

To:	Legal Services Board	Agenda Item No.:	3
Date of Meeting:	24 November 2016	Item:	Paper (16) 69

Title:	Exploring consumer vulnerability in legal services
Workstream(s):	Tackling unmet legal need
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Status:	Unclassified

Summary:
<p>This paper provides an update on the commitment in our 2016/17 business plan to research the experiences of vulnerable consumers, including the scope and timetable for this work. It also outlines and seeks views on possible additional work to maximise the impact of this research.</p> <p>Having explored existing and on-going research to understand where the LSB can add value, our focus in this research is on individuals with mental health problems and dementia. Procurement is underway, with qualitative research due to start shortly. Publication of the results is expected in Q1 2017.</p> <p>With a view to maximising the impact of our research, this paper also explores some options for additional work, which would draw on existing internal resources.</p>

Recommendation(s):
The Board is invited to note progress to date and to discuss how we might best use our resources to maximise the impact of this research, including relevant contacts that it may be possible to make use.

Risks and mitigations	
Financial:	N/A
Legal:	N/A
Reputational:	N/A
Resource:	The additional work discussed in this paper does not form part of the business plan for 2016/17. While we have previously identified the merits of carrying out such work, resource would therefore need to be allocated to it.

Consultation	Yes	No	Who / why?
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Board Members:	X	Michael Smyth is the Board member assigned to this work and information has been shared with him as the work has progressed
Consumer Panel:	X	In addition to taking account of the Panel's response to our commission on priority areas of law for the LSB (on enabling demand for legal services to be met), its Secretariat and members have contributed to the developed of the research specification.
Others:		[REDACTED]

Freedom of Information Act 2000 (Fol)		
Para ref	Fol exemption and summary	Expires
Consultation: Others	Section 44: restricted information under s167 LSA which was obtained by the Board in the exercise of its functions and therefore must not be disclosed	N/A

LEGAL SERVICES BOARD

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Exploring consumer vulnerability in legal services

Context

1. Our business plan for 2016/17 said that we would commission research to evidence the experiences of consumers in a range of vulnerable circumstances with different legal services providers. Our interest in this area is in understanding if approved regulators (ARs) are applying effective measures to protect the interests of these consumers and possible ways that these measures might be improved.
2. Guidance by the Legal Services Consumer Panel (the Panel) recognises that consumer vulnerability is a multi-faceted issue.¹ The guide highlights the range of individual risk factors that are associated with personal characteristics (including physical and mental ability, language skills and financial constraints) and situational factors (which reflect the dynamic nature of vulnerability) (see diagram at **Annex A**). Risks can be particularly acute in legal services where people often need help specifically because of their personal characteristics, for instance, in mental health law. The actions of providers can also increase this vulnerability. These risks can result in consumers not receiving the legal services they need.
3. The commitment to undertake research stems partly from our work on accessibility, which explored measures to address barriers that contribute to unmet legal need. An update to the Board in October included progress by the regulators in implementing best practice. This noted that we have seen some improvement in consumer vulnerability being embedded in regulatory frameworks. Steps include requirements² and guidance³ for practitioners on recognising and responding appropriately to vulnerability. Our research will help to understand the practical impact of such steps.
4. Given the breadth of possible areas for study on the subject of vulnerability, we have looked to take account of existing evidence. This includes understanding areas where research is being, or has been, done and interrogating the relevant datasets that we hold. A table outlining research resources is at **Annex B**. For example, our analysis of the 2012 and 2010 Civil and Social Justice Panel Surveys (CSJPS) and the 2015 Individual Legal Needs Survey suggests that people with mental health issues are less engaged and have a less positive experience of legal problems compared to those without these issues. Key points from our analysis are noted below, with more detail provided at **Annex C**:

¹ This applies BSI 18477 (2010) (Inclusive service provision: Requirements for identifying and responding to consumer vulnerability) to legal services in 'Recognising and responding to consumer vulnerability, A guide for legal services regulators' (2014): <http://www.legalservicesconsumerpanel.org.uk/ourwork/vulnerableconsumers/Guide%20to%20consumer%20vulnerability%202014%20final.pdf>

² For example, the Solicitors Regulation Authority competence statement: http://www.sra.org.uk/solicitors/competence-statement.page#heading_toc_j_1

