an option for consumers to read reviews by previous customers, either inputted directly through the website or via IPW's own monitoring processes. The review form asks consumers both for informal written feedback and to answer a series of questions relating to commitments in IPW's code of practice.

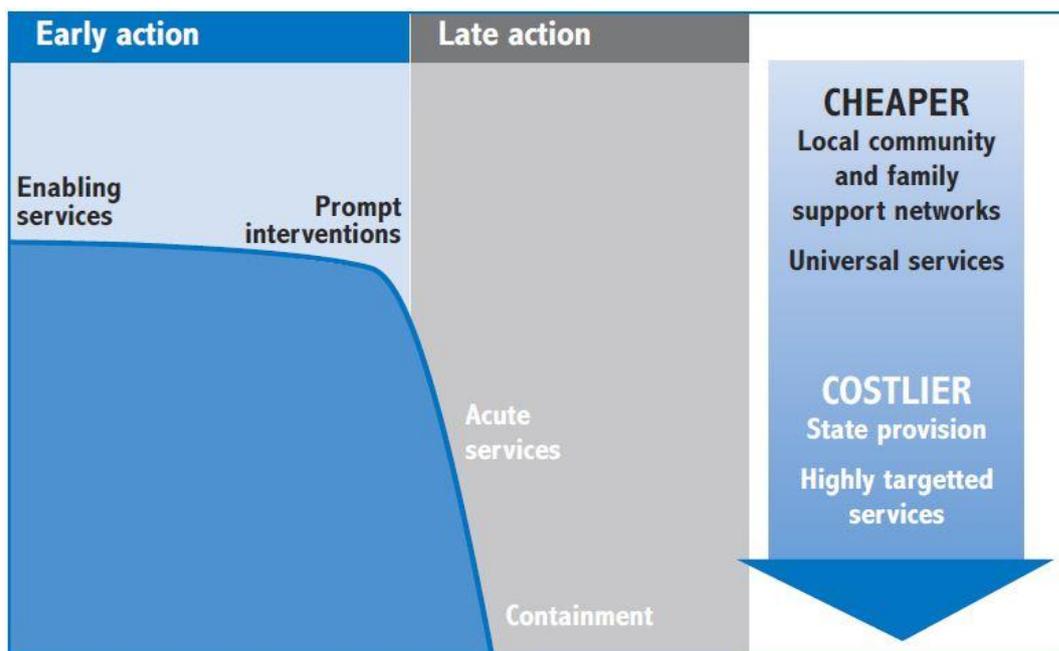
24. One issue in relation to the professional bodies is a bias towards recommending use of their members rather than setting out the range of market options in a neutral way. For example, the Law Society's guide on will-writing states: *'Although it is possible to write a will without a solicitor's help, this is generally not advisable as there are various legal formalities you need to follow to make sure that your will is valid. Without the help of an expert, there's a real risk you could make a mistake, which could cause problems for your family and friends after your death.'* The guide makes no mention of will writers or financial services providers as alternative options. Similarly, the Bar Council's website explains that barristers no longer hold a monopoly on the right to appear in higher courts, but *'the Bar remains a yardstick for high quality advocacy and independent legal advice'*. Of course, there is no requirement for professional bodies to highlight services offered by rivals, but it limits the extent to which consumers can rely on this information for impartial advice.
25. The website of the Chartered Institute of Legal Executives (CILEx) is an exception to this rule. Its guide to choosing a lawyer encourages people to try to resolve disputes informally before contacting a lawyer and mentions a range of legal professionals. It also advises people to shop around, suggests how to compare lawyers and recommends how consumers can prepare for their first meeting. Like the other professional bodies, its website has an online searchable member directory containing practitioners' contact details and areas of specialism.

### **Law for Life**

26. Law for Life is a charity dedicated to ensuring that people have the knowledge, confidence and skills needed to deal with the law related issues they are likely to encounter in the course of their lives. It promotes good practice in delivering public legal education, provides a space for practitioners and researchers to share information and ideas, and improves awareness of the need for and value of public legal education.
27. The emphasis of public legal education is on problem prevention and early intervention based on the argument that this avoids expense, stress and disruption for individuals and creates knock-on savings for the justice system and society as a whole (see Figure 1). According to Law for Life, economists have estimated that over a three to four year period unresolved problems cost the nation £13 billion.
28. Activities to support public legal education often take place in local communities and may be delivered by people as part of their job. For example, teachers might inform pupils about their rights and responsibilities as part of a citizenship class, or a role play about resolving a housing problem could be delivered as part of a theatre performance.

