

Evaluation framework

April 2011

Introduction

1. The goal of the Legal Services Board is simple and clear – to reform and modernise the legal services market place in the interests of consumers, enhancing quality, ensuring value for money and improving access to justice across England and Wales. In achieving these goals, we have a largely facilitative role rather than directly regulating the suppliers of legal services.
2. When we look at the overall performance of the LSB we will be analysing ourselves across three sets of metrics:
 - Organisational efficiency – are we cost effective at carrying out our role as an oversight regulator?
 - Functional performance – do we achieve the targets we have agreed in carrying out our regulatory functions?
 - Delivery of market reforms – have we delivered the market reforms envisaged by the regulatory objectives in the Legal Services Act 2007?
3. This evaluation paper is concerned with the evaluation of the ‘delivery of market reforms’ rather than ‘organisational efficiency’ or ‘functional performance’. The Ministry of Justice will evaluate organisational efficiency in 2012 as part of their triennial review. Functional performance will be evaluated separately using a series of performance targets outlined in earlier LSB publications – these are set out in Section 4 of LSB’s Business Plan 2011/12.
4. The Legal Services Act 2007 (“the Act”) sets out the eight Regulatory Objectives shared by the LSB and the approved regulators. While the Regulatory Objectives set out the framework for regulation, our vision for the market that we set out below articulates how these objectives translate into a market that would demonstrate success for the LSB. Our Business Plan sets out our day-to-day work approach to meeting the objectives.

Our approach

5. We are committing to carrying out a triennial evaluation of the delivery of the market reforms set out in the vision in the form of a report on the legal market. We will collect the data to inform this report from a number of different sources both LSB and external. Then in analysing the data, we will use statistical techniques to try to distinguish the LSB’s role in delivering the changes seen in the market. Inevitably, this analysis will be challenging and conclusions that might be drawn may conflict both between sources and between segments of the wider market. We propose to use a descriptive analysis to draw together the data, provide conclusions where possible and highlight areas of concern.
6. The market we are evaluating and the reforms we are introducing are complex and our evaluation plan will necessarily involve a number of simplifying assumptions and a range of evidence. We are not proposing to set out specific targets, but instead we have highlighted 17 outcomes from our vision that we will evidence with a series of indicators to explore whether the outcomes have been met. Individual indicators will not provide conclusive evidence of the success (or not) of meeting objectives. Nevertheless, a number of indicators together can provide robust evidence of

success or failure. Evaluation will need to distinguish between actions by the LSB and their impact both in the short and long run. Evaluation should measure both the achievement of the outcome itself, and determine the role of the LSB in achieving the outcome, though in practice such distinctions will often be difficult, if not impossible, to make.

7. Our evaluation is underpinned by evidence, both addressing what we should measure and how it can practically be measured given the need to minimise regulatory burdens on the profession. Research by the Regulatory Policy Institute provides an economic framework for understanding where regulation may be required and particular areas of importance for evaluation e.g. quality of legal services provided. We will also incorporate outcomes research by Opinion Leader, which has developed a clearer framework for assessing consumer needs. But, more important has been the need to understand the available data and how we can segment the market in order to evaluate the impact of regulatory change.
8. In particular, we will be seeking to ensure that we build on the research planned by the Legal Services Consumer Panel to support its Customer Impact Scorecard. Our intention will be to use evidence from this where possible, seeking additional evidence only where necessary to supplement our understanding of consumers.
9. Following initial discussions about our evaluation strategy we have advanced our research plans to carry out this segmentation research and improve our evidence base. Most importantly, we have commissioned OXERA to develop a market segmentation model that will allow us to both collect data and analyse the impact of reforms to regulation (see **Appendix A**).
10. Inevitably, when the initial segmentation research is completed we will be able to form a clearer view of the sources of evidence available for our evaluation. A wider programme of reviews of the existing data held by approved regulators and academic reports has also been completed which will ensure that we limit the burdens on the profession by drawing on available evidence first, whatever the source. Going forward the evaluation outlined below envisages further research to develop the required indicators, not least a triennial consumer survey to track key consumer indicators and how they change as the reforms are introduced.

Our vision

11. In short, our vision is based on our belief that a competitive legal services market, plus appropriate regulation, is most likely to deliver the regulatory objectives. Our efforts as oversight regulator will therefore focus on ensuring that regulation is proportionate - reduced where possible to remove unnecessary barriers to regulatory objectives and imposed where necessary to support consumer or public interest outcomes. Oversight regulation will seek to encourage competition while ensuring that regulation reacts and develops to protect against emerging risks.
12. Below we set out how key participants should experience the legal services market of the future, the main indicators for our evaluation and how we will evidence these.

The profession

- 13. The legal services profession will be clear and confident about its professional ethics and how they apply to the legal services market. They will be able to offer to meet consumer need as they see fit, with regulation restricting them only where it can be justified based upon clear evidence and transparent process.
- 14. The profession will be as diverse as the society or market it serves. It will be open to anyone with the talent and drive to succeed, with standards that are admired both by consumers, the public, the whole of the legal system and internationally. The UK's overall competitiveness and its legal sector's competitiveness will be enhanced by the open and transparent commitment to quality, access and value.
- 15. This commitment will be particularly visible through more diverse and innovative routes to initial and vocational qualification, more partnerships between educators and providers and more focused and enforced requirements for ongoing development, including formal reaccreditation where consumer needs justify this. The profession and its regulators will have a priority focus on ensuring the appropriate quality of legal services.
- 16. The profession will be a confident and articulate voice in debates around access to justice, the rule of law and the administration of justice. This will be visible through strong professional bodies that are confident in their representative role. Public confidence in the profession will not be impaired by undue representational influence on regulation.
- 17. Our analysis and consultation has led us to conclude that the key outcomes for the profession will be around: diversity; quality of service; independence of the profession; and maintaining professional standards.

