



4 July 2018

Dear Sir/Madam,

### **Consultation on Modernising Consumer Markets, Consumer Green Paper.**

The Legal Services Consumer Panel (Panel) welcomes the opportunity to respond to the Department for Business, Energy & Industrial Strategy (BEIS) consultation on its Modernising Consumer Markets Green Paper. Our response mirrors the structure of the consultation document although we have skipped questions not directly relevant to the legal services sector.

#### **The uniqueness of the legal services market**

Before addressing the points raised in the consultation, the Panel would like to highlight what is particularly complex and challenging about the legal services market compared to other regulated sectors such as energy or telecommunications.

First, in the legal services market there are eight regulators and one oversight regulator in contrast to one regulator for many of the other sectors. Additionally, there are more types of services provider in the legal sector compared to energy or telecommunications, such as solicitors, barristers, conveyancers, legal executives, with firms of varying sizes, including sole practitioners.

Second, although consumers of legal services appear to have more choice than energy consumers, a chronic deficiency in information provision hinders consumers from making informed decisions. In 2016, the Competition and Markets Authority (CMA)<sup>1</sup> concluded that competition is not working well for individual consumers of legal services because of the lack of market transparency.

Third, the implications of choosing a less suitable legal provider compared, say, to an energy supplier can have longer term and wider consequences if things go wrong. For example, a consumer can fairly easy switch energy supplier if they are not happy with the price or the service itself. However, if something goes wrong during writing a will, and the error is detected only at the probate stage, the impact is much greater and possibly irreversible for those mentioned in the will.

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<sup>1</sup> Legal services market study, the Competition and Market Authority, December 2016.

## Better outcomes in regulated markets

### *Putting consumers in control*

#### *Price transparency*

The Panel agrees that service providers should now have greater ability to segment consumers and to respond better to their needs. But from our annual Tracker Survey, we know that only 27% of consumers shop around for a lawyer. Those least likely to shop around are consumers over 55 years old and those from a lower social grade. Thus, we would encourage regulators to ensure that providers use segmentation to tailor their communication to ensure that the different groups of consumers have the information they need, through the channels they are most likely to use, to enable them to compare providers.

In 2016 the Panel published a report on Open Data in legal services<sup>2</sup>, focussing on consumers' need for access to much more comprehensive and clear information on price and quality in order to shop around. This has potential to address the information asymmetry that is currently present in the legal services sector. Our Tracker Survey shows that 36% of consumers find it difficult to get information on price because they lack upfront information. 16% say that prices are presented in a confusing manner and 12% say that it takes a long time to obtain a quote from providers.

Price comparison websites (PCWs) can also play a role in helping consumers to get the best deals and drive competition. But PCWs are not well developed in the legal sector, and only 2% of consumers use a PCW in this sector.<sup>3</sup> PCWs need access from legal service providers to information on price in order to build gateways for consumer engagement. We know that the Law Superstore, a legal services sector-specific PCW, recently exited the market, partly because it found it difficult to progress without price information from providers.<sup>4</sup> Also, the Panel has argued strongly for providers to make information available in a format easily comparable and portable across PCWs.

#### *Information about quality of service*

In the legal services sector there is little information on quality or quality proxies. We recognise that there are practical and cultural barriers in this sector to providing information on quality, but this needs to be addressed by regulators. In our Open Data report<sup>5</sup> we noted that price transparency without quality information could mislead consumers into thinking that higher-priced services were of better quality. That is not always the case. We are therefore in favour of the BEIS recommendation that regulators could do more to improve the availability of service providers' performance data to inform consumer choice. The CMA made a similar recommendation in its market study<sup>6</sup>, that legal services regulators should consider the publication of first-tier complaints data as a quality indicator. Having access to complaints data has clear benefits for consumers. Recent research<sup>7</sup> into consumers' experience of making complaints about solicitors shows that 91% of consumers say that having access to firms' complaints data would be helpful to them.

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<sup>2</sup> Opening up Data in legal services, Legal Services Consumer Panel, February 2016.

<sup>3</sup> Tracker Survey Research, Legal Services Consumer Panel, June 2018.

<sup>4</sup> 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>.

