

Research note

The legal services market

August 2011

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Executive Summary

1. The Legal Services Board (LSB) is the oversight regulator of the legal services market in England and Wales. Since being established in 2007, the LSB has been committed to implementing the Legal Services Act, the objectives of which include promoting competition and the interests of consumers. The prime means of doing this has been through the introduction of Alternative Business Structures (ABS) and removing unnecessary restrictions to doing business in the legal services market, whilst making sure that proportionate regulatory interventions exist to protect all of the other broader regulatory objectives.
2. Understanding current drivers and trends in the market is crucial to our role as an oversight regulator. This document does not assess the future impact of ABS; no regulator should attempt to second guess the market it regulates. However, the LSB is committed both to evaluating the impact of its own policies and to monitoring the way in which the legal services market changes over time. This document, therefore, captures relevant trends in the market now, against which future changes in legal services may be assessed.
3. The introduction of ABS can be viewed as a catalyst which will intensify existing trends in the market. Allowing the freedom for firms to arrange their business structure as they see fit may prompt firms to convert to ABS and for their competitors to do the same.
4. Four main factors can be identified in affecting take up rates of ABS:
 - Access to capital, in turn driven by the health of the overall economy and the financial markets;
 - The regulatory environment, including the real and perceived costs and benefits of regulatory compliance;
 - Behaviour of consumers; and
 - Behaviour of firms, both in the ABS space and the rest of the market.
5. All four factors are likely to have an impact both upon the likelihood of firms becoming ABS and their eventual success or otherwise under that model.
6. However, the success of firms offering legal services will, in the end, depend on their ability to offer services that satisfy consumers. Growing competition, the adaption of new technologies, access to sources of capital and new forms of service delivery are likely to change the way the legal services market operates

in the future, but it is harnessing those to consumers' needs that will be the decisive factor.

7. Looking across the legal services market, it is clear that the market is both segmented and diverse. The market is segmented between the larger providers of legal services such as international law firms and those described as 'city' or corporate firms on the one hand, and the more traditional high street firms on the other. This has a geographical aspect in terms of value produced as large corporate firms disproportionately account for the largest share of value in the market compared to the value of smaller firms, and are concentrated in and around London. There are also regional differences in the concentration of lawyers in England and Wales.
8. There is uncertainty as to how ABS will impact on different groups in the market. If significant numbers of firms convert to ABS or new firms enter the market, we are likely to see increased competition in the market. A more competitive market may see inefficient firms exit the market while other firms will adapt and change the way they do business, including making their businesses more efficient and acquiring competitors. This process may carry particular risks to some small firms who do not adapt to the changing market place. It should not, however, be assumed that large scale exit will occur, as Australian experience suggests that the numbers of small firms has actually increased in the period following liberalisation.
9. In describing the legal services landscape in which ABS will operate, this research note highlights the benefits for consumers of opening up and modernising the legal sector. These benefits are likely to include alternative ways of delivering services, enhanced choice and lower costs for some services.
10. There are some generalised effects which are likely, over time, to show the overall impact of liberalisation. To understand the impact of liberalisation on the market and what this means for consumers and suppliers, the following factors should be taken into account:
 - Increased competitive market for legal services in England and Wales;
 - Increased quality and diversity of services provided;
 - Increase in choice of legal services;
 - Lower costs for some services;
 - Greater innovation and alternative service delivery;
 - Greater scope for commoditisation of legal products and investment in achieving economies of scale and scope;
 - Greater capital investment;
 - More confident consumers with better information leading to them making better choices with lower transaction costs;

- New approaches to the management of law firms;
- Exit by small firms that are unable to adapt to competition and/or some market consolidation;
- Falling unit cost of legal service products;
- Increased product differentiation allowing greater scope to compete for niche providers and across specific product ranges.

11. The LSB will seek to gather evidence in all of these categories of data and use them to inform both its impact assessment of ABS, currently planned for 2014 and, more broadly, our work to evaluate the impact of our actions and that of the Legal Services Act as a whole.

12. We plan to carry out a full evaluation of the impact of the Legal Services Act triennially with a first assessment planned to commence in spring 2012. This evaluation will encompass an assessment of all of the reforms introduced through the Legal Services Act, including the introduction of ABS. The evaluation will assess the impact of ABS on the market and investors using this baseline, together with assessments of the impact of wider reforms on the profession, consumers and the public.

13. To support our evaluation work we have carried out a detailed review of the available research and statistical evidence in our Regulatory Information Review, which we will publish shortly. We have also started a programme of research to improve our understanding of the supply side of the legal services market, where we hope to publish initial reports later in this year. A detailed description of our evaluation framework is available on the LSB website.

14. The note also deals in some detail with the possible impact of ABS on diversity within the legal profession. Despite significant progress in encouraging more diverse entry to the profession, the “trickle up” effect that might have been expected has not yet occurred at the level necessary to produce greater diversity at senior levels and more commercially attractive parts of the sector – for example BME practitioners are disproportionately concentrated in small firms and practise in particular areas of law. To the extent that the impact of ABS on market structure is felt more keenly at junior parts of the profession and lower value parts of the sector, there may therefore be some risk that its impact will not be positive on diversity. However, any negative effect will need to be evaluated both against the fact that smaller firms may consolidate into fewer larger, more corporatized firms, which are likely to have both stronger incentives and a greater ability to implement effective diversity policies; and the impact of increased regulatory action in this field more generally. This is an area to which the LSB will continue to have regard in its evaluation.

15. We intend for this research note to add to the growing body of research on the state of the legal services market. We are looking at how best to make the information utilised in this report widely available on-line later in 2011.

Introduction

16. The Legal Services Act 2007 (“the Act”) sets out a new regulatory framework of the legal services market. Once Part 5 of the Act is commenced, licensing authorities (“LAs”) designated by the Lord Chancellor on the recommendation of the LSB will be able to license ABS.
17. ABS will allow non-lawyers to own and manage law firms and they will be able to accept external investment. In allowing lawyers and non-lawyers to work together, ABS will enable a much wider range of legal and non-legal services to be provided to consumers by the same business. This will enable significant change to the provision of legal services in England and Wales. Depending on the level of uptake, we are likely to see changes in the way that providers organise their business affairs and fund their businesses.

Purpose of the Document

18. This document sets out an overview of the current legal services market in England and Wales. Drawing from a variety of sources, we have attempted to describe key components of the market and identify key trends which are likely to shape the way legal services are delivered.
19. The legal services market for England and Wales has undergone significant change over the last decade and experienced growth in turnover for most of this time. This document first sets out, in broad overview, the structure of the legal services market – both its domestic and international constituent markets – and focuses on demand and supply side analysis of the market. It touches on the regulatory arrangements which underpin the regulation of legal service provision in England and Wales, as well as the introduction of ABS.
20. The decision whether or not to allow ABS has already been made. The Act received Royal Assent in 2007 and the LSB has received applications from the Law Society (acting through the SRA) and the Council for Licensed Conveyancers (CLC) to becoming Licensing Authorities (LAs).
21. The task of publishing a ‘baseline study’ of the market such as this has not been systematically done before. In compiling this document we have made use of the large number of surveys and different data sets that investigate different issues and parts of the market. The baseline will enable us to see, over time, what effect the changes have. The LSB’s future research agenda includes the monitoring of impacts on ABS on specific themes such as demand-side research and monitoring; supply-side research and monitoring; diversity research; and complaints (including quality of legal services).

22. Data from the LAs after 2011 will enable us to monitor take up of ABS and identify emerging trends. Monitoring by the LSB will form the basis of a more comprehensive post-implementation review to be carried out around 2014 which will draw from all the research planned by the LSB, including regulatory and market information from LAs.

Regulatory Structure

23. The current regulatory structure of the legal services market can be described as largely a co-regulatory arrangement, with the legal professional bodies exercising regulatory control over their members, subject to varying degrees of oversight by a range of high-level oversight regulators. Since 2004 there has been a growing awareness that the regulatory framework of legal services is in need of reform with the aim of more effective competition, independent complaints handling and a regulatory structure which has greater consistency and enforcement of standards and quality.

24. Part 5 of the 2007 Act sets out the regulatory framework for licensing ABS. Schedule 13 to the Act sets out detailed requirements on the ownership of licensed bodies. Non-lawyer owners of “restricted interests” in ABS will need to satisfy the licensing authority that they are suitable to hold that interest. The Act also facilitates a modified licensing regime for ‘special bodies’ (including not-for-profit organisations and trade unions). However, these special bodies are currently protected by transitional arrangements and are not part of this analysis.

25. There are a number of other relevant publications about the LA’s approach to regulation of legal entities, most notably the SRA’s New Handbook (including the January 2011 consultation *The Architecture of Change Part 2 – the new SRA Handbook*) and the CLC’s four consultations which relate to outcome-focused regulation: (*Framework Consultation; Regulatory Enforcement Consultation; Revised Rules and Guidance Consultation; Litigation and Advocacy Consultation*) as well as the LSB’s March 2010 *Guidance to Licensing Authorities* and the April 2011 consultation, *Developing Regulatory Standards*.

Limitations

26. The impact of ABS on the legal services market is difficult to predict, as it is entirely dependent on take up by businesses already operating in the legal services market or seeking to enter it. There are also a number of independent trends and drivers already affecting the market. In this document we identify four important factors that are likely to have a bearing on the way ABS are adopted: access to capital; regulatory environment; behaviour of law firms; and behaviour of consumers.

27. Making meaningful conclusions about the future of the market that may result from ABS is difficult. In this document we are aware of these limitations and focus instead on presenting a survey and analysis of key trends in the market today. Some of the information contained here will be of relevance for regulators and firms in forming a view about the range of possible effects introducing ABS into the legal services market may have.
28. In describing the nature of the legal services market we have drawn together publically available surveys, studies and descriptions of the current market. Much of this information is from different studies which focus on particular aspects of the market. Where we have been able to we have quantified the information. However, it is hard to predict how the market will respond to the economic freedoms that these reforms give and so some of the effects can only be considered qualitatively.
29. In addition there has been little systematic collection of data across the market. It is hoped that this document will encourage this kind of data collection and analysis including more detailed monitoring of effects on diversity and access to justice.
30. Disentangling the impact of ABS from other regulatory changes is difficult. Both the applications for LA designation (SRA and CLC) have modernised their regulations away from detailed rules and towards outcomes for all those they regulate, making consideration of the impact of ABS by itself a difficult task.

Background

LSA and the regulators

31. Legal services regulation has evolved over several centuries and can be characterised as rules and regulations established and enforced by various professional bodies over their members (conduct and discipline matters), with the Legal Services Board serving as the overarching regulator of the industry.
32. Specific types of legal activity are subject to statutory regulation and are classed as reserved legal activities. These include: right to conduct litigation; the right of audience in the courts; reserved instrument activities; certain probate services; notarial services and administration of oaths. Other associated regulated activities such as claims management and provision of immigration services are regulated under other statutes.
33. The legal services market has a number of regulators such as the Solicitors Regulatory Authority (SRA) and Bar Standards Board (BSB) as well as professional representative bodies such as the Law Society and Bar Council. The SRA and BSB set accreditation, quality and professional standards for the individuals and firms they regulate. Professional representative bodies, by contrast, do marketing and provide training for their members. Industry self-regulation has typically focused on the suppliers of legal services (firms and individuals) and on delivering particular regulated activities such as advocacy in the case of the Bar.
34. In summary, the key bodies in the market in England and Wales are:
 - Legal Services Board;
 - Law Society (approved regulator);
 - Solicitors Regulation Authority (carries out regulatory functions of the Law Society);
 - Bar Council (approved regulator);
35. The legal services regulatory landscape also involves high level regulators, including the Legal Services Board and the Office of Fair Trading. While not regulatory, the Legal Services Commission and Crown Prosecution Service and various arms of government (central and local) exert quasi-regulatory functions by setting standards and entry requirements when purchasing legal services, affecting the behaviour of market participants.
 - Bar Standards Board (carries out regulatory functions of the Bar Council);
 - Council for Licensed Conveyancers (approved regulator);
 - Institute of Legal Executives (approved regulator);

- Intellectual Property Regulation Board (carries out regulatory functions of The Chartered Institute of Patent Attorneys and The Institute of Trade Mark Attorneys);
- Master of the Faculties (approved regulator);
- Office of Fair Trading.

36. Historically, regulatory rules have largely been set by professional bodies and have encompassed both restrictions on entry (quotas/quantity restrictions) including exclusive rights (to litigate, audience in court and reserved areas) and also prescriptions in relation to professional conduct. This type of self-regulation can have positive effects as a form of regulation – maintaining homogenous standards and being responsive to suppliers' needs. However, the absence of competitive pressures tends to reinforce behaviour and restrictive rules that can lead to monopoly/cartel effects.¹

37. In general, the rationale of legal services regulation is to satisfy broader public policy objectives such as economic concerns of efficiency and equity as well as issues about quality, protection against conflicting interests, and fairness. Self regulation has tended to focus on standards and reputation partly as a response to problems concerning imperfect or 'asymmetrical' information.

38. The problem of asymmetrical information arises in the transaction between a client and a supplier of legal services where there is a concern that the client, as a non-specialist does not, or cannot, have access to all relevant information. The client is at a disadvantage in knowing where to access specific legal services, and how to assess the quality of service provided. This problem is present in all professional markets but the imbalance of knowledge and power that exists between lawyers and consumers is especially acute. This imbalance is worsened when one considers that 'day to day' legal services are often purchased by consumers at a time of distress, or who are vulnerable, and such purchases tend to occur infrequently. Infrequent purchases can impair the ability of consumers to assess the quality of services.

39. The structure of the supply side of the market (where regulation has primarily focused) has direct consequences for the provision of legal service products and professional restrictions or practices (fixed or minimum prices, restrictions on advertising and organisation form, and exclusive rights) has a bearing on levels of innovation, new entry and competition. Ultimately, all of these factors affect

¹ See *Understanding the Economic Rationale for Legal Services Regulation*, Regulatory Policy Institute, 2011. Monopoly/cartel effects can lead to 'economic rents' for suppliers when firms are in a powerful position to supply a service at a higher price than it would be able to do in a more competitive and open market. The difference between the price paid in such a market and the price for the same good in a competitive market is an 'economic rent' and it is this difference in which the consumer is worse off. In terms of the impact of restrictions on competition in the provision of professional services, including the legal sector, see OFT, *Competition in Professions Report*, 2001, pp.23-28.

the efficiency of how the market operates and the price consumers pay for legal services.

40. It has been observed in EU competition policy that business structure regulations may have a negative economic impact if they prevent providers from developing new services or cost-efficient business models.² Ownership regulations can reduce access to capital in professional services markets which can hinder new entry and expansion.
41. In common with historic restrictions in the legal services market, a number of professions in the EU are subject to sector-specific regulations on business structure which reduces the scope for collaboration with other professions and, in some cases, the opening of branches, franchises or chains.³ The problem encountered by these restrictive regulations such as lack of competition and increasing the cost for new businesses entering the market builds the case for regulators to lessen restrictions.

Reform of Regulatory Arrangements: Part 5 of the LSA 2007

42. Allowing ABS into the market is one part of wider reform of regulatory arrangements. The aim is to ensure that fragmented and overlapping arrangements are less complicated and regulation is based on a clear set of regulatory objectives. The eight regulatory objectives are set out in the LSA 2007.⁴
43. In 2001 the Office of Fair Trading (OFT) identified a number of competitive restrictions in the legal services market and recommended that legal professional rules should be fully subject to competition law and those rules deemed unjustifiable be removed.⁵ Subsequent government reports have highlighted the shortcomings of the legal services regulatory regime and the necessity of placing regulations on a rational footing which puts consumers at the centre of legal services:
- A 2003 report by the Department for Constitutional Affairs considered the current regulatory environment in legal services as out-dated, complex and not sufficiently transparent;
 - The 2004 *Clementi Review* considered the governance structures of the frontline professional bodies as inappropriate for the regulatory tasks they

² European Commission, *Report on Competition in Professional Services*, European Commission, 9 February 2004.

³ European Commission, *Report on Competition in Professional Services*, European Commission, 9 February 2004.

⁴ See section 1 of the LSA 2007.

⁵ See OFT, *Competition in Professions Report*, 2001.

faced. The *Clementi Review* also viewed the necessity of having more effective competition in the legal services market;

- The 2005 Government White Paper, *The Future of Legal Services: Putting Consumers First* identified problems with how complaints are handled by professional bodies such as inconsistencies between standards of various bodies;
- October 2007 passage of the LSA 2007 which is a comprehensive reform of legal services in England and Wales.
- In 2009 Legal Disciplinary Practices (LDPs) involving different kinds of lawyers and up to 25% non-lawyers but still providing reserved legal activities were allowed;
- Alternative Business Structures (ABS) allowing up to 100% external ownership and management of legal businesses and the provision of legal and non-legal services by the same entity.

44. The key changes to the regulatory framework set out in the LSA 2007 include:

- Establishment of an oversight regulator – the Legal Services Board (LSB) – to regulate Approved Regulators;
- Separation of the professional body and regulatory roles of ARs;
- Powers to designate Approved Regulators as Licensing Authorities to regulate ABS;
- Allowing ABS;
- Establishment of the Office of Legal Complaints and the Legal Ombudsman to resolve consumer disputes.

Existing regulatory arrangements and outcome focused regulation

45. In order to better regulate the increasingly diverse legal services market and have in place more efficient and effective regulation to cope with the changes of ABS, LAs need to change the way they approach regulation. This means moving away from regulatory systems which were prescriptive towards new systems that are more flexible and targeted in their approach.

46. In line with the LSB's guidance on licensing rules the CLC and SRA have been developing and implementing new risk based approaches to regulation. This approach departs from the traditional approach of regulation of lawyers which has been characterised as inconsistent and reactive.⁶ In line with better regulation principles, this 'outcomes focused regulation' (OFR) offers a systematic evidence-based means of targeting resources at issues or firms that

⁶ See LSB discussion on regulation in *Wider Access, Better Value, Strong Protection*, 14 August 2009 and *Alternative Business Structures: approaches to licensing*, November 2009.

are assessed as high risk.⁷ LSB's view is that OFR encompasses not only the guidance in the code and handbook, but that a proper focus on risks to outcomes when supervising firms and individuals is central to the role of ARs.

47. It is intended that outcome focused regulation:

- Supports and encourages the delivery of high quality legal services;
- Focuses on the important regulatory outcomes that must be achieved while giving firms more flexibility in how they achieve agreed outcomes;
- Deals with emerging risk(s) proactively.

48. Current regulatory arrangements, which tend to be rules-based and prescriptive, are not necessarily effective at keeping up with changes in the legal services market. Arguably they are also less effective when regulating a diverse range of large and small providers. Outcomes focused regulation moves away from a more generalised (and costly) monitoring of all firms without regard for their individual risk profile. For example, it appears that for now the cost burden of regulatory compliance for firms falls more on small and medium size firms.⁸

49. Under an outcomes focused approach the cost burden of compliance for firms deemed of higher risk would more accurately reflect relevant factors such as the business activities of the firm in question.

50. Risk based regulation which seeks to assign different levels of risk to different business activities should enable low risk firms to face relatively lower costs. Lower costs for firms perceived as low risk allows these firms to benefit from a competitive advantage in providing legal services.

Legal Disciplinary Practices – a step toward ABS?

51. The LSA 2007 has already allowed the formation of Legal Disciplinary Practices (LDPs). There are two types of LDPs. The first type allows different types of lawyers to enter partnership (e.g. barristers and solicitors). The second type are solicitor and conveyancer controlled structures in which non-lawyers are permitted to be managers and that outside non-lawyer ownership is allowed up to 25%.

52. The first LDPs were registered in March 2009 and by June 2011 there were 393 LDPs registered in England and Wales.⁹ This figure represents around 3.7% of total firms in the market,¹⁰ and of these around 220 had non-lawyer managers.

⁷ LSB, *The Future of Legal Services: Emerging Thinking*, 2010, p.6.

⁸ *LMS Financial Benchmarking Survey*, 2008, p.24.

⁹ SRA LDP Registration Data.

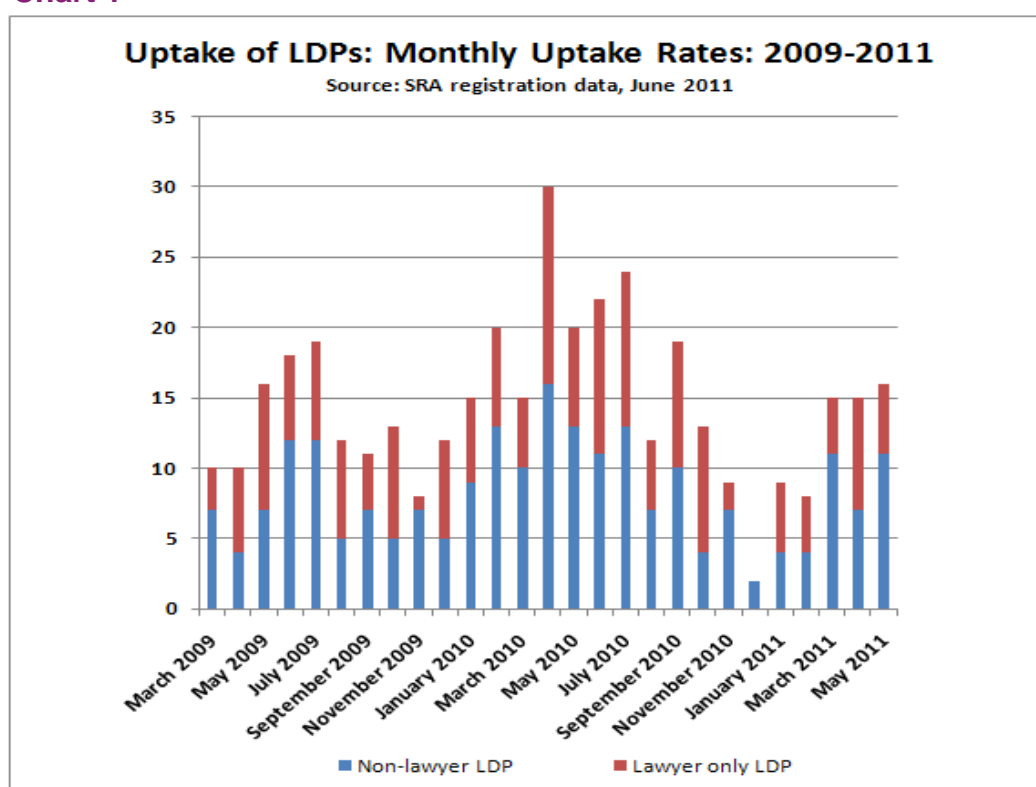
¹⁰ Taking the 2010 Law Society figure of 10,413 firms registered in England and Wales. The Law Society, *Trends in the solicitors' profession – annual statistical report* [Executive Summary] 2010, p.6.