Figure 1 - Diversity

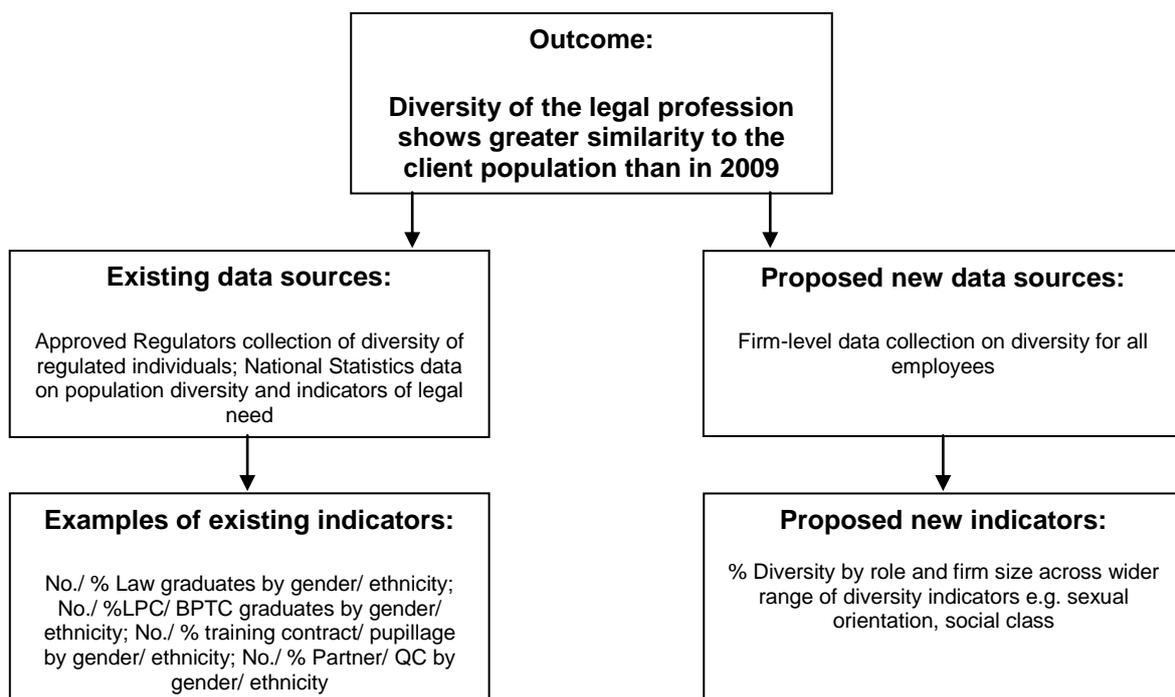


Figure 2 - Quality of service

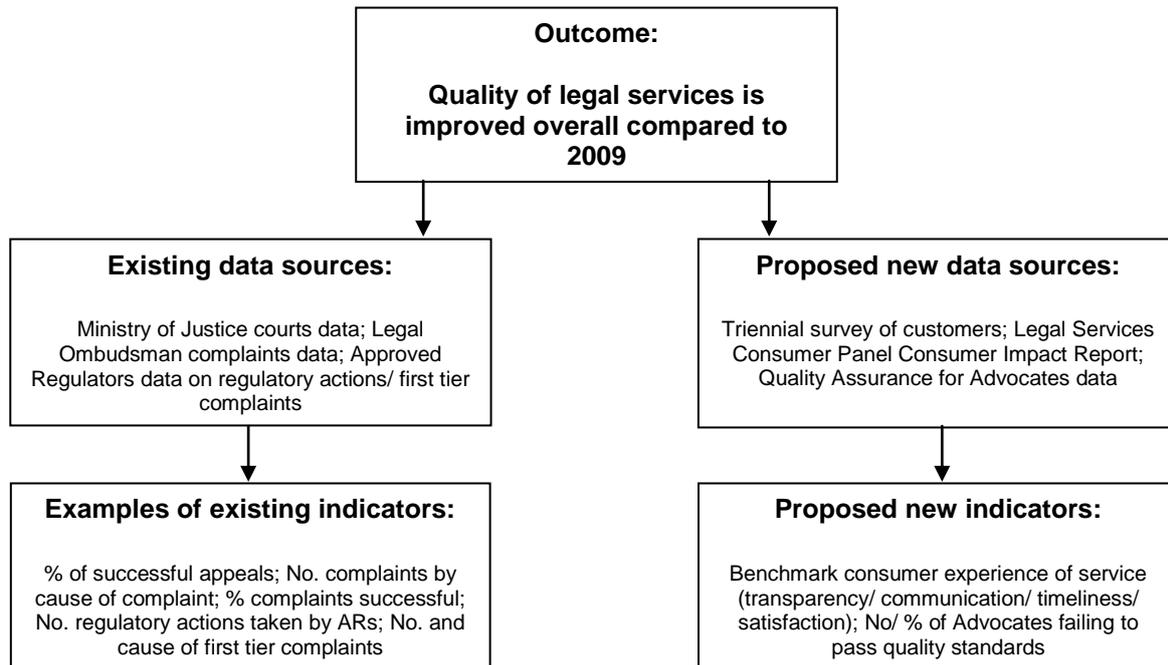


Figure 3 - Independence of the profession

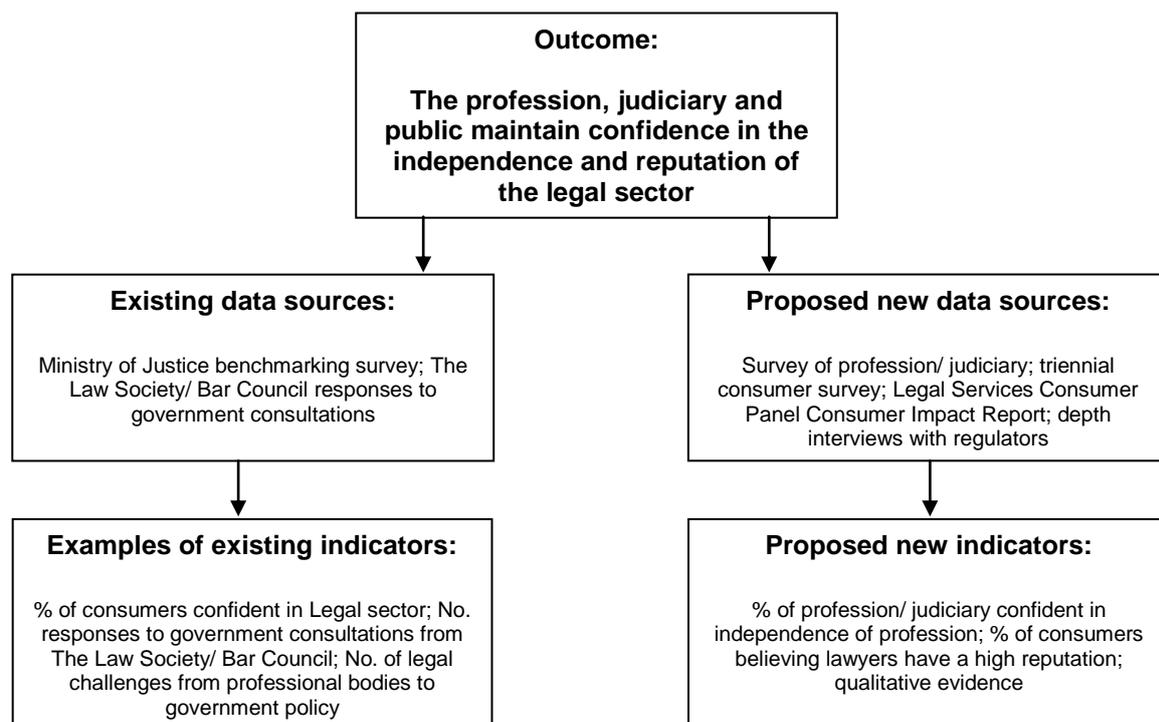
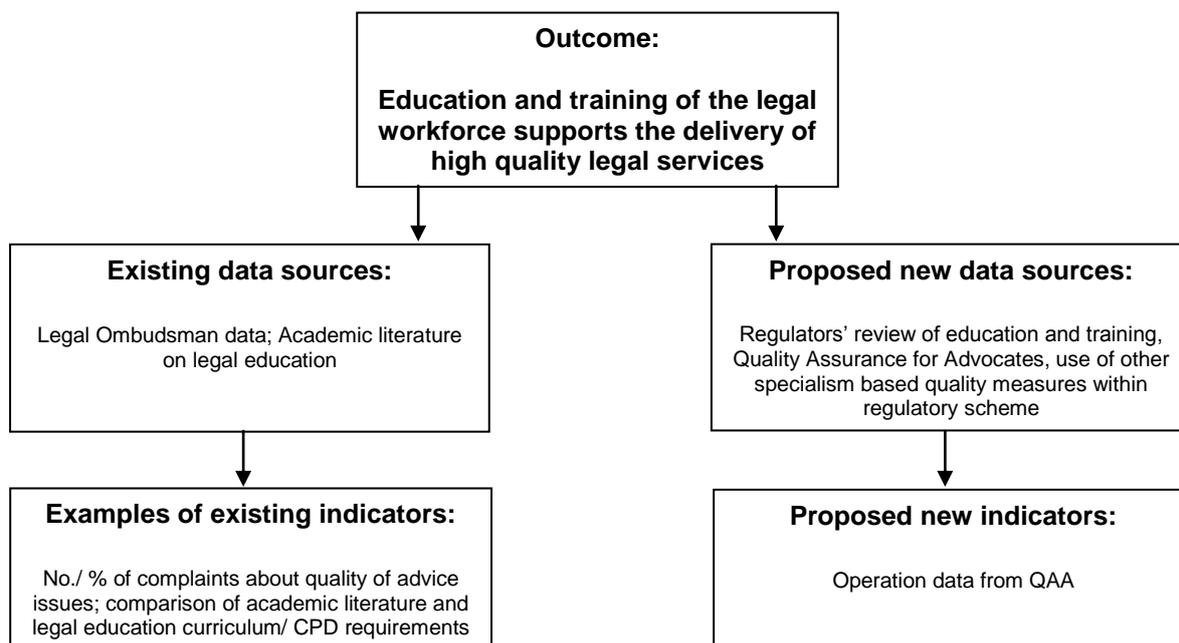


Figure 4 - Maintaining professional standards



The consumer

18. Consumers will feel that their needs are understood by the legal services market and that there is a range of options to help them. Where possible, consumers will be confident and able to exercise choice – choice over how they access services, types of service and how they are packaged and bundled; choice between pricing and quality alternatives. Where that is not possible, consumers must be confident that regulation protects them. So consumers will know when their money is protected and that their legal adviser is competent. And consumers should be confident that their complaints are listened and responded to quickly and fairly by the firm or individual providing the service, with a fair, rapid and independent Ombudsman scheme providing transparent fairness and redress where this fails. For the market to work effectively consumers will have to be empowered and confident when they employ legal advice.

19. Our analysis and consultations have led us to conclude that for consumers the key outcomes that a successful market should deliver should be: improved access to justice; confidence in regulation and the profession and consumers who are confident and empowered in the dealings with legal services.

