



# Consumer principles

Applying the consumer principles to legal services: a tool for legal professionals and regulators



slcc  
consumer  
panel

**the consumer voice**

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in legal regulation and complaints

## The SLCC Consumer Panel

The SLCC Consumer Panel was established under the Legal Profession and Legal Aid (Scotland) Act 2007 to assist the SLCC in understanding and taking account of the interests of consumers of legal services.

## Consumer Panel Members

Carol Brennan (Chair) (Queen Margaret University Consumer Dispute Resolution Centre)  
Sheila Scobie (Competition and Markets Authority)  
Shaben Begum (Scottish Independent Advocacy Alliance)  
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## Thanks to:

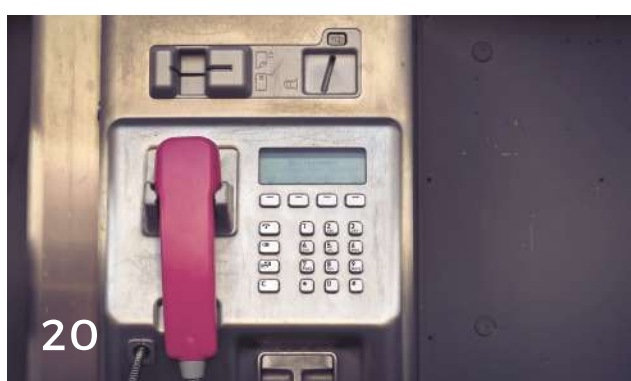
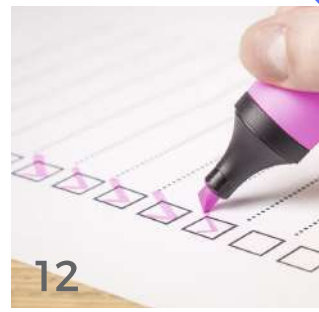
The Legal Services Consumer Panel (England and Wales) for their time and assistance. The Panel's work in this area - in particular its excellent 'The Consumer Interest' (2014) publication - was our starting point in developing a Scotland-specific vision for how the consumer principles may apply to legal services and regulation.

We would also like to thank all of the participants (from the legal sector and consumer bodies) who attended our round-table event on consumer principles on 2 June 2017 and those who provided input to the document, with particular thanks to Sarah O'Neill.



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# Introduction

## About this publication

The Legal Services (Scotland) Act 2010 requires regulators to promote and protect the interests of consumers. Yet, when it comes to professional services, doing so is not always straightforward.

This publication is designed to help those involved in regulation - and legal professionals - to think about the consumer interest in a structured way.

It is based on the seven internationally recognised consumer principles - to which we have added an eighth - and looks at how these can be applied in the context of legal services and regulation.

This publication follows on from our leaflet for legal services consumers.

## Using this document

Ensuring that the consumer interest is taken into account can be complex and often involves judgement calls and a balancing of objectives.

Consequently, this document does not provide definitive advice on applying the consumer principles, nor does it have all the answers.

Instead, it poses a series of questions designed to prompt consideration of whether there is a consumer-focused culture in legal services and at the heart of regulation.

It has been informed by the views of both consumer groups and representatives of the legal sector.





**"..consumer trust equals consumer spending."**

### **Consumer principles and business**

Something that is less well-known about JFK's seminal speech on consumer rights is that it was essentially a speech about stimulating the US economy.

Kennedy recognised one fundamental principle: consumer trust equals consumer spending. In other words, embracing consumer rights **is good for business.**

### **Consumer principles and regulation**

The consumer principles touch on deep rooted societal issues - such as access and fairness - that cannot be addressed purely through legal services regulation. There may also be times when the principles will conflict.

When these issues arise, our approach would be to take a view as to what policies are most likely to improve the situation of consumers as a whole.

Ultimately, service users should benefit from - and be at the heart of - regulation.

### **The consumer principles**

US President John F Kennedy first outlined a vision for consumer rights on 15 March 1962 (the day we now celebrate as Consumer Rights Day).

Over time, the international consumer movement developed and expanded his speech into a broader vision of principles developed to help ensure consumer needs are met more effectively. These were adopted by the UN General Assembly in 1985.

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# access

## Do people have access to the services they need?

A person's need for legal advice can often coincide with them experiencing some of the most difficult moments in their life, for example, bereavement, family separation or criminal charges.