Analysis of initial take up rates indicates that in the first few months take up rates were steady, but peaked in April 2010 (see chart 1).

53. The cyclical nature of LDP take up is likely to be influenced by outside factors such as SRA registration cycles, partnership constitutions and the anticipation by market participants of the introduction of ABS.

54. It is difficult to know why some market participants have not become LDPs, instead opting to wait for the lifting of full restrictions for ABS. These firms may also be waiting to see what competitor firms do, before themselves deciding to move away from being a traditional law firm.

Chart 1



55. Chart 2 shows the cumulative numbers of LDPs. Anecdotal and survey-based reporting suggests that an important motivating reason for firms to convert to LDP status was to formalise involvement of non-lawyer professionals and to retain and reward them.¹¹ Several mid-ranking City of London firms such as Kennedys (ranked no. 35)¹² and Olswang (ranked no.32)¹³ converted to LDP

¹¹ John Robins, *Big Bang Report*, ‘Opportunities and Threats in the New Legal Services Market’, May 2009, p.71.

¹² *The Lawyer*, 2010 ‘UK Top 200’.

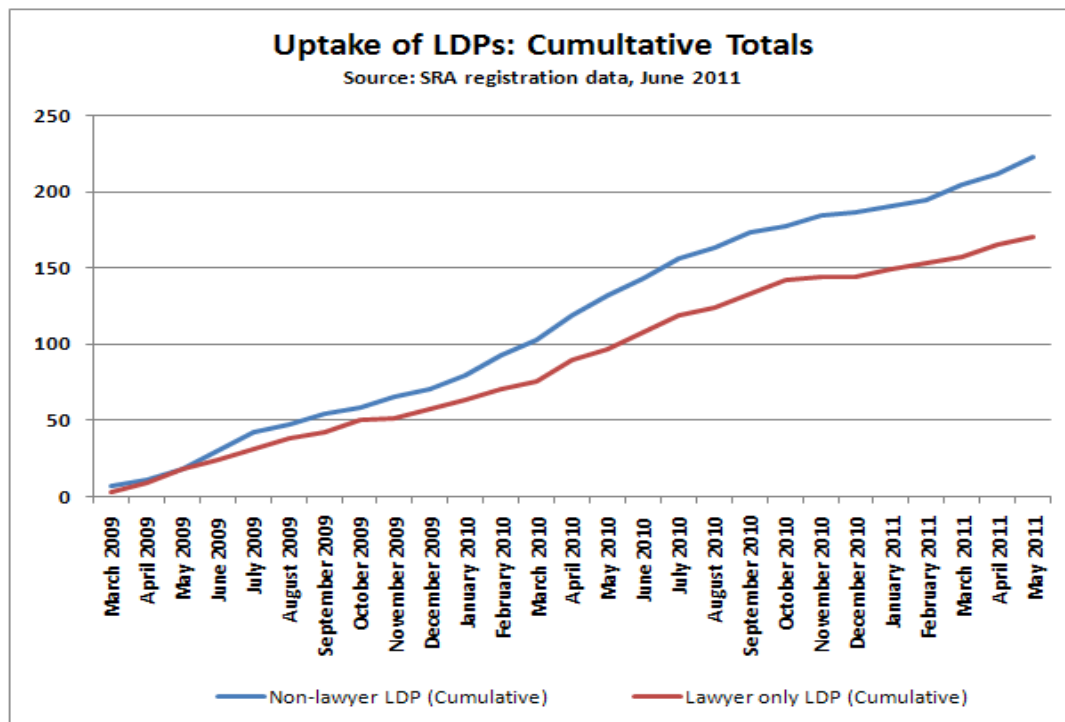
¹³ *The Lawyer*, 2010 ‘UK Top 200’.

status primarily in order to draw in professional non-lawyer expertise in managing their businesses.¹⁴

56. What is clear is that from the first quarter of 2010 there was an increase in LDP up take by firms. Slow initial up take during the first quarter of 2009 could be attributed to cautiousness and a degree of market uncertainty among firms. There are likely to be several reasons for this slow take up during this initial period.¹⁵ It is possible that much of the take up which occurred has formalised what were existing informal arrangements of non-lawyer involvement.¹⁶

57. The higher up take from the first quarter 2010 may reflect a more favourable financial environment for firms as well as a certain ‘snow-ball’ effect; once a critical mass of LDPs were in the market firms saw competitor firms change status, prompting them to do so as well. Nonetheless, numbers of LDPs still remains low when compared against the total number of firms.

Chart 2



58. Other mid-size legal firms have shown strong interest in converting to LDP status in order to attract investment and equity from outside investors, although the restrictions on LDP practice means that investors must be active managers in the firm. The largest city firms, by contrast, have taken a more cautious approach in relation to LDP status. This may be due to the anticipation of greater ownership arrangements offered through ABS, lower requirements for capital, or

¹⁴ See John Robins, *Big Bang Report*, ‘Opportunities and Threats in the New Legal Services Market’, May 2009.

¹⁵ On a view concerning initial up take see Jon Robins, *The Law Society Gazette*, ‘Why legal disciplinary practices are off to a slow start’, Thursday 09 April 2009.

¹⁶ Some of the LDP respondents in a series of interviews conducted by the LSB in 2009 made this point.

concerns that foreign regulatory regimes may prohibit members practising through LDP type structures.¹⁷

59. While no economic analysis of LDPs has been made to date, market participants are expected to have benefited from the introduction of LDPs. For example, allowing partial ownership by non-lawyers may have exposed law firms to different management practices and new business strategies, which may differ from traditional partnership models. Adopting new business strategies and management styles can benefit consumers through changing the nature of how those firms can compete and offer services and differentiate their activities from competitor firms. The economic benefit of allowing limited external ownership also allows market participants to organise production and resource allocation within the firm and pursue different strategies for raising capital and retaining skills.¹⁸
60. By introducing limited external ownership and new management techniques, LDPs operate within a context of different incentives faced by traditional firms organised in a partnership structure.¹⁹ This is because in a LDP, non-lawyer managers and owners can bring new organisational and management styles that are different to the traditional partnership model. These firms may benefit from being more 'corporate' and a non-lawyer manager who has a financial management background may take a different view of the business than a legal partner.
61. While there are recognisable benefits for being LDPs for some solicitors, commentators have noted that this is generally not the case for barristers who wish to move into solicitor-led LDPs. The reason for this is that such a move would only make sense for those solicitor-led LDPs with a strong focus on litigation. This situation may increase the flow of advocacy work to the barristers in the LDP. In April 2010 US firm Kobre & Kim's London branch became an LDP and hired two barristers to conduct litigation.²⁰
62. Widening the 'pool of talent' to include non-lawyer professionals can also serve as a different way of financing debt by allowing a non-lawyer practice manager or executive to take an equity stake.²¹

¹⁷ John Robins, *Big Bang Report*, 'Opportunities and Threats in the New Legal Services Market', May 2009, p.16.

¹⁸ See Prof Stephen Davies, *The Economic Implications of Partnership restrictions in the Legal Services Sector and their possible Removal*, Department of Constitutional Affairs, 2005.

¹⁹ On a graphic illustration of the different incentives faced by LDPs see Jordi Blanes i Vidal, et al., *Legal Disciplinary Practices: A discussion of the Clementi Proposals*, prepared for the Department for Constitutional Affairs, June 2005, p.30.

²⁰ Jomati Consultants, *Challengers and Choices: The Bar in Flux*, September 2010, p.24.

²¹ See Prof Stephen Davies, *The Economic Implications of Partnership restrictions in the Legal Services Sector and their possible Removal*, Department of Constitutional Affairs, 2005, pp.9-10.

63. In principle there is also the argument that previous restrictions on non-lawyer managers and ownership act as a constraint on the operation of market forces and, in particular, the freedom of suppliers to choose the type of organisational structure which best suits them. In the case of LDPs, partially lifting such restrictions increases the possibility for competition between firms in that they can better differentiate their activities and seek an alternative way to access capital, as well as embrace new business strategies.
64. Anecdotal evidence points to LDPs being a partial ‘transition point’ to full ABS model. A KPMG survey in 2008 of major companies suggests that around 52% of respondents thought that service would be improved by admission of professional managers to ownership in law firms.²² It is also found that large companies are enthusiastic about allowing corporate specialists such as accountants, economists and consulting engineers to have an ownership interest in a law firms.²³ Similar views were also raised in 2009 when the LSB conducted interviews with LDPs (see text box below).

Legal Services Board’s interviews with LDPs

In 2009 the LSB conducted a series of interviews with a selection of a legal firms regulated by the SRA and CLC to record their experience in converting to LDP status. The majority of firms interviewed commented that being an LDP had enabled firms to bring in a wider range of skills and therefore had made them more dynamic entities. Several firms noted that opening up to new management structures and skills could positively act to influence public perceptions of firms and legal service provision in general. Firms also noted the benefits for consumers in terms of opportunities for bundling services and the emergence of national firms offering standardised services such as conveyancing.

It was noted in some of the interviews that being an LDP had enabled firms to bring in a wider range of skills and therefore had made them more dynamic entities. In some cases this also meant undertaking an IT program and using new technologies, but the majority of firms interviewed said that little had changed in terms of the operation of their firms but that becoming a LDP had ‘legitimised’ their structure

LDP interviews also noted that there were significant opportunities for ABS. For example, one firm commented that a ‘one-stop-shop’ legal model would benefit consumers and that ABS would result in a more diverse workforce. A conveyancing firm stated that it could envisage an ‘ABS future’ where a conveyancing firm might combine with estate agents and surveyors to provide an all encompassing property service. Key challenges noted in the interviews included: costs versus quality; emergence of national firms in conveyancing; and changes in the traditional model of legal service provision.

²² See KPMG, *Impact of the 2007 UK Legal Services Act: Survey of Major Companies*, 2008, p.14.

²³ Around two-thirds of survey respondents felt that introducing professional managers into ownership would bring greater efficiency and improved service and could also facilitate cultural change. KPMG, *Impact of the 2007 UK Legal Services Act: Survey of Major Companies*, 2008, p.4.

The Australian experience²⁴

65. The experience of the legal services market in Australia is a useful comparator to the market in England and Wales as the Australian market underwent change and reform analogous to the LSA 2007.
66. The Australian legal services market can be used as a comparator market because of shared similarities with the market in England and Wales. These similarities extend to the use of common law, the presence of representative bodies that regulate the professional standards of members, and the fact that the market has a similar composition of legal professionals (solicitors, barristers, etc) in England and Wales. Historically, the Australian legal market derived much of its structure and the way it operates from the market in England and Wales.
67. In Australia the lifting of restrictions for ownership and introduction of ABS type businesses occurred over a period of about ten years. Limited ownership by non-lawyers of multidisciplinary partnerships (MDP) and solicitor corporations in New South Wales were allowed in 1987. However it was not until 2000 that fully-fledged Incorporated Legal Practices (ILP) were permissible in New South Wales.²⁵ An ILP is a corporation which engages in legal practice and permits non-lawyer involvement in management and ownership, in a similar way to ABS.
68. Australia's gradual reform in the provision of legal services took place on a state by state basis. In 2004 ILPs were permitted in Victoria with Queensland following suit in 2007. The lifting of restrictions of ownership and the flexibility that this offered for raising capital and allowing inter-professional partnerships saw the number of ILPs rising from 437 in Victoria and Queensland in 2006/7, to 977 in 2009/10.²⁶ This represented an increase of over 123%.
69. One, often cited reason for the popularity of ILPs in Australia, is the ability to cross sell other products, for example financial products, thereby boosting margins. ILPs as corporate entities have the benefit of raising capital more effectively and adopting more efficient corporate management techniques. In this respect, incorporation offers management options that are not available under a partnership structure. Appointing a CEO (either a lawyer or non-lawyer CEO) to head up the business in an ILP ensures autonomy in making business decisions.

²⁴ Sources: The Legal Services Board (Victoria), *Annual Reports 2007-09*, The Legal Services Commission (NSW) *Annual Reports 2008/9*; *Climate Change: Forecasting the impact of the Legal Services Act*, October 2010 [Baker Tilly], p.30.

²⁵ See Steven Mark & Georgina Cowdroy, 'Incorporated Legal Practices – A New Era in the Provision of Legal Services in the State of New South Wales', *Penn State International Law Review*, Vol 22:4, 2004 pp.671-693. ILP's were subsequently permitted in Victoria in 2004 and Queensland in 2007.

²⁶ The Legal Service Board *Annual Report: 2009/10* and the Legal Services Commission *Annual Report: 2009/10*.

70. In a partnership the decisions and views of individual partners can impede efficient business decisions especially when such views do not coincide, and the removal of a partner whose economic or other contributions to the firm are not satisfactory is difficult, often involving litigation.²⁷ However, in a corporate structure – such as an ILP – the division of decision making power between directors, shareholders, and employees can be more tailored to the business needs of the ILP.
71. Such unbundling of roles means enhanced accountability for fee-earners and a subsequent tightening of control over different practice areas, but less autonomy for the former partners of the firm.²⁸ For these reasons, ILPs are increasingly popular in the Australian legal services market.
72. ILPs in the Australian market are generally not retailers providing legal services. One firm, Slater & Gordon, has floated on the Australian Stock Exchange, consolidated its presence nationally and has acquired smaller regional firms.²⁹ In general the Australian market has not shown an immediate tendency for large scale consolidation or the emergence of national retailers offering legal services.
73. The drivers behind this are complex and not fully understood. They may be related to particular matters around tax and regulation, as well as to other market characteristics in Australia such as population density, the type of demand for legal services and state-based regulation.
74. For these reasons, and probably others, we have not yet seen large Australian retailers (e.g. Coles or Safeway) offering legal services. While this may change, the trend in Australia appears to be toward *some* consolidation of strong regional brands by larger firms.
75. During the time of relaxation of ownership requirements and reductions in other barriers the overall volume of firms in the Australian market rose. Growth in total legal firms in Victoria and Queensland rose from 7,040 to 8,430 between 2006/7 and 2009/10.³⁰ This represented a rise of around 19%.
76. Total growth in the market was accompanied by growth in mid-size ILP firms, typically with less than five employees, suggesting an expansion in small to medium size firms taking advantage of alternative ownership structures and capital sourcing.

²⁷ Steven Mark & Georgina Cowdroy, 'Incorporated Legal Practices – A New Era in the Provision of Legal Services in the State of New South Wales', *Penn State International Law Review*, Vol 22:4, 2004 , p.680.

²⁸ Steven Mark & Georgina Cowdroy, 'Incorporated Legal Practices – A New Era in the Provision of Legal Services in the State of New South Wales', *Penn State International Law Review*, Vol 22:4, 2004 , p.680.

²⁹ Slater & Gordon have acquired several regional law firms with long histories of servicing regional and rural clients, such as the acquisition of the NSW firm, Long Howland. Slater & Gordon have 900 staff located in over 40 offices throughout Australia.

³⁰ See the annual reports of the Legal Services Board 2010 (Victoria) and The Legal Services Commission 2010 (Queensland).

77. Overall, the Victorian and Queensland markets saw an aggregate growth in total legal entities at the same time as a growth in take up of the new ILP structures (see chart 3). This show that even after lifting restrictions the market in Victoria and Queensland expanded overall, indicating that new entities entered the market despite some consolidation underway by larger firms.

Chart 3



78. Slater & Gordon became the first listed solicitors' firm on the Australian Stock Exchange (ASX) in May 2007.³¹ It has seen its share price increase as the firm sourced external capital to finance its expansion within the market, taking advantage of the reform of the legal services market in the Australian jurisdiction. The firm listed initially on the ASX at a share price of \$1 (£0.41 in May 2007) and which has appreciated to \$2.34 (£1.52) by 2 August 2011. Growth in turnover has doubled from \$63 million (£41.7m) in the year to 30 June 2007, to \$125 million (£82.9m) in the year to 30 June 2010.³²

79. While only preliminary, the evidence from Australia does not suggest a mass exit of small high-street firms from the market. The Australian experience suggests

³¹ In its IPO of 21 May 2007 Slater & Gordon raised A\$35 million (£23.4m). Since 2007 other Australian legal firms have listed on the stock exchange. Some Australian firms, such as the Perth-based Integrated Legal Holdings, specialise in the provision of online legal document services for the Australian market. Integrated Legal Holdings owns numerous legal subsidiaries and in September 2010 the company announced the acquisition of the Sydney-based The Argyle Partnership-Lawyers, and also acquired Queensland's leading personal injury firm, Trilby Misso Lawyers, for \$57 million and also a \$40 million capital raising to fund the cash component of the acquisition. In January 2011, Integrated Legal Holdings acquired Wojtowicz Kelly Legal. *Financial Times*, Market Data, 2011.

³² Slater & Gordon, *Annual Report*, 2009/10, p.3.

that take up of the new structures may be used to fund expansion through acquisition and greater investment in technology.³³ The Australian experience also shows that despite some consolidation and exit of smaller firms, the overall size of the market grew.

European Experience

80. There has been a move to liberalise legal services among European Union (EU) member states. Through the Lawyers' Services Directive (77/249/EEC) in conjunction with other instruments, lawyers and law firms from EU Member States can provide legal services in 30 European states. Due to the European Lawyers' Establishment Directive (98/5/EC), individual lawyers and law firms can establish a practice in any Member State. This movement toward a more open cross-border arrangement in Europe has resulted in increased competition and brought about changes in the way legal services are offered. Many European jurisdictions, however, prohibit non-lawyers from partly or fully owning legal firms or from exercising decision-making power within law firms.
81. There are, however, several European jurisdictions which do allow Multi-Disciplinary Partnerships (MDPs) under certain conditions. In these examples, non-lawyers may become partners of a law firm if they are members of a regulated profession whose professional code of conduct is comparable to that of the legal profession.
82. German MDPs bring together lawyers, notaries and auditors in one firm. However, there exists different responsibilities for lawyers, notaries, and auditors which can lead to incompatibilities and result in these practices not really being 'one-stop-shops' for consumers.³⁴ In France, Italy and Denmark law firms seem to accept non-lawyer partners of law firms. In these countries – and in some Scandinavian countries which generally have liberalised legal service markets – there is a preference among legal firms to associate with foreign firms through networks and affiliations.³⁵ But the only member state which accepts external capital in law firms, to a certain extent, is Spain which has a growing and competitive body of non law firm providers of legal services.³⁶

³³ See, for example, Slater & Gordon's release of a fully on-line facility for clients to purchase wills in March 2010. Slater & Gordon, *Annual Report*, 2009/10, p.13.

³⁴ *Council of Bars and Law Societies of Europe's Response to the Legal Services Board's Consultation on a Regulatory Regime for Alternative Business Structures*, 4 September 2009, p.4
[http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/pdf/ab_structure/ccbe.pdf]

³⁵ Robert G. Lee, *Liberalisation of Legal Services in Europe: Progress and Prospects*, Cardiff Law School, p.5
[<http://www.brass.cf.ac.uk/uploads/Liberalisation.pdf>]

³⁶ Robert G. Lee, *Liberalisation of Legal Services in Europe: Progress and Prospects*, Cardiff Law School, p.22 [http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/pdf/ab_structure/ccbe.pdf]

The England and Wales legal services markets

83. The market for legal services is diverse and complex. It can be analysed from different positions and in many respects consists of several sub-markets for different types of legal activity. Equally, the market may be segmented between the larger providers of legal services such as international law firms or those described as 'city' or corporate firms, and the more traditional high street firms. These different sets of firms undertake different types of work and contribute, in varying ways, to overall turnover in the sector. The market also consists of barristers and their chambers which are highly specialised, as well as many para-legals who work alongside solicitors in law firms or in their own firms providing unreserved work for clients.
84. If the market for legal services is diverse, so too are its customers. Legal services are viewed by many people as of intrinsic value due to the importance of the rule of law and dispute resolution processes. Because of the social policy importance accorded to law and access to legal services, legal aid remains a significant component of demand in the market. Central Government's spend on legal aid is large enough to affect business decisions of the many firms that are its recipient. The third sector also constitutes an important element in the market and has a role as both a supplier of legal services and also as a customer. Large consumers such as companies with in-house lawyers have specific characteristics that set them apart from small businesses who are also consumers of legal services.
85. This section sets out the context of legal services in England and Wales. Some of the trends may intensify when restrictions are lifted in the market, such as the role of market consolidators and retailers offering low cost legal services.

