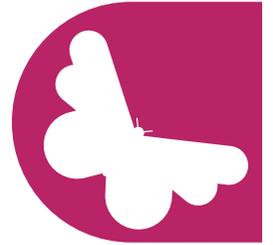


Consumer Impact Report 2011



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1. Overview

About the Consumer Impact Report

The Consumer Impact Report is the first assessment of the legal services reforms from a consumer perspective. The report measures the direction of travel towards the Panel's vision for the market: responsive services; high quality advice; a diverse workforce that understands its diverse clients; quick, fair and cost-effective complaints-handling; and where consumers are placed at the heart of regulation.

The period since these landmark reforms entered the statute book in 2007 has seen a great amount of institutional change. The approved regulators, overseen by the Legal Services Board, have put in place new governance arrangements to separate their regulation and representation functions.

The new complaints arrangements are up and running. The licensing regime for alternative business structures has been designed. Rulebooks have been rewritten with a new emphasis on outcomes-focused regulation.

Now these foundations have been laid, the time is right to see whether consumers are starting to see the difference in their dealings with lawyers. This report includes the findings of new research with consumers and provides commentary on policy developments over April 2010 to March 2011 through a consumer interest lens.

The Report will be of interest to the various regulatory and complaint-handling organisations which are

responsible for delivering the reform agenda. We hope it is also helpful to parliamentarians and others who ultimately provide accountability for these bodies, and, more widely, to all those affected by the changes. Above all, by highlighting areas of strength and weakness, we have sought to provide a tool for the profession and its regulators to identify opportunities to improve.

We will repeat this exercise each year to see what has changed. Therefore, the Consumer Impact Report is an evolving resource and we would welcome feedback on how we could refine our methodology.

Our findings

The four years since the Legal Services Act have seen positive changes for consumers, but many existing problems persist. As the reforms are a long-term project, this mixed story is to be expected. The key strengths and weaknesses are summarised on page 7.

On the positive side, consumers usually get the outcomes they want from legal services and most are happy with the service they receive. People entering the legal workforce are increasingly representative of the diversity of the general population. Lawyers will soon be working to new rulebooks that are more consumer-friendly and have greater flexibility to respond to a diverse and changing market. There is also evidence of innovation in the delivery of legal services as traditional and new providers position themselves in readiness for a more liberalised market.

It is also encouraging that work has started to deal with some major structural issues that the legislation was unable to tackle. This includes establishing a clear rationale for regulating legal services. The existing framework is confusing and based on a set of reserved activities that evolved over centuries unrelated to the protections consumers need. A second major review, of education and training, includes ensuring that lawyers remain competent throughout their careers. It will aim to equip a workforce suitable for the modern market place.

On the negative side, too many consumers are still being let down by delays and communication breakdown. The high number of complaints about costs has not abated. Especially alarming is that one in every five people do not trust lawyers to tell the truth, and also that the already high volume of claims on the solicitors' compensation fund is rising. Although growing numbers of women and Black and Minority Ethnic (BME) individuals are entering the workforce, they are not progressing to senior roles – this remains a stubborn problem. Consumers cannot be confident that regulation is being conducted independently of the profession as only three approved regulators have a lay majority on their regulatory boards, despite new requirements. Meanwhile, all the approved regulators need to engage more with consumers as they design policy, whilst some need to be more open about their activities.

The success of the reforms should ultimately be judged by how consumers experience legal services. As the vast majority of consumers are happy overall with the outcome of legal work and the service provided, there is reason to be encouraged. However, satisfaction surveys should be treated with some caution as people measure satisfaction against their initial expectations before engaging a provider. Indeed, as consumers purchase legal services rarely they have little experience against which to judge their experience. Moreover, soon-to-be-

lifted restrictions on the ownership of law firms mean consumers cannot yet judge the service provided by solicitors against alternatives.

Although the overall figures are promising, they mask significant levels of dissatisfaction with some core elements of service, and some disparity in the experience of clients in Wales or from particular socio-economic or ethnic backgrounds. Satisfaction with value for money is also far too low – key to ensuring access to justice. This suggests there is both no room for complacency and scope to raise standards. In addition, elements of the regulatory framework which are invisible to individual consumers – such as regulatory independence and the diversity of the profession – underpin the quality of legal services. Here also there remains much more to do.

Consumer power

The key theme running through this first Consumer Impact Report is the imbalance of power between consumers and lawyers. This is particularly striking as consumers are increasingly assertive in other parts of the economy, seen in rising levels of switching service providers and their use of online customer feedback tools.

Competition in legal services is weak with the vast majority of consumers not shopping around. Consumers tend to assume quality is guaranteed, many find it difficult to compare providers and others feel their choice is restricted. There is also a sense that people approach lawyers with trepidation: many admit they have little knowledge about what lawyers do, and lack confidence either that their consumer rights will be protected or how to complain when providers get things wrong. When unhappy with the service they get, one-third of consumers do nothing about it.

Some parts of the population have less power than others. When thinking about purchasing legal services, consumers in lower socio-economic groups have less trust in lawyers, are less confident their rights will be protected and struggle more to make comparisons. Such users are more likely to feel they get poor value for money and are less satisfied both with the outcome of legal work and with customer service. Despite being more dissatisfied,

they are also less likely to complain. BME consumers are also less satisfied with the service they get and are more likely to distrust lawyers.

Seen in this context, it is frustrating that consumers are unnecessarily being held back from exerting their muscle because useful information about the quality of providers, such as complaints data, is not made available. Yet consumers would receive better service if the names of those who persistently fall short of the required standards were exposed. Other tools such as price comparison websites, which would help consumers to make informed choices, are also in their infancy.

The Government has recently published a consumer empowerment strategy and legal services need to adopt and implement its aims.

Change on the horizon?

The most significant plank of the legal services reforms – alternative business structures – have yet to arrive. New entrants counting down to October 2011 will see the above problems as a commercial opportunity to make legal services more approachable and to deliver services that meet people's needs.

When the Panel publishes the second Consumer Impact Report, one year from now, the market may look quite different and the impact of the reforms on the consumer experience might truly start to be felt.

Findings in summary

- ✓ High overall satisfaction with outcome of legal work
- ✓ High satisfaction with most aspects of customer service
- ✓ More flexible, consumer-friendly rulebooks
- ✓ Major reviews started on scope of regulation and education and training
- ✓ Disciplinary procedures meeting timeliness targets
- ✓ A more diverse workforce on entry and generally a high momentum on diversity
- ✓ Internal Governance Rules lay foundation for independent regulation
- ✓ Good investment in research by Legal Services Board
- ✓ Generally good levels of transparency, but with exceptions
- ✓ All consultations lasting 12 weeks unless reasons given otherwise

- ✗ A lack of consumer power – low shopping around, little information about quality of providers, lack of confidence to complain – is not driving competition
- ✗ Old customer care problems persist – delay, communication breakdown and costs
- ✗ Technical quality of legal work is unknown by regulators
- ✗ Quality Assurance Scheme for Advocates initiative undermined by weaknesses in proposals
- ✗ Low levels of trust in lawyers
- ✗ High volumes of allegations about misconduct and claims on Compensation Fund
- ✗ Low numbers of women and BME individuals at senior levels of workforce
- ✗ Wide gaps in confidence and quality of experience between socio-economic groups
- ✗ Codes of conduct lack specific duties related to consumers in vulnerable circumstances
- ✗ Cautious policy decisions by Legal Ombudsman – not publishing decisions, exclusion of third party complaints, low case fee income
- ✗ Weakness in intelligence flows failing to extract learning from complaints
- ✗ Lay majority rule implemented on only three out of seven regulatory boards
- ✗ Little consumer engagement
- ✗ Patchy performance on consultation feedback

2. Introduction

The starting point

The architect of the Legal Services Act, Sir David Clementi, diagnosed a regulatory maze that was too close to the profession, failing complaints systems and restrictions on business models that stifled competition. The driving purpose of the resultant legislation was echoed in the subtitle of the White Paper: “putting consumers first”. Since then, the Legal Services Board and others have begun an extensive change programme to liberalise the market, improve complaints handling and secure the independent regulation of lawyers.

As the statutory body responsible for representing the interests of consumers in the sector, the Legal Services Consumer Panel is well placed to monitor whether the reforms are delivering their aims. Nearly four years after the Act was passed, the Panel has developed a tool – the Consumer Impact Report – to measure the impact of these changes on outcomes for consumers. We intend to repeat the exercise annually in order to track whether things are moving in the right direction.

Benefits

We feel it is important to define consumer expectations of the reforms as a benchmark against which to measure progress in their delivery. By identifying the strengths and weaknesses of the market in an evidence-based way, the Impact Report will help show which regulatory policies and practices work. We also hope it will act as a catalyst for improvement in areas of weakness. Moreover, a consumer assessment of the reform programme enhances transparency and accountability for those organisations with a shared responsibility for designing and delivering the reforms. This accountability should improve consumer understanding of legal services and build public confidence in the regulatory process.

The Legal Services Board is meanwhile putting in place its own evaluation framework. This concentrates on the changes that have occurred in the legal market and the impact that can be attributed to the Legal Services Board. Every three years the Legal Services Board will produce a report benchmarking changes

against the 17 outcomes in its framework. The Panel and the Legal Services Board have worked closely to ensure the initiatives are complementary. We are pleased that the Legal Services Board’s evaluation framework, which covers a broader range of public interest issues than our consumer assessment, will incorporate the findings of our annual Impact Reports.

Constructing the Consumer Impact Report

The Panel's vision for legal services

The figure shows the five elements of the Panel's vision for legal services, which represent the high-level outcomes in this Report. Each high-level outcome is broken down into three intermediate outcomes, and, in turn, a series of indicators. By developing intermediate outcomes and indicators beneath our vision, our intention is to identify some important staging posts towards enduring change. By so doing, we can highlight which elements are either nearer or further away from being realised.

The indicators are populated by regularly published data sources such as business plans, annual reports and board papers.

In addition, we commissioned YouGov to conduct an annual tracker omnibus survey with both a representative sample of the general population and recent users of legal services. We have also added a qualitative commentary to interpret the data and make wider observations of developments between April 2010 and March 2011.

The reforms could not transform the market overnight. The Impact Report is not an annual pass/fail examination, nor does it set targets, but instead the indicators are measures of the direction of travel towards a longer-term set of aims. The Panel sees achieving the outcomes as a shared responsibility across the regulatory community, including the Panel as the representative of consumers.

Outcomes

Responsive services

- A meaningful choice of providers and
- Consumers are empowered when dealing with providers services
- Consumers receive value for money

High quality advice

- Advice is technically competent
- Consumers are satisfied with the service provided
- Providers behave ethically, and misconduct is dealt with swiftly and appropriately

A diverse workforce that understands its diverse clients

- The workforce reflects the make-up of the population
- Providers understand the diverse needs of consumers
- Regulators take proper account of consumers at risk of disadvantage

Quick, fair and cost-effective complaints-handling

- Complaints are resolved by providers in-house
- A world-class ombudsman scheme
- Complaints intelligence is used to raise standards

Consumers are placed at the heart of regulation

- Approved regulators are truly independent of the entities they regulate
- Regulatory bodies work transparently
- Regulators have robust consumer engagement mechanisms

Scope

The legal services environment is complex and multi-layered. There are many types of consumer, and they interact with several distinct branches of the profession. These are supervised by several regulatory organisations and subject to an ombudsman scheme, which in turn are subject to oversight regulation by the Legal Services Board. It would be neither possible nor sensible for our Impact Report to cover the full breadth of this landscape.

