

Lowering barriers to accessing services

Lessons from other sectors

March 2016

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Executive summary

1. The LSB is committed to removing barriers to accessing legal services. This is an important part of our strategic objective of enabling the need for legal services to be met effectively.
2. We expect the approved regulators to be pursuing their own approaches to making legal services more accessible. Through the regulatory standards assessment process we are aware of some of the initiatives that regulators are pursuing in this regard and we will continue to assess regulators' performance through our regulatory standards work.
3. Outside of the legal services sector there have been significant resources and effort devoted to making services accessible for consumers, particularly within the financial services, healthcare and utilities sectors. We believe that there are lessons to take from these sectors, which could assist the approved regulators in progressing their own approaches. These lessons could be applied without needing to match the resources devoted in these other sectors.
4. This report summarises our findings from reviewing initiatives in other sectors. This is based on significant desk-based research and nine meetings with key players in other sectors.
5. Our focus was on measures that could make services more accessible for consumers. Within this, we have concentrated on initiatives that could be of interest to the approved regulators. However, representative bodies and other players have an important role to play in lowering barriers and may also find this report useful.
6. The findings are presented under five themes:
 - (i) Encouraging or requiring summary disclosure of key information by providers.
 - (ii) Using consumer research to develop guides or toolkits for providers on accessible language and communications.
 - (iii) Developing simple, plain English guides explaining regulation to consumers.
 - (iv) Developing logos or other visual representations for providers to use to denote regulation.
 - (v) Embedding the importance of consumer vulnerability within the regulatory framework.
7. The project was focussed on initiatives outside the legal services sector and did not involve a detailed examination of the approaches that are already being

pursued by approved regulators. Therefore we anticipate that some of the themes will be familiar to some approved regulators and may already be feeding into their work.

8. We believe that the report represents a valuable shared resource for the sector. We recognise that the themes in the report will be more relevant to some approved regulators. We hope that all approved regulators will explore the themes, if they haven't already, and feed any relevant new learning into their own existing and planned initiatives.
9. We will seek to engage with the regulators in the coming months to better understand how they are approaching the themes identified in this report.
10. The LSB is extremely grateful to the organisations that provided their time to discuss their work with us as part of this project. There is a list at Annex A of all of these bodies.

A. Context – the need for action

11. The LSB considers that consumers should be able to meet their legal needs conveniently, affordably and effectively, with appropriate protections in place to prevent harm to them or the public interest. This emerges from the regulatory objectives of improving access to justice, protecting and promoting the interests of consumers, supporting the rule of law and protecting and promoting the public interest.
12. LSB research demonstrates that a high proportion of consumers with a legal problem do not seek legal advice:
 - In 2012 the LSB’s Legal Needs Survey identified that *“less than half of legal needs resulted in the individual obtaining advice, assistance or professional help (44%).”*¹
 - Similarly, the Small Business Legal Needs Survey of 2015 found that *“over half of firms experiencing a problem tried to resolve it by themselves.”*²
13. The LSB considers that this ‘access gap’ – the proportion of those who experience a legal problem but do not access advice – represents unmet legal need.³ The LSB has committed to tackling the existing high levels of unmet legal need as one of its three main areas of focus in its 2015-18 strategic plan. The LSB pursued a number of projects in 2015/16 which contributed to this strategic theme. This included the following:
 - Affordability - A project exploring what “affordable” means in the context of legal services.
 - Open data - A project seeking to understand how open data and markets, including intermediaries and choice tools, can be used by consumers to solve problems and make effective choices in the regulated and unregulated legal services market.
14. The above projects target two of the most significant barriers that prevent consumers from accessing legal services: cost and lack of information. However, it is evident from previous research that there are other factors preventing consumers from accessing services. This third project was focused on improving understanding of these other barriers and particularly what could be done to address them.

¹ BDRC Continental, *Legal Services Benchmarking*, prepared for the LSB, June 2012 (see [here](#)). Note: The results of a new Legal Needs Survey which was undertaken in 2015 will be available shortly.

² Kingston University, *The legal needs of small businesses*, prepared for the LSB, October 2015 (see [here](#)).

³ We recognise that in some other sectors a distinction is drawn between need for essential services and demand for services that may not be essential. We do not believe that this distinction can be reliably drawn in legal services on the basis of the existing evidence base.

15. We recognise that in practice consumers' choices will be influenced by many different factors and that there is no single, simple measure which will address all potential barriers. However, by seeking to improve understanding of what could be done to tackle a number of known barriers we are hoping to assist approved regulators to develop their approaches and improve accessibility of the services that they regulate.

B. Barriers to accessing legal services

16. Following a review of the existing research and evidence on potential barriers to accessing legal services, we decided to focus our attention through this project on the following non-financial barriers to access:

- (a) Inaccessible language and communications.
- (b) Lack of trust.
- (c) Failure to cater for the needs of vulnerable consumers.

17. Our research identified one other significant barrier which we decided not to pursue; this relates to consumers not identifying a service need and therefore not realising that they could seek legal advice. The approaches to tackling this barrier are likely to revolve around public legal education, which is a significant issue in its own right. The regulatory objectives in the Legal Services Act 2007 include “increasing public understanding of the citizen’s legal rights and duties” but in practice, the LSB’s statutory powers place limits on our ability to effect change in this regard. In addition, whilst the approved regulators would have a role to play in this, there are many other players who would need to be involved in tackling this barrier. For these reasons, it was deemed to be beyond the scope of this particular project.

