

Draft statement of policy on empowering consumers – consultation paper

A consultation on our proposed policy on empowering
consumers

This consultation will close on **8 December 2021**

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Executive summary

1. The Legal Services Board (“LSB”) is the oversight regulator for legal services in England and Wales. It is responsible for regulating the approved regulators of legal services and the regulatory bodies to whom some have delegated their regulatory functions. The LSB was established by the Legal Services Act 2007 (“the Act”), which provides that in discharging its functions, the LSB must comply with and thus promote the regulatory objectives.
2. The proposals in this consultation paper aim to advance a series of regulatory objectives, including promoting competition, improving access to justice, promoting and protecting the interests of consumers, encouraging an independent, strong, diverse and effective legal profession, and increasing public understanding of the citizen’s legal rights and duties.
3. Our State of Legal Services 2020 report identified challenges that the sector needs to collectively address, including ‘empowering consumers to obtain high quality and affordable services’.¹ There is a long-standing issue in the legal services market that too many consumers do not engage effectively with the market. A lack of understanding of the sector and poor access to clear and comparable information about providers means that a significant proportion of consumers cannot easily access legal services suited to their needs.
4. The Competition and Markets Authority (CMA) completed a market study of legal services in 2016² and a further review in 2020.³ In both assessments, the CMA found that the market was not working in the best interests of consumers. It made recommendations to the regulators to improve market transparency for consumers and the LSB to co-ordinate and oversee progress against the recommendations.
5. Although there have been some positive market developments and new regulatory arrangements since 2016, it is clear that further action is needed from the regulators to deliver real change in outcomes for consumers. There is fresh impetus following the CMA’s latest review and we intend to capitalise on this to achieve those outcomes.
6. We intend to issue a statutory statement of policy on empowering consumers under Section 49 of the Act. We propose for the statement of policy to set out expectations of the regulators in pursuing improved engagement among

¹ LSB (2021), [Reshaping Legal Services \(legalservicesboard.org.uk\)](https://legalservicesboard.org.uk), p.7

² CMA (2016), [Legal services market study: Final report \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

³ CMA (2020), [Final report \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

consumers with the legal services market. The LSB would have regard to the statement of policy in carrying out its functions, in particular:

- the maintenance and development of standards in relation to regulators' regulation of authorised persons and their education and training;
- considering applications to change regulatory arrangements; and
- undertaking any enforcement actions.

7. We also propose to have regard to the statement of policy in discharging our oversight function through assessing regulators under the regulatory performance assessment framework.

8. This consultation seeks views on a draft statement of policy. We have set out proposals for our expectations of regulators to:

- ensure provision of information on price, quality, service, redress⁴ and regulation;
- enable consumers to engage effectively with the legal services market; and
- secure effective compliance with regulatory arrangements implemented to achieve the specified outcomes.

9. We consider that, in pursuing the expectations in the draft statement of policy, the regulators will improve outcomes for consumers.

10. Given the diversity of the legal services market, both in terms of providers and the needs of consumers, this draft statement of policy is designed to be high-level. The statement is based on a set of general expectations, principles and specific expectations. This approach is intended to provide a flexible framework for the regulators, while ensuring a minimum standard of transparency across relevant providers.

11. Regulators already have a variety of regulatory arrangements in place around transparency. In adhering to this statement of policy, they may choose to introduce further arrangements, or use other regulatory levers to effect change.

12. We have drawn on a wealth of evidence in developing this draft statement, including our own research, the CMA's analysis, responses to our quality indicators discussion paper⁵, research with the LSB's Public Panel⁶,

⁴ In referring to 'redress' we have mirrored the language used by the CMA. We note that the Act refers to 'complaints resolution' in referring to the same issues.

⁵ LSB (2021), [Quality Indicators | The Legal Services Board](#)

⁶ LSB (2021), [LSB Public Panel Research Report \(legalservicesboard.org.uk\)](#)

engagement via our roundtable event⁷, and contributions from stakeholders across the sector.

13. We consider that this draft statement of policy and a recently established oversight group chaired by the LSB, will together provide a proportionate, targeted and effective framework for making and monitoring improvements in consumers' interaction with the legal services market.
14. The consultation period begins on Wednesday 15 September and runs until Wednesday 8 December 2021.

⁷ LSB (2021), [6.2 Paper \(21\) 28 Quality Indicators discussion paper - Annex A \(legalservicesboard.org.uk\)](https://legalservicesboard.org.uk)

Background

About the Legal Services Board

15. The LSB is the independent body that oversees the regulation of legal services in England and Wales. The Act provides that in discharging its functions, the LSB and approved regulators must, so far as is reasonably practicable, comply with and thus promote the regulatory objectives⁸. The LSB oversees the ten approved regulators, some of which have delegated their regulatory functions to independent regulatory bodies (“regulators”).⁹
16. Section 49 of the Act provides for the LSB to prepare and issue a statement of policy on any matter and in preparing it, have regard to the principle that its principal role is the oversight of the approved regulators. The LSB must have regard to any relevant statement of policy in exercising or deciding whether to exercise any of our statutory functions.
17. Under section 50 of the Act, before publishing a statement of policy, the LSB is required to invite representations on a draft of the statement. This consultation paper constitutes a notice under section 50 of the Act accompanying the proposed statement of policy.

