

Empowering consumers

Background paper 1: possibilities and limitations

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1 Summary

1. There is currently much interest by government in initiatives to empower consumers, both as a means of improving outcomes for individuals, including those in vulnerable positions, but also as a contribution to supporting economic growth through stimulating competitive forces and enabling deregulation initiatives.
2. The Legal Services Board has requested the Consumer Panel's advice about how regulators can help consumers to play a more active, empowered role in the legal services market. In this first of two background papers, we define consumer empowerment and consider the potential and limitations of related policies. We also review existing research evidence on levels of empowerment among UK consumers generally and in the legal services market in particular.

Empowering consumers

3. Consumer empowerment consists of two broad elements which interact to create the conditions for consumers to thrive. Firstly, the resources consumers have at their disposal to make better choices. This includes a certain state of mind (confidence and willingness to play an active role), decision-making tools such as good information, and the skills to use these tools to make effective decisions that secure positive outcomes. Secondly, the institutions – for example, the competition regime, consumer protections and regulatory organisations – that support consumers to shape markets.
4. There are some limits to what consumer empowerment policies can achieve on their own, which are important to respect. This includes people's innate behavioural traits, which means consumers will not always act in an economically rational way. There are also inherent features of the legal services market that are difficult to overcome, such as asymmetries of information and distress purchases. In addition, some market failures, such as lack of price transparency, are deeply ingrained and regulators cannot address these overnight. Finally, statistical evidence suggests that wider social conditions impact on the extent to which vulnerable consumers can drive competition. It is very important, especially in the context of legal services being a good which everyone in society must be able to access, that empowerment initiatives do not inadvertently widen inequalities. However, targeted interventions can also empower vulnerable groups.
5. Given the inherent characteristics of the legal services market, we caution about relying too heavily on consumers to drive competition. Consumer representatives emphasise that perceptions of consumer protection are a precondition of people being willing to take risks and play the more active role in markets envisaged for them. It is important to be realistic about the interaction between consumer and competition policy. In practice, this does not involve making a choice between two distinct approaches, but striking an appropriate balance between the two. It must involve ensuring the consumer protection framework is fit for purpose in order to give consumers justified confidence to act.

The UK consumer

6. Recent studies allow us to infer the extent to which UK consumers are empowered and to compare legal services with other markets. Surveys suggest that market features have a significant influence on consumer confidence and experience, with legal services sharing characteristics – such as complexity, infrequency and distress purchase – with other markets that attract lower ratings. Survey evidence also suggests that vulnerable consumers are less empowered across a range of measures.
7. Evidence on the UK consumer compared to other countries is mixed. A study by the University of East Anglia, which focused on institutional dimensions of empowerment, concluded that the UK was on par with the best in the world in many aspects, with scope for improvement identified in redress mechanisms and public enforcement. Investment in information and advice services was seen as an important development. EU studies, which mostly focus on the consumer decision-making dimensions of empowerment and are based on surveys of consumer perceptions, suggest that the UK is among the best in terms of overall market conditions but middle-ranking in relation to some aspects of consumer empowerment.
8. Across all markets, there seem to be issues with consumer awareness of their rights and levels of engagement with the market, although it may be significant given technological developments that UK consumers are more likely to share positive and negative experiences with others. The various surveys are consistent in suggesting that consumers find it hard to compare price and quality in legal services. Other factors, such as amount of choice and satisfaction are broadly comparable with other sectors.

The legal services consumer

9. The paper reviews evidence of existing levels of consumer empowerment in legal services across the following five dimensions:
 - Confidence in the market – people are not very trusting of lawyers as a group, although they are confident about the professionalism of their own lawyer. People also seem to lack of confidence that their consumer rights will be protected or that lawyers who do bad things will face the consequences of their actions. Confidence in the justice system appears to have improved, although a good majority of people feel that judges are out of touch
 - Identifying legal needs – a significant minority of people take no action to resolve some serious legal problems, often due to a sense of powerlessness, lack of knowledge or belief that their efforts would be futile. Over one third of people admit to having no understanding of their rights when experiencing a legal need. More positively, knowledge about what lawyers do is slowly increasing and people are increasingly using the internet to find information about legal issues
 - Choosing legal services – there are low levels of shopping around and many who search find it difficult to make comparisons – the absence of credible choice tools does not help matters. Referrals by commercial intermediaries are widespread, but this tends to produce lower service satisfaction ratings

- Using legal services – there are lower satisfaction ratings and high complaint volumes relating to communication by lawyers during a case; this gets in the way of consumers actively participating in decisions about their legal needs. The use of legal jargon exacerbates this problem. Increasingly people are resolving legal needs without seeking professional advice. While many do this successfully and would do it again, for others this appears to be driven by affordability concerns
- Complaining about poor service – only half of people say they would be confident making a complaint to a lawyer and many dissatisfied consumers do not complain or give up before their complaint is satisfactorily resolved. Research shows that people are confused about what to do, get overwhelmed by legal jargon, believe they won't get a fair hearing and fear that upsetting their lawyer could have repercussions for their case. Signposting rules that would help alert consumers to their right to complain are not working effectively

10. All this suggests that legal services consumers are currently not very empowered. The research also highlights that vulnerable consumers are less confident, less trusting, less knowledgeable, less likely to shop around, less satisfied and less likely to complain. Social inequalities seem to be pervasive when it comes to consumer empowerment. Empowering consumers will be an uphill struggle, although our research highlights some small signs that consumers are starting to become more active in the market.

11. It is striking that low levels of consumer confidence are not confined to legal services. The research data reveals apparently low confidence that businesses have the interests of their customers at heart or that regulators will act to deal effectively with poor practice. Regardless of whether these perceptions are accurate, this is the reality of the wider context in which legal services providers and regulators operate. The linkage between consumer confidence and active participation in markets means this is critical.

Questions for discussion

12. This is a discussion paper designed to provoke debate, not make recommendations. We are interested to hear what others think about the following questions:
- The paper shows that people do not make full use of information and that there are inherent limits to how empowered consumers can be. What are the implications of this for pursuing consumer empowerment policies in legal services?
 - What difference do consumer vulnerability issues make to this?
 - To what extent is the legal services market unique?
 - Which aspects of low consumer empowerment are of most concern?
 - How much does it matter that consumers are not shopping around? What does this mean for competition in the legal services market?
 - What is the right balance for regulators between enhancing the consumer protection framework and facilitating better consumer decision-making in legal services?

2 Background

The Legal Services Board's request for advice

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

Our approach

4. The Panel is publishing two background papers to support Phase One of the project. We have organised a roundtable to discuss these papers, bringing together regulators and consumer bodies from the legal services sector and other relevant markets. The combined content of these materials will form our initial findings, which we will condense into a short document for publication.
5. This first background paper introduces the theme of consumer empowerment. As we shall see, the Coalition Government promotes initiatives in this area as a key element of its growth agenda. The paper is divided into four sections:

- Chapter 3 explains what is meant by consumer empowerment and the claimed benefits of policies to support this agenda. It also explores possible limitations to consumer empowerment policies relating to wider social conditions, behavioural traits and the innate characteristics of markets.
 - Chapter 4 reviews data from four major studies to summarise evidence on levels of empowerment among UK consumers as a whole.
 - Chapter 5 reviews existing research data to summarise evidence on levels of empowerment among legal services consumers in England and Wales. The data is organised around five themes, the last four of which represent key stages in the consumer journey: public confidence; identifying legal needs; choosing providers; using legal services; and complaining.
 - Chapter 6 poses some questions for discussion.
6. The second background paper, to be published shortly, summarises consumer empowerment initiatives in other parts of the economy. This demonstrates a range of approaches which might contain useful learning for legal services. The paper also summarises existing interventions by legal services regulators.

3 Exploring the issues

The Coalition Government agenda

1. Empowering consumers is a central plank of the Coalition Government's policy agenda. The Department for Business, Innovation and Skills (BIS) has published a Consumer Empowerment Strategy setting out the opportunities to support consumers to play their role in securing sustainable growth, in particular seeing the possibilities created by new technologies as enabling a more sophisticated demand side.

*"In short, we want to see confident, empowered consumers able to make the right choices for themselves – to get the best deals, demand better products or services, and be able to resolve problems when things go wrong. This approach makes it easier for honest, high quality businesses to compete and will drive innovation, competition and growth. A better deal for consumers and the economy means a better deal all round."*¹

2. In fact, empowering consumers is a running theme of recent policy announcements. Whether in health, higher education, housing or elsewhere, there is a strong emphasis on giving patients, students, tenants and others the tools they need to stimulate providers to design and deliver services that are more responsive to their needs. Empowering consumers is seen as being beneficial for the individual, including those in vulnerable positions, but also as benefiting society overall by sharpening competitive forces and thus supporting economic growth.
3. In addition, empowering consumers is seen as enabling deeper deregulation: as increasingly consumers can help themselves and discipline markets, so government can step away and strip back unnecessary regulation. This is explicitly recognised by the LSB in its letter to us commissioning this advice: *"The more consumers are able to choose and use legal services with confidence, the less that prescriptive and restrictive regulation is required and the more that the regulatory objectives are secured."*
4. Empowering consumers is also at the heart of the EU policy agenda. It is a fundamental part of the European Consumer Agenda supporting the Europe 2020 goals. Again, the rationale is to support growth, starting with the acknowledgment that consumer expenditure accounts for 56% of EU GDP. It states: *"well designed and implemented consumer policies with a European dimension can enable consumers to make informed choices that reward competition, and support the goal of sustainable and resource-efficient growth, whilst taking account of the needs of all consumers"*.²

¹ Department for Business, Innovation and Skills and Cabinet Office, *Better Choices: Better Deals, Consumers Powering Growth*, April 2011.

² European Commission, *A European Consumer Agenda – Boosting confidence and growth*, COM (2012) 225 final

What is meant by empowering consumers?

5. Empowering consumers is a much used phrase, but one often used without a definition. The LSB's Business Plan asks the Panel to focus on choosing and using legal services; however, these represent individual elements of efforts to empower consumers and it is important to view them as parts of a wider concept. The literature suggests that consumer empowerment consists of two linked broad-based components with various strands sitting within each:
 - The resources available to consumers to make informed choices; and
 - The institutions and safeguards that support them in doing this.
6. This is briefly explored further below, although it is necessarily a simplistic description given the introductory scope of this report. It draws on a literature review commissioned by BIS, which we recommend reading for those wishing to consider this in more detail.³
7. The starting point for the first element is that consumers and providers have an unequal power relationship. Due to factors such as people's lack of knowledge and experience, or market issues such as barriers to switching and lack of cost transparency, consumers may not make the best choices available to them or may even be exploited by unscrupulous providers. This frustrates competition because providers offering the best deals are not fully rewarded, or they may be unfairly undercut by rivals. An effective policy response might therefore be to equip consumers with the information, tools and other resources that will enable them to make better choices. Firstly, this requires consumers to be confident and willing to participate in markets, moving from a situation where they are passive recipients of goods and services, to one where they are active purchasers who signal their needs to providers and, individually or collectively, use their buying power to influence the way that the market operates. Secondly, in order to have a positive influence on the market, the decisions that consumers take should secure good outcomes for them. This requires consumers having the knowledge and skills to navigate the market place effectively and make accurate decisions.
8. The starting point for the second element is that consumers do not exist in a vacuum, but are supported by an institutional environment that supports them in carrying out this market-shaping role. This consists of various elements including the market environment and the consumer protection regime. For example, a diverse provider base is a precondition for consumers to exercise choice. Other support mechanisms include a strong framework of consumer rights (including in our context, enforceable codes of conduct) and independent redress mechanisms to turn to if these rights are breached, well-resourced consumer organisations to represent their interests and effective regulators. One study suggests the concept of an institution is quite broad embracing settled habits and socially accepted 'rules of the game', such as the norms and conventions that govern behaviour, as well as the protocols and practices that have developed for the organisation of society, such as money, language and law.⁴

³ ICF GHK, *Empowered Consumers and Growth: Literature Review – Final Report*, Department for Business, Innovation and Skills, May 2012.

⁴ BERR (now BIS), *Benchmarking the performance of the UK framework supporting consumer empowerment through comparison against relevant international comparator countries*, University of East Anglia, 2009.

9. These two elements – well-informed decision-making and institutional support – interact to create the conditions for consumers to thrive. For example, the ability of consumers to choose services that are most attuned to their needs is enhanced by competition reforms which allow a more diverse range of providers to enter the market, while the removal of switching barriers or complex tariff structures makes it easier for consumers to shop around. Alternatively, a good level of consumer protection, such as access to an ombudsman, gives people greater confidence to use a different provider than previously in the knowledge they will have some recourse if things go wrong.

10. The ICF GHK literature review commissioned by BIS sums up this dynamic as follows:

“At the core of consumer empowerment is the idea that consumers should have the tools to secure the best outcomes for themselves. An empowered consumer should be confident, knowledgeable and feel protected, and therefore tends to make optimal decisions by understanding their own preferences, the choices available to them and their rights and the means of complaining and seeking redress if their rights are breached.

At the root of consumer empowerment and its ability to contribute to growth is the strengthened relationship between consumer and producer.

The empowered consumer articulates preferences more clearly, allowing businesses to better understand the products required and better able to compete by differentiating themselves in the market. This leads to better offers, which results in increased consumer welfare because of better and cheaper products supplied more efficiently because of strengthened competition.”⁵

The impact of new technologies

11. The mass adoption of the internet and emergence of other new technologies is seen as giving fresh impetus to consumer empowerment. UK consumers do more online shopping than any other EU country; this is changing the way that businesses advertise and sell their services, but it has also enabled consumers to shop in different ways supported by tools seeking to help them do this successfully. Search engines, customer feedback and price comparison services have increased the information available about individual providers to inform consumer choice. A series of reports by Consumer Focus have highlighted collaborative efforts by consumers, using the internet to tell others about their experiences and exercising their collective power, such as through group purchasing or mass switching exercises, to get better deals.⁶ Authors such as Clay Shirky present a picture of a future where market failures are addressed by (spontaneous) collective action by highly empowered online citizens. He underlines the role of social media in allowing the formation of groups and group action, without the time and cost restrictions that limit more traditional organisations and institutions.⁷

⁵ For a review of recent literature try: ICF GHK, *Empowered Consumers and Growth: Literature Review – Final Report*, Department for Business, Innovation and Skills, May 2012.

⁶ See, for example: Consumer Focus, *Get it, together – The case for collective switching in the age of connected consumers*, Richard Bates, May 2012.