The emotional stress, time pressures and money worries that often go hand in hand with these types of life-changing events can create what we call 'consumer vulnerability', something that needs to be taken into account in legal service relationships, including access to legal advice.

Access to legal services can have life changing implications yet there can be barriers for consumers. Being aware of what these might be is a good place to start if we want to improve consumer access.

There are the barriers we tend to be most familiar with - for example, physical and mobility issues, hearing impairments, foreign language issues and geography.

There are also barriers we may not often think of, for example, terminology. The average reading age in Scotland is 11 and the use of complex language and legal jargon can create serious problems.

In recent years, the spotlight on language used in the legal profession has grown stronger. In 2016, a Lancashire based judge, Justice Peter Jackson, was widely praised for a family law judgment issued





# choice

## Is there any meaningful choice?

When it comes to legal services, meaningful choice means the ability to make an informed choice.

Giving consumers meaningful choice encourages competition which in turn drives up standards, fair prices, and can lead to innovation.

While there are many legal service providers in Scotland, there also appears to be limited information on their different characteristics and relative costs. If that information is not available, we have to ask whether there is real choice.

Reliable comparative information, for example the data held on price comparison websites, helps with this in other sectors.

An informed choice also involves awareness of which providers are regulated and which aren't - and what that means for consumers. We talk more about this in the sections on Safety and Quality.

As lifestyles and customer preferences change, there may be demand for new types of services and providers. Something that may need to be considered is whether there are any barriers to new business models.



A final point to bear in mind is that in Scotland, legal services consumers do not have access to the level of information about complaints that they would have in England and Wales.

Is it time to look at whether complaints bodies have the right powers in terms of publishing data on complaints?

**For service providers:**

Are you providing transparent information that will help consumers make an informed choice of provider?

Is there a gap in terms of the type and availability of service that is being offered by firms in Scotland?

Do we need to look at new business models to meet today's needs and preferences?

Are services responsive to consumer need?

**For regulators:**

Is there a need for greater transparency in terms of pricing information? In England a significant proportion of providers have price information on their websites.

Is regulation creating any barriers for new business models?

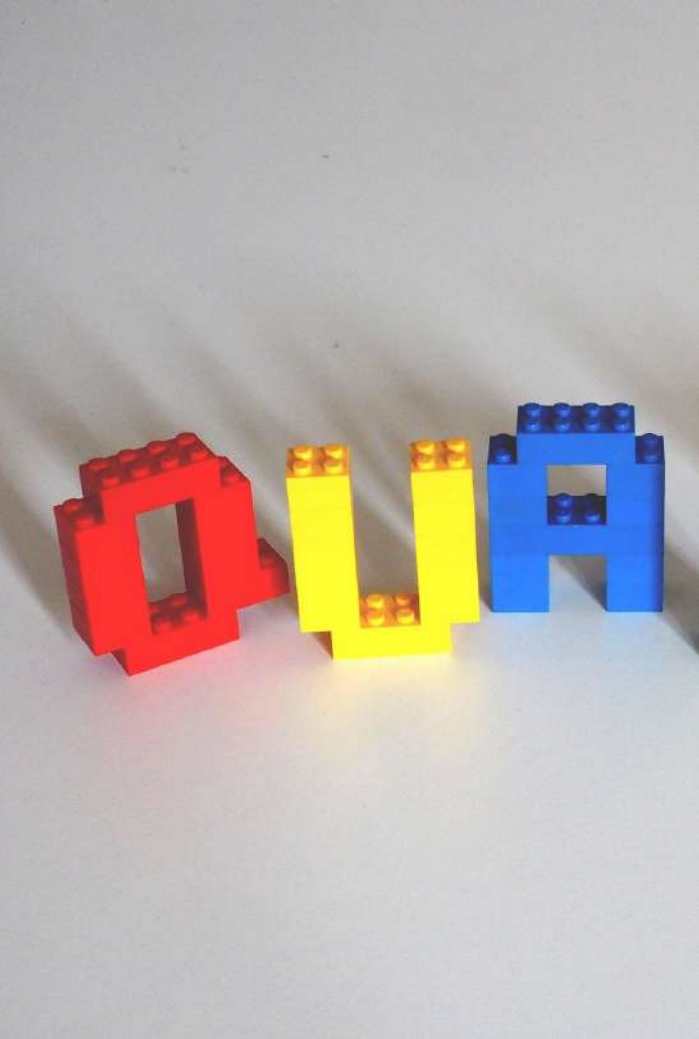
Is there a need for a consumer protection framework which addresses the consumer principles?