This report is limited to matters falling within the Panel's statutory remit, i.e. the regulation of legal services. Issues such as public funding of legal services and the administration of the courts are outside of scope.

Reflecting the Panel's priorities, the Impact Report focuses mainly on individual clients and the solicitors' profession. Where possible, data is segmented to draw out the experiences of different parts of the population. This was a forced decision as there is a lack of data about the activities of other legal professions or consumers' views of them. Indeed, the Legal Services Board has recognised the poor availability of data as a problem requiring action.

Meeting the design challenges

High-level outcomes can be hard to measure directly due to their broad and conceptual nature as well as the range of factors and actors that contribute to their delivery. Furthermore, they are generally not directly attributable to the activities

of one organisation, whilst external factors, such as public attitudes and the behaviour of market participants, can also drive change.

The Panel has reviewed good practice in indicator design, and, in particular, drawn on guidance developed by the Audit Commission (see opposite). We were especially alert to the dangers of creating perverse incentives or unintended consequences. For example, measuring the speed of a conveyance without also introducing a quality measure might lead to lawyers rushing the process and missing an important detail. Moreover, some indicators need to be interpreted carefully. For example, an increase in complaint volumes could be taken negatively as indicating worsening service levels, or positively as consumers being increasingly prepared to assert their rights. The main safeguard is to produce multiple indicators for each intermediate outcome in order to permit a balanced assessment.

The Consumer Impact Report will evolve over time. The high-level outcomes, by setting out a long-term vision for legal services, should stand the test of time. However, whilst these five goals provide enduring anchors for the Report's assessment, specific consumer issues and concerns are likely to change. Therefore, the Panel expects to modify some of the indicators in future versions to reflect changes in the market.

Audit Commission guidance on indicator design

Indicators should be:

- Relevant to the aims and objectives of the organisation
- Clearly defined, to ensure consistent collection
- Easy to understand and use
- Comparable, and sufficiently accurate to allow comparisons between organisations and over time
- Verifiable, by senior managers, audits and inspectors. Independent verification of performance is required for national indicators, and reduced the likelihood that organisations will risk trying to manipulate the data
- Statistically valid, so that false conclusions are not made
- Cost-effective to collect, so that the benefits of using the information outweigh the cost of collection. This is most likely to occur when the information is used routinely for operational management
- Unambiguous, so that it is clear what constitutes good performance
- Attributable, so that the responsibility for achieving good performance is clear
- Responsive, to reflect changes in performance clearly
- Avoid perverse incentives and the risk of skewing outcomes, and encourage behaviours leading to service improvement
- Allow innovation in service delivery; and
- Timely, so that the information is not out of date

3. OUTCOME:

Responsive services

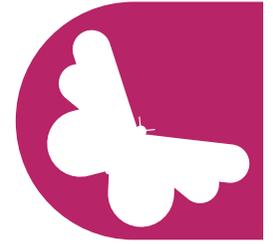
Assessment of consumer impact

Consumers are not driving competition. The vast majority do not shop around and many find it difficult to compare rival offers. In some areas of law, consumers feel they have no choice. In fact, most consumers assume that legal services pretty much look and cost about the same. Choice tools, such as quality marks and price comparison websites, which could alert consumers to different options, are underdeveloped.

All this paints a bleak picture of consumer power, at odds with trends in other sectors. Viewed more positively, the market will soon be opened up to new entrants. There is an opportunity for the new business structures to meet consumers' appetite for innovative forms of service provision which offer value for money. There are signs – such as the trend towards fixed fees – that the market is already evolving in positive ways in anticipation of greater competition.

Regulators could do more to harness consumer power. Complaints data, and even some details about misconduct cases, which would help consumers to identify the best and worst lawyers, is actively being withheld. This gives the minority of bad providers protection they do not deserve and frustrates the efforts of the best providers to differentiate themselves.

Assessment Framework



▼ Intermediate outcomes

A meaningful choice of providers and services

▼ Indicators

- Consumer satisfaction with choice
- Number of Legal Disciplinary Practices

Consumers are empowered when dealing with providers

- Consumer claimed knowledge about what lawyers do
- Consumer confidence that their rights are protected
- Shopping around: extent and ease of making comparisons
- Use of choice tools: price comparison websites and quality marks
- Availability of information about provider performance

Consumers receive value for money

- Consumer satisfaction with value for money
- Consumer satisfaction with transparency of offer
- Complaints to Legal Ombudsman about excessive costs
- Complaints to Legal Ombudsman about deficient cost information

Intermediate Outcome >

A meaningful choice of providers and services

What we want

Consumers have the opportunity to choose between multiple providers which compete vigorously and innovate in order to offer attractive services. The market contains services which are packaged to meet the varied needs and preferences of clients. Consumers find it easy to identify those providers able to deal with their matters and can make comparisons by researching information on the price and quality of different offers. The market should serve all consumers who potentially would benefit from legal help and should cater for the needs of people whose circumstances increase their risk of experiencing detriment.

There are no restrictions on who may provide legal services, or how, unless these controls are necessary to safeguard consumers. This is supported by a flexible system of regulation which applies different standards according to the risks. Wherever possible, the regulatory landscape is simple and consumers understand how they are protected when using different providers.

What we found

Choosing lawyers

In the Panel's Tracker Survey, 64.5% of recent users considered they had a great deal or fair amount of choice, but a significant minority (31.7%) considered they had little or no choice or none at all – this is disappointing.

Indicator A1: consumers satisfied with choice

64.5%

It is particularly concerning that 11.6% of consumers felt they had no choice at all. This is explained by high figures in probate (23.3%), personal injury (25.6%) and employment disputes (30.0%). Providers of wills often encourage clients to name them as an executor. This may be a sensible option, but there are concerns about whether clients understand the financial implications due to a lack of transparency (providers take a percentage of the estate as fees, which can be very lucrative). In personal injury, the Panel's work on referral fees highlighted longstanding concerns about pressure selling and the policies of before-the-event insurers to insist that claimants use one of their nominated solicitors. Another possible explanation is that consumers using claims management services do not realise they are able to choose their own lawyer. The high figure for employment disputes is probably explained by members using their trade union nominated solicitors.

Impact of the new Business Structures permitted under the 2007 Act

New business structures, known as alternative business structures, will be allowed from October 2011. When the new structures are introduced, the freedom for providers to offer combinations of legal and other services under one roof will offer consumers alternative ways to access advice. In addition, external investment in law firms should stimulate innovation and new ways of delivering services, such as sophisticated online solutions. Future editions of the Impact Report will monitor the impact of the emergence of these new structures on consumer choice. However, the market is already changing in anticipation of competition from new entrants, for example the emergence of franchises and networks of local law firms which have been actively advertising their services.

One type of new structure already exists. Legal Disciplinary Practices, comprising solicitors and non-solicitors, were introduced in April 2009. These firms can be owned and managed by a combination of different types of lawyer, and up to 25% non-lawyers, but there can be no external ownership. As at 31 March 2011, 377 such practices were regulated by the Solicitors Regulation Authority.

Indicator A2: Number of Legal Disciplinary Practices

377



Regulatory borders

The boundaries of regulation affect consumer choice. Restrictions on choice may be necessary to protect consumers, for example by setting entry standards to ensure the quality of advice. However, the starting principle should be to give providers freedom to operate unless there are good reasons to intervene.

Research by Professor Stephen Mayson revealed the list of reserved activities – areas of legal work that only certain branches of the profession may provide – was an accident of history rather than the result of a clear policy rationale.¹ Therefore, even though new business structures will liberalise the market, it is unclear whether all these existing restrictions are justified, or, whether they should be extended further. An encouraging development is work started by the Legal Services Board to develop criteria for regulating legal services. The Consumer Panel also began an investigation into the particular case of will writing.

The Solicitors Regulation Authority and Council for Licensed Conveyancers will continue to regulate all legal activities provided by their regulated entities. This potentially reduces choice, but the Panel considers this is necessary to protect consumers as it prevents providers dodging regulation and also makes the regulatory landscape less confusing. Nevertheless, consumers remain unaware that some legal services are entirely unregulated; multiple regulatory regimes, each applying a different set of rules, do not help matters.

There were major changes in the style of regulation. In anticipation of the introduction of new business structures, three approved regulators (Council for Licensed Conveyancers, ILEX Professional Standards and Solicitors Regulation Authority) shifted from prescriptive rules-based regimes to an outcomes-based approach. This should benefit consumers as such regulation is better suited to prevent loopholes and it places the onus on providers to behave in ways which support consumer outcomes. However, there are risks: such codes of conduct create new challenges for enforcement whilst too much uncertainty can stifle innovation.

The Panel criticised the Solicitors Regulation Authority's new code for not starting with a blank piece of paper and thinking afresh about the requirements needed to deal with modern markets. We also considered that the code contained a too detailed list of outcomes and indicative behaviours and was framed around the provider's behaviour, rather than having a few core outcomes framed around the consumer experience. However, by the end of the consultation, the Panel disagreed with few points of detail in the new code. Furthermore, the Council for Licensed Conveyancers and Solicitors Regulation Authority committed to preparing materials to help consumers know what standards they are entitled to expect from providers.

¹ Professor Stephen Mayson, *Reserved activities: history and rationale*, Legal Services Institute, 2010.

Intermediate Outcome >

Consumers are empowered when dealing with providers

What we want

Consumers are aware when the law can help them and find appropriate assistance quickly. This might involve using self-help materials or being signposted to the right source of help. Consumers shop around and demand more of providers, using their purchasing power to spur them to provide high quality and value for money services. They make use of reliable signals, such as quality marks and comparison websites, to inform purchase decisions.

Regulators and other bodies support consumers in making informed choices. For example, they publish information about the performance of providers that do not treat their customers fairly and ensure quality signals used by consumers are reliable. They require providers to disclose specific information, such as referral arrangements, that consumers need to make informed decisions.

What we found

Knowledge is power

We asked consumers about their knowledge of what lawyers do – 44.3% claim a fair or great deal of knowledge. There was a wide gap between socio-economic groups: 50.3% of ABC1s compared to 36.2% of C2DEs.



Market changes could improve this figure: the emergence of stronger legal brands amongst the new business structures; the growth of price comparison websites (which often contain consumer education materials) and greater information dissemination by regulators.

Indicator A3: Consumers claiming a fair or great deal of knowledge about what lawyers do

44.3%

Indicator A4 shows just 51.2% of people we surveyed are confident that their rights as consumers would be protected when using lawyers, whilst 25.7% said they were not confident. In Wales, only 43.9% are confident. This is discouraging, although legal services fares better than other sectors except supermarkets.

Indicator A4: Confidence that consumer rights are protected

Sector	Rating
Supermarkets	60.5%
Lawyers	51.2%
Accountants	46.7%
Banks	39.5%
Mobile phone companies	25.0%
Estate agents	22.1%
Car service and repair businesses	22.1%
Builders	17.9%

Exercising choice

Providers are more likely to design responsive services if consumers shop around for the best deal. However, the Tracker Survey reveals about only one in five (19.1%) consumers shop around. In Wales, just 6.4% of respondents said they shop around whilst only 54.1% are happy with the choice available – both figures are significantly worse than the overall sample.