³ For example, Costs Lawyers Standards Board: <http://clsb.info/wp-content/uploads/2014/06/Vulnerable-Consumers13.1.15.pdf>

- individuals with a mental health or physical condition are more likely to take no action in response to a legal problem
 - these individuals are also more likely to experience legal problems that they perceive to be more serious
 - legal problems generally are more prevalent for those with mental health issues.
5. Reflecting the work noted above and the relatively tight budget for this research, our focus will be on two health issues. These are the experiences of individuals with mental health problems and with dementia. We have chosen these on the basis:
- of the association with areas of law that the Panel identified as priorities for the LSB (which is seen in relation to mental health in the analysis at Annex C), in response to our commission on enabling demand for legal services to be met,⁴ and on the basis of discussion with the Panel during the scoping phase of this work
 - that there are knowledge gaps around these issues and, therefore, opportunities to achieve better outcomes for such individuals and those assisting them (for example, carers and the third sector), but also for vulnerable consumers more generally through availability of a more complete evidence base.
6. Our aim is that this research is of practical benefit in informing our and others' work by illustrating the experience of these people in finding and attempting to use/using legal services. It should, for example, facilitate informed discussion with ARs and with practitioners and inform our work in the next strategy period. To help do this, we want to answer the following questions:
- what, if any, features of the legal services market are particularly relevant to these vulnerable circumstances?
 - what circumstances contribute to these individuals being vulnerable when purchasing legal services?
 - do these circumstances result in adverse outcomes when using lawyers, and if so how?
 - to what extent are the legal needs of those who participate in our study being met?
 - taking account of relevant existing/ongoing work and initiatives, what approaches could improve accessibility, service experience and outcomes?
7. In due course we anticipate that this work will inform our assessment of performance by the regulators against the regulatory standards.

⁴ In the context of how the market is responding to changes in the availability of legal aid, and whether there is or could be a regulatory response, the Panel identified the following areas of law: family and relationships; housing; asylum and immigration:
http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/documents/PriorityAreasOfLawFinal.pdf

Timetable

8. Our specification for this research was issued in October.⁵ Procurement is progressing well and we expect to appoint a provider and start work in advance of the Board meeting. Consistent with our business plan, the research should be complete by the end of March 2017, with publication planned for Q1 2017.
9. We will bring a further paper in March 2017 on early findings and the draft report, which will set out any strategic questions or considerations for the Board.

Maximising the impact of our work

10. This research is obviously part of a wider picture (i.e. beyond legal services) for people with mental health and dementia issues. Equally, for ARs and practitioners, mental health and dementia are two aspects of vulnerability.
11. A key lesson from our work on accessibility was that proactive engagement by the LSB ahead of publication increases the impact of our reports. With this in mind, we will carry out an additional piece of work to maximise the value of our research. This has the potential to benefit not just these groups, but all consumers, in terms of delivering improvements in customer service.
12. The broad aim of this complementary work will be to identify good practice and the ability of the sector to address the additional detriment experienced by vulnerable consumers through regulatory and non-regulatory levers.
13. While being mindful of resource constraints, this additional work might include:
 - engagement with ARs on possible areas for improvement, for example, around support for practitioners in dealing with vulnerable consumers
 - building relationships with relevant charities. For example, we might look to embed our research in their work and identify possible platforms for its wider dissemination (e.g. events associated with mental health week, which takes place in May 2017)
 - identifying opportunities for and advocating other relationships, for example, between charities and representative bodies, ARs and LeO
 - analysis of common themes in research on consumers in vulnerable circumstances associated with legal services, with a view to identifying regulatory and non-regulatory solutions.
14. Scoping for this work is now underway. We welcome Board members' views on how we might best use our resources to maximise the impact of this work, including relevant contacts that it may be possible for the LSB to draw on.

24.11.16

⁵ <https://research.legalservicesboard.org.uk/wp-content/media/Vulnerable-consumers-research-2016-FINAL.pdf>

The Consumer Panel Guide: vulnerability in the legal services market

The diagram below is from the Consumer Panel’s ‘*Recognising and responding to consumer vulnerability: A guide for legal services regulators*’. This shows the individual risk factors and market factors, and illustrates how both of these have the potential to cause vulnerability.