⁷ www.clayshirky.com

12. The ICF GHK study notes that at one extreme the relationship between consumer and producer enabled by new technologies enables consumers to become co-creators/co-producers – with the potential to bring forward innovation and new business models. ‘Prosumption’ refers to the breaking down of the barriers between production and consumption, so that consumers can be directly and personally involved in the production of goods they are purchasing. The Panel is not aware of any such business models in the legal services market, so we do not consider this further.

Limits to empowering consumers

13. Despite the current enthusiasm for empowering consumers, it is important to be aware of the possible limitations. This is important since the emphasis on empowering consumers implies the transferring of greater responsibility to individuals for managing their own affairs and potentially the withdrawal of existing support through deregulation initiatives. The removal of necessary regulation due to overconfidence in the ability of consumers to regulate markets could be counterproductive as it may exacerbate consumer detriment and weaken competition. Note that the LSB has separately asked for the Panel’s advice on the degree of risk that consumers should bear in the market.

Vulnerable consumers

14. One important factor is wider social conditions and their impact on the extent to which some groups of consumers in particular can realistically be expected to play the economic role described above. Analysis of the EU Consumer Empowerment Index shows that poor living conditions and low educational levels are key factors contributing to low empowerment. Educational attainment was found as essential for ensuring consumer literacy, with lower levels of empowerment usually associated with low levels of education – the UK had one of the highest gaps across the EU. Age was another factor, with younger generations seeming to be more skilled, aware and engaged than older generations.⁸ Internet access was strongly related to self-perceived consumer empowerment; in this context, 10 million UK adults have never used the internet, including four million of the most excluded and disadvantaged people.⁹
15. Interventions to empower consumers, such as greater information provision, could have benefits for consumers in vulnerable positions. However, not everyone is equally able to make good use of these new tools and there is a risk that initiatives widen inequalities. In the context of legal services, an important consideration is that access to justice can be classified as a ‘merit good’, in other words something everyone should be able to benefit from regardless of their ability to pay for it. However, a feature of merit goods is that consumers do not fully perceive how good the service is for them, for example they may undervalue the benefit of taking precautionary steps to prevent legal problems.
16. This discussion should not be read to imply that empowerment initiatives should be stopped because they could leave some people behind, but rather that regulators

⁸ European Commission and JRC, *The Consumer Empowerment Index: A measure of skills, awareness and engagement of European consumers*, 2011.

⁹ Consumer Focus, *Unleashing the new consumer power*, Philip Cullum, October 2010.

should be aware of the impact of certain measures on vulnerable consumer groups and tailor responses accordingly. BIS has asked Citizens Advice and Consumer Focus to 'consider and advise on how they, local and central Government and other organisations could help empower the very vulnerable as consumers'.¹⁰ Their report emphasises the need for consumers in vulnerable positions to be given more bespoke tools to get better choices and better deals in the market place, and for companies and Government to address some of the poor practices and barriers that have been erected.¹¹

17. Not everyone needs to be empowered before markets work well. As long as a sufficient proportion of consumers are empowered to exert influence on providers, the benefits this accrues can be expected to trickle down. A study by the University of East Anglia suggests the size of this proportion will vary according to the nature of the product, supply side conditions, size of the market and other factors.¹²

Behavioural traits

18. The traditional economics approach assumes that consumers will fully search the market using information to make choices that will maximise their welfare. However, behavioural economics argues that consumers often fail to act in their own best interests due to innate behavioural traits. This explains how, even where there is adequate information, consumers can make apparently irrational choices. The literature suggests models in behavioural economics can be divided into two categories:

- Preference-based theories, in which consumers have preferences different from those assumed in mainstream economics; and
- Cognitive-based theories, in which consumers make cognitive errors in taking their decisions (e.g. they misunderstand the laws of probability)¹³

19. The Institute for Government has produced a report, commissioned by the Cabinet Office, exploring the application of behavioural theory to public policy. It developed a checklist of nine of the most robust (non-coercive) influences on behaviour, captured in a simple mnemonic – MINDSPACE.¹⁴ In a market context, these influences can lead to various forms of consumer detriment such as people failing to switch to better offers, moving to worse deals or failing to participate in markets at all. Of course, providers can exploit these traits to their advantage. Sophisticated marketing practices can zone in on these behavioural cues, while sales practices can guide people towards certain choices.

¹⁰ Department for Business, Innovation and Skills and Cabinet Office, *Better Choices: Better Deals, Consumers Powering Growth*, April 2011.

¹¹ Consumer Focus, *Tackling consumer vulnerability: An action plan for empowerment*, 2011.

¹² BERR (now BIS), *Benchmarking the performance of the UK framework supporting consumer empowerment through comparison against relevant international comparator countries*, University of East Anglia, 2009.

¹³ ICF GHK, *Empowered Consumers and Growth: Literature Review – Final Report*, Department for Business, Innovation and Skills, May 2012.

¹⁴ Cabinet Office and Institute for Government, *MINDSPACE: Influencing behaviour through public policy*, 2011.

Figure 1: MINDSPACE

Messenger	We are heavily influenced by who communicates information
Incentives	Our responses to incentives are shaped by predictable mental shortcuts such as strongly avoiding issues
Norms	We are strongly influenced by what others do
Defaults	We 'go with the flow' of pre-set options
Salience	Our attention is drawn to what is novel and seems relevant to us
Priming	Our acts are often influenced by sub-conscious cues
Affect	Our emotional associations can powerfully shape our actions
Commitments	We seek to be consistent with our public promises, and reciprocate acts
Ego	We act in ways that make us feel better about ourselves

20. The logical response to problems of information asymmetry is to provide consumers with more information. However, behavioural economics suggests that people do not make full use of information and may decide to ignore certain information or choice options to make decisions quickly, often relying on simple rules of thumb. This is exacerbated by an overload of choice or information that can confuse or even distract consumers from focusing on the most important aspects, and cause them to make decisions with less reflection, rather than more.¹⁵
21. All this suggests there are inherent limits to how empowered consumers can be. However, a good understanding of what influences behaviour can also assist regulators in both tackling barriers to consumer empowerment and designing interventions which build on people's natural behavioural traits. There are now many studies suggesting how people can be 'nudged' in ways that produce socially desirable outcomes, for example manipulating the choice architecture to frame information in ways that guide people to good decisions. The use of opt-out defaults in occupational pensions is a significant recent example. Therefore, information can help to empower consumers, but there needs to be an appreciation of its limitations, knowledge of how to make best use of it and a commitment to tackle industry practices that exploit consumers.
22. Note that the LSB has commissioned a paper which should set out the key areas of behavioural economics that are relevant to consumers of legal services, illustrate examples of how particular lessons from the theory can be applied in the behaviour of these consumers, and explore whether behavioural theory provides any insights into the behaviour of 'high-street' partnerships supplying legal services.

Features of the market

23. Inherent characteristics of markets can make it more challenging for consumers to make informed choices and thus truly drive competition through their purchasing decisions.

¹⁵ European Commission – DG SANCO, *Commission Staff Working Document on Knowledge-enhancing aspects of consumer empowerment 2012-14 SWD (2012) 235 final*.

Legal services, like other professional services sectors, exhibit many of these features. The possible extent of consumer empowerment may be limited by these conditions.

24. The Panel has described these market features in previous reports and so we shall only rehearse the arguments briefly here. They include that the vast majority of consumers use legal services rarely and so it is hard to learn from experience. The technical nature of the law means it can be difficult for consumers to assess the quality of work, sometimes even after the event – as in the case of will-writing. Indeed, this information deficit, which is made worse by legal jargon, makes it hard for consumers to know whether they can self-help or should use a lawyer, and if the latter, how much legal advice is necessary. Legal services may be distress purchases as they can be needed urgently (e.g. when arrested) or in situations involving high emotion (e.g. obtaining probate). Sometimes, as is true of conveyancing, the legal service is one element of a wider transaction and may not get full attention it ideally merits. Research suggests that consumers make some false assumptions about the technical quality of work, the level of consumer protections and the amount of ‘checking’ by regulators that goes on.
25. In addition, it is often said that consumers only use a lawyer when they have to – for example, buying a home requires conveyancing to be completed or a divorce has to be confirmed by a court. However, it can also be the case that consumers’ choice of lawyer is limited in certain circumstances. Consumers wishing to take a mortgage with a certain lender may be limited to conveyancers listed on its panel, as may also be the case when claiming on a legal expenses insurance policy. Indeed, when legal advice is free there is little incentive to shop around. Furthermore, increasingly consumers are accessing legal advice through commercial intermediaries.
26. There are also well-known ingrained poor market practices that frustrate consumers from becoming active market participants. For example, a lack of price transparency makes it harder to compare offers. Complaint volumes to the Legal Ombudsman on this subject and the Panel’s Tracker Survey – where there was a 10% fall in satisfaction between 2012 and 2011 – suggest this is a significant problem.¹⁶ Of course, regulators can intervene in an effort to correct market problems, for example through information requirements that seek to improve price transparency. However, these initiatives may not gain the co-operation of providers if they run counter to their commercial interests. In these situations, market conditions for empowering consumers may increase in marginal steps over time and within the bounds possible given inherent market features.
27. A consumer investigation for the Labour Party by Ed Mayo, based in part on interviews with leading consumer representatives, found that consumer confidence that the rules protect them is the single most important factor that explains those markets that work for consumers and those that do not – far more so than competition, choice or ease of price and quality comparison.¹⁷ Simply giving consumers more information and expecting them to get on demanding more from businesses is therefore inadequate. As Prashant Vaze, Consumer Focus’s chief economist, asked: “*are we mistakenly pursuing*

¹⁶ Legal Services Consumer Panel, *Consumer Impact Report 2012*, June 2012.

¹⁷ Ed Mayo, *Confidence and Competitiveness: The new consumer policy agenda*, Labour’s Policy Review, Labour Party, September 2012.

*competition over consumer protection? If so, we risk creating a highly liberalised market, where we're telling people they should switch using competition whereas in fact, people are less prone to switching because they don't have that underlying confidence."*¹⁸

28. This view starts with a proposition that consumer confidence is key to people's willingness to take risks and be active participants in markets. Regulators should ensure that the consumer protection framework is fit for purpose before expecting consumers to drive competition. This requires ensuring consumer-led protections such as access to redress, but also undertaking more traditional regulatory approaches that seek to prevent consumer detriment, actively monitor market practices and discipline offenders.

¹⁸ Ibid.

4 The UK consumer

Benchmarking consumer empowerment

1. Policy interest in empowering consumers has led to some attempts to measure current levels of consumer empowerment. This chapter presents evidence from four major studies which consider this in terms of the UK economy overall. This helps to put the legal services market in context and identify measures which legal regulators might use to benchmark levels of consumer empowerment.
2. The four studies are:
 - Consumer Focus's Consumer Conditions Survey, which gathers consumer perceptions of conditions in 45 markets;
 - A study by University of East Anglia for the UK Government that benchmarked the performance of the UK framework supporting consumer empowerment through comparison against relevant international comparator countries;
 - The European Commission's Consumer Empowerment Index, which measures the skills, awareness and engagement of European consumers; and
 - The European Commission's Consumer Conditions Scoreboard, which monitors 50 markets in order to identify those at risk of malfunctioning.
3. This chapter necessarily relies on definitions of consumer empowerment used by the study authors. Given the scope of the LSB's advice request, we give particular attention to the decision-making aspect of consumer empowerment, giving less focus to issues concerning the institutional environment.
4. We acknowledge that the first two of these studies are now a few years old and it is important to consider the impact of economic conditions on consumer perceptions. Despite these caveats, the studies were comprehensive and based on large samples and we consider they serve as useful context for the purposes of this report.

Consumer Focus, Consumer Conditions Survey (2009)

5. An assessment of consumer conditions was made based on consumers' ratings of 45 UK markets on key performance indicators relating to confidence and transparency. Issues relating to complaints, vulnerable consumers and channels of purchase were also covered. 5,862 telephone interviews were conducted across the UK resulting in 22,836 market evaluations, with a minimum of 500 evaluations in each market.
6. The six key performance indicators measured were:
 - Range and choice available
 - Living up to expectations

- Protecting consumer rights
 - Trustworthiness of advertising and marketing
 - The ease of comparing quality
 - The ease of comparing prices
7. An overall Consumer Confidence Index score (CCI) was calculated by taking an average of the mean scores consumers gave to each market (out of 10) on each of the above six key performance indicators. 'Professional services' was one of the 45 markets covered in the survey, however inferences with respect to legal services should be made with caution as the definition covers surveyors and accountants as well as solicitors.
 8. An important finding was that the ranking of markets was affected by whether they were associated more with a "pleasurable" or "painful" purchase or activity; or whether a market is complex or relatively uncomplicated, or whether it is a familiar "everyday", or is a more infrequent "critical event" market. The markets in the lower end of the table also included those affected by the economic downturn or were associated with rising prices or recent adverse publicity. Legal services – often being a painful, complex, infrequent and critical event purchase – is likely to be impacted by these effects.
 9. Across all markets, choice is the key performance indicator which was the most highly rated followed by the degree to which a market lived up to expectations. There was least confidence in indicators relating to advertising and the extent to which people felt their rights as consumers are protected. Key Driver Analysis (KDA) was also carried out to examine which of the six indicators was most closely related to overall satisfaction. This produced a powerful model, which showed that the strongest driver of overall satisfaction with the market was the perception of how well what consumers bought lived up to their expectations – in other words, that they "got what they wanted".
 10. Consumers were asked whether or not, in the past year or two, they had had any cause to complain in any of the markets they were questioned about, and if they had, whether or not they actually made a complaint. The level of complaints was found to vary enormously between markets, although there was a general correlation (also true of professional services) between the overall CCI scores and complaint volumes.
 11. Finally, the Consumer Conditions Survey allowed segmentation of findings according to vulnerable consumers. Respondents self-identified as vulnerable based on a survey question asking if people felt they were at a disadvantage in terms of 'any health problems, of access to shops, or making sense of the information, or your financial circumstances'. Overall, 19% of the total sample felt they were at a disadvantage in at least one of the markets they were asked about. These consumers gave significantly lower scores on all the key performance measures, giving an overall CCI score of 65 compared to 72 for the whole sample. Nearly half of those who felt at a disadvantage had made a complaint (48%). This was significantly higher than the overall proportion of consumers who had made a complaint (30%). Those feeling they are at a disadvantage were relatively more likely to be female, young, have a disability, be from an ethnic minority and/or have a low household income.