Only half of consumers (51.0%) find it easy to make comparisons, with 28.3% finding it difficult. Indeed, legal services were third bottom in an EU survey of 50 markets for ease of making comparisons.²

As the law is technical, and people use legal services rarely, it is understandable why consumers tend not to shop around. However, there are more deep-rooted assumptions to overcome as consumers do not feel it is worth the effort. The Panel’s referral fees investigation

showed that consumers view legal services as standard products where quality and price do not vary much between providers. Similarly, our report on quality assurance found that consumers assume all lawyers are technically competent and tightly regulated.

Indicator A5: Shopping around

Measures	Performance
Consumers who shop around	19.1%
Consumers who find it easy to compare providers	51.0%

Tools that would alert consumers to different options and help them compare offers are little used. The Tracker Survey suggests just 1.4% of consumers use a price comparison website to choose lawyers, despite a separate survey suggesting that 43% of consumers want to use them.³ Similarly, only 4.7% of consumers use quality marks, despite reputation and claims of specialism being the two most important factors that determine choice. The Tracker Survey reveals far greater use of price comparison websites and quality marks in other parts of the economy.

² Communication from the Commission – Monitoring consumer outcomes in the Single Market: the Consumer Markets Scoreboard – COM (2009)25 final, 2009

³ Legal Services Board omnibus, December 2009

Commentators expect these choice tools to feature more prominently in legal services in future. However, their impact in other sectors has been dented by credibility issues. For this reason, during 2011-12 the Panel will develop standards for price comparison websites and quality marks.

Indicators A6: Choice tools

Measures	Performance
Use of price comparison websites	1.4%
Use of quality marks	4.7%

Harnessing consumer power

There is a lack of transparency around complaints and misconduct information, which could provide signals about service quality. This is a missed opportunity for regulators to harness consumer power and to promote the commercial importance of reputation by publishing data about provider behaviour.

Only three approved regulators identify providers found guilty of misconduct – such information is not available on the websites of the Council for Licensed Conveyancers, Intellectual Property Regulation Board, the Master of the Faculties or the Costs Lawyer Standards Board (although this is a very new body).

Moreover, data on service complaints held by the ombudsman and assessments of legal aid providers held by the Legal Services Commission (a major purchaser of legal services) are unavailable. The Legal Ombudsman will publish anonymous statistics and case studies which can assist the profession overall, but this does not create an incentive for the minority of poor providers to improve. Following consultation, the Legal Ombudsman announced a delay until early 2012 on making a decision about naming providers whilst it collects more data, citing concerns raised by the profession about unintended consequences. This is hugely disappointing and is at odds with the Government's consumer strategy. However, we hope that the Legal Ombudsman will have more confidence to publish complaints statistics once it reviews the data it is collecting in early 2012.

Indicator A7: Availability of provider performance data

Data	Availability
Approved Regulator - misconduct cases	3 out of 7
Legal Ombudsman - service complaints (six months data)	No
Legal Services Commission - peer reviews	No

Intermediate Outcome



Consumers receive value for money

What we want

Consumers are satisfied the service is worth the price they paid. Providers charge a reasonable fee for their work and their costs are transparent by clearly setting out fees and charges at the outset.

Regulators do not regulate price for privately-funded legal work, but support consumers to identify value for money by making useful information available. These activities might include providing educational materials or investigating allegations of poor practice, such as misleading advertising, that inhibit consumers from getting value for money. Regulators are alert to other factors that might prevent consumers from securing value for money, for example high pressure sales tactics that persuade people to purchase unsuitable services, or additional fees and charges hidden in the small print so consumers end up paying more than they intend.

What we found

The cost of legal services is a key consideration for consumers – 70.4% of those we surveyed say it is an important choice factor, although other factors related to quality and convenience are seen as more important.

Reliable information about the average price of legal work is unavailable. The Tracker Survey, which provides data on consumer perceptions of value for money, reveals a mixed picture. Only 55.8% of consumers who pay for legal services themselves consider they get good or very good value for money. On the other hand, only 11.0% said they get poor or very poor value; 26.6% did not feel strongly either way. The picture is even less positive in Wales, where just 37.1% consumers feel they get good value – a big difference compared with the overall sample.

In the Tracker Survey, 79.6% are satisfied with the clarity of information on the costs to be charged although one in ten (9.8%) are dissatisfied. Costs were a major source of complaints before the Legal Services Act and this continues to be the case. The Legal Ombudsman received 904 complaints about

excessive costs and 776 complaints about deficient cost information in its first six months. One area of concern is headline pricing. The Law Society issued a practice note about this following reports of malpractice. The issue is that consumers get a higher bill than expected, for example in conveyancing, due to disbursements that are added at the end of the process. When such disbursements are not optional, they should be included in the estimate of costs at the outset so that consumers have a better idea of their total cost exposure and can budget accordingly.

The trend away from hourly rates towards fixed costs is a healthy signal that the market is responding to consumer demands for more predictable costs.



Indicators A8-11: Value for money

Data	Measure
Satisfaction with value for money	55.8%
Satisfaction with transparency of offer	79.6%
Legal Ombudsman – complaints about excessive costs	904 (six months data)
Legal Ombudsman – complaints about deficient cost information	776 (six months data)

4. OUTCOME:

High quality advice

Assessment of consumer impact

The technical quality of legal advice is hard to measure as regulators do not carry out such checks. Consumer satisfaction with service is high overall, but some elements of service – communication and timeliness – having lower ratings.

Consumers are generally satisfied with the outcome of legal work, although there is some variation across practice areas. The number of allegations of poor quality work by solicitors appears high and there was a steep rise in negligence claims. The start of a comprehensive review of education and training with wide terms of reference – including the ongoing competence of lawyers – is a very welcome development. The Quality Assurance Scheme for Advocates initiative is also welcome, but is being undermined by weaknesses in the proposals.

Only half of people trust lawyers to tell the truth – far less than doctors or teachers – although most consumers are satisfied with the professionalism of their own provider. The reputation of the legal profession is being damaged by a large and rising number of claims to the SRA Compensation Fund, high numbers of allegations of dishonesty and bad publicity caused by bullying tactics on behalf of corporate clients. There was also a substantial rise in complaints about dishonesty by barristers.

More positively, the Solicitors Disciplinary Tribunal met its timeliness targets whilst, for the Bar, the Bar Standards Board achieved faster turnaround times in a challenging year. An area of concern is the very high dismissal rate of complaints by the public about misconduct by barristers.

Assessment



▼ Intermediate outcomes

Advice is technically competent

▼ Indicators

- Consumer satisfaction with outcome of legal work
- Success rates in publicly-funded work
- Allegations of poor quality work

Consumers are satisfied with the service provided

- Consumer satisfaction with five elements of customer service: clarity of information, clear explanation, empathy, ongoing communication and timeliness

Providers behave ethically, and misconduct is dealt with swiftly and appropriately

- Consumer perception of trustworthiness
- Consumer perception of professionalism of lawyers
- Incidence of potential misconduct
- Performance of disciplinary procedures



Intermediate Outcome >

Advice is technically competent

What we want

Legal advice helps consumers to achieve good outcomes, such as a will that divides their estate as intended or moving home in good time. Providers exercise skill and have comprehensive knowledge of relevant laws and wider issues relating to their practice areas, which they keep up-to-date. They apply this knowledge by helping clients understand the options available and relating this to their circumstances, in a way that helps them to make a decision and move forward.

Regulators have effective mechanisms to ensure advice is technically competent. Education and training mechanisms equip the workforce with the right levels of knowledge, skill and culture to meet the needs of their clients. Other requirements ensure providers remain competent throughout their careers. In addition, regulators are alert to and minimise market incentives that could drive down quality.

What we found

Difficulties in measuring quality

Developing indicators for competent advice is difficult due to a lack of data – regulators carry out very few checks on the technical aspects of work. Also little data is collected on outcomes

of legal work. Instead, consumer opinion and instances of quality concerns are used as indicators of quality. These have limitations as consumers lack the expertise to assess quality whilst data on quality concerns presents one side of the story. We hope data will become available to fill these knowledge gaps.

Outcomes

Indicator B1 shows consumer satisfaction with outcomes is high although there are differences across areas of work. The nature of the work may partly explain this – process-driven services have higher outcome satisfaction ratings than contested work where there are winners and losers. For example, consumers found guilty of a crime are unlikely to be satisfied, or consumers may have inflated expectations about the level of compensation to which they are entitled.

Indicator B1 – Outcome satisfaction

Area of work	Satisfied	Dissatisfied
Conveyancing	92.2%	2.3%
Making a will	92.0%	1.9%
Probate	82.3%	5.9%
Family matters	73.2%	24.4%
Accident or injury claims	69.2%	21.1%
Overall satisfaction	83.5%	8.4%

Indicator B2 shows outcomes in work funded by legal aid. The Legal Services Commission assesses providers primarily on how frequently they achieve outcomes that are a substantive benefit to their clients. A success rate of 40% is now a mandatory Performance Indicator within the legal aid contracts awarded by the Legal Services Commission. In some categories of law, at some levels of service, there is no legal aid merits test where providers assess the strength of a case before agreeing to take it on. Success rates in areas of law where fundamental rights are at stake, and which involve disputes between the individual and the state (such as immigration and mental health), can be expected to be lower than in disputes between individuals. Arguably, success rates in the former are more a reflection of the legal system than the ability of the lawyers involved. The overall success rate of 80% is unchanged from the previous period, although family matters are slightly worse whilst immigration and other areas are slightly improved.

Indicator B2 – Success rates in publicly-funded work

Measures	Performance
Success rates in family	63%
Success rates in non-family/immigration	89%
Success rates in immigration	65%
Overall concluded matters – benefit for client'	80%



Allegations of poor quality

Indicator B3 includes allegations of poor quality work. Negligence claims against solicitors rose from 80 in 2008 to 210 in 2009 – more than any other type of professional indemnity claim. It should be noted there is a lag between when the work is undertaken and the start of court proceedings. Furthermore, external drivers influence the volume of claims, for example claims are more likely in a recession. However, other drivers work in the opposite direction: more potential claimants cannot afford to litigate in a recession, and the increased use of mediation.

The Solicitors Regulation Authority received 1,323 allegations about legal competence in 2010-11. This is high, but, more encouragingly, down from 1,601 in 2009-10. The Bar Standards Board received 142 complaints about incompetence, down from 161 in 2009.

The Legal Services Commission carries out peer review of a sample of providers by checking case files. 12% of reviews were graded below competence or failure in performance. Of greater concern, more than a third (38%) of the employment providers and more than a quarter (27%) of the mental health providers had this rating.

In its first six months, the Legal Ombudsman received 1,442 complaints about ‘failure to advise’ – where the lawyer did not provide legal advice which would reasonably have been expected. It received another 1,331 complaints about failure to follow instructions.

Indicator B3 – Allegations of poor quality work

Measures	Performance
Complaints to Legal Ombudsman about failure to advise	1,442 (six months data)
Complaints to Legal Ombudsman about failure to follow instructions	1,331 (six months data)
High Court negligence actions against solicitors	210
Allegations received by SRA about legal competence	1,323
Complaints to BSB about incompetence	142
Overall LSC peer reviews graded ‘below competence’ or ‘failure in performance’	12%

Policy developments

High quality advice is underpinned by the initial education and training of lawyers and by mechanisms to ensure lawyers remain competent throughout their careers. The Consumer Panel’s report on quality in legal services focused on the second aspect and highlighted weaknesses in existing arrangements. In particular, we argued that continuing professional development requirements (CPD) need strengthening as they are not linked to practice areas or development needs. Indeed, it emerged that solicitors can achieve their total annual CPD hours quota by going on a skiing holiday accredited by the Solicitors Regulation Authority!