(a) Inaccessible language and communications

18. The legal sector is often characterised by the complexity of the language that is used. For example, research undertaken for the LSB in 2011 into consumers’ information needs⁴ noted that “*the legal sector can be seen as shrouded in a degree of mystery and aloofness, making it inaccessible to consumers (deliberately so, to some minds), and the language used is described as jargon and legalese.*”

19. The LSB is not aware of research which directly examines the link between complex language and use of legal services. However, previous research has noted the propensity for jargon and inaccessible language to put consumers off securing advice or representation:

- The LSB’s Choose and Use⁵ research in 2013 noted that “*...for many people, an initial barrier [to engagement with legal professionals] is lack of awareness and understanding of lawyers and the law...understanding is further clouded by the amount of legal jargon*”. In examining why certain consumers consider and then reject seeking legal advice, one of the reasons cited in the report

⁴ Vanilla Research, *Understanding consumer needs from legal information sources*, 2011 (see [here](#)).

⁵ Optimisa research, *Consumer use of legal services*, prepared for the LSB, April 2013 (see [here](#)).

was that lawyers were seen as *“inaccessible”*. The report goes on to note that perceptions of inaccessibility of ‘traditional’ lawyers relates to language used (and location). Concerns about inaccessibility were most prevalent amongst social grade C2DE (manual occupations).

- LSB research concerning the experience of those with learning disabilities in accessing legal services⁶ identified the particular difficulties that these consumers can have when presented with inaccessible language. Recommendations for improvements from those involved in the qualitative research included *“easier language to guide people to the right service”* and *“avoiding jargon and long words, using plain language, producing legal materials in easy-read, and explaining things clearly.”*

20. This is not an issue that is unique to England and Wales. An Australian paper⁷ which examined access to justice in an international context notes the following:

“The legal profession speaks a fundamentally different language to the general public. Although many jurisdictions have implemented measures to bridge the language gap through ‘plain language’ initiatives, many people continue to feel overwhelmed by the concept of approaching a lawyer for help.”

21. On the basis of the above evidence, it is clear that inaccessible language and the perception of it can prevent consumers from accessing services. Moreover, the impact appears to be greater on certain demographics and particularly on vulnerable consumers. It follows that wider use of plain, non-technical language would help to address a proven barrier to consumers accessing legal services.

(b) Lack of trust

22. Trust in lawyers, as measured by the Legal Services Consumer Panel’s Tracker Survey, increased slightly in 2015. However, current levels of trust remain disappointing and leave significant scope for improvement.

23. The Tracker Survey has measured trust annually over a five year period and, even with an increase in 2015, still only 47% of respondents stated that they would generally trust lawyers to tell the truth.⁸ This is slightly higher than levels of trust in “the ordinary man or woman in the street” (40%). In contrast, consumers are far more likely to trust teachers (71%) and doctors (82%).

⁶ Norah Fry Research and Bristol University, *What happens when people with learning disabilities need advice about the law?*, prepared for the LSB, July 2013 (see [here](#)).

⁷ Tahlia Gordon and Steve Mark, *Access to justice: can you invest in it?*, April 2015 (see [here](#))

⁸ See “Tracker Survey 2015 – data tables for general public sample” ([here](#)).

24. Levels of trust in lawyers differ significantly by ethnicity, with trust amongst BME consumers at 42% compared to 50% for White British consumers; amongst Black African consumers, levels of trust were at 32%.
25. The available data suggests that lack of trust has a small direct impact on consumers' willingness to access advice; the 2012 Legal Needs Survey found that 3% of respondents cited lack of trust in lawyers/advisers as a reason for handling a matter alone, whilst 2% cited it as a reason for doing nothing. Qualitative studies have shed more light on the role of trust in decision making:
- A report for the LSB looking into lessons from behavioural economics emphasised the many different inter-related factors which play into consumer decision making and noted that trust in the legal system is an important consideration in a consumer's decision as to whether or not to approach a legal advisor.⁹
 - Similarly, the LSB's Choose and Use research noted that trust is often implicit in a decision of whether to seek advice and is "*one of a number of elements factored into the eventual decision.*" For example, the research identified links between lack of trust and concerns about fees and overcharging, which suggests that lack of trust contributes to perceptions of legal services being too expensive (which is a significant barrier in its own right).
26. Therefore whilst lack of trust does not in itself prevent many consumers from seeking advice, it is likely to contribute to consumers' decisions on how to proceed. Its impact is likely to be greater amongst certain groups, given the disparities in levels of trust related to the ethnicity of consumers.
27. To improve trust and increase the accessibility of legal services, the Choose and Use research suggested that: "*Greater visibility and understanding of the role of the legal services regulatory and complaints bodies will provide reassurance and ultimately lead to greater trust.*"
28. This recommendation, and the issue of trust generally, is relevant to the LSB's vision for the legal services market, as set out in our draft business plan 2016/17.¹⁰ This includes the following indicator: "*a regulatory framework that commands the confidence of consumers, the public and all those with an interest in legal services.*"
29. The LSB recognises that approved regulators and the Legal Ombudsman are already seeking to build their visibility through communications and outreach work. This does appear to have had some effect, as the LSCP tracker survey has recorded increases in consumer awareness of LeO and the largest approved

⁹ Professor John Maule, *Understanding Decision Making in Legal Services: Lessons from Behavioural Economics*, prepared for the LSB, June 2013 (see [here](#)).