12. Table 1 below compares ratings between professional services and the overall picture across the 45 markets surveyed. As expected given factors related to this market described above, professional services compares unfavourably to other markets across all indicators coming 39th equal overall. Of particular note, professional services was the worst ranked market for both ease of comparing price and comparing quality.

Table 1 – Consumer Conditions Survey

Indicator	All markets	Professional services (PS)	PS Ranking
Overall CCI	72	64	39 th =
Choice	78	72	33 rd =
Living up to expectations	77	74	33 rd
Comparing quality	72	60	45 th
Comparing price	72	54	45 th
Protecting consumers' rights	67	61	35 th =
Trust in advertising and marketing	66	59	35 th =
Overall satisfaction with experiences	75	69	35 th =

13. Consumer Focus has since updated this survey evidence based on secondary analysis of EU Market Monitoring survey results. Expectations remain the clearest indication of overall performance of the market. However, among the other indicators trust in consumer protection rules had the highest statistical correlation, distantly followed by choice, ease of comparison and complaints. This result suggests consumers are most likely to have a satisfactory experience of a market if they believe that there are strong consumer protections in the market.¹⁹

University of East Anglia, Benchmarking the performance of the UK framework supporting consumer empowerment through comparison against relevant international comparator countries (2009)

14. This study was commissioned by the Department for Business, Enterprise and Regulatory Reform (now BIS), which at the time had a strategic objective to ensure that the UK consumer protection regime was at the level of the best in the world. In this context, the objective of the report was to benchmark the performance of the UK framework supporting consumer empowerment by comparing it with the frameworks existing in other comparative countries, namely: Australia, Canada, Denmark, Germany, Spain and the United States.

15. The study formulated 14 theoretically-informed indicators (see box 1) for identifying the level of consumer empowerment. They resulted from a review of the economic literature in order to identify the characteristics of consumer engagement in the market which are

¹⁹ Consumer Focus, *Consumer Conditions in the UK 2011: Analysis of EU Market Monitoring Survey Results*, 2012.

likely to result in consumer detriment and/or to militate against consumer empowerment. While the characteristics described by the indicators are not all directly observable, each indicator points to one or more 'symptomatic states' which are observable and which potentially give rise to concern with respect to the level of consumer empowerment.

16. The findings were based on descriptive information relating to the consumer protection regimes collected by desk research supplemented by data collected via a questionnaire completed by policy experts and practitioners, and by secondary survey data.
17. Having grouped the indicators under four themes, the study concluded:
 - Legal framework – the UK is on a par with the best, particularly following implementation of the Consumer Protection Regulations
 - Consumer interface (provision of information, advice and consumer advocacy) – the UK is on a par with the best
 - Redress mechanisms – further progress is needed in order for the UK to be on par with the best
 - Public enforcement – the UK is on a par with the best in respect of sanctions, the use of enforcement resources, and in having powers for agencies to react to market level problems. Coordination is a consistent problem across all seven countries and, while the UK will shortly have robust coordination mechanisms in place, the effectiveness of these measures will require further testing in the future
18. The consumer interface is of greatest relevance to this paper. Here the report noted that full consumer awareness of their rights is unrealistic, and not necessarily desirable, given cognitive and time constraints. Nevertheless, it was observed that many countries were increasing investment in provision of consumer information and advice. In order to be effective, this should be accessible, strongly branded and based on the one-stop-shop principle. Telephone and the internet were the dominant delivery channels, but the study found face-to-face advice may benefit certain disadvantaged groups in particular. Another observation was more emphasis being placed on consumer education aimed at raising consumer market skills. The study suggested this may potentially make an important contribution to the empowerment of consumers, and there was a broad consensus among stakeholders this should be a priority, but noted there was no direct evidence as to the effectiveness of educational initiatives to this end. Factors leading to an assessment that the UK was on a par with the best included the Consumer Direct initiative, the Office of Fair Trading's role to coordinate consumer education and the national coverage of Citizens' Advice Bureaux. Of course, since the publication of the report the first two functions have been brought within the remit of Citizens Advice.

Box 1 – University of East Anglia study 14 indicators

1. An empowered consumer is a well informed consumer.
2. Where a choice set exists, the consumer is empowered if:
 - (i) the choice set includes the 'good' quality outcome;
 - (ii) the options are 'reasonably' far apart in product characteristic space (that is, they are sufficiently different from one another in a market where differentiation is important); and
 - (iii) there is the choice not to engage in a transaction.
3. The consumer is disempowered in the face of a supplier or suppliers who are able to exploit monopoly power.
4. Under certain clearly specified conditions, the 'good' outcome is realised by imposing restrictions on what can be supplied to consumers.
5. Markets that are informationally demanding leave (even rational) consumers exposed to poor quality outcomes.
6. A consumer, or group of consumers, is/are disempowered if they are unable to access the market for a good that is deemed to be essential for participation in society.
7. A consumer, or group of consumers, is/are disempowered if they are unable to access information relevant to the purchase of goods.
8. The level of consumer empowerment in a market may be defined by reference to one or more other markets.
9. For a given market:
 - (i) in the absence of any cognitive or informational constraints, consumers are likely to attain good quality outcomes (the standard economic assumption);
 - (ii) when acting under the constraints of bounded rationality, consumers may attain 'reasonable' outcomes (one behavioural conclusion);
 - (iii) when acting under the constraints of bounded rationality, consumers may attain poor quality outcomes (a second behavioural conclusion).
10. Consumers are susceptible to poor quality outcomes (moral hazard and/or adverse selection) under conditions of asymmetric information.
11. As the complexity of transactions increases and cognitive demands become greater, the gap between realised outcomes and the best possible outcome is likely to increase.
12. The impact of price discrimination on consumer empowerment in a given market is ambiguous.
13. Consumer (dis)empowerment is greater the (higher) lower are transaction costs.
14. For a given market, the level of consumer empowerment is related to the existence and effectiveness of both formal and informal institutions serving consumer interests.

European Commission – DG SANCO, Consumer Empowerment Index (2011)

20. The Consumer Empowerment Index is a composite measure constructed from a set of individual data gathered from the Special Eurobarometer n°342 (a survey of 56,470 respondents on the subject of consumer empowerment undertaken in 2010 across the 27 EU member states plus Iceland and Norway). There are 22 indicators grouped in 3 main dimensions of empowerment: consumer skills, awareness of legislation on consumer rights and consumer engagement, as below.

Table 2 – Structure of the Consumer Empowerment Index

Pillar	Sub-pillar	Indicator
Consumer skills	Basic skills	Recognise cheaper product
		Find the best interest rate
		Calculate the interest on a loan
	Capacity to read logos/labels	Correct interpretation of “grams of fat”
		Find expiring date for a product
		Recognise correctly logos
Awareness of consumer legislation	Unfair commercial practices	Rule for illegal advertisement
		Rule for gifts received by post
		Rule for advertising prices (air tickets)
	Cooling off period after purchase	Rule for money back guarantee
		Rule for the purchase of car insurance
		Rule for door-to-door sales
Guarantee period	Rule for commercial guarantees	
Consumer engagement	Comparing products	Comparisons when purchasing a good
		Actual behaviour in comparing products
	Reading terms and conditions	Reading terms and conditions
	Interest in consumer information	Knowledge of consumer organisations
		Knowledge of programmes related to consumer rights
		Actual behaviour in obtaining info on consumer rights
	Tendency to talk	Tendency to communicate negative experiences
		Tendency to communicate positive experiences
	Detriment and redress	Combination of questions: actual behaviour when experiencing problems for which there is a legitimate cause for complaint

21. The Consumer Empowerment Index identifies Norway as the leading country followed by Finland, the Netherlands and Germany and Denmark. The middle of the ranking is dominated by western countries such as Belgium, France and the UK, with an average score 13% lower than the top five. At the bottom of the Index are some Eastern and Baltic countries like Bulgaria, Lithuania, Poland and Romania. A group of southern countries – Italy, Portugal and Spain – score poorly in the Index.
22. The survey asked respondents to express their opinion on whether, as consumers, they feel confident, knowledgeable and protected. Consumers who feel knowledgeable are also those who show higher basic skills and better capacity to read logos and labels. Consumers who feel confident seem not to read completely and carefully terms and conditions when signing contracts, while they seem to be more interested in information on their rights as compared to non-empowered consumers. Detriment and redress is not significantly related to the perception of protection.
23. The UK ranks 16th out of the 29 countries included in the study, but this masks some significant differences between elements of the Index – see Table 3. For example, UK consumers are more likely to feel confident, protected and knowledgeable than the EU average. Performance in relation to consumer skills is mixed and there is a lack of knowledge about some important consumer rights. Less positively, of the three pillars of consumer empowerment the UK ranks only 21st out of 29 on engagement – these are the indicators most closely related to the choosing and using focus of this paper. Closer analysis of this pillar suggests that UK consumers are more likely to seek information about their rights and tell others about their experiences, but they are less disposed to reading terms and conditions and rank in the middle on other aspects.

Table 3 – Analysis of Consumer Empowerment Eurobarometer survey

Indicator	EU average	UK	UK rank
Subjective feelings			
Feel confident	73%	89%	3=
Feel knowledgeable	63%	82%	3
Feel protected by consumer law	55%	75%	5
Feel confident, protected and knowledgeable	44%	64%	6=
Consumer skills			
Basic numeracy skills (3 correct answers)	45%	46%	12=
Interpreting food labels	58%	75%	5=
Familiarity with 5 logos/labels	2%	3%	11=
Awareness of EU consumer legislation			
Unfair commercial practices (2 correct answers)	33%	28%	24
Unfair commercial practices: air fare rates	56%	54%	19=
Cooling off period in distance selling	62%	70%	7
Cooling off period in doorstep selling	44%	50%	6=
Guarantee periods	39%	27%	23=
Legislation: 7 correct answers	2%	1%	12=

Consumer engagement			
Always compare unit price of goods	21%	19%	14=
Read terms and conditions at least partially	67%	62%	23
Can name at least one consumer organisation	49%	14%	26
Can name at least one public authority	25%	33%	13
Watch or listen to programs about consumers	64%	65%	15
Proactively seek information on consumer rights	12%	17%	4=
Told at least one person about negative experience	50%	59%	6
Told at least one person about positive experience	61%	68%	11
Detriment and redress			
Encountered problem in last twelve months	21%	28%	4=
Inclination to make a complaint (no problem)	71%	78%	8
Complained (problem encountered)	77%	76%	16

European Commission – DG SANCO, Consumer Conditions Survey, 8th edition (2012)

24. The Consumer Scoreboard is the Commission's main tool to monitor the Single Market from a consumer perspective and is published twice yearly. The spring edition tracks the integration of the retail single market and monitors conditions in EU Member States. As this covers similar ground to the Consumer Empowerment Index the results are not considered here. The autumn edition monitors 51 markets in order to identify those at risk of malfunctioning from a consumer point of view. The results are based on telephone interviews with consumers having purchasing experience in each market.

25. The main characteristics of markets are captured through six main components:

- Competition – measures if consumers are satisfied with the choice of providers;
- Comparability – how easy or difficult it is for a consumer to compare goods or services and implicitly includes a price and quality dimension;
- Trust – the extent to which consumers are confident that providers respect the rules and regulations that protect the consumer;
- Live up to what you wanted – gauges satisfaction whilst taking into account whether the market generally lives up to what consumers want;
- Problems and complaints – incorporates occurrence of problems and the severity of the problem as viewed by the proportion of consumers who complain; and
- Switching – evaluated by actual switching behaviour and perceived ease of switching (legal services is not one of the markets covered in this aspect).

26. As with the Consumer Focus survey, legal services are combined with accountancy services so it is difficult to draw firm conclusions. In addition, comparing legal services regimes is problematic given countries have different legal systems, while consumer perceptions are also likely to be affected by local economic conditions or specific events.

27. The UK ranks 6th out of 27 Member States across all markets. Legal and accountancy services ranks 31st out of the 51 markets across the EU (25th in the UK). Table 4 presents data from selected indicators that form the components of the Scoreboard. This suggests that ease of comparison is a significantly worse feature in the legal and accountancy market. This is also where the UK loses out compared to its EU counterparts. Other measures on a comparison between the UK legal sector and the EU markets average are broadly similar. The UK legal sector outperforms EU counterparts on aspects such as choice and trust in suppliers.

Table 4 – EU Consumer Conditions Scoreboard

Indicator	All services markets	Legal sector UK	Legal sector EU
Enough providers to choose from	7.7	8.4	7.8
Ease of comparison	7.0	6.1	6.6
Trust suppliers to respect consumer protection rules	6.7	7.2	6.8
Lived up to what you wanted	7.3	7.5	7.3
Encountered a problem	10%	9%	12%

5 The legal services consumer

1. This chapter uses existing research to indicate levels of consumer empowerment in the legal services market. Building on the frameworks for understanding this concept that we describe in previous chapters, the findings are grouped under five headings:

- Confidence in the market
- Identifying legal needs
- Choosing legal services
- Using legal services
- Complaining about poor service

2. A comprehensive survey and analysis of this data is beyond the scope of this document, but a brief overview is sufficient to allow some broad conclusions. We are conscious that the market – both consumers and suppliers – are diverse and there is a need to avoid over generalisations. The LSB has asked us to focus on individual consumers and we highlight significant demographic differences where relevant.