Figure 5 - Improved access to justice

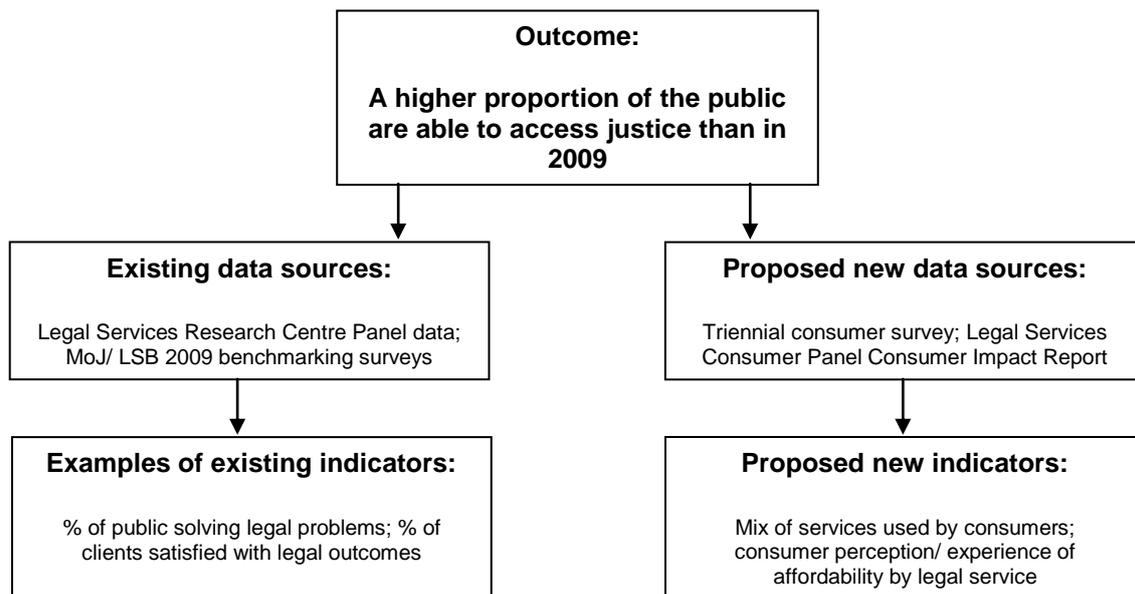


Figure 6 - Confidence in regulation

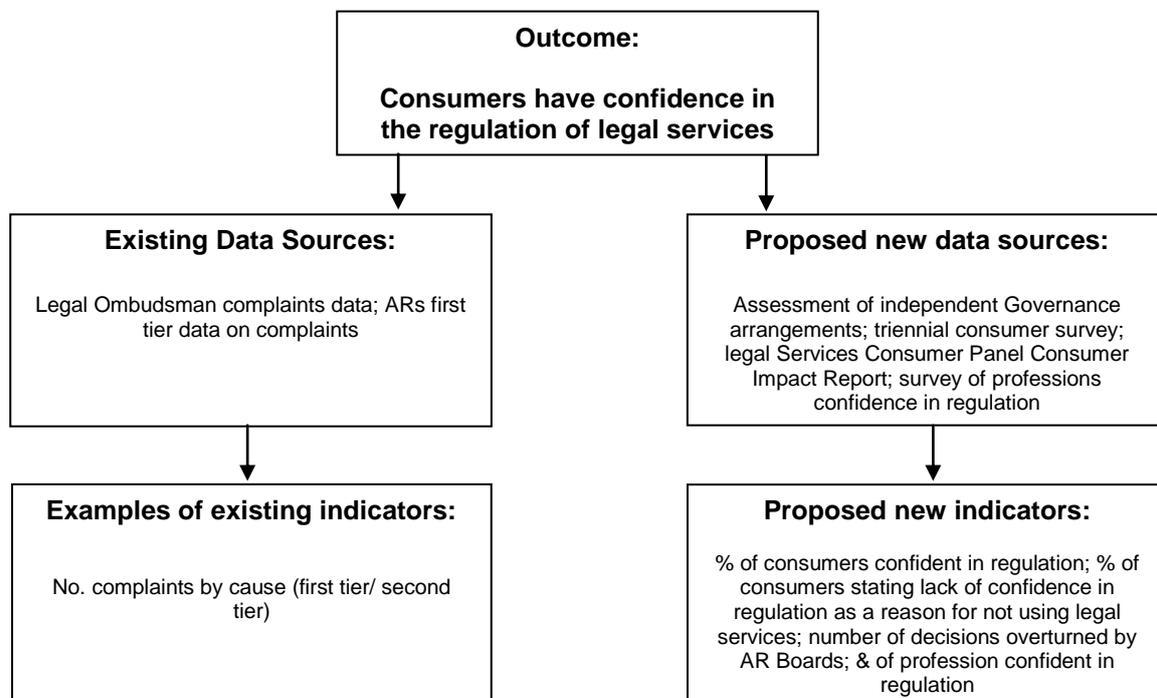


Figure 7 - Confidence in the profession

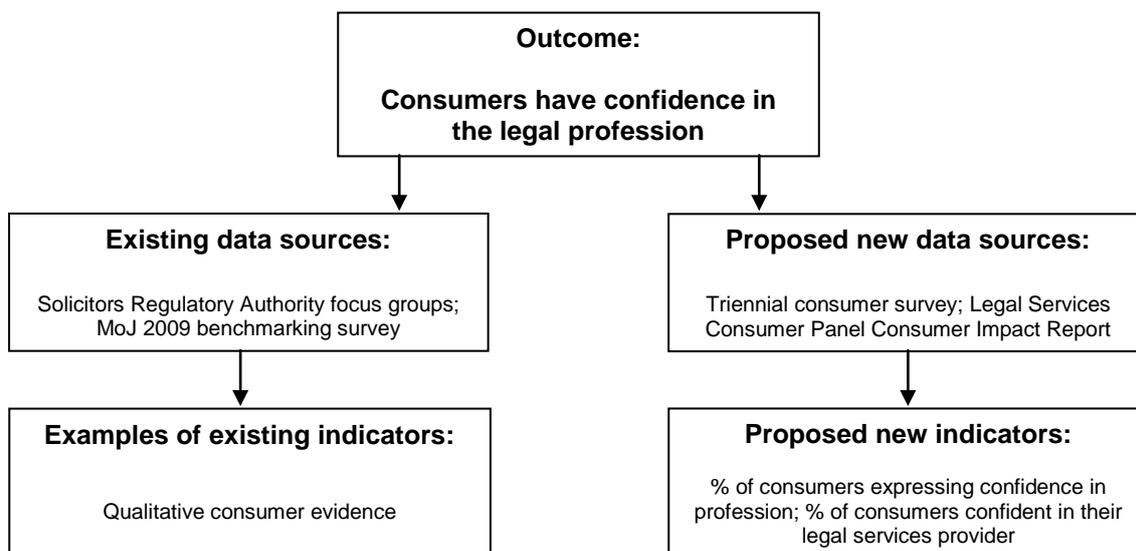
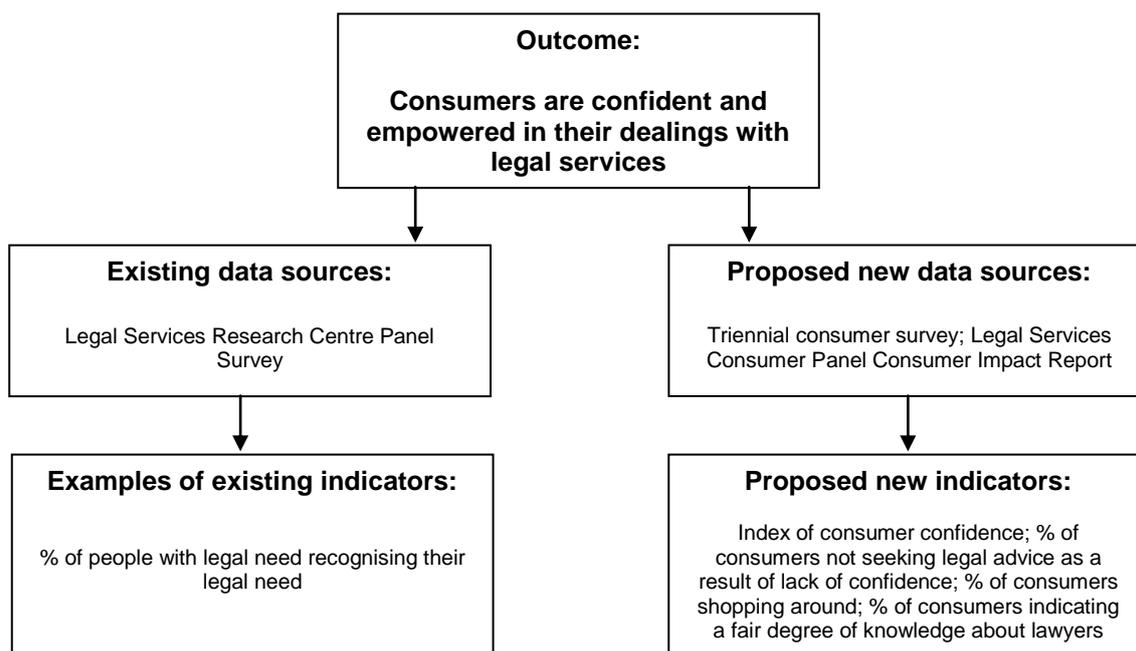


Figure 8 - Consumers who are confident and empowered



The public

20. The public will be confident that the legal services market and its professional actors support and uphold the rule of law. They will feel that recourse to the law is affordable, practically accessible and comprehensible and thus they can go about private or commercial relationships confident that any disagreement or dispute can be resolved within a fair and reliable legal system. At its pinnacle, the public should have the utmost confidence in the justice system and the legal services and lawyers that contribute to and are a part of it.