CMA review

18. In 2016, the CMA conducted a market study¹⁰ of legal services and found that individual and small business consumers were not being best served and too many were not able to use the legal services market effectively. This was in part because there was not enough information available to help them make an informed choice when choosing a provider. The CMA made recommendations to the LSB and the regulators to improve the provision of information on price, service, regulation and redress.
19. There has been some activity to address these issues since 2016, particularly on price transparency, but more needs to be done as there is little evidence of improved consumer engagement with the market or increased levels of shopping around.
20. For example, our 2020 prices research¹¹, jointly commissioned with the CMA, found an improvement in price transparency generally. In 2020, there were 40% more providers displaying prices on their websites compared to 2017. There continued, however, to be a wide dispersion in pricing, as was the case in 2015 and 2017. We would have expected this dispersion to be narrower if the market

⁸ LSB (2017), [Regulatory objectives \(legalservicesboard.org.uk\)](https://legalservicesboard.org.uk)

⁹ LSB [Approved regulators | The Legal Services Board](#)

¹⁰ CMA (2016), [Legal services market study: Final report \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

¹¹ LSB (2020), [Prices research | The Legal Services Board](#)

was working more competitively. The findings from the Legal Services Consumer Panel's 2021 tracker survey indicate levels of shopping have not increased over the last 12 months, with 30% of consumers shopping around in 2021 and in 2020. This is only a marginal increase from 27% of consumers shopping around in 2017, the year after the publication of the CMA's market study.¹²

21. In 2020, the CMA undertook a review of its 2016 market study¹³ and made further recommendations to the regulators to:

- Ensure that there are high levels of compliance with the minimum standard of transparency across the legal services sector;
- Improve the clarity, comparability and prominence of disclosure on providers' websites in relation to price, service, redress and regulatory status;
- Improve the provision of information on quality of legal services providers to consumers;
- Develop initiatives to help consumers engage actively with information on price, service and quality;
- Develop an ongoing programme of consumer research and testing to determine the information on price, service and quality that is most useful for consumers;

22. The CMA asked the LSB to lead on co-ordinating and overseeing activity by the regulatory bodies on these issues, and our Board agreed in principle to this recommendation in March 2021.¹⁴

LSB work to empower consumers

23. We identified work to improve consumers' experience of the legal services market as an important element of our strategy for the sector.¹⁵ This is key to meeting the challenge identified in our State of Legal Services 2020 report¹⁶ of empowering consumers to obtain high quality and affordable services. We also consider this work can help to reduce the significant unmet legal needs of more than three million people in England and Wales each year.

¹² LSCP (2021), [Legal Services Consumer Panel Tracker Survey 2021](#)

¹³ CMA (2020), [Final report \(publishing.service.gov.uk\)](#)

¹⁴ LSB (2021), [Agreed minutes - 18 March 2021 \(legalservicesboard.org.uk\)](#)

¹⁵ LSB (2021), [Reshaping Legal Services \(legalservicesboard.org.uk\)](#)

¹⁶ LSB (2020), [The State of Legal Services 2020](#)

24. The LSB has undertaken various strands of work to inform the development of this draft statement of policy:

- In September 2020, we published our latest report on the price of legal services.¹⁷
- We have drawn on a range of historical evidence, including findings from our 2020 State of Legal Services¹⁸ report, and the Individual Legal Needs Survey 2019.¹⁹
- In February 2021, we published a discussion paper on quality indicators²⁰. The CMA had recommended that the LSB lead on identifying solutions on how best to indicate a provider's quality to consumers. In the paper, we provided evidence and analysis of what information about quality consumers would find helpful, the best channels for conveying this information, and potential policy interventions. We received 23 submissions²¹ and published these alongside our response.²²
- We carried out a programme of stakeholder engagement to complement the discussion paper, including convening a roundtable event to discuss the areas of contention which emerged in responses to the paper.
- Alongside the discussion paper, we published research with our Public Panel²³ looking into what consumers look for in terms of quality, the information they use to gauge quality and their response to initiatives to improve access to information on quality.
- We have taken account of findings from our work on public legal education (PLE) and attendance at the Solicitor General's PLE committee.²⁴

25. We have established a new LSB-led oversight group, the Market Transparency Co-ordination and Oversight Group (MTCOG).²⁵ Via the MTCOG, the LSB will oversee and co-ordinate progress of the regulators against the CMA

¹⁷ LSB (2020), [Prices research | The Legal Services Board](#)

¹⁸ LSB (2020), [The State of Legal Services 2020](#).

¹⁹ LSB (2019), [Online survey of individuals' handling of legal issues in England and Wales 2019 | The Legal Services Board](#)

²⁰ LSB (2021), [Quality Indicators | The Legal Services Board](#)

²¹ LSB (2021), [Submissions for Quality Indicators Discussion Paper](#)

²² LSB (2021), [Quality indicators discussion paper: response document](#)

²³ LSB (2021), [LSB Public Panel Research Report \(legalservicesboard.org.uk\)](#)

²⁴ LSB [Public legal education | The Legal Services Board](#)

²⁵ The group meets quarterly and is attended by representatives from the LSB, SRA, BSB, CILEx Regulation, CLC, Faculty Office, IPReg, CLSB, ICAEW and the LSCP.

recommendations and other areas of work identified by the LSB as relevant to improving consumer understanding of and engagement with the market. It will also provide an opportunity to identify possible areas of collaboration. We gathered feedback from members of the MTCOG on an earlier draft of the statement of policy before launching this consultation.

26. Our proposals in this consultation document are based on our own independent analysis of the market, drawing on our own evidence base as well as the CMA's work. We have worked closely with the CMA since 2016 and their findings have informed our thinking.
27. Other ongoing LSB projects are also relevant to this work. We are undertaking work to review how the regulatory bodies ensure that regulated legal professionals remain competent throughout their careers²⁶, and separately on the impact of technological developments on legal services.²⁷ We will also be starting further work to support consumers in vulnerable circumstances, as set out in our business plan for 2021/22.²⁸

Statement of policy

Purpose

28. We consider that consumers need information about the price, quality and service of legal providers, as well as information on regulation and redress, so that they are best equipped to shop around and make effective choices. If consumers are empowered to make the right choices, then more people should be able to better access legal services suited to their needs, at better value for money. Greater awareness of regulatory protections and routes to redress should lead to stronger confidence in the legal services market. These factors in turn should contribute to reducing unmet legal need.
29. We also expect that such steps would contribute positively to diversity and inclusion among providers and innovation in the market, thereby improving the overall delivery of services to individuals and small businesses. If consumers are exercising informed choices, they will be aware of a wider range of providers. Further, providers would have stronger incentives to innovate to design services around the needs of consumers.
30. We see our work here as consistent with the regulatory objectives set out in the Act, in particular:

- Improving access to justice;

²⁶ LSB [Ongoing competence | The Legal Services Board](#)

²⁷ LSB [Technology and Innovation | The Legal Services Board](#)

²⁸ LSB (2021), [PowerPoint Presentation \(legalservicesboard.org.uk\)](#)

- Protecting and promoting the interests of consumers;
- Promoting competition in the provision of legal services;
- Encouraging an independent, strong, diverse and effective legal profession; and
- Increasing public understanding of the citizen's legal rights and duties.

