



Minutes

Legal Services Consumer Panel meeting

Date: 24 February 2016

Time: 13:00-16:00

Venue: One Kemble Street, London WC2B 4AN

Present:

Elisabeth Davies	Chair
Andy Foster	Member
Cathy Gallagher	Member
Michelle Goddard	Member
Frances Harrison	Member
Philip Marsden	Member
Marlene Winfield	Member
Lola Bello	Consumer Panel Manager
Stephanie Chapman	Consumer Panel Associate
Ramandeep Bhatti	Legal Services Board (Minutes)
Julie Myers	Legal Services Board
Nicholas Baré	Legal Services Board (Item 6 only)
Sharon Horowitz	Competition Markets Authority (Item 7 only)
Rachel Merelie	Competition Markets Authority (Item 7 only)
Maria Recan-Sevitz	Competition Markets Authority (Item 7 only)
Paul Treagar	Competition Markets Authority (Item 7 only)
Dr Chris Decker	Oxford University (Item 8 only)

Item 1 – Welcome and apologies

1. The Chair welcomed the Legal Services Consumer Panel ('The Panel').

Item 2 – Declaration of interests

2. Philip Marsden declared an interest in relation to agenda item 7 reiterating that he has had no involvement in the CMA's review of legal services.

Item 3 - Panel minutes – 27 January 2016

3. The Chair presented a revised version of the 27 January 2016 minutes.

The Panel approved the minutes of 27 January 2016.

Item 4 – Matters arising

4. In relation to Item 5 in the minutes, the Chair advised that with agreement of the Panel, the secretariat will send a draft version of the work programme 2016/17 to the Legal Ombudsman prior to submitting a final version to the LSB. The Panel agreed.
5. In relation to Item 7 in the minutes, the Chair advised a paper on segmentation is scheduled to be submitted at the next Panel meeting in April.
6. In relation to Item 8 in the minutes, the Chair advised that Stephen Mayson has asked to attend the Panel meeting in June, before he submits his report to the LSB.

The Panel noted the matters arising.

Action point: the Secretariat should send the draft work programme 2016/7 to the Legal Ombudsman.

Item 5 – Draft work programme 2016-17

7. The Chair presented the draft work programme for 2016-17.
8. The Panel suggested a few minor amendments to the work programme, but were overall happy with the narrative and content. It was agreed that any drafting changes should be submitted to the secretariat by email. The Chair suggested discussions about Panel leads should take place outside of the meeting.
9. The Chair sought the Panel's views on whether the fourth Consumer Impact Report should be published this year or next year. Following careful consideration the Panel agreed it would be best for the report to be published next year.

Subject to some minor amendments the Panel approved the work programme for submission to the LSB Board meeting on 23 March 2016. The Panel agreed to publish the fourth Consumer Impact Report in 2017.

Action point: Panel leads will be discussed and allocated outside of the meeting.

Item 6 – LSB first tier complaints guidance

10. The Chair introduced Nicholas Baré, Regulatory Associate at the LSB.
11. Nicholas Baré provided an update on the LSB's work on first tier complaints handling. Key points presented include:
 - In its 2015/16 business plan, the LSB set out that it would complete a thematic review of the effectiveness of its complaints handling requirements for approved regulators.
 - Section 112 of the Legal Services Act allows the LSB to publish requirements for approved regulators to put regulatory arrangements in place for practitioners' complaints handling procedures.
 - This thematic review is solely focused on how better outcomes can be achieved for consumers through the approved regulators' arrangements.
 - The thematic review identified that requirements for the approved regulators to have complaints handling arrangements remain largely fit for purpose. However, the LSB's supplementary guidance could be updated to improve outcomes for consumers.
 - The LSB will shortly begin a consultation on this.
12. In the subsequent discussion, the following points were raised:
 - The approved regulators should be making better use of the data they have
 - The approved regulators could improve their communications with complainants, including the information in complaints letters.
 - The question that needs to be addressed is in relation to the 'silent sufferers'; what are the barriers preventing the dissatisfied from complaining.

The Panel noted the update on the LSB's work on first tier complaints guidance.

Item 7 – Competition and Markets Authority market review of legal services

13. The Chair welcomed the Competition and Markets Authority (CMA) to the Panel meeting. The Chair introduced Sharon Horowitz - Director, Sector Regulation and Legal Services Project Director; Maria Rican-Sevitz - Assistant Director, Sector Regulation; Paul Treagar - Assistant Director, Economics and Rachel Merelie - Senior Director of Sector Regulation.
14. Philip Marsden declared his interest as Deputy Chairman of the CMA, stating that he has no involvement in this review.
15. Colleagues from the CMA gave a presentation on their inquiry into legal services, in which they explained the context and scope of the investigation. The presentation also included an outline of the 'theories of harm' which will inform the study.
16. The Panel raised the following points during the course of the presentation:
 - Vulnerable consumers is not a static term and it is important to take account of the shifting dynamics and how properties of the legal services market create new vulnerabilities.