21. Our analysis and consultation has suggested the following key outcomes for a successful development of the legal services market from a public perspective will be: public confidence in the law; efficient legal system; confidence in the standards and ethics of the profession.

Figure 9 - Public confidence in the law

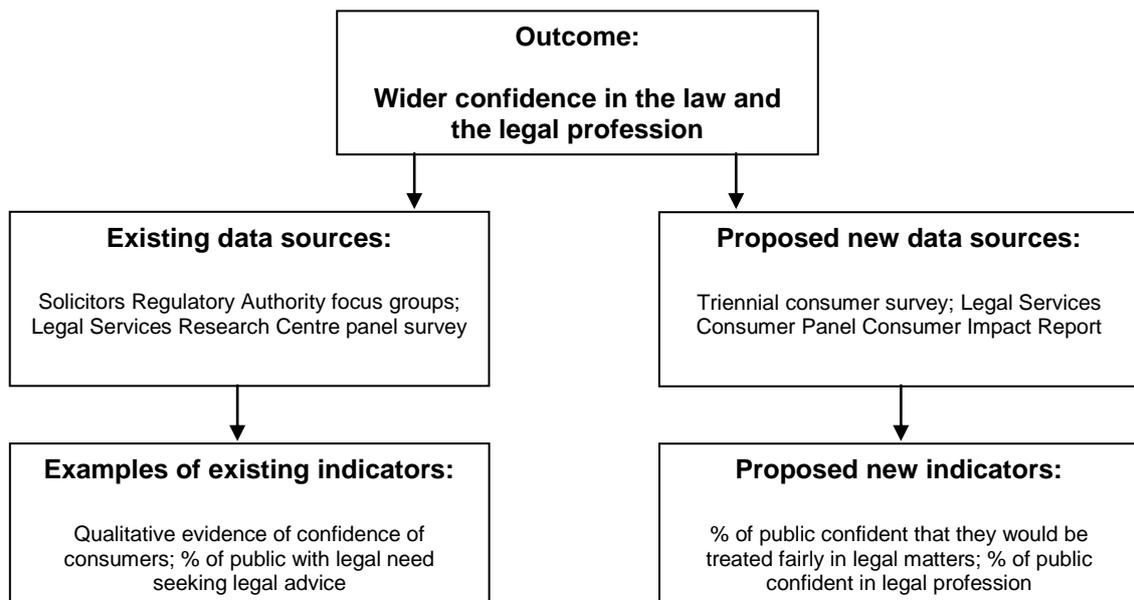


Figure 10 - Efficient legal system

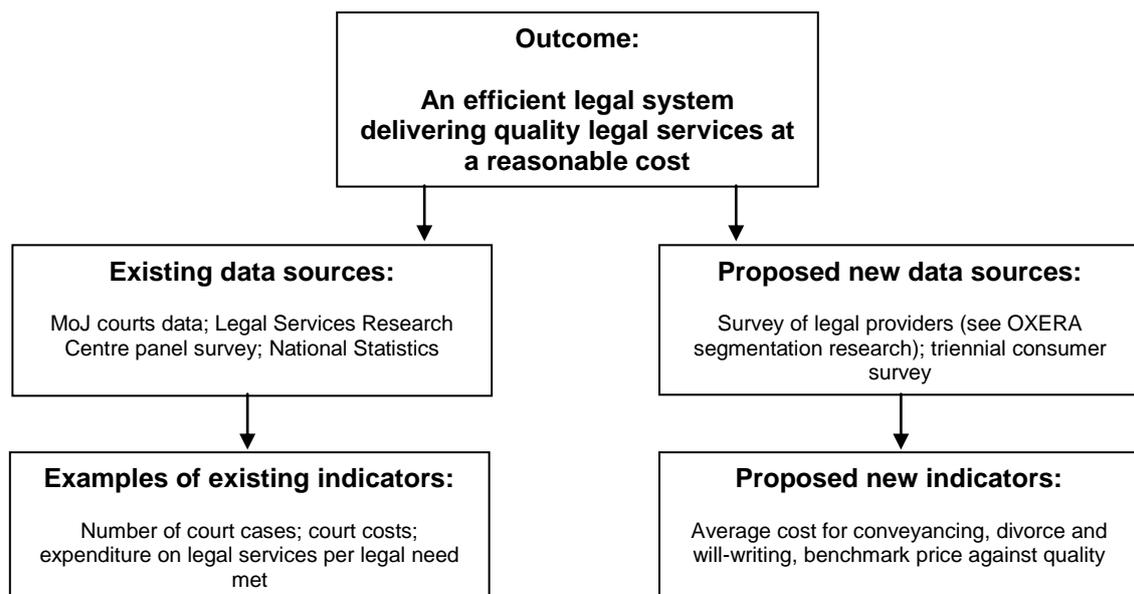
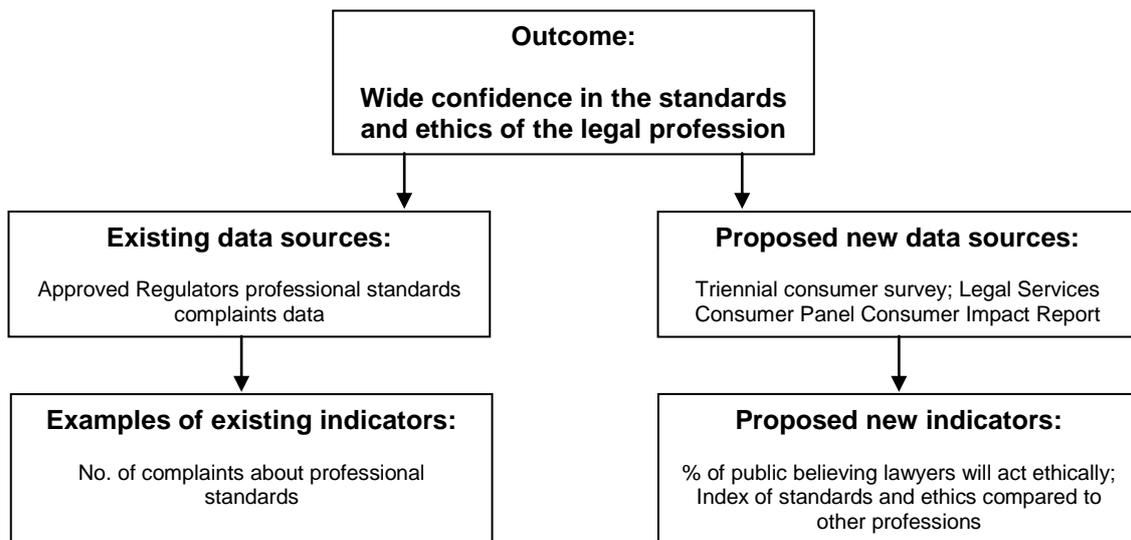