¹⁰ As consulted upon in January 2016 (see [here](#)).

regulators over the last five years. However, even with these increases there is clearly scope for further improvement:

<i>Before now, which, if any, of the following organisations have you heard of?</i>	2011	2013	2015
Legal Ombudsman	65%	61%	66%
Solicitors Regulation Authority	16%	18%	20%
Bar Standards Board	13%	16%	18%

(c) Failure to cater for the needs of vulnerable consumers

30. The needs of consumers vary according to their particular circumstances and characteristics. For example, as set out above, certain consumers are affected disproportionately by widespread use of inaccessible language and some groups of consumers are less likely to trust legal services providers.

31. This creates the risk that the market will not provide services which are accessible for certain groups of consumers, or that individual providers will not provide an appropriately tailored service for vulnerable consumers. The Legal Services Consumer Panel guide on consumer vulnerability noted that *“while there are some lawyers who specialise in helping specific client groups, it’s important that all lawyers can identify and understand consumer vulnerability and adapt their services to meet people’s varied needs.”*¹¹

32. If providers do not recognise and respond to consumers’ vulnerability their services are less accessible to these consumers. This in turn could lead to consumers becoming disillusioned and not pursuing a matter at all, thereby contributing to unmet legal need.

33. The available data suggests that certain groups of consumers are significantly less likely to access legal services. For example, the 2012 Legal Needs Survey found that those in social grade DE were considerably less likely to obtain advice/assistance in response to a legal problem than those in AB (35% compared to 44%).

¹¹ Legal Services Consumer Panel, *Recognising and responding to consumer vulnerability*, October 2014 (see [here](#)).

C. Lessons from other sectors

34. With the above barriers in mind, the LSB reviewed the most relevant approaches to making services more accessible within the financial services, healthcare and utilities sectors.

35. This included significant desk-based research and investigation, including reviewing 19 research reports¹² (referenced as footnotes within this report) and numerous consultations and policy statements. In addition, the project team discussed initiatives with the following organisations:

- British Standards Institution
- Department for Work and Pensions
- Financial Conduct Authority
- Financial Ombudsman Service
- General Dental Council
- National Employment Savings Trust
- Patient Information Forum
- Trustmark
- UK Regulators Network (through which we participated in a workshop on billing in the utilities sector)

36. Having undertaken this process, we have identified five themes. Each is explained below, including reference to any supporting material for further reading. We hope that this report will be a useful resource for the sector.

37. We recognise that the resources available to some of these organisations are on a different scale to those available to approved regulators. However, we believe that learning can still be taken from their work.

(i) Encouraging or requiring summary disclosure of key information by providers

38. There are three main aspects to this theme:

- (a) Limitations of terms and conditions for communicating key information
- (b) Layering of information / summary disclosure
- (c) Mandatory disclosure requirements

39. Each is expanded upon below.

¹² Six of these were prepared for the LSB, whilst 13 were from other sectors.

(a) *Limitations of terms and conditions for communicating key information*

40. It has been observed previously within the legal services sector that client care letters are sometimes used to provide detailed terms and conditions (T&Cs) to clients under the belief that this is necessary, without adequate consideration of the impact that this has on consumers.¹³
41. Relying on lengthy T&Cs, which are usually drafted as legal documents, as a means of explaining to clients the service that will be provided, is an example of inaccessible communication which can prevent consumers from progressing a matter or seeking advice again in the future. It can also contribute to decreased trust in a provider and in lawyers more generally.
42. Similar issues are noted in the Financial Conduct Authority's (FCA) Smarter Communications project, which it launched in June 2015.¹⁴ Through this project the FCA is seeking to identify improvements to consumer communications. One of the themes explored is the complexity of T&Cs material provided to consumers:
- "in many cases we believe T&Cs, as they are currently written, provide evidence of an over-disclosure approach that some firms have adopted as a mechanism that they believe mitigates risk of action: contractual disputes, court proceedings, regulatory action or complaints escalated to the ombudsman service ... participants in our roundtables provided no compelling evidence that this was a successful risk-mitigation strategy. This approach all adds to consumer misunderstanding and consequently a lack of trust."*
43. The FCA also notes that *"where the presentation of the T&Cs inhibits the consumer's ability to engage with the contents in any meaningful way, this discourages them from even trying."*
44. HM Treasury has also recently recognised a general concern about the length and complexity of T&Cs information across different markets, in its report "A better deal: boosting competition to bring down bills for families and firms".¹⁵ Following on from this report, the Department for Business Innovation and Skills (BIS) has published a Call for Evidence seeking a better understanding of how T&Cs can be made more user-friendly and consumers might be helped and encouraged to engage more effectively with them.¹⁶ This publication references a Consumer Detriment survey that BIS commissioned, which found that 62% of

¹³ <http://www.legalfutures.co.uk/blog/please-sir-the-dog-ate-my-client-care-letter>

¹⁴ <http://www.fca.org.uk/static/channel-page/dp-smarter-comms/dp-smarter-comms.html>

¹⁵ HM Treasury, *A better deal: boosting competition to bring down bills for families and firms*, November 2015 (see [here](#)).