Confidence in the market

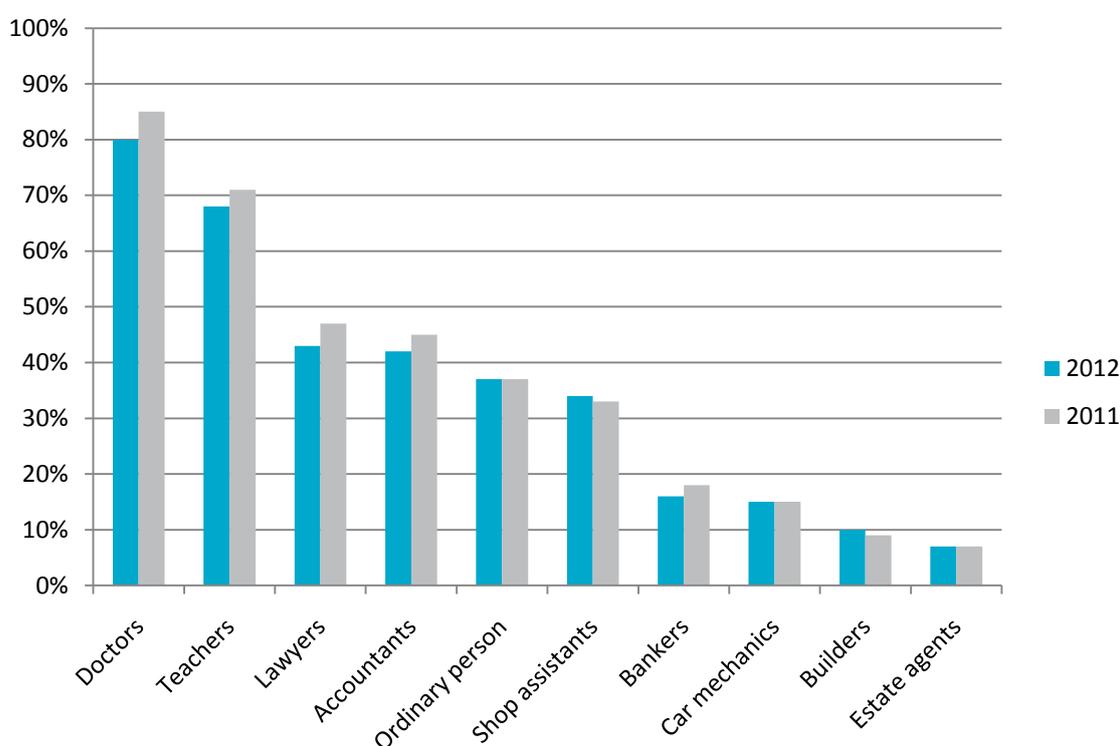
3. In Chapter 2, we highlighted analysis suggesting that consumer confidence that the rules protect them is the single most important factor that explains those markets that work for consumers. Confidence encourages consumers to participate in legal services, for example deciding whether to seek advice when experiencing a legal problem or to write a will. It also encourages people to take risks, for example to choose a different provider to one they have used previously.
4. An analysis of whether a good institutional framework is in place to support consumer confidence is outside the scope of this report. However, in terms of influence on consumer behaviour ‘perception is reality’ so it is valuable to look at consumer views about the providers they deal with and the level of protections in place.

Trust in providers

5. The Panel’s Consumer Impact Report tracks levels of public trust in lawyers. This data highlights that public trust in lawyers (43%) is low compared to some other professions, but user satisfaction with the professionalism of their own lawyer is quite high (79%). There are lower levels of trust among particular social and ethnic groups.
6. Trust exists in a relationship – it has to be earned by lawyers and granted by consumers. Although our survey figures suggest this relationship is healthy on a one-to-one basis most of the time, it also really matters that there is general public

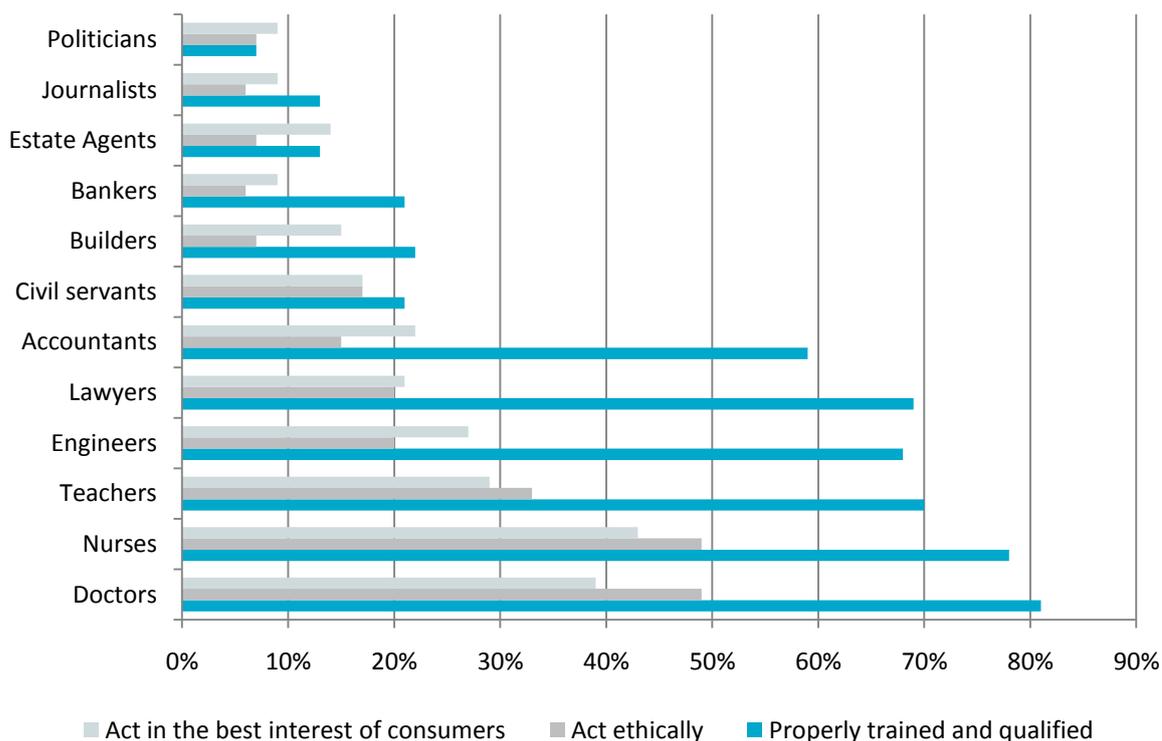
trust in lawyers. Lawyers perform roles that benefit the public at large – contributing to ensuring justice – and the rule of law risks breaking down if they are not trusted. In particular, people may not engage with legal services: not reporting crimes, failing to assert their rights when these are infringed or not bothering to obtain services that would benefit them. The Panel and the LSB have commissioned research to understand the reasons behind low levels of generalised trust in lawyers. Surveys indicate declining levels of trust across the professions and so partly this may reflect wider social trends such as a less deferential public. Factors outside of a lawyer’s control may also be relevant, e.g. in our adversarial system the fact that lawyers are seen to ‘defend the guilty’ or their association with other actors in the justice system.

Chart 1 – Public trust in lawyers



Source: Legal Services Consumer Panel, Consumer Impact Report 2012

7. A consumer perceptions survey by Which? provides further evidence of low levels of trust. In a word association exercise just one in five people said that lawyers act ethically or in the best interests of consumers. More positively, over two-thirds of people consider that lawyers are properly trained and qualified. The perception that lawyers are subject to rigorous entry checks is confirmed by previous research by the Panel and the SRA. The Panel’s research found that consumers assume lawyers’ technical competence is periodically checked – like having a regular MOT – more than is actually the case. Such over-confidence in regulation is not healthy since it may mean consumers do not ask the right questions when choosing between providers.

Chart 2 – Public perceptions of lawyers

Source: Which? survey conducted by Populus, August 2012.

Trust in regulators

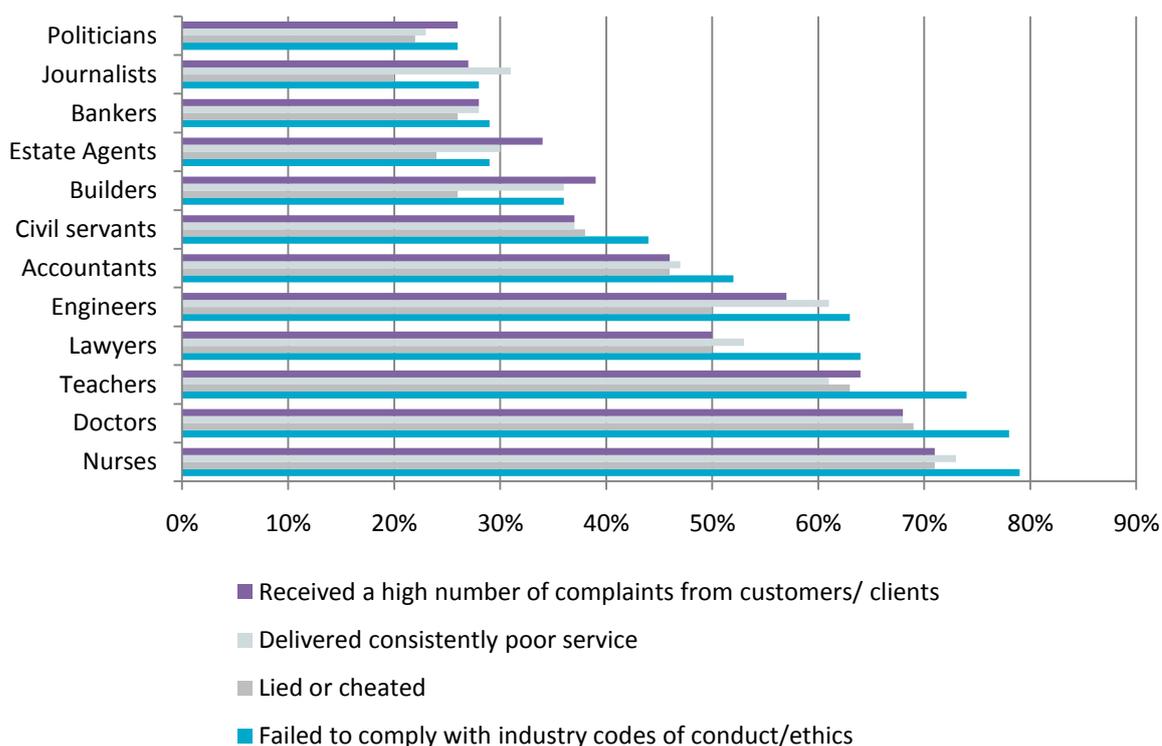
8. There is also perception data from which confidence in regulators can be inferred. The Panel's Consumer Impact Report reveals that 49% of the general public are confident their rights as consumers would be protected when using lawyers. This saw a 4% fall compared to the previous year's figures. Across the population, differences between socio-economic groups and age ranges are narrow but are more pronounced among ethnic groups. This generally mirrors the trust in lawyers findings; the Pakistani population exhibits the lowest levels of confidence (30%).
9. The Populus survey for Which? suggests only 30% of people think that lawyers are well regulated. However, regulators in other professions were also badly rated: doctors were most likely to be considered as being well regulated (42%), while accountants (26%) and bankers (10%) fared even worse than lawyers. It is likely that external factors, such as failures in financial services regulation, have influenced perceptions about regulators in general. There is low awareness of legal services regulators, although research suggests, as with competence issues, that consumers tend to overestimate the degree of 'checking' that goes on both in legal services²⁰ and elsewhere in the economy²¹.
10. Which? also asked consumers how likely it was that someone would be removed from their position (lose their job) in certain situations. These figures may

²⁰ Legal Services Consumer Panel, *Quality in legal services*, 2010.

²¹ Vanilla Research, *Retailer perceptions of weights and measures*, April 2008.

indicate confidence in regulators taking action to protect consumers when providers misbehave. Relatively speaking lawyers compare better in this part of the survey, but the results are still lower than would be hoped – for example, just half of people think that lawyers would lose their position if they lied or cheated. As with other figures, this data suggests a general lack of confidence in regulators among consumers as a whole.

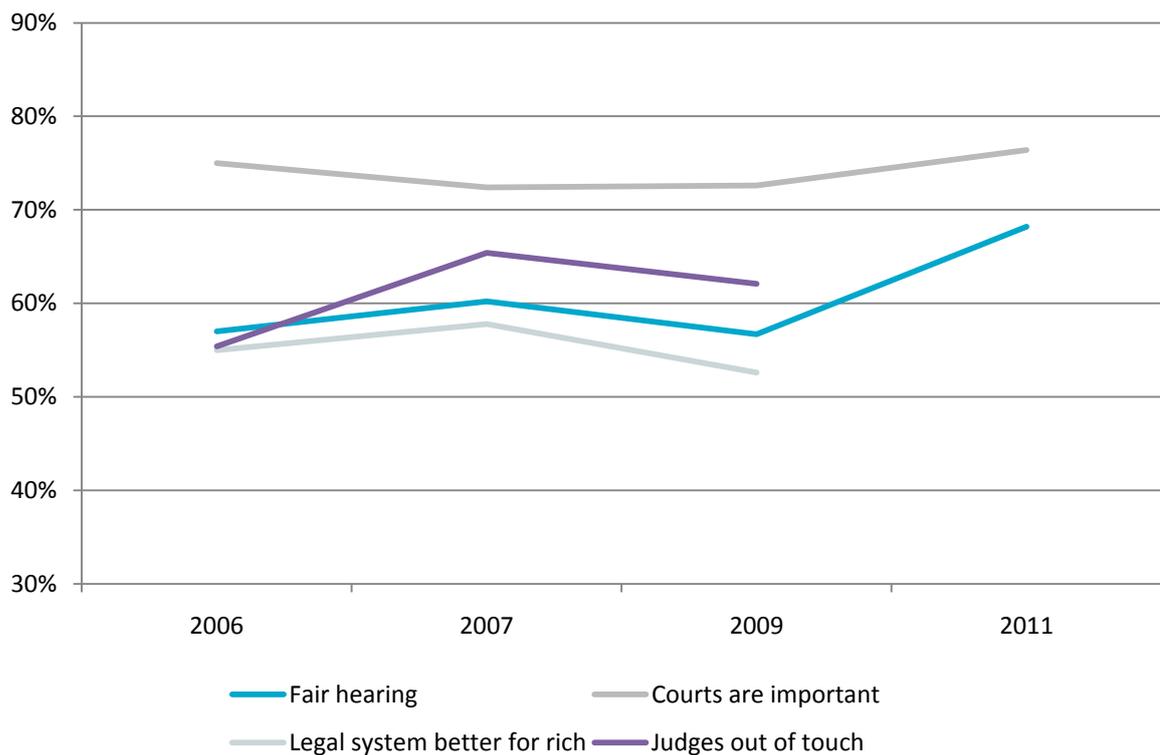
Chart 3 – Circumstances when someone would ‘lose their position’



Source: Which? survey conducted by Populus, August 2012.

11. Research by the Legal Services Research Commission (LSRC)²² provides information on public confidence in the justice system more widely. A good majority of people agree that the courts are an important way for ordinary people to enforce their rights and that they could have a fair hearing in court. Less positively, a similar majority of people consider that judges are out of touch with society. Generally, the measures indicate improving levels of confidence in the justice system over time. However, there is some evidence that people who experience more problems have less favourable views of the justice system. Moreover, in previous waves of the survey the majority of people agreed that the justice system achieved more favourable outcomes for the rich than the poor.