The Panel’s report also identified the need to explore more far reaching methods of ensuring competence, including licensing by activity and periodic reaccreditation.

Three regulators – the Bar Standards Board, ILEX Professional Standards and the Solicitors

Regulation Authority – have begun a major review of education and training. This is a once-in-a-generation opportunity to redesign these mechanisms for the modern market place. It is encouraging that the terms of reference allow a comprehensive examination of both initial training and ongoing competence.

The development of a mandatory quality assurance scheme for advocates, initially covering criminal work, is a positive development. This clarifies what consumers can expect from their advocate and it should ensure that advocates are matched to the types of cases they are competent to handle. However, these potential benefits are being undermined by weaknesses in the proposals. In particular, there are no mechanisms for the experiences of consumers to be considered within assessments of advocates and the scheme is overly generous to advocates by allowing them to choose on which cases they are assessed and by whom.



Consumers are satisfied with the service provided

What we want

Consumers receive the level of service they demand of providers. Providers display empathy to their clients, treating each person as an individual not a file. Their processes run efficiently so that things progress smoothly and in a timely way. They provide clear and useful advice which allows consumers to decide the course of action most likely to deliver their preferred outcome given the circumstances. Lawyers communicate effectively with clients by explaining issues clearly and without jargon, signposting what should happen and when, and updating on key developments. They meet the expectations of their clients in terms of professional presentation, both personally in terms of dress and appearance, but also in the physical office environment.

Consumers are free to negotiate differing levels of service with providers according to their needs, but regulators set and enforce minimum standards where necessary in order to safeguard the quality of advice. For example, codes of conduct define desired behaviours such as timeliness that if not met would support a complaint, or specify transparency requirements in relation to the terms of engagement that providers enter into with their clients.

What we found

The elements of service within Indicator B4 are based on surveys asking consumers what is important to them. Levels of dissatisfaction are low, although quite large proportions of people are neither satisfied nor dissatisfied – this high level of ambivalence suggests no room for complacency. The two lowest rated aspects of service – ongoing communication and timeliness – are also two of the most common areas of complaint recorded by the Legal Ombudsman.

It is striking that consumers in Wales are less happy overall with the service they received – 15% are dissatisfied compared to 8% in England.



Indicator B4 – Service satisfaction

Service elements	Satisfied	Dissatisfied
Clarity of information on the service to be provided	79.4%	6.6%
Things were explained so they were easily understood	80.2%	7.3%
Treated as an individual, not just another file	74.6%	8.3%
Communication while the matter was progressing	72.3%	11.3%
Matter was dealt with in a timely way	73.9%	12.6%
Overall satisfaction	79.9%	8.9%



Intermediate Outcome >

Providers behave ethically, and misconduct is dealt with swiftly and appropriately

What we want

Providers adhere to standards of ethical behaviour within and beyond their codes of conduct. At all times they put their duty to the court, and then to their clients, ahead of commercial interests. In his review of the regulation of legal services, Lord Hunt wrote: “What marks professionals out is a commitment to certain standards of behaviour, founded in ethics and best practice”. And, further: “legal professionalism provides the essential foundations for trust between provider and client”.¹

Through the market rules they set and their response to malpractice, regulators create positive incentives that keep instances of unethical behaviour and dishonesty to a minimum. This is supported by access to good intelligence, proactive cooperation with other agencies and effective monitoring processes. Regulators have a wide sanctioning toolkit at their disposal that acts as a strong deterrent. Disciplinary procedures deal with cases swiftly and justly.

¹ The Hunt Review of the Regulation of Legal Services, October 2009.

What we found

Consumer perceptions

Indicator B5 shows that less than half of adults in our survey generally trust lawyers to tell the truth; one in five said they would actually distrust them. By comparison, doctors have an 84.6% trust rating and teachers a 71.4% rating, although lawyers have a comparable rating to accountants (45.4%). This figure is alarming, although one reason to anticipate lower levels of trust with lawyers is the perception they defend the guilty. In Wales, only 39.6% of respondents would generally trust lawyers to tell the truth compared to 40.7% trust for the ordinary man or woman in the street.

More encouragingly, 81.8% of recent users are satisfied with the professionalism of their provider, whilst only 5.4% are dissatisfied. Although the two questions are not directly comparable, there appears a gap between general public perceptions of the trustworthiness

Indicator B6: Satisfaction with professionalism of provider

81.8%

Indicator B5: Consumer perceptions of trustworthiness

Would generally trust to tell the truth	Rating
Doctors	84.6%
Teachers	71.4%
Lawyers	47.1%
Accountants	45.1%
The ordinary man or woman in the street	37.0%
Shop assistants	33.2%
Bankers	17.7%
Car mechanics	14.8%
Builders	9.3%
Estate agents	7.1%



Incidence of potential misconduct

The Solicitors Regulation Authority's Compensation Fund handles applications for grants from people who have suffered financial loss due to a solicitor's dishonesty or failure to account for monies received. There were 3,694 separate new claims to the Fund in 2010-11, whilst just over £27 million was paid out in the same period – these are eye watering figures. The Solicitors Regulation Authority has observed these figures are substantially higher than previous years due to an increase in interventions in the last two years (although the reasons for this increase are unclear). The most common reason for claims – 60% – related to general client money, generally small amounts of money that claimants had paid on account to a firm that was investigated by the Solicitors Regulation Authority and where this money could not be identified in client accounts.

The remaining data indicate the scale of other regulatory activity. The numbers of allegations in relation to solicitors about fraud, dishonesty and money laundering are striking, although these are just allegations and should be seen against the scale of legal transactions and providers. Moreover, these figures, whilst unacceptable, are all lower than the previous year.

Also of concern, the Bar Standards Board saw a substantial rise in complaints about dishonesty/discreditable conduct from 10 in 2009 to 72 in 2010. The Bar Standards Board explains that these cases mostly relate to allegations about barristers' behaviour outside their capacity as lawyers, but this is still significant in relation to trust in the profession.

Indicator B7: Misconduct

Measure	Instances
New claims to SRA Compensation Fund	3,694
Allegations to SRA about fraud/dishonesty/money laundering	847
Allegations upheld by SRA	1,531
Referrals to Solicitors Disciplinary Tribunal	301
Interventions due to suspected dishonesty	12
Complaints to BSB about dishonesty/discreditable conduct	72
Complaints to Legal Ombudsman about misconduct	55 (six months data)



Effectiveness of disciplinary proceedings

The Solicitors Regulation Authority aims to put together a case to place before the Solicitors Disciplinary Tribunal within six months, and it, in turn, aims to hear matters within six months. During 2010-11 the average figures were 5.04 months and 10.45 months respectively – therefore, both targets were met. The Solicitors Disciplinary Tribunal is developing a broader range of Performance Indicators to measure its performance, which will be included in future editions of the Impact Report.

The annual report of the Bar Standards Board's professional conduct department showed an improvement in turnaround times for closed complaints in 2010. 39% of complaints were closed within 3 months (compared to 31% in 2009) and 80% were closed within 12 months (the same as in 2009). Where cases were referred for further action (i.e. beyond a Committee decision), 90.5% were closed within 12 months.

The high percentage of dismissed complaints by the Bar Standards Board is striking. Indeed, in the ten most frequently occurring aspects for external complaints (mostly from members of the public), uphold rates are below 5%. There is likely to be an element of unmerited complaints due to the consumer being dissatisfied by virtue of losing a case, but even so these figures appear unnaturally low.

With regard to disciplinary cases, the committee's report noted that the increased involvement of the Bar Mutual Indemnity Fund had resulted in an increase in the number of defendant barristers instructing solicitors and counsel on a fee-paying basis. Despite this the Bar Standards Board was successful in 91% of cases referred for disciplinary action. It appears that barristers are more willing to contest cases when insurers pay the legal fees, despite the prospects of success being slim. The report attributed this development to a backlog of 32 cases in appeals against decisions by the Bar Disciplinary Tribunal. Consumers are adversely affected if disciplinary proceedings take too long to conclude: closure is delayed for the individual and barristers are free to continue practising in the meantime.

Indicator B8 – Performance of disciplinary procedures

Measures	Performance
Average time for SRA to issue case to SDT	5.04 months
Average time for case to reach SDT hearing	10.45 months
Complaints to BSB closed within 3 months	39.0%
Complaints to BSB closed within 12 months	80.9%
BSB cases referred for further action closed within 12 months	90.5%



5. OUTCOME:

A diverse workforce that understands its diverse clients

Assessment of consumer impact

There are far higher numbers of women and BME entrants to the workforce than the general population. However, women and BME groups are underrepresented at senior levels – historical data suggests the trickle up effect from an improving performance on entry has not materialised. Research on understanding the barriers to progression and initiatives to shine a spotlight on the make-up of individual providers are welcome. There is generally a high level of momentum on the diversity agenda, but it is disappointing that some approved regulators have so far not fully embraced the Legal Services Board’s transparency proposals.

The Tracker Survey reveals a stark social divide: consumers from lower socio-economic groups have significantly less knowledge about what lawyers do, find it harder to choose lawyers and are less satisfied with the outcome of legal advice or the service they receive. BME consumers are also less satisfied with the service they receive and are far more likely to distrust lawyers.

Regulators are not doing enough to ensure consumers in vulnerable circumstances are protected when the market does not adequately meet their needs. The absence of research in this area means they are unlikely to understand the additional risks of detriment that some consumer groups face. None of the codes of conduct has specific requirements with respect to consumer vulnerability, although this has been incorporated into revised codes developed by the Council for Licensed Conveyancers and the Solicitors Regulation Authority.

Assessment



▼ Intermediate outcomes

The workforce reflects the make-up of the population

▼ Indicators

- Diversity of workforce on entry
- Diversity of senior workforce
- Women on boards

Providers understand the diverse needs of consumers

- Usage of legal services across population
- Consumer experience across population
- Service satisfaction among disabled consumers
- Discrimination complaints to Legal Ombudsman

Regulators take proper account of consumers at risk of disadvantage

- Consumer research reports with at risk groups
- Usage of Equality Impact Assessments
- Consumer vulnerability duties in codes of conduct



The workforce reflects the make-up of the population

What we want

Consumers deal with providers whose workforce reflects the diverse make up of the general population, enabling them to access the widest possible pool of talent. The workforce is diverse at all levels: high numbers of non-traditional aspirants are stimulated to enter the profession, progress to senior levels in law firms and are appointed to regulatory boards. The legal sector is a leader on diversity performance and is genuinely committed to removing remaining barriers to access.

Providers recognise having a diverse workforce is good for business. Market forces create a commercial incentive to reinforce this culture, as the diversity performance of individual providers influences the choices of corporate customers and other large purchasers.

What we found

The Consumer Impact Report includes diversity information on solicitors and barristers with respect to gender and ethnicity. We would have liked to include a broader range of diversity measures, but such data is unavailable. The Legal Services Board is consulting on proposals for approved regulators to collect data across the full range of diversity strands.