¹⁶ BIS, *Terms and conditions and consumer protection fining powers: call for evidence*, February 2016 (see [here](#))

consumers surveyed who had purchased a good or service over the internet had ticked the box about T&Cs even though they had not read or glanced over them at all.¹⁷

(b) Layering of information / summary disclosure

45. Concerns about the inaccessibility of T&Cs can be addressed through layering of information that is presented to clients, so that certain key information is drawn out and presented up front.
46. This concept is based on research findings that consumers generally spend a very short period of time reading contractual information or bills. For example, research undertaken by Ipsos Mori for Ofgem¹⁸ found that only 40% of consumers read their bills or statements of accounts in full, with 46% claiming to have “glanced over it or skim read it”.
47. This emphasises the importance of how information is presented and considerable efforts have been devoted to understanding the best way to increase engagement. For example, a randomised controlled trial undertaken by the FCA in 2013¹⁹ demonstrated the impact of accessible presentation of information in the context of letters alerting consumers to their right to claim redress. It tested the impact of seven changes to an existing letter and found that reducing the text by 40% almost doubled the response rate and adding ‘salient bullet points’ to summarise information increased response rates over 2.5 times. Combining different changes served to increase the response rate by seven times compared to the control letter that was being used prior to the trial.
48. A clear message from the above experiment and other similar research is that the longer and more complex the information provided, the less likely a consumer is to read or understand it. This theme was expanded upon by a literature review which the FCA commissioned from Oxera.²⁰
49. Oxera suggested that consumer understanding and engagement could be significantly increased by layering information so that the consumer receives a summary disclosure of the most important information on the services they are receiving upfront, with clear signposts to other additional information.
50. Oxera’s report identifies two key considerations when producing a summary disclosure:

¹⁷ TNS, *Consumer engagement and detriment survey*, 2014 (see [here](#)).

¹⁸ Ipsos Mori, *Customer engagement with the energy market: tracking survey*, September 2015 (see [here](#)).

¹⁹ Financial Conduct Authority, *Encouraging consumers to claim redress: evidence from a field trial*, April 2013 (see [here](#)).

²⁰ Oxera, *Review of literature on product disclosure*, October 2014 (see [here](#)).

- Identifying aspects to include: for financial products this may include product attributes, prices, charges and changes in cost, risk and indicative estimates if precise fees cannot be given.
- Designing summary disclosure: the importance of consistency and comparability across providers and easy access/prominent display.

51. The BIS call for evidence on T&Cs (referenced above) seeks views on a number of proposals for helping consumers to engage with T&Cs, including *“putting key facts together bold and up front (e.g. on two pages).”*

52. The LSB is aware that the approved regulators are currently scoping a joint piece of work on client care letters. We hope that this work will include consideration of summary disclosure of certain key information. The research undertaken in other sectors should be a useful starting point and could help to target any sector specific research or testing.

(c) Mandatory disclosure requirements

53. Across the other sectors that were reviewed, there is a general recognition of the importance of how key information is communicated to consumers, which is reflected in a significant regulatory focus on this aspect of service delivery.

54. For example, financial services and utilities regulation stipulates what information should be disclosed to consumers and how, in relation to certain services:

- Mortgages – The FCA’s Mortgage Conduct of Business rules set out quite prescriptive requirements concerning what firms (both lenders and intermediaries) should disclose to customers when offering a product and how this should be presented. Much of this manifests through ‘mortgage illustrations’. Templates are available for these illustrations and provide a combination of prescribed sections and layout as well as some specific text to be included. From 21 March 2016 these templates have been standardised across Europe as a result of the Mortgage Credit Directive (2014/17/EU). The intention is to draw out all of the key information that consumers would need to have in order to understand if the product being offered is the best product for them.
- Pensions – Providers must disclose ‘statutory money purchase illustrations’ which present consumers with certain prescribed information, including the amount of money in their pension pot, contributions to their pot and projections on the size of the pot at retirement, as well as the providers’ fees.
- Energy companies are subject to a number of quite prescriptive requirements concerning what information should be presented and how. Some of these

requirements provide that the information must be presented on the first page of a letter and in some instance the text size is even prescribed.

55. As demonstrated, mandatory disclosure requirements often include summary disclosure as a necessary component.
56. It should be noted that the FCA launched a consultation paper in October 2015 proposing to remove certain “ineffective” disclosure requirements from its Handbook.²¹ This serves to highlight the fact that prescriptive mandatory disclosure is not always appropriate and can impose burdens on regulated firms without achieving the intended aims. Over prescription can also stifle innovation in communication. However, proportionate mandatory disclosure requirements are likely to remain a central concept in regulation in other sectors.
57. During 2016/17 we will be requesting advice from the LSCP on the effectiveness of existing information remedies in legal services regulation and how these could be improved. We will ask that this involves consideration of the issues explored within this theme. Approved regulators are also encouraged to consider the tools at their disposal for encouraging and ensuring clear and effective communication of certain key information to consumers. This may involve working with non-regulatory bodies and consumers.