²² Legal Services Research Centre, Civil and Social Justice Surveys 2007-2011

Chart 4 – Public attitudes towards the justice system

Source: Legal Services Research Centre, Civil and Social Justice Surveys 2007-2011

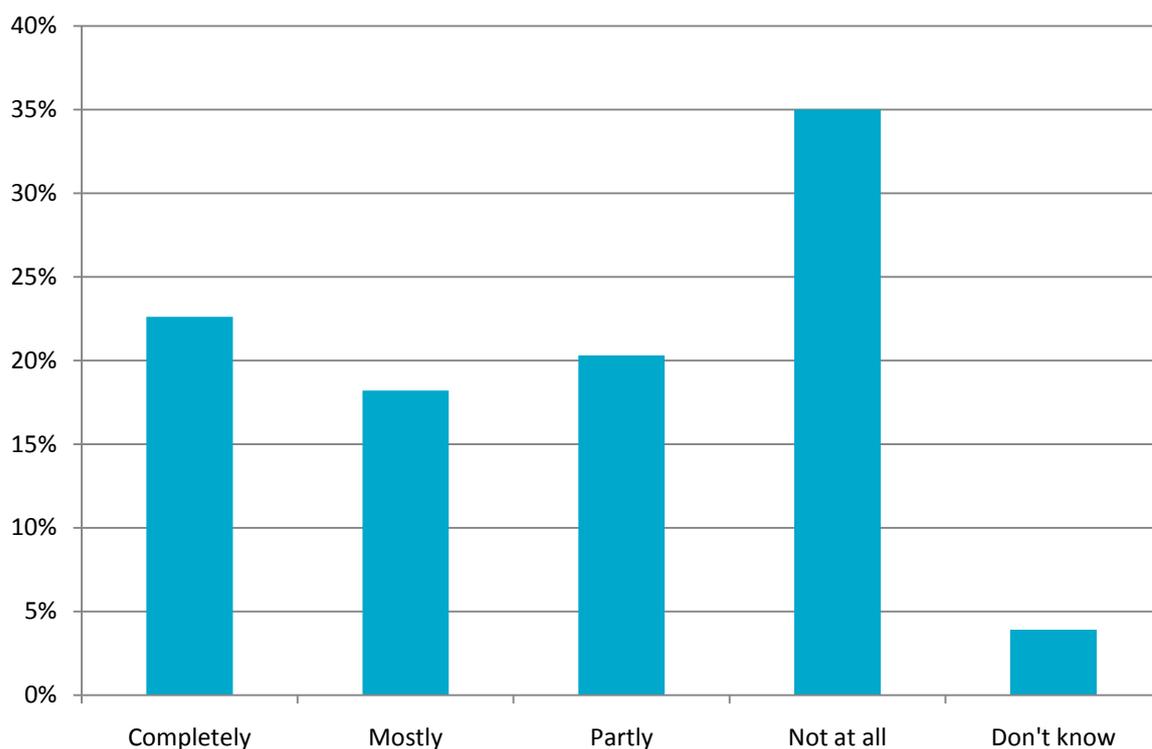
Identifying legal needs

12. Law-related issues arise from time to time in everyone's lives. These might involve legal processes associated with major events like moving home or specific problems such as a dispute with a neighbour. Not all of these things will require people to obtain legal advice, but the chances of getting a successful outcome – whether through preventing or resolving issues – are surely increased if people recognise what their legal needs are and employ strategies to deal with them effectively.
13. Law for Life has commissioned an evaluation framework for public legal education (PLE)²³. It defines a legally capable individual as someone who has the knowledge, skills and attitudes to deal effectively with law-related issues. The framework uses four domains based on what a legally capable person should be expected to know and be able to do when faced with a law-related issue in their everyday life:
 - **Recognising and framing the legal dimensions of issues and situations** – through PLE, people are able to apply the concepts of rights and obligations in order to recognise and frame the legal dimensions of issues and situations. They build up the confidence and skills to communicate with individuals and

²³ University of Bristol Personal Finance Research Centre and Law for Life, *Public Legal Education Evaluation Framework*, November 2011.

organisations about issues. PLE can also help to dispel any misapprehensions that people have about dealing with law-related issues.

- **Finding out more about the legal dimensions of issues and situations** – through PLE, people learn about how to deal with the legal dimensions of issues and situations. This includes how to find out about the rights and obligations that may apply to an issue; the steps, processes and structures required to deal with it; and learning about the obstacles, risks and consequences they might face. They are also able to assess when they might benefit from expert advice.
 - **Dealing with law-related issues and situations** – through PLE, people learn about different ways of dealing with law-related issues, including how to prevent them getting worse. They also develop the skills and confidence to plan and implement an appropriate course of action to deal with issues, which includes being able to apply information or advice in an effective way.
 - **Engaging and influencing** – through PLE, people learn about ways in which they can act collectively to legitimately engage with and influence the world in which they live. This action may impact upon themselves but also upon other people either locally, nationally or internationally. They are able to apply what they have learned to a range of situations and issues.
14. The framework discusses measurement and monitoring of legal capability among the population as a whole. It is evident that legally capable individuals have characteristics – personal skills such as communication, and personal qualities such as perseverance – that go beyond the reach of legal regulators. In the absence of data, the research team proposes a new large-scale survey to measure legal capability as has happened in financial services, although it acknowledges this is a costly option.
15. The Civil and Social Justice Survey Panel (CSJSP) measures the ability of people to protect their legal rights and hold others to their legal responsibilities in 15 civil justice problem categories. A key finding is that while 33% of respondents reported having experienced a civil justice problem, people characterised fewer than 10% of these as 'legal'. Instead, the most common response (43%) was to characterise problems as simply 'bad luck' or 'part of life'. There are differences between areas of law, for example 80% of personal injury problems are classified as legal but only a third of rented housing problems are. Where people characterise problems as legal, they are more likely to see lawyers as a source of help. In light of our discussion of how framing information influences behaviour, this finding contains learning for those seeking to raise consumer knowledge of legal issues.
16. Over one third of respondents had no understanding of their rights at the time they first experienced problems, with a further one fifth having only a partial understanding. When people did understand their rights, this was most frequently attributed to formal advice. This finding should be treated with care since, as demonstrated by EU surveys, people may have false confidence in the extent to which they know their rights.

Chart 5 – Extent of understanding of rights when problem is experienced

Source: Civil and Social Justice Panel Survey 2011

17. Respondents took no action to resolve 10% of problems; this has stayed constant over research waves. Inaction is common in relation to some serious problem types, in particular clinical negligence, care issues, neighbour and employment problems. Inaction is also more common among some population groups including those on lower incomes and BME people. Just under 30% of problems saw people obtain formal advice, while in a further 15% of problems people got more formal help. People dealt with problems entirely on their own in 46% of occasions. When people are asked why they do not take action, the reasons often relate to a sense of powerlessness, lack of knowledge or a belief that their efforts would be futile. These factors each go to the heart of a lack of empowerment and confidence.
18. The LSB's major consumer survey by BDRC found similar findings: 36% of those who did nothing when they had a legal need said this was because they felt nothing could be done – by far the most significant factor.²⁴ In general the reasons for inaction were related primarily to the legal need faced and less about the characteristics of the individual, although social groups DE and those on lower income were more likely to do nothing. Complexity of the need and previous experience of the legal need also had a bearing. The more personal legal needs such as divorce, probate and issues surrounding home life and welfare benefits were the most likely to have resulted in some sort of action.

²⁴ BDRC, *Legal Services Benchmarking*, Legal Services Board, June 2012.

Role of online information sources

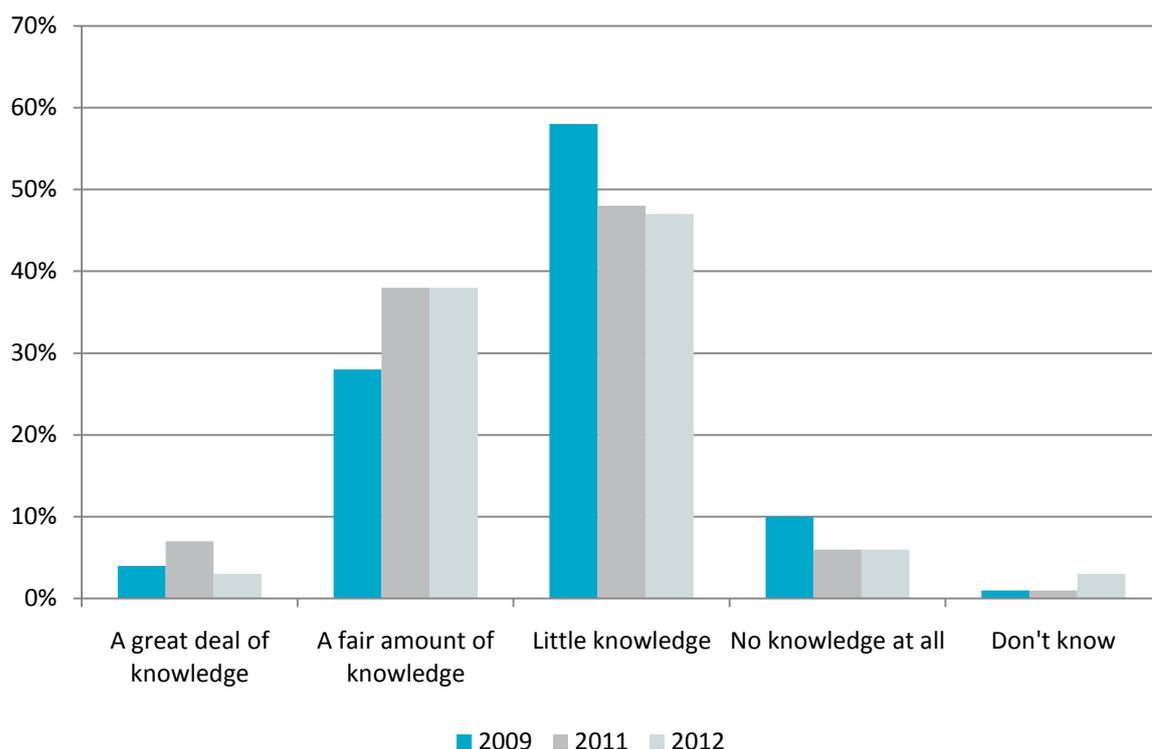
19. In the CSJSP, use of the Internet for advice seeking was observed to have increased to 19%, from 16% in the 2006-9 wave of the survey, and just 4% in the 2001 wave. Qualitative research commissioned by the LSB suggests that relatively few consumers rely on online sources for information, but those who did felt there was actually too much information and choice. There was a common view that the law is very precise and the risks involved in trying to build up your own knowledge based on the *wild west* of the internet are too great. However, there was much enthusiasm for a reliable, independent and trustworthy one-stop online resource – akin to NHS Direct – providing a basic level of information, on which consumers could make more confident decisions and then have more informed conversations with legal advisors. Reflecting the earlier definition of legal capability, people envisaged using such a resource to help them resolve problems they faced, rather than to explore what legal problems they might face in future.
20. The internet is a cost-effective means of delivering information rapidly to a wide audience, but legal regulators should be aware of digital inclusion challenges. Ofcom data reveals that 10 million people have never used the internet; 4 million of these are among the most disadvantaged, yet who will be most in need of social welfare law advice. While 81% of the population has ever used the internet, only 56% of those on low incomes have done so. Similarly, only 44% of people aged 65 or over have ever gone online.²⁵ A poll commissioned by the Legal Action Group found that people in social group DE are the least likely to use internet and telephone advice services.²⁶
21. Although online services may be cheaper to deliver, they will not always be the best means of helping people to fix their legal needs. Legal problems can be complex or emotionally sensitive, and some people, especially those in vulnerable positions, may need more active guidance. Advisors may also need to see documentation in order to provide effective advice. Research also shows that many people prefer to access legal services in a face-to-face environment. Digital technologies have their place and we encourage their development, but they should be seen as a supplement to traditional advice formats, not a substitute for them.

Knowledge of lawyers

22. The extent of people's knowledge about what lawyers do can be used as an indicator of consumer empowerment, although again over-confidence in reporting is a factor. The Panel's Consumer Impact Report tracks this – the data suggests that knowledge levels have increased somewhat over the period 2009-2012.

²⁵ Ofcom, *Internet use and attitudes bulletin 2012*.

²⁶ Legal Action Group, *Social welfare law: what the public wants from civil legal aid*, 2012.

Chart 6 – Knowledge of what lawyers do

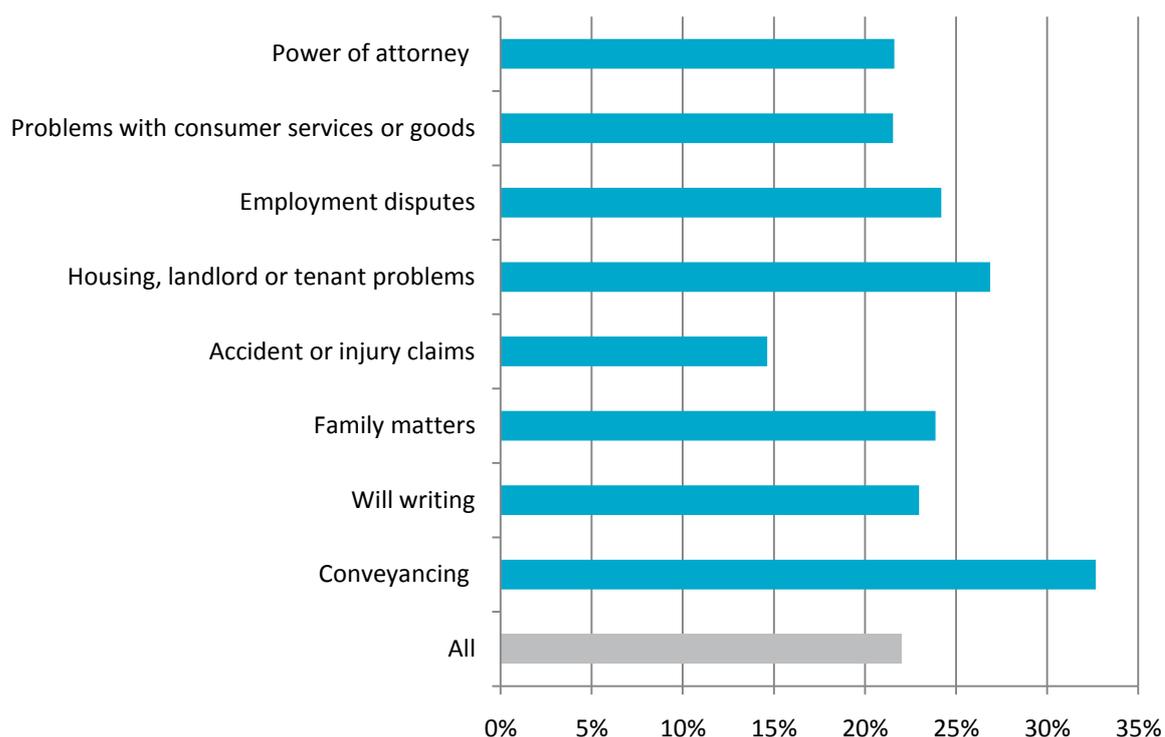
Source: Legal Services Consumer Panel, *Consumer Impact Report* (2011, 2012 figures); Legal Services Board omnibus survey (2009 figures)

Choosing legal services

23. Consumers exercising choice in the market is a key element of empowerment as it signals how demanding they are of providers. As highlighted previously, preconditions for this are a diversity of suppliers and the extent to which consumers have freedom of choice (this is limited in some areas of law). Within these limitations, this section considers evidence of consumer approaches to selecting providers as a means of gauging how far they are driving competition.