Function of the statement of policy

31. We consider the most effective way to catalyse change in the market to better achieve these objectives is to issue a statement of policy.
32. The draft statement of policy sets proposals for our expectations of the regulators in undertaking their regulatory functions.²⁹ The LSB will have regard to how regulators adopt the statement in exercising its statutory functions. This statement is likely to be particularly relevant where we assess regulators under our regulatory performance framework, where we consider applications from regulators proposing changes to regulatory arrangements, and where we take any enforcement actions.
33. The draft statement of policy covers areas where the CMA made recommendations, specifically on transparency of information around price, quality, regulation and redress. It also covers areas that we consider relevant to empowering consumers, including public legal education initiatives.
34. We consider that a statement of policy, used in conjunction with our other statutory functions, and the new oversight group, will together provide a proportionate, targeted and effective framework for making and monitoring improvements in individual and small business consumers' interaction with the legal services market.

Expectations and outcomes

35. Our intention is to secure better outcomes for consumers across the market, while allowing flexibility to regulators in pursuing those outcomes. We have therefore structured the draft statement of policy around a set of general expectations framed as some specified outcomes for regulators to pursue. These are then followed by guiding principles and specific expectations for regulators around different types of information and how to ensure they are made available.
36. This approach is intended to provide a flexible framework for the regulators, while ensuring minimum standards of transparency across relevant providers.

²⁹ We do not have jurisdiction over the approved regulators' representative functions.

We consider that the outcomes set out in paragraph 11 of the draft statement align with the regulatory objectives.

37. A flexible and permissive approach appears to be appropriate given early signs of market development, particularly surrounding the use of digital comparison tools (DCTs) and review websites.³⁰ The framework is intended to cater for different types of regulators by giving them flexibility to implement changes appropriate to their size and scale.
38. We acknowledge that several regulators have already put in place regulatory arrangements to improve transparency of price, service and quality information.³¹ It is apparent, however, that compliance with these existing arrangements is deficient in some areas, or that providers are meeting the letter, rather than the spirit, of the requirements.³² We therefore propose to set a general expectation that regulators should tighten up on compliance with their regulatory arrangements and we will hold them to account in doing this.
39. Where regulators intend to introduce new regulatory arrangements, rules-based systems are likely to be more effective than guidance. We appreciate that measures put in place since 2016 are still bedding in, and some regulators are intending to conduct research into their impact. Yet it is apparent already that the greater change in provider behaviour has occurred in regimes which have mandatory regulatory arrangements, especially price transparency. We acknowledge that a rules-based approach may not be necessary for those regulators that regulate those providers less oriented toward individual and small business consumers, as set out below.
40. The CMA recommended that the regulators develop an ongoing programme of consumer research and testing to determine the information on price, service and quality that is most useful for consumers.³³ Specifically, the CMA identified the importance of testing of best practice guidance and formats for price and service transparency to consumers; testing consumers' understanding of questions and prompts used to gather feedback; testing to measure the impact of interventions; and testing with consumers in vulnerable circumstances.
41. We expect that regulators should conduct meaningful engagement with a broad range of consumers of legal services, to test whether their needs and wants from the profession are being satisfied (or improving), and also test any specific proposals for changes in policy. We are in the process of revising our rules and guidance around making applications to change regulatory arrangements. The revised rules and guidance will set out our expectations around what information

³⁰ The CMA defined DCTs as 'digital intermediary services used by consumers to compare and potentially to switch or purchase products or services from a range of businesses' in its [DCT market study](#).

³¹ LSB [Consumer Empowerment: Past work | The Legal Services Board](#)

³² CMA (2020) [Final report \(publishing.service.gov.uk\) p68-74](#).

³³ CMA (2020) [Final report \(publishing.service.gov.uk\)](#)

regulators should include in applications regarding evaluation and monitoring of the impact of proposed changes.

42. The draft statement of policy also refers to regulators making use of other appropriate activities (paragraphs 2, 16, 18, 20). These could be made up of a wide range of policies and initiatives, such as undertaking pilot schemes, commissioning research or supporting public legal education initiatives.

43. It is vital that progress against the outcomes is regularly assessed. We expect regulators to monitor the impact of their activities, while the LSB will take a market-wide view through its own activities. The draft statement of policy sets an expectation that regulators will have appropriate mechanisms in place to evaluate and report on the effectiveness of actions they take in pursuing the outcomes. Given the nature of the high-level outcomes, our proposed expectation specifies that the regulators should make changes to their arrangements and activities where the outcomes have not been met.

Q1. Do you agree with our approach of using expectations, outcomes and principles? Do you agree that the expectations and outcomes we have identified are the right ones?

Principles

44. As well as the overall outcomes, we have proposed principles to be adopted by regulators in meeting those outcomes.

45. In relation to the scope of the draft statement of policy, we consider that regulators should be targeting activity proportionately towards aiding individual consumers and small businesses. We identified both of these groups as having significant levels of unmet legal need in our legal needs surveys.³⁴ These groups were the focus of the CMA's market study and subsequent progress review.³⁵ Regulators should be particularly vigilant in relation to these consumers. They are typically less familiar with the legal services market, as they are commonly making one-off purchases, may be unfamiliar with the complex range of services available, and lacking traditional triggers and directions to providers as exist in other markets, such as insurance.