Law for Life helps to showcase and evaluate such projects, while also developing a body of research and theory on public legal education. Its work on developing the four domains of legal capability, highlighted in Background Paper 1, is an example of this.

**Figure 1: Prevention better than cure**



Source: Law for Life

29. The nature of public legal education – practical solutions, local delivery and stress on prevention – adds a different perspective to choosing and using legal services than that which the work of legal regulators has historically focused on. While the legal regulators we have spoken to agree that public legal education is worthwhile, we detect a lack of certainty about what their role, if any, should be in relation to this. Likewise, we sense a frustration in the other direction about a lack of engagement by legal regulators with this agenda and a perceived over reliance on market solutions. The most common view is that the scale and nature of public legal education is such that this is more properly a role for government than regulators. However, these issues need teasing out further and so a greater level of engagement between the legal regulators and legal education initiatives would help each to grow a common understanding of what their respective roles should be.

### **Advice sector**

30. As highlighted in the previous section, Citizens Advice has now been given responsibility to provide information and advice about general consumer matters. This will be integrated within Adviceguide.org.uk – its main public information service, providing access to information on rights on a very wide range of issues including benefits, housing, employment, debt, consumer and legal issues. It provides information

at a level which empowers people to solve their own problems and signposts to appropriate advice when necessary. Adviceguide provides general guidance on rights and responsibilities; users are encouraged to contact an advisor or solicitor if they need more details or advice about what action to take. The website provides general guidance on using a solicitor, but the main focus is on help with everyday issues with a legal dimension. Over 11 million people visited the Adviceguide website in 2011-12.

31. Advicenow.org.uk is an independent, not-for-profit website run by Advice Services Alliance – the coordinating body for independent advice services in the UK – providing information on rights and legal issues for the general public. Its aim is to inform people about the law, and provide practical guidance on how to manage problems – including when and how to get expert help. The website contains guides on particular issues and provides links to hand-picked resources on other websites which it checks for accuracy. Advicenow places an emphasis on improving the standard of information on law-related issues available to the public. It uses a range of techniques to get the message across such as problem pages, quizzes and cartoons, while it also tests various communication methods and shares the results of these evaluations.
32. In addition, there are charities specialising in particular areas of law, such as Shelter and LEASE for housing issues, or the Debt Advice Foundation for debt problems. Other charities represent specific groups of people, such as Mind for people with mental health needs and Gingerbread for single parents. As might be expected, these organisations provide a detailed level of information about the issues under focus. This makes the point that generic advice providers, due to the breadth of the issues they deal with, are likely to provide a first level of information that points consumers in the right direction, which they may then follow up with specialist agencies if needed.
33. Funding cuts in the third sector may have an impact on future information provision and hence the extent to which regulators can rely on this. For example, Advicenow no longer receives any government funding, but instead relies on donations and sponsorship.

### **The market**

34. Finally, the market is an important source of information for consumers and represents the source which people are mostly likely to spontaneously encounter when searching for and using legal services. Our focus is on information which the market provides to consumers voluntarily, rather than in fulfilling a regulatory requirement.
35. One of the predicted consequences of market liberalisation is that new entrants will invest more heavily in marketing their services than traditional law firms, thus bringing the law into people's view to a greater extent than in the past. Another prediction is that new firms will strive to make the law seem more accessible, for example by removing legal jargon and emphasising customer service. This is already evident in the activities of new entrants to date. Advertising is packaging legal services in relation to major life events, like moving house and dealing with the ups and downs of family life. The law is also being portrayed as something which is there to help, countering the stereotype that the law happens to people when they are in trouble. Technological solutions, such as DIY document services, are giving people greater control over how they manage their

own affairs. Some providers offer the sorts of guides about legal issues, such as why it is important to make a will, which other types of organisation already make available.

36. Commercial intermediaries, such as comparison websites, are another type of market solution. Some of these provide general guidance on legal issues in an effort to make their services attractive and useful. The Panel's report on comparison websites found a variety of techniques being employed to this end, such as news articles, blogs, videos, FAQs, step-by-step guides and ask-an-expert tools.
37. A key risk is that the information may not be independent, being self-promotional rather than offering objective guidance. Our review of comparison websites found that general information sometimes came across as a sales pitch rather than being genuinely helpful. Another issue was sites placing too much importance on the need to seek professional advice from a solicitor in all situations when suitable alternatives exist, for example using a different type of provider or resolving an issue without professional help.