If implemented, this data will be used in future editions of the Impact Report.

Entry

Indicator C1 suggests a positive record on the diversity of entrants to the workforce. A greater proportion of women and people from BME backgrounds are becoming solicitors and barristers compared to the overall cohort. The proportions of newly admitted BME solicitors and barristers are well in excess of the general population.

Historic statistics indicate an improving picture. Whereas since 2000 the total number of solicitors holding practising certificates has grown by 42.4%, the number of women holding practising certificates has nearly doubled, having increased by 79.7%. Moreover, BME solicitors were estimated to account for 11.1% of solicitors with practising certificates in 2010, up from 10.6% in 2009. However, the overall figures mask differences between ethnic groups some of which remain under-represented, for example there remain fewer African-Caribbean admissions.

In the last five years, governments have placed emphasis on improving social mobility in the professions, most recently the report by an independent external panel on Fair Access to the Professions (the ‘Milburn Report’). The Legal Services Board has noted there are a

wide range of initiatives focused on improving diversity and social mobility at the entry level to the profession, run by approved regulators, regulated entities, charities and others. The Legal Services Board has also taken a lead role on improving social mobility by chairing the Gateways to the Profession Collaborative Forum and is developing a social mobility toolkit for regulators and professional associations.

Indicator C1 – Diversity of workforce on entry

	Women	BME
Solicitors - New Admissions to Roll	59.1%	22.1%
Total solicitors with practising certificates	45.8%	11.1%
Barristers - Called to the Bar	52.7%	41.0%
Total self-employed barristers	31.5%	9.6%
Total employed barristers	46.2%	12.0%
General population	51.0%	11.5%



Senior workforce

Indicator C2 shows the provision of legal services at the highest levels is dominated by white, male lawyers. This reflects the findings of a Legal Services Board literature review. Research evidence also suggests the improving performance on entry has not filtered through to senior levels over time. Numbers of women and BME lawyers entering the profession have been increasing for a number of years but the ‘trickle up’ effect has not materialised. A study by the University of Westminster⁴ found that stereotyping and bias are preventing women and BME solicitors from furthering their careers, and inequalities in pay and status are causing them to abandon their careers in disproportionately high numbers. The study flagged up other initiatives open to law firms including part time working, other flexible working hours arrangements and mentoring schemes.

The Legal Services Board has focused on achieving greater transparency about the diversity make-up of the profession as an incentive to take action. It has consulted on proposals for a framework for gathering and publishing data about diversity and social mobility at provider level covering all eight characteristics under the Equality Act 2010. The Legal Services Board’s expectation is that approved regulators should require legal businesses to gather and publish data about the diversity of their workforce as a regulatory obligation.

The Panel welcomes this initiative, although previous transparency initiatives in other sectors have had limited impact – this suggests the business case for diversity needs to be clearly made. The data also need to have sufficient granularity to expose inequalities between population groups.

There are entrenched cultures to break down and this requires a high level of commitment across stakeholders. There is a gathering momentum to this agenda, but there are pockets of resistance. For example, only three approved regulators provided their proposals to meet diversity objectives as requested by the Legal Services Board in its transparency consultation. Likewise, the Bar Standards Board proposals on equality and diversity, if implemented, would not capture data on all the protected characteristics, nor would the provider-level information be published.

Indicator C2: Diversity of senior workforce

	Women	BME
Solicitors that are partners	24.8%	6.8%
All practising solicitors	45.2%	10.6%
QCs	10.9%	4.3%
All barristers	34.4%	10.1%
General population	51.0%	11.5%

⁴ Professor Hilary Sommerlad et al, Diversity in the legal profession in England and Wales: a qualitative study of barriers and individual choices, University of Westminster, 2010.



Women on regulatory boards

The Government has started a review into the obstacles that prevent more women from reaching senior positions in business. It notes a clear business case for increasing the number of women on industry boards, which could apply equally to regulatory boards. Evidence suggests that companies with a strong female representation at board and top management level perform better than those without and that gender diverse boards have a positive impact on performance.

Indicator C3 shows that, across the legal services boards, women make up at least half of membership only on the Office for Legal Complaints (the board of the Legal Ombudsman) and ILEX Professional Standards.

Indicator C3: Women on boards

LSB	OLC	BSB	CLC	CSLB	IPS	IPReg	MoF	SRA
2/10	4/7	6/15	2/7	0/5	3/7	1/10	n/a	6/16





Providers understand the diverse needs of consumers

What we want

Providers understand and respond to the diverse needs of their clients who receive a good service regardless of their personal circumstances. They adapt services to cater for those with specific cultural needs or who are in vulnerable circumstances, for example due to physical needs or because English is not their first language. Providers comply with equalities legislation so that clients do not experience discrimination.

The BSI standard on consumer vulnerability makes clear that all consumers are different, with a wide range of needs, abilities and personal circumstances. These differences can put some consumers in a position of vulnerability or disadvantage during certain transactions and communications, potentially putting them at risk from financial loss, exploitation or other detriment. The standard identifies ‘risk factors’ related to a person’s circumstances – such as bereavement, illiteracy, illness or disability – which could increase the likelihood of a consumer being at a disadvantage or suffering detriment. The BSI standard also makes clear that organisations and markets differ in the way that they provide services and interact with consumers. Organisations’ policies and

processes can contribute to, or increase the risk of, consumer vulnerability. The Consumer Panel’s desire is for a market where providers acknowledge and respond to this definition of vulnerability.

What we found

Usage of legal services across population

Indicator C4 measures access to legal services across the general population – consumers in lower socio-economic groups are 10% less likely to have used legal services in the last two years. However, this measure is problematic as usage levels are likely to reflect patterns of economic activity more generally, for example house purchase. Will writing is a discretionary legal service and our survey suggests some difference. Again, however, this should be treated with caution as there is a link between wealth and the perceived need to write a will.

Indicator C4 – Usage of legal services across population

Measure	ABC1	C2DE	Gap
Not used legal services in last two years	64.4%	75.1%	-10.7%
Made a will in last two years	9.4%	5.2%	-4.2%



Consumer experience

Indicator C5 shows the widest differences between socio-economic groups across the Tracker Survey. It reveals that consumers in lower socio-economic groups are less trusting of lawyers and less confident that their rights are protected or about making a complaint. They are less satisfied with the choice available and find it harder to make comparisons. They are more likely to find legal services poor value for money and be less satisfied with the outcome of legal work and client care.

There are also differences between White and BME respondents, although the figures should be treated with some caution due to smaller sample sizes (although they are statistically valid). Of particular note, BME consumers are almost 15% less likely to trust lawyers to tell the truth. It is also concerning that BME consumers are significantly less satisfied with the outcome of legal work and the service they receive, although, more positively, there is evidence they are more likely to shop around and feel they got good value for money.

Indicator C5 – Consumer experience of legal services across population

Measure	ABC1	C2DE	Gap	White	BME	Gap
Trust	50.8%	42.9%	-7.9%	49.3%	34.5%	-14.8%
Confidence rights protected	53.6%	48.4%	-5.2%	52.5%	44.1%	-8.4%
Confident in complaining	55.2%	45.2%	-10.0%	51.7%	46.6%	-5.1%
Choice satisfaction	68.9%	54.0%	-14.9%	64.5%	57.1%	-7.4%
Shopped around	19.8%	17.2%	-2.6%	18.0%	27.9%	+9.9%
Making comparisons	52.7%	46.0%	-6.7%	50.3%	n/a	n/a
Value for money satisfaction	58.6%	49.0%	-9.6%	55.2%	63.4%	+8.2%
Overall service satisfaction	82.2%	74.1%	-8.1%	80.3%	66.5%	-13.8%
Outcome satisfaction	86.7%	75.4%	-11.3%	83.9%	72.9%	-11.0%



Discrimination

The Equality Act 2010 means that clients who use lawyers can expect to be protected from discrimination.

Unlawful discrimination can take a number of forms, for example treating a person worse just because of one or more of their protected characteristics, or do something to someone in a way that has a worse impact on them and people with a particular protected characteristic than on other people.

The Act also requires providers to make reasonable adjustments for disabled people. This may mean changing the way in which services are delivered, providing extra equipment and/or the removal of physical barriers. The duty is to make reasonable adjustments to ensure that a disabled person can use a service as close as it is reasonably possible to the standard usually offered to non-disabled people. When the duty arises, providers are under a positive and proactive duty to take steps to remove or prevent these obstacles.

The Tracker Survey enables us to ask the views and experience of consumers who consider they have a disability against the same measures. Note that, unlike the figures above, the overall outcome and satisfaction figures do not exclude matters that are ongoing, as otherwise they would not be statistically significant. It is

encouraging that disabled consumers have very similar levels of overall satisfaction with service, although there is less satisfaction with the outcome of work and less trust in lawyers or confidence that their consumer rights will be protected (see Indicator C6).

The Legal Ombudsman records the volume of complaints alleging discrimination by lawyers – it received 23 complaints in its first six months, which is a reasonably modest total.

Indicator C7: Discrimination complaints to Legal Ombudsman

23 (six months data)

Indicator C6: Service satisfaction among disabled consumers

Measure	No Disability	Disability	Gap
Trust	48.4%	42.3%	-6.1%
Confidence rights protected	53.6%	43.7%	-9.9%
Confident in complaining	52.0%	46.6%	-3.4%
Choice satisfaction	65.7%	60.2%	-5.5%
Shopped around	19.2%	18.6%	-0.6%
Making comparisons	n/a	n/a	n/a
Value for money satisfaction	57.0%	51.8%	-5.2%
Overall service satisfaction	72.5%	72.0%	-0.5%
Outcome satisfaction	73.2%	65.3%	-7.9%



Intermediate Outcome >

Regulators take proper account of consumers at risk of disadvantage

What we want

Regulators anticipate when the market may not adequately cater for consumers who have specific needs. Using good intelligence and by having engagement programmes with the public and representative bodies, they understand the challenges these consumers face.

Regulators accept responsibility to intervene to protect the interests of consumers in vulnerable circumstances, designing effective policies to meet the challenges identified. For all major policies, regulators conduct equality impact assessments to determine whether there is likely to be a differential impact on any group of consumers. Codes of conduct require providers to take proper account of clients' individual needs and these provisions are robustly enforced.

What we found

Understanding diverse consumer needs
None of the approved regulators carried out research exercises with at risk groups.

However, we were pleased to see the Solicitors Regulation Authority consult on a draft Equality Framework and Engagement Strategy for 2011/12 – increasing the level of engagement with consumers and the wider public was one of its nine objectives.

The Solicitors Regulation Authority also runs a Disability Advisory Group of local representatives of bodies who provide support on policy development.

More broadly, we could not find reference in any of the approved regulators' business plans to consumer vulnerability. Unfortunately, the absence of information suggests this dimension is not currently considered a high priority.

Indicator C8: Consumer research exercises with at-risk groups published by approved regulators

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Policy design

Equality Impact Assessments analyse potential or actual effects of policies, procedures, practices, criteria and functions to determine whether they have a differential impact on any groups. Three bodies – the Legal Services Board, the Legal Ombudsman and the Solicitors Regulation Authority – regularly include such Impact Assessments as part of major policy consultations. It is beyond the scope of this Report to consider the quality of such exercises.