Figure 11 - Confidence in the standards and ethics of the profession



The market

22. The legal services market will be efficient and equitable. Neither supply side nor demand side will hold an upper hand and no provider will be able to abuse a dominant position within its market. The market will be competitive on access, price and quality – offering consumers real choices and offering providers opportunities to innovate. Those looking at the market in future will see a plurality of service and business offerings with city firms, high-street firms, internet firms, niche firms, branded business etc. all competing to help consumers with their legal problems.
23. The market of the future should reflect the key outcomes of: greater competition; affordable services; plurality of service.

Figure 12 - Greater competition

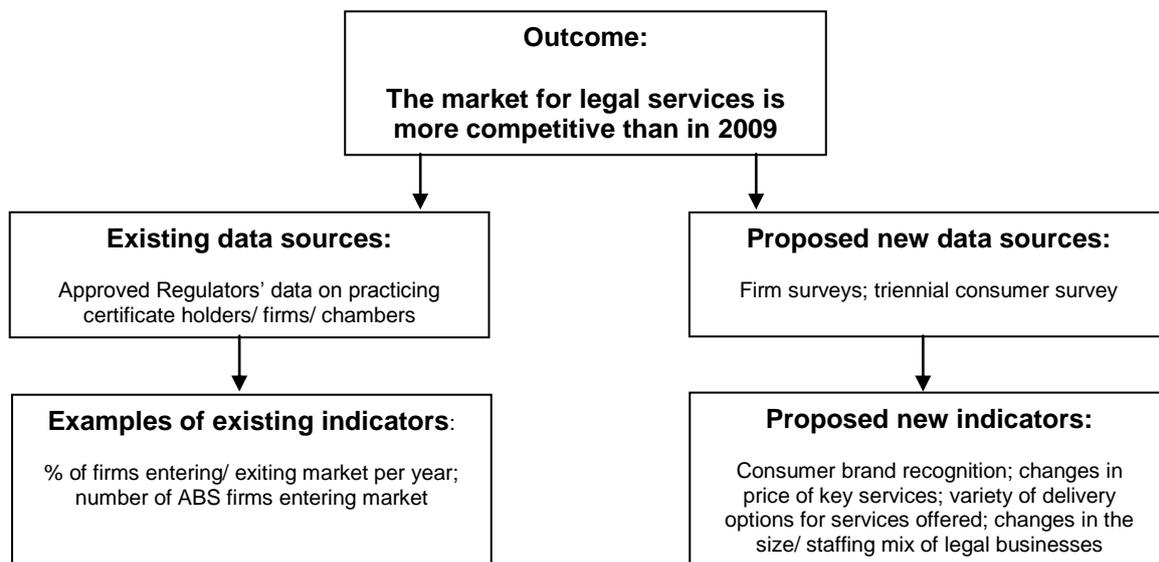


Figure 13 - Affordable services

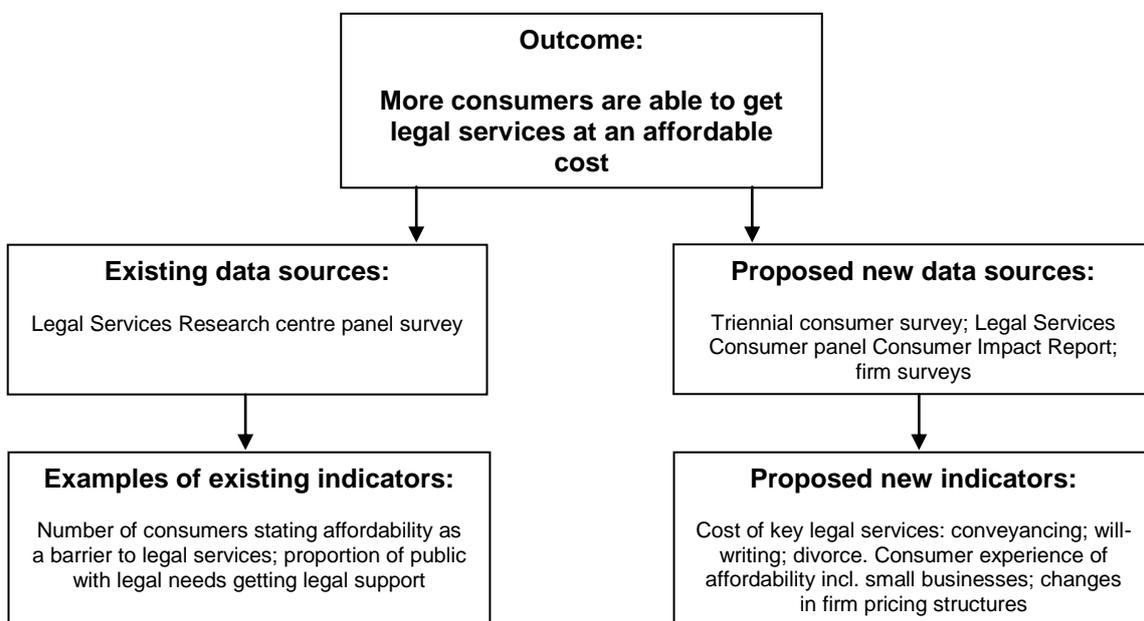
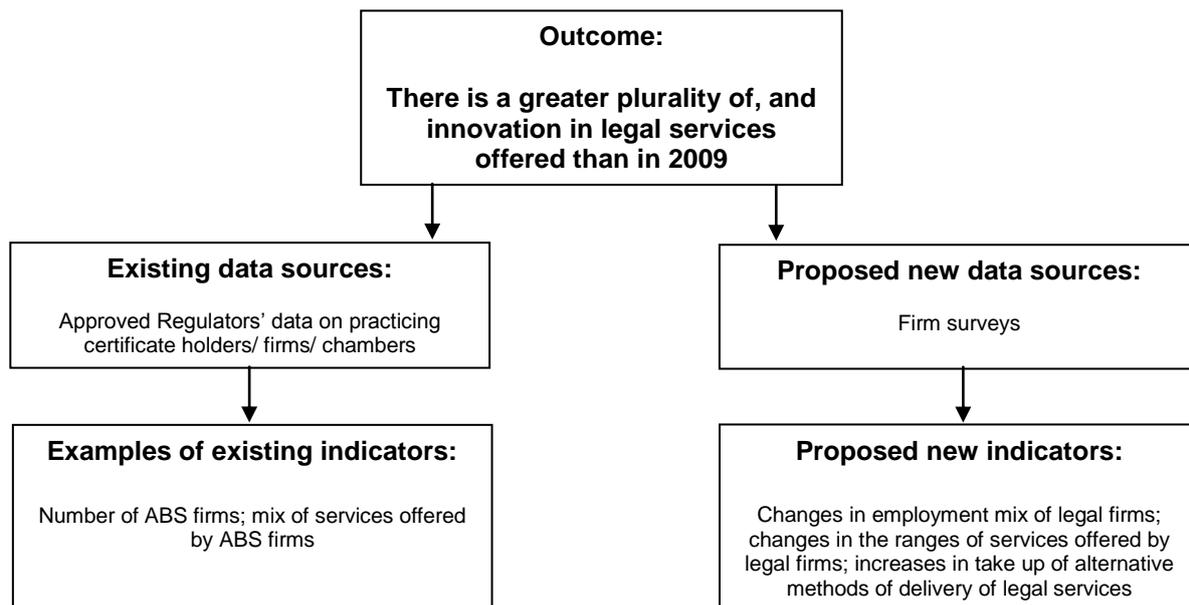