Is there scope to promote choice through the publication of price comparison information?

Is it time to enable the SLCC to publish non-anonymised data on complaint outcomes?







# quality

## Are consumers getting good quality outcomes?

When it comes to goods we purchase or everyday services, consumers generally know what they are entitled to expect.

In relation to professional services, it can be more difficult. Consumers are often not in a position to judge the technical quality of the work or it may be years before issues come to light.

For that reason, it is largely up to regulation to prevent poor quality work. This can be done through checks and controls on practitioners and firms.

It should also involve engaging with consumers directly to understand their experience and expectations of the service as this can provide a different set of insights.

Transparency around provider performance and complaints data may help consumers to identify the right providers to meet their needs.

This again brings us to the question of whether complaints bodies in Scotland need extended powers in terms of the information that can be made public.



Good quality outcomes are also dependent on risk being appropriately divided between consumers and providers.

Risk can mean different things in different types of cases. For example, in a divorce case, there may be a financial risk associated with going to court rather than accepting a pre-court settlement while in criminal law the risk of a particular strategy might involve a more severe penalty.

Due to their own personal circumstances, consumers will have varying priorities and the right decision for one person will not be the right decision for another. For consumers to be able to take good decisions for them, they need to be able to access good information.

Good information (which we discuss more in the next section) is clear, accurate and pitched at the right level.

**For service providers:**

Are internal systems for supervising work of junior staff and quality checks effective?

Are you empowering consumers to actively participate in decision-making?

Is the information you are providing clear, accurate, timely and pitched at the right level?

**For regulators:**

Are quality assurance systems in place to ensure the competence of providers?

Are quality systems proportionate to the risks?

Is there a need for increased transparency about providers subject to disciplinary action?

Do we need to review service standards to build on the consumer principles?







# safety

## **Are consumers safe from risks around fraud, insolvency, unqualified providers and poor quality services?**

While safety is one of the internationally recognised consumer principles, it may not - at first glance - seem to be a natural requirement of legal regulation.

We have included it because - while not necessarily applicable in the regulation of other sectors - we believe that some of the specific characteristics of the relationship between legal consumers and professionals, make safety an important consideration.

In particular, the imbalance in knowledge (and therefore power) between less informed consumers and highly qualified professionals, means that there is a greater need to keep consumers safe from risks around fraud, insolvency, unqualified providers and poor quality services.

As with issues around quality, it is largely up to regulation to protect consumers from these risks. This can be done through checks and controls on practitioners and firms to ensure competence.

Transparency around providers subject to disciplinary action may help consumers to identify lower risk providers. This again brings us to the issue of what information complaints bodies should be able to publish.





Regulatory systems need to be able to protect consumers from risks around issues such as fraud and insolvency.

However, it is also important to avoid applying unnecessary standards of protection where consumers themselves do not obviously benefit, balancing the cost of regulation with the benefits to consumers.

With fragmented systems for regulation and complaint handling, the sharing of information between different bodies is critical for consumer protection.

Joined up working between regulators and the ability to share information can ensure that different organisations can work together to detect concerning patterns and trends.

However, there may also be decisions that consumers can make to reduce the risk to them.

For consumers to be able to manage the risks, they need access to the right information at the right time.

**For service providers:**

Is the information provided to clients enabling them to actively participate in decision making and manage risks?

Is the information clear, accurate, timely and pitched at the right level?

**For regulators:**

Do people understand regulation - is it clear?

Is there a need for increased transparency about providers subject to disciplinary action?

Are quality assurance systems in place to ensure the competence of providers?

Are quality systems proportionate to the risks?





# information

## Are consumers getting the right information?

Ultimately, knowledge is power, and when it comes to legal services, access to good information is crucial at every stage: choice of provider, decisions about a case, making a complaint and routes to redress.

The legal service should be a two-way process but for this to happen, consumers need good information. Good information is clear, accurate and timely.