Obligations on providers

Codes of conduct were surveyed for references to consumer vulnerability. The Panel's preference is for codes to include positive duties on providers in the mandatory sections of rule books as these are easier to enforce and it emphasises the importance of the issue. Therefore, it is disappointing that none of the codes contains such duties, although both the Bar Standards Board and Solicitors Regulation Authority include statements in Guidance. Some approved regulators have revised their codes of conduct in preparation for the introduction of the new business structures. This has seen a shift towards outcomes-based regulation, which is well-suited to broad duties related to vulnerability. The Council for Licensed Conveyancers has incorporated 'regard to consumer vulnerability' as a specific outcome, whilst the Solicitors Regulation Authority has incorporated consumer vulnerability considerations into a number of Indicative Behaviours.

Indicator C9: Usage of Equality Impact Assessments

LSB	LeO	BSB	CLC	CSLB	IPS	IPReg	MoF	SRA
✓	✓	x	x	x	x	x	x	✓

Indicator C10: Reference to vulnerability duties in codes of conduct

	BSB	CLC	CSLB	IPS	IPReg	MoF	SRA
Rules	x	x	x	x	x	x	x
Guidance	✓	x	x	x	x	x	✓



6. OUTCOME:

Quick, fair and cost-effective complaints-handling

Assessment of consumer impact

Research suggests a significant proportion of consumers lack the confidence to complain or feel it would be a wasted effort. The Legal Services Board's signposting rule, which requires lawyers to notify clients of their right to complain and how, should help to break down these barriers. Yet the data suggests there are compliance issues: the Legal Ombudsman turned many complaints away because the provider's in-house procedure was not used, whilst there were 364 complaints in the first six months about the provider's failure to investigate complaints internally.

The Legal Ombudsman is a new organisation, so corporate performance data is not available to allow an assessment of complaints-handling. It has made some overly-cautious policy decisions – not to name lawyers subject to complaints, not to accept third party complaints and getting a low proportion of income from case fees – which weaken the incentive for providers to raise service standards and handle complaints properly. Also of concern is the high number of complainants the Legal Ombudsman turns away because they fall outside of the scheme's jurisdiction – this suggests issues about regulatory borders, but it may also be a consequence of decisions made at the scheme's inception, such as not to accept third party complaints.

Weaknesses in intelligence flows – the failure by most approved regulators to collect data from providers on complaints and gaps in information sharing between regulatory agencies – mean that the learning from complaints is not being fully extracted.

Assessment Framework



▼ Intermediate outcomes

Complaints are resolved by providers in-house

▼ Indicators

- Consumer confidence in making a complaint
- Dissatisfied consumers who do nothing
- Cases not admitted to Legal Ombudsman because the provider's in-house complaints procedure was not used
- Complaints to Legal Ombudsman about failure to investigate complaint internally

A world-class ombudsman scheme

- Complaints falling outside of Legal Ombudsman jurisdiction
- Performance data: cases resolved within 3 months; overall user satisfaction score; complaints resolved by informal resolution; difference between C2DE dissatisfied consumers and C2DE users of Legal Ombudsman; and average cost per complaint

Complaints intelligence is used to raise standards

- Cases investigated by Legal Ombudsman
- Providers with more than 3 complaints to Legal Ombudsman



Intermediate Outcome >

Complaints are resolved by providers in-house

What we want

Consumers who are unhappy with a service have the confidence to raise their concerns directly with the provider. They are aware of their right to complain and are clearly signposted to the procedure they should follow, including their option to complain to the Legal Ombudsman. Providers proactively acknowledge mistakes and put things right. They treat every complaint seriously and have procedures which are accessible, timely, fair and responsive to the unique circumstances of each client. When a remedy is warranted, providers quickly return the consumer to the position they were in before the problem occurred.

What we found

Dismantling barriers to complaining

There is a need to break down barriers that prevent consumers from complaining about poor service from lawyers. Indicator D1 shows only half of consumers would feel confident making a complaint and 29.6% would not be confident. Compared to other parts of the Tracker Survey lawyers fare relatively less well than other sectors – consumers would be more confident complaining about supermarkets, banks, accountants and mobile phone companies.

Moreover, 35.2% of consumers who are dissatisfied with the service they receive do nothing about it.

More encouragingly, 42.8% raise their concerns with the provider and 12.8% make a formal complaint. Worryingly, qualitative research jointly commissioned by the Panel and the Legal Ombudsman highlighted that consumers are reluctant to complain due to a fear that providers will outsmart them and the profession will close ranks to protect its own. We welcome research commissioned by the Legal Services Board on first-tier complaint-handling, which will help to understand better the barriers to complaining.

Against this backdrop, the Legal Services Board introduced swiftly a rule requiring lawyers to notify clients of their right to complain and how. Importantly, the rule includes a requirement to alert consumers at the time of engagement of their right to complain to the Legal Ombudsman. This gives people confidence that an independent organisation will listen to their concerns should they feel they have not received a fair hearing from their provider. An implementation review conducted by the Legal Services Board found that each of the approved regulators had appropriately incorporated the new requirement into their rule books.

Indicator D1: Confidence in complaining

Sector	Confident
Supermarkets	74.6%
Banks	55.0%
Accountants	53.2%
Mobile phone companies	51.9%
Lawyers	50.5%
Car mechanics	43.9%
Estate agents	43.9%
Builders	41.5%

Indicator D2: Dissatisfied customers who do nothing

35.2%



Intermediate Outcome >

Changing provider behaviour

Early data from the Legal Ombudsman suggests the first-tier complaints handling rule is not always getting through to lawyers or their clients. In its first six months the service turned away 205 contacts because the provider's internal complaints procedure was not used.

Even more striking, the Legal Ombudsman recorded 364 complaints in the first six months about failure to investigate a complaint internally.

The prospect of paying case fees should act as an incentive to handle complaints well. However, the Legal Ombudsman was too cautious in deciding to obtain just 10% of its income through case fees, which gives a weak incentive for firms to resolve complaints in-house. We sincerely hope the Legal Ombudsman will introduce a stronger incentive when it consults on a revised case fee structure again before the end of 2012.

Indicator D3: Cases not admitted by Legal Ombudsman because in-house complaints procedure was not used

205 (six months data)

Indicator D4: Complaints to Legal Ombudsman about failure to investigate complaint internally

364 (six months data)

A world-class ombudsman scheme

What we want

The Legal Ombudsman provides an independent and impartial service to resolve service complaints when consumers and providers cannot agree on a fair outcome. The scheme may consider all instances when a consumer is dissatisfied with a legal service they purchase or which they are affected by. The Legal Ombudsman is easy to use and the service actively reaches out to parts of the population that are traditionally less likely to complain.

The Legal Ombudsman provides an efficient and consumer-focused service that meets the needs of its users. Consumers feel their complaint was investigated properly and treated fairly, even if they do not agree with the outcome. Complaints are handled in a timely way with most resolved informally so as to settle matters quickly and preserve relationships.

What we found

The Legal Ombudsman has Key Performance Indicators, which its board – the Office for Legal Complaints – is required to agree with the Legal Services Board. The Panel inputted to the design of these indicators, which we consider appropriate. Therefore, we have used a selection of them for our indicators:

- Timeliness – the length of time it takes to resolve complaints, specifically the proportion resolved within three months
- Quality – user satisfaction with the service
- Outcome – whether the Legal Ombudsman is successful in meeting its aspiration to resolve as many complaints as possible through an informal resolution process
- Accessibility – users of the service broadly match the socio-economic background of consumers who are dissatisfied with their provider
- Efficiency – cost per complaint

At the time of writing, the Legal Ombudsman has not published performance data so we are unable to include this in the Impact Report.

Indicator D5: Legal Ombudsman performance

Measure	Performance
Cases resolved within 3 months	Unavailable
Overall user satisfaction score	Unavailable
Complaints resolved by informal resolution	Unavailable
% Difference between C2DE consumers who are dissatisfied and users of ombudsman service	Unavailable
Cost per complaint	Unavailable



The early data suggests there may be issues with the Legal Ombudsman's remit – it recorded 2,969 cases it could not investigate in the first six months. In 1,130 of these, the complainant did not fall within the scheme's jurisdiction. This may suggest wider issues about the boundaries of regulation, for example complaints about unregulated activities cannot be accepted. However, some may be a consequence of decisions made when it consulted on the scheme rules. For example, it is disappointing that it decided not to accept 'third party complaints'. This means that people are ineligible to complain if they do not have a contract with the lawyer concerned.

Some serious cases could be excluded, for example legal work on a remortgage when the client is technically the bank, or a law firm unfairly intimidating someone by sending threatening letters on behalf of a corporate client. Finally, some of these 'out of scope' complaints might reflect a lack of success in accurate targeting of the Ombudsman's marketing and publicity, resulting in inappropriate approaches. This not only wastes staff time but can falsely raise consumers' hopes of redress.

Indicator D6: Complainants outside of Legal Ombudsman jurisdiction

1,130 (six months data)

A further 721 complaints were not accepted because they fell outside the time limit. Ordinarily, a complaint must arrive at the Legal Ombudsman within one year from the act/omission; or one year from when the complainant should reasonably have known there was cause for complaint, whichever is later. As the Legal Ombudsman is new, it is possible these include a number of very old cases where the consumer is having 'a second go' having failed under the previous systems. However, should these high numbers persist we would wish to revisit the time limit.

One worry was that previous complaint-handling bodies would develop a complaints backlog or drop service standards in the transition period. In the event, the Legal Complaints Service – the largest scheme – completed its caseload and maintained service levels. Unfortunately, a backlog developed at the Office of the Legal Services Ombudsman, with about 600 cases – some of which had been 'in the system' for a long time – remaining unresolved when the Office closed in March 2011.

Intermediate Outcome >

Complaints intelligence is used to raise standards

What we want

Providers reflect on the underlying cause of each complaint and take steps to reduce the likelihood of the problem happening again. Where a problem reveals systemic issues, providers change their policies and procedures. The profession view complaints positively as an opportunity to improve levels of service. Regulators and the Legal Ombudsman create effective incentives to reinforce this learning culture.

There are excellent intelligence flows between regulatory agencies enabling risks to consumers to be swiftly identified and acted on. This includes both individual allegations of misconduct and common problems in the market. Based on this intelligence, changes are made which lead to reduced volumes of complaints, for example shaping training content, changing rules or taking disciplinary action.

What we found

The ultimate test of improving standards is fewer complaints. The Legal Ombudsman allocated 4,146 cases for investigation in the first six months. However, as the complaints arrangements are new, it is too early to make an assessment.



Indeed, experience in other sectors suggests complaint levels may initially increase due to greater consumer awareness of the opportunity to complain. Therefore, indicator D7 should be seen as a benchmark against which to measure progress in the medium-term.

Under the previous arrangements, a relatively small number of providers accounted for a large proportion of the Legal Complaints Service's caseload. Effective targeting of these providers by regulators, whether through education or enforcement, is an absolute must if consumers are to be protected, diligent providers safeguarded and overall case volumes reduced. Indicator D8 should be seen as a benchmark to measure the effectiveness of efforts to deal with providers who persistently give poor service.