## 5 The approved regulators

1. In this section, we consider current activity by the approved regulators against the ten themes in Chapter 3, highlighting good practice examples in boxes. In considering the activity of each regulator, the Panel recognises that some parts of the market deal with lay clients to a greater extent than others and this will naturally reflect their level of focus on helping consumers to choose and use legal services. Level of resources is another constraint on scale of activity, although many of the activities which can be undertaken do not require significant financial resources. The analysis below is not intended as a scorecard since not all the themes will necessarily be applicable to every regulator.
2. Please note the following acronyms used below
  - BSB – Bar Standards Board
  - CLC – Council for Licensed Conveyancers
  - CLSB – Costs Lawyer Standards Board
  - IPReg – Intellectual Property Regulation Board
  - IPS – ILEX Professional Standards
  - MoF – Master of Faculties
  - SRA – Solicitors Regulation Authority
- 1. Define a strategic approach towards consumer empowerment**
3. The Panel has reviewed strategy and business plan documents on approved regulators' websites. The SRA has developed an empowering consumers strategy as a subset of its overall organisational strategy, which we consider to be good practice. In addition, the BSB and IPS have specific objectives relating to improving consumer understanding of their codes. For example, the BSB has this objective: 'The public understands the standards they are entitled to expect from those whom we regulate.' In addition, IPReg plans to commission a new website to improve access for consumers.
4. We are encouraged that the BSB, CLC, IPS and SRA all plan to increase their consumer engagement activity over the next period. Involving consumers in the development of regulatory policy is one form of consumer empowerment, although this does not fall within the choosing and using focus of this project.

## Solicitors Regulation Authority – Empowering consumers strategy

One of the SRA's three values is: 'We protect the public – putting consumer protection at the heart of all we do'. A bullet point under this heading is: 'We promote access to justice and help consumers make informed choices'.

One of the SRA's sub-strategies is 'empowering consumers' and activities within this are brought together by the Consumer Affairs division. Specific actions are to:

- Introduce a "next generation" of ways for consumers to have their say about lawyers and law firms
- Help to unravel the mystery of using a lawyer by providing a "one-stop shop" website service for consumers to quickly find the right support and advice
- Let consumers know in simple terms what to expect from their lawyer, and what to do if something goes wrong
- Provide good quality information that meets varied needs of different consumers, in formats that are easy to find and easy to use
- Work with consumers to ask them directly what information they want, when they want it and what the best ways are of providing it to them
- Launch a new package of research that aims to improve experiences and access to legal services for consumers who are vulnerable and in need of support

## 2. Ensure there is adequate generic information provision

Three regulators – the CLC, IPS and SRA – have a specific area of their website targeted at consumers. The other websites still contain at least some information that consumers might find useful to know.

5. Perhaps unsurprisingly, much of the information relates to what lawyers do, the role of the regulator and the standards which lawyers are required to follow. For example, the CLSB's home page includes information about what it does, the regulatory requirements it places on costs lawyers and a warning that costs lawyers should not be confused with terms like law costs draftsman or costs draftsman. Similarly, the consumer section of the IPS website outlines how members can qualify as Chartered Legal Executives and the range of work they may undertake and the standards that consumers can expect. None of the regulators' websites contained guides to areas of law or other non-regulatory issues, although the SRA provided links to the Law Society's legal guides.
6. We were pleased to find that all the regulators' websites, with the exception of the Master of Faculties', provided clear information about complaints handling including signposting to the Legal Ombudsman. The BSB's website includes a helpful 12 page leaflet on complaint handling covering service and conduct complaints.

