

Sent by email only to consultation@sra.org.uk



28 September 2017

Dear Sir/Madam

Corporate Strategy 2017–20 Consultation

The Legal Services Consumer Panel (the Panel) welcomes the opportunity to respond to the Solicitors Regulatory Authority's (SRA) consultation on its Corporate Strategy.

The Panel agrees with the challenges and opportunities described by the SRA in its consultation document. We are broadly supportive of the SRA's strategic aims, although we believe the final document would benefit from a fuller explanation about how the SRA proposes to achieve its intended outcomes. The SRA's consultation document is also light on evaluation. We would suggest that the final document expands on this important aspect.

We have tailored our response to mirror the structure of the SRA's consultation document. We have therefore commented on each strategic objective, as outlined in the consultation document.

The SRA's strategic aims for the next three years

Strategic aim one

The SRA aims to set and apply high standards of professional standards for the individuals and firms it regulates. To achieve this objective, the SRA has outlined plans to improve training, professional developments and diversity. In addition, the SRA plans to revise its enforcement strategy.

The Solicitors Qualifying Examination and diversity

We continue to support the principle of a standardised professional assessment with the facility to extend clear routes of, and flexibility in, access to qualification. The SQE will introduce a consistent assessment and standards at the point of entry into the profession. In the Panel's response to the SRA's consultation on this subject,¹ we raised concerns around diversity, flexibility, funding and the timings for the SQE's implementation. Some of these concerns remain for the Panel. In particular, the uncertain cost of funding and clarity needed in the assessment of pre-qualification experience when applied to the parallel degree and apprenticeship routes, as referenced in the Panels consultation response. Whilst the project is still at building stage, we encourage the SRA to keep under review the stipulated timeframe for the SQE's implementation, and adjust this if necessary to avoid jeopardising the outcome.

¹ A new route to qualification: The Solicitors Qualifying Examination, Legal Services Consumer Panel, 2017.

Diversity

The SRA should continue to work with the wider profession to improve diversity at the point of entry and beyond. This will encourage the development of services for a variety of consumer need. Clearly defined goals to ensure diversity across the professions would be helpful.

Enforcement Strategy

The Panel welcomes the SRA's proposal to consult on plans to revise and update its enforcement strategy. We agree that a clear strategy can provide clarity for providers, consumers and the wider public. Additionally, it can elucidate the consequences of not meeting professional standards, and the threshold for assessing how serious a breach is.

The Panel would suggest that the consultation considers whether current enforcement processes provide sufficient deterrent across the spectrum of firms and individuals subject to the exercise of enforcement powers by the regulators.

In addition to the question posed above, we would like the SRA to consider the role enforcement decisions can play in contributing to better-informed consumers. The Panel notes that there is currently very little evidence or focus around how to use enforcement data to empower and or inform consumers decision making. We know that in the financial services sector, 41% of consumers surveyed said that fines for financial misconduct would influence their decision 'a great deal' when choosing a financial services provider.² In addition, a quarter of respondents said that if their current financial provider had been convicted of a crime, e.g. manipulation of interest rates, they would decide to switch providers.

The Panel believes that legal services regulators could do more to harness the power of consumers to make informed decisions by making enforcement decisions readily and easily available. In our Open Data report,³ we recommended that regulators should establish a single portal for regulatory history and conduct information. The Competition and Markets Authority (CMA)⁴ further developed this idea and recommended that regulators should consider the feasibility of a single digital register. We are pleased that the SRA is leading this strand of work with a clear commitment to getting it right. The Panel believes that the single digital register should contain enforcement decisions. Although enforcement decisions are generally publicly available, it is rarely easily accessible and certainly not conveniently located in one place. We believe the collation and presentation of enforcement decision on the digital register will improve the way in which consumers engage with enforcement information. It will also contribute positively to the SRA's transparency agenda.

Strategic aim two

We are supportive of the SRA's aim to modernise the regulatory arrangements in order to give providers greater freedom to innovate and to meet consumer's needs.

² Ipsos Mori on behalf of the Financial Services Consumer Panel conducted a Face to Face Omnibus Survey, 2014.

³ Information Remedies, Legal Services Consumer Panel, 2017.

⁴ Legal services market study, Competition and Market Authority, 2016.

Innovation

The Panel welcomes the SRA's focus on innovation and improving services for consumers. In our 2020 Legal Services report,⁵ the Panel said that innovation has the potential to create new markets, cheaper services, increase transparency, empower consumers, and enhance access to justice. We however advised regulators to remain mindful of the needs of vulnerable consumers who may not always be able to take advantage of innovation like technological developments.

We agree that regulation should support innovation. However, innovation must produce good consumer outcomes. Regulators should be aware and equipped to deal with the associated risks of innovation. Regulators should acquire new skills, consumer data and analytical tools to help with managing risks. While we agree that regulators need to be flexible to facilitate growth and allow providers to innovate, they must also be alert to the need to protect consumers, especially vulnerable consumers.

Solicitors practising in non-regulated firms

We are supportive of proposals that are designed to improve flexibility of practise for solicitors and to encourage more diverse delivery methods of legal services. The Panel has, however, raised concerns around reductions in consumer protection and the confusion that may result for users unfamiliar with the different protections applicable to non-reserved legal activities and reserved activities.⁶ The SRA has outlined plans to use information remedies to highlight reductions in consumer protections. Whilst we have emphasised the limitations of information remedies⁷ in some circumstances, we recognise that it has a role to play in explaining differences in consumer protection provided by different business models. The Legal Choices website should also be used as a portal for outlining and explaining these differences, including any implications for consumer protection. We expect to see the use of information remedies accompanied by robust consumer testing.

