

Evaluation: How can we measure access to justice for individual consumers?

A discussion paper.

September 2012

1 Overview

- 1.1 This discussion paper sets out a range of indicators the Legal Services Board (LSB) is considering in order to baseline access to justice in England & Wales, and monitor how it changes over time. This is to guide the LSB's evaluation of the impacts of reforms against its regulatory objectives, which include having a specific duty to improve access to justice, under the Legal Services Act 2007 (LSA).
- 1.2 Access to justice is a big concept. It permeates every aspect of legal services policy debate in some form, and is relevant to all stakeholders - academics, regulators, funders, businesses, and individual citizens.
- 1.3 The LSB defines access to justice as much wider than access to courts, or the provision of services by authorised persons. This reflects the findings from a range of research using the legal needs survey methodology, and this report draws significantly on the findings of our recent Legal Services Benchmarking survey of individual consumer needs. The Legal Benchmarking survey looked across 28 different types of legal problems¹. In this report we utilise findings in relation to the consumers main legal problem. The survey uses a legal needs approach, and covers the types of problems experienced by individuals, how they responded to them, and the levels of satisfaction with legal services provided. The scope of this research covers both welfare and rights issues and more transactional legal services – a broader range of categories than existing research in this area. This approach to access to justice can be juxtaposed against the views of a wide range of stakeholders, which are discussed and considered through a consumer's perspective in the main section of this paper.
- 1.4 The focus here is on individual consumers, as opposed to charities, businesses, and government. The paper presents a range of possible indicators, considered against the practicality of the cost of getting the required information, and the rationale for including each measure.
- 1.5 It concludes that if the LSB is to be able to monitor access to justice effectively, a range of indicators are required, and invites discussion about these proposed measures. We invite stakeholders to review the published data share with us any evidence we have overlooked. We would welcome feedback on this paper in the coming months. Please direct any feedback to robert.cross@legalservicesboard.org.uk

2 Context for the LSB

2.1 In the LSA, Parliament established the LSB as oversight regulator of the Approved Regulators (ARs) – The Law Society, General Council of the Bar, Council for Licensed Conveyancers, The Chartered Institute of Legal Executives, The Chartered Institute of Patent Attorneys, The Institute of Trade Mark Attorneys, Association of Law Costs Lawyers, Master of the Faculties, Association of Chartered Certified Accountants, and the Institute of Chartered Accountants Scotland. The ARs are responsible for the frontline regulation of legal service providers, who are authorised to undertake reserved legal activities.

2.2 The LSA gives the LSB and the ARs a duty to promote the regulatory objectives, set out in the Act as:

- Protecting and promoting the public interest;
- Supporting the constitutional principle of the rule of law;
- Improving access to justice;
- Protecting and promoting the interest of consumers;
- Promoting competition in the provision of services;
- Encouraging an independent, strong, diverse and effective legal profession;
- Increasing public understanding of the citizen's legal rights and duties;
- Promoting and maintaining adherence (by authorised persons) to the professional principles

2.3 These are wider than the general obligations on the LSB and the ARs to have regard to the principles of better regulation and best regulatory practice; to assist in the maintenance and development of standards in relation to the regulation of lawyers and their education and training; and the need to manage our affairs in accordance with good corporate governance. The regulatory objectives are statutory provisions which bind the LSB and the ARS to a set of outcomes - collective success or failure to deliver will be measured against these objectives.

2.4 The LSB was set up in 2009. The first three years of the LSB's activity was focused on delivery of the key structural elements of the LSA reforms – independence of the approved regulators, establishment of a new complaints handling system and Alternative Business Structures (ABS).

2.5 ABS are firms which are partly or wholly owned or controlled by non-lawyers and which provide legal services or a mixture of legal and non-legal services to the public. Several different models are possible under the arrangements for ABS, which encourage increased competition. This should lead to more choice for consumers, which may result in lower prices. Innovation is increased and firms may make savings through cost-effective operations. It also encourages growth in the legal services market. There are risks associated with ABS, including possible conflicts

of interest between lawyer and investor and, potentially, fewer smaller firms. There are also changes to the scope of legal services regulation are currently under consultation, and there is a major review of the future of legal education and training² to consider.

- 2.6 However, conscious of the challenges in assessing change against the regulatory objectives, in July 2010 the LSB published a detailed description of what each of the regulatory objectives mean³, following a public consultation. A year on, building on research to better understand the legal services market, the LSB published its Evaluation Framework⁴ following wide consultation.
- 2.7 This framework provided the details of how we proposed to evaluate progress towards the outcomes associated with each of the regulatory objectives. In April 2012 we published a Market Impacts of the Legal Services Act – Interim Baseline Report⁵ – pulling together what limited available evidence suggested about the progress over the past five years. This interim report invited readers to put forward additional evidence to enhance the findings of the analysis and interpretation in advance of a final version being published in late 2012, with annual updates thereafter. This Interim Baseline Report focuses on access to legal services, leaving access to justice for future evaluation reports.
- 2.8 This approach to evaluation of the impacts of LSA reform is deemed necessary given the range of outcomes possible, the complexity of the concepts involved, the lack of agreement on what the outcomes might look like, and a general paucity of data and evidence in the legal services sector. Further the LSA is not being implemented in isolation from other changes – the impacts of the recession on demand for traditional legal services, changes to legal aid, litigation funding, and wider impacts of technology all impact the legal services market in different ways.
- 2.9 The next section draws on a wide range of literature and considers how access to justice has been defined by different stakeholders.

3 Defining access to justice

3.1 Access to justice is a complex concept to define, with a range of different views on what it means. This increases the challenge of benchmarking levels of access to justice, since we must first define what it is we are measuring if we are to understand how it changes over time, and what actions the ARs and the LSB can take to address any access to justice issues.

3.2 We take as our starting point that access to justice is a positive thing for society as a whole. A range of research discusses the benefits of access to justice⁶ on commercial activity, individual's health, and as a check on governmental power. The World Bank statement on legal and judicial reform includes an assertion that *"improving, facilitating and expanding individual and collective access to law and justice supports economic and social development. Legal reforms give the poor the opportunity to assert their individual and property rights; improved access to justice empowers the poor to enforce those rights"*.⁷

3.3 In any event, improving access to justice is a regulatory objective of the LSA. However since the LSA does not define it, the question of what is meant by the term access to justice remains.

LSB definition

3.4 The LSB developed a definition as part of its 2010 consultation on what the regulatory objectives mean. Clearly for an oversight