(ii) Using consumer research to develop guides or toolkits for providers on accessible language and communications

58. The legal profession is not the only profession to be associated with jargon and technical language. Within medicine, the Royal College of General Practitioners has recently been driving work to improve health literacy. A recent report noted how doctors can inadvertently fall into inaccessible communication: *“Doctors, having spent many years immersed in the biology of human health and disease, may overestimate the health literacy of their patients.”*²² The report notes that GPs may therefore not realise that they have failed to make themselves understood. It is likely that similar risks exist for lawyers, who may not realise that they are using legal language or jargon that many consumers will not understand.
59. Guidance or toolkits can have an important role to play in helping professionals to identify when they are using technical words or phrases and in aiding them to improve the accessibility of their language and communications.
60. Within the pensions sector various organisations including the Department for Work and Pensions (DWP) have recently devoted considerable effort to improving the accessibility of pensions language and communications. One of the

²¹ Financial Conduct Authority, *Smarter Consumer Communications: Removing ineffective disclosure requirements in our Handbook*, October 2015 (see [here](#)).

²² Royal College of General Practitioners, *Health Literacy*, June 2014 (see [here](#)).

main aims of this work is to restore consumer confidence and increase engagement with and use of pensions.

61. In 2009-10 the National Employment and Savings Trust (NEST), which is the Government backed pension scheme, undertook qualitative research with employers, their advisers and future savers as the basis for driving clear and accessible communication in the new auto enrolment market. Following this, in January 2011 it published the first edition of the NEST Phrasebook²³ – a regularly updated 28 page guide on words and phrases that should and should not be used in communications with employers and consumers. In 2012 it also published The Golden Rules of Communication²⁴ – a list of 8 rules for communicating with consumers. Each rule is explained and justified and then an example is given of it being put into action. Both of these publications detail the consumer research and testing which informed their development.
62. DWP built on this as part of its high profile work aimed at “Reinvigorating workplace pensions”.²⁵ In 2011 it undertook qualitative research with consumers to “*test understanding of key messages and specific language terms and determine what actions they promote.*”²⁶ It used the results of this and NEST’s research to create a Pensions Language Guide for providers.²⁷ This 32 page language guide sets out important principles to consider when developing consumer information. The main body of the publication provides a comprehensive guide to common jargon and phrases which should not be used, alongside alternative phrases to replace them with. It also identifies terms which are acceptable to use but which need to be defined to assist consumer understanding. The guide was developed to accompany the implementation of automatic enrolment in 2012.
63. Through its Smarter Communications work the FCA recognises the efforts made in relation to pensions language and states: “*[we] welcome and support industry efforts to reduce jargon and to communicate with customers in a language they can understand.*” However, it stresses that industry could do more to embed consistent language and terminology, suggesting that the guides produced by NEST are a useful starting point for industry wide work.
64. Some evidence of the actual impact of this work can be inferred from the take up of automatic enrolment, which resulted in far lower levels of opt out than had

²³ <https://www.nestpensions.org.uk/schemeweb/NestWeb/includes/public/docs/NEST-phrasebook.PDF.pdf>

²⁴ <https://www.nestpensions.org.uk/schemeweb/NestWeb/includes/public/docs/golden-rules-of-communication.PDF.pdf>

²⁵ DWP, *Reinvigorating workplace pensions*, November 2012 (see [here](#)).

²⁶ The Futures Company, *Automatic enrolment – information for workers qualitative research*, July 2011 (see [here](#)).

²⁷ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/303858/auto-enrol-language-guide.pdf

been anticipated (the DWP had initially modelled around a 25% opt out rate but qualitative research suggests actual opt-out rates of between 9-12%).²⁸

65. There has been a similar focus on improving the accessibility of communications in healthcare. For example, the Patient Information Forum (PIF) was established in 1997 as the UK membership organisation and network for people working in and involved with, health information. PIF is committed to improving the healthcare experience of patients and the public by supporting individuals and organisations to provide clearly communicated, evidence based health and care information and support, which is accessible and developed with its users.
66. In 2013 PIF undertook research into the Case for Information²⁹, which recognised the benefits of high quality health information and communication. The positive impact of which includes more effective service utilisation, lower health costs and improved patient experiences.
67. More recently, PIF has developed an interactive toolkit for those within the health and care sectors to assist them in improving their communications with patients.³⁰ Of particular note, the toolkit stresses the importance of developing key communications in consultation with a representative range of users, as well as recognising the value of design and layout to effective communication.³¹ The web pages for the toolkit include real case studies which provide practical examples of how the toolkit principles can be approached.
68. The LSB believes that there could be significant value in the development and promulgation of language guides or toolkits for legal services providers. The purpose could be to develop sector-wide understanding of common words and phrases which should be avoided, replaced or explained, as well as words and means of explaining services those which are accessible. The durability and impact of such work would be maximised if it was based on consumer testing or research.
69. As set out above, during 2016/17 we will be requesting advice from the LSCP on the effectiveness of existing information remedies in legal services regulation. We believe that this request should be broad enough to include consideration of the potential value of language guides and toolkits for providers.