Shopping around

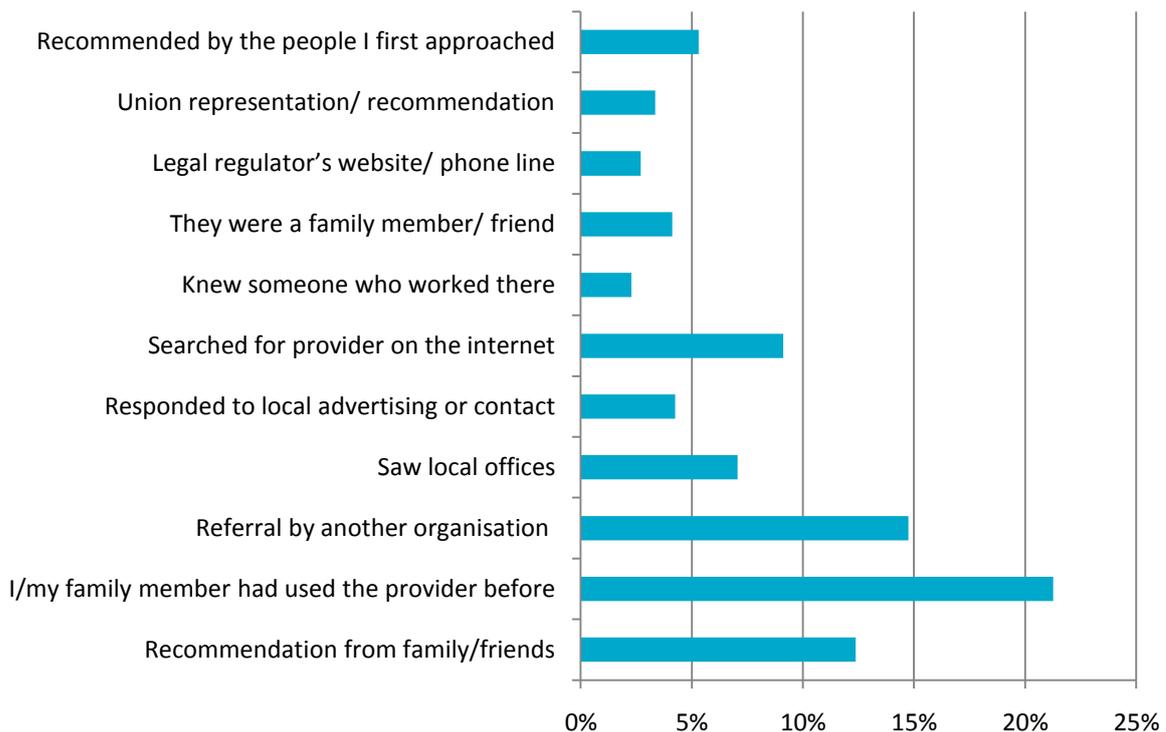
24. The Panel's Consumer Impact Report suggests that only 22% of consumers shop around for legal services, although this is up from 19% in 2011. There is some variation by area of law: around one-third of consumers shop around for conveyancing services whereas less than 15% do so for accident and injury claims. Of those who do shop around, 57% say they find it easy to compare providers – a 6% rise since 2011. We recall here that legal and accountancy services were rated the worst market for ease of comparison in Consumer Focus's Consumer Conditions Survey.

Chart 7 – Shopping around by area of law

Source: Legal Services Consumer Panel, Tracker Survey 2012

25. Further evidence that consumers do not actively shop around and compare providers is the extent to which people return to the provider they used previously or rely on a recommendation either from someone they know or a commercial intermediary. Closer analysis shows differences between areas of law and among demographic groups. For instance, whereas 15% of all consumers are referred by a commercial intermediary, this is 33% for accident and injury claims and 31% in conveyancing transactions. Similarly, while 21% of consumers overall use the provider they used before, this was true in 39% of power of attorney cases and 28% of wills. In terms of demographic groups, the over 55 age group are more likely to go back to previous providers while social group ABC1 are more likely to shop around than the C2DE group.

Chart 8 – Selection methods

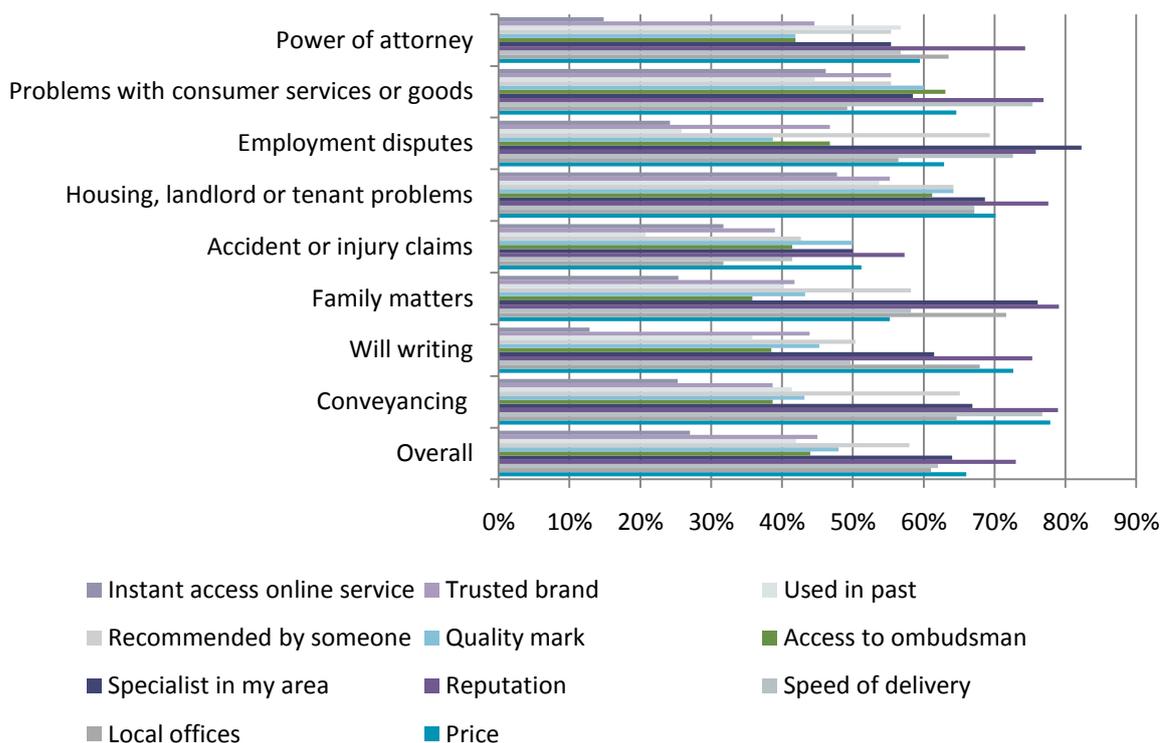


Source: Legal Services Consumer Panel, Tracker Survey 2012

Choice factors

26. Qualitative research commissioned by the Panel found that consumers assume little difference in quality standards based on their perception that the transactional areas of law in particular are relatively black and white, and that since all lawyers work from the same legal framework and have all passed qualifications, the quality of advice will not vary significantly across firms.²⁷ However, we also know from our Tracker Survey that reputation is the most important factor influencing choice of provider with specialism being another highly prized feature. This appears contradictory – everyone is the same but reputation matters – but it may help explain why few people bother to shop around.
27. While price is an important choice factor (66%) it rates somewhat lower than might be expected. Price is more important in transactional areas of law like conveyancing (78%), but far less so in family matters (55%) where factors such as local offices (72%) come more into play. Therefore, the emotional context of law means consumers are less price sensitive, attracted to the personal touch and more likely to rely on existing providers or recommendations and not search the market for unknown providers unless they have to.

²⁷Vanilla Research, *Quality in legal services*, Legal Services Consumer Panel, 2010.

Chart 9 – Choice factors and areas of law

Source: Legal Services Consumer Panel, Tracker Survey 2012

Choice tools

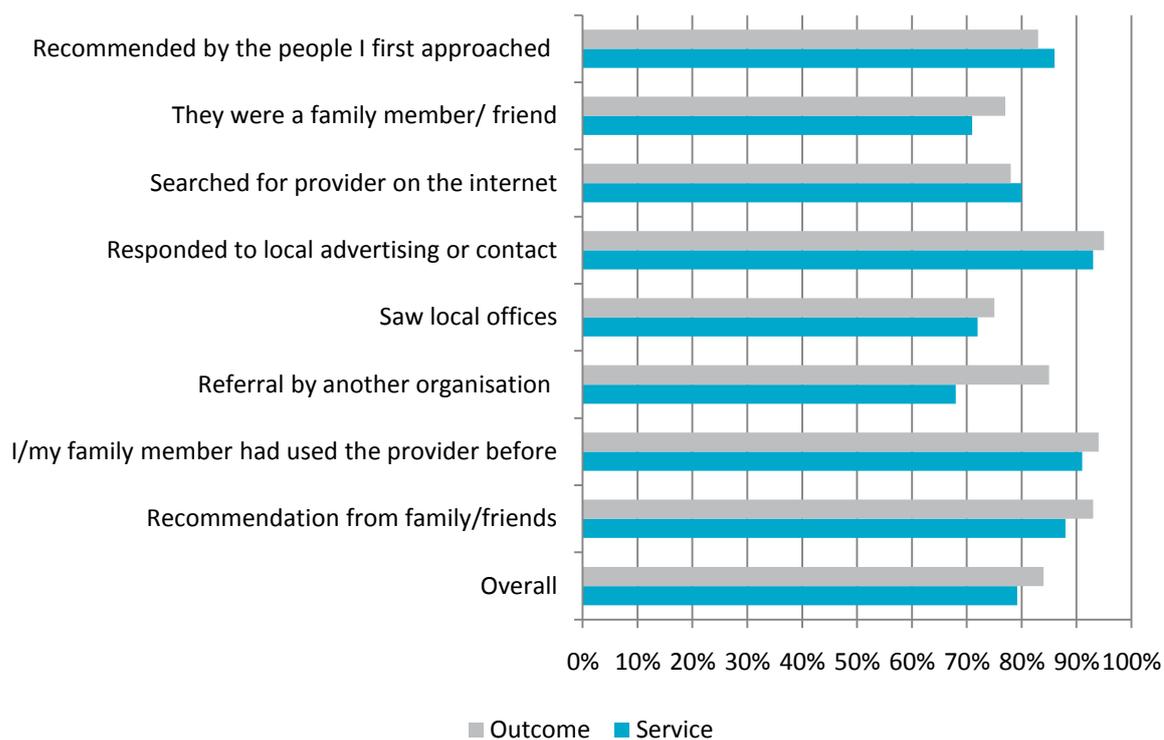
28. Another explanation why consumers do not shop around is a lack of information or tools that would help them to distinguish between providers, on either price or quality grounds. Law firms have traditionally not advertised their services heavily; indeed until relatively recently they were banned from doing so. Some restrictions remain, such as barristers marketing ‘success rates’. In addition, ‘choice tools’ – such as complaints data, quality marks and comparison websites – are not well established in the market. Our Tracker Survey suggests that only 1% of people use comparison websites to choose providers and 4% an accreditation scheme. The Panel has previously considered each of these tools at some length.²⁸ In respect of comparison websites, we have argued that market changes – the ABS reforms, technological advances and rising consumer power – are likely to erode barriers currently holding back their growth. In addition, we note from the BDRC survey that 17% of consumers who sought advice found their provider following an internet search – the second most popular search method. If the internet is a growing search tool, greater use of internet comparison tools would seem a logical next step.
29. One obvious reason why consumers do not shop around is that consumers do not always pay for legal services; our data shows only 56% of services are privately

²⁸ Legal Services Consumer Panel reports: *Voluntary Quality Schemes (2011)*, *Comparison websites: Consultation response to Legal Ombudsman on publishing case decisions (December 2010)*.

paid for. Other funding methods include legal aid, insurance, no win no fee arrangements and through trade unions or employers. Surprisingly, privately-paying consumers exhibit only slightly more shopping around behaviour than those who are legally aided or insured. As the scope of legal aid narrows and the litigation funding regime changes, more consumers may have a greater incentive to compare offers.

30. But does it matter that consumers are not shopping around? Our data suggests that satisfaction with outcome and service is the same whether consumers shop around or not. Moreover, people who use the same provider or had a personal recommendation are also largely satisfied. However, while such personal experience methods seem to be reliable, consumers making choices based on referrals from commercial intermediaries or walking past a local office – passive search methods – are less satisfied. Moreover, satisfaction levels may reflect low expectations people have of the service they received whereas shopping around should spur providers to improve service levels. Shopping around also exerts downward pressure on price making legal services more affordable.