46. There are other small organisations that may benefit from these measures, such as charities, educational establishments and other non-profit organisations. Given our evidence base, our proposals are targeted at individuals and small

³⁴ LSB (2019). [Online survey of individuals' handling of legal issues in England and Wales 2019 | The Legal Services Board. LSB \(2018\). The legal needs of small businesses.](#)

³⁵ CMA (2016). Market study into the supply of legal services in England and Wales – Statement of Scope (publishing.service.gov.uk)

businesses. In practice though, it is likely that other such consumers will benefit from activities by regulatory bodies consistent with the statement of policy.

47. The draft statement of policy sets out that regulators should also consider whether different approaches are required, according to certain practice areas and needs of individual and small business consumers. Some practice areas will be more disposed to increased transparency, such as conveyancing, due to the commoditised nature of the service, and the wider availability of data on providers' performance.
48. Elsewhere, triggers to drive market competition may not be as effective for some consumers, for example those using legal aid services. Such consumers do not engage with the legal services market in the same way and the role of the Legal Aid Agency as a larger purchaser bears on the operation of this part of the market. We note the ongoing review of criminal legal aid and will reflect on its findings within our work where relevant.
49. For these reasons, we anticipate that different approaches may be appropriate for some of parts of the profession. For example, few costs lawyers regulated by the Costs Lawyer Standards Board (CLSB) deal directly with individual consumers and small businesses. Likewise, patent and trademark attorneys regulated by the Intellectual Property Regulation Board (IPReg) will generally provide their services to more frequent consumers, including larger businesses. We still expect that these regulators will take the necessary steps to ensure appropriate levels of transparency to support increased consumer understanding of their regulated communities in those markets.
50. We also consider that it is important for regulators to be aware of the differing needs of consumers, particularly those who are in vulnerable circumstances, including the digitally excluded. Although some of the specific activities we have identified in our policy development rely on use of online platforms, there is still a sizeable proportion of providers who do not have their own websites and will communicate to consumers through other means.³⁶
51. We have set an expectation in the draft statement that regulators should consider the needs of these consumers, in determining whether different approaches are required for different practice areas within their regulated community. Similarly, it is important that regulators consider how consumers in vulnerable circumstances can most easily make informed choices and comparisons between providers, whether using online tools or otherwise.
52. Where an area of legal practice falls under the remit of multiple regulators, such as conveyancing, it is especially important for these regulators to collaborate and aim for consistency of approach to help limit consumer confusion. We

³⁶ 87% of firms participating in the SRA's evaluation of its transparency rules said they had a website. SRA (2020). [SRA Transparency Rules: Year One Evaluation](#).

expect that the MTCOG will provide further opportunities to identify where regulators can most usefully collaborate.

Q2. Do you agree with the proposed principles to be adopted?

Specific expectations

Public legal education

53. We consider that public legal education has an important role to play in aiding consumers when they seek to obtain legal services. Participants in the LSB's Public Panel research described their limited knowledge and experience of what is needed, and not knowing what they should look out for when choosing providers. This points to the need for 'just in time' public legal education, i.e. educating consumers to know what a good quality legal service involves, and the sort of information they should look for, and questions to ask, when shopping around.
54. Some consumers are wary of using DCTs and online services to obtain legal services, with concerns about the potential to be influenced by fake or malicious reviews.³⁷ We consider that a targeted public legal education programme could help consumers to use DCTs safely and build trust in these tools, as well as building trust in the legal services market more generally.
55. We consider that this expectation is reasonable and proportionate given the collective responsibility of the LSB and the regulators to promote the regulatory objective of increasing public understanding of the citizen's legal rights and duties.
56. In the draft statement of policy, we have proposed expectations that regulators put in place effective programmes of activity to support public legal education, with the aim of supporting consumers to interact with the legal services market and empowering them to make effective choices. Legal Choices is an existing tool that regulators can support and we consider that continued collaboration there will be vital to its success. Such collaborative endeavours should naturally benefit economies of scale and help to reduce consumer confusion.
57. Where regulators are contributing to Legal Choices and/or undertaking separate initiatives, we expect them to demonstrate that these are being undertaken in pursuit of the outcomes we have set out. We propose that regulators would evaluate their initiatives, and demonstrate an adequate level of investment, reach and impact to justify their activities and evidence their effectiveness.

³⁷ LSB (2021) [Quality Indicators Discussion Paper response document](#), p16.

Q3. Do you agree with the proposed expectation around public legal education?

Information about price

58. The draft statement of policy sets out proposed specific details of types of pricing information that should be useful to consumers and so made available to them. We consider information that is useful to consumers is that which best enables effective consumer choice. The specific expectations around price replicate the necessary elements of price information identified by the CMA in its 2016 market study. We concur with the CMA's assessment that these constitute the level of price information necessary to best inform consumer choice.
59. Regulators may wish to go further in determining what information is necessary, for example requiring price information both including and excluding VAT, or specific types of disbursements such as counsel fees. Where information about hourly fees is offered, consumers should be able to understand if and how these differ by different members of staff at a legal provider.
60. Our 2020 prices research³⁸ has shown that there have been improvements in price transparency since 2017, and that this has not just occurred in practice areas where specific measures have been introduced. For example, consumers were able to find more information about the price of divorce services, despite family law not being targeted by the SRA's transparency reforms.
61. The research did though indicate a significant minority (20%) of divorce providers did not display prices on their website and had no plans to change this. It also indicated that there is still a wide range of prices available for similar services. We would expect to see less divergence in pricing if the market was more competitive.

Information about quality

62. In 2020, the CMA recommended that the LSB lead on the development of quality indicators, following little progress since 2016 in this area. We published a discussion paper on quality indicators in February 2021 alongside research from our Public Panel.
63. The draft statement of policy reflects our conclusions on the discussion paper following public consultation and wider stakeholder engagement. It proposes for information on disciplinary records including any sanctions, and details of cases published by the Legal Ombudsman, to be made available to consumers as a

³⁸ LSB (2020), [Prices research | The Legal Services Board](#)

baseline of information about quality. Both types of information are already typically available via regulators' websites and the Legal Ombudsman's website.