Poor quality information might be complex, misleading, written in small print or contain jargon. Or, there may simply be too much of it. If a consumer is overwhelmed by the amount of information they are receiving, they may give up before finding what they need.

Information on the characteristics and past performance of potential providers could help consumers to find the right professional services for their circumstances. It is more likely to result in a good professional fit between client and service provider.

However, information is meaningless if those who need it have difficulty accessing it. Issues which can affect access to information include broadband speed and the availability of alternative formats, for example, foreign languages, large print, easy-read and audio files.

As well as thinking about the information provided to consumers, it is also important to be mindful of how information provided by consumers is used.

There should be systems in place to ensure that data protection requirements are understood and that safeguards are in place to prevent the misuse of personal information.

**For service providers:**

Are you providing good information - is it clear, accurate and pitched at the right level for the reader?

Are you providing information in a timely and accessible way that enables consumers to participate and make informed decisions

Are your Terms of Business letters clear?

Could important messages be getting lost amid complex/ lengthy information?

What systems do you have in place to safeguard against the misuse of personal information?

**For regulators:**

Are you concerned with whether consumers are receiving good information?

How could you require service providers to provide information which is clear, accurate and relevant?

Are complaints bodies able to publish the right information?

Are there mechanisms to ensure that data protection and privacy requirements are effective?







# fairness

## Are consumers being treated fairly?

No one should be unfairly discriminated against due to their personal circumstances.

Equality laws make it illegal to treat a person less favourably due to a protected characteristic and require providers to make reasonable adjustments for disabled people.

As mentioned on page 8, it is also important to be aware of consumer vulnerability. While we tend to think of vulnerability as only affecting a small group of people with certain characteristics - for example older people or those with recognised disabilities or impairments - consumer vulnerability has the potential to affect a much wider group.

This can be as a consequence of circumstances. Think about bereavement, for example, when emotional stress, time-pressure and other worries can make tasks such as dealing with legal paperwork much more difficult than they might otherwise be.

A recent consumer study by the Financial Conduct Authority found that just over half of consumers show potential vulnerability (see page 8).

It is important to be aware of the factors that can increase someone's likelihood of being vulnerable when they are using legal services.



Risk factors include bereavement, illiteracy, illness or disability. Limited legal knowledge or being busy or stressed can also make it difficult to absorb lengthy and complex information. This can create an imbalance of power and hence a consumer vulnerability.

Treating consumers fairly is about more than following protocols and making specific adjustments for specific groups of people. It is about creating a culture of fairness at the heart of the business model where differences are respected and accommodated.

**For service providers:**

Are the principles of equality understood and embedded throughout your organisation?

Is consumer vulnerability understood at all levels of your organisation?

Who does the cost of reasonable adjustments fall to? (e.g. sign language interpretation)

Do you put the interests of the consumer first? (e.g. is language appropriate?)

**For regulators**

Is there further work to be done on equality issues to ensure that these are understood and embedded?

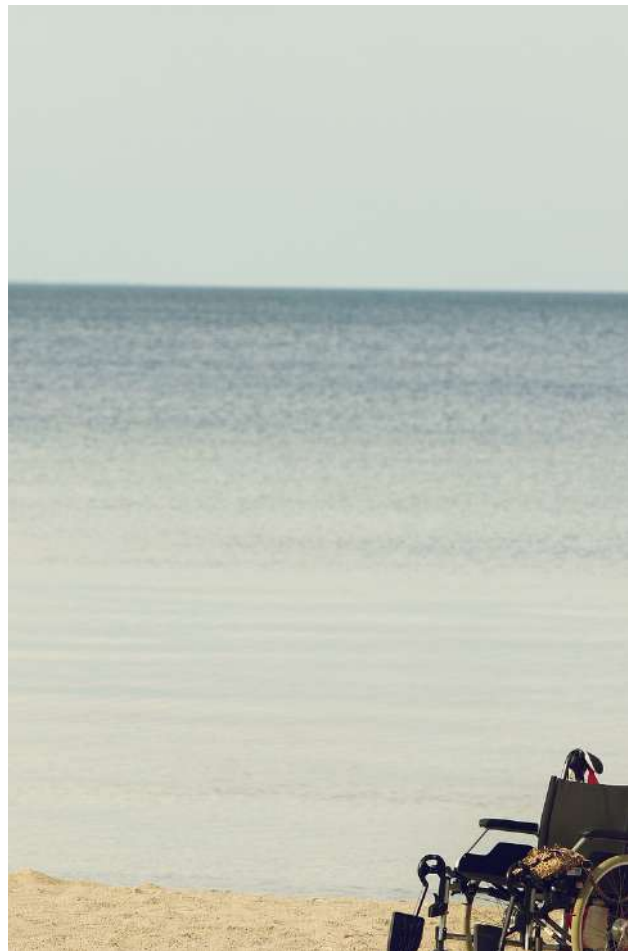
Is there a business culture whereby the interests of consumers come first?

