



**THE LAW SOCIETY SUBMISSION TO THE LEGAL SERVICES BOARD
DISCUSSION PAPER ON QUALITY INDICATORS**

22 April 2021



Introduction

1. The Law Society has a strong interest in quality of legal services, and we welcome the opportunity to respond to the Legal Services Board (LSB) discussion paper on quality indicators.
2. We are responding to the consultation in our representative capacity as the independent professional body that supports and represents 200,000 solicitors from England and Wales.
3. Ensuring both high professional standards and high-quality legal advice lie at the core of the Law Society and the profession. Our members strive to meet high standards of service, which is reflected in the high level of client satisfaction with solicitors in comparison to other professions. The YouGov Legal Needs survey, carried out on behalf of the Law Society and LSB, shows strong client satisfaction, with nine out of 10 clients satisfied with solicitors.¹ A high proportion of people (eight out of 10) also agree that solicitors provide value for money.²
4. In addition, we help to drive up standards in the profession and demonstrate quality to consumers through accreditations we offer to legal practices and individual solicitors who meet the highest standards of technical expertise and client service in specific areas of law. The accreditations are drivers of quality in service, excellence in client care and practice management. The accreditations provide the assurance to clients that the firm or practitioner has reached the requisite standards to be accredited.
5. We would be pleased to share our expertise in these areas and work with the LSB and other stakeholders to explore all relevant issues with the most helpful quality indicators for clients.

Executive summary

6. Regulators should exercise their powers to ensure that consumers can have confidence in the quality of legal services that a regulated provider is likely to provide, rather than leave it for consumers to gauge ways to assess quality standards as best as they can.
7. Professional ethics and proxies for quality – such as independence, honesty, integrity, confidentiality, and not acting when there is a conflict of interest – should be integral parts of quality measures, so that the public can maintain trust and confidence in the profession and the justice system.
8. Identifying meaningful quality indicators for consumers within the legal sector presents challenges for the following reasons:
 - there is an inherent difficulty for consumers judging the quality of legal advice compared to other markets, which are highly commoditised with frequent purchases: for example, judging the quality of hotels or restaurants

¹ Legal Needs of Individuals in England and Wales Report commissioned by the Law Society and the Legal Services Board with YouGov, 27 January 2020; <https://www.lawsociety.org.uk/topics/research/legal-needs-of-individuals-in-england-and-wales-report>

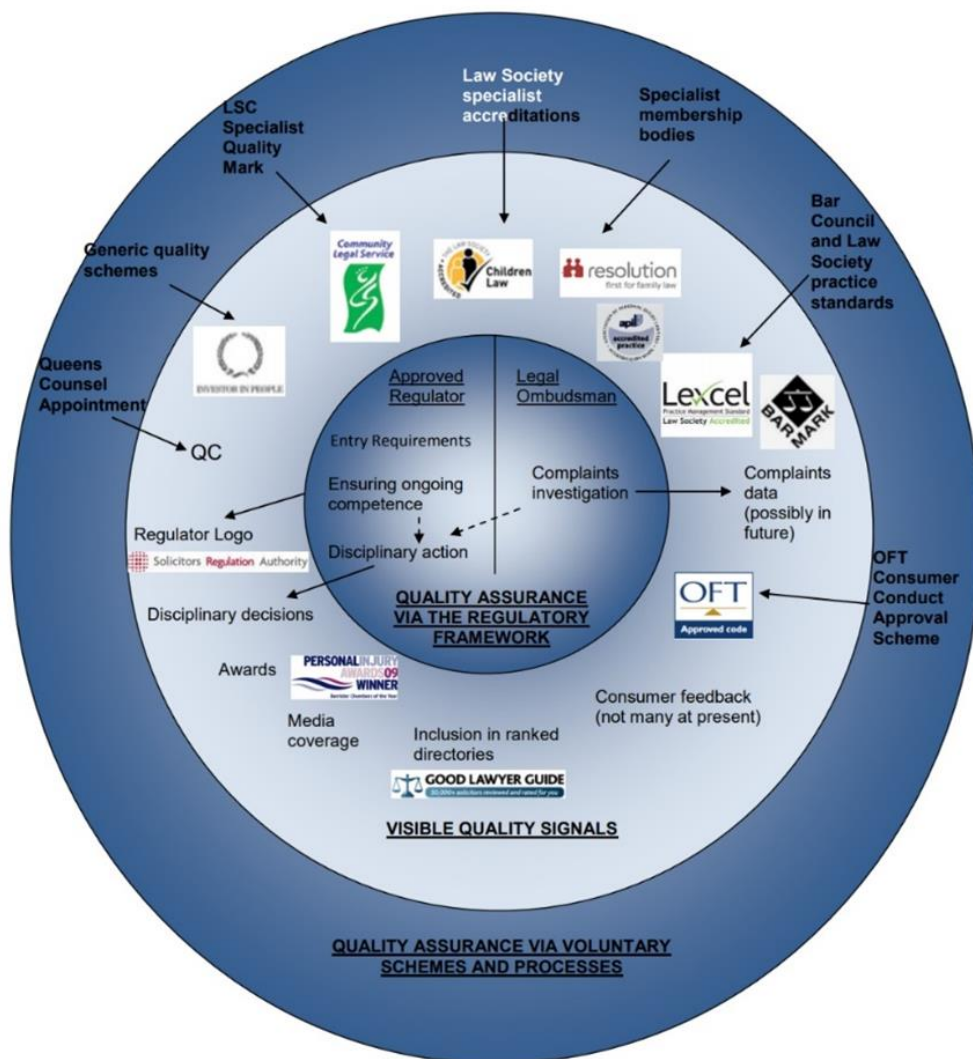
² Ibid.