64. We propose that regulators aim to go beyond this minimum level where possible. We have proposed that in determining other types of information about quality that might be useful to consumers, they should have regard to the types of quality we identified in our discussion paper, namely the quality of legal work done, quality of customer service, and outcomes.³⁹
65. We also note that it may be necessary for regulators to ensure consumers can distinguish between the quality of services offered by the same provider among different practice areas.
66. We have proposed an expectation that regulators consider the types of information that might be most suited to offering useful information about quality, namely quantitative data and consumer feedback. We are not specifying any particular quantitative data be made available as we consider what constitutes useful information will differ depending on regulators and practice areas as appropriate.
67. The draft statement proposes some examples of what data might be useful to consumers to inform their choice, such as quantitative data on a provider's performance (e.g. complaints data, success rates, error rates) and consumer feedback, ratings and reviews. Such data is likely to be useful in specific circumstances and we encourage regulators to consider these and alternative sources, to ensure they are available to consumers in ways that will helpfully inform their choice.
68. As part of our work on quality, we have set out our intentions to engage with public bodies to try and make more independent data about providers' performance more widely available, including to consumers.
69. We consider that consumer feedback is the most useful tool to help consumers understand the quality of service they are likely to receive from a provider. Responses to our discussion paper and findings from the regulators' pilot into online reviews⁴⁰ indicate that there has been a notable increase in use of review websites for legal services. This should increasingly mean there is a critical mass of feedback material that can be used by regulators and providers to inform consumers about quality of providers featured on those services.

Information about service

³⁹ LSB (2021) [Quality Indicators discussion paper \(legalservicesboard.org.uk\)](https://legalservicesboard.org.uk)

⁴⁰ SRA (2021), [SRA | SRA Update 93 reviews pilot | Solicitors Regulation Authority](#)

70. The CMA also recommended that providers should offer a minimum level of information about the services they provide. We agree that it is important for individual consumers and small businesses to have a good understanding of the work that will be done by the provider, including the likely format and timescales. For these consumers, typical legal processes are generally unfamiliar, often a one-off purchase, and can be complex.
71. In the draft statement of policy, we propose as a minimum the elements of information about service and redress recommended by the CMA in its 2016 market study. We have also set expectations that contact details and information about practice areas should be available as a minimum for each provider.
72. As with information about price, we have mirrored the language used in the CMA's 2016 recommendations. We expect the regulators to interpret 'mix of staff' as appropriate to provide the most useful information to consumers. Similarly, regulators should ensure that the details of PII cover are most relevant to the individual and small business consumers we are targeting through this work. This likely to primarily be whether providers hold a PII policy, and in some circumstances the nature and level of cover.
73. Our quality indicators discussion paper discussed the role of information about location, size and age of a provider. We consider these elements are important in informing consumer choice, but that they are more suitably considered as details of the service providers offer rather than explicit indicators of quality.
74. The draft statement of policy also sets an expectation that consumers have access to information about the regulatory status of providers. Consumers have limited understanding of the regulatory framework in legal services. For example, many assume that all providers are regulated and/or do not check whether provider is regulated. Ensuring provision of such information is intended to boost awareness among individual and small business consumers and reduce risk of harm.
75. The draft statement of policy covers information about how to complain to providers and access the Legal Ombudsman. This reflects our existing requirements⁴¹ around complaints handling made under section 112 of the Act.

Q4. Do you agree with the expectations set out around minimum levels of information about price, quality and service?

Making information available to consumers

⁴¹ LSB (2016) [First-tier complaints handling](#).

76. In the quality indicators discussion paper, we considered the merits of different channels that make information about providers available to consumers. One way in which this can take place is via DCTs and review websites.
77. We consider DCTs and review websites offer strong benefits in this market. These platforms bring together various types of information in a consistent format. This makes consumers less reliant on having to consult multiple sources which may present information differently.⁴² In addition, by making the process of selecting or researching a legal services provider easier and quicker, DCTs will reduce current barriers consumers face when shopping around.
78. These features should promote increased competition between providers and thus better value and quality of service for consumers. The pandemic has accelerated a pivot towards providers having an increased online presence⁴³, indicating that DCTs are increasing their impact. We also consider that such platforms can help smaller firms gain visibility and parity with larger firms that may have larger traditional marketing budgets and consumer awareness.
79. We are pleased by the initial findings of the regulators' pilot into online reviews, which has shown increased use of several review websites by many firms and consumers. The draft statement of policy's proposals around transparency are intended to help the DCT market grow, and we encourage regulators to engage with this market to help shape its development in ways that will be beneficial to consumers and the public interest. We will take account of findings from the first phase of the regulators' pilot when issuing our final statement.
80. We are interested to further understand whether there has also been similar growth among DCTs offering price information. If this is not currently the case, it will be important for regulators to determine how best to get useful and comparable price information to consumers, whether by making it easier for such DCTs to develop or other solutions.
81. The quality indicators discussion paper underlined the need to build public and provider trust in DCTs and review sites. For example, we suggested that regulators may wish to consider developing a voluntary accreditation scheme. We are considering such activities with the members of the MTCOG, and expect this may be a good opportunity for the regulators to collaborate and develop a sector-wide solution.
82. We note that providers' websites are a primary tool for providers in conveying information to consumers, and often the first tool consumers will use to obtain information. The draft statement of policy sets proposed expectations of how information generally should be communicated to consumers, in terms of being

⁴² Glenesk (2021), [Customer Service Review - Glenesk Group](#)

⁴³ CMA (2020) [Final report \(publishing.service.gov.uk\)](#). LSCP (2021) [Tracker Survey Report on how consumers are choosing legal services.](#)

prominent, comprehensible, accurate and easily comparable. It is not though prescriptive about how information on these websites should be displayed, because we do not want to risk stifling innovation.

