



Dispute Resolution Team  
Ministry of Justice  
102 Petty France  
London SW1H 9AJ

Sent by email only to [disputeresolution.enquiries.evidence@justice.gov.uk](mailto:disputeresolution.enquiries.evidence@justice.gov.uk)

29 October 2021

Dear Dispute Resolution Team,

### **Consultation: Dispute Resolution in England and Wales – Call for Evidence**

The Legal Services Consumer Panel (Panel) welcomes the opportunity to provide evidence and its comments on dispute resolution in England and Wales. The Consumer Panel is a statutory body created by the Legal Services Act, 2007 to provide independent advice regarding the interests of legal services consumers. We provide expert evidence-based advice to the Legal Services Board and others in order to facilitate decisions that are shaped by the needs of users, especially those who have lower bargaining power in the market such as individuals, small businesses, charities and especially vulnerable persons.

The Panel's response to your call for evidence will be separated into two parts, the first relating broadly to dispute resolution from our perspective of the consumer's experience of the legal services market; the second relating specifically to our sector and the current framework for dispute resolution between legal services consumers and providers. We have endeavored to answer your consultation questions where appropriate and also provide comments on areas that may be ancillary to these questions but may have bearing on how you take this policy initiative forward in a way that will best serve the public.

#### **1) Dispute Resolution In General**

The Panel agrees that many court users would prefer to avoid going to court due to the cost and how complicated it seems. As Professor Susskind puts it, "[e]ven in justice systems that we regard as the most advanced, dispute resolution in public courts generally takes too long, costs too much, and the process is unintelligible to all but lawyers".<sup>1</sup> The result is a considerable reduction in the public's access to justice which in turn undermines the rule of law. Accordingly, any interventions that help the public achieve a just outcome to their problems without resorting to litigation should be explored. Nevertheless, caution should always be used when employing alternative dispute resolution methods (as with other more conventional legal routes) where there is an imbalance in bargaining power, especially where one party may not be well versed on their rights or entitlements, vulnerable or otherwise. While

---

<sup>1</sup> Susskind, "The Future of Courts", *The Practice* (Volume 6, Issue 5), Harvard, July/August 2020 at <<https://thepractice.law.harvard.edu/article/the-future-of-courts/>>.

the Panel does not have direct evidence concerning alternative dispute resolution, we can provide some data relating to the consumer's experience in the legal services market that may inform the Ministry's policy design.<sup>2</sup>

Generally, consumers need any system replacing traditional litigation to offer clarity of outcomes and to inspire confidence in its fairness. But even more important than offering an easy method of dispute resolution, it should be noted that access to early legal advice can empower people to take prompt action to solve issues before they become so contentious that litigation or ADR is needed. A recent study showed that government spending could be decreased by many times the amount it invests in free legal advice (support for clients at an average cost of £510 per person yielded an average net benefit to the Treasury of £8000 per person). This study concluded that the Treasury could save £4 billion next year by supporting free legal advice.<sup>3</sup>

### Technology Infrastructure

Taking stock of the use of technology and innovation in the legal services sector, the Solicitor Regulation Authority's 2021 study found that SRA regulated law firms with individual and small business clients are less innovative, less likely to adopt legal technology, and face higher financial, staffing, and regulatory uncertainties or barriers to technology adoption than law firms with large corporate clients.<sup>4</sup> In fact, it also found that technological initiatives serving an individual and small business clientele received only 3.2% of the total venture capital funding for law technology and innovation projects.<sup>5</sup> Notwithstanding these findings, it is also important to recognize that the use of technology in legal services provision made a huge jump recently in large part due to social distancing measures with as much as 54% of consumers using legal services online during the pandemic.<sup>6</sup> Yet only 3% of those who used legal services in the last two years reported using an internet based company that solely operated online.<sup>7</sup> Our data also highlights that the perception of barriers to using legal services delivered by artificial intelligence have changed considerably over the last year whereas 50% of consumers said they were not user-friendly in 2020, only 31% felt this way in 2021. Legal services consumers are now more likely to cite themselves as not being confident using artificial intelligence technology (35%) and its relatively low availability (24%) as barriers to its use.<sup>8</sup>

### Public Sector Equality Duty

Finally, our data shows that legal services consumers from ethnic minority backgrounds are less likely to be satisfied with the service they used. While 90% of those who used legal services in the past two years who were from a white British background were satisfied with their outcome, only 87% of those from a minority ethnic background were. These numbers also vary by specific minority groups as follows: Mixed race (90%), Indian (82%), Pakistani (92%), Chinese (80%), Black African (90%), Black Caribbean (82%) and Asian (net) (85%).

---

<sup>2</sup> See generally LSCP, *Consumer Impact Report*, March 2020 at <<https://www.legalservicesconsumerpanel.org.uk/wp-content/uploads/2020/03/2020-03-19-Consumer-Impact-report-Working-FINAL-DRAFT.pdf>>; LSCP, *Legal Services Consumers Tracker Survey Data and Reports*, July 2021 found at <<https://www.legalservicesconsumerpanel.org.uk/what-we-do/research-and-reports>>.