Consumer protection

The requirement for solicitors to have Professional Indemnity Insurance and to contribute to a Compensation Fund offers protection to solicitors and consumers alike. Consumers run the risk of significant financial loss because of errors or omissions. Regulatory prescription for insurance safeguards both solicitors and consumers against loss, allowing them to contract with greater confidence and peace of mind. A scandal affecting a single firm can erode public confidence more broadly if financial protection arrangements are not robust. We are sympathetic to attempts to assess whether current requirements are prohibitive, inflexible and costly, and to alleviate these where necessary.

In carrying out its consumer protection review, it will be important for the SRA to show that the appropriate balance of risks had been struck between all parties (insurers, providers, consumers and the public), taking into consideration consumers' lack of expertise and experience in dealing with legal matters. The Panel also believes that regulators should be realistic about the risks that consumers can reasonably be expected to both understand and manage. We are convinced that consumer research will help the SRA arrive at the right balance and we look forward to engaging with the SRA on this important issue.

⁵ 2020 Legal Services, How regulators should prepare for the future, Legal Services Consumer Panel, 2014.

⁶ Looking to the future: Flexibility and public protection, Legal Services Consumer Panel, 2016.

⁷ Information Remedies, Legal Services Consumer Panel, 2017.

Strategic aim three

The Panel is supportive of the SRA's plans to increase the availability of relevant and timely information to help consumers to make informed choices.

Our latest Tracker Survey⁸ shows that the most important factors influencing consumers choice of providers are reputation (75%), price (69%) and specialism (67%). Despite price being an important factor, our research shows low levels of transparency. A very small proportion of consumers surveyed found the price on providers' website (6%) or in advertisements (4%). The majority (61%) had a discussion with the provider to determine the price. The Legal Services Board's research⁹ found that only 17% of providers displayed their fees on their website.

The Panel has consistently said that providers are not responding quickly enough to consumers need for transparency around price and quality. The Panel has also been clear that price transparency without information on quality could mislead consumers into thinking that higher-priced services mean better quality. Therefore, information on both quality and price is essential to make transparency meaningful. The Panel remains convinced that mandatory regulatory intervention around price transparency and quality is necessary to improve competition that delivers good consumer outcomes. Additionally, we would emphasise that the presentation of this information is as important as its availability.

Finally, there are intermediaries, such as price comparison websites well placed to present consumers with pricing information, quality indicators, and other features to help them assess services. However, to flourish, these intermediaries need access to information on price and quality of services. The Law Superstore, a comparison website, recently exited the market, partly because it found it difficult to progress without price information.¹⁰ This is yet another reason why the Panel believes that intervention is necessary in this area.

Strategic aim four

The Panel welcomes the SRA's aim to ensure that their regulatory arrangements work as effectively as possible for individual consumers, businesses, and providers in the context of the UK leaving the European Union (EU).

In the financial services sector, we note that the Financial Services Consumer Panel, HM Treasury, and other stakeholders have worked together on research to identify a post-EU exit regulatory framework that delivers good consumer outcomes for the financial sector. The Panel is of the strong view that the legal services regulators and other stakeholders should collaborate on similar research as soon as practicable. The UK is the largest legal services market in Europe, currently worth more than £32bn per year to the economy.¹¹ Therefore, more needs to be done collectively to ensure that the market continues to deliver wider economic benefits and good consumer outcomes post exiting the EU.

The Panel also welcomes the SRA's focus on consumers in Wales, and its continued working relationship with the Welsh authorities and community.

⁸ How consumers are choosing legal services, Legal Services Consumer Panel, 2016.

⁹ Prices of Individual Consumer Legal Services, Legal Services Board, 2016.

¹⁰ Pioneering price comparison site Law Superstore taken over, The Law Society Gazette, 15 August 2017

<https://www.lawgazette.co.uk/law/pioneering-price-comparison-site-law-superstore-taken-over/5062458.article>.

¹¹ UK Legal Services Market Report 6th edition, IRN Research, 2016.

Strategic aim five

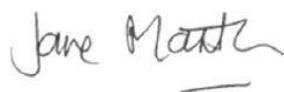
The Panel supports the SRA's aim to work better and together with others to improve its overall effectiveness, its responsiveness, and the delivery of its regulatory functions.

We fully support the plans for the SRA to modernise its IT system and the programme of engagement it has set out. We remain concerned that there is not enough consumer research and testing to guide regulation across the sector. We believe the SRA can play a bigger role in collaborating on research, particularly with smaller regulators.

Priority

The Panel believes that it is important for stakeholders to understand the SRA's order of priority over the next three years. In our view, a key priority has to be the CMA's transparency remedies in light of the deficiencies found in the market. We also believe that the final strategy needs to be flexible enough to adapt or respond to external developments, particularly in light of the uncertainties around the impending changes to the United Kingdom's relationship with the European Union.

We would be very happy to meet and discuss any aspect of this response in further detail. Please contact Lau Ciocan for further queries at lau.ciocan@legalservicesconsumerpanel.org.uk.



Yours sincerely

Dr Jane Martin

Chair