<sup>5</sup> Opening up Data in legal services, Legal Services Consumer Panel, February 2016.

<sup>6</sup> Legal services market study, the Competition and Market Authority, December 2016.

<sup>7</sup> Research into the experiences and effectiveness of solicitors' first tier complaints handling processes, the Solicitors Regulation Authority and Legal Ombudsman, October 2017.

The Panel is aware that publishing complaints data can be a challenging task for regulators, but it remains of concern that none of the legal services regulators has yet published this information. We are holding a roundtable event on 5<sup>th</sup> July aimed at assisting regulators in thinking about how they might contextualise complaints data as this is the key argument we have heard against publishing it. The roundtable will draw on learning from other regulated sectors such as telecommunications, financial services and health.

### *Ensuring vulnerable consumers are treated fairly*

In its 2020 Legal Services report<sup>8</sup> showed that innovation has the potential to create new markets, cheaper services, increased transparency, empowered consumers, and enhanced access to justice. We however advised regulators to remain particularly mindful of the needs of vulnerable consumers, who may not always be able to take advantage of innovation such as technological developments.

The Panel agrees with BEIS' recommendation that regulators should act robustly to prevent harm to vulnerable consumers and encourage providers to design services that work for them. In our Consumer Segmentation report<sup>9</sup>, we said that regulators can use segmentation to encourage providers to deliver products and services that meet consumers' needs, especially vulnerable consumers. The legal services sector is far behind other sectors in tailoring services to users' needs. This is concerning as we know that the sector often serves very vulnerable consumers. To begin to address this problem, the Panel has worked with the Bar Standards Board (BSB) to develop a practical guide to help barristers understand consumers' vulnerabilities when giving immigration advice.

The Panel would like to see regulators collaborating and assessing the effectiveness of different approaches to support vulnerable consumers. For example, we welcomed the Legal Services Board research on the experiences of consumers with dementia<sup>10</sup> and mental health problems<sup>11</sup> (and their carers) when they use legal services, highlighting some good practices that could be adopted more widely. More needs to be done to improve access, service experience and outcomes for vulnerable consumers, and regulators need to take responsibility for developing clear guidelines on how providers might tailor their services more effectively to meet the needs of consumers in vulnerable circumstances.

## **Digital markets that work for consumers**

### *Helping consumers to drive competition*

Our research<sup>12</sup> has shown an increase in the use of online delivery methods over the years. Consumers' preference for online delivery has increased slowly but steadily since the start of the survey in 2012 from 21% to 30% in 2018. Consumers in higher social grades are more likely to have their legal services delivered over the internet (31%) than those from lower social grades (21%). However, those from lower social grades using legal services in this way have increased by 9 percentage points since 2017. Additionally, those from a BAME background (36%) are more likely than White British (27%) to use services by email or the internet.

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<sup>8</sup> 2020 Legal Services, How regulators should prepare for the future, Legal Services Consumer Panel, 2014.

<sup>9</sup> Consumer Segmentation, Legal Services Consumer Panel, March 2017.

<sup>10</sup> Research report on how people with dementia (and their carers) experience legal services, LSB, July 2017.

<sup>11</sup> Research report on how people with mental health problems (and their carers) experience legal services, LSB, July 2017.

<sup>12</sup> Tracker Survey Research, Legal Services Consumer Panel, June 2018.

The Panel would like to see providers being responsive to consumers' preference for method of service delivery. Also, they should ensure that even vulnerable consumers can, where appropriate, benefit from the digitalisation of legal services.

#### *Effective competition enforcement*

Nowadays digital platforms are becoming much better at gathering consumers' data and using algorithms to make predictions about what they want to buy. However, regulators must ensure that these techniques are being used to benefit consumers, as well as providers. Algorithms use certain types of "biases" in order to make predictions, and the use of algorithms by firms to track and adjust prices presents a new challenge for regulators. This could facilitate forms of pricing malpractice and undermine the benefits of price competition, potentially without the provider being aware. Therefore, we welcome BEIS's proposal that, in supporting innovation through the lawful use of personal data, there is no sacrifice of ethics and consumer benefit. Consumers must have confidence that if they allow their data to be used, it will bring them some benefit, and no harm.