<sup>3</sup> Leckie, Munro, Pragnell and McWilliams, *Defending the public purse: The economic value of the free legal advice sector*, September 2021 at <<https://atjf.org.uk/wp-content/uploads/2021/09/Defending-the-public-purse-The-economic-value-of-the-free-legal-advice-sector-September-2021.pdf>>.

<sup>4</sup> Sako and Parnham, *Technology and Innovation in Legal Services: Final Report for the Solicitors Regulation Authority*, University of Oxford, 2021 at <<https://www.sra.org.uk/globalassets/documents/sra/research/full-report-technology-and-innovation-in-legal-services.pdf?version=4a1bfe>> at p. 7.

<sup>5</sup> *Ibid* at p. 10.

<sup>6</sup> LSCP, *Tracker Survey* (2021).

<sup>7</sup> LSCP, *Tracker Survey* (2021).

<sup>8</sup> LSCP, *Tracker Survey* (2021).

Similarly, though 84% of white British consumers were satisfied with the customer service they received, only 79% of consumers from an ethnic minority background were. Again, the specific minority group a consumer belonged to made a difference as follows: Mixed race (79%), Indian (76%), Pakistani (81%), Chinese (67%), Black African (81%), Black Caribbean (85%) and Asian (net) (76%).<sup>9</sup>

## 2) Resolution of Legal Services Consumers' Disputes with Service Providers

Within the legal services sector, there are large gaps in a consumer's ability to access redress for a service provider's poor service. Ability to access redress depends on who a consumer buys legal services from rather than the type of legal services being bought. Should a consumer go to a regulated lawyer, such as a solicitor or barrister, the Legal Ombudsman is the avenue for redress while there is no umbrella avenue for redress for unregulated legal services providers. Most people find it surprising that there are only a small number of legal activities which can only be provided by regulated lawyers so that in most cases, the same service could easily be bought from someone who is not covered by the Legal Ombudsman. Advising on how to fight for custody of children, claiming against an employer for unfair dismissal, drafting a will or preparing a power of attorney are all services that can be performed by both regulated and unregulated providers leaving the unsuspecting consumer with no clear recourse to redress if they wind up choosing an unregulated provider.

The result is that consumers are confused about where to seek remedies regarding disputes with their legal services providers and other than where they used a regulated lawyer or a regulated firm, they may have nowhere other than the courts to seek redress. This confusion may be one of the reasons why many consumers say they are not aware of any route of redress and few make complaints where they are dissatisfied<sup>10</sup>. There is clear potential to improve how the legal services ecosystem operates for the public.

In particular, we believe there is an opportunity now to bring more disputes within the Legal Ombudsman's jurisdiction. Expanding the Legal Ombudsman's scope to include unregulated legal services providers, which may include some dispute resolution providers, would provide consumers of these services with a way to complain about unsatisfactory service within the ombudsman's scheme. The entire sector would then gain learning from complaints data and consequently raise standards.

Practically, we understand a single register of all legal services providers, whether regulated or unregulated, is under consideration and could help establish who could be covered by an expanded Legal Ombudsman scheme. Given the changing legal services marketplace, online services should also be included in this expanded remit.

Though the Legal Ombudsman has experienced backlog issues, which have worsened with the pandemic, the Panel is encouraged by the direction taken by new leadership with a broad based and long-term plan to decrease the backlog of cases and the time for a case to be resolved. But they have a long way to go: real concerns must be addressed about whether the current Legal Ombudsman approach can improve performance sufficiently and deal with these delays so consumers can have their complaints resolved in an efficient and timely manner. Nevertheless, having one avenue of redress for all legal services consumers will undoubtedly fulfil additional dispute resolution needs within an existing legislative scheme, clarify and enhance consumers' experience in this market, and promote fair and effective competition to ensure better outcomes for consumers overall.

---

<sup>9</sup> LSCP, Tracker Survey (2021).

<sup>10</sup> LSCP, *How Consumers Are Using Legal Services*, June 2021 at <https://www.legalservicesconsumerpanel.org.uk/wp-content/uploads/2021/07/LSCP-2021-How-consumers-are-using-FINAL.pdf> at p. 13.

The Panel appreciates the opportunity to provide input from the unique vantage point of legal services consumers. We hope you find these comments helpful. Please contact Heidi Evelyn, Consumer Panel Associate ([Heidi.Evelyn@legalservicesconsumerpanel.org.uk](mailto:Heidi.Evelyn@legalservicesconsumerpanel.org.uk)), with any enquiries.

Yours sincerely,

A handwritten signature in black ink that reads "S Chambers". The signature is written in a cursive, flowing style.

Sarah Chambers  
Chair  
Legal Services Consumer Panel