²⁸ Department for Work and Pensions, *Automatic enrolment opt out rates: Findings from qualitative research with employers staging in 2014* (see [here](#)).

²⁹ Patient Information Forum, *Making the case for information*, May 2013 (see [here](#)).

³⁰ <http://www.pifonline.org.uk/toolkit/>

³¹ For key steps on using effective design see the toolkit, [here](#).

(iii) Developing simple, plain English guides explaining regulation to consumers

70. As set out above, the LSB's Choose and Use research in 2013 recommended that more be done to increase the visibility of regulators and to build consumer understanding of their role, in order to build trust in legal services providers.

71. Other sectors have also been through this process. For example, building trust has been on the agenda for the General Dental Council (GDC) since a research report that it commissioned in 2010³², looking into public perception of dentists, identified trust as a significant issue. The report supported the GDC's plan to create new, simplified standards for dental professionals. It also included the following recommendation:

“There is a need for the GDC to raise its profile amongst the general public and patients. The development of these [new] standards provides the opportunity to do this. The information included in the new standards should be clear and comprehensible for the general public and patients.”

72. Following this report, the GDC did proceed to develop clearer standards that should be better understood by the general public. These are captured in the “Standards for the Dental Team” publication³³, which presents the standards in an accessible format and does not have the appearance of a Code of Conduct or rulebook. It explains the nine core ethical principles, starting in each case by setting out “patients’ expectations” in simple and clear language.

73. To complement this publication and to increase public awareness of the standards and dental regulation, the GDC has designed a concise and accessible guide for consumers explaining what to expect from dentists, as well as the protections that exist if something goes wrong. The leaflet, entitled *Smile*³⁴, was developed alongside consumers and is designed to be accessible (the value of design and layout is recognised in PIF's toolkit – see above). The leaflet was approved for plain English language by Crystal Mark, as are all significant consumer communications by the GDC.

74. Dentists' surgeries are encouraged to have the *Smile* leaflet available in waiting rooms. It is also available on the GDC's website in six different languages and in Easy Read format.

75. Within financial services, the Financial Ombudsman Service (FOS) devotes significant efforts to raising awareness of the regulatory protections and redress

³² George Street Research, *Patient and public attitudes to standards for Dental Professionals*, November 2010 (see [here](#)).

³³ General Dental Council, *Standards for the Dental Team*, September 2013 (see [here](#)).

³⁴ General Dental Council, *Smile* (see [here](#)).

available to consumers, to address the issue of trust. The link between awareness of consumer protections and accessibility of services is recognised in FOS' annual report for 2014/15,³⁵ which notes that: *“our commitment to reaching people who need us isn't only about being there when things go wrong. Significantly, awareness of a free ombudsman can encourage people to engage with financial services in the first place.”*

76. To build awareness the FOS seeks to produce clear, plain English communications for consumers. In addition to its own plain language consumer leaflet³⁶, it has produced an online video³⁷ explaining its role; this has been viewed over 160,000 times. It also recognises the value of targeted outreach work and of reaching consumers through local media stories.

77. FOS' communications and outreach work may have made a contribution to recent increases in public awareness, to a position where four out of five people now have some awareness of FOS. Awareness amongst certain demographics has risen as much as 40%.³⁸

78. We hope that the approved regulators will give consideration to the approaches taken in other sectors when developing their own outreach work and consumer communications.

(iv) Developing logos or other visual representations for providers to use to denote regulation

79. Building trust through increasing consumer awareness of regulatory protections relies on consumers being able to identify regulated providers when they are considering seeking advice.

80. The LSCP's recent report on “Opening up data in legal services”³⁹ notes how difficult it currently is for consumers to establish and engage with whether a provider is regulated. LSB staff experienced these difficulties first hand when mapping the unregulated legal services market, as part of a separate project during 2015/16 aimed at improving understanding of unregulated providers⁴⁰. In particular, it was often difficult to establish from providers' websites whether they are regulated; many regulated providers make no mention of their regulated status on their websites and those that do often note this in small print at the foot of their website.

³⁵ Financial Ombudsman Service, *Annual review of consumer complaints: financial year 2014/2015*, May 2015 (see [here](#)).

³⁶ <http://www.financial-ombudsman.org.uk/publications/consumer-leaflet.htm>

³⁷ https://www.youtube.com/watch?v=JxzZdoYOQ_U

³⁸ Figures from Annual Report 2014/15 (see above).

³⁹ Legal Services Consumer Panel, *Opening up data in legal services*, February 2016 (see [here](#))

⁴⁰ See website ([here](#)) for further details.