Market trends

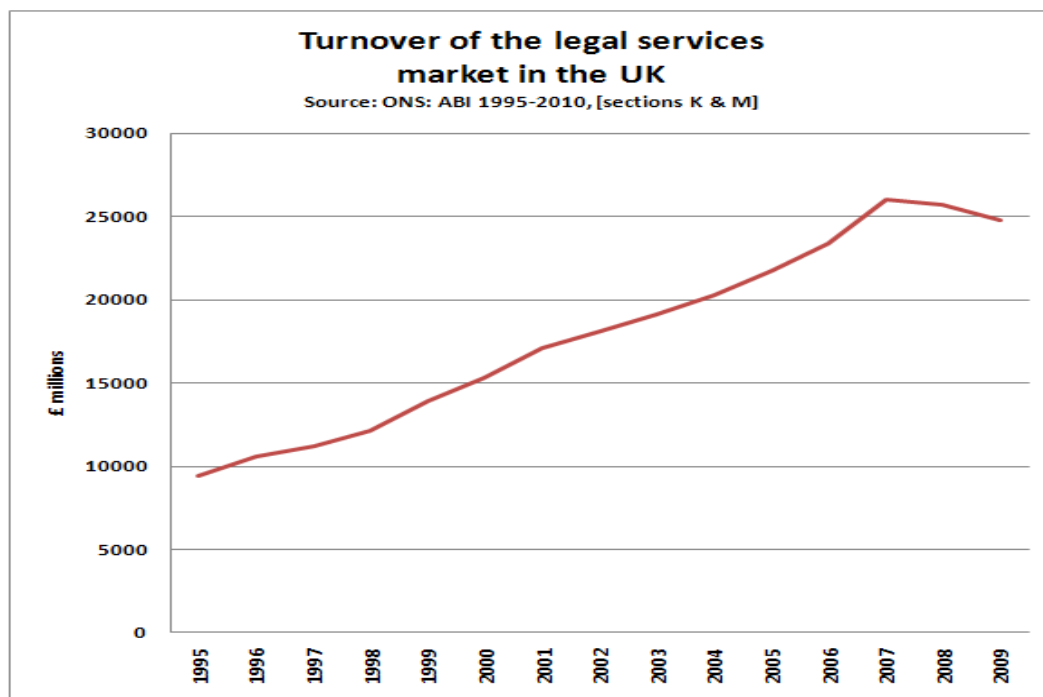
86. The legal services market is an important part of the UK economy. Not only do legal services have an important enabling function for other enterprise in the UK, they are also a significant direct contributor to economic activity and an important and growing source of professional service exports. Over the last 15 years the market has developed significantly and London is a leading international centre for legal services activity.
87. Legal services accounted for around 1.7% of UK GDP³⁷ or £24.7 billion in 2009.³⁸ By contrast the financial services sector, a market that also relies on

³⁷ UK GDP at market prices for 2009 was £1.395 trillion. *ONS Statistical Bulletin: Quarterly National Accounts*, 4th quarter 2009 [released 30 March 2010], p.30

³⁸ *Office of National Statistics*, ABI, Section K. This figure includes export earnings for UK based firms, but not the earnings for their subsidiaries.

both industry and overarching regulation of professional services, accounted for 10% of UK GDP or £116.8 billion in 2009.³⁹ The size of the legal services market as measured by total turnover indicates a growing UK market⁴⁰ for legal services that expanded from around £9.3 billion in 1995 to £ 25.6 billion in 2008, before contracting slightly to £24.7 billion in 2009⁴¹ (see chart 4).

Chart 4



88. The contraction in 2008-2009 coincides with the recession as legal services are used particularly in relation to property and financial transactions. Falling markets in these areas reduced demand for legal services such as conveyancing.⁴² Falling markets in financial services are likely to have had a contributing affecting on the decline in turnover in legal services as some firms turned to relying on in-house legal advice rather than outside expertise.

³⁹ *International Financial Services London*, City Business Series – Economic Contribution of UK Financial Services, 2011, p.1.

⁴⁰ While the ONS figures are aggregated for the UK economy as a whole, the contribution of Scotland and Northern Ireland is very minor. When viewed in gross value added (2010) prices, legal services in England and Wales accounted for £18.1 billion, while in Scotland £1.7 billion and Northern Ireland as £0.2 billion. A large proportion of value is created in London and the southeast – this regional alone accounts for around £8.7 billion. *International Financial Services London*, City Business Series – Legal Services, 2011, p.10.

⁴¹ *Office of National Statistics*, ABI, Section K & M. There may be additional turnover unaccounted for in the national statistics for professional services and which are not aggregated in total turnover. For example, if legal activities that feature as part of ‘Legal and accounting services’ could be disaggregated then, potentially, total turnover may be greater than what is presented here.

⁴² See *HMRC National Statistics* – Table 16-2, ‘Property Transactions in the UK 2009’.

89. The legal services market in the UK has experienced growth in the number of legal enterprises from 22,490 registered legal enterprises⁴³ in 1996 to 28,675 in 2009.⁴⁴ Of these the number of SRA regulated firms (solicitor firms) has also experienced some growth. Over the period from 2004 to 2009 SRA regulated firms expanded at around 2.8% a year. The table below summarises the trends.

Chart 5

Number of Legal Enterprises in the UK ⁴⁵		Number of regulated solicitor firms in England & Wales ⁴⁶	Practising certificate holders (solicitors) in England and Wales ⁴⁷
1996	22,490	8702	68,037
1997	22,988	8842	71,637
1998	23,491	8764	75,072
1999	24,106	8561	79,503
2000	24,390	8319	82,769
2001	24,742	8306	86,603
2002	25,223	9231	89,045
2003	25,742	9198	92,752
2004	26,233	10,075	96,757
2005	26,837	9,873	100,938
2006	27,362	10,000	104,543
2007	28,274	10,114	108,407
2008	29,092	10,267	112,433
2009	28,675	10,362	115,475
2010	N/R	10,413	117,862 ⁴⁸
2011	N/R	N/R	119,641

⁴³ According to the Office of National Statistics, legal enterprises are statistical units such as enterprises and local units, observational units, reporting units, and administrative and legal units which are registrations for tax and legal purposes. They include sole proprietors and partnerships, local and central government and not for profit organisations.

⁴⁴ *Office of National Statistics, ABI, Section K*. The latest ONS data is for 2009 figures only. These figures generally count barristers as a single entity for the purposes of ONS's measurement.

⁴⁵ *Office of National Statistics, ABI [section K]*. Most recent data point is 2009.

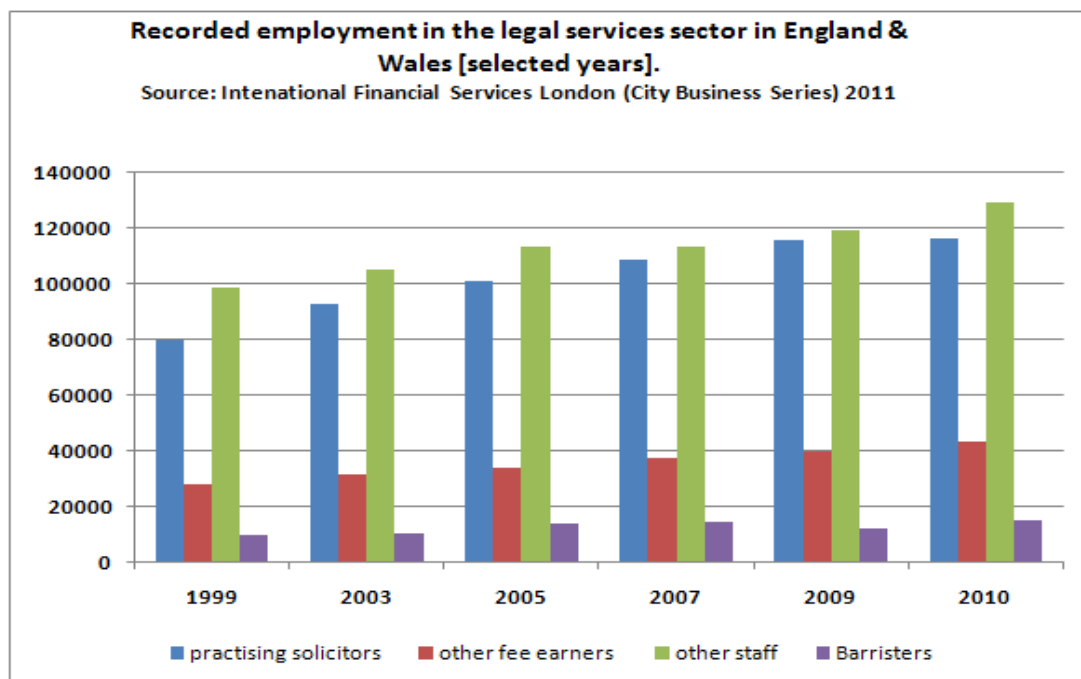
⁴⁶ *The Law Society, Trends in the solicitors' profession - annual statistical reports*, [various years: 1996-2010]. Calculation of numbers of firms prior to 2000 includes those whose earnings are at least £15,000 per annum. There is a discrepancy in total figures between Law Society statistics and Solicitor Indemnity Fund (SIF) statistics. The Law Society statistics comprise all private practice firms, while the SIF only collects information about those firms which have gross fees of £15,000 per annum or higher.

⁴⁷ *The Law Society, Trends in the solicitors' profession - annual statistical reports*, [various years: 1996-2010] and information provided to the LSB (May 2011) by approved regulators in accordance with *The Legal Services Act 2007* (Levy) (No.2) Rules 2010.

⁴⁸ During 2010 solicitors from Northern Ireland and from the Republic of Ireland constituted a large proportion of newly authorised persons in England and Wales. This is because these individuals could apply to be directly admitted to the roll of England & Wales under the old scheme. The changes in transfer regulations resulted in an expansion of authorised persons in 2010. A total of 1,485 Northern Irish and Irish solicitors registered in 2010 compared to 45 in 2009. *SRA Summary of Performance Measures and Statistics*, December 2010, p.7.

90. Employment in the legal services market in the UK has also expanded. Over ten years from 1999 the number of practising solicitors rose from 79,503 to 119,641 in April 2011, representing a large increase in the number of solicitors, with an especially large expansion in the two years from 2007 to 2009.⁴⁹
91. One key factor contributing to the growth of employment in legal services – and especially the growth in practising solicitors – has been the expansion of multinational corporate legal firms in London. These large enterprises often employ lawyers in foreign jurisdictions and undertake commercial transactions. Other factors contributing to the overall rise in employment have been the increase in the number of non-solicitors such as legal executives.
92. Commoditisation of some legal service products has resulted in some increase in the numbers of employed non-lawyer professionals. This may be due to increased employment of para-legals and other non-lawyer staff in corporate firms undertaking routine legal work.⁵⁰ The number of solicitors in private practice in 2010 was 86,748⁵¹, having increased threefold since 1970. The number of support staff in legal services fell in the 1990s before stabilising and rising moderately again since 1999 to almost 129,000 in 2010⁵² (see chart 6).

Chart 6



⁴⁹ The Law Society, *Trends in the solicitors' profession - annual statistical reports*, [various years: 1996-2010]. and information provided to the LSB (May 2011) by approved regulators in accordance with *The Legal Services Act 2007* (Levy) (No.2) Rules 2010.

⁵⁰ On the future employment outlook of para-legals in corporate legal firms see the Institute of Para-legals, *Background Briefing*, December 2010.

⁵¹ The Law Society, *Trends in the solicitors' profession - annual statistical reports*, [various years: 1996-2010]. Solicitors in non-private practice in 2009 were 31,114.

⁵² In 2010 the Institute for Para-legals estimated that between 35,000 – 40,000 or approximately 44% of all fee-earners in solicitors firms are para-legals. Institute of Para-legals, *Background Briefing*, December 2010.

93. Barristers experienced an expansion in number (57%), more rapid than that of solicitors (50%). Between 1999 and 2011 the numbers of barristers rose from 9,700 to 15,309.⁵³ The expansion in the number of barristers can be attributed to an increase, in part, of demand for specialist legal services, including rising demand for specialist advice on international legal transactions. The increasing size of barrister's chambers⁵⁴ and more barristers in training may also account for this rise.
94. Total numbers of other legal service professionals which includes para-legals, legal executives and other staff has risen from 98,522 in 1999 to 129,000 in 2009. The growth in para-legals and other legal service professionals can be attributed to the expansion of corporate firms and overall growth in the sector. The definition of a para-legal (and para-legal firm), however, varies and can include para-legal advisers to legal executives to support staff and to clerks working outside of the legal services sector, including in charities and contract management companies.
95. The employment of non-lawyer professionals may also be related to the growth in standardisation and back office legal work. However, the growing importance of commoditisation of legal services may serve to counter-balance the growth in non-lawyer employment through the application of technology (rather than labour) in delivering legal services. These figures, however, do not capture the employment of non-lawyer professionals in foreign law jurisdictions which are increasingly used by corporate law firms to do low margin standardised work such as document production and other back office functions. The numbers of non-lawyer professionals from low cost foreign jurisdictions are expected to rise as high volume low margin work is increasingly contracted out by corporate law firms.⁵⁵
96. Technology is an increasingly important part of how law firms do business. The growth in technology may be one reason for more moderate growth in employment in the sector in the future. According to a *YouGov* poll of solicitors, 85% of sole practitioners have invested in new technology in the last ten years. In addition, 47% of respondents said that they now deliver their services online.⁵⁶

⁵³ The Law Society, *Trends in the solicitors' profession - annual statistical reports*, [various years: 1996-2010] and information provided to the LSB (May 2011) by approved regulators in accordance with *The Legal Services Act 2007 (Levy) (No.2) Rules 2010*.

⁵⁴ Jomati Consultants, *Challengers and Choices: The Bar in Flux*, September 2010, p.30.

⁵⁵ See Orijit Das, 'Legal Process Outsourcing: transforming the legal landscape', *The Future of the Legal Services: Emerging Thinking*, LSB, 2010, pp.23-32.

⁵⁶ *LawyerLocator*, 'The Future of Small Law Firms – Jeopardy or Opportunity?', 2010, p.4.

One market or many?

97. Overall there is very little information about how the legal services market functions. While information is collected in aggregate form by the Office of National Statistics there is surprisingly little breakdown and analysis of how different parts of the market interact and are related to each other. While regulators and professional bodies collect useful data concerning numbers of regulated persons and data about legal entities, to date there has not been a focus on economic analysis. The LSB is undertaking research to build a segmentation model that will enable distinctions to be drawn between different parts of the market.
98. What is clear is that the experiences, drivers, pressures and products of legal firms differ greatly. Barristers who specialise in shipping contracts do not compete with legal aid funded housing law solicitor firms, who do different work to patent attorneys who, in turn, do not compete with specialist bulk personal injury firms.
99. In general these firms do not compete directly with 'magic circle' corporate firms whose specialisation is corporate and commercial law. While all forming part of the same overall market some of these segments do not, or cannot (for regulatory reasons), compete with each other although there are likely to be overlaps at each of the boundaries.
100. This document does not attempt to develop a market segmentation model (which is being developed independently and should be published by the LSB in September 2011), but draws attention to some of the distinguishing factors in the market using the available research. It is useful to take a view of the market from its two constituent economic factors: demand and supply.
101. By viewing the market this way, we can better categorise the principal market participants on both sides of the transaction for legal services in what is, in reality, a complex market with segmented parts.

A demand side view

102. Historically, consumers of legal services have been overlooked with focus instead on to the suppliers of legal services, notably those professionals authorised to provide reserved legal activities. In a market where regulation restricted competition between solicitors and barristers, and restrictions concerning partnerships and high barriers to entry controlled the supply of legal

professionals and the types of business models permissible, pricing of legal services and the nature of consumer demand was often regarded secondary.⁵⁷

103. Understanding the demand-side of the legal services market is more difficult than the supply side as much of the available research is anecdotal or consists of surveys based on a limited cohort of firms or consumers.⁵⁸ The other difficulty in understanding the demand-side of the legal services market is that restrictions still operate in the market therefore limiting competition and constraining consumer preferences.
104. Consumer preferences are, in themselves, difficult to quantify and research because the potential consumer base for legal services in England and Wales is every individual, business and government authority.
105. Legal services are sometimes regarded as a ‘credence good’ in that they are difficult for the consumer to ascertain quality or value. This means that trade-offs which exist for consumers in purchasing legal services such as price and quality may not be made in the most effective or informed manner. Also, the nature of legal services as complex products which often require the technical expertise of a professional also makes it difficult for consumers to determine quality, especially when many legal services are not repeat purchases but one-off purchases.
106. For many consumers legal services – even the language used by lawyers – is impenetrable and difficult to understand, let alone assess quality in a meaningful and informed way.⁵⁹ Added to this difficulty is the lack of substitutability for many legal service products used by everyday consumers.
107. The demand-side of the market can principally be characterised by a number of important consumers of legal services:
- Private consumers;
 - Public consumers (central government, local authorities, etc);
 - Small businesses (firms without legal departments);
 - Large businesses.

⁵⁷ OFT Report, *Competition in the Professions*, 2001.

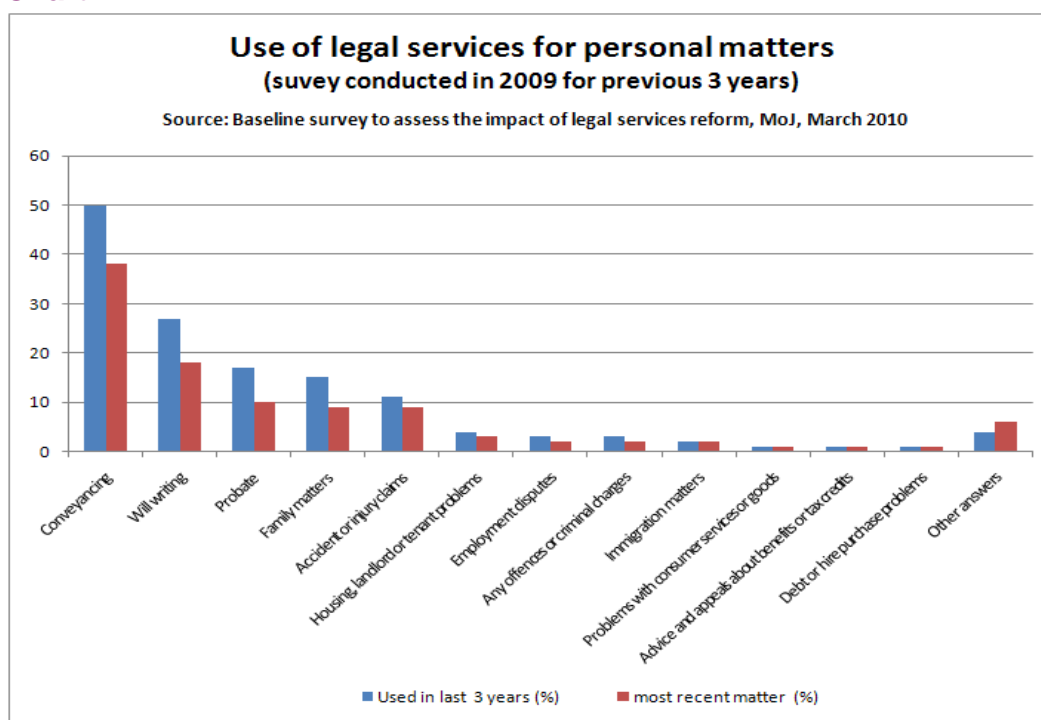
⁵⁸ For example, see the surveys of: Clearwater Finance (2006) who polled 30 large law firms; Investec (2010) who polled 30 managing partners; Bar Standards Board (2010) who polled 1,913 barristers and 141 clerks; and Baker Tilly (2010) who polled more than 100 firms.

⁵⁹ Steve Brooker, ‘The Consumer’s Role’, *Understanding the Economic Rationale for Legal Services Regulation: A collection of Essays*, Legal Services Board, 2011, pp.48-49.

Private consumers

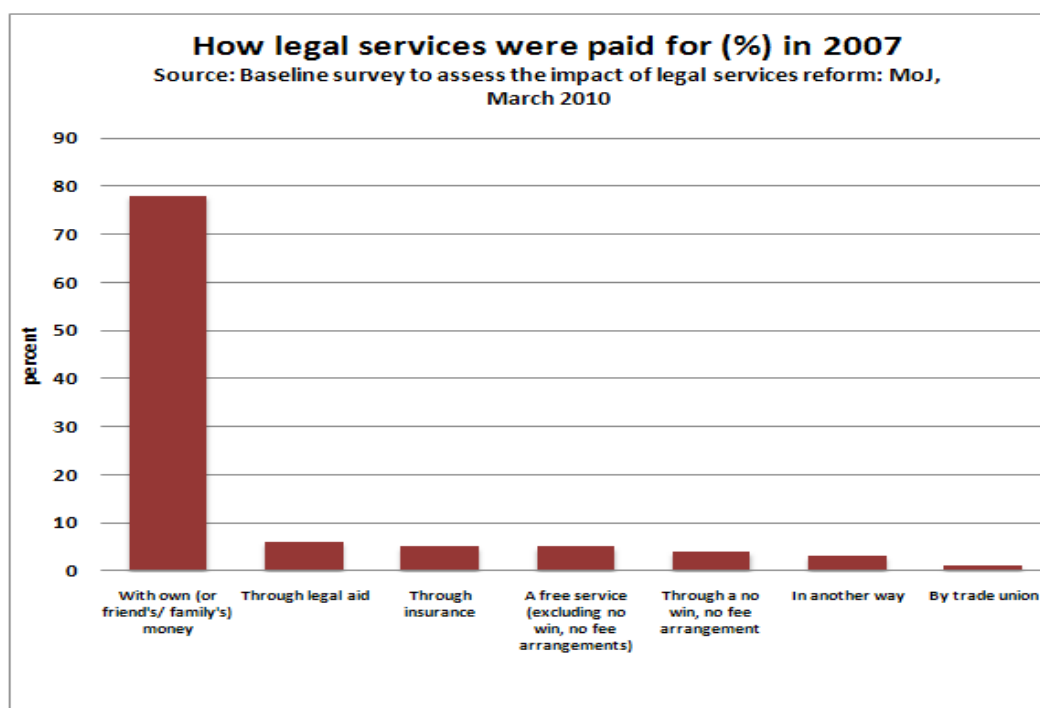
108. Private consumers mainly use legal services for conveyancing, will writing and probate and family matters. Out of these services conveyancing tends to be a repeat purchase for many consumers.
109. Those services used least by private consumers include advice on benefits or tax credits and debt or hire purchase problems. Accident and injury claims are relatively popular for private consumers, consisting of around 10% of purchased services (see chart 7).
110. For many private consumers choosing a legal service is not always straight forward as it can be difficult to differentiate either quality, type of service, specialism or price.
111. Consumers often rely on repeat purchases from family used or peer-recommended solicitor firms, even for services that are totally different from previous purchases.