Chart 10 – Satisfaction with outcome and service by choice method

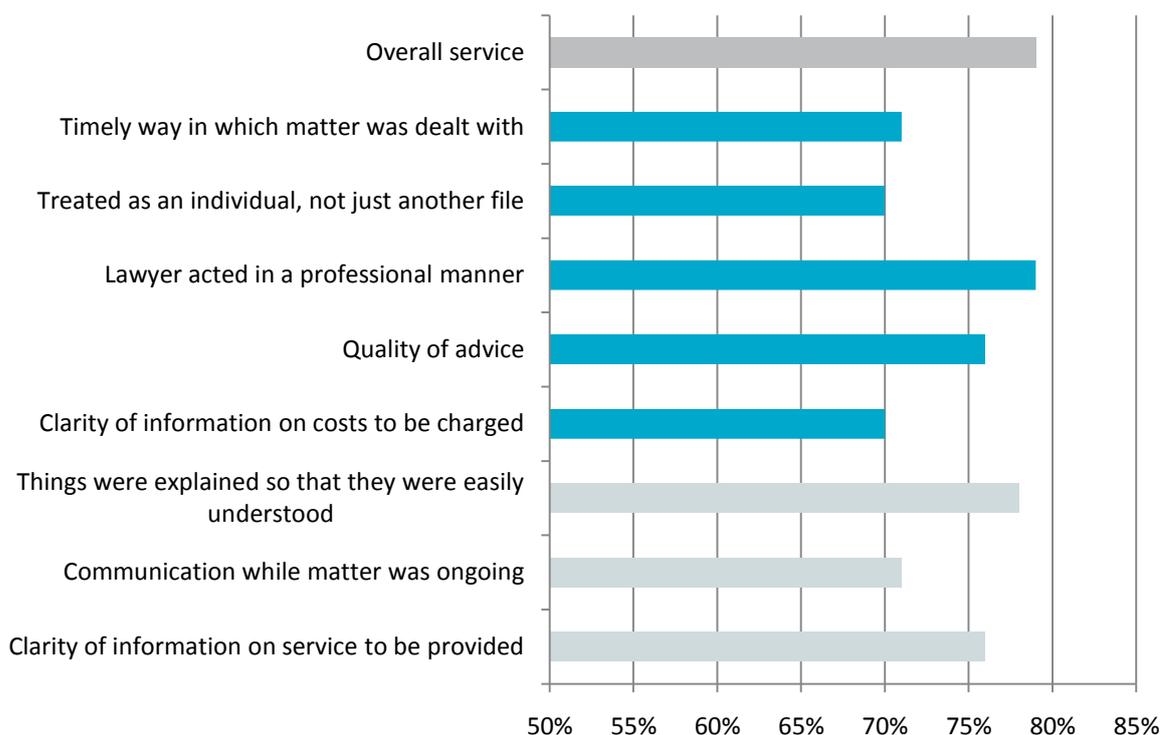


Source: Legal Services Consumer Panel, Tracker Survey 2012

Using legal services

31. An empowered consumer in the context of using legal services is one who actively participates in and influences decisions about their case. Of the five sections in this chapter using legal services is the least researched, but there are some proxies that we can use to make some inferences.
32. One such proxy is consumer satisfaction and complaints statistics in relation to communication by providers at the time of instruction and during the matter, as consumers cannot actively participate if they are not given information at the outset on which to make choices, consulted on key decisions or kept informed of progress. This assumes greater importance in the context of low general public understanding of legal services issues or of what lawyers do. Our Tracker Survey suggests the large majority of consumers are satisfied with the communication aspects of the service they receive, although ongoing communication is one of the three weaker aspects (along with timeliness and clarity over costs).
33. The Legal Ombudsman's complaints statistics back this up: almost 27% of its caseload relates to cases alleging a failure to advise clients or to keep them informed. Its thematic report on costs suggests that communication failures are the underlying cause of a large proportion of complaints about this issue.²⁹

Chart 11 – Satisfaction with communication



Source: Legal Services Consumer Panel, Tracker Survey 2012

²⁹ Legal Ombudsman, *An ombudsman's view of good costs service*, 2011.

34. Qualitative research consistently highlights people's frustration with poor communication. For example, in research by Opinion Leader commissioned by the LSB on desired consumer outcomes, many participants recounted experiences in which they were dissatisfied with the lack of predictability in their interactions with legal service providers. One of the underlying causes of this was insufficient explanation of the legal process, including expected outcomes and timelines at the time of engagement. There were instances where participants were half-way through a case before it became apparent that the chance of achieving their desired resolution was very much lower than they had anticipated. Given the time and costs involved in using legal services, there was much indignation as to why their chance of success had not been clearly outlined before they decided to pursue a legal solution. In relation to ongoing communication, participants often reported feeling uninformed about their case and that the onus was with them to continually chase their lawyer for progress updates.³⁰
35. The same research highlighted issues with legal jargon. Participants frequently commented on the use of jargon and technical language by lawyers, who were considered to be poor communicators. Many recalled feeling that their provider had not talked 'on my level' and that written and verbal communications were unnecessarily technical and archaic. Plain English communication was a clear priority for improving participants' interactions with legal service providers.

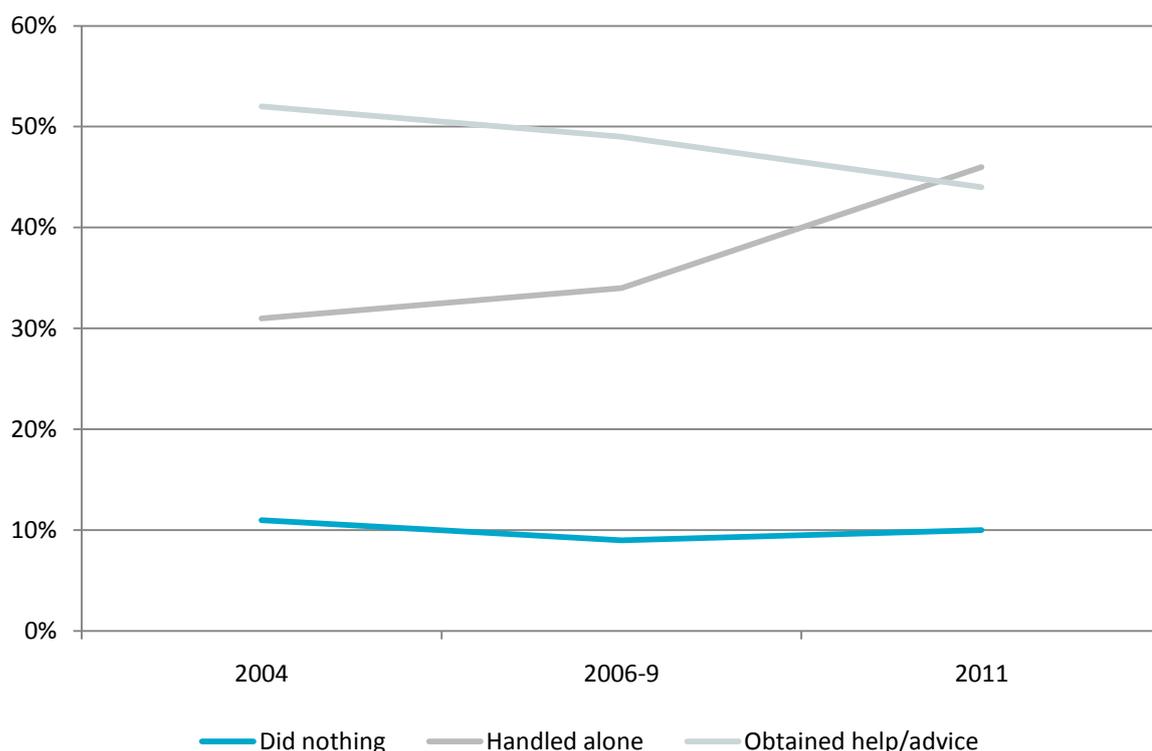
Handling matters alone

36. Although the 2011 CSJSP survey is not directly comparable to previous waves, there appears to be a trend towards people using formal advice less and handling problems alone more. It is possible to draw different conclusions from this in terms of consumer empowerment. On the one hand, it would be good news if better information provision and tools were enabling people to resolve issues themselves. For example, the LSB's market evaluation highlights a shift away from use of solicitors in probate applications, which may be partly explained by simplification of this process.³¹ Alternatively, people might not be obtaining advice due to affordability reasons, for example the increase in self-represented litigants is often attributed to legal aid cuts. The courts have been criticised as one example of a system designed for lawyers, and which as a consequence is too complex and obscure for those representing themselves.³²

³⁰ Opinion Leader Research, *Developing measures of consumer outcomes for legal services*, Legal Services Board, March 2011.

³¹ Legal Services Board, *Regulatory Information Review*, 2012.

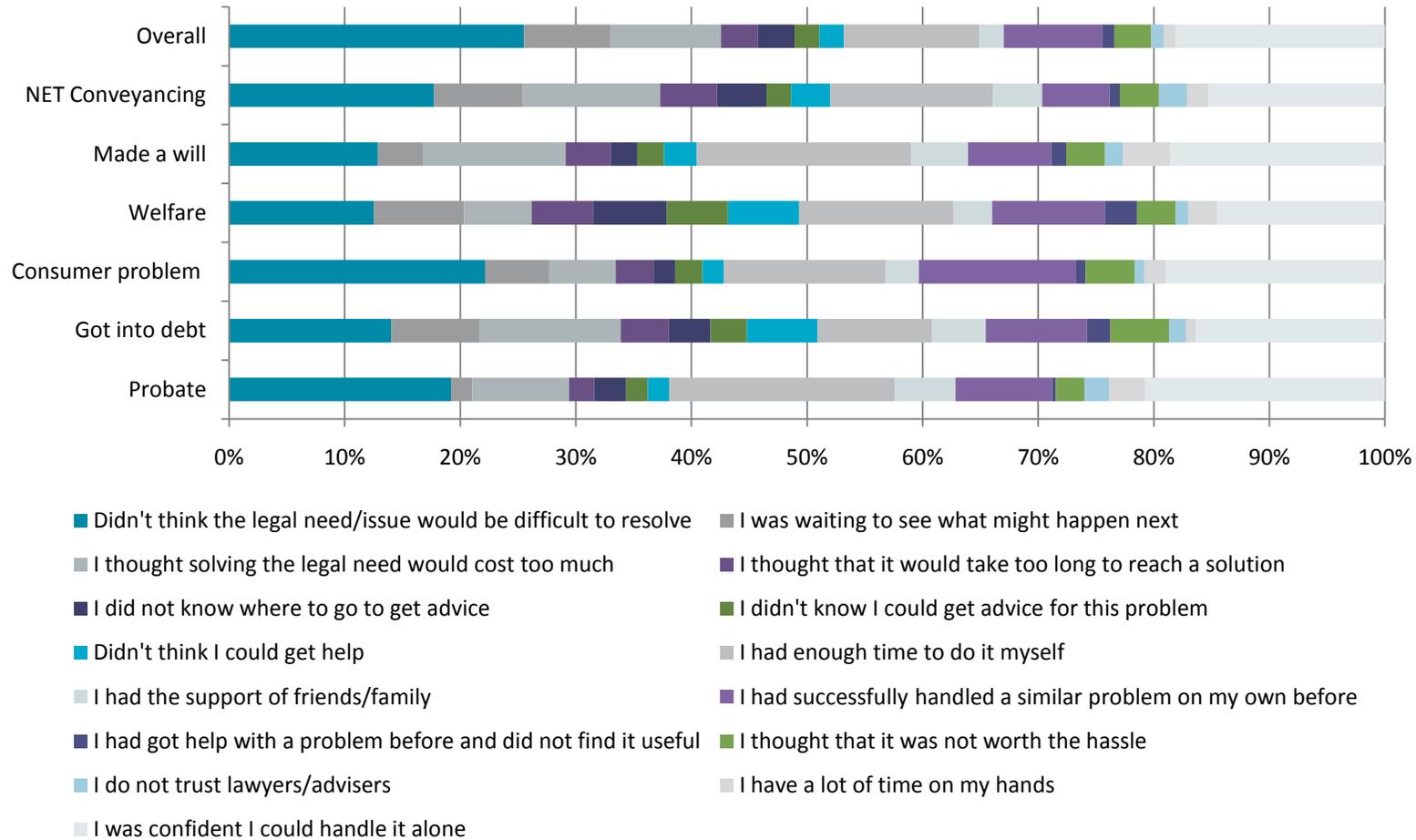
³² Civil Justice Council, *Access to Justice for Litigants in Person (or self-represented litigants)*, November 2011.

Chart 12 – Broad response to problems

Source: Civil and Social Justice Panel Survey 2011 (and previous waves)

37. The BDRG research provides additional information on the areas of law where consumers are handling matters alone, their reasons for doing so and their experience. This shows much variation by area of law, for example 50% of consumer problems were handled alone compared to only 9% of house buying and selling. Overall the proportion of legal needs handled alone is higher than might be expected – and has overtaken the number of people seeking advice. The main reasons involve people’s confidence in their own ability to sort out the problem. In nearly a quarter of legal needs that were handled alone, the respondent believed that the legal need would not be difficult to resolve, a further 17% were confident that they could handle it alone and 8% claimed they had previous experience of the legal need.
38. There were more negative assessments of services in particular areas of law. While 9% of people handled their legal need alone across all services due to cost reasons, this was true in around a quarter of debt, wills and conveyancing cases. Similarly, lack of knowledge about the possibility of getting advice or where to go to obtain it was a significant factor explaining why many debt and welfare legal needs are handled alone.
39. Half of those handling alone found the process easy (51%), with only 18% finding it difficult. Respondents also reported that the experience of handling alone was frequently easier than they had expected. In addition, a majority would do it again (69%) and recommend others to handle a similar legal need alone. This is a complex issue that is assuming greater importance and would benefit from further research.