7. The SRA was the only website to provide information on choosing and using legal services in the form of leaflets, consumer videos and FAQs. There is a dedicated area of the site on finding and using a solicitor including information on: the best way to find and choose a solicitor or other legal service provider; useful tips for getting the best from your solicitor; what to expect from a solicitor; costs, including legal aid and other sources of legal advice; and common legal terms. Its leaflet – Thinking of using legal services/ What to expect – is available in 10 community languages.
8. The SRA is leading a collaborative initiative among the regulators to launch a public network for consumers across England and Wales. The plans are not yet fully developed, but we understand that one purpose of the website is a resource for consumers when they need help and information, while another objective is to allow members of the public to have a say about how lawyers are regulated.
9. One issue is the extent to which legal regulators should provide information themselves or instead lean behind the efforts of others who have greater reach and communications expertise. There is an impetus behind joining up public information provision through the advice sector in a way that reflects the reality of people's lives rather than continue the piecemeal delivery that flows from a system based on artificial regulatory boundaries. Currently, consumers are left to piece together a complex jigsaw by visiting a series of websites each containing fragments of information that reflect the remits of each organisation. In reality, people are likely to be making choices based on an incomplete picture as they will not be aware of these various resources and will not have the time or patience to navigate the landscape.
10. At the very least, the approved regulators should work collaboratively with third sector organisations and initiatives such as the Money Advice Service, by helping to ensure their information is accurate and appropriately targeted. This could involve techniques such as white labelling – content produced by regulators, but which other organisations are free to use with their own branding. This observation does not seek to undermine the existing efforts of regulators, many of whom provide valuable regulatory and other information through their websites. However, they should step back and reflect objectively on which approaches would have the most impact in helping to empower consumers, and seek out and make the most of partnership working.

### **3. Help consumers to understand their rights**

11. We looked for Client Charters and other evidence of regulators translating existing rules into a clear set of behaviours that consumers can reasonably expect providers to demonstrate. Codes of conduct were clearly signposted on all regulators' websites. The CLC is the only regulator to develop a Client Charter (see box). In addition, the IPS and SRA websites have distilled key elements of their codes. Some regulators have recently updated their codes of conduct to make them more outcomes-focused, or are in the process of doing this. This provides an opportunity to develop Client Charters or other tools to help consumers understand what standards they can expect.

## Council for Licensed Conveyancers – Client Charter

The CLC launched its new outcomes-focused regulatory regime in October 2011. Its new regulatory arrangements include a Client Charter that identifies the Outcomes which clients have the right to expect and the options available to them if their expectations are not met. It also contains information about complaining to the Legal Ombudsman and how the CLC will deal with misconduct referrals.

Consumers can access information about their rights with respect to:

- Service
- Advice
- Money and fees
- Professional conduct
- Principled behaviour
- Complaints

### 4. Create incentives for consumers to take a more active role

12. Policy decisions that would create such incentives, for example on funding of legal advice, are not decided by the approved regulators so this is not considered further.

### 5. Draw on insights from behavioural economics

13. We are not aware of initiatives by any of the approved regulators in this area. As mentioned in the previous chapter, the LSB has commissioned research on applying the theory to legal services with a dual focus on consumers and providers.

### 6. Open up data about regulatory performance

14. Consumers can search the professional registers held by each regulator, although visitors to the IPS and SRA websites are redirected to the representative arms. This seems an unnecessary inconvenience for consumers and sends unhelpful messages about how independently regulation works in practice. In addition, not all the lists are electronically searchable; sometimes users have to scroll down an alphabetical list.
15. Some entries only contain contact information for practitioners or firms, but the best websites combine this with other data such as specialisms and experience. The BSB's website integrates disciplinary findings within barrister profiles (see box). This is good practice since it provides consumers with a range of information which they might consider in helping them to choose their provider. Similarly, the CLSB's register lists any conditions on the practising certificate (although none of its practitioners have any).
16. However, there is scope for improvement in relation to providing a broader range of quality information across all sites, for example links to Legal Ombudsman decisions.

17. Consumers can access details of disciplinary decisions on the BSB, IPS and SRA websites. The absence of such information on other regulators' websites may reflect a lack of disciplinary activity since some of these bodies are new regulators. The three regulators which do publish disciplinary findings have different publication policies. This is something which the LSB may wish to consider in its forthcoming enforcement review.

### Bar Standards Board – Searching the register

Consumers can access the following details about barristers when searching the electronic register on the BSB's website:

Name

Practising certificate valid from [date range]

Practising Status

Date of Call (to the Bar) [date]

Primary practice address

Telephone number

Authorised to conduct following reserved legal activities in each of full rights of audience, reserved instrument activities, probate activities, administration of oaths [Yes/No]

Registered Pupil Supervisor [Yes/No]

Registered to undertake public access [Yes/No]

Authorised to undertake Immigration advice and services [Yes/No]

Disciplinary findings: [No/description of findings and link to further details]

The BSB could improve accessibility further by providing enhanced search options as it is currently necessary to know the barrister's name to find his/her entry.