81. The LSCP’s report includes a number of recommendations for the approved regulators on improving publicly available data. The LSB also believes that there could be some quick wins through taking lessons from the successful development of quality marks and regulator logos in other sectors.
82. Quality marks provide a simple, visual representation to consumers that a provider meets certain standards. For example, Government developed TrustMark to provide assurance to consumers that tradesmen within the scheme are *“trustworthy, reliable and operating to Government endorsed standards.”*⁴¹ When the scheme was relaunched in 2014 the communications surrounding the launch emphasised the importance of the standard to *“boosting the reputation of tradesmen and consumer confidence in the domestic repairs, maintenance and improvement market.”*⁴²
83. Providers who have a quality mark will usually display the corresponding logo on their websites and client communications. In contrast, most regulators do not allow providers to utilise a logo, generally due to concerns that it could damage the integrity of their brand or corporate identity. As a result, it is often easier for those with quality marks or voluntary regulation to build trust than for those who are subject to statutory regulation. For example, unregulated will writers who are members of the Society of Will Writers or the Institute of Professional Will Writers can utilise the logo of either organisation to build trust, whereas authorised persons regulated by most approved regulators do not have access to logos that they can use to denote their statutory regulation.
84. The GDC has sought to balance the benefits and risks associated with provider use of its logo by creating a specific provider logo.⁴³ It is similar but not identical to the GDC’s own logo, in order to protect the GDC’s corporate identity. However, it provides dentists with an option for denoting to consumers the fact that they are regulated in a simple, visual and consistent fashion. Similarly, the General Pharmaceutical Council (GPhC) has created a voluntary logo for internet pharmacies to use to *“provide reassurance to patients and the public online that they are purchasing medicines online from a registered pharmacies that have to meet GPhC standards.”*⁴⁴ This logo is completely different from the GPhC’s own corporate logo.
85. Approved regulators may wish to consider allowing providers to utilise logos or other visual representations to denote regulation in the interests of building consumer trust and confidence. In this regard, it is noteworthy that the Costs Lawyers Standards Board already allows those that it regulated to use a logo as a “mark of regulation”.⁴⁵

⁴¹ See website: <http://www.trustmark.org.uk/>

⁴² <http://www.trustmark.org.uk/newsroom/press-releases/government-relaunches-trustmark/>

⁴³ The logo can be viewed [here](#).

⁴⁴ <https://www.pharmacyregulation.org/registration/internet-pharmacy>

⁴⁵ <http://clsb.info/mark-of-regulation/>

(v) Embedding the importance of consumer vulnerability within the regulatory framework

86. The importance of taking consumer vulnerability into account when delivering services is recognised across sectors.

87. The British Standards Institution has developed a national standard on inclusive service provision⁴⁶ which is intended to be applicable to a range of industries. The standard was developed with consumer organisations and seeks to:

- Encourage the use of fair, ethical and inclusive practices and improve accessibility to services for all.
- Show organisations how to identify vulnerable consumers and how to treat them fairly.
- Increase consumer confidence in service providers.

88. The standard has been adopted by FOS, which has noted, in a White Paper, the benefits that it has seen from adopting the standard; these include identifying improvements to approaches and processes, enhancing support provided to staff and ultimately improving customer satisfaction.⁴⁷

89. The FCA has devoted considerable effort in recent years to raising the profile of vulnerability and to driving improvements in service provision for vulnerable consumers. At the heart of its approach is a detailed Occasional Paper on vulnerability⁴⁸ which sought to raise awareness and understanding of vulnerability. The paper provided practical examples, advice and a toolkit for providers to assist them in assessing and improving the accessibility of their services to vulnerable consumers.

90. The FCA's awareness raising and guidance was complemented by operational regulation, as assessment of providers' approaches to dealing with consumer vulnerability is embedded in its authorisation and supervision processes. The FCA has found that this holistic approach, combining assistance and guidance with a regulatory underpinning, has been successful in driving improvements in the way that many providers think about and adapt their services to cater for consumer vulnerability. Industry buy-in is exemplified by the fact that a

⁴⁶ British Standards Institution, *British standard for inclusive service provision – identifying and responding to consumer vulnerability*, BS 18477:2010 (see [here](#)).

⁴⁷ British Standards Institution, *Providing fair, flexible and inclusive services – a business perspective* (see [here](#)).

⁴⁸ Financial Conduct Authority, *Occasional Paper No.8 – Consumer Vulnerability*, February 2015 (see [here](#)).

Vulnerability Taskforce, comprising industry representatives, charities and consumer groups, was established following the FCA's occasional paper. This taskforce has produced a report outlining industry best practice on dealing with consumers in vulnerable circumstances.⁴⁹

91. The LSCP has developed a specific guide to assist legal services regulators in recognising and responding to consumer vulnerability.⁵⁰ This guide was based on the British Standards Institution's standard for inclusive service provision, with the intention of making it more relevant and accessible to the legal services sector.

92. The LSB hopes that the approved regulators are already taking the LSCP's guide into account in developing their own approaches to consumer vulnerability. The need for regulators to respond to consumer vulnerability is embedded in the regulatory standards framework, through which we assess the performance of regulators. For example, our assessment framework includes the following indicators that an approved regulator is towards the top of the scale (emphasis added):

- *Outcomes focused regulation:* High quality, up to date, reliable evidence from a range of sources about how all groups of consumers need and use the legal services the AR/LA regulates;
- *Risk assessment:* Formal, structured and transparent and evidence based approach to identification and mitigation of risks across the whole range of entities and individuals that the AR/LA regulates. Risk analysis focuses predominantly on consumer detriment, including those in vulnerable circumstances. Evidence that approach to risk works in practice.