Chart 7



112. Private funds account for the vast bulk of legal services purchased by consumers and constitute around 75% of all purchases.
113. By contrast, insurance accounts for only a fraction of overall number of services paid for. Arrangements such as 'no win no fee' also feature as a minor (less than 5%) component of how most legal services were paid for (see chart 8).

Chart 8



114. Other research has found some evidence that the existing legal services market does not provide services for all potential consumers, though quantifying the level of unmet need is challenging. The Legal Services Research Centre *Civil & Social Justice Surveys* have found that 7.5% of people experiencing civil justice problems tried and failed to get advice. A further 8.8% did nothing in response to a civil justice problem, and 34.6% handled their problems without recourse to advice.⁶⁰
115. In this context it would appear that perception of price was an important determinant for individuals. A poll of more than 2,000 people and in-depth interviews with 100 consumers also revealed that 'expensive' was the word most commonly associated with the word 'solicitor', while almost half of those interviewed felt their experience of dealing with a lawyer represented poor value for money.⁶¹
116. In a *YouGov* survey commissioned by the LSB in 2009, 20% of respondents said that they had not sought advice even though it could have been beneficial.⁶² The most common reason by far was cost with 54% of respondents agreeing that legal advice was 'too expensive'. Next most popular answer was 'because I didn't know enough about how the process works' (20%).⁶³ Research into Litigants in Person conducted in 2005 found that the second most common

⁶⁰ Report of the 2006-9 English and Welsh Civil and Social Justice Survey, *Legal Services Research Centre*, p.46.

⁶¹ *Climate Change: Forecasting the impact of the 2007 LSA*, October 2010, p.17.

⁶² *YouGov* [commissioned by the LSB], 'Consumer Research: data set and conclusions', December 2009.

⁶³ *YouGov* [commissioned by the LSB], 'Consumer Research: data set and conclusions', December 2009.

reason given for acting in person during legal proceedings was an inability to afford representation. There was a strong consensus that few individuals would chose to be unrepresented. The main reason suggested for acting in person in both family and civil cases was the cost of legal representation, coupled with ineligibility for legal aid.⁶⁴

117. However, in some cases, representation does not affect outcomes, especially in tribunals. Research points to advice and preparation beforehand (e.g. defining the claim and preparing the case) does has an important impact on tribunal outcomes.⁶⁵

Legal aid

118. Legal aid remains an important component of the demand side picture. In 2008/9, legal aid was delivered through 1,781 criminal contracts and 2,613 civil and family contracts from the Legal Services Commission (LSC). Of the civil providers, 360 contracts are with Not for Profit organisations.⁶⁶

119. Central Government spent around £2 billion annually on legal aid for the period 2007/8 to 2010/11. This accounts for around 10% of the total turnover of legal services in the UK⁶⁷ and provides in excess of 2.9 million acts of assistance.⁶⁸ Accounting as a significant portion of spend on legal services, legal aid has a large 'multiplier' effect in the market and impacts on the decisions and level of business of many small and medium sized firms.

120. Legal aid costs differ depending on the nature of the case and whether the case is dealt with in the higher courts (e.g. criminal matters). Legal aid costs have experienced some fluctuation in aggregate spend over the last five years, decreasing between 2005/6 and 2007/8, before rising in 2008/9 and declining once more in 2009/10 (see chart 9). It is anticipated that legal aid spend will reduce further in the future, reflecting the current focus on consolidating expenditure and potentially delivering savings of £350 million by 2014-15.⁶⁹

⁶⁴ Prof. Richard Moorhead & Mark Sefton, *Litigants in person: Unrepresented litigants in first instance proceedings*, Cardiff University, pp.15-16.

⁶⁵ Michael Adler, *The Potential and Limits of Self-Representation at Tribunal*, Economic & Social Research Council, 2008.

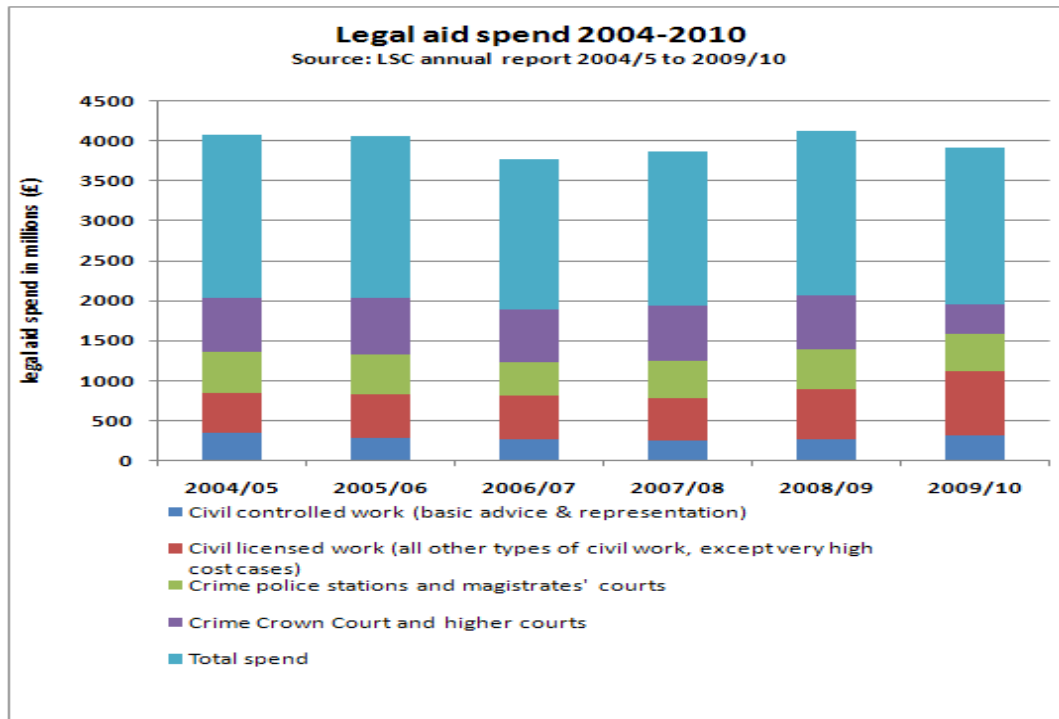
⁶⁶ Ministry of Justice, *Proposals for the Reform of legal Aid Spend in England and Wales*, consultation paper CP12/10, November 2010, p.29.

⁶⁷ *Office of National Statistics*, ABI, Section K. Total turnover figure includes exports of legal services from legal entities based in the UK.

⁶⁸ *Legal Services Commission Annual Report: 2009/10*, p.5. An act of assistance is each instance in which a provider gives legal help or representation to a client on a specific case.

⁶⁹ Ministry of Justice, *Proposals for the Reform of legal Aid Spend in England and Wales*, consultation paper CP12/10, November 2010, p.5

Chart 9



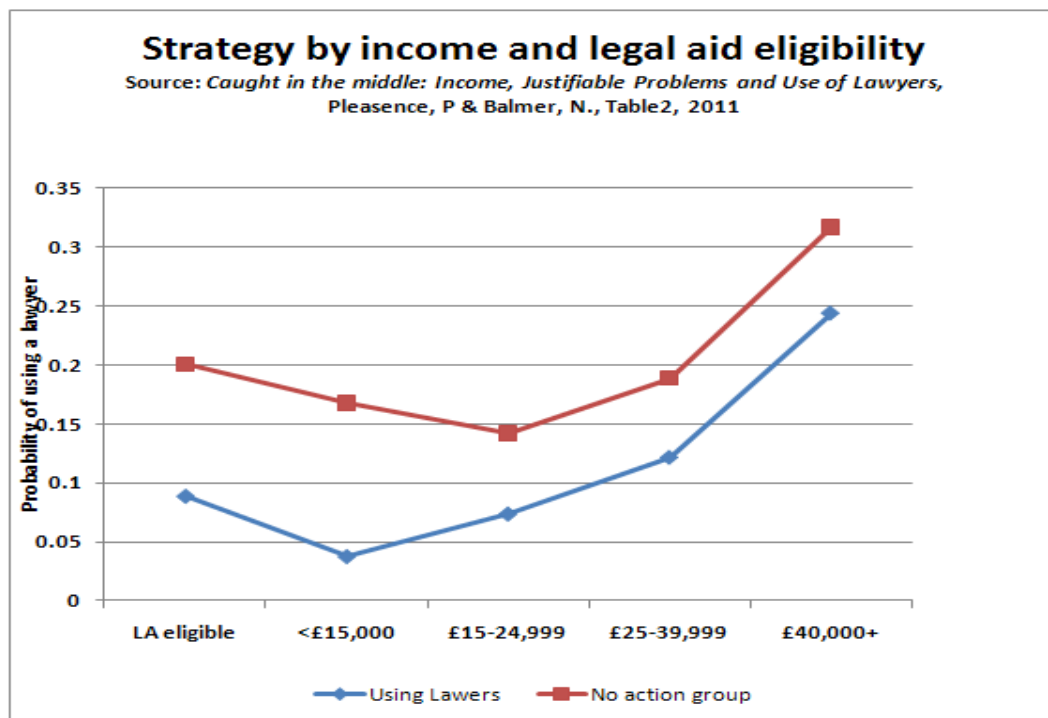
121. However, it is difficult to quantify if the level of legal aid is determined solely on existing market demand as the legal aid budget is decided not exclusively by market forces but factors such as how much of the budget is required for non-discretionary areas such as criminal defence cases, and by tendering of contracts with suppliers.

122. A study undertaken in 2003 suggested that there existed an element of unmet demand for legal services by individuals in the market, either because they were not eligible for legal aid or because of other factors (e.g. private supply of legal services was too expensive).⁷⁰

123. An element of this unmet demand may occur because individuals' income level is too high to be eligible for legal aid, but it is still low enough that private legal advice is considered too expensive. This situation is especially the case for the group of people whose annual income falls between £15,000 and £24,000, as shown in chart 10 below.

⁷⁰ See Frontier Economics, *A market analysis of legal aided services provided by solicitors*, A Report Prepared for the Department of Constitutional Affairs and the Legal Services Commission, December 2003. The report refers to the situation where there may be unmet demand in the legal services market. The level of unmet demand, however, is not estimated. The report suggests that unmet demand - or 'excess demand' - can be indicative that the price paid for the service may be too low.

Chart 10



124. It was also recorded that demand went unmet among some individuals seeking advice from Citizen Advice Bureaux, local councils and employers. This situation reflects the fact that not all consumers' needs were satisfied despite there being provision for legal aid for eligible vulnerable consumers and a private market for legal services.⁷¹

Larger consumers

125. Larger consumers are an important element in the demand side and generally consist of large organisations in either the private or public sectors. For example, central government is a consumer/purchaser of legal services along with other levels of government such as local government. Local government procures a range of legal advice, often in conjunction with receiving advice from in-house legal specialists.

126. In-house lawyers are employed to do a range of activities including managing external counsel, acting as a lower cost alternative to external counsel, drafting and negotiating commercial terms and dealing with employment issues. In-house lawyers also provide compliance advice and training, identifying and avoiding risk, structuring deals, managing brands, managing disputes, mergers and disposals, or are involved in industry-specific activities, such as structuring investment products.

⁷¹ Frontier Economics, *A market analysis of legal aided services provided by solicitors*, A Report Prepared for the Department of Constitutional Affairs and the Legal Services Commission, December 2003, p.66.

127. Due to their 'embedded' nature there is no accurate measurement of the proportion of legal spend attributed to in-house lawyers. However, survey data points to in-house lawyers having control or influence over at least half of total legal services spend.⁷² The economic value of in-house advice is estimated to rise over the coming years as companies are looking for ways to increase value in procuring legal advice in an uncertain business climate.⁷³ In a survey from 2009, 22% of general counsel surveyed expected their departments to grow further in size, mainly driven by perceived higher value for using in-house lawyers rather than seeking external legal advice.⁷⁴
128. The composition of where in-house lawyers work is varied. According to a Law Society report of 2008 around 33% of general counsel worked in the financial sector, with 10% working in the service sector, 6% in manufacturing and 6% in retail. Also, about 20% of Corporate Counsel worked in FTSE100 and FTSE 250 companies combined, and about half of the Corporate Counsel worked in commercial organisations which were not listed on the official stock exchange.⁷⁵
129. In-house lawyers also account for a sizable proportion of solicitors and barristers. In 2010 there were approximately 23,000 in-house solicitors providing reserved legal activities,⁷⁶ many of which are located in large corporations based in London and the southeast. The relatively large number of lawyers who work in-house underscores the point that large corporations and businesses are also large scale consumers of legal services.

Other consumers

130. In addition, small business consumers who require legal advice (as they have no in-house legal departments) are important users of legal services, typically in the areas of commercial and employment law. For small businesses that do not regularly use legal services, for a variety of reasons, their accountants sometimes tend to be their trusted advisers. The level and composition of such transactions is difficult to quantify in a meaningful way, however it is likely that such purchases are typically for commercial legal services such as employment law, business contracts and other advice. The use

⁷² See *The Lawyer Survey 2008*; PLC 2009 *Benchmarking Survey*; IRN Research, *The UK Legal Services Market*, 2008.

⁷³ See NABARRO Report, (2010), 'From in-house lawyer to business counsel: A survey and discussion paper'.

⁷⁴ *Strategic Legal Advisor*, 'General counsel look for alternatives as law firm fees continue to soar', 6 February 2009.

⁷⁵ See *Corporate Counsel – A Profile*, The Law Society 2008. According to a survey conducted by *Strategic Legal Advisor* in 2009, around 73% of British companies have cut work to outside law firms over the previous 12 months in response to the onset of the recession. *Strategic Legal Advisor*, 'Credit crunch takes its toll on legal departments', 26 February 2009.

⁷⁶ SRA Practising Certificate Data, 2010.

of legal services by small businesses is cyclical, reflecting the level of activity in the economy.

131. From a small business perspective, research has found that small businesses frequently seek to ‘muddle through’ rather than obtain advice since seeking formal advice is perceived as expensive, serious and a last resort.⁷⁷ Taken together these pieces of evidence suggest a level of need for legal services not being met by the current legal services market.
132. Organisations operating in the third sector also constitute an element in the demand side of the market. While many of these organisations are suppliers of legal services to individuals and other groups, some third sector organisations purchase legal services such as advice and representation on a wide scope of legal issues ranging from employment law, immigration and human rights.
133. The LSB Consumer Panel has recently commenced a project examining the experiences of small charities in accessing legal services. This project will involve new research on small charities as consumers rather than providers of advice.

Conclusion: Demand side picture

134. The demand side picture of the market is complex and consists of different customers in terms of needs, organisational type and buying power. The private consumer market place consists of private individuals accessing services primarily paid for with their own funds. Central government is a large procurer of legal services for individuals – mainly for social policy reasons – with a spend of around £2 billion annually. Other levels of government are also purchasers of legal services such as local authorities who use both in-house legal services and privately supplied services.
135. Results from surveys indicate that there is likely to be a component of latent demand in the current market which is not met by either the private market for legal services, or from central government purchasing legal services on behalf of individuals who cannot afford them.
136. Any analysis of the market needs to recognise the components of both demand and supply. Further work will be required to better understand the demand side of the market, and is part of the LSB’s future research agenda.

⁷⁷ LSB, *Legal Advice for Small Businesses Qualitative Research*, February 2010, p.2.

A supply side view

137. Historically, the supply-side of the legal services market in England and Wales was characterised by three categories: (1) non-contentious legal work, (2) litigation; and (3) advocacy. The first and second categories were the preserve of solicitors while advocacy was historically conducted only by barristers. Given the varying levels of specialist legal knowledge required and differing roles in providing legal services, formal distinctions emerged distinguishing barristers and solicitors.⁷⁸

138. The Bar and solicitors' profession are the main legal services employers in the UK. The total recorded employment for solicitors (119,641) and the Bar (15,309) account for 91% of authorised persons as of 1 April 2011.⁷⁹ The total number of authorised persons grew by 3% in 2010/11. Elsewhere in the legal services market there are:

- 7,467 members of the Institute of Legal Executives with the majority employed in solicitors' firms;
- 1,115 licensed conveyancers in England and Wales;
- 620 registered trade mark attorneys;
- 1,687 registered patent attorneys;
- 845 public notaries, of which 27 are scrivener notaries.⁸⁰

139. Measured by turnover, the supply of legal services in England and Wales is predominantly provided by solicitors. A large portion of turnover is also undertaken by professionals offering other legal activities such as patent attorneys and copyright agents, as well as para-legals. However, at this stage, it is not possible to differentiate between turnovers of these other activities.

140. The value of output of barristers also makes a significant contribution to the overall turnover in the legal services sector. Barristers do some high-value international work, despite being relatively few numerically. There are only 343 barrister chambers and 400 sole barristers practicing in England and Wales.⁸¹ The number of barrister chambers has been declining over time with around 50 chambers closing or being consolidated into larger chambers over the past 15 years.

⁷⁸ For a more detailed description of the emergence of reserved legal activities and their statutory and historical basis see Regulatory Policy Institute, *Understanding the economic rationale for legal services regulation*, report for the LSB, 2011.

⁷⁹ Information provided to the LSB (May 2011) by approved regulators in accordance with *The Legal Services Act 2007 (Levy) (No.2) Rules 2010*.

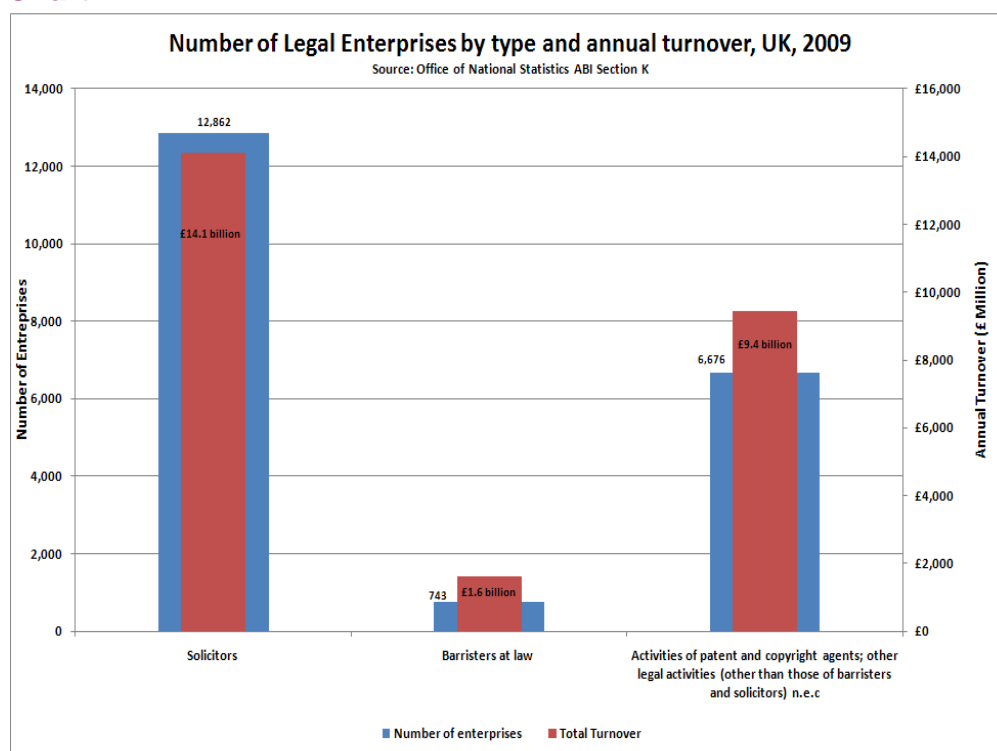
⁸⁰ Information provided to the LSB (May 2011) by approved regulators in accordance with *The Legal Services Act 2007 (Levy) (No.2) Rules 2010*.

⁸¹ Jomati Consultants, *Challengers and Choices: The Bar in Flux*, September 2010, p.30.

141. The trend is one of consolidation as today there are on average 35 barristers per chamber, compared to 21 in 1995. The growth in the number of sole barristers has been strong, rising from around 100 in 1995 to 400 today. The desire to work flexibly and not within constraints of a chamber, coupled with the possibility of reducing overhead costs, are two factors driving this trend.