### 7. Share data on open access platforms

18. The Legal Ombudsman started to publish details of formal ombudsman decisions from April 2012. However, this is currently not available on an open access platform.
19. Following the Panel's report on comparison websites, the LSB has encouraged the approved regulators to open up their professional registers. None have yet done so.

### 8. Strengthen choice tools so that consumers can trust them

20. Following the Panel's report on comparison websites, the LSB has asked the approved regulators to engage directly with the report and its recommendations. It expects them to 'take some steps to ensure that comparison sites develop in a way that supports consumers in choosing and using legal services'. As far as we know, the only positive step to date is a commitment by the SRA to organise a roundtable with comparison website operators in early 2013. In addition, the Law Society is enhancing its 'find a solicitor' service and is looking to further develop this service to include public input on comparisons of experience.

21. The Panel has also considered how best to strengthen the credibility of accreditation schemes. The LSB held a roundtable with scheme operators and regulators to discuss the report and, following a consultation on the wider theme of quality, accepted the report's recommendations and endorsed our assessment criteria. It identified the need for joint working between scheme operators and regulators, including in relation to the potential for membership of good schemes to inform risk-based regulation.

### **9. Make careful use of information remedies**

22. Some approved regulators have recently introduced new information remedies, such as the BSB in relation to public access. A review of whether these remedies work well in legal services would be a significant exercise. Instead, our focus is on the evaluation of the utility of information remedies as a means of reducing consumer detriment outside of consulting with stakeholders on a case-by-case basis. We are not aware of any specific activity, although the SRA's vulnerable consumers and information project (see below) may provide useful insights.

### **10. Take targeted action to empower vulnerable consumers**

23. The Panel looked for evidence of activity that specifically supports vulnerable consumers to choose and use legal services. Action to strengthen the institutional dimension of empowering consumers, such as through codes of practice, is outside of scope. We are aware of one such project, by the SRA (see box). In addition to this study, the SRA has established a Forum on disability involving organisations representing the interests of disabled and vulnerable people. The forum aims to bring about real change for the better in identifying barriers experienced by disabled people and working together to overcome those barriers in the context of legal services.

#### **Solicitors Regulation Authority – Research with vulnerable consumers**

The SRA has started research on vulnerable consumers and the role of information. It will explore how a diverse range of consumers, including those who may be more vulnerable, can be given the right information to understand and benefit from legal services, and demonstrate how different types of vulnerability can lead to good outcomes being put at risk. The research will establish the key information consumers need to get successful legal outcomes, and identify those consumers who might be at risk of not being able to access this information, or use it appropriately. It will identify gaps in consumer information provision at all stages of clients' engagement with legal services and explore how these link to vulnerability and seek to establish whether providing information to consumers and the wider public can help raise standards in legal services, and raise awareness of citizens rights in relation to legal services. Finally, the SRA plans to develop a 'barometer of consumer vulnerability', capable of highlighting which types of 'vulnerability' are most likely to put consumer outcomes at risk.

## 6 Questions for discussion

1. This is a discussion paper designed to provoke debate, not make recommendations. We are interested to hear what others think about the following questions:
  - What key areas of learning can legal services take from other sectors?
  - How should responsibility for provision of consumer information be divided between the various regulatory and non-regulatory actors in legal services?
  - To what extent should approved regulators provide information directly to consumers versus lean behind the efforts of others?
  - How can regulators best ensure that information which consumers obtain via the market is credible?
  - What role do the regulators have to support public legal education goals?
  - How effective are information remedies in supporting consumer decision-making?
2. These questions should be considered alongside those in the first background paper, which focus on the possibilities and limitations of consumer empowerment policies.
3. The Panel will be seeking stakeholder views on both background papers through a planned event in January and via a series of bilateral meetings. We would welcome contact from anyone who is interested in these issues.