Are unfair trading practices being monitored?

Is intelligence about unfair trading practices being shared?

Are regulators and complaints bodies empowered to share information?

Are relevant special interest groups consulted?







# representation

## **Do consumers have a say? Do some have more say than others?**

It can often be the case that there is an imbalance of power when consumers have dealings with lawyers.

Limited knowledge about legal processes and terminology can reduce consumers' confidence in questioning advice or fees. Legal services are used infrequently which means that consumers are less likely to build up knowledge and confidence in their dealings with lawyers.

The fact that legal services are often a crisis purchase used at times of stress or distress, for example a family bereavement, criminal charge or divorce, can mean that stress and anxiety can lead to a further imbalance in power.

While lawyers have a collective voice through professional associations, it is harder for consumers to collectively raise concerns. This means that regulators need to work harder to understand the views and interests of consumers.

Engaging directly with consumers and with consumer organisations will be key to ensuring that regulation ultimately benefits consumers and responds to their needs.



Legal firms and regulators should have an understanding of the consumer interest. It may be an area in which training is required.

Learning from complaints is key to ensuring that future consumers do not have the same negative experiences.

**For service providers:**

Do you encourage customer feedback?

Do you have staff with expertise in consumer affairs/ train staff on customer service?

How do you ensure that the views of consumers are taken into account in the way that you run the firm/ organisation?

How are the views of the client fed into decision-making during the case?

Do you address issues that arise from complaints to avoid them happening again?

Do you keep an eye on your complaints data to help understand what consumers are looking for and respond to that?

**For regulators:**

Is the consumer voice represented on your Board?

Are regulators listening to consumers through dialogue and research?

Are regulators listening to consumer representatives/ organisations?

Are consumer organisations adequately resourced and supported?

Do regulators work openly and transparently so they can be held accountable for their performance?





# redress

## **If things go wrong, is there a means to put it right?**

Consumers need to know what their rights are. They also need access to independent and effective redress. That redress system should be accessible and easy for them to use.

When consumers make a complaint to the service provider, those providers should have good processes in place to deal with complaints. They should deal with complaints swiftly and fairly.

When consumers make a complaint to a complaints body, that body should be able to accept all reasonable complaints and offer quick, fair and effective redress.

Consumers should be confident that the complaints body will be fair and impartial in the way that it handles complaints.

There should also be deterrents in place to minimise unfair trading practices or poor quality service, for example, penalties available to regulators which will exceed any gain from poor service or unfair practices.

Complaint bodies and regulators should help service providers to learn from complaints by sharing information about good and bad practice and how to avoid common complaint scenarios arising.





They should also support service providers in learning from the complaints they receive.

**For service providers:**

Do you have a published complaints process?

Do you tell clients about systems for redress?

Do you keep a complaints log?

Do you engage with complaints bodies in order to learn from common complaints?

**For regulators:**

Do consumers understand how to achieve redress? Could more be done to raise awareness of the rights to redress?

Is the system for putting things right easy to use and accessible?

Do processes need to be redesigned to meet consumer expectations?

Are there gaps or loopholes which result in redress not being achieved?

Are there penalties available which exceed any potential gain from poor service or unfair practices?

Do complaints bodies impose the maximum penalties?

Are current systems for achieving redress too complex?

Are there systems in place to support learning from complaints?

Should consumers have access to complaint information about specific firms?







# Professionals

## ACCESS

- Are you offering the services that people need?
- Are you using language that consumers can understand?
- Are there ways to offer legal services to those in isolated / rural areas?
- How can barriers for those with disabilities/ vulnerabilities be addressed?
- Can you help clients to access information about costs in a simple and transparent way?
- Is there anything you can do to address concerns about affordability?