Indicator D7: Cases allocated for investigation

4,146 (six months data)

Indicator D8: Providers with more than 3 complaints to the Legal Ombudsman

246 (six months data)

Missing data

The Legal Ombudsman's caseload represents the tip of the iceberg in relation to complaints, especially if efforts to improve first-tier complaint handling arrangements are successful. In order to assess more reliably the scale of consumer dissatisfaction, it is necessary to know the total numbers of complaints to providers. However, with the exception of the Bar Standards Board, this information is not collected by the approved regulators. In its first-tier complaint handling implementation review, the Legal Services Board concluded the approved regulators

“have generally had poor first-tier data collection processes and systems in place. This would make it difficult for them to identify systemic issues and adopt a targeted approach to regulation”.⁵

The Panel finds this situation unacceptable; without this information we do not see how the approved regulators can begin to learn from, and respond to, consumer problems.

The Legal Ombudsman and the Legal Services Board may only share information about individual lawyers and firms with certain approved organisations. A consultation exercise identified fifteen organisations that should be permitted to receive such data. However, acting on legal advice, the Ministry of Justice decided that six bodies – including the Judicial

⁵ LSB, First-tier complaints handling: Implementation - Progress Review Report, 2011.

Appointments Commission, QC Appointments and the Legal Services Commission – could not be included in the relevant statutory instrument. During the year, the Panel learnt that the results of peer review exercises carried out by the Legal Services Commission were not shared with the Solicitors Regulation Authority. Such broken links are missed opportunities to alert regulators to the risk to consumers that some providers present.

Weak incentives

Making complaints data publically available creates incentives for providers to meet the needs of their customers and try hard to resolve complaints in-house. As noted earlier (see **Indicator A7, Responsive Services**), publication of complaints data would give providers a powerful incentive to maintain service standards and respond appropriately to complaints. The Legal Ombudsman will review whether to name providers once it has nine months more data; we hope this will lead to a change of approach. More generally, however, once the organisation's operations bed down, the Panel hopes it will explore in a strategic fashion various options to make best use of its unique intelligence to help raise standards.



7. OUTCOME:

Consumers are placed at the heart of regulation

Assessment of consumer impact

The Internal Governance Rules agreed by the Legal Services Board provide good foundations for independent regulation. However, delaying tactics by approved regulators in implementing the lay majority rule undermined progress. There is generally an enhanced focus on consumers in the language used by approved regulators, but elements of practice and specific incidents cause concern. In particular, the Solicitor Regulation Authority's chair has criticised the Law Society's view of its role as an approved regulator, which casts doubts about regulatory independence.

There is inconsistency between approved regulators in levels of transparency which cannot be explained by sectoral differences. Some basic information, such as annual reports is missing, although there is also good practice, in particular the Solicitor Regulation Authority's quarterly performance report.

Consumer engagement at the Legal Services Board is adequately resourced, but the Solicitors Regulation Authority was the only approved regulator to publish consumer research reports this year. Public commitments, including plans for an online public network that all approved regulators could use, are a step in the right direction.

Most consultations last at least twelve weeks – a good record. Performance varies in respect to giving reasons where this is not the case. Performance is patchy on providing feedback statements within six months of the consultation closing with some smaller approved regulators not providing any feedback.

Assessment Framework



▼ Intermediate outcomes

Approved regulators are truly independent of the entities they regulate

▼ Indicators

- Regulatory boards with lay majority
- Regulatory boards with lay chair

Regulatory bodies work transparently

- Availability of information on strategic direction and activities: annual report, business plan
- Availability of information on decision-making: board minutes, board papers, consultation submissions, names of senior management team

Regulators have robust consumer engagement mechanisms

- Legal Services Board research budget
- Consumer research reports published by approved regulators
- Ratio of consultations lasting a minimum of 12 weeks, or reasons if not
- Feedback to consultations within 6 months of consultation closing





Approved regulators' governance arrangements are truly independent of the entities they regulate

What we want

Consumers have confidence that regulators are protecting and promoting their interests. A high level of consumer focus permeates these organisations, starting at the board and embedded across the staff team. Their genuine commitment to putting the interests of consumers at the heart of regulation is self-evident in corporate communications, for example in the language they use and their balance of priorities. This focus is translated into decisions that reflect the underpinning purpose of the Clementi reforms: putting consumers first.

Regulators have governance arrangements which are simple and truly independent of the entities they regulate. Boards and key committees have a majority of lay members, which work free from influence or control by representative bodies.

What we found

Independence rules

The Legal Services Board has made Internal Governance Rules specifying how the approved regulators should achieve clear separation between their regulation and representation functions.

The Rules cover all aspects of the relationship and are based on the principle that structures or persons with representative functions must not exert, or be permitted to exert, undue influence or control over the performance of regulatory functions, or any person(s) discharging those functions. In the Panel's view, these Rules provide a solid foundation for consumer-focused regulation. Crucially they include a requirement that regulatory boards have a majority of lay members. This rule is critical since it underpins public confidence that regulatory decisions will be taken in the public interest, rather than sectional interests.

However, the rule has been undermined by some approved regulators delaying in changing the composition of their regulatory boards to achieve lay majorities. Only 3 out of 7 of these boards – the Costs Lawyer Standards Board, ILEX Professional Standards and the Intellectual Property Regulation Board – have a lay majority. Some approved regulators initially indicated their wish to wait until the terms of existing board members expired before moving to lay majorities. Yet in the case of the Law Society, this would have meant its regulatory board, the Solicitors Regulation Authority, retaining a majority of professional members until 2013 – a full six years after the Legal Services Act.

The Legal Services Board reached agreement with individual approved regulators, which mean they will have lay majorities sooner, although

still on a slower timescale than is ideal. The way in which some representative arms clung to the status quo does not instil confidence about their commitment to independent regulation. For example, only after the Bar Standards Board agreed an accelerated process for appointing lay members, did the Legal Services Board determine not to pursue any formal enforcement action over matters related to its compliance with the lay majority rule.

The Chair of the Board has a key influence on the tone and strategic direction of an organisation. The Panel did not call for lay chairs to be required, as the best candidate should be given this role. If, over time, lawyer chairs predominate, it will be difficult for the approved regulators to maintain that appointments are made strictly on merit. Currently, three of the seven regulatory boards – the Council for Licensed Conveyancers, Costs Lawyer Standards Board and ILEX Professional Standards – have a lay chair.

Indicator E1: Regulatory boards with lay majority

3/7

Indicator E2: Regulatory boards with lay chair

3/7



Independent in practice

The reality may differ from what the written arrangements suggest. Undue influence on the part of representative arms may be subtle and difficult to detect. Therefore, it is important to look behind written procedures to ensure that governance arrangements are independent in practice as well as on paper. For this reason, the Legal Services Board's announcement that the 2011 scrutiny of the rules will have a greater focus on regulatory practice is welcome.

There are mixed signals in relation to language. On the positive side, there has been an enhanced emphasis on consumers in the language used in corporate documents and major policy initiatives. On some issues, such as standard of proof, the Solicitors Regulation Authority has robustly defended its decision to use the civil standard on public interest grounds in face of strong opposition from the Law Society – visible dissent between regulators and trade bodies is a healthy signal of independence.

From a consumer perspective, it is important for the chairs of approved regulators to recognise that consumer protection is central to the purpose of regulation and to communicate this externally. Therefore, it was disappointing to hear the Chair of the Bar Standards Board make approving mention of remarks made by the Lord

Chief Justice about the dangers of 'consumer fundamentalism'. The Deputy Chief Executive of Consumer Focus expressed his surprise as follows:

*"We deal with a lot of regulators in different sectors. This isn't the way the chief executive or chair of Ofgem [talks] about the energy industry, or Ofwat about the water sector!"*⁶

The Act made the professional bodies the approved regulators, which in turn delegated responsibility for regulation to independent regulatory arms. However, the professional bodies retain an oversight role and make some key decisions, for example approving the budget. These governance arrangements can feel unsettling when they involve a potential tension between the public interest and the interests of lawyers. The biggest test was the Law Society needing to agree the Solicitors Regulation Authority's application to become a licensing authority. This was finally voted through with a big majority, but the nature of the relationship inevitably raises suspicions about what goes on behind closed doors. The Law Society's chief executive indicated it had won concessions out of the Solicitors Regulation Authority and reached 'an agreed position' with the regulator, although the Solicitors Regulation Authority denied this.⁷

The Chair of the Solicitors Regulation Authority said the process had "produced... a significant divergence of view as to what the Law Society as the approved regulator may properly seek to do".⁸

⁶ <http://www.consumerfocus.org.uk/files/2011/02/Philip-Cullum-Bridging-the-gap-The-Law-Society.pdf>

⁷ <http://www.legalfutures.co.uk/regulation/solicitors/sgm-threat-recedes-as-sra-refutes-suggestions-that-it-changed-abs-stance>

⁸ <http://www.legalfutures.co.uk/latest-news/plant-lays-bare-sralaw-society-tensions-caused-by-defective-legal-services-act>

Regulatory bodies work transparently

What we want

Regulators operate transparently, helping consumers to see how decisions that affect them are made and enabling them to hold decision-makers to account. By demonstrating a high level of transparency, regulators reinforce public confidence in the independence of their decisions. Information that the public can reasonably expect to be available is easily accessible and provided in a timely manner. As a minimum, consumers can find information on the standards of conduct that regulators demand of providers, details of regulators' forward plans and annual activities, and an account of regulatory decisions and how these were made.

What we found

We identified information that consumers should be able to easily access on the websites of regulatory bodies, in two areas:

- Strategic direction and activities
- Decision-making

Indicator E3 shows mixed performance across the approved regulators. This is difficult to explain given they perform the same functions in similar environments. The provision of such basic information on a website costs very little.

Even for the smallest approved regulators, which face genuine resource limitations, consumers should expect to find information about planned activities and a description of work over the past twelve months.

It is disappointing that none of the approved regulators publish responses to consultations submitted by stakeholders, in contrast to standard practice by the Legal Services Board and the Legal Ombudsman.

This allows people to see how regulators take the consumer interest into account alongside other interest groups.

The Panel was pleased to find some evidence of good practice. For example, the Solicitors Regulation Authority produces a quarterly performance report on the outcomes of its regulatory activities, enabling stakeholders to monitor performance against its strategy. The Legal Services Board publishes full details of all its research activities, providing transparency and enabling others to make use of the data.

Indicator E3: Transparency table

	Annual Report	Business Plan	Board Minutes	Board Papers	Consultation submissions	Management team
LSB	✓	✓	✓	✓	✓	✓
LeO	✓	✓	✓	x	✓	✓
BSB	✓	✓	✓	✓	x	✓
CLC	✓	✓	x	x	x	✓
CLSB	-	-	-	-	-	✓
IPS	✓	✓	✓	x	x	✓
IPReg	-	✓	✓	x	x	✓
MoF	x	x	x	x	x	x
SRA	x	✓	✓	✓	x	✓





Regulators have robust consumer engagement mechanisms

What we want

Regulatory priorities and policies are shaped by meaningful dialogue with both individual consumers and representative bodies. Regulators develop effective and well-resourced consumer engagement strategies, which are reviewed regularly at board level. They make high quality evidence-based decisions informed by a rich understanding of consumer needs, experience and behaviour. This understanding is demonstrated by selecting the right mix of engagement tools for the issue at hand, drawing on tried and trusted techniques, but also showing an appetite to innovate.

Consultation exercises are meaningful and allow experts and the public a proper opportunity to contribute views and evidence. To enable this, regulators invest time in making their processes accessible, in particular by explaining issues clearly and communicating in plain language. Regulators seek consumer input at an early stage and throughout the policy-making process, giving ample opportunity for those interested to make representations. When decisions are made, they are clearly explained and feedback is given in a timely manner.