## Annex 1 – BIS consumer empowerment strategy proposals

### The power of information

- midata – helping consumers to access, control and use data held about them by businesses, e.g. people using data on their mobile phone usage patterns to select the best tariff
- New programmes to give consumers richer, more relevant information about the goods and services that they use, e.g. by introducing annual credit card statements, reforming car labelling to give consumers clearer information about the costs of running different cars and trialling new ways to help consumers understand food hygiene ratings of restaurants

### The power of the crowd:

- A range of initiatives that will support the development of collective purchasing and collaborative consumption, e.g. a green collective purchasing scheme in which B&Q will help encourage the uptake of energy efficiency measures
- Protect consumer feedback and improving public sector choice tools: this includes supporting the development of a self-regulatory quality mark for comparison websites and OFT enforcement action against companies that create false feedback
- Better access to performance and complaints data held by public bodies: this includes setting an expectation that regulators, departments and public service providers release the complaints data they hold about businesses

### Support for the vulnerable

- Expand alternative dispute resolution including a new scheme for e-commerce disputes
- Ask Citizens Advice, Citizens Advice Scotland and Consumer Focus, to conduct a joint review on how to empower very vulnerable consumers
- Work with Argos to trial new ways of ensuring that consumers shopping in store are able to access consumer feedback normally only available online

### A new role for business and government

- Establish new partnerships with businesses to achieve social objectives in areas such as public health and energy efficiency
- Support new industry-led professional standards through the Growth and Innovation Fund
- Continue to encourage consumer and competition bodies to work together to empower consumers

## Annex 2 – Activity by approved regulators

### Strategic objectives

BSB	<p><b>Business Plan 2012-13</b> One specific objective related to choosing and using: “The public understands the standards they are entitled to expect from those whom we regulate”</p>
CLC	<p><b>Corporate Strategy 2011-13</b> None of the four strategic priorities relate to empowering consumers</p> <p><b>Business Plan 2012</b> No specific objectives/priorities relate to empowering consumers</p>
CLSB	<p><b>Business Plan 2013</b> No specific objectives/priorities relate to empowering consumers</p>
IPReg	<p><b>Business Plan 2013</b> “We expect full commissioning of our new website enabling better access for consumers”</p>
IPS	<p><b>Strategy for the first three years</b> A key aim: ‘maintain a register of members which is responsive, accurate and up to date, allowing enquirers to access the status, rights and fitness to practise history of those listed’</p>
MoF	No strategy or business plan is published on the website
SRA	<p><b>Strategic plan 2010-13</b> One of the three values is: ‘We protect the public – putting consumer protection at the heart of all we do’. A bullet point under this heading is: ‘We promote access to justice and help consumers make informed choices’.</p> <p>See good practice box for details of the empowering consumers strategy</p>

### Generic information and advice on website

BSB	A 'who we are' leaflet, but no advice on choosing and using barristers. There is a lay guide to the public access scheme but this is not easy to locate
CLC	A guide to using the services of a licensed conveyancer – the Client Charter. Can view a sample licence
CLSB	Home page includes information about what the CLSB does and what regulatory requirements are placed on costs lawyers and a warning this is not to be confused with law costs draftsman/costs draftsman. The information section of the website provides a brief description of the role of costs lawyers
IPReg	Contains general information about IPReg
IPS	Consumer section of website outlines how members of CILEx can qualify as Chartered Legal Executives and the range of work that members may undertake. The section also sets out the standards that consumers and others can expect of members, and how to complain about a CILEx member where they have not met expected standards. However, there is no information on choosing or using chartered legal executives
MoF	The notaries section of the website contains a brief description of what a Notary Public does and the role of the Faculty Office
SRA	Plans to launch a public network for consumers across England and Wales to use when they need help and information, which allows members of the public to have a say about how lawyers are regulated. The current website contains alerts, consumer videos, a jargon buster and FAQs. There is a section on finding and using a solicitor including information on: the best way to find and choose a solicitor or other legal service provider; useful tips for getting the best from your solicitor; what to expect from a solicitor; costs, including legal aid and other sources of legal advice; and common legal terms. A leaflet – Thinking of using legal services/ What to expect – provides a quick introduction to using legal services and is available in 10 community languages. The SRA's website also links to other websites, e.g. the Law Society's guides to common legal issues and the Citizens Advice page on finding and using a solicitors

### Information about complaint handling on website

BSB	Yes. Clearly signposted from homepage. Clearly written information about misconduct complaints and link to complaint form. Clear signposting to the
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	Legal Ombudsman. FAQs and a 12 page leaflet on complaint handling
CLC	Yes. The consumer section of the website contains information about how to complain and links to the Legal Ombudsman and a conduct complaint form
CLSB	Yes. Home page explains role of Legal Ombudsman for service complaints and CLSB for conduct complaints. There is also a complaint handling tab on the website providing further information and links
IPReg	Yes. A dedicated page on complaints explaining the role of the Legal Ombudsman for service complaints and IPReg for conduct complaints
IPS	Yes. Explains the difference between service and conduct complaints and the different routes for each. A leaflet explains the procedure IPS follows when it receives misconduct complaints and the available sanctions. The website also contains information about complaint-related KPIs and service standards
MoF	No
SRA	Yes. A dedicated page on complaints explaining the role of the Legal Ombudsman, but mostly focuses on misconduct and last resort measures