83. In meeting these minimum standards, we are mindful that individual and small business consumers should not be overwhelmed by information, to the extent that it would be unhelpful to them when shopping around. We consider that providing 'meaningful' information involves ensuring that this is proportionate, targeted and manageable for consumers. Special consideration should therefore be given by regulators to ensure consumers with lower legal capability are also accommodated in information made available by providers.
84. As with other aspects of the legal services sector, we expect that developments in technology will spur greater innovation among DCTs. We have not set prescriptive requirements on the types of platforms and websites that regulators, providers and consumers should use, given the potential for innovation in service delivery over the coming years.
85. We note though that a sizeable proportion of legal services providers do not operate websites, and so they will not be able to present information directly to individual and small business consumers shopping around online. We expect regulators to consider how consumers can obtain meaningful and comparable information about these providers, whether through information on the regulators' registers or otherwise.

Registers

86. Another way in which information can be made available to consumers online, either directly or through DCTs and review websites, is via regulators' registers. The CMA notes that as the clarity, comparability and standardisation of price and quality information improves then it should become increasingly useful for DCTs to use such information in their services, so a consistent set of data on a register should be valuable to both DCTs and consumers directly.⁴⁴
87. In the draft statement of policy, we have set out expectations of what information should be made available in a single online location in order to aid consumers. This would likely be the regulators' registers⁴⁵, but there may be other channels that could better deliver on our policy aims.
88. We understand from our stakeholder engagement around quality indicators that coverage and accuracy of existing data on registers is patchy. Any deficiencies need to be addressed to preserve the integrity of professional registers, as well for aiding consumer choice and facilitating DCTs. In doing so, regulators will

⁴⁴ CMA (2020), [Review of the legal services market study in England and Wales](#), para. 4.88.

⁴⁵ We note that information required for inclusion in registers kept by regulators is in specified other legislation and not the Act.

need to comply with relevant legislation requiring them to keep rolls and registers of authorised persons, the Data Protection Act 2018 and UK General Data Protection Regulation.⁴⁶ Such considerations should not though prove a barrier to the provision of beneficial services to consumers.

89. The CMA recommended that the LSB lead on introducing a single digital register of regulated providers, and that this would be of benefit to consumers. We are supportive in principle of a single digital register of regulated providers as we consider that it could play an important role by supplying DCT or review websites with the raw data that underpins these services. We have started scoping the development of such a register and will engage more widely on proposals separately from this work on the statement of policy.

Q5. Do you agree with the expectations around making information available to consumers?

Implementation

90. Following the consultation, we will consider the responses received in finalising our proposals, before we publish our response and a final statement of policy, which will take effect immediately. We would first expect regulators to undertake work to meet the specific expectations and then continue work to pursue the outcomes and general expectations set out in the statement.

91. Under the Act, the LSB must have regard to any relevant statement of policy in exercising (or deciding whether to exercise) any of its functions. These include our functions to approve applications to change regulatory arrangements, and our oversight role of assessing regulators under the regulatory performance assessment framework. As such, for example, we will assess whether regulators have adhered to the statement when considering applications for approval of rule changes in areas relevant to the statement (for example, around new transparency requirements).

92. We will monitor regulators' progress against the statement through several ways: the relationship management process, meetings of the MTCOG and ultimately the regulatory performance framework.

93. We have begun to undertake a review of our regulatory performance framework and as part of this intend to consult on any proposed changes to the framework in due course. We intend to build on and strengthen the framework, ensuring it is aligned to the strategic challenges facing the sector. As part of the review, we will consider how we might reflect this and other statements of policy (among

⁴⁶ The LSB already has [rules](#) under section 87(4) of the Act on the keeping of registers of licensed bodies by licensing authorities.

other matters) within the framework, so it will be clear to regulators and other stakeholders how these are considered when the LSB conducts its regulatory performance assessments.

Q6. Do you agree with our proposed plan for implementation?

Equality impact assessment

94. The LSB has given due consideration to its obligations under the Equality Act 2010, including consideration of the public sector equality duty.⁴⁷ The draft statement of policy includes principles that regulators should adjust their approaches to empowering consumers according to their operating contexts, including in response to the needs of consumers in vulnerable circumstances.
95. We have proposed to actively consider any impacts on groups with protected characteristics as the policy is implemented through our work. This includes considering applications for changes to regulatory arrangements and regulatory performance assessments of regulators.
96. We consider our proposals will help to boost diversity among providers in the legal services sector. For example, we consider that DCTs can help smaller firms gain visibility and parity with larger firms that may have traditional larger marketing budgets and consumer awareness.
97. The draft statement of policy's emphasis on individual and small business consumers should benefit those who are particularly unfamiliar with legal services and may lack confidence in engaging with legal services providers. The statement also underlines the need for regulators to take account of the differing needs of consumers, particularly those in vulnerable circumstances, including the digitally excluded. We do not consider there is anything in the statement of policy that will negatively impact those groups with protected characteristics.
98. During the consultation period, we will engage with stakeholders representing people with protected characteristics to ensure that we fully take account of any issues that may lead to adverse impacts for those consumers and consider mitigating measures.

Q7. Do you have any comments regarding equality impact and issues which, in your view, may arise from our proposed statement of policy? Are there any wider equality issues and interventions that you want to make us aware of?

⁴⁷ GOV.UK (2012), [Public sector equality duty - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

Impact assessment

99. The LSB has considered the likely impact of the proposed new draft statement of policy on the approved regulators, regulatory bodies, their regulated communities and consumers. We recognise that in some cases, changes in our regulatory approach may result in an increased burden on providers. Individual regulators are best placed to assess and quantify these impacts based on the activities they decide to pursue.
100. Our policy approach is intended to ensure that issues of market transparency and improving consumer engagement with the market are established within the LSB's regulatory framework. Regulators will be clearer about what is expected of them in terms of supporting consumers to better engage with and understand the legal services market. We have prepared a high-level draft statement to provide regulators with flexibility to use a range of regulatory arrangements and other appropriate activities to pursue the specified outcomes and so meet the general expectations.
101. We have had regard to the better regulation principles in our development of the proposals and we consider that the statement of policy will be a proportionate, transparent, targeted and effective means of addressing issues of consumer engagement with the market.
102. We invite respondents to comment on the potential impact of the draft statement of policy and quantify the likely costs and anticipated benefits, to further inform the LSB's assessment of the regulatory impact of the proposed policy.