What we found

Consumer engagement

The Legal Services Board had a research budget of £300,000 in 2010-11, which represents a good level of investment for an organisation of its size and remit. It was pleasing to note the boards of the Legal Services Board, Solicitors Regulation Authority and Bar Standards Board each reviewed their organisation's approach to consumer engagement.

Indicator E4: LSB research budget

£300,000

However, the approved regulators published just two consumer research reports between them in the same period – both by the Solicitors Regulation Authority. This is a poor performance. Effective engagement requires both expert input and direct dialogue with the public. This is not a choice between the two: experts cannot second-guess how consumers think and behave in the real world, while the public will struggle to analyse critically detailed regulatory issues through a consumer interest lens.

Indicator E5: Consumer research reports published by approved regulators

2

There are signs of improvement for the future. Licensing authority applications by the Council for Licensed Conveyancers and Solicitors Regulation Authority have both committed to making significant resource available for consumer research. Moreover, following a workshop the Consumer Panel held with approved regulators in June 2010, these bodies – led by the Solicitors Regulation Authority and the Bar Standards Board – have agreed to work together to introduce a public network to offer consumers a direct say on legal services regulation. Whilst encouraging, this is not enough on its own, as online mechanisms primarily attract people who are already more likely to engage. This may restrict who can participate, especially consumers with limited internet access.

Meaningful consultation

The Government has a Code of Practice on Consultation. This Code sets out what people can expect from the Government when it runs formal, written consultations on policy or policy implementation. Its standards provide a good test for all bodies and the Legal Services Board is a signatory to the Code. The Panel would encourage the Legal Ombudsman and the approved regulators similarly to adhere to the Code.

One criterion is that consultations should normally last for a minimum of 12 weeks. Where there is a shorter period, there should be good reasons, which should be explained in the document. The vast majority of consultations issued during 2010-11 lasted at least this long, with the exception of ILEX Professional Standards. Where this was not the case, the Legal Services Board always provided reasons but performance is patchy elsewhere. Overall this is a good record and we hope to see performance maintained in 2011-12 (see Indicator E6).

Following any consultation, the Code requires a published summary detailing: who responded to the consultation, the views expressed to each question and any other significant comments. This should normally be available before or alongside any further action.

Although the Code does not specify a timetable, the Panel considers six months is a reasonable period for consulting bodies to provide feedback. Of consultations closing 1 November 2009 – 31 October 2010, just 25 out of 38 had feedback statements six months later. Indicator E7 shows there is mixed performance across the regulators. It seems to be the practice of some smaller regulators – in particular ILEX Professional Standards and the Intellectual Property Regulation Board – not to provide any feedback to stakeholders.



Indicators E6/7 – Meaningful consultation

	12 week period	Reasons if not 12 wks	6 months feedback
LSB	7/12	5/5	15/15
LeO	4/5	0/1	2/2
BSB	5/5	-	0/2
CLC	5/6	1/1	0/2
CLSB	-	-	-
IPS	1/5	0/4	0/5
IPReg	1/1	-	-
MoF	-	-	-
SRA	8/9	0/1	8/12



Glossary

ABS – Alternative Business Structures

BME – Black and Minority Ethnic

BSB – Bar Standards Board

BSI – British Standards Institution

CLC – Council for Licensed Conveyancers

CPD – Continuing Professional Development

CSLB – Costs Lawyer Standards Board

EU – European Union

KPI – Key Performance Indicator

ILEX – Institute of Legal Executives

IPS – ILEX Professional Standards

IPReg – Intellectual Property Regulation Board

LDP – Legal Disciplinary Practice

LSB – Legal Services Board

MoF – Master of the Faculties

OLC – Office for Legal Complaints

SRA – Solicitors Regulation Authority

Reference guide

OUTCOME: Responsive services

Intermediate outcome	Code	Indicator	Source
A meaningful choice of providers and services	A1	Consumers satisfied with choice	Tracker Survey
	A2	Number of Legal Disciplinary Practices	SRA Performance Report, December 2010
Consumers are empowered when dealing with providers	A3	Consumers claiming a fair or great deal of knowledge about what lawyers do	Tracker Survey
	A4	Consumers confident their rights are protected when dealing with lawyers compared with other sectors	Tracker Survey
	A5	(a) Consumers who shop around (b) Consumers find it easy to compare providers	(a) Tracker Survey (b) Tracker Survey
	A6	(a) Consumers using price comparison websites (b) Consumers using quality marks	(a) Tracker Survey (b) Tracker Survey
	A7	(a) Availability of information about misconduct cases (b) Availability of information about service complaints (c) Availability of Legal Services Commission peer reviews	(a) Website of each approved regulator (b) Website of Legal Ombudsman (c) LSC micro-site on www.justice.gov.uk
Consumers are satisfied with the value for money provided by their lawyer	A8	Consumers satisfied with value for money	Tracker Survey
	A9	Consumers satisfied with transparency of offer	Tracker Survey
	A10	Complaints to Legal Ombudsman about excessive costs	Data provided by Legal Ombudsman
	A11	Complaints to Legal Ombudsman about deficient cost information	Data provided by Legal Ombudsman

OUTCOME: Quality

Intermediate outcome	Code	Indicator	Source
Advice is technically competent	B1	Consumers satisfied with outcome of legal work	Tracker survey
	B2	Success rates in publicly-funded work	LSC Statistical Information 2010
	B3	Allegations of poor quality work (a) Complaints to Legal Ombudsman about failure to advise (b) Complaints to Legal Ombudsman about failure to follow instructions (c) High Court negligence actions against solicitors (d) Allegations received by SRA about legal competence (e) Complaints to BSB about incompetence (f) LSC peer reviews graded 'below competence' or 'failure in performance'	(a) to (b) Provided by Legal Ombudsman (c) Ministry of Justice, Judicial and Court Statistics 2009 (d) SRA Performance Report, December 2010 (e) BSB Annual Report of Professional Conduct Department 2010 (f) LSC Peer Review – Outcomes for Face to Face Providers: Breakdown of Outcomes by Category, April 2009 – January 2011
Consumers are satisfied with service provided	B4	Consumers satisfied with elements of service: clarity of information, clear explanation, empathy, ongoing communication and timeliness	Tracker Survey
Lawyers make ethical decisions and dishonesty is identified and dealt with swiftly and appropriately	B5	Consumers who would generally trust lawyers to tell the truth	Tracker Survey
	B6	Consumers satisfied with professionalism of their provider	Tracker Survey
	B7	Incidence of potential misconduct (a) New claims to SRA Compensation Fund (b) Allegations to SRA about fraud/dishonesty/money laundering (c) Allegations upheld by SRA (d) Referrals to Solicitors Disciplinary Tribunal (e) Interventions due to suspected dishonesty (f) Complaints to BSB about dishonesty/discreditable conduct (g) Complaints to Legal Ombudsman about misconduct	(a) to (e) SRA Quarterly Performance Report, December 2010 (f) BSB Annual Report of Professional Conduct Department 2010 (g) Data provided by Legal Ombudsman
	B8	Performance of disciplinary procedures (a) Average time for SRA to issue case to SDT (b) Average time for case to reach SDT hearing (c) Complaints to BSB closed within 3 months (d) Complaints to BSB closed within 12 months (e) BSB cases referred for further action closed within 12 months	(a) to (b) SRA Quarterly Performance Report, December 2010 (c) to (e) BSB Annual Report of Professional Conduct Department 2010

OUTCOME: Diversity

Intermediate outcome	Code	Indicator	Source
The workforce reflects the make-up of the population	C1	Diversity of workforce on entry (women/BME) (a) Solicitors – New Admissions to Roll (b) Barristers – Called to the Bar	(a) Law Society Annual Statistical Report 2010 (b) Bar Barometer, March 2011
	C2	Diversity of senior workforce (women/BME) (a) Solicitors that are partners (b) QCs	(a) Law Society Annual Statistical Report 2010 (b) Bar Barometer, March 2011
	C3	Women on boards	Websites of LSB, OLC and approved regulators
Providers understand the diverse needs of consumers	C4	Usage of legal services across socio-economic groups (a) Not used legal services in last two years (b) Made a will in last two years	(a) to (c) Tracker Survey
	C5	Consumer experience of legal services across population	Tracker Survey
	C6	Service satisfaction among disabled consumers	Tracker Survey
	C7	Discrimination complaints to Legal Ombudsman	Provided by Legal Ombudsman
Regulators take proper account of consumers at risk of disadvantage	C8	Consumer research reports with at risk groups published by approved regulators	Websites of approved regulators
	C9	Usage of Equality Impact Assessments	Websites of approved regulators
	C10	Reference to vulnerability duties in codes of conduct	Approved regulators' codes of conduct

OUTCOME: Redress

Intermediate outcome	Code	Indicator	Source
Complaints are resolved by providers	D1	Consumers who are confident in complaining	Tracker Survey
	D2	Dissatisfied consumers who do nothing	Tracker Survey
	D3	Cases not admitted by Legal Ombudsman because the provider's in-house complaints procedure was not used	Provided by Legal Ombudsman
	D4	Complaints to Legal Ombudsman about failure to investigate complaint internally	Provided by Legal Ombudsman
A world-class ombudsman scheme	D5	Legal Ombudsman performance data (a) Complaints resolved within 3 months (b) Overall user satisfaction score (c) Complaints resolved by informal resolution (d) Difference between C2DE dissatisfied consumers and C2DE users of Legal Ombudsman (e) Average cost per complaint	Provided by Legal Ombudsman
	D6	Complainants falling outside of Legal Ombudsman jurisdiction	(a) to (e) Provided by Legal Ombudsman
Complaints intelligence is used to raise standards	D7	Cases allocated for investigation by Legal Ombudsman	Provided by Legal Ombudsman
	D8	Providers with more than 3 complaints to Legal Ombudsman	Provided by Legal Ombudsman

OUTCOME: Consumer-Focused Regulation

Intermediate outcome	Code	Indicator	Source
Approved regulators' are truly independent of the entities they regulate	E1	Diversity of workforce on entry (women/BME) (a) Solicitors – New Admissions to Roll (b) Barristers – Called to the Bar	Websites of approved regulators
	E2	Regulatory boards with lay chair	Websites of approved regulators
Regulatory bodies work transparently	E3	Availability of following on websites (a) Annual Report (b) Business Plan (c) Board Minutes (d) Board Papers (e) Consultation submissions (f) Names of senior management team	(a) to (f) Websites of LSB, Legal Ombudsman and approved regulators
Regulators have robust consumer engagement mechanisms	E4	LSB research budget	LSB Business Plan 2011-12
	E5	Consumer research reports published by approved regulators	Websites of approved regulators
	E6	Ratio of consultations lasting a minimum of 12 weeks, or reasons if not	Websites of approved regulators
	E7	Feedback to consultations provided within 6 months of consultation closing	Websites of approved regulators

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

Dianne Hayter (Chair)

Jeff Bell

Graham Corbett

Elisabeth Davies

Emma Harrison

Paul Munden

Neil Wightman

Karin Woodley

Secretariat

Steve Brooker

Alanna Linn



Legal Services Board
Victoria House
Southampton Row
London WC1B 4AD
T 020 7271 0076

www.legalservicesconsumerpanel.org.uk