142. When assessed from the point of view of turnover the largest contribution, however, is from solicitors who generated £14 billion in annual turnover in 2009 (see chart 11).⁸² The activities of all others in the market, excluding solicitors and barristers, accounted for £9.4 billion in turnover. This turnover was generated from a diverse range of sources that included patent attorneys and copyright agents and other legal activities which include para-legal activities.

Chart 11



⁸² Figures shown here are broken down in ONS statistics for legal services sub-categories. The activities of non-solicitors and barristers are grouped together as comprising ‘value of all other legal activities’ and presumably are made up of para-legal and other non-reserved legal activities. The number of legal entities is an ONS measurement and may result in a significant increase in the recorded number of solicitor and barrister enterprises. This is especially the case with barristers which the number of enterprises in 2009 was recorded by ONS as 9,075. As this figure follows a different sampling measure (ie. mainly accounting single barristers as an ‘entity’), we instead use the figure of 343 barrister chambers and 400 sole barristers. We recognise that a chamber is a collection of individuals, but for reporting purposes this approach reflects actual entities in the market place. On the figure for barristers see Jomati Consultants, *Challengers and Choices: The Bar in Flux*, September 2010, p.30. On caveats regarding ONS calculation of barrister entities see Office for National Statistics, ABI, Section K – ‘Real estate, renting and business activities’, 1995-2007[Release Date 16/06/2009].

Retail or “high street” firms

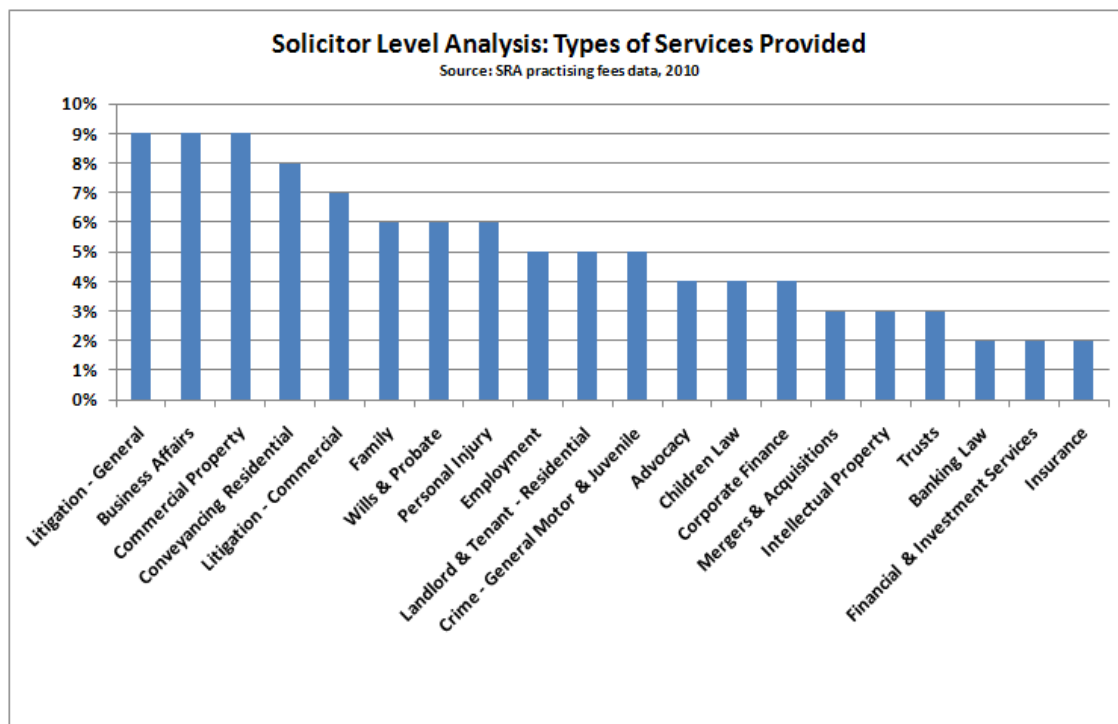
143. The firms in this category tend to employ more than one partner and may employ several staff (not all solicitors). A sub category of these are sole practitioners. The majority of legal services to individuals are supplied by solicitors, many of whom practise in high street firms and whose mainstay are commercial litigation, business affairs and commercial property transactions.
144. High street firms are the main point of contact for people seeking ‘routine’ legal services (e.g. wills, conveyancing, divorce, etc).
145. The large numbers of such firms makes it difficult to draw conclusions about their characteristics and shared factors. It is likely that those firms who are using technology for product delivery and lower unit costs will enable them to better embrace changed market conditions. High street firms are well placed to exploit niche market opportunities and to focus on traditional strengths such as face-to-face service delivery and perceived higher quality of service.⁸³

Solicitors – products

146. The majority of legal services in England and Wales are supplied by solicitor-led partnerships. As chart 12 shows, the scope of products offered by solicitor firms are many, but the top three services offered are general litigation, business affairs and commercial property, followed closely by residential conveyancing services.
147. These three services together account for 34% of all solicitor firm services (by type but not by value). While the majority of solicitor firms are small to medium size, commercial law such as mergers and acquisition, corporate finance, banking law, financial and investment services and insurance – chiefly the preserve of City of London legal firms – account for 13% of all solicitor services. City firms are involved in supplying high value services to sophisticated clients, many of which are internationally based.

⁸³ The LSB is conducting further research into these characteristics.

Chart 12



Solicitors – value

148. Despite the specialisation by City of London law firms, the turnover of the top 100 UK law firms which specialise in corporate finance, banking law, etc., amounted to £13.7 billion in 2010.⁸⁴ This figure indicates a market where legal services connected to city business contributes to over 55% of the total turnover of the market for England and Wales.⁸⁵ Clearly corporate and commercial law disproportionately account for a large share of total value and are supplied by a minority of (mostly London based) city firms.

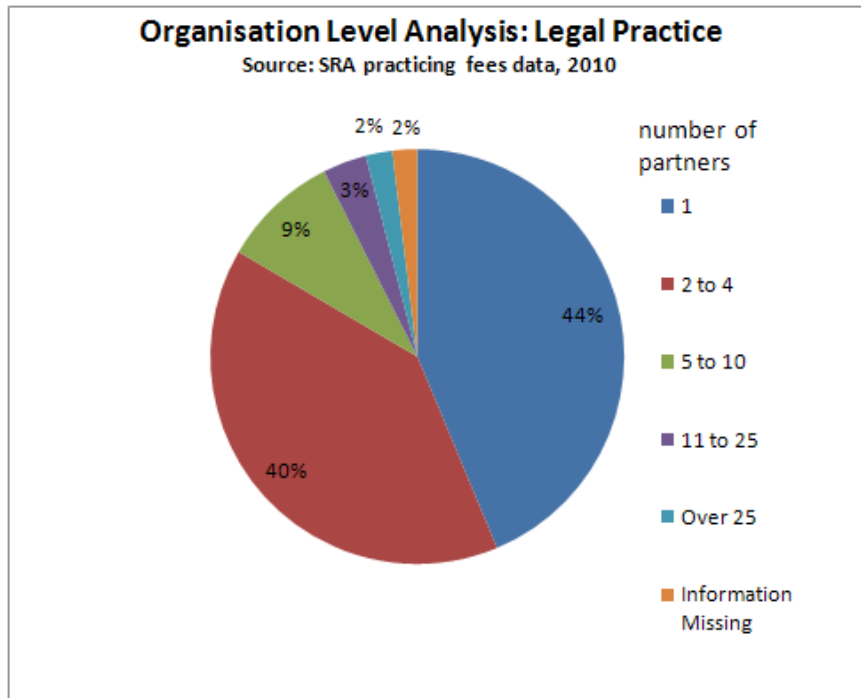
149. Further evidence from this part of the market is shown when looking at the size of practices. Some 84% of legal practices run by solicitors are small businesses with four or fewer partners. By contrast, those firms defined as large (in excess of 25 partners) and which predominate in legal firms in the City of London, account for only 2% of total firms (see chart 13).

150. There are, therefore, two distinct trends that can be identified among suppliers of legal services. On the one hand there are the large city law firms that produce a majority of the value in legal services but which are not particularly numerous when looked at across the whole market, and on the other hand, the majority of law firms operating in the market but which are small and account for much less value.

⁸⁴ *The Lawyer*, 'UK 200 Annual Report' 2010.

⁸⁵ *Office of National Statistics*, ABI, Section K.

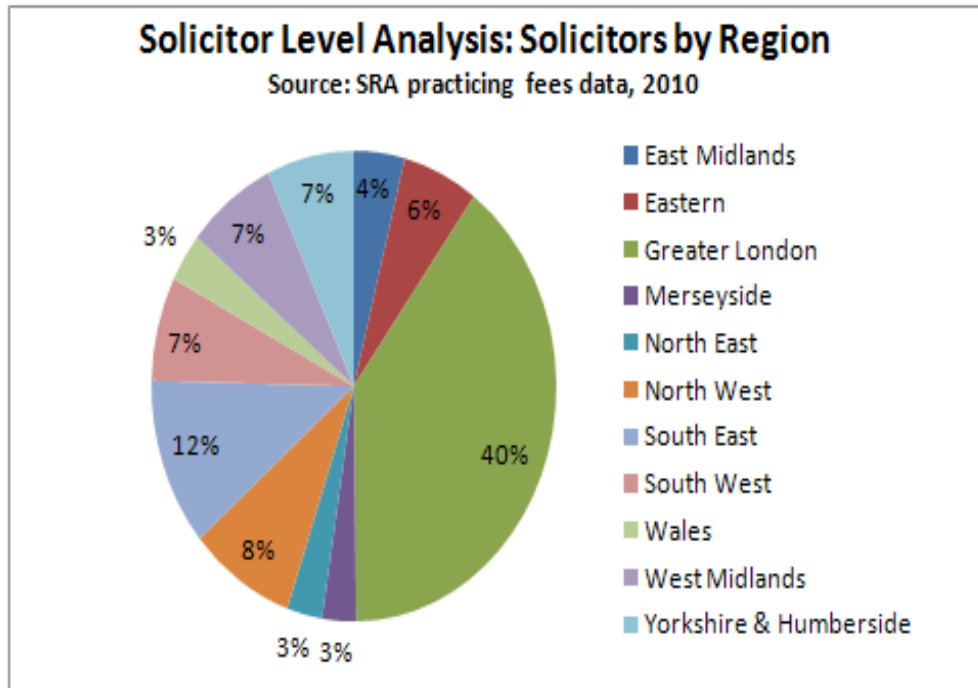
Chart 13



Segmented market structure: London versus the regions

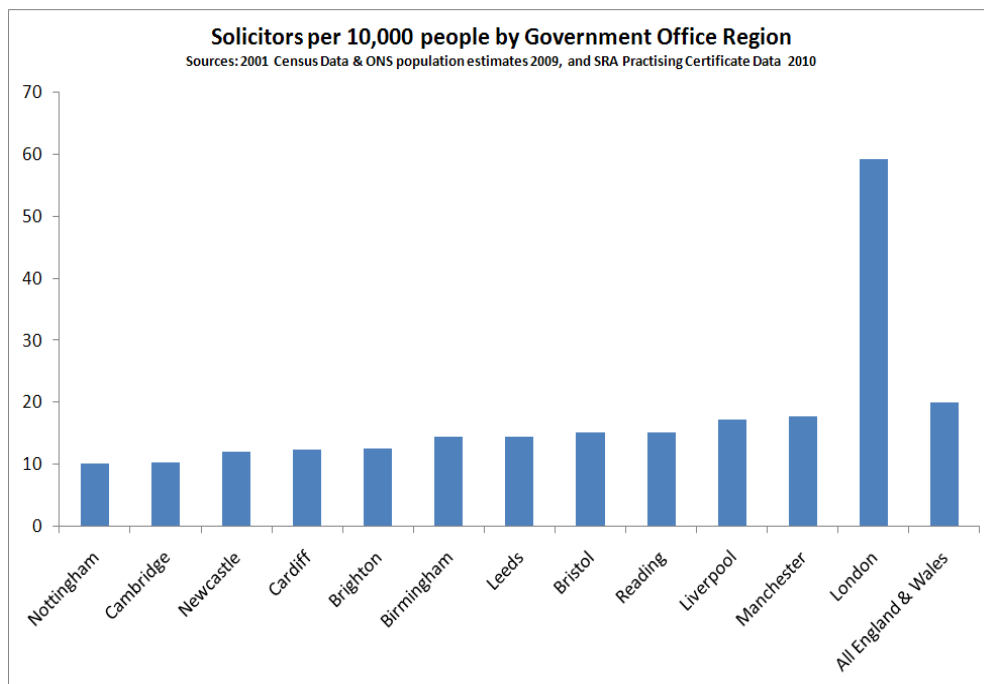
151. The Southeast and Greater London account for just over half (52%) of all solicitors. Given the concentration of large corporate legal firms in London it is no surprise that London and its surrounds serve as the primary cluster for the supply of legal services.
152. Other important regions include the Southwest, West Midlands, Yorkshire and Humberside. Each of these regions account for 7% of total solicitors. This breakdown displays a strong bias toward legal activity in the Southeast – and especially Greater London which itself accounts for 40% of all solicitors in England and Wales. Within Greater London a large portion of these solicitors would be concentrated in the City, signalling the City out as perhaps a ‘sub-market’ within the market of Greater London. Wales, by contrast, accounts for 3% of total solicitors in the market.
153. Given the high number of solicitors working in the Southeast compared to other regions, it might be more accurate to view the market as consisting of two geographical segments. The first segment would be City of London firms while the second segment represents geographic distribution of solicitors operating in all other regions (see chart 14).

Chart 14



154. There are significantly more lawyers per head of population in some parts of the country than others. As can be seen in chart 15, London has more than three times more lawyers per head of population than the next most 'lawyer dense' region, and London accounts for more than six times more lawyers than Nottingham which has fewest lawyers per head of population.

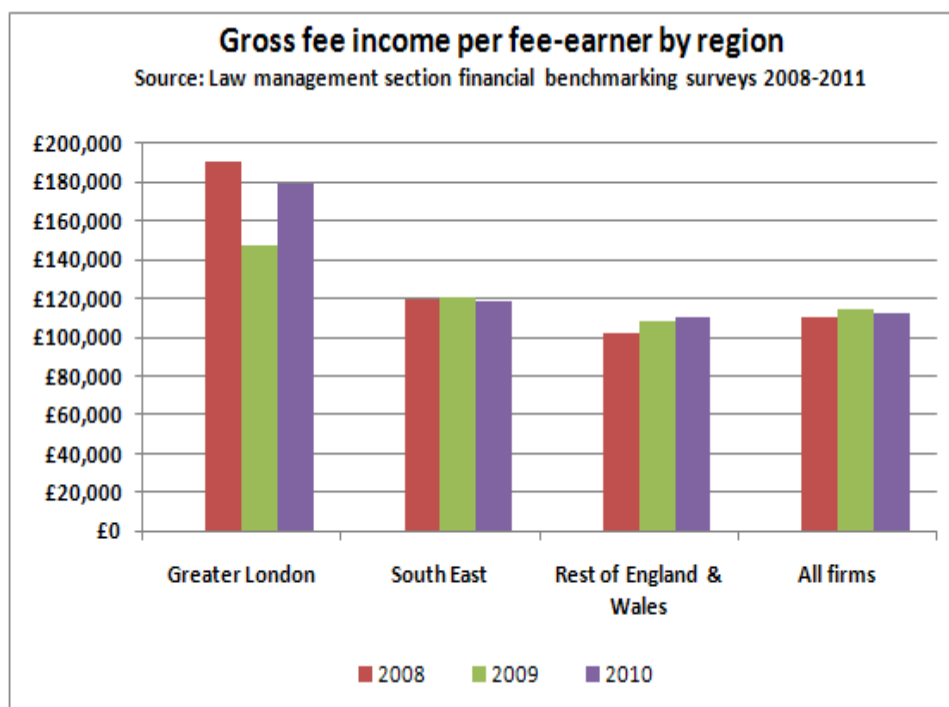
Chart 15



155. It also appears that there is a strong regional difference in income per legally qualified fee-earner. For example, gross fee income per fee earner in London was around £179,000 compared to £110,333 in the rest of England and Wales for 2010. Fee income in London experienced the largest and most rapid recovery from the decline in 2008, compared with other regions in England and Wales (see chart 16).

156. This difference in gross fee income per fee earner in London compared to the regions is probably due to the headquartering of corporate firms in the City of London and the concentration of high value work among London based firms. Large corporate city firms tend to have higher value legal work, often with international links.

Chart 16



157. Among the top 200 law firms by revenue in the UK⁸⁶, almost all of which are based in the Greater London region, the average revenue per lawyer in 2010 was £238,000.⁸⁷

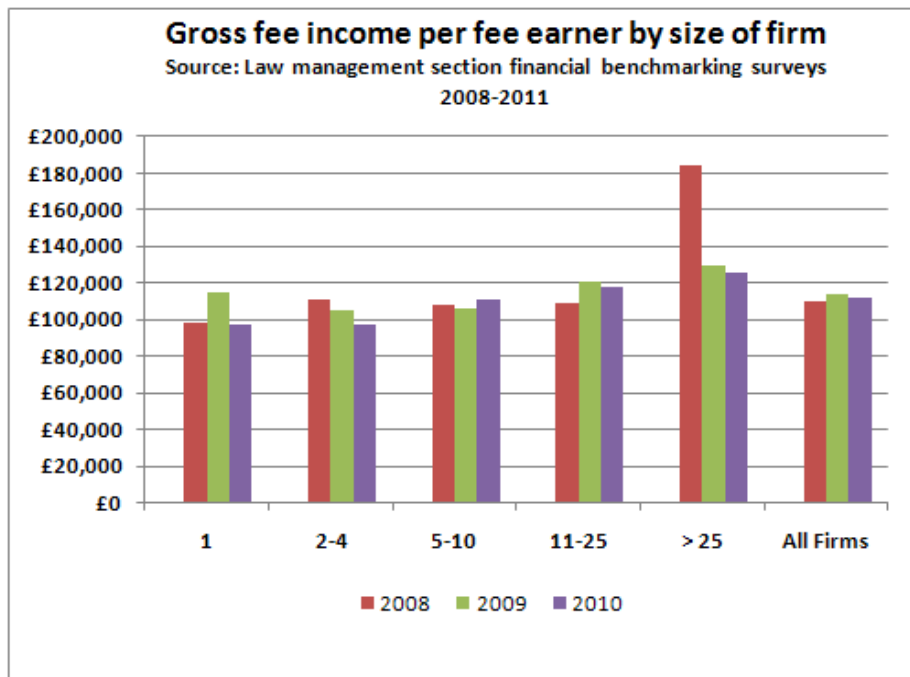
158. Prior to the recession in 2008 the fee income per fee earner of large legal providers (comprising 25 or more solicitors) was two thirds higher than the market average.

⁸⁶ The data for the top 200 UK firms is for all qualifying firms across the whole UK. The vast majority of these firms, however, are based in England and Wales.

⁸⁷ *The Lawyer* 'UK 200 Annual report', 2010. While the report refers to UK firms, almost all of the top 200 UK law firms are based in England, primarily in London and the southeast.

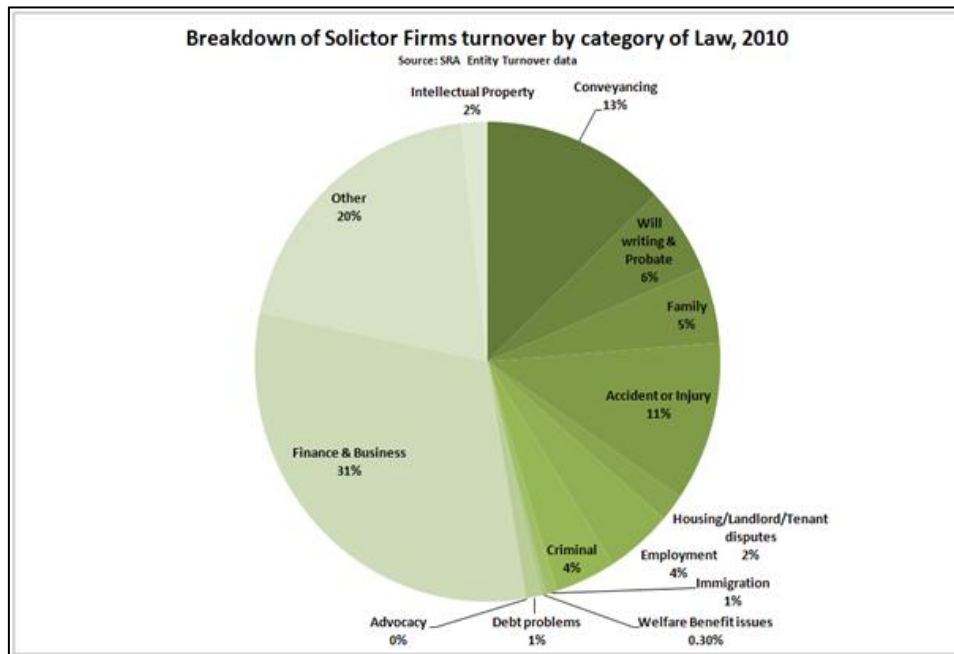
159. Fee income per fee earner in these large law firms, however, experienced a significant decline in 2009 and 2010, but still remained higher than the market average overall (see chart 17).

Chart 17



160. Finance and business transactions accounted for the highest turnover among the numerous categories of law offered by solicitors. These categories of law are typically offered by corporate firms rather than 'high street' solicitor practices. Legal work typically associated with 'high street' services such as conveyancing, housing and will writing/probate contribute relatively less to overall turnover (see chart 18).