## CHOICE

- Are you providing transparent and consistent information that will help consumers make informed choices?
- Are there gaps in terms of the types and availability of services offered in Scotland?
- Do we need to look at new business models to meet today's preferences/needs?
- Are services responsive to consumer need?

## QUALITY

- Are internal quality systems for supervising the work of junior staff and quality checks effective?
- Are you empowering consumers to actively participate in decision making by providing them with the right information, at the right time?
- Is the information you are providing clear, accurate, timely and pitched at the right level?

## SAFETY

- Is the information provided to clients enabling them to participate actively and make informed decisions?



## INFORMATION

- Are you providing good information - is it clear, accurate and pitched at the right level for the reader?
- Are you providing information in a timely and accessible way?
- Are your Terms of Business letters clear and tailored?
- Could important messages (e.g. about costs) be getting lost amid complex or lengthy information?

## FAIRNESS

- Are the principles of equality understood and embedded throughout your organisation?
- Is consumer vulnerability understood at all levels of your organisation?
- Who does the cost of reasonable adjustment fall to (e.g. sign language interpretation)?
- Do you put the interests of the consumer first (e.g. is language appropriate?)

## REPRESENTATION

- Do you encourage customer feedback?
- Do you have staff with expertise in consumer affairs/ train staff on customer service?
- How do you ensure that the views of consumers are taken into account in the way that you run the organisation?
- How do the views of the client feed into the decision making process?
- Do you address issues that arise from complaints to avoid them happening again?
- Do you keep an eye on complaints trends within your organisation to understand any endemic issues?

## REDRESS

- Do you have a published complaints process?
- Do you tell clients about systems for redress?
- Do you keep a complaints log?
- Do you engage with complaints bodies in order to learn from common complaints?







# Regulators

## ACCESS

- Are you engaging with consumers to understand their views on access to legal services and possible barriers?
- Could regulation be creating any unnecessary barriers?
- What could be done to enable consumers to access cost information in a simple and transparent way?
- Is there an appropriate balance between competition and regulation?

## CHOICE

- Is there a need for greater transparency in terms of pricing information? How does the situation in Scotland compare to transparency on this issue in England and Wales?
- Is regulation creating any barriers for new business models?
- Is there a need for a consumer protection framework which addresses the consumer principles?
- Is there scope to promote choice through the publication of price comparison information?
- Should the SLCC be able to publish non-anonymised data about complaints?

## QUALITY

- Are quality assurance systems in place to ensure the competence of providers?
- Are quality systems proportionate to the risks?
- Is there a need for increased transparency about providers subject to disciplinary action?
- Do we need to review service standards to build on the consumer principles?

## SAFETY

- Is regulation clear? Do people understand regulation?
- Is there a need for increased transparency about providers subject to disciplinary action?
- Are quality assurance systems in place to ensure the competence of providers?
- Are quality systems proportionate to the risks?



## INFORMATION

- Are you concerned with whether consumers are receiving good information?
- How could you require service providers to provide information which is clear, accurate and relevant?
- Are complaints bodies able to publish the right information?
- Are there mechanisms to ensure that data protection and privacy requirements are effective?

## FAIRNESS

- Are the principles of equality understood and embedded in service providers?
- Is consumer vulnerability understood by service providers?
- Who does the cost of reasonable adjustment fall to (e.g. sign language interpretation)?
- Is there a business culture whereby the interests of the consumer comes first?
- Are unfair trading practices being monitored and is intelligence being shared?
- Are regulators and complaints bodies empowered to share information?
- Are relevant special interest groups consulted?

## REPRESENTATION

- Is there further work to be done on equality issues to ensure that these are understood and embedded?
- Are the interests of consumers at the heart of regulation?
- Are unfair trading practices being monitored? If so, how is that information used?
- Is intelligence about unfair trading practices being shared?
- Are regulators and complaints bodies empowered to share information?
- Are relevant special interest groups consulted?

## REDRESS

- Is the consumer voice represented on your Board?
- Are regulators listening to consumers through dialogue and research?
- Are regulators listening to consumer representatives/ organisations?
- Are consumer organisations adequately resourced?
- Do regulators work openly and transparently so they can be held accountable for their performance?



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