- The Panel supported the CMA's Theories of Harm approach and noted that consumers were not very engaged, active or empowered to make informed decisions in the sector.
- Quality assessment of a legal service is important to make the right choice, but there is a persistent difficulty with consumers' ability to assess quality and little information made available.
- It would be useful to look at other sectors – health and voluntary sectors.
- The CMA should consider how the ADR regime has affected the landscape and Trading Standards may be able to give an insight into this.
- The Panel has completed a range of research studies that can be used to inform this study, including the joint research with the Legal Ombudsman on complaints handling and its most recent report on Open Data.
- There is a danger of consumers being left behind because they lack the technological knowledge.

17. Colleagues from the CMA confirmed they will publish their interim findings and preliminary recommendations in July. In the mean-time they welcome any input from the Panel.

The Panel noted the presentation from the CMA.

Item 8 – SRA Handbook review

18. The Panel welcomed Dr Chris Decker to the meeting.

19. Cathy Gallagher declared her interest as Pro Bono and Solicitor Regulation Lead at the Law Centres Network.

20. Dr Chris Decker gave a presentation on the SRA's work around the review of their Handbook, for which he has been asked to provide support. In November 2015 the SRA published a discussion paper, *Looking to the Future*, which set out its plans for the next few years of regulatory reform.

21. The SRA is proposing a two phase review of their regulatory approach and of their Handbook, which sets out the code, the principles, the rules and the procedures which underpin their approach to regulating individuals and organisations. The Handbook itself is too large, complex and detailed and needs regular amendment just to stand still.

22. The SRA has developed a 'new approach to regulation', and the following are the five key elements of the proposed model:

- All solicitors are subject to core professional principles and the code of conduct at all times.
- If delivering reserved legal services and related activities to the public or a section of the public, solicitors must do so through an authorised entity.
- Individual solicitors may deliver other, non-reserved legal services to the public or a section of the public by practising in an unauthorised entity (the second of our core options at paragraph 23 above). If they do, regulatory protections such as access to the Legal Services Ombudsman and complaints handling obligations in the Code of Conduct will apply. Depending on the circumstances, the SRA will also for example:
 - impose restrictions around holding client money

- put in place personal responsibilities around professional indemnity insurance
- limit access to the SRA Compensation Fund.
- An entity - i.e. an organisation - may be authorised by the SRA to deliver reserved legal services, but although then entitled to do so (because it meets the stringent tests), it does not need to deliver reserved legal services to retain its authorisation
- Any entity authorised by the SRA (delivering reserved or non-reserved services):
 - must have appropriate indemnity insurance
 - may hold client money subject to proper systems being in place
 - will have obligations and protections under the SRA compensation arrangements.

23. Following the presentation, the Panel took the opportunity to discuss the review and made the following points:

- The consumers that will be affected the most are those who have the least knowledge on technology, regulation and what is being delivered.
- There should be a set of standards or principles for those delivering reserved/non-reserved legal activities, to avoid any confusion around the scenario where a solicitor is regulated but the entity is not.
- Loosening up the regulation could reduce public confusion but there has to be careful balance made against the need to protect consumers.
- There are unique factors in the legal services market that create new vulnerabilities for consumers that have significant implications on how they understand legal services.
- The merits of an 'informed consent' approach was discussed, Panel members emphasised the need to consider human biases and variations in behaviours and the impact this has on whether consent given is truly informed.
- Panel members discussed the need for creative thinking and a needs-led approach, as opposed to issuing lengthy terms of contract.
- Panel members noted that information provision requires a lot of work, consumer testing and evaluation.
- The SRA would need to address consumer protection issues of a regulated individual working in an unregulated firm.

24. Dr Chris Decker invited the Panel to send through any research which might be useful. This could feed into his work as part of the preliminary framework for the SRA consultation which will be launching in spring 2016.

The Panel noted the presentation from Dr Chris Decker.

Item 9 – Chair's report and members update

25. The Chair advised that on 2 February, she and the Panel Manager met with Jonathan Smithers, President and Catherine Dixon, Chief Executive of The Law Society.

26. On 10 February the Chair and Panel Secretariat had an introductory meeting with the new Chief Ombudsman, Kathryn Stone.

The Panel noted the update from the Chair.

Item 10 – Projects update

27. The Panel Associate presented the projects update.

The Panel noted the projects update.

Item 11 – Consultation responses

28. The Panel Associate presented a paper on recent and upcoming consultation responses.

The Panel noted a response had been submitted to the Legal Ombudsman’s consultation on *2016-17 budget consultation*.

Item 12 – Draft agenda for 27 April 2016 meeting

29. The Chair presented the proposed agenda for 27 April 2016 meeting.

30. The Chair advised an item not on the draft agenda is an update on the LSB’s work on pricing, for which Steve Brooker, Head of Research and Development at the LSB will be attending.

The Panel agreed the proposed agenda for 27 April 2016 and noted some further changes would be made to allow time for the update from the LSB.

Item 13 – Any other business

31. Cathy Gallagher made a request to the secretariat to have sight of project timelines.

32. Frances Harrison advised that Martin Coppack at the Financial Conduct Authority is working on vulnerability and access, drawing inspiration from the Panel’s Consumer Principles. Members agreed to invite him to a Panel meeting

Action: Secretariat to invite Martin Coppack to a Panel meeting.