#### *Informed consent to terms and conditions and privacy notices*

The Panel agrees with BEIS that consumers need to understand what they have accepted in a contract or privacy notice. Additionally, how this information is presented to consumers is vital. In our Information Remedies report,<sup>13</sup> we highlighted how information can be used by regulators to improve consumer awareness and understanding, and also to prevent consumers being misled. Whether information benefits consumers will depend very much on how it is designed and presented. Therefore, regulators must consider the importance of consumer research, testing, evaluation, and monitoring in designing effective information remedies. Regulators should consider learnings from other sectors about how information affects groups of consumers differently, including vulnerable consumers. Information may well need to be targeted differently, tested and evaluated periodically for its efficacy.

### **Improving enforcement of consumer rights**

The Panel supports BEIS's creation of a business environment where firms respect consumer rights, treat consumers fairly and resolve any problems quickly. Indeed, this is essential to ensuring markets work well for everyone. An unambiguous and strong enforcement procedure for consumer rights is beneficial not only for individual consumers, but for business performance more broadly. We agree that sanctioning firms' poor behaviour creates a level playing field, ensuring that those who respect the law are not disadvantaged, and helps avoid a 'race to the bottom' in standards.

#### *The role of alternative dispute resolution (ADR)*

We believe that easy access to ADR is vital to enable consumers to have their voice heard when making a complaint. BEIS's research shows that eight in ten consumers who have used ADR say their problem would not have been resolved without it. Overall, the Government believes that having more than one ADR provider stimulates innovation and good value, giving businesses a choice of different types of dispute resolution at a range of costs. However, the Panel is concerned that a multiplicity of ADR providers favours businesses and not consumers (indeed it can be detrimental to consumers). At present legal services consumers could be signposted to multiple ADR providers of whom the Legal Ombudsman is not one. There is therefore potential for consumer confusion. In the legal services sector we believe consumers

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<sup>13</sup> Information Remedies, Legal Services Consumer Panel, March 2017.

would benefit if the Legal Ombudsman is at least one of the designated ADR providers, if not the main or only one.

We note that BEIS is considering extending mandatory ADR to sectors with high value complaints. We consider that it would help to explore the possibility of extending it to some parts of the unregulated legal services sector where is potential for considerable consumer detriment.

### **A regulatory and competition framework for the future**

In the Green Paper the Government expressed its wish to set the strategic direction for water, telecommunication and energy sector regulators<sup>14</sup>, and its willingness to take responsibility for improving consumer outcomes without undermining regulatory independence. The Panel would like to see a similar initiative for the legal services sector. The UK has the largest legal services market in Europe, currently worth more than £32bn per year to the economy.<sup>15</sup> More could be done collectively to ensure that the market continues to deliver wider economic benefits and good consumer outcomes, especially post exiting the European Union.

We also welcome BEIS' initiative to create a new Consumer Forum chaired by the Minister for Consumer Affairs to discuss overarching priorities for the regulated sectors. To ensure that the consumers' voice is heard the Panel would recommend that the Forum includes some individuals experienced in consumer advocacy, advice, policy and/or enforcement. This could include one or more of the Chairs of the Consumer Panels from the regulated sectors.

Finally, we fully support the Government's desire to see that the CMA remains a strong, independent competition authority that is bold, focusing on activities that champion consumers and address the challenges of the digital economy (as raised under the *Digital markets that work for consumers* headline). In legal services, we would ask the CMA to continue to work with regulators to ensure the recommendations of its 2016 Legal Services Market Study are implemented. It is vital that the CMA support legal services regulators to implement the much needed reforms it has recommended, despite resistance.

We would be very happy to meet and discuss any aspect of this response in further detail. Please contact Lau Ciocan if you have any queries at [lau.ciocan@legalservicesconsumerpanel.org.uk](mailto:lau.ciocan@legalservicesconsumerpanel.org.uk).

Yours sincerely,

Sarah Chambers



Chair

Legal Services Consumer Panel

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<sup>14</sup> Ofwat, Ofcom and Ofgem.

<sup>15</sup> UK Legal Services Market Report 6<sup>th</sup> edition, IRN Research, 2016.