Consumers in vulnerable circumstances – other research resources

The table below notes work on the subject of vulnerability that may be relevant to our research and to the complementary work to maximise its impact.

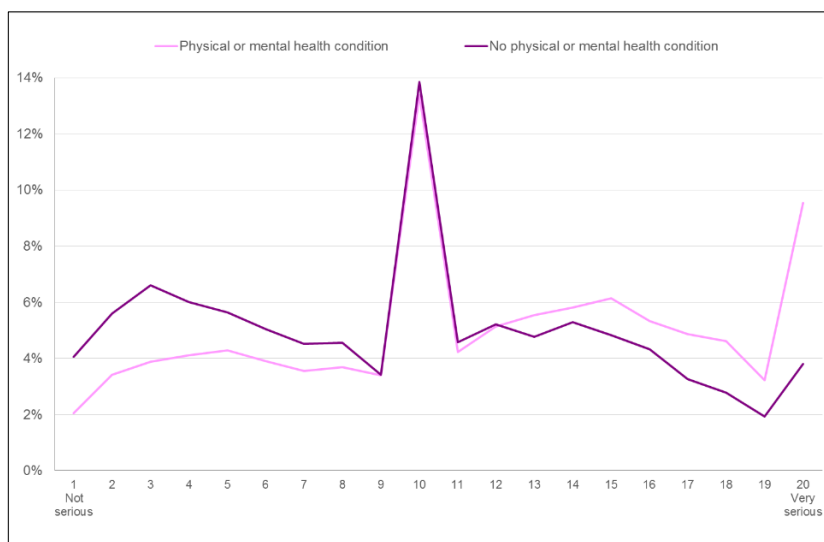
Research title	Published by	Link
Research into Client Care Letters, 2016	The Panel and ARs	http://www.cilexregulation.org.uk/~media/pdf_documents/cilex-regulation/resources/client_care_letters_research_report_-_final_021116.pdf?la=en
Quality of legal services for asylum seekers, 2016	Solicitors Regulation Authority	http://www.sra.org.uk/sra/how-we-work/reports/asylum-report.page
Mental health in the workplace, 2016	Chartered Institute of Personnel and Development	http://www.cipd.co.uk/binaries/employee-outlook_2016-focus-on-mental-health-in-the-workplace.pdf
Lowering barriers to accessing services: lessons from other sectors, 2016	LSB	http://www.legalservicesboard.org.uk/news_publications/publications/pdf/2016/20160331_Lowering_Barriers_Final_Report.pdf
Treating consumers fairly - flexible and inclusive services for all (2015)	Citizens Advice	https://www.citizensadvice.org.uk/global/migrated_documents/corporate/treating-consumers-fairly.pdf
Choose and Use research, 2013	LSB	https://research.legalservicesboard.org.uk/wp-content/media/Understanding-Consumers-Final-Report.pdf
The Vulnerable Consumer of Financial Services: Law, Policy and Regulation, 2011	Peter Cartwright	http://www.nottingham.ac.uk/business/businesscentres/crbfs/documents/researchreports/paper78.pdf
Understanding consumer needs from legal information sources, 2011	LSB	https://research.legalservicesboard.org.uk/wp-content/media/2012-Legal-information-sources.pdf

LSB data analysis: mental health and legal problems

As part of informing the scope of our research, we have analysed relevant data held by the LSB. Key points from the 2015 Individual Legal Needs Survey and the 2012 and 2010 Civil and Social Justice Panel Surveys are discussed below. While caveats apply in both cases, these provide us with useful context for this work.