Q8. Do you have any comments on the potential impact of the draft statement of policy, including the likely costs and anticipated benefits?

Q9. Do you have any further comments?

Next steps

103. This consultation closes on Wednesday 8 December 2021. Once the consultation has closed, we will consider all feedback received and make any resulting changes as appropriate to the draft statement of policy.
104. We will publish our response to the consultation when we issue the final statement of policy in early 2022.

Responding to the consultation

105. The questions posed in this consultation are listed below for reference:

- Q1.** Do you agree with our approach of using expectations, outcomes and principles? Do you agree that the expectations and outcomes we have identified are the right ones?
- Q2.** Do you agree with the proposed principles to be adopted?
- Q3.** Do you agree with the proposed expectation around public legal education?
- Q4.** Do you agree with the expectations set out in the statement of policy around minimum levels of information about price, service and quality?
- Q5.** Do you agree with the expectations around making information available to consumers?
- Q6.** Do you agree with our proposed plan for implementation?
- Q7.** Do you have any comments regarding equality impact and issues which, in your view, may arise from our proposed statement of policy? Are there any wider equality issues and interventions that you want to make us aware of?
- Q8.** Do you have any comments on the potential impact of the draft statement of policy, including the likely costs and anticipated benefits?
- Q9.** Do you have any further comments?

106. Any representations should be made to the LSB by 5pm on **Wednesday 8 December 2021**. Please ensure that responses reach us by the closing date as we cannot guarantee that responses received after this date will be considered.

107. We would prefer to receive responses electronically but hard copy responses by post are also welcome.

108. Responses should be sent to:

- **Email:** consultations@legalservicesboard.org.uk
- **Post:** Legal Services Board, 3rd floor, The Rookery, 2 Dyott Street, London, WC1A 1DE

109. We intend to publish all responses to this consultation with personal data redacted, on our website unless a respondent explicitly requests that a specific part of the response, or its entirety, should be kept confidential. We will record the identity of the respondent and the fact that they have submitted a confidential response in our summary of responses.

110. If you wish to discuss any aspect of this paper or need advice on how to respond to the consultation, please contact the LSB by one of the methods described above or by telephone (020 7271 0050).
111. Any complaints or queries about this process should be sent to the Legal Services Board via the consultations inbox or by post.

Draft statement of policy – Empowering consumers

Issued under section 49 of the Legal Services Act 2007

[Date of publication]

Purpose of this document

1. This statement of policy is issued under section 49(2) of the Legal Services Act 2007 (Act) and in preparing it the Legal Services Board (LSB) has had regard to the principle that its principal role is the oversight of approved regulators.⁴⁸
2. The purpose of this statement of policy is to set expectations of the approved regulators and the regulatory bodies to whom some have delegated their regulatory functions (regulators) in the interests of the public and consumers. These are expressed as general expectations, principles and specific expectations and will apply as the regulators use regulatory arrangements and other appropriate activities to pursue them.
3. In exercising or deciding whether to exercise any of its functions, the LSB must have regard to any relevant statement of policy published under section 49 of the Act. This statement of policy on empowering consumers is likely to be most applicable to:
 - a. The maintenance and development of standards in relation to the regulation by regulators of persons authorised by them to carry on reserved legal activities and the education and training of persons so authorised, under section 4 of the Act;
 - b. The approval of changes to a regulator's regulatory arrangements in accordance with section 20 and Part 3 of Schedule 4 to the Act; and
 - c. Enforcement functions under sections 31 to 45 and 76 of the Act.
4. The LSB will also have regard to regulators' compliance with this statement of policy in discharging its other oversight functions, including in its assessment of regulators under the regulatory performance assessment framework.
5. In discharging its functions, the LSB must, so far as is reasonably practicable, act in a way which is compatible with the regulatory objectives and which it considers most appropriate for meeting those objectives. This statement of policy is relevant to all the regulatory objectives, and in particular the following:
 - a. Improving access to justice;
 - b. Protecting and promoting the interests of consumers;
 - c. Promoting competition in the provision of legal services;
 - d. Encouraging an independent, strong, diverse and effective legal profession; and

⁴⁸ Section 49(3) of the Act.

- e. Increasing public understanding of the citizen's legal rights and duties.
- 6. In developing this statement of policy, the LSB has had regard to the Better Regulation Principles under which regulatory activities should be transparent, accountable, proportionate, consistent, and targeted only at cases in which action is needed.
- 7. This statement of policy takes into account the LSB's requirements for regulators' regulatory arrangements relating to complaints procedures for authorised persons, specified under section 112 of the Act.⁴⁹
- 8. The provisions of the Act, and any rules made under those provisions, will prevail over this statement of policy.
- 9. We may review this statement of policy and issue a revised version if our policy changes.

⁴⁹

https://legalservicesboard.org.uk/what_we_do/regulation/pdf/2016/201607_Version_2_Requirements_Guidance.pdf. This includes the accompanying guidance issued under section 162 relating to those requirements.

LSB statement of policy – Empowering consumers

10. The LSB will have regard to the general expectations, principles and specific expectations set out below in discharging its functions set out in paragraphs 3 and 4.