### Simple version of rules

BSB	No, although code of conduct clearly signposted from home page
CLC	Yes. The Client Charter identifies the Outcomes which clients have the right to expect and the options available to them if their expectations are not met. It also contains information about the complaining to the Legal Ombudsman and misconduct referrals will be dealt with
CLSB	No, although code of conduct clearly signposted from home page
IPReg	No, although code of conduct clearly signposted from home page. IPReg has told us it has not issued a simple version of its rules because the code lists only 22 rules and is written in plain English
IPS	The website lists the 9 principles forming the basis of the IPS code
MoF	No, although various notarial rules clearly signposted within website
SRA	Consumer section of website contains information on 'what you should expect from a solicitor regulated by us' which distils the key elements of the SRA code

### Facility to check professional register

BSB	Yes – clearly signposted on home page, although need to know the barrister's name in order to search. The barrister profiles include year of call
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	(experience), authorisations, registered to undertake public access and disciplinary findings
CLC	Yes – can search by practice, name of conveyancer or by postcode. The search return includes contact details but no other regulatory information
CLSB	Yes – an alphabetical list of costs lawyers, the year they qualified, their employing firm and any conditions on the practising certificate (none have any). There are no contact details – users are signposted to the ACL website for this
IPReg	Yes – An alphabetical list of regulated entities. An alphabetical list of patent attorneys containing details of year of registration and qualification and a postal address. In addition, an alphabetical list of trade mark attorneys containing year of registration, qualification route, postal address, telephone number and email address
IPS	No – links to the CILEx directory on external website. Users can search by surname, employer and location filtered by specialisation (area of law) and practising rights. Search returns include a postal address and year elected to grade
MoF	Yes – a list of practising notaries searchable by town and surname containing postal address, telephone, fax, email and website
SRA	No – links to Law Society database on external website

### Facility to check complaints/disciplinary findings

BSB	Can search by barrister name or view all findings for the last 4 weeks and read details of the offence, the sentence and costs
CLC	Latest news section of home page contains details of interventions, although 'intervened' is not explained (it means shut down). However, we could not find a list of disciplinary findings. The CLC has informed us this is because no disciplinary findings have yet met its publication criteria. It acknowledges that it is not clear on any consumer-facing page of the website that it operates such a publication policy; it will seek to address this (and to have a dedicated page made ready for when there are relevant findings)
CLSB	No, although this may be because there are no findings as yet
IPReg	No, although its new complaints and enforcement strategy explains that references to disciplinary boards and its written decision will be published. As yet, no enforcement action has been taken
IPS	A disciplinary records directory contains details of all members who have had a disciplinary order made against them. It also contains details of unsuccessful appeals against decisions made by the conduct panels of IPS

	where the Appeals Panel has ordered that publication be made. This includes appeals brought by individuals who are not members of CILEx. All disciplinary orders made against members are publishable but the time for which they are publishable varies depending on the type of order that has been made. A publication policy is available on the website. The directory is organised in alphabetical order and case details include the date, details of the offence, the outcome and the penalty
MoF	No
SRA	Yes – Check a solicitor’s record search tool contains information on disciplinary decisions going back three years. Users can access details of the solicitor’s name, address, sanction and reasons for the decision

### Choice tools/other

BSB	No
CLC	No
CLSB	No
IPReg	No
IPS	A client survey launched in October 2012 enables clients to provide anonymous feedback on the service they have experienced. The survey asks for information about the type of advice/action the firm provided, the quality of service received and how much clients know about the role and qualifications of Chartered Legal Executives.
MoF	No
SRA	No

**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.**

**Consumer Panel Members**

Elisabeth Davies (Chair)

Jeff Bell

Graham Corbett

Emma Harrison

Paul Munden

Neil Wightman

Karin Woodley

**Secretariat**

Steve Brooker

Harriet Gamper



Legal Services Board  
Victoria House  
Southampton Row  
London WC1B 4AD

T 020 7271 0076

[www.legalservicesconsumerpanel.org.uk](http://www.legalservicesconsumerpanel.org.uk)