- the quality or otherwise of legal advice or services delivered may only become apparent some time or even years after the service or advice has been provided
 - consumers may find it difficult to distinguish between customer care and the quality of the legal advice
 - the use of consumer views to generate quality indicators is likely to be subjective and influenced by perception of outcome. Thus, it may be particularly challenging in many practice areas. For instance, criminal defence services often attract unwarranted complaints of poor quality by defendants following convictions and likewise in contested litigation or debt collection cases
9. For these reasons, the regulatory system and minimum entry standards should provide assurance around quality of legal advice and improving awareness of these amongst consumers should be a crucial part of developing the overall strategy on quality indicators.
 10. There is already a range of mandatory and self-regulatory quality marks in the legal sector (Figure 1) that exist for consumers including our own accreditations, which could be updated for practice areas under consideration. For example, qualification as a solicitor with built-in ethical conduct and enhanced client protections provide a baseline level of quality, on which consumers can rely. The Solicitors Regulation Authority (SRA) and the Legal Aid Agency set quality assurance standards for certain services and the SRA publishes information about disciplinary and conduct matters, whilst Legal Ombudsman (LeO) publishes complaints data. Furthermore, the LSB's work on continuing competence aims to ensure that regulated professions meet high standards of education, training and competence through practice.
 11. Therefore, an important part of the LSB's strategy should be to examine how to enhance the level of consumer engagement with existing quality schemes, prior to considering new measures.
 12. Given the low public awareness of legal issues, public legal education should also be factored in more prominently in the mix of possible tools to make consumers aware of existing quality marks and nudge them to engage with information available from credible sources they can trust. Special focus should be given to the most disadvantaged in our society to make them aware of available help, including that they may be eligible for legal aid, and signposting them to high quality services and providers they can trust.
 13. Prior to considering the role of digital comparison tools (DCTs) as a potential mechanism for making consumers aware of quality indicators, it will be important to analyse potential benefits and risk for consumers, the likely impact on legal service providers and a wider market. Adequate consumer protection measures would need to be introduced to ensure clients can safely engage with DCTs, and the market is not distorted so that the public can maintain trust and confidence in the legal sector and the wider justice system.
 14. Engaging with DCTs clearly poses various risk and challenges; however, we are aware that a number of law firms do engage with them. There is nothing to stop law firms or clients from engaging with DCTs and whilst some members do so, many have chosen not to. As such we would object to mandatory signposting requirements, as these would be disproportionate and burdensome on our members. We would be particularly concerned by the impact on small law firms and practitioners, who may not have resource to actively engage with such tools and could be disadvantaged. There would also be a disproportional

impact on Black, Asian and minority ethnic (BAME) solicitors, given that they are 'over-represented' in such practices.

- We are willing to explore these issues through further research to examine the benefits for clients and the viability and effectiveness of possible quality proxies and mechanisms in various practice areas. For this reason and in the interest of transparency, we have agreed to assist the SRA's pilot with law firms and DCTs to test potential scenarios in practice. Any proposals need to be rigorously assessed, in particular to understand the benefit for clients and the impact on the market, especially on small firms and sole practitioners.

Figure 1 – Quality assurance in legal services



Question 1: We are proposing to think about quality in terms of these dimensions: technical quality, customer service and outcomes. What do you think about these elements and are there others we should consider?

16. At a high level, these three proposed dimensions are the right ones. It is helpful for clients to be able to take into account all three aspects of quality in distinguishing between providers. The challenge remains to develop meaningful benchmarks to underpin these in a way which will help consumers, across hugely diverse practice areas, which would be effective in indicating to a consumer what high-quality legal service should look like.
17. Furthermore, it is in the public interest for quality indicators to reflect, where possible, the wider interest of the rule of law and consider solicitors' dual duties to the client and the court. For this reason, professional ethics and factors such as independence, honesty, integrity, confidentiality, and not acting when there is conflict of interest, should be built into quality measures, to ensure that legal service providers are not eroded by market pressures and the public trust in the profession and the justice system is maintained.
18. The distinction between the three dimensions of quality, which we agree are all important considerations for consumers, will be undermined if regulators decide to give priority to consumers' subjectively assessed experience which place emphasis on only one of the three quality dimensions. For example, clients may look at customer service or measure quality by the outcome of their case rather than technical competence of their lawyer. The behavioural bias is evidenced in consumer research where typically consumers searching for lawyers show preference for customer service rather than technical quality. For example, the LSB's research found that out of eight quality indicators considered by the consumer panel, the top three preferences were customer ratings, customer reviews and customer experience, whereas accreditation and information about solicitors were at the bottom.³ As we have said above, clients will be better placed to assess some dimensions of quality over others. For these reasons, it will be important that consumers have access to a range of sources of information to allow them to assess all dimensions of quality. Contextual information that sits around indicators could constructively encourage consumers to consider other aspects of quality as well as customer care and can be particularly helpful in providing meaningful quality markers for diverse practice areas.

Technical competence

19. Technical indicators of quality are currently measured by the level of qualification, training and expertise. Regulators and professional bodies maintain technical competence through various mechanisms including reservation, specialisation, accreditation, quality assessments (for example in legal aid work), continuing competence and peer reviews. One of the tasks of this work ought to be to consider how regulators can make consumers more aware of these markers of technical competence and drive consumers to this type of information.

Customer service

20. Consumer research⁴ suggests that consumers assess the customer service as part of the overall service they receive from lawyers. For example, common markers include good communication and responsiveness, jargon-free language, empathy, or having offices

³ Quality Indicators in legal services, A research report for the Legal Services Board, January 2021, p. 25.

⁴ Ibid.

open at times convenient to clients. These are important but only cover one aspect of service quality for consumers.

Outcomes

21. The LSB proposes to measure quality by looking at whether advice has been useful and delivered a good outcome. A good outcome can only be objectively assessed by reference to the facts of any case and situation. As such, developing broad parameters to enable outcomes to be benchmarked might be of limited relevance.
22. The Legal Needs Survey found that clients' satisfaction can be influenced by the outcome of the case, regardless of whether a lawyer provided a good service. For example, in criminal cases the outcome may be that the client receives a custodial sentence, leading to feelings of frustration against their solicitor. As noted by the LSB, a good outcome may not be satisfactory to a client but serves the interest of justice. Furthermore, on some matters, such as will writing, an outcome can only become apparent after a long time. The LSB will need to take account of these factors in determining how best to equip consumers to assess whether legal advisers deliver good outcomes. Peer reviews are used in some areas for objective judgement, such as legal aid, but it would be costly to roll them out across the whole sector.

Other factors to consider

23. Professional ethics should also be included in the package of quality measures. As mentioned earlier, ethics is a cornerstone of a solicitor's identity, and ethical conduct of an individual practitioner or a law firm is in the wider public interest, and clients are likely to look for a practitioner who adheres to ethical standards.
24. The LSB should also consider dimensions now increasingly used in corporate sector, such as how firms approach corporate social responsibility, diversity and inclusion, or climate change. For example, Chambers or Legal 500 list firms' inclusion as one of the indicators. For some consumers, these may be considered as important aspects of quality in choosing one firm over another and could be factored in an overall package of possible measures.

Question 2: We are proposing to encourage use of these types of information: objective data, consumer feedback and general information about providers. What do you think about these types of information and are there others we should consider?

Objective data

25. All of these are important sources of data for consumers, but we have concerns about some of the proxies proposed. The LSB will also need to consider whether they can be promoted to consumers in a way which equips them with meaningful and reliable information which allows them to make informed decisions, especially in areas where data patterns fluctuate or are not contextualised. For example, LeO complaint data for some practice areas is limited and highly fragmented. A large proportion of LeO's complaints relate to conveyancing issues, whereas some practice areas attract a limited number of complains. The LSB's consumer panel research indicates clients are doubtful about complaint data, and participants said that that "*complaints data could be problematic in*

that it relies on context, could be manipulated, or could include spurious complaints".⁵ Much complaint data is already available in the public domain, with LeO regularly publishing its decisions. The LSB will wish to consider whether duplicating this information could create additional cost, without apparent consumer benefit.

26. It will be difficult to provide a consistent set of objective data on success rates across the sector, given variabilities and complexities that exist within legal services. For example, success rates in litigation depend on many underlying factors, including the strength of client evidence or witness statements, and much of this is not related to the lawyer's performance and is out of the lawyer's control. In developing its proposals, the LSB will wish to consider that if success rates were to become a measure, this could discourage lawyers from taking on more challenging cases with lower chances of success, and this in turn could have a knock-on effect on access to justice. For other areas, such as wills or trusts, it is unclear what the success rates would look like.
27. As for providing error data, this would presumably only be applicable to limited practice areas such as conveyancing.
28. Regarding data on disciplinary records and sanctions, these are already publicly accessible. For example, the SRA's Solicitor Register provides information on whether a solicitor or a law firm has a record. We consider this level of information sufficient to help clients to make a judgment. Moreover, better signposting consumers to information which is already available in the public domain can be more cost effective

Consumer feedback

29. As mentioned earlier, consumers show preference for consumer feedback when trying to gauge quality of legal services, but over relying on consumer feedback as an objective proxy for quality indicators would be unreliable. Though our members already routinely use client feedback to reflect and improve on the quality of customer service they provide to clients, we set out some factors that might be taken account of in reliance on consumer feedback:
 - consumer feedback may be more meaningful in relation to some aspects of quality over others
 - consumer feedback may be more meaningful in relation to some areas of practice, whereas for others there is a risk that consumer feedback may be linked more closely to the outcome of the case than the solicitor's performance
 - certain types of consumers may be more or less likely to provide certain types of feedback. For example, it is accepted that clients who have lost a criminal case submit a disproportionately high number of complaints about the lawyers who represented them. Whereas clients in immigration cases may be less likely to provide feedback either because they may no longer be in the same jurisdiction or because they may lack the necessary language skills to offer feedback. Some vulnerable clients may not have the capacity to give feedback

⁵ Quality Indicators in legal services, A research report for the Legal Services Board, January 2021, p. 5.

30. There will be challenges in comparing statistics or trends across different areas of law and types of practice. If we accept that criminal clients are more likely to offer negative feedback on the performance of their solicitor, it would therefore be problematic to compare statistics for criminal practitioners against those of lawyers practising in fields that attract less criticism, for example will writing. Also, law firms covering different practice areas are likely to get more generic feedback, whereas sole practitioners or those practising in one area of law, which attract less feedback, for example immigration, may get far less or none at all.
31. As we have said throughout, it is important that consumers are equipped with a range of information, both objective and subjective, in order to allow them to make informed decisions in choosing between providers. Proposals to promote customer feedback to consumers should, therefore, be accompanied by technical quality markers, such as specialism, practising experience, accreditations, and complexity of matters handled. The LSB and regulators should also ensure that DCTs operating in the legal sector include technical quality indicators alongside customer service. The SRA is currently doing a pilot with DCTs and law firms to explore the potential for developing a set of quality indicators which could be consistently used by DCTs. We support this work and strongly recommend that evidence from the pilot should be used to inform any future policy considerations. However, we consider that any mandatory signposting requirements to customer reviews and other DCTs may create a disproportionate burden for firms and practitioners.

General information about providers

32. We agree that general information about providers is useful and could be provided by way of online directory. Consumers may look for specialism, skills and experience of law firms and practitioners and more could be done to encourage use of this type of data. Most law firms and practitioners already provide information to clients about their specialism, experience and staff credentials on their website, by phone and through direct communication with their clients. In parallel, the SRA collects relevant data on specialism, expertise, date of admission, disciplinary and sanction records, which anyone can access for free online through the SRA's Solicitor Register. The Law Society's Find a Solicitor (FAS) register also provides data on solicitors and law firms regulated by the SRA. Signposting consumers to this information could help them to make more informed choices. We are looking at FAS to consider how it can update and improve the current approach.

Other Information

33. Information on accreditations should also be included as part of any information provided on quality, as these are recognised as objectively verified measures of quality. It is important to raise awareness among consumers of such schemes.
34. The Law Society awards accreditations to legal practices and individuals who meet the highest standards of technical expertise and client service in specific areas of law, and we also award a diploma in Local Government. The Law Society awards accreditations to individuals in the following areas:
- Children Law
 - Clinical Negligence

- Criminal Litigation
- Family Law
- Family Mediation
- Immigration and Asylum
- Mental Health
- Mental Capacity
- Personal Injury

35. We also award legal practice accreditations to legal practices who meet high standards of technical expertise and client service in specific areas of law. We have three types of legal practice accreditations:

- Lexcel England and Wales, which consists of three Standards for legal practices, in-house legal departments and international legal practices/departments
- Conveyancing Quality Scheme (CQS)
- Wills and Inheritance Quality Scheme

36. Lexcel is our legal practice quality mark for client care, compliance and practice management, and is recognised as a quality mark in legal aid contracts. The Lexcel Standard requires practices to actively monitor client satisfaction and has clear requirements for client care and levels of service.

37. CQS is a recognised quality standard for residential conveyancing practices. It is awarded to practices that have demonstrated the expertise and committed to deliver quality residential conveyancing advice in accordance with stringent scheme rules. CQS supports practices to manage their risk and use standardised processes and compulsory annual training. CQS has clear requirements for levels of service and client, while supporting practices that educate clients about what to expect. The accreditation is recognised by the UK's largest lenders and by stakeholders.

38. The accreditations are recognised by stakeholders as clear quality marks. We included information about our accreditation schemes in [Annex A](#)

Question 3: Which groups of consumers and/or types of provider should action in this area focus on?

39. Individual consumers should be the ultimate target group for dissemination of information on quality and other aspects of the service. A special focus should be given to the needs of vulnerable clients – such as those digitally excluded, with mental and/or physical disabilities, or those under pressure or duress – to ensure that information provisions factor in their particular needs. For example, our guidance on meeting the needs of vulnerable clients encourages our members to factor vulnerability into the provision of legal services.⁶ In our guidance we separate out different categories of vulnerability:

⁶ <https://www.lawsociety.org.uk/topics/client-care/meeting-the-needs-of-vulnerable-clients>

- clients who have capacity to make decisions and give instructions but need extra support to do this because of mental and/or physical disabilities
- clients who lack mental capacity to make decisions and provide instructions, for whom solicitors must follow a range of statutory and other safeguards
- clients who are vulnerable to undue influence, undue pressure or duress (who may or may not have mental capacity to make decisions and provide instructions)

40. We recommend the LSB should give special consideration to these groups to ensure any proposals on quality indicators are meaningful to them as well.

Question 4: Should there be a base level of transparency on quality across the market and enhanced transparency in priority service areas? What should a base level of transparency on quality consist of?

41. It will be difficult to achieve a base level of transparency on quality which could provide a meaningful quality measure for consumers across the whole legal sector. Were a standard approach to emerge, it should be applied consistently to ensure clients receive a consistent experience across the legal sector. If it is not, a firm that provides relevant information but does not have a perfect record risks looking worse than a firm with a worse record that chooses not to publish anything.

42. Given that consumer knowledge of legal services and regulation is low and many believe all providers are regulated to the same level, the base level of transparency must as a first step set out to disseminate information on regulatory status (whether a provider is regulated or not and by what authority) and whether the service is provided by a solicitor, other qualified lawyer or non-regulated person. Regulatory status is the proxy underwritten by legislation for probity and technical quality, and it signifies whether a provider meets the minimum quality threshold for education and training, competence and client protections. For this reason, we welcomed the introduction of the digital badge by the SRA in December 2019 which is interlinked with the recognition of the solicitor brand as a mark of quality. The badge informs consumers that they are using a regulated solicitor and also links them to easy-to-understand information on the protections this solicitor offers and should be widely promoted to make the public aware. Information about regulatory status of legal service providers is not currently provided in a harmonised way across the sector, and many providers market themselves as “lawyers”.

43. This could be developed further with additional technical criteria such as technical skills, specialism and experience, and information on quality marks and accreditation. This type of data is already collected by regulators and professional bodies and can be objectively verified. Many law firms and practitioners already provide this sort of information to clients, and it should not be overly onerous for law firms to provide on a more consistent basis. It is also important to note that much of this information is valued by consumers and it is considered useful to them when comparing service quality.

44. Regarding quality marks and accreditations, we accept that not many consumers may be familiar with them. However, including information about accreditations as part of the base level transparency would help to raise consumer awareness about objective quality benchmarks which exist. These could guide consumer decisions regarding quality and help to supplement the customer service indicators which consumers currently rely on.

45. The base level of transparency should include information on aspects of customer service, such as timelines, responsiveness and communication methods. However, it is important to bear in mind that quality of legal services and advice may be compromised in favour of achieving response or completion times or meeting other criterion that may have little to do with quality standards. For example, in conveyancing settings, 'speed' as an overall goal can reduce the quality of legal advice and increase claims and the cost of professional indemnity insurance.

Question 5: How useful could consumer feedback, objective data and general information about providers be in informing consumer choice? What are the benefits and drawbacks of these types of information?

46. Please see our response to question 2.

Question 6: What role, if any, should success rates and complaints data have in informing consumer choice? Is there other quantitative data that would be helpful to inform consumer choice?

47. There is a significant problem with using success rates as a barometer of merit, as it could potentially discourage solicitors from taking on the more difficult, but still arguable, cases, as such cases could impact negatively on their statistics. The result could impact negatively on access to justice, with certain clients finding it difficult to get legal representation, merely because their cases could be difficult to win.
48. Another potential problem with success rates is that in some fields of practice, consumers may be tempted to approach cheaper legal providers, perhaps providers without legal qualifications, where their cases are more straightforward. However, for more complex cases, or those that are harder to win, consumers may be more likely to engage solicitors. This type of approach to sourcing legal services, could again impact negatively on the success rates for solicitors, by virtue of the fact that they are often dealing with the most difficult, or least winnable, cases.
49. There are important factors which should be taken into account in relation to complaints data, which we have explained above. As we have highlighted, certain areas of law attract a higher number of complaints than others. Also, in some areas of law, mistakes are more likely to only become apparent some years after the legal service was provided; consider will writing, for example, where a mistake may only surface when the will is executed some years after the legal services have been performed.

Question 7: Which of these different channels – law firms' websites, DCTs, a single digital register – do you think could be most effective in providing access to information on quality? Are there other channels we should consider?

50. It is important to explore the issue of accessibility of information on quality in the context of the overall consumer journey and communication channels consumers commonly use when searching for information on legal services.
51. We agree that law firms' websites and other online communication channels are important, but other means of communication should not be underestimated. For example, the SRA's evaluation report found that aside from searching firms' websites (26%), a large proportion

of clients visit law firms' premises (32%), use telephone (32%) or send an email (24%) to find out about the service.⁷ These communication channels are important and allow consumers to assess certain aspects of quality such as professionalism, empathy and customer experience, and to see whether they can build a rapport with a lawyer. These are also particularly important for people less adept at using online information channels, digitally excluded or vulnerable clients. Experience of other markets shows that people in vulnerable circumstances are less likely to engage with digital tools, and the pandemic has also exposed the digital divide in society. Therefore, offline communication channels should also be considered.

52. DCTs operate now and may complement these. However, when looking at the potential role DCTs can play in providing access to information on quality, the LSB and regulators need to ensure that they are an impartial, reliable and accurate source of information.
53. Consideration should also be given to using well-established consumer networks that are trusted to disseminate information. For example, Citizens Advice is a recognised and trusted charity, and offers advice on consumer, family, housing, immigration and other areas of law. In 2019 to 2020, Citizens Advice recorded over 34.5 million visits, the site had 54.5 million pageviews and they helped 2.8 million people in person, by phone, email or web chat.⁸
54. As for the single digital register, it is difficult to comment on whether it would be an effective channel of communication without knowing more details about what the product would look like. We set out our further thoughts on the register in response to question 10.
55. The enhancement of consumer engagement using the outlined communication channels should be supported by a properly funded and co-ordinated public legal education campaign to address the root of the problem, which is low public awareness of legal issues. A crucial part of the campaign should focus on making the most disadvantaged in our society aware of available help, including that they may be eligible for legal aid, and signposting them to high-quality services and providers they can trust.

Question 8: Do you have evidence on current usage of DCTs not mentioned in the paper? How could we best encourage engagement by consumers and law firms with DCTs? What are your views on the specific solutions, such as requiring law firms to sign post to DCTs, embed ratings, or prompt consumers to leave a review?

56. We are aware there are some DCTs in the legal services market, but we have not undertaken specific research in this area. We understand that both consumers and law firms are cautious about DCTs. For example, the SRA's evaluation report found that while 41% of consumers are aware of legal services price comparison sites and 51% of consumer reviews and/or ratings sites, only a few have actually used either comparison sites (13%) or review sites (21%).⁹ Even fewer law firms use these sites, with only 2%

⁷ Better Information in the Legal Services Market – Year One Evaluation of the Transparency Rules, SRA, 2020, p. 47; <https://www.sra.org.uk/sra/how-we-work/reports/better-information-legal-services-market/>

⁸ <https://www.citizensadvice.org.uk/about-us/about-us1/introduction-to-the-citizens-advice-service/>

⁹ Better Information in the Legal Services Market – Year One Evaluation of the Transparency Rules, SRA, 2020, p. 69; <https://www.sra.org.uk/sra/how-we-work/reports/better-information-legal-services-market/>

saying that they provide price and service information to any price comparison website, and also few give customer feedback on their firms' websites.

57. We understand there are broadly two types of DCTs – comparison websites and review sites. The main comparison websites of which we are aware, predominantly specialise in the conveyancing practice area, but there are some covering a selection of practice areas:

- [JustBeagle](#) which enables consumers to browse and compare fixed fee legal services. It also contains details for over 10,000 law firms. JustBeagle operates in conjunction with LegalBeagles, a legal discussion forum
- [TheLawSuperstore](#), which advertises itself as the UK's first comparison website for legal services, and [RatedSolicitors](#) which brings together a range of legal professionals who have all agreed to let their clients share their experiences
- [Conveyancing Prices](#)
- [Conveyancing Index](#)
- [Conveyancing Quotes](#)
- [Conveyancing Quote Now](#)
- [The Law Superstore](#)
- [Legal Utopia](#)
- [Really Moving](#)

58. There are also review sites where consumers can post feedback about law firms and practitioners:

- [Google Reviews](#)
- [Trustpilot](#)
- [Review Solicitors](#)
- [REVIEWS.io](#)
- [Solicitor.info](#)

Benefits of engaging with customer review websites

59. Some law firms already engage with DCTs, in particular with review sites and encourage clients to leave a review on independent sites. The main driver behind engaging with review sites is marketing. For example, Google reviews are linked with Google search and maps, used by consumers to search for legal advice, and may help some firms to stand out.

60. Aside from marketing purposes and driving clients to their websites, those law firms actively engaging with review sites find customer feedback useful in terms of reassuring that they provide a good customer service or help them to improve service. Some use positive customer feedback to reward staff who receive positive reviews. Other firms and practitioners appear on review sites without their active engagement or prompting clients to leave a review, and some are not aware until alerted by friends or colleagues when incorrect information is posted.

Challenges of engaging with customer reviews websites

61. The SRA's report found that law firms have reservations about engaging with DCTs, primarily because of the risks of negative or inaccurate reviews, the difficulty of portraying quality accurately, how to describe and commoditise complex legal services and also how

to establish objectivity.¹⁰ 29% of solicitors reported benefits from DCTs, whereas 80% noted that there were some challenges.¹¹

62. These findings broadly reflect the main challenges with DCTs. In particular, law firms are concerned about fake reviews, either negative or bot reviews, artificially inflating the number of positive reviews posted by competitors. There are companies on the market who offer to either remove negative reviews or enhance reviews for a price.
63. These concerns are exacerbated by evidence from other sectors where reviews are more common. For example, in 2020 consumer organisation Which? found that fake reviews make consumers twice as likely to choose poor-quality products and launched a campaign to demand that mainstream online marketplaces take more action on fake reviews.¹² In response the CMA launched an investigation into fake online reviews.¹³
64. Also, reviews may not always be accurate, particularly if problems with, or the merits of, the legal service only become apparent significantly after the transaction. An assessment of service quality may be influenced by the legal outcome, which can pose challenges to a fair evaluation in contentious areas of law. All these are far more complex in comparison to more commoditised services like hotels, utilities and insurance where DCTs work well.

Practical Considerations

65. Law firms that actively engage with review sites can find it time consuming and require staff resource, which typically involves responding to reviews, positive or negative, or resolving issues about incorrect data. In cases when many reviews are posted, it can be difficult to identify what particular case a review refers to in order to respond. Some suggested that posting a case number by clients could help to make the process easier.
66. Those law firms which are on review sites but have no resource cannot actively engage and may be disadvantaged by the overall rating. Also, some firms and practitioners find it challenging to amend incorrect data, for example about professional credentials, posted on review sites.
67. Firms who actively engage with customer review sites thought that small firms and sole practitioners are likely to find it more challenging to engage and monitor information on such sites because of limited resources.
68. For these reasons, we would be strongly concerned if signposting, embedding or engaging with review sites were to become mandatory for law firms. Such a move would be likely to benefit larger firms who have more resource to manage and maintain the 'back end' of customer review or other DCT platforms. If this takes off, it is likely to negatively impact the small firms and sole practitioners, who will be left behind. There would also be a disproportional impact on BAME solicitors, given that they are 'over-represented' in such practices. This would be in direct opposition to the Legal Services Act's objective of "encouraging an independent, strong, diverse and effective legal profession".

¹⁰ Ibid.

¹¹ Ibid; CMA Legal Services Market Study Progress review, 2020.

¹² <https://campaigns.which.co.uk/fake-reviews/>

¹³ <https://www.gov.uk/government/news/cma-investigates-misleading-online-reviews>

69. In practice areas such as conveyancing, DCTs' development can be hindered by offline referral intermediaries (for example estate agents) which refer clients directly to legal advisers. Though strong competition exists in the conveyancing sector, estate agents are in a position of a significant influence over consumer choice of a conveyancer, being able to steer the consumer to a particular conveyancer on the basis that this conveyancer will 'get on with it' or 'has worked well with the estate agent on other occasions'.
70. Some firms also consider DCTs as referral intermediaries and choose not to engage with comparison sites, because they operate a non-referral business model. Depending on the business model of DCTs, they are generally free to access for consumers but there can be a cost to law firms to appear on such sites.
71. There is nothing to stop members from engaging with DCTs and some members already do so. If over time this engagement provides advantages for members and consumers, we expect engagement to increase. As such, we do not support any mandatory measures that would require firms and practitioners to engage with DCTs.
72. The LSB and regulators should continue to work with the sector to explore the relevant issues associated with various risks and challenges relating to the use of DCTs to allow the DCTs market to continue to develop, if there is consumer demand. For this reason, we have agreed to assist the SRA's pilot with law firms and DCTs to test potential scenarios in practice. We strongly recommend that the LSB should wait for the results of the SRA's pilot, so that these can inform any potential policy options to consider.

Question 9: What, if any, steps should regulatory bodies take to help consumers and legal services providers engage with DCTs safely?

73. Regulators have a role to play to ensure that the DCTs market operates fairly and consumers, law firms and practitioners have trust and confidence to engage with such tools.
74. As the LSB acknowledges, choosing a provider in legal services is different to buying a holiday, insurance, or switching energy supplier. The decision is high stakes, often involving high cost and distress. For these reasons, regulation of solicitors has built-in strong client protections with enforceable quality measures through qualification and practice. In this context, the question arises about what enforceable quality measures are in place for DCTs operating in the legal sector, to ensure they protect clients and help to raise quality of legal services overall.
75. The CMA's report on digital comparison tools carried out in 2017 identified a number of concerns about how DCTs operate such as risks of consumers focusing on price rather than customer satisfaction and quality, issues around data accuracy, transparency about how DCTs make money, competition between DCTs, and DCTs' transparency, accessibility and clarity when using personal consumer information.¹⁴ The CMA also investigated review sites. To improve the DCTs' market, the CMA recommended to the government and regulators the introduction of CARE principles (Clear, Accurate,

¹⁴<https://www.gov.uk/government/publications/digital-comparison-tools-summary-of-final-report/digital-comparison-tools-summary-of-final-report>

Responsible and Easy to use) to ensure that DCTs treat people fairly. The CMA also recommended that the government look to bring DCTs into the regulators' scope in energy and telecoms and introduce civil fining powers for breaches of consumer protection law. It is also noteworthy that the CMA's report considered a range of products and services that are simple and that consumers are relatively familiar with, compared with legal services.

76. So, prior to encouraging consumers and legal providers to engage with DCTs, the LSB and frontline regulators should take appropriate measures to prevent problems identified in other markets from happening in the legal sector. We are sceptical of the measures proposed in paragraphs 85 to 87 of the discussion paper. While public legal education and signposting consumers to Legal Choices can help, more robust consumer protections are necessary to deal with these issues.
77. One of the key challenges is that the LSB and frontline regulators do not have a regulatory oversight of DCTs operating in the legal services market. This means regulators need to rely on DCTs willingness to implement any measures voluntarily. The LSB and frontline regulators could consider accreditation scheme for DCTs in the legal sector based on the CMA's CARE principles. Similar accreditation schemes for DCTs were developed by Ofgem and Ofcom to ensure prices and options provided by DCTs are calculated fairly in an unbiased way, and consumers and providers have a means to complain in case they are unsatisfied with the service. The SRA introduced a Code of Conduct for DCTs participating in their pilot, which could evolve into a more robust accreditation although its enforcement powers would still be limited, and even more constrained with regard to DCTs based abroad.¹⁵ While the SRA's Code of Conduct is certainly a step in the right direction, it needs to be improved further by fully embedding the CARE principles, and supported by a robust monitoring and enforcement mechanism.
78. Another aspect which could potentially give the legal sector more confidence is providing more regulatory clarity. Since few DCTs operate in the legal services market, this is quite a new area for law firms and practitioners, and there is unease about issues such as referrals, subscription fees, client confidentiality and care. For example, the American Bar Association has recently issued a formal opinion for US attorneys about how to behave in relation to negative reviews.¹⁶ Similarly, the SRA has made some good progress and provided some clarification on the Rule 5.1 and advice on how to engage with online reviews, but more regulatory guidance is needed to ensure certainty.
79. Finally, the LSB and regulators need to monitor the impact of DCTs on the competition in the market. For example, the CMA found that some DCTs imposed commercial conditions on suppliers preventing them from offering services at a lower cost. Also, there is a risk that larger firms could monopolise these sites with the gap between the large and small firms widening, with smaller firms leaving the market. This could result in less consumer choice, higher prices, causing an adverse impact on access to justice. The LSB and legal regulators should also encourage consumers to shop around several DCTs as advised by consumer bodies and other sector regulators.

¹⁵ <https://www.lawgazette.co.uk/commentary-and-opinion/the-trustpilot-case-is-only-the-beginning/5107434.article>

¹⁶ https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/aba-formal-opinion-496.pdf

Question 10: What range of quality information, if any, would it be appropriate to hold on a single digital register?

80. In response to the LSB's strategy and business plan consultation we argued that prior to considering setting out a single digital register to be placed on Legal Choices website, the LSB should undertake a cost-benefit analysis, with a projection of measurable benefits for consumers, including a projection of website traffic/user hits, and the consumer segments it intends to target versus set up and marketing costs. Therefore, we consider it to be premature to seek views about a range of quality information on the register before providing these details. It is commercially prudent to conduct such cost-benefit analysis in the light of the fact that the SRA and other regulators already run well established professional registers, and any duplication should be avoided.
81. The LSB is also aware that the Law Society runs the Find a Solicitor Service, which is a free online search tool that people can use to find a solicitor in their area. There are over 600,000 visits to the website each month, generating 49,000 enquiries to firms, and nearly 7,000 consumer calls to our helpline. In comparison, Legal Choices has generated 3.1 million visitors over a three-year period, which came at the cost of £750,000 to regulators.¹⁷ The cost of funding Legal Choices is uncertain and likely to increase for the solicitors' profession since the Bar Standards Board withdrew its support. We note the LSB has sought views from the LSB's consumer panel as to whether they would find the single register useful, but it would be helpful to understand whether views have been sought about the usefulness and awareness of existing professional registers, and the Legal Choices website where the proposed register is to sit.
82. We are concerned that a new register of regulated professions could not only add extra cost for frontline regulators and the profession, but also increase consumer confusion. Legal professions are regulated to differing levels, with varying degrees of client protections attached, yet the majority of consumers believe that legal providers are regulated to the same level. Separate professional registers run by frontline regulators clearly signal to consumers that they need to be aware of the differences.
83. As such, it would be more cost-effective and beneficial to consumers to revamp existing professional registers run by regulators and display them separately in a more prominent way on the Legal Choices website. For example, such a model is used by the Professional Standards Authority, which provides links on its website to registers of accredited practitioners run by regulators in different fields of health and social care.

Question 11: What are your views on the relative merits of a market-led approach compared with standardised regulator-led approach?

84. Any potential approaches to help consumers access and compare information on legal providers need to take account of consumer preferences and the information channels consumers are likely to engage with. It is also essential that information provisions are supported by strong consumer protections to ensure consumers have access to high quality and impartial information. We have taken this into account in analysing the routes outlined by the LSB.

¹⁷ CMA Legal Services Market Study Progress review, 2020, para 3.110, p. 57.

85. Route one is heavily reliant on regulators' support for "*the emergence of a flourishing DCTs market*"¹⁸. Yet currently, consumer take up of DCTs in the legal sector is low, and the LSB acknowledges some inherent features of legal services that make it difficult for these tools to thrive. Markets where DCTs are prevalent are highly commoditised, based on high volume and regular consumer engagement, for example: annual insurance renewal, switching energy or mobile phone contract, or booking annual holidays. In comparison, legal services are complex, highly fragmented with small client bases, infrequent consumer engagement (one-off service – for example, divorce, wills, employment matters). Furthermore, offline referral intermediaries already exist (such as estate agents in conveyancing).
86. Given the above, the level of regulator support for DCTs development needs to be considered in the context of whether existing barriers to development of these tools are likely to be mitigated in the long-term, and consumers' appetite to engage. Strong consumer measures would need to be built into these tools to ensure consumers get access to high-quality information and are treated fairly. In this context, the market should be allowed to continue to evolve. We would be concerned about signposting requirements as these could be too onerous on the profession, in particular on small firms and practitioners.
87. Route two with the centralised regulator-led approach like the Care Quality Commission model would provide a more robust and objective scoring system, but it would be costly to roll out across the whole sector.
88. A quality assurance system, which includes peer reviews and audits, already exists in the legal aid work. The Legal Aid Agency applies numerous checks and audits on legal aid firms to ensure they are complying with the terms of the contract, the quality of advice, and whether the correct fee was claimed. Peer reviews are carried out by experienced practitioners who write a detailed report giving the overall quality rating.¹⁹ However, it is difficult to see how such a system could be scaled up across the sector cost-efficiently. For example, in 2006 Lord Carter's review of criminal legal services recommended setting up a quality assurance scheme for advocates, but the SRA and the Bar Standards Board have not been able to implement such a scheme, despite actively working on it. Problems included:
- testing by scenarios being extremely expensive and in piloting proved to be of limited value
 - feedback from judges subjective and unreliable
 - observation of work impractical because of the volume of contested hearings that do not go ahead as expected
 - difficulty of defining what good quality advocacy should look like and testing it in practise
89. It would be important to understand how likely consumers would be to use this service by carrying out a cost-benefit analysis, as consumer engagement with information provided by government bodies and regulators is generally low. We anticipate that significant resource would have to be allocated to encourage consumers to make use of it.

¹⁸ LSB discussion paper, p. 25.

¹⁹ [Legal Aid Agency audits - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

90. A more nuanced approach may be needed that combines some elements of a market-led approach and standardised regulator-led approach.
91. A possible model could involve regulators supporting the development of market-driven solutions by facilitating the provision of information in a way that allows the existing DCTs market to expand, if there is consumer demand. Regulators could then develop a standardised model for information and scoring which DCTs could use innovatively. The standardised model would set key criteria for information on technical and service quality and objective data. In most cases, this information is already available on firms' websites, and if there are any gaps, additional information could be provided by regulators.
92. A challenge would be to ensure that DCTs use the quality markers in a balanced way. As evidenced in other markets, DCTs often come up with different search results and ranking for the same product or service, because the search outcome is dependent on the type of criteria and algorithms set by DCTs. That is why consumers using DCTs are advised to use accredited sites where possible and shop around DCTs before making a purchasing decision. Typically, consumers visit two to three DCTs as part of the searching process.²⁰ Strong consumer protection measures would need to be built in to protect clients, and also to ensure legal providers are treated fairly.

Question 12: Do you have any further comments on our analysis and approach to determining suitable quality indicators?

93. Prior to developing potential measures, more research needs to be done to examine the viability and effectiveness of possible quality proxies in various practice areas. For this reason, we are supporting the SRA's pilot with law firms and DCTs to test potential scenarios in practice. In addition, we are keen to offer expertise of our accreditation schemes as well as insight of our specialist subject committees covering various practice areas. It is vital that any decision to determine suitable quality indicators is supported by robust evidence on the level of consumer engagement with quality indicators and showing it to be cost effective and practical to deliver at practice level. Any proposals need to be rigorously assessed, in particular through the impact on small firms and sole practitioners, in order to show they will deliver tangible benefits to clients.

²⁰ <https://www.gov.uk/government/publications/digital-comparison-tools-summary-of-final-report/digital-comparison-tools-summary-of-final-report>