Chart 18



Corporate or 'city firms'

161. An important aspect of the supply side picture in terms of value and output are large corporate firms which are predominately based in London and whose enterprises are often international in scope. As already been touched upon above, these firms have the largest turnover by value and employment in the sector.

162. This concentration of large corporate firms in London can be viewed as consisting of a 'corporate level' of the market which differs from the rest of the market in important ways. Firstly, the types of legal services these firms provide are often international in scope and high value. The range of these services include: corporate finance law, commercial law, advice on banking projects, corporate tax advice and dispute resolution (domestic and cross-border). The corporate level of the market is characterised by large corporate entities often with international subsidiaries and generally closely interconnected with other high value professional services such as finance and insurance, which are also clustered in London.

163. Also included in the corporate level of the market are subsidiaries of foreign law firms headquartered in other jurisdictions but have large operations in London. Barrister's chambers are also included in the corporate level of the market where their work is of a specialised nature and high value. The scope of barristers' work is diverse and includes international legal work, commercial law and litigation and advocacy services.

164. A number of large corporate law firms have developed their businesses beyond the England and Wales. These firms specialise in offering a variety of high-end legal services to corporate clients. At the corporate end of the market law firms, in line with their international competitors, have experienced merger activity and a rise in fee income over the past decade. As a result, the corporate end of the market has experienced the creation of a number of multinational law firms, with employment increasing by 18.6% from 2003/4 to 2009/10.⁸⁸ Profits of the largest 100 law firms in the UK increased by 1% in 2009/10 to £4.07 billion from the previous year despite the slow economic recovery in the UK.⁸⁹
165. Many international corporations choose to procure legal services and settle disputes in the UK. London's role as a centre for international finance and the location of many global corporations features as a strong draw card for global firms to do business here and use the English and Welsh legal system. The perceived positive reputation of the legal system and its openness to foreign firms contributes to its attraction.⁹⁰ London's history of dispute resolution and arbitration of international disputes is also cited as an important reason for procuring legal services by international corporations.⁹¹
166. For example, many foreign firms wishing to raise capital (especially commodity producers) decide to list on the London Stock Exchange (sometimes as a dual listing with the Hong Kong Stock exchange) and often contract city legal firms to advise on the underwriting process for market flotation.⁹²
167. English and Welsh law is often chosen for transactions that have arbitration provisions and those contracts that require financing and insurance. The main global insurance market, Lloyds, is located in London and operates under English and Welsh law. Other advantages of English and Welsh law which are cited as contributory factors for London's reputation in exporting legal services include a politically independent judiciary, respected legal professionalism and lower costs for litigation compared to US courts.⁹³
168. The London Court of International Arbitration and the International Dispute Resolution Centre, the Commercial Court and Chancery Division of the High Court, as well as the Technology and Construction Court, serve as venues for settlement of disputes for international businesses and individuals. Their location in London bolsters the city's attractiveness for dispute resolution and settlement

⁸⁸ The headcount of the largest 100 law firms in the UK jumped from 40,230 in 2003/4 to 47,725 in 2009/10. *International Financial Services London*, City Business Series – Legal Services, 2011, p.1.

⁸⁹ *International Financial Services London*, City Business Series – Legal Services, 2011, p.1.

⁹⁰ Jomati Consultants, *Challengers and Choices: The Bar in Flux*, September 2010, p.31.

⁹¹ *International Financial Services London*, City Business Series - Legal Services, 2009, p.1.

⁹² *The London Evening Standard*, 'Law firms may earn £10m in Glencore Deal', 18 April, 2011.

⁹³ *International Financial Services London*, City Business Series - Legal Services, 2011, p.7. More information on the strengths of the legal system in England and Wales and dispute resolution can be found in *International Financial Services London*, 'Dispute Resolution in London and the UK', 2010.

of international transactions and contracts. Significant investment has been made in ensuring that these courts are modern and operate efficiently, while also appealing to international businesses and individuals seeking redress. Investment in these court facilities have been higher than that of some Magistrate Courts in England and Wales, some of which are currently being consolidated.

169. In 2009 over 29,244 disputes, many with an international dimension were resolved in the UK. Most of these were resolved in London. About 90% of disputes handled by international law firms in London involve at least one foreign based party.⁹⁴ The growing attractiveness of resolving disputes by international parties with no participant from England or Wales is shown by the 59% rise in dispute resolution among foreign parties from 3,339 in 2007 to 5,297 in 2009.⁹⁵

170. International legal services are increasingly important in the overall supply of legal services and have experienced significant growth in recent years. For example, in 2009 £3.1 billion of legal services were exported⁹⁶ compared to £1.1 billion in 1999. This represents a 180% rise over a ten year period. Exports of legal services grew faster than domestic legal services. Domestic legal services were £10.4 billion in 1999 growing to £19.2 billion in 2008, an increase of 84% over the period.

171. Over half of the revenue of the largest 100 law firms in the UK is generated by foreign law firms that are based in London. UK law firms have been successful in reaching top positions with several UK firms headquartered in London counted among the top five global law firms by gross revenue in 2010 (e.g. Clifford Chance and Linklaters).⁹⁷ There are also over 200 foreign law firms with offices in London. Many barristers involved in international practice are members of the Commercial Bar Association (COMBAR) who have around 1,200 members, or 7.8% of all barristers.⁹⁸ COMBAR was formed in 1989 to bring together barristers who practice in the field of international and commercial law. The main fields of practice for COMBAR members cover international trade, commodity transactions, international arbitration, insolvency, oil and gas/energy law and European Union law.

172. International arbitration work for barristers has seen a rise in recent years, mainly via the International Chamber of Commerce and other similar organisations. There is an increase in work resulting from hearings relating to

⁹⁴ *International Financial Services London*, City Business Series - Legal Services, 2011, pp.7-8.

⁹⁵ *International Financial Services London*, City Business Series - Legal Services, 2011, p.7.

⁹⁶ Legal services exports are defined as: exported services by law firms or their subsidiaries based in England exporting to an individual or firm residing in a foreign jurisdiction; and barristers providing services to foreign clients. On the definition and information on where legal services are generated from see *International Financial Services London*, City Business Series - Legal Services, 2011, p.11.

⁹⁷ *American Lawyer*, 'Global 100 2010: The World's Highest Grossing Law Firms'.

⁹⁸ *International Financial Services London*, City Business Series - Legal Services, 2011, p.11.

human rights law at the European Court for Human Rights and at the International Criminal Court. As UK businesses look for opportunities abroad there has also been rising demand for barristers to advise on foreign laws and regulations and cross border disputes, as well as English and Welsh barristers to seek rights of audience at Common Law courts in Commonwealth jurisdictions.⁹⁹

173. The exports of COMBAR members totalled £84m in 2009, up from £76m in the previous year. However, not all exports from barristers are from COMBAR members and many barristers that are members of other specialist bar associations also undertake international work. In total, the figure for exports of barristers for 2010 was £152m, an increase of £21m from 2009.¹⁰⁰

174. The global nature of the legal services industry in England and Wales can also be shown by the number of English and Welsh solicitors working in foreign jurisdictions; in 2010 around 6,000 solicitors on the Roll from England and Wales worked abroad for international law firms.¹⁰¹ The supply of legal service professionals working abroad is a growing trend among UK trained solicitors and is one indicator of the growing globalisation of legal services (see chart 19).

Chart 19



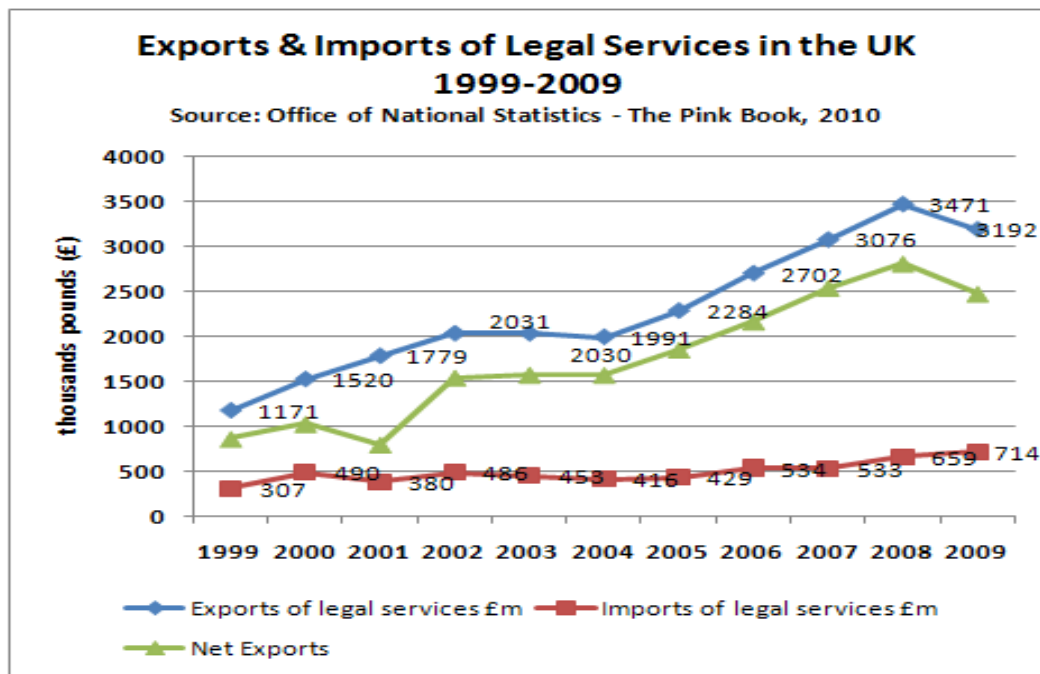
⁹⁹ Jomati Consultants, *Challengers and Choices: The Bar in Flux*, September 2010, p.31.

¹⁰⁰ *International Financial Services London*, City Business Series - Legal Services, 2011, p.11.

¹⁰¹ *International Financial Services London*, City Business Series - Legal Services, 2011, p.4. The number could be significantly higher as not all solicitors abroad have current practising certificates.

175. Imports¹⁰² over the same period rose in value but from a lower base of £307 million in 1999 to £714 million in 2009. However with these high export volumes the UK is a net exporter of legal services (see chart 20).

Chart 20



176. The expansion in legal service exports has become an increasingly important share of the composition of revenue in the sector. This trend is expected to grow, with a significant portion of revenue in 2008/9 coming from growth in emerging markets in Central and Eastern Europe, Asia and the Middle East.¹⁰³

177. In 2010 there were four UK law firms in the top ten firms (by revenue) in *The Global 100*.¹⁰⁴ Two of these were Clifford Chance and Linklaters. In total, there were 12 UK firms listed in the *Global 100* for 2010, between them generating in excess of £12 billion in gross revenue earnings.¹⁰⁵ The international market for legal services has meant that a number of transatlantic law firms have important London practices geared for the UK and European markets. For example, one of the largest UK law firms by gross fees, Linklaters, in 2009/10 employed 2,562 solicitors, of which 60% worked outside the UK.¹⁰⁶

178. The growing numbers of solicitors on the Roll working abroad and the employment of solicitors in international offices in London suggest a deepening of global linkages in legal services. This growing internationalisation of the solicitors' market in England and Wales occurred at the same time as the growth

¹⁰² Imports of legal services are defined as billings of UK businesses from law firms based overseas. See *International Financial Services London*, City Business Series - Legal Services, 2011, p.11.

¹⁰³ See *The Next Wave: Globalisation after the Crisis*, Jomati Consultants, 2010.

¹⁰⁴ *American Lawyer*, 'Global 100 2010: The World's Highest Grossing Law Firms'.

¹⁰⁶ *International Financial Services London*, City Business Series – Legal Services, 2011, p.3.

in other sectors of the economy which rely on high value (and often international) services such as the financial sector, shipping and transport, and which also import and export skilled professionals.

179. Around a half of the UK's top 30 legal firms have outsourced functions to India. Driven in part by the low labour costs of Indian legal graduates, similar training methods and common law legal systems (starting salaries of £4,700 compared to City of London law firms where graduates were paid on average around £36,500 in 2010¹⁰⁷). South Africa is also viewed as a desirable market to outsource legal functions to, mainly because South Africa shares a similar time zone as London and wage costs are lower.¹⁰⁸

Market consolidators

180. The entry of market consolidators in the supply of legal services in England and Wales is probably one of the more important emerging trends in the market. The term 'market consolidator' can mean large retail firms (both within and outside the legal services industry) and also large corporate firms which use economies of scale and scope to offer low cost legal services, often 'bundled' with other related products such as financial services. Market consolidators can also be active in acquiring smaller firms and increasing their investment portfolio.

181. Large corporations are currently focusing on providing legal services capable of a large degree of commoditisation and standardisation, including wills and probate, conveyancing and personal injury. For example, Halifax banking corporation and Co-Op have both launched an online 'pay as you go' legal document production and advice service.

Investment in systems that standardise often repeated processes means that practitioners are able to offer these services more cheaply to clients and at a predictable level of quality and service. While consumers may not be motivated solely by price, they inevitably demand value for money and regard quality and levels of service as important. Investment in innovative ways of delivering traditional legal products is expected to increase as large corporations expand their commoditised legal service products.

¹⁰⁷ *Law and Legal*, 'Law Firms Offer Best Graduate Salaries', 2010.

¹⁰⁸ *Law Society Gazette*, 'Offshoring legal work: do lawyers risk outsourcing themselves', Thursday 27 November 2008.

'ABS law' in the headlines – what it means

Press coverage refers to the emergence of so-called 'ABS law' but generally there is no definitive definition. The term touches on issues around liberalisation of markets, threat of competition to high street firms and the emergence of large retailers offering low cost standardised legal services.

ABS law usually means:

- Corporatisation of law firms through reform of ownership restrictions;
- Cost-competitive delivery of legal services through commoditisation;
- Entry of retailers into legal services and offers their services on the high street.

As a concept, ABS law confuses large corporate retailers such as the Co-Op offering legal services, and the emerging new business strategies of established law firms outsourcing legal processes to low-cost jurisdictions (eg. India, South Africa, etc). This view, however, is driven by what *The Times* has described as 'a feeling that the legal profession operates a closed shop that deters real competition and provides a cloak of mystification not least about fees under which tardiness and obscurity can flourish'. The presence of retailers offering legal services such as conveyancing and wills is viewed as a threat to high street traditional practices, not least because of their cost-competitive advantages of investing in technology (e.g. on-line will writing), employment of lower cost para-legals and bundling services.

The economic case for ABS law focuses on the advantages that a different version of legal service provision provides to consumers. New entrants in any market can improve competitive conditions and the presence of well organised corporate entrants provides new capital and employment. This can encourage existing firms to be more efficient. The operation of corporate entities makes the procurement of legal services cost-effective for the average consumer: bundled legal services can serve as a one-stop shop and provide a greater choice for consumers seeking standardised legal products.

While concern is raised from a supply-side view that high street firms could be displaced by the emergence of ABS law and the 'threat' of competition that it offers, it is equally valid to take the view from a demand-side perspective that consumer welfare will be enhanced by greater choice and lower prices. Given that large corporations such as AA and the Co-Op are already operating in the market, any shift away from high street firms is unlikely to be rapid or necessarily far-reaching for those firms with sound finance positions and local reputation. High street firms will probably still retain the advantage of localised networks and reputation.

Sources: *The Big Bang Report*, May 2009, pp.2-3; *Alternative Business Structures: Something for Everyone*, Stephen Mayson, p.4; *The Times*, May 21, 2009; Rachel Rothwell, 'Solicitors anxious over ABS 'threat'', *Law Society Gazette*, September 20, 2010.

182. In the case of the Co-Op, sales from its specialist retail business in legal services expanded 19.2% from £20.3m in 2009 to £24.2m in 2010. Profits from legal services by the Co-op in 2010 were £3.9m.¹⁰⁹ The Co-Op also views the strength of offering legal services as a basic 'entry-point' to members and also as an inducement for new members to join the Co-Op.

183. Legal services such as wills are also being offered as part of funeral planning and have enabled the Co-Op's legal services business to identify new customers. More partnerships for joint services are planned for the immediate

¹⁰⁹The Co-Operative Group, *Annual Report and Accounts*, 2010, p.24.

future.¹¹⁰ This approach leverages off the provision of legal services (and free legal advice telephone service for members) to cross-sell a wider range of products.¹¹¹

184. Cross selling products encourages repeat purchases and can be seen by customers as a convenient way to purchase services under one roof. The Co-Op group claims it is now one of the leading providers of wills, probate and estate administration services in the UK.

The third sector

185. The Not for Profit (NfP) sector is also an important sector providing legal services to a range of consumers. The NfP sector channels much of its provision of legal services towards areas where access remains difficult due to financial or other reasons. Many of these consumers are 'missed' or generally not served by traditional firms offering standard products and service delivery methods. Asylum seekers and other vulnerable people often fall into this category.

186. The NfP sector provides some of the legal services publicly funded by legal aid through the Legal Services Commission as well as legal services funded through volunteer organisations and *pro bono* work undertaken by solicitors and barristers.

187. In the NfP sector (which receives a large share of legal aid), a number of agencies provide legal advice and representation to clients. These include:

- Citizens Advice Bureaux (CAB) in England and Wales;
- Advice UK branches;
- Law Centres Federation.

188. In terms of scale, agencies in the NfP sector employ the equivalent of between 15,000 and 30,000 people spending time providing advice, much of which is legal or quasi-legal in nature.¹¹² Large agencies such as AgeUK, Shelter and CAB have national-wide networks and have different points of access which include providing advice via telephone, internet and face-to-face meetings. A large portion of NfP legal aid work went to the Immigration Advisory Service (IAS) and Refugee and Migrant Justice (RMJ), both of which were the largest providers of publically funded immigration and asylum legal advice. However, as they have both recently gone into administration this has resulted in a large portion of NfP work on immigration cases going to smaller NfP providers instead.

¹¹⁰ The Co-Operative Group, *Annual Report and Accounts*, 2010, p.24.

¹¹¹ *The Big Bang Report*, p.31.

¹¹² Department for Constitutional Affairs, *Estimating the size and nature of the civil legal advice sector in England and Wales*, DCA Research Series 4/06, March, 2006, p.35.

189. It is estimated that agencies operating in the third sector providing advice and guidance could have up to 4,000-5,000 points of access across England and Wales.¹¹³ Much of the funding for legal advice agencies in the third sector is dependent on public funding from local authority welfare departments and the Legal Services Commission.¹¹⁴
190. Around half of the civil legal advice sector in England and Wales consists of local independent support groups. Local support/resource groups vary in size from those comprising only one or two voluntary staff, to those employing over 30 paid staff.
191. Trades Union are another important source of legal service provision, hiring their own legal specialists to advise members and are particularly active in supplying legal advice about employment and compensation matters. Trades Union also offer members free legal services in relation to wills, general advice about non-employment related issues and, in some cases, free legal representation for criminal matters.¹¹⁵ Trades Union also contract with barristers to provide advice directly to members on employment matters.

Future market development

192. This section considers some of the factors that will need to be taken into account in any future assessment of the impact of liberalisation.
193. Various commentators have discussed the ways in which the market may change. These include consideration of how small law firms may react, the influence of greater access to capital, and new management techniques. Other factors include benefits which may flow from more competition and new forms of service delivery.
194. It is likely that, by increasing competition, ABS will hasten existing trends in the market. These include moves to commoditisation, standardisation, deployment of technology in lowering marginal costs of document production, outside pressure for external involvement, and greater flexibility to raise capital. It is important to note to a greater or lesser extent that these are pre-existing

¹¹³ Department for Constitutional Affairs, *Estimating the size and nature of the civil legal advice sector in England and Wales*, DCA Research Series 4/06, March, 2006, p.35.

¹¹⁴ Department for Constitutional Affairs, *Estimating the size and nature of the civil legal advice sector in England and Wales*, DCA Research Series 4/06, March, 2006, p.45. The current consolidation of funding to legal aid and the reform of its provision will impact on providers of legal aid services. On the current proposals to reduce legal aid spend and reform its provision see Ministry of Justice, *Proposals for the Reform of legal Aid Spend in England and Wales*, consultation paper CP12/10, November 2010.

¹¹⁵ UNISON, for example, provides a broad range of free legal services to members, including free initial legal advice on any matter not related to work from one of UNISON's solicitors. This service entitles members to receive a 30-minute telephone interview.

trends. Allowing ABS will not, of itself, introduce these trends into the legal services market.

Liberalising the legal services market

195. In the legal services market, existing restrictions have the effect of lessening potential competition and creating barriers for certain suppliers to enter the market (e.g. non-lawyer owners). The negative effect of the market not working in the most efficient way means that overall prices for services might be higher than in a more competitive market. In this situation resources (such as labour and capital) are unlikely to be allocated in an efficient way (i.e. where they would have the highest return), thereby creating additional costs which might be passed onto consumers.

196. Examples of liberalisation in other markets such as in Australia, the UK and the Netherlands, suggests that greater liberalisation has generally resulted in lower consumer costs. In Australia, the removal of barristers' monopoly right of access to the courts has resulted in an estimated 12% reduction in costs, whilst in the UK the extension of conveyancing work to non-legal providers resulted in 'lower prices'.¹¹⁶ In Holland in the property market, the abolition of entry requirements for estate agents led to lower prices for estate transactions. Such reduction in cost needs to be assessed in the context of any increase in social costs resulting from the opening of markets. However, the evidence points to a positive benefit for greater competition in professional services than has historically been the case.¹¹⁷

197. It is also pointed out that a more open and competitive legal services market which allows for non-lawyers to own legal firms and focus on service quality and price may go some way toward changing what can be described as a traditional culture in legal services. A stronger emphasis on delivering quality services at a lower cost and in a convenient way to the consumer may see a faster shift away from previous ways of doing business. This culture shift, while difficult to quantify, is likely to be facilitated by more competition in the market and a greater cross sector fertilisation as non-lawyer professionals are permitted to own law firms. These non-lawyer professionals can bring new management techniques to law firms such as management service design, customer insight and client journey mapping as well as packaging other products with legal services.