Figure 14 - Plurality of service



Investors

24. Investors should be able to enter the legal services market, with restrictions in place only where they can be justified based on transparent consumer protection criteria. Investors should be free to develop services how they see fit, with the market acting as the arbiter of consumer acceptance.
25. Legal regulation will focus on risk-based supervision of firms and individuals, without compromising legitimate controls on quality at the point of entry or firm disciplinary intervention when needed. There will be active collaboration with regulators across the sector, demonstrable learning from other sectors and other jurisdictions and constant engagement with the profession, the sector, consumer bodies and academia to ensure soundly based practice.
26. Market reforms will only be successful if investors see: an attractive market for investment; proportionate regulation; and risk based supervision.

Figure 15 - An attractive market for investment

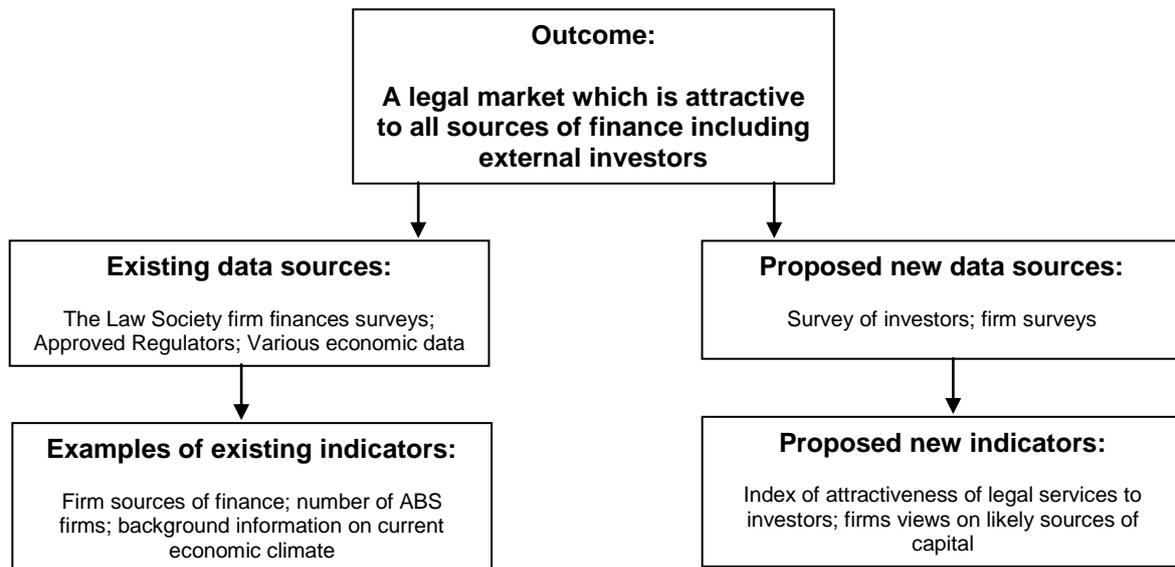


Figure 16 - Proportionate regulation

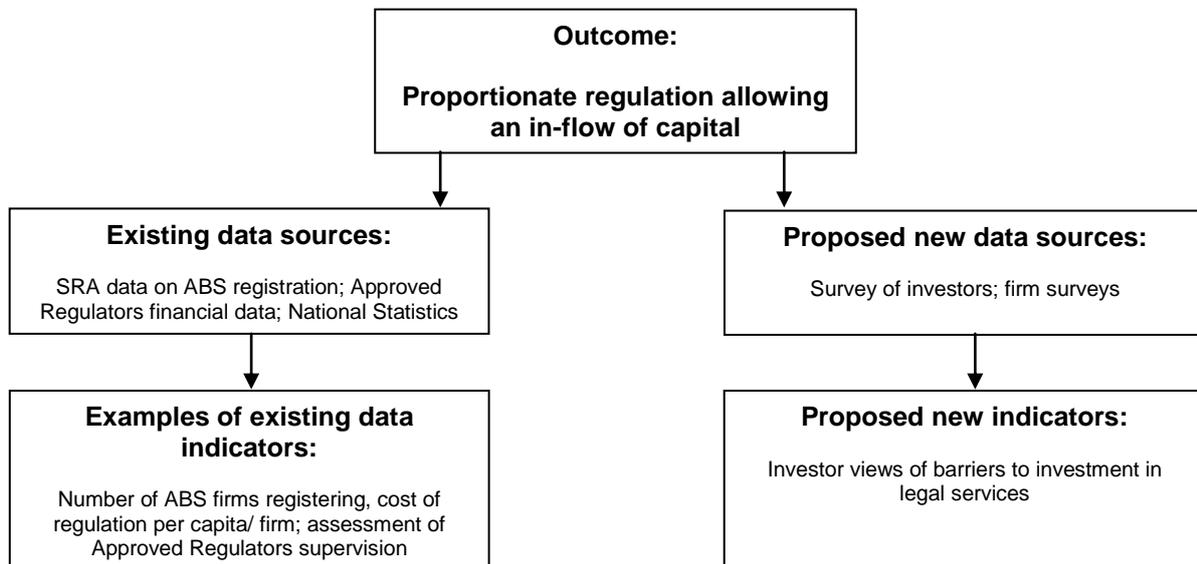
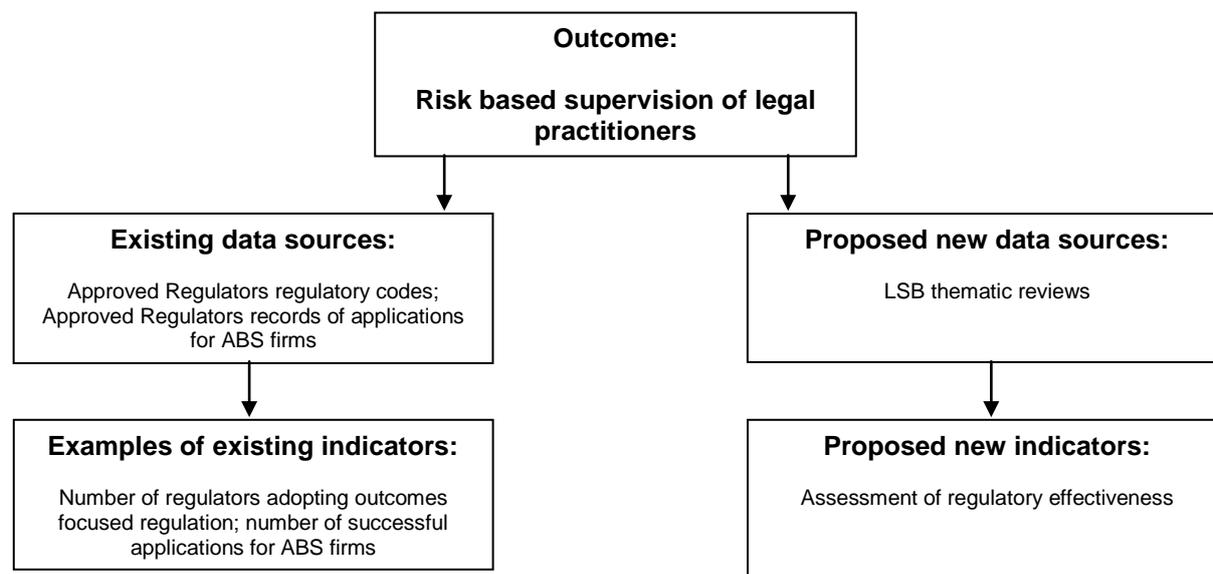


Figure 17 - Risk based supervision



Next steps

27. We believe that our proposals represent a comprehensive plan to evaluate the impact of the Legal Services Act, but balance our desired rigour against the need for a proportionate regulatory response to evaluation.
28. In the coming year we will continue to develop the evidence base to support our first evaluation which will be published in Q4 2011/12. In future years, we will update the evidence annually, carrying out a full evaluation triennially. Key to improving our evidence base will be business and consumer surveys benchmarking the market and monitoring change against the regulatory objectives.
29. Later this year we plan to commission our first major consumer survey in a triennial series designed to support our evaluations. This research will monitor how consumer experiences have changed since the Ministry of Justice's 2010 Baseline Survey¹ providing valuable evidence for our evaluation. We will also be incorporating evidence from the Legal Services Consumer Panels' Consumer Impact Report. This evidence will be integrated into the evaluation alongside our consumer research, which will be designed to fill gaps but not replicate the Panels' work.
30. We will be holding a workshop in early summer 2011 to test the specifications for the research, begin to identify timelines and any relevant resources we have missed.

¹"Baseline survey to assess the impact of legal services reform", Ministry of Justice Research Series 3/10, March 2010

Research to support evaluation