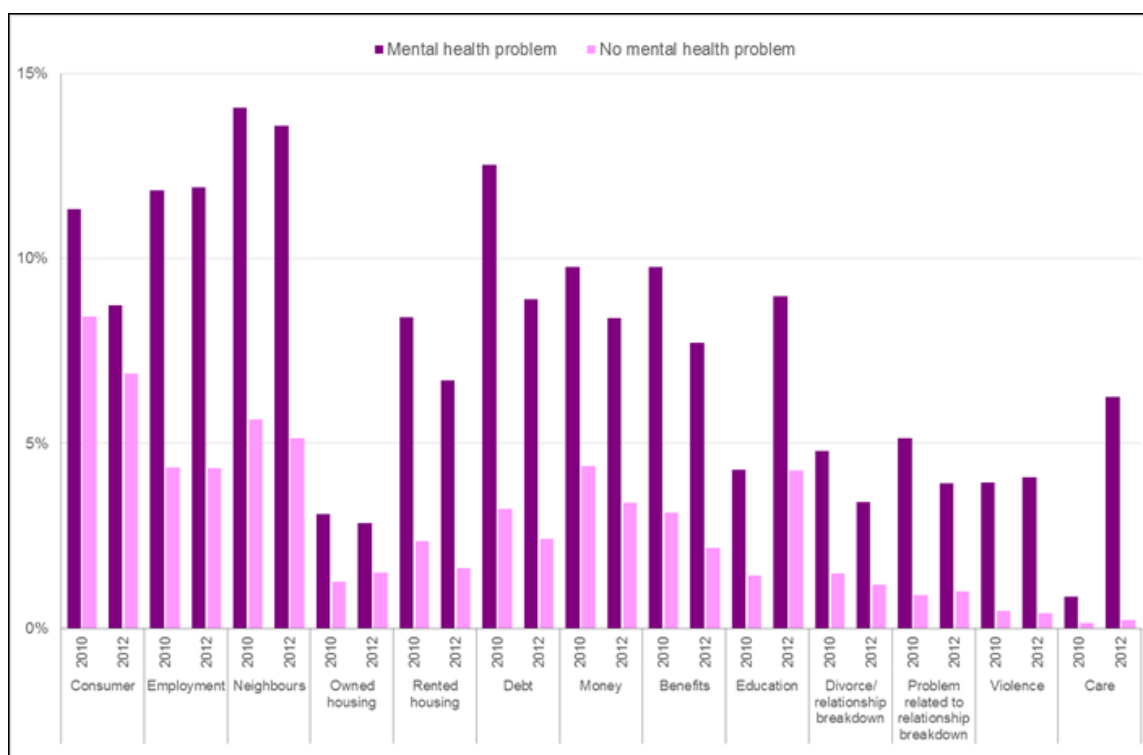
Individual Legal Needs 2015

1. The main caveat for this analysis is that the research did not distinguish between physical and mental health conditions. This means that we are unable to draw firm conclusions on mental health.
2. Overall, a significantly higher proportion of those with a physical or mental health condition (when compared to those without a physical or mental health condition) took no action in response to the legal problem - 18% (829 of 4,749 respondents) vs 14% (1,648 of 11,658 respondents) and a significantly lower proportion handled their problem alone – 47% (2,224 of 4,749 respondents) vs 51% (5,917 of 11,658 respondents).
3. Overall, of those who sought advice, 11% (174 of 1,656 respondents) of those with a physical or mental health condition were dissatisfied with the service they received, compared with 8% (321 of 3,996 respondents) for individuals without a physical or mental health condition.
4. Looking at reasons for dissatisfaction with service; the two areas where there was the largest significant difference between the two groups were:
 - a) The quality of service provided was poor or not up to scratch - 46% (80 of 174 respondents) vs 34% (108 of 321 respondents)
 - b) I was not treated very well by staff - 26% (45 of 174 respondents) vs 14% (45 of 320 respondents).
5. Overall, individuals who have a physical or mental health problem are more likely to experience legal problems that they perceived to be more severe.



Civil and Social Justice Panel Surveys (CSJPS)

6. It is worth noting that this data is now relatively dated (from 2012 and 2010). The effect of significant changes since then, including the Legal Aid, Sentencing and Punishment of Offenders Act 2012, must therefore be borne in mind.
7. In both the 2012 and 2010 CSJPS survey 15% of all respondents reported having suffered from stress, depression or some other kind of mental health problem since start of reference period.
8. Below is a chart showing the prevalence of different legal problems for those with a mental health problem vs those without a mental health problem in both 2010 and 2012:



9. There is evidence of a strong relationship between mental health and problem outcome. Specifically better mental health was associated with a significant increase in the likelihood of 'court/tribunal/process', 'putting up with the problem' and particularly 'resolved independently/resolved self' and 'agreement' outcomes, when contrasted with problems being 'ongoing' for poorer mental health.