¹¹⁶ Robert G. Lee, *Liberalisation of Legal Services in Europe: Progress and Prospects*, Cardiff Law School, p.22 [http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/pdf/ab_structure/ccbe.pdf], p.18.

¹¹⁷ OFT, *Competition in Professions Report*, 2001.

198. Liberalisation of the legal services market by the introduction of ABS will allow different business models to develop to cater for different consumer preferences. They will be able to provide consumers with a greater choice about how they get legal services. ABS will be able to organise their businesses in a way that is efficient for them, whilst regulation will create the conditions for all firms to compete on as a level a playing field as possible.

199. However, some problems that exist in the legal services market (many of which are related to information imbalances and are common to other professional service markets) may not be changed quickly or directly by ABS, other than to the extent that it acts to improve incentives to cost efficiency and higher quality across the value chain as a whole. These include:

- Consumers are unable to assess the quality of the advice that they receive from lawyers;
- poor quality legal advice (even if only by a small number of poorly performing firms or individuals) leads to additional costs and is potentially detrimental to the public interest and the rule of law;
- Impact of poor advice on third parties such as unnecessary cases being taken to court and wasting the court's time.

200. More competition and external finance and management increases the likelihood of legal services being delivered via a range of technologies such as over the phone, through the internet and bundled with other services. There is the potential to create innovative ways of delivering legal services. Innovative ways of delivering services may also involve the adoption of technologies that lower the cost of legal services through economies of scale. A more vigorous market may look at ways of reaching more consumers which may have a positive effect by reaching groups who currently have difficulties in accessing legal services.

201. The changes that will take place in the legal services market will affect how both consumers and suppliers will behave and will also have a bearing, in the longer term, on the type and quality of services offered. The extent of the changes will depend on the likely take up rates of ABS. In turn, there are likely to be several factors which will impact on take up rates of ABS. Some of these factors relate to the external environment such as the health of the economy and financial markets, while others relate more directly to how suppliers and consumers respond to changes.

Factors that are likely to influence take up levels of ABS

202. There are four key factors that will influence uptake of ABS. Several of these factors are out of the control of regulators or ABS firms. These factors will depend on the external environment. Other factors are more directly linked to

the behaviour of regulators and how they regulate, which can affect uptake levels of ABS. These four factors are:

- Access to capital finance and health of the economy and financial markets;
- The regulatory environment, including the cost and burden of regulatory compliance (real and perceived);
- Behaviour of law firms – both ABS and traditional;
- Consumer behaviour.

Access to capital

203. The first factor that may influence take up of ABS is the ease in which investment may flow into the market. This will be determined by the external financial environment, interest by incumbent firms to seek investment, perceived value of investment and ease for capital to flow in and out.

204. Access to capital and operation of financial markets will influence the calculation of risk by firms wishing to become ABS. Closely related to this is business confidence and the overall level of economic activity. The speed of take up across the market may vary depending on the type and size of business as well as prevailing economic and financial conditions. Should the economic climate deteriorate, or access to finance capital become more difficult, then this may impact on business' plans to become ABS and therefore result in a long, slow take up of ABS both for new entrants and existing providers.

205. Assuming large companies have greater luxury of financing expansion through raising capital on external markets or using their own cash reserves, mid-tier firms may have a greater incentive to go to public markets to fund their merger and acquisition activities. If the legal services market follows such a path it is likely that mid-tier firms (i.e. those with a turnover of £100-200m) would be among the earlier adopters.

206. Firms which are 'highly cash generative' but with room for expansion, for example mid-tier city law firms with high growth strategies, could be prime candidates for attracting capital from private equity houses. The scope for finding efficiencies could be an important reason for attracting private equity with its access to management consultants and expertise in restructuring corporations in view of delivering greater synergies and focusing on finance bottom lines.¹¹⁸

207. However, the top tier firms are reported to be not seeking private capital due to concern over losing control especially given that equity investment would

¹¹⁸ Climate Change: Forecasting the impact of the Legal Services Act October 2010, pp.7-8.

mean partners would relinquish a portion of their equity stake.¹¹⁹ For top-tier firms, the prospect of becoming ABS in England and Wales may not be so appealing when considering their global operations and complications that may arise with working across multi-jurisdictions, some of which may not recognise ABS operations.

208. There is a risk that external investment and ownership proves only temporary. It is possible that the purchase of shares in ABS is for short-term (speculative) gain only, resulting in an ‘investment bubble’. This risk is, however, partially mitigated by regulation of external ownership and the long term positive benefits of external capital in law firms. This risk, nonetheless, does exist as it is also present in many liberalised markets open to outside sources of investment.
209. Many law firms have significant amounts of debt financing. Depending on the cost of debt versus capital, some firms may look to move from debt financing to equity financing. This will depend, in part, on the attitudes and risk appetite of the banks that provide finance capital.
210. Interest rates and the state of the housing market will have an effect on the volumes of conveyancing transactions which may impact on the decision of a law firm specialising in conveyancing whether to convert to ABS. High cost of capital may dissuade potential would-be investors from purchasing law firms and restructuring them. High cost of capital may also hinder plans for ambitious firms to seek ABS status and expand into different sectors (e.g. finance, property, insurance etc). With fewer external investors and owners interested in the sector, ABS take up might be slower.
211. The introduction of ABS may be appealing for foreign firms as there will be more opportunities to raise capital to fund expansion than in other jurisdictions. However, foreign firms would have to take account of their own regulatory frameworks in making any decision in relation to operating as ABS in England and Wales. Access to, and cost of, capital will be an important determinant in any plan for foreign firms to expand. Other factors will include exchange rates and regulatory checks on fitness to own.

Regulators – a changing approach to regulation

212. The external regulatory environment such as the cost and burden of regulatory compliance, real or perceived, will affect take up rates of ABS. If the ABS regulatory regime is too costly for firms – whether through direct costs such as licensing fees or indirect costs such as time taken to comply with LAs’ rules

¹¹⁹ See *Climate Change: Forecasting the impact of the Legal Services Act October 2010*, pp.7-8; *Legal Futures*, 22 July 2010, ‘Private Equity keen on the biggest and smallest City firms says PE-backed solicitor’; and *Legal Futures*, 12 February 2010, ‘External Capital and law firms – the future’.

and requests – then take up of ABS may suffer as a result and firms may opt to remain traditional law firms. This poses a risk that lifting restrictions on ownership may not necessarily have any real impact on the level of competition and choice for consumers. A lot of this will come down to individual LAs and how they approach regulation of legal services.

213. The analysis presented here is generally based on SRA and CLC regulated firms since together they regulate a very high proportion of all legal firms currently (and expected) in the market. The LSB has recommended to the Lord Chancellor that he should designate both regulators as LAs. Other regulators are also considering becoming LAs.

214. Internal factors such as the regulatory environment and implementation of outcome focused regulation (OFR) and emphasis on a risk-based approach to firms will impact on overall take up.

SRA & CLC

215. The SRA is the largest regulator in the legal services market and in 2010 regulated 10,413 solicitor firms.¹²⁰ There are some areas where the cost of regulating ABS might be higher than for traditional firms (i.e. the marginal cost of regulating ABS). In terms of firms' activities some are higher risk to regulate whether they are provided by traditional or ABS firms, such as conveyancing.

216. The SRA has set its ABS application fee at £2,000.¹²¹ In addition the SRA will charge £150 for individual suitability tests. The SRA's annual licence fee, however, is yet to be confirmed. The CLC has set its ABS application fee at £1,200.¹²² Its annual licence fee is yet to be confirmed. These fees are intended to be broadly cost reflective.

217. The SRA estimates that the average cost of regulation for a traditional law firm is about £1,700 a year. These include: (1) Governance, risk management and compliance costs (£400); (2) Information on financial risk management costs (£90); (3) Information in business model risk (£300); (4) Information on acting in client's best interests (£550).¹²³ This cost might be higher on those ABS firms that are subject to greater supervision due to their more complex ownership arrangements or for other reasons.

¹²⁰ The Law Society, *Trends in the solicitors' profession - annual statistical report*, 2010, p.6.

¹²¹ When the assessment is complete the applicant body will be advised of the level of additional work required to consider their application and an estimate of any additional fee payable, based on the daily rate (£600 per day), plus any additional costs associated with specialist investigations.

¹²² The CLC will charge extra for applications that take longer than 2 days. This will be charged on a rate of £80-100 per hour. Fitness checks will be charged on top and will be £65-75.

¹²³ SRA, *Outcome-focused Regulation: Indicative Costs Benefit Analysis*, November 2010, pp.46-48.

218. The LSA 2007 requires that non-lawyer managers and owners of ABS must be 'fit and proper' people. This means that licensing authorities will have to carry out a variety of checks to determine the person's suitability. This will add costs to ABS. The fees that the SRA and CLC have set for applying for a licence are intended to be cost reflective, so it should not be a major barrier to entry.
219. The LSA 2007 states that all ABS must have a Head of Legal Practice ("HoLP") and a Head of Finance and Administration ("HoFA"). The HoLP will be a lawyer within the ABS who will have a role (along with the ABS senior managers and Board) in ensuring compliance with the terms of the ABS licence, as well as a duty to report any non-compliance to the LA. The HoFA must ensure that the ABS complies with licensing rules made about accounts and must report any breach of those licensing rules to the LA.
220. The SRA will also require traditional law firms to have a Compliance Officer for Legal Practice (CoLP) and a Compliance Officer for Finance and Administration (CoFA). They will have similar responsibilities to the HoLP and HoFA. Since the requirement is consistent for ABS and traditional law firms, there is no marginal ABS-specific cost. However there may be a marginal cost for the SRA in terms of additional monitoring, information gathering or screening. If traditional firms do not have specific compliance posts then there will be an increase in cost to them of complying with the new requirements.
221. There will be a marginal cost to the CLC of monitoring, information gathering or screening information provided by the HoLP/HoFA.
222. The level of complexity of ownership structures and the nature of activities carried out by an ABS can impact on LA costs. The implementation of Outcome Focused Regulation is designed to enhance the capacity of LAs to deliver risk based regulation which allows more targeted regulation and monitoring of high risk firms.
223. This approach is a departure from a prescriptive rules-based regulatory regime. However, there might be additional costs for the regulation of some ABS firms which are deemed as high risk either due to their activities or nature of ownership. This includes increased supervision or risk assessments that results in greater spend in regulating certain firms, including increased costs associated with devoting resources (e.g. labour costs, opportunity cost of time, IT costs).
224. There are one-off and ongoing costs of establishing and operating an ABS appeals mechanism. ABS will fund the set-up and operating costs of the appeals

mechanism for ABS. These costs are covered in detail in the relevant consultation papers issued by the LSB.¹²⁴

Behaviour of law firms

225. The way the market will develop will depend on how the current providers react to the changing environment and the strategy and number of any new entrants.
226. Generally expectations are that although there will be some new entry into the market, it is expected that most of the first wave of ABS will be existing firms that decide to become ABS for commercial reasons. Some of these may be new to offering reserved legal activities. Initially then, while competition may increase, the level and scope of competition would not increase greatly. Existing trends in legal service provision such as commoditisation are likely to continue, as are existing moves to shift routine legal work offshore and achieve greater economies of scale.
227. Small law firms are likely to be the first to see the impact of ABS. However, overall take up of ABS by these firms is likely to be low, though rising in proportion for those firms which form networks and franchising arrangements with other firms. It is likely that the main attraction to becoming an ABS will be the ability to provide non-legal services to existing clients and potentially lower costs through commoditisation of legal products, by developing economies of scale. There may be some consolidation, with small firms being bought as part of an acquisition strategy by larger ones. But the effect of any consolidation is likely to be most marked in the small and medium firm sector of the market.

Increasing entry over time

228. If the number of ABS increases over time this is likely to result in a greater degree of change. A higher take up of ABS may result in private equity investment in second-tier City firms, as well as some new entrants including large retail providers of non-legal services (such as supermarkets and banks). This would enable ABS' to maximise efficiencies by delivering low margin legal products through an already established presence on the high street. There would also be likely to be a strong focus on commoditisation and standardisation made possible by technological delivery and employment of para-legal staff.¹²⁵ In this context, some consolidation may also occur, especially if a large retailer entered the market offering those legal service products that can be commoditised, perhaps bundled with other products such as financial services.

¹²⁴ See Legal Services Board, *Alternative business structures: appeal arrangements*, 5 May 2011.

¹²⁵ See 'External Capital and Law Firms – The Future', *Legal Futures*, February 2010.

229. Consolidation may be driven by legal firms seeking to expand their presence in the market that have the capital to purchase medium sized firms. Some of these purchases are likely to be strategic with a view to partnering with already established providers of legal services, as has been seen with the strategy of Slater & Gordon in the Australian market.
230. If the number of ABS continues to increase we would expect to see involvement of more private equity investing in City firms wishing to become ABS. Trends toward consolidation in the market are also likely to be greater.
231. The entry of one of more retailer offering legal services in this way would invariably place pressure on high street firms to innovate and focus on reputation, quality and niche market. Those firms that cannot adapt to the changed retail landscape may exit the market, while other high street firms might be able to lower cost through creating business networks or sharing sunk costs such as back office functions.
232. Some may form networks and franchise arrangements in order to reap benefits from economies of scale.¹²⁶ For smaller and regional firms, exploiting niche markets could help maintain profits from lower margins for standardised legal work (conveyancing, wills, probate, etc) and provide a way to compete using a range of different forms of product delivery.
233. A higher degree of competition is likely to impact on all sizes of firms, with small firms already facing pressures from existing market trends. As take up rates among competitor firms increases, it is possible that there will be a 'snowball effect' where firms wait until their competitors take advantage of the changes. Upon seeing a competitive advantage more firms are likely to follow. Taking the experience of the Australian market as a guide, this cumulative growth in the market of new business structures occurred alongside an overall growth in the number of traditional law firms.
234. Both new structures and traditional firms expanded in Australia as the market opened up. Likewise, the data to date suggests a similar trend occurring in England and Wales with respect to LDPs. Here, while up take was initially slow, it began to quicken from first quarter 2010 and has remained on the same general trend line.
235. As the intensity of competition increases, cost savings gained from outsourcing¹²⁷ repetitive and routine legal work (e.g. document production, IT

¹²⁶ Moves toward differentiation on the basis of quality and brand-reputation are already underway, the most notable example in the market currently being the franchised network, 'Quality Solicitors'.

¹²⁷ See 'External Capital and Law Firms – The Future', *Legal Futures*, February 2010.

and finance work) are likely to become more of a driving force in law firms' changing strategies.¹²⁸

Consumer behaviour

236. Consumers will make choices between different legal service providers. Over time as consumers get enhanced choice we see this as the major determining factor in the shape of the market. Those firms, ABS or not, who are able to meet consumer needs will be the ones who flourish.

237. New entrants and existing law firms that become ABS may have a greater awareness of consumer needs and more business orientated practices that make them more efficient than many traditional firms.

238. With increasing entry, consumers (including businesses that use legal services) are likely to benefit from lower prices for standardised services. Different business models are also likely to use technology innovatively to lower transaction costs and perhaps offer services in geographical areas where previously they were limited or non-existent.

239. New ways of delivering legal services may also impact on the purchasing decision of consumers. The freedom that ABS brings in terms of organisation of legal practices means that some firms may focus on brand recognition and quality standards to differentiate themselves from competitor firms. A pre-ABS example is *Quality Solicitors* which is a network of firms adhering to service and quality standards.

240. The consumer experience of choice and comparing quotes for legal services is expected to improve. In recent years there has been a shift in consumer behaviour due to the empowerment of internet technology, in particular price comparison websites. This is true of many consumer products and is well advanced in the UK; UK consumers are leaving over 100 million comments a year on websites about service performance.¹²⁹ There is, however, greater scope for such trends to take hold in legal services. Surveys show that 60% of people cannot name a single law firm and 77% of consumers who used lawyers in the last five years did not shop around.¹³⁰

241. Comparison websites have been shown to inform the purchasing preferences of consumers with the result being that the UK has the highest

¹²⁸ LSB, *The Future of Legal Services: Emerging Thinking*, 2010, pp.26-27.

¹²⁹ *Consumer Focus*, 'Unleashing the New Consumer Power, 2010', cited in Steve Brooker, 'The Consumer's Role, *Understanding the Economic Rationale for Legal Services Regulation: A collection of Essays*, Legal Services Board, 2011, p.48.

¹³⁰ Steve Brooker, 'The Consumer's Role', *Understanding the Economic Rationale for Legal Services Regulation: A collection of Essays*, Legal Services Board, 2011, pp.48-49.

switching rate in the EU27.¹³¹ Focusing on traditional problems of reducing search cost, facilitating choice and increasing consumer understanding and confidence when making purchases can change consumer behaviour. This, in turn, can potentially reduce poor service standards and complaints filed against solicitors by disgruntled consumers.

242. Introducing ABS into the market and allowing greater competition may place pressure on firms to differentiate their activities from competitors and seize on the potential for quality and price comparisons to influence consumer purchases. Narrowing the 'information deficit' experienced by some consumers in understanding legal fees and comparing the price and standards across legal services, may empower consumers to change their purchasing behaviour or to be better informed consumers.

243. Consumers who are better informed about standards and prices are also likely to buy from those firms that best suit their preferences. However, there is a risk that consumers may not exercise choice in any significant way. If this results from inertia or from problems of accessing a full range of legal services, this will therefore not automatically improve the quality, price or value of legal services offered in the market.

244. A more open legal services market should mean that consumers will receive more targeted legal services, where and when they demand them, at lower prices and at an appropriate level of quality. Lower prices for legal services can have a positive effect on access to justice for consumers with low incomes. Consumers whose incomes are generally too low to procure legal advice from private suppliers but who do not qualify for legal aid should be able to benefit from falling unit costs of legal services.

245. Also, increased competition among suppliers of legal services and greater provision for different business models may have a positive effect on access to justice as alternative forms of service delivery (internet, phone, bundled services with a retailer) may serve the needs of those consumers who are geographically remote from a high street firm. Application of cost-reducing technologies and greater competition is likely to positively impact on service provision for consumers.

The distinctions between barristers and solicitors

246. All markets have their own individual characteristics. Markets for professional services such as legal services, for example, are often held to have specific traits that might have a bearing on the role and type of regulatory arrangements

¹³¹ Cited in Steve Brooker, 'The Consumer's Role', *Understanding the Economic Rationale for Legal Services Regulation: A collection of Essays*, Legal Services Board, 2011, p.50.

in place to protect consumers. Usually, markets for professional services deal with complex products that consumers cannot, or without great difficulty and cost, be able to assess the quality of services or judge which provider best suits their needs.

247. This difficulty is exacerbated for consumers of legal services because transactions are often undertaken infrequently or when the consumer is particularly vulnerable – i.e. family or criminal matters. The difficulty and costs encountered by consumers in purchasing services is relevant in understanding the market structure for legal services.
248. Economists sometimes refer to the market failure of asymmetric information. By this economists are concerned with the unequal relationship between the lawyer and client. This refers to a situation when a collective technical profession is responsible for providing specialist advice on the initial diagnosis of a problem and is also involved in providing a remedy.¹³²
249. One of the main problems in markets for professional services is that there is often an incentive for the professional who diagnoses the problem to recommend a high cost remedy for it.¹³³ The consumer, on the other hand, is usually inexperienced in such matters and does not, or cannot, have access to full information or the technological knowledge necessary in assessing the quality of the proposed service. This situation potentially creates an unequal relationship between the professional and the consumer.¹³⁴
250. The traditional structure of the market has also defined the conditions of entry to the market for providers of legal services. This can be summarised as restrictive and with a higher cost of entry than in an open market.¹³⁵ The provision of legal services can traditionally be described as a vertical two-level system comprising solicitors and barristers whose work is regulated and structures the market for reserved legal activity around two 'brands'. These brands have specific entry requirements, such as training and vocational/pupillage work, as well as certification).
251. This structure is different from most other markets where barriers to entry are lower, facilitating competitive entry and that capital and labour can move around relatively unhindered. In other markets firms are generally free to choose how to organise themselves and what type of ownership structure (private or public)

¹³² Prof Stephen Davies, *The Economic Implications of Partnership restrictions in the Legal Services Sector and their possible Removal*, Department of Constitutional Affairs, 2005, p.3

¹³³ Prof Stephen Davies, *The Economic Implications of Partnership restrictions in the Legal Services Sector and their possible Removal*, Department of Constitutional Affairs, 2005, p.3

¹³⁴ See C. Decker & G. Yarrow, *Understanding the economic rationale for legal services regulation*, Regulatory Policy Institute, October 2010.

¹³⁵ An open market is one with low barriers to entry and exit (i.e. free access) and competition of buyers and sellers.

best suits them. While having entry requirements for training and professional membership to maintain quality standards deemed essential to the public interest (equal justice for all and independence), restrictions around business structure and ownership can be viewed as lessening competition between organisational forms. Restrictions of this kind can lead to prices that are higher than in a more open market as well as less choice for consumers.