Chart 13 – Reason for handling alone

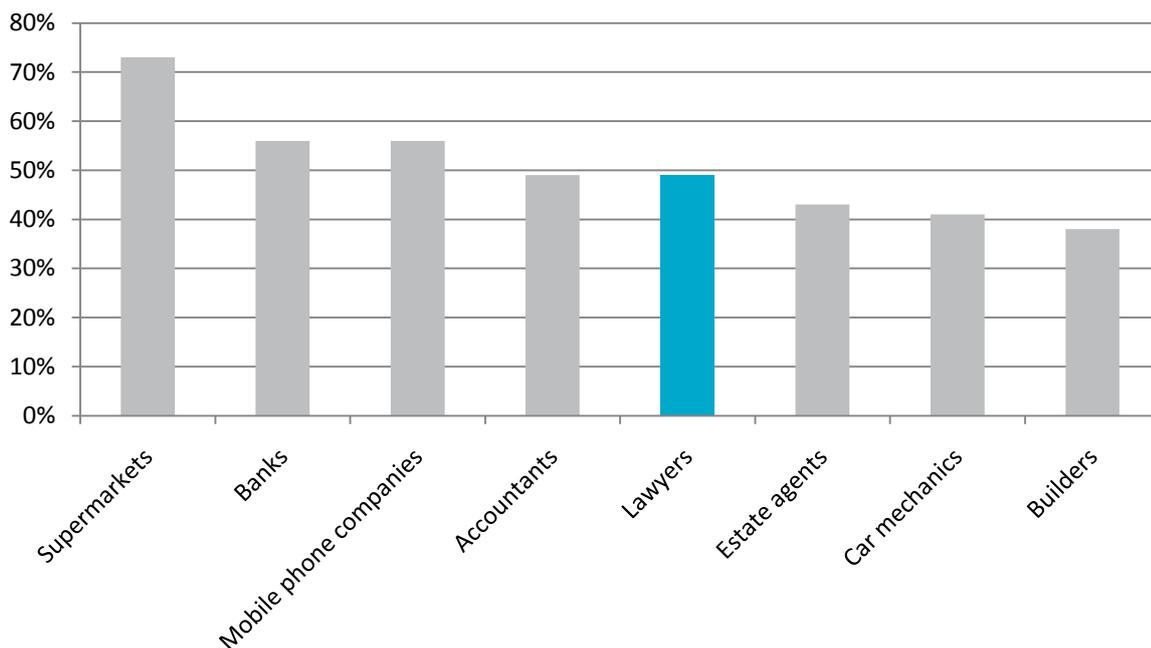


Source: BDRC, Legal Services Benchmarking, Legal Services Board, June 2012. Data based on all mentions including main reason.

Complaining about poor service

40. The extent to which consumers have the confidence to complain about poor service, their ability to do so successfully and the actions of providers in handling complaints are all elements which contribute to consumer empowerment.
41. The Panel's Tracker Survey shows 49% of people would be confident making a complaint to a lawyer. Further analysis shows that confidence to complain increases with age in all sectors except mobile phones where the opposite is true – this suggests that familiarity with goods and services is likely to affect confidence. While 51% of ABC1s say they are confident complaining about lawyers, this is the case for 45% of C2DEs – the difference between social groups is not as great as in other parts of our survey. The data also reveals differing confidence levels among ethnic groups, along broadly similar lines to the trust question. So confidence is 52% in the White British group and 45% in the BME group; within the BME group, just 32% of Pakistani people are confident.

Chart 14 – Public confidence in complaining

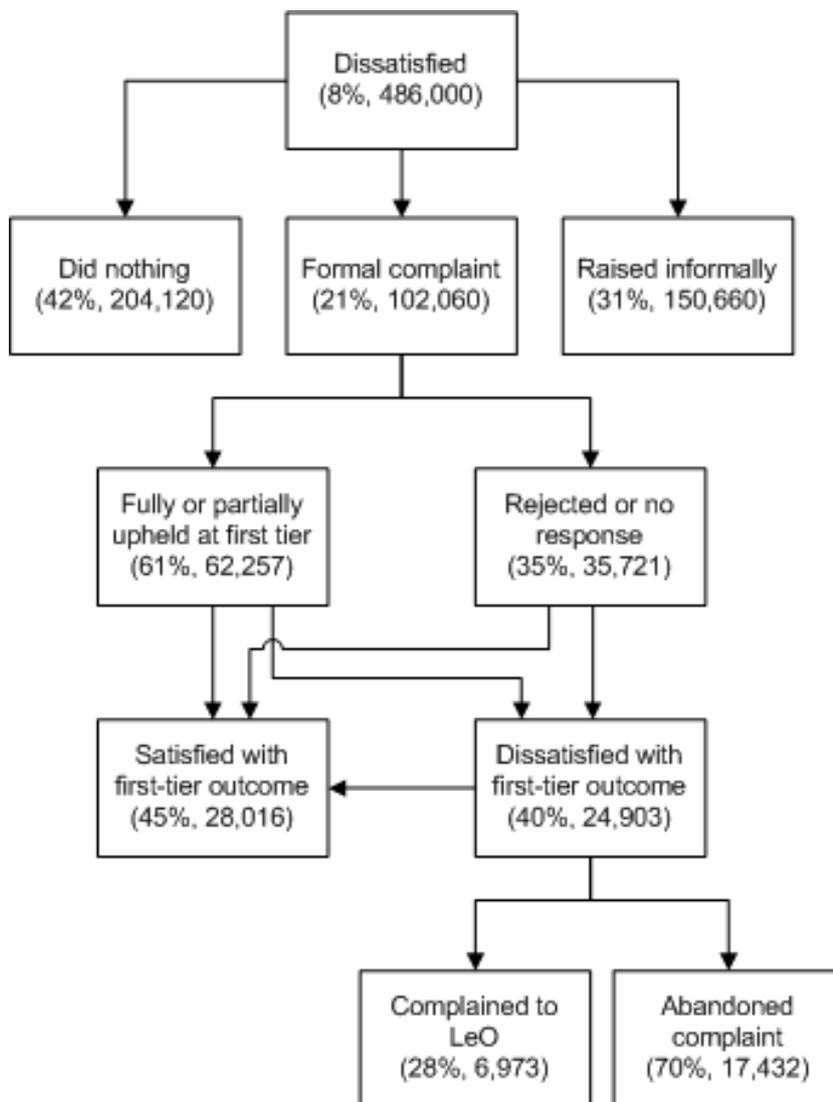


Source: Legal Services Consumer Panel, Tracker Survey 2012

42. One indicator of consumer empowerment in relation to complaints is the proportion of dissatisfied consumers who complain to their provider. The Panel's Tracker Survey shows that 42% of people do nothing when they are dissatisfied, 31% raised concerns informally and 21% made a formal complaint. Extrapolating this data to population statistics, we have estimated there are nearly 500,000 dissatisfied consumers per year, of whom just 28,000 formally complain and are satisfied with the outcome. Of those who are dissatisfied with the outcome, 70% abandon their complaint at this stage rather than pursue it further by complaining to the Legal Ombudsman. Our joint

research with the Legal Ombudsman suggests that raising informal concerns instead of making a formal complaint is a particular feature of the legal services market, partly reflecting people's concern about the possible consequences for their case if they took this step. In relation to 'abandoned complaints' the research indicates that exhaustion and relief that the legal matter itself has been resolved leads many to decide not to carry on with their complaint.

Figure 1 – Consumers' journey through the complaints system



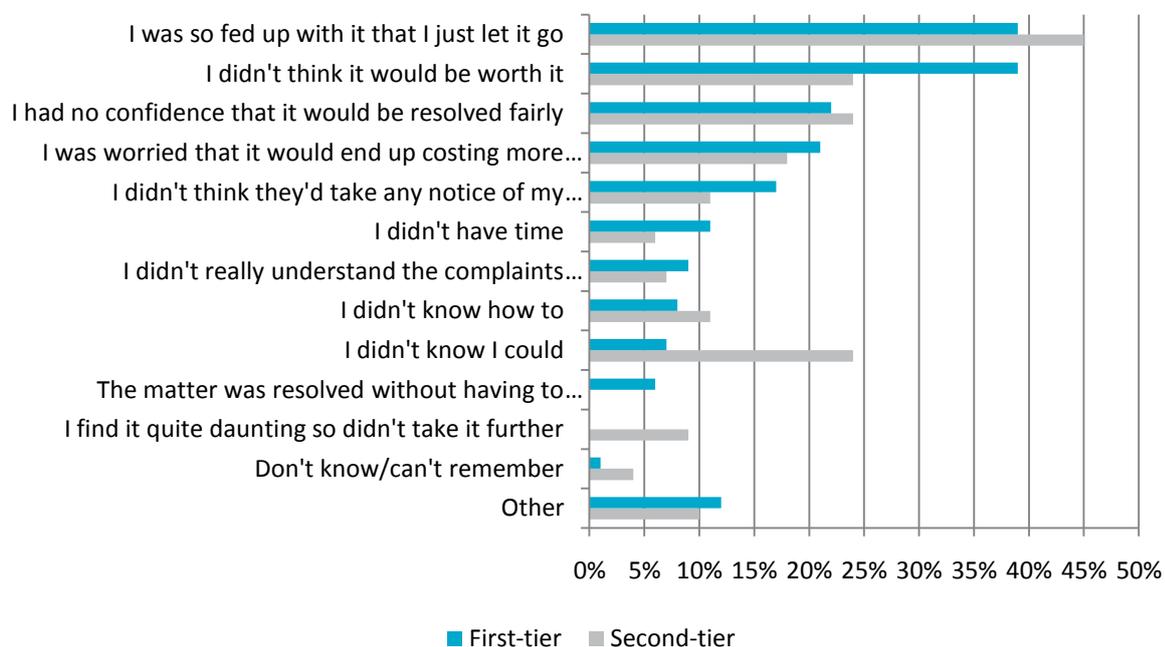
Source: Legal Services Consumer Panel, Tracker Survey 2012 (first two rows); YouGov report on first-tier complaints handling for the Legal Services Board 2011 (other rows)

43. There is now quite a rich evidence base on the reasons why people do not complain. The joint Panel/Legal Ombudsman research has shown that there is a lack of awareness of how the complaints process works. People find the overall process

confusing and often intimidating and there is a perception that the process is either stacked against them or that the law firm will do nothing about it. There is also a worry that to complain might disadvantage the consumer, for example by leading to a delay in the resolution of their matter and many of the interviewees would (and did) sacrifice full resolution to their complaint if they felt it increased their chances of a swift and satisfactory result in the initial legal case. There is also uncertainty about challenging a lawyer in a formal or official complaint process, which is perceived as akin to trying to beat lawyers at their own game. Furthermore, defensive responses or language used by providers can be interpreted as confrontational and threatening. The language used in the provider's response creates significant barriers, either because it is difficult for the complainant to understand, or because it is seen to convey an intimidating tone. Exacerbating this is the difficulty many complainants have comprehending the precise details of much of this communication due to the use of legal jargon.³³

44. Research by YouGov for the Legal Services Board confirms these barriers, indicating a mix of reasons relating to a sense of powerlessness, concerns about fairness and cost, and lack of awareness. The data allows an analysis of barriers at first and second tiers – this indicates that lack of awareness and fatigue are key differences in factors explaining why consumers do not use the Legal Ombudsman.

Chart 15 – Reasons for taking no action

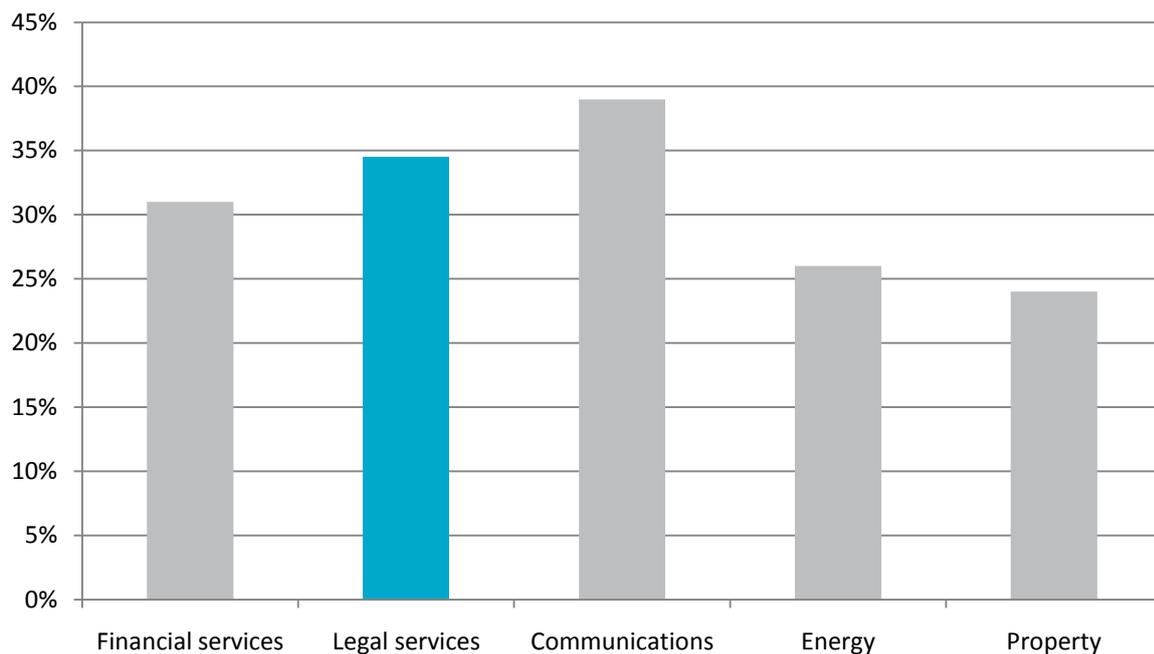


Source: YouGov, First-tier Complaints Handling, Legal Services Board, June 2011

³³ YouGov, *Consumer experiences of complaint handling in the legal services market*, Legal Ombudsman and Legal Services Consumer Panel, October 2012.

45. This paper has previously highlighted the importance of consumer awareness. In the context of complaints-handling, a signposting rule requires providers to inform clients at the point of engagement about the firm's complaints process and about their right to complain to the Legal Ombudsman. However, evidence suggests there are material levels of non compliance with the signposting rule, or at least low consumer recall that they were informed.³⁴ The legal services sector is not alone in having such a rule, but surveys suggests it is also not alone in facing compliance or consumer recall issues.

Chart 16 – Signposting



Source: Annual reports of Ombudsman schemes in each sector. Consumers were asked how were you told about the service – the chart records those who recalled being told by their provider

³⁴ In addition to the table, see: YouGov, *First-tier Complaints Handling*, Legal Services Board, June 2011; LSB Board paper on first-tier complaint handling, July 2012.

6 Questions for discussion

1. This is a discussion paper designed to provoke debate, not make recommendations. We are interested to hear what others think about the following questions:
 - The paper shows that people do not make full use of information and that there are inherent limits to how empowered consumers can be. What are the implications of this for pursuing consumer empowerment policies in legal services?
 - What difference do consumer vulnerability issues make to this?
 - To what extent is the legal services market unique?
 - Which aspects of low consumer empowerment are of most concern?
 - How much does it matter that consumers are not shopping around? What does this mean for competition in the legal services market?
 - What is the right balance for regulators between enhancing the consumer protection framework and facilitating better consumer decision-making in legal services?
2. These questions should be considered alongside those in the second background paper, which focus on activity to enhance consumer empowerment in legal services learning from initiatives in other parts of the economy.
3. The Panel will be seeking stakeholder views on both background papers through a planned event in January and via a series of bilateral meetings. We would welcome contact from anyone who is interested in these issues.

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.

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