The LSB alongside its survey of research evidence available has already commissioned a number of projects designed to support the LSB's evaluation. Following initial feedback from the LSB Board, plans to carry out segmentation research were brought forward with a report by OXERA expected to be ready for publication in June. Other research by Opinion Leader looking at the outcomes that consumers would like to see from legal services will be ready for publication in March. Further detail about these two projects is provided below.

OXERA Market Segmentation Research

OXERA were commissioned at the end of December 2010 to develop an appropriate segmentation model for evaluating the impact of the Legal Services Act 2007, given the likely availability of data and other evidence. The draft proposals being developed by OXERA conclude that segmentation should be carried out by legal area and customer type. However, the model itself should be flexible enough that particular analysis can be carried out by service type and/or provider type. The segmentation was developed by considering both individual markets and the availability of data both from existing sources and from firms should primary data collection be needed.

The segmentation model will outline in each area the type of data required for the LSB's evaluation and the existing or possible sources to fill the data gaps. By highlighting those areas where data already exists for our evaluation the OXERA report will be able to set out the research strategies required to fill the gaps where data is currently not available. Initial piloting of the framework will seek to improve our understanding of large corporate law firms, high-street law firms and special bodies providing reserved legal services.

Opinion Leader consumer outcomes research

To understand whether the LSB delivers on its objectives we believe that is essential to know whether the changes introduced deliver the types of outcomes that consumers actually want. Opinion Leader were asked to carry out research to explore what consumers really want when they engage with legal services. This research has produced a series of 'consumer outcomes' that help us understand the types of behaviours that we would expect to see if the market was competitive and focused on delivering excellent service for consumers.

The research explored the views of consumers with recent experience of civil and criminal legal services, as well as small and large business clients of legal services. Once developed from these consumer discussions the outcomes were tested with the Board members from the LSB and the Legal Services Consumer Panel, before being testing with groups of stakeholders. The final outcomes cover: transparency; initial communication; ongoing communication; professionalism and integrity; timeliness; alignment with consumers' best interests; and complaints. The evaluation will seek to draw evidence in each of these areas.