252. However, the problem of asymmetric information remains for the consumer as most consumers will have little or no knowledge about the skills and experience of different barristers, and they typically lack the ability to judge their quality. For many consumers, the demand is exceptional and comes at a time of stress and vulnerability, and there is little opportunity for quality comparison in advance of purchasing the service.¹³⁶

253. While imperfect information is a feature of all markets, in the legal services market there are also public interest arguments concerning the desire for all to access to quality legal services, as well as the integrity of the profession by acting in the best interest of the customer.¹³⁷

254. In the traditional structure of the market competition exists but only at the level of these 'brands' (i.e. between solicitors and between barristers). This occurs under conditions of restriction in terms of entry and movement within the market, and means that competition may be lessened because it would exist only among firms who are similar in terms of business model.¹³⁸ However, the lessening of some restrictions such as allowing qualified solicitor advocates to represent clients as an advocate in the higher courts in England and Wales has helped increase competition between solicitors and barristers for certain forms for litigation.

255. Restricted competition at this level may also reduce the incentive to innovate or offer different services in which to satisfy consumer preference. Overall, the performance of firms may not be as dynamic in a market where such restrictions still apply. If regulators change to allow more vertically integrated firms this may change the behaviour of all market participants.

Overall factors to monitor

256. There are some generalised effects which are likely, over time, to show the overall impact of liberalisation. To understand the impact of liberalisation on the

¹³⁶ Prof Stephen Davies, *The Economic Implications of Partnership restrictions in the Legal Services Sector and their possible Removal*, Department of Constitutional Affairs, 2005, p.3

¹³⁷ Prof Stephen Davies, *The Economic Implications of Partnership restrictions in the Legal Services Sector and their possible Removal*, Department of Constitutional Affairs, 2005, pp.3-5.

¹³⁸ Stephen Mayson, *The Regulation of Legal Services, August 2010*. This has sometimes been referred to 'oligopolistic competition'.

market and what this means for consumers and suppliers, the below factors could be taken into account:

- Increased competitive market for legal services in England and Wales;
- Increased quality of services provided;
- Increase in choice of legal services;
- Greater innovation and alternative service delivery;
- Greater scope for commoditisation of legal products and investment in achieving economies of scale and scope;
- Greater capital investment;
- More confident consumers with better information leading to them making better choices with lower transactions costs;
- New approaches to the management of law firms;
- Exit by small firms that are unable to adapt to competition and/or some market consolidation;
- Falling unit cost of legal service products;
- Increased product differentiation allowing greater scope to compete for niche providers and across specific product ranges.

ABS and Diversity

257. The LSB has a duty to encourage an independent, strong, diverse and effective legal profession. In order to enable a strong legal services profession we regard it important to consider potential diversity impacts on both suppliers and consumers.

258. The LSB consulted on the potential diversity impacts of ABS in our consultation *Approaches to Licensing* in autumn 2009. The majority of respondents agreed with the LSB's position that there was a range of potential benefits to the introduction of ABS that could in turn have a positive effect on the diversity of the profession.

259. However, we acknowledged in our consultation that ABS could pose some risks and could lead to adverse impacts to the diversity of the profession, at least in the short term. We have also discussed the potential diversity impacts of ABS through the LSB's quarterly Diversity Forum of Professional Regulators, in which the Forum members highlighted the need to monitor the impacts closely and take action to mitigate these impacts where possible.¹³⁹

260. Approved regulators (ARs) already collect some diversity data about individual practitioners – either through the practising certificate issue/renewal process or through diversity monitoring surveys. The data is published at

¹³⁹ See the LBS discussion paper on potential diversity impacts in September 2010: http://www.legalservicesboard.org.uk/news_publications/latest_news/pdf/abs_and_diverstiy_v4.pdf

aggregate level, rather than at the level of individual firms or chambers. LSB is currently working with ARs to increase the range of data that is gathered and published. This should help enable the diversity impact of ABS to be monitored more effectively. We expect that the quality and quantity of data collected will improve when approved regulators became licensing authorities and when new forms of regulation are introduced, such as the SRA and CLC's move to outcomes focused regulation which requires greater information gathering by licensing authorities.

261. For solicitors, the Law Society's REGIS database includes information about the age, gender and ethnicity of practising certificate holders. Ethnicity data is known for approximately 88% of practising certificate holders and can be broken down by size of firm and level of seniority. An annual statistical report is produced analysing trends in the profession.¹⁴⁰ The SRA carried out a diversity census in 2009 which was sent to all practising certificate holders. This covered a broader range of diversity strands and included an updated categorisation in relation to ethnicity data.

262. In relation to barristers, the Bar Council also collects data on age, gender and ethnicity of practising certificate holders. In 2010, ethnicity data collected through this mechanism was known for 89% of self-employed barristers and 78% of employed barristers.¹⁴¹ The Bar Council carried out a demographic survey of all barristers in 2010, covering a broader range of diversity strands (including disability, sexual orientation, gender reassignment, caring responsibilities and type of schooling). The response rate was 35% and an analysis of the results has been published.¹⁴²

263. The aggregated data that is available for solicitors and barristers illustrates progress at the entry level for both gender and ethnicity:

- 60% of newly qualified solicitors in 2008/09 were women.¹⁴³ This is in contrast to 25% in 1978/79¹⁴⁴ and 53% in 1998/99.¹⁴⁵
- 53% of those called to the Bar in 2008/09 were women.¹⁴⁶ This is in contrast to 24% in 1978/79.¹⁴⁷
- 28% of newly qualified solicitors in 2008/09 self classified as either black or ethnic (BME).¹⁴⁸ This is in contrast to 13% in 1998/99.¹⁴⁹

¹⁴⁰ <http://www.lawsociety.org.uk/aboutlawsociety/whatwedo/researchandtrends/statisticalreport.law>

¹⁴¹ <http://www.barcouncil.org.uk/assets/documents/Bar%20Barometer,%20March%202011.pdf>

¹⁴² <http://www.barcouncil.org.uk/assets/documents/Bar%20Barometer,%20March%202011.pdf>

¹⁴³ *Law Society Statistics*, 2009 – cf. footnote 6 therein.

¹⁴⁴ *Royal Commission on Legal Services*, Volume 1, p.496 – cf. footnote 3

¹⁴⁵ *Law Society Statistics*, 1999 – cf. footnote 6.

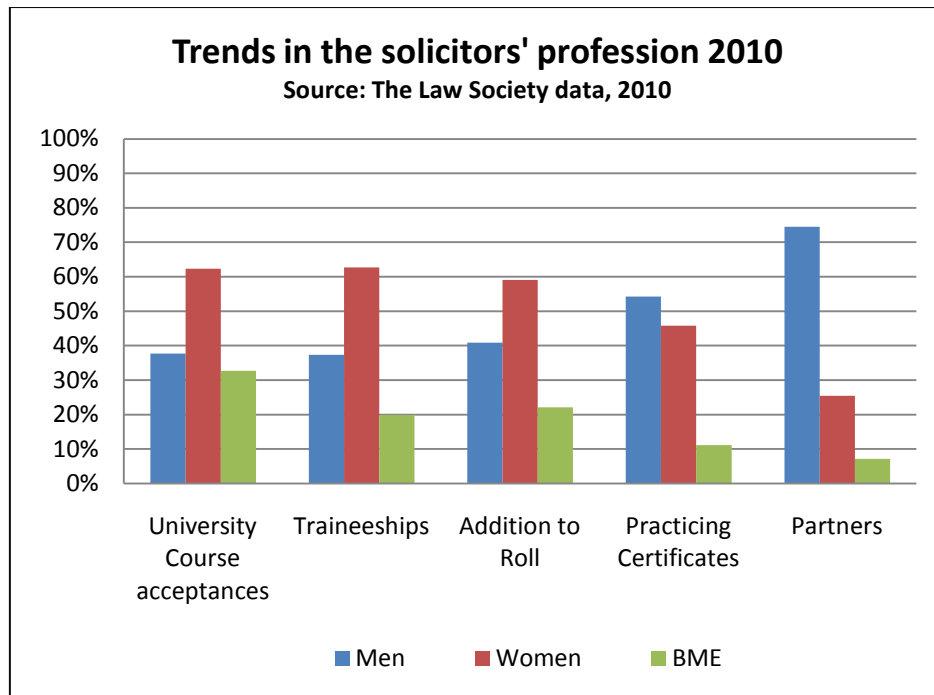
¹⁴⁶ <http://www.barcouncil.org.uk/assets/documents/called%20to%20the%20Bar%20by%20Ethnicity%20and%20Gender%20Apr%202009.pdf>

¹⁴⁷ *Royal Commission on Legal Services*, Volume 1, p.496 – cf. footnote 3

¹⁴⁸ *Law Society Statistics*, 2009 – cf. footnote 6.

- 18.7% of pupil barristers in 2007/08 were BME¹⁵⁰
- 33% of 'home' (UK) students accepting places on undergraduate law courses in 2009 were BME.¹⁵¹

Chart 21



264. These numbers compare favourably with the ethnicity profile of the population as a whole – the 2001 census showed 7.9% of the population was from a non-white ethnic group.¹⁵²

265. However, it is much less clear that progress is being made on retention and progression. Only 22.98% of partners in solicitors firms are women and the latest survey by the Black Solicitors Network shows only 4.48% of partners are BME in a survey of the top 150 firms.¹⁵³ Among the courts based judiciary (as opposed to the tribunals judiciary) 19.4% of judges were women in April 2009, and 4.5% were BME.¹⁵⁴

266. This does not reflect the diversity of the population as a whole, or the rising numbers of women and BME lawyers entering the profession – practitioners who

¹⁴⁹ *Law Society Statistics*, 1999 – cf. footnote 6.

¹⁵⁰ <http://www.barcouncil.org.uk/assets/documents/BVC%20Stats%20210709.xls>

¹⁵¹ UCAS statistics, obtained from Statistical Enquiry Tool <http://search1.ucas.co.uk/fandf00/index.html>. Also from www.barcouncil.org.uk/assets/documents/Analysis%20of%202008%20BME%20and%20gender%20030409.pdf minority

¹⁵² <http://www.statistics.gov.uk/cci/nugget.asp?id=455>

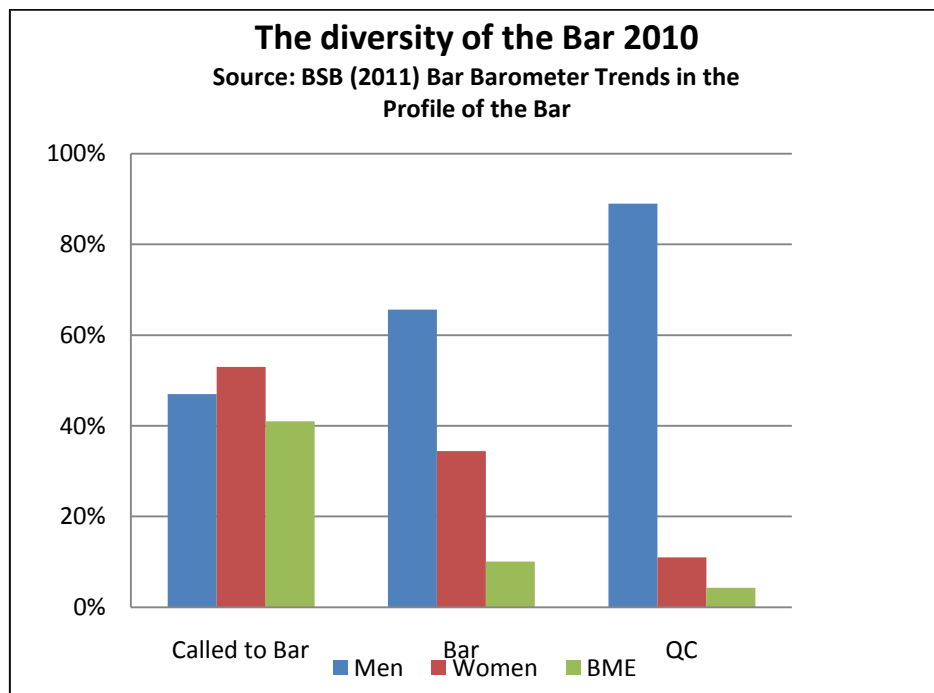
¹⁵³ *Black Solicitors Network Diversity League Table 2010: A Demographic Survey of the Legal Profession*, Table 1 (p.18).

¹⁵⁴ *The Report of the Advisory Panel on Judicial Diversity 2010*, para 20 (p.15).

would otherwise be expected to have a greater representation at higher levels within a firm. There is further evidence that the numbers of women and BME lawyers entering the profession has been increasing for a number of years. For example, in 1996, 58% of students accepted to study law degrees were women¹⁵⁵ and BME students accounted for 13% of admissions across all subjects at all universities¹⁵⁶

267. This cohort is currently at or nearing the stage of being considered for partnership in solicitors firms (8 – 9 years post-qualification experience). However, the anticipated ‘trickle up’ effect has not materialised. Taking diversity among barristers as an example, diversity at senior levels such as Queens Counsel (QC) is overwhelming male, with woman and BME cohorts under represented (see chart 22).

Chart 22



268. While an argument can be made that more corporatized legal firms could offer better and more clearly defined HR policies which could improve the retention of women, this is not necessarily the case in other professions which have operated primarily through corporatized business entities such as the finance and banking sectors.¹⁵⁷

¹⁵⁵ *The Report of the Advisory Panel on Judicial Diversity 2010*, para 2, footnote 19.

¹⁵⁶ *The Report of the Advisory Panel on Judicial Diversity 2010*, para 2, footnote 21.

¹⁵⁷ Examples raised at the LSB’s forum in February 2011 on the diversity impacts of permitting ABS.

269. To this end, there is a risk that the introduction of ABS by itself may not positively impact on equality and diversity within the legal profession. The main drivers will probably be commercial. If consumers demand more diversity there will be strong incentives to provide it among firms. If commercial pressures are such that investments in flexible working and maternity leave are not made then this will have a negative impact.
270. The evidence concerning the progression and retention of women is mixed. For barristers, women constitute 31.5% of self-employed barristers (they constitute 34.4% of all barristers) and 46.2% of employed barristers.¹⁵⁸ Disproportionally, women barristers work in publicly funded areas of self-employed practice (especially family law) and are over-represented among those leaving self-employed practice. The Bar's annual survey of practitioners leaving or changing their practice status show a similar pattern of women departing from self-employed and employed practices but the women's dropout rate from self-employed practice is higher.¹⁵⁹
271. The survey highlights that childcare responsibilities are a significant factor motivating women to leave self-employed and employed practice. There is also some emerging evidence in the two most recent surveys that inflexible working arrangements had declined in importance as identified factors motivating women to leave self-employed practice, while there has been an increase in the importance of financial factors.¹⁶⁰
272. There is a risk that with the introduction of ABS and increasing competition in the market, the increased pressure to lower unit cost through commoditising aspects of legal service provision may result in some less efficient high street and small legal practices to exit the market. Such an exit from the market may reduce the absolute numbers of BME practitioners (assuming that when small firms exit the market the staff of those small firms do not find alternative employment with other legal services providers). However, the exit from the market of smaller firms may not disproportionately impact on BME customers.

Consumers and diversity

273. From a wider diversity perspective the exit from the market of some smaller firms may impact on a select group of BME practitioners, but not necessarily on the majority of the BME individuals who are consumers in the market. As evidence shows, it is price and perceived quality which are the biggest barriers to access legal services.

¹⁵⁸ BSB (2011) *Bar Barometer Trends in the Profile of the Bar*, pp.14-15.

¹⁵⁹ See BSB (2011) *Bar Barometer Trends in the Profile of the Bar*.

¹⁶⁰ *Survey of Barristers Changing Practice Status: 2001-8*, Bar Council.

274. The introduction of ABS and how well the needs of diverse consumers are met has received little attention to date. It is foreseeable that the possible exit of small inefficient firms from the market place may result in a negative impact on vulnerable clients whom they serve in terms of access to a preferred type of legal services provider. It is not clear from the evidence at hand that this impact may be attributed to the introduction of ABS.
275. It is unclear to what extent any adverse impacts from the introduction of ABS will disproportionately affect BME. Such an impact may in fact be transitional and gradual, allowing for adjustment and alternative opportunities to appear in other areas of the legal services industry. Enhanced competition and lifting of ownership restrictions may also see new entrants into the sector, thereby increasing employment opportunities for BME practitioners and will make for a more varied career structure for some. The use of a household brand name in providing legal services could provide assurance to consumers and accessing services from a 'one stop shop' could be convenient for some consumers.
276. Existing trends in the market such as commoditisation and bundling of legal services by large providers are likely to impact more on diverse consumers of legal services. Indeed, new forms of delivery services may have a positive impact on diverse consumers as legal services provision might cater for more niche services, while the adoption of technology by firms could result in low cost access to services for some consumers who cannot access services via traditional means.
277. There is little data concerning the equality and diversity impact on other minority groups such as trans-gender people and people with disabilities. In terms of consumers of legal services, we could envisage that people who are immobile may benefit from increased scope of access and delivery offered by technology (e.g. phone, internet). However, data is lacking in order to more fully understand the impact, if any, that the introduction of ABS into the legal services market may have on these people.
278. On balance, therefore, limited data does not allow us make an accurate forecast of all of the possible impacts relating to equality and diversity. However, in terms of the impact on the diversity of suppliers of legal services, there may be an impact in terms of the composition (and its diversity) of legal service providers, assuming that high levels of competition envisaged may result in inefficient smaller firms that do not innovate or improve productivity to exit the market. This may have a disproportionate effect of female trainees, of whom the majority train in sole practices, small or medium-sized firms, potentially reduce the number of training opportunities for women.
279. There may also be a disproportionate impact on BME lawyers who tend to be employed in smaller firms. Growth in the number of legal and non-legal entities

could increase the number of employment and training opportunities available. In addition, the move away from the traditional partner structures toward corporate business structures, and the wider scope for external capital and management techniques in law firms, could see more varied and better supported career structures for women.

280. The lack of data on demand-side diversity issues such as vulnerable clients, clients with disabilities and trans-gender clients makes it very difficult to identify impacts. However, for disabled clients, we would envisage that greater delivery options of legal services through technologies such as the internet, as well as bundling services under one roof, would have a positive impact.
281. On balance the LSB would expect that introducing ABS into the market better allows for the possibility that legal services will be delivered in a more diverse way than currently, and that the unit cost for some services may fall, benefiting vulnerable and low income consumers. Some benefit may be gained from a move away from the partnership model and permitting external owners with diverse experience of other markets. These factors may counter-balance the possible negative risk associated with introducing ABS. Future monitoring of diversity has been raised and supported in the Diversity Forum and remains a key work theme for the LSB in our planned monitoring of the market.
282. In discussions with regulators and professional bodies it is evident that further research and monitoring is needed to more fully detail the issues surrounding diversity and equality. Discussion with stakeholders, including a forum hosted by the LSB in February 2011 on diversity impacts of ABS, suggested the best assumption is that the introduction of ABS will have a neutral impact on diversity of the legal profession as there is insufficient evidence that ABS will have either more of a positive or more of a negative impact.
283. Increasing diversity and social mobility at all levels of the legal services workforce is a priority area for the LSB. Progress at the more senior levels of the profession in particular has been disappointing and much of the focus has been on gender and ethnicity rather than social background or the other protected characteristics under the Equality Act 2010. The LSB considers that there is a distinct regulatory contribution to be made to achieving further progress. In July 2011 the LSB published its decision document setting out its expectation that approved regulators will:
- Gather a more comprehensive evidence base about the diversity characteristics of the legal workforce by ensuring that every individual is given an opportunity to self-classify against a broader range of characteristics (including age, gender, disability, ethnic group, religion or belief, sexual orientation, socio-economic background and caring responsibilities);

- Ensure the transparency of diversity data, including published summary data about some characteristics (age, gender, disability, ethnic group socio-economic background and caring responsibilities) at the level of individual regulated entities (where approved regulators regulate entities);
- Collate diversity data to give an aggregate view of the diversity make-up of each branch of the profession;
- Ensure the data identifies seniority where appropriate, so that it can be used to track progress in relation to retention and progression; and
- Evaluate the effectiveness and impact of existing diversity initiatives.

284. The LSB will also assess the extent to which these objectives have been achieved by the end of 2012

285. In addition, the LSB's monitoring and post-implementation review of the introduction of ABS will focus on the equality impact associated with both the introduction of ABS, in so far as it is possible to draw a casual connection between ABS and changes in equality, and also with equality issues more generally in the legal services market.

286. Equality and diversity remains a core workstream and focus for analysis at the LSB, and falls within the LSB functions of operating in compatibility with the regulatory objectives set down the LSA 2007.

Further impact work

287. We plan to carry out a full evaluation of the impact of the Legal Services Act triennially with a first assessment planned for Spring 2012. This evaluation will encompass an assessment of all of the reforms introduced through the Legal Services Act, including the introduction of ABS. The evaluation will assess the impact of ABS on the market and investors using this baseline, together with assessments of the impact of wider reforms on the profession, consumers and the public.

288. To support our evaluation work we have carried out a detailed review of the available research and statistical evidence in our Regulatory Information Review, which we will publish shortly. It is intended that the Regulatory Information Review will be publicly available on the LSB website and will have uploaded links and references to over 600 publicly available sources of research and information to assist individuals, firms and regulators better understand the legal services market. The Regulatory Information Review will serve as a repository of openly sourced information and will be regularly updated.

289. The LSB have also started a programme of research to improve our understanding of the supply side of the legal services market, where we hope to publish initial reports later in this year. Some of the analysis on the supply side

of the market involves analysing the different components of supply and will touch on issues around ABS and new entry into the legal services market as the sector responds to changes in the regulatory framework. A detailed description of our evaluation framework is available on the LSB website.