93. During 2015/16 we have undergone a cycle of assessments of approved regulators and received evidence from the regulators on their achievements in relation to the regulatory standards. This has included identification of measures aimed at embedding consumer vulnerability within their activities. For example:

- The BSB's research strategy is focussed on developing its understanding of vulnerability. During 2015/16 it undertook two projects focused on vulnerable consumers (one on immigration and one on youth court advocacy; the latter was jointly commissioned with CILEx Regulation). It has also introduced risk-based supervision. This includes an assessment of consumer vulnerability, which informs the BSB's assessment of impact and its supervisory approach.

⁴⁹ bba, *Improving outcomes for customers in vulnerable circumstances*, February 2016 (see [here](#)).

⁵⁰ Legal Services Consumer Panel, *Recognising and responding to consumer vulnerability*, October 2014

- The SRA’s Risk Outlook for 2015/16 identifies “*failure to provide a proper standard of service, particularly to vulnerable people*” as a priority risk.⁵¹ This publication notes that its statement of competence for solicitors includes a requirement to meet the needs of people in vulnerable circumstances.

94. Whilst some good progress has been made, more can be done. How regulators are responding to consumer vulnerability will continue to be a feature of our ongoing regulatory standards work.

95. Approved regulators may be interested in exploring further how the FCA have advanced the agenda on consumer vulnerability amongst financial services providers.

⁵¹ Solicitors Regulation Authority, *Risk Outlook 2015/16*, July 2015 (see [here](#)).

D. Summary of themes

96. The table below demonstrates how the themes set out in Part C relate to the barriers to access from Part B.

	Inaccessible language and communications	Lack of trust	Failure to cater for the needs of vulnerable consumers
(i) Encouraging or requiring summary disclosure of key information by providers.	X	X	X
(ii) Using consumer research to develop guides or toolkits for providers on accessible language and communications.	X	X	X
(iii) Developing simple, plain English guides explaining regulation to consumers.		X	X
(iv) Developing logos or other visual representations for providers to use to denote regulation.		X	
(v) Embedding the importance of consumer vulnerability within the regulatory framework.			X

E. Next steps

97. There remain a number of barriers that prevent some consumers from accessing legal services. This results in unmet legal need.
98. The LSB is committed to doing what it can to remove and reduce the barriers so that more consumers can meet their legal needs conveniently, affordably and effectively. We also expect approved regulators to be developing their own approaches. This is consistent with the regulatory objectives of improving access to justice, protecting and promoting the interests of consumers, supporting the rule of law and protecting and promoting the public interest.
99. Through our most recent assessments of regulators under the regulatory standards framework we know that the approved regulators are pursuing measures to address the barriers outlined in this report. We are also aware of joint initiatives across regulators, such as work on client care letters being pursued through the Regulators' Forum.
100. We have not sought, through this project, to undertake an extensive analysis of the existing and planned work of approved regulators to address barriers to access. Instead, we have reviewed other sectors to identify themes and lessons that could be applicable to legal services. The intention is to provide a valuable shared resource for the legal services sector.
101. We hope that approved regulators will explore the themes in this report, if they haven't already, and feed any new learning into their own existing and planned initiatives. In the coming months we will be seeking to engage with the approved regulators to better understand how they are approaching the themes.
102. During 2016/17 we will continue to focus on tackling unmet legal need, building upon the work that we have undertaken during 2015/16. Our draft business plan 2016/17⁵² outlines the work that we will progress during 2016/17 in pursuit of this strategic objective. There are two workstreams which directly follow up on this report:
- Requesting advice from the LSCP on the effectiveness of existing information remedies in legal services regulation and how these could be improved. We believe that this request should be broad enough to include examination of the issues covered in the first two themes within this report (concerning summary disclosure and language guides).
 - To help drive improvements in relation to responding to consumer vulnerability (the fifth theme from this report), the LSB intends to undertake research during 2016/17 aimed at improving understanding of

⁵² See [here](#).

how vulnerable consumers access legal services. Through this project we will seek to advance the evidence base on the experiences of vulnerable consumers and to help regulators and professional bodies to identify areas of highest risk. It should assist approved regulators in developing approaches to removing barriers to vulnerable consumers accessing legal services.

103. In addition, in March 2016 the LSB started a consultation concerning requirements we have set for regulators, under section 112 of the Legal Services Act 2007, concerning notifying clients of their right to complain.⁵³ The consultation proposes some amendments to our guidance on this, including providing that approved regulators should set clear and concise guidance for authorised persons which reflect best practice for communicating with clients, including client care letters. This is consistent with the first theme within this report.

104. We look forward to continuing to work with the regulators to drive improvements in the accessibility of legal services.

⁵³ See [here](#).

Annex A: Bodies consulted

The project team met, or spoke to, the following bodies as part of the project:

- British Standards Institution
- Department for Work and Pensions
- Financial Conduct Authority
- Financial Ombudsman Service
- General Dental Council
- National Employment Savings Trust
- Patient Information Forum
- Trustmark
- UK Regulators Network: attending an event concerning billing (including the presentation of information to consumers) in the utilities sector.

The report seeks to reference publicly available information in relation to the approaches summarised and not rely solely on information discussed in meetings with these bodies. Any errors in the presentation of facts are the LSB's responsibility.