General expectations

11. The LSB expects regulators to:

- a. Pursue the following outcomes:
 - i. Consumers have the knowledge and capability to recognise when their problem is a legal issue and know how to get legal assistance where necessary.
 - ii. Consumers have the knowledge and capability to engage effectively with the legal services market.
 - iii. When choosing a legal services provider, consumers can access useful information about a provider's services, price, quality, regulatory status and access to resolution of complaints that enables them to make an informed choice as to the provider most suited to meet their needs.
- b. Ensure compliance by those they regulate with the regulatory arrangements they put in place to pursue these outcomes, including through effective measures to address non-compliance;
- c. Have appropriate mechanisms in place to evaluate and report on the effectiveness of the steps they have taken in pursuit of these outcomes and make changes where these have not been met; and
- d. Have regard to the Competition and Markets Authority (CMA)'s 2016 legal services market study and 2020 review as to the effective functioning of the legal services market and promotion of competition in the interests of consumers.

Principles

12. In implementing this statement of policy, the LSB will have regard to the following principles:

- a. The CMA found that competition is not working well in the legal services sector for individual consumers and small businesses. As such, regulators should pursue the outcomes with particular attention to individual consumers and small businesses.
- b. Regulators regulate different professions within the legal services sector, and, as a consequence, may adopt different approaches to meeting the general expectations and so pursuing the outcomes.

- c. In considering whether specific approaches are required for providers in different practice areas within their regulated communities, regulators should consider:
 - i. the needs of consumers, including those of consumers in vulnerable circumstances (for example where consumers are digitally excluded and do not have access to information online); and
 - ii. the types of provider and services offered (for example some services are more “commoditised”, such as conveyancing and wills and probate, whereas in more bespoke areas, such as legal aid work, it may be more difficult to compare providers).
- d. Collaboration between regulators is encouraged where this may lead to more effective and proportionate activities (for example where there may be overlapping consumer needs, where practice areas are covered by more than one regulator, or where economies of scale are sought, particularly on testing solutions).

Specific expectations

13. In implementing this statement of policy, the LSB has specific expectations of the regulators:

Public legal education

14. Regulators are expected to put in place an effective programme of activity to support the regulatory objective of increasing public understanding of the citizen’s legal rights and duties. This should be with a particular focus on public legal education that supports people to understand where they have a legal problem and how to access the professional help they need to resolve it.

15. Regulators are expected to make meaningful contributions to cross-sector initiatives, such as Legal Choices, that are subject to appropriate mechanisms to ensure they are effective. Regulators should be able to demonstrate suitable investment, reach and impact of such initiatives following evaluation.

Information about price

16. Regulators are expected to take steps to ensure that their regulatory arrangements and other appropriate activities result in the provision of useful information that best enables effective consumer choice about the cost, or potential cost, of the services offered by providers.

17. In assessing whether price information is useful and best enables effective consumer choice, regulators are expected to consider such factors as:

- a. The pricing/charging model;
- b. Hourly fees (where charged) by grade of staff;

- c. Indicative fixed fees, factors that may affect these and the circumstances where additional fees may be charged (where offered);
- d. Typical ranges of costs for different stages of cases (where appropriate);
- e. The scale of likely disbursements (e.g. searches, court fees); and
- f. Other key factors that determine price (including disbursements).

Information about quality

18. Regulators are expected to take steps to ensure that their regulatory arrangements and other appropriate activities result in the provision of useful information that best enables effective consumer choice on the quality of legal services providers to consumers, including:

- a. Providers' disciplinary and enforcement records, including any sanctions; and
- b. Published decisions made by the Legal Ombudsman on complaints about providers.

19. In considering what further information about quality is useful, the LSB expects regulators to have regard to:

- a. Information about:
 - i. The quality of legal work done;
 - ii. The quality of customer service; and
 - iii. Outcomes of work done.
- b. The following types of information, as appropriate for the particular market:
 - i. Quantitative data on a provider's performance (for example complaints data, success rates, error rates); and
 - ii. Customer feedback, ratings and reviews, in particular those that comment on the aspects of quality set out in paragraph 19a.

Information about service, redress and regulation

20. Regulators are expected to take steps to ensure that their regulatory arrangements and other appropriate activities result in the provision of useful information that best enables effective consumer choice, including:

- a. Contact information;
- b. A description of the services that the provider offers, including areas of practice;
- c. The mix of staff that deliver the services;
- d. Key (and discrete) stages of services;
- e. Indicative timescales of completing services and factors affecting these;
- f. The provider's regulatory status, registration details;

- g. The provider's complaints process and access to the Legal Ombudsman; and
- h. Details of the provider's Professional Indemnity Insurance cover.

How information is made available to consumers

21. Where information set out at paragraphs 16 to 20 is made available, this should relate to regulated entities and/or regulated individuals as appropriate.
22. Regulators are expected to take steps to ensure that their requirements and activities result in the provision of information by providers that is:
- a. Clear and prominent;
 - b. Comprehensible, including through the provision of appropriate contextual information;
 - c. Accurate and up-to-date; and
 - d. Easy to compare to information made available by other providers.
23. Regulators are expected to take steps to ensure that the following information about the providers they regulate is available in at least one single location online. This may include the regulator's own register of regulated providers⁵⁰:
- a. Contact information;
 - b. A description of the services that the provider offers, including areas of practice;
 - c. The provider's regulatory status and registration details;
 - d. Details of the provider's Professional Indemnity Insurance cover;
 - e. Providers' disciplinary and enforcement records, including any sanctions; and
 - f. Published decisions made by the Legal Ombudsman on complaints about providers.
24. The LSB expects that fulfilment of the above requirements will support the development of tools that help consumers to engage effectively in the market, such as digital comparison tools, review websites and any joint register of providers. Regulators are expected to consider undertaking the following activities to further facilitate the use of such tools:
- a. Ensuring consumers are made aware of such tools;
 - b. Embedding trust among consumers and providers in such tools; and
 - c. Making relevant information freely available to third parties on an open data basis.⁵¹

⁵⁰ Subject to relevant legislation on regulators' registers of authorised persons, and any alterations to regulatory arrangements that may be needed.

⁵¹ Subject to relevant legislation on regulators' registers of authorised persons, the Privacy Act 2018 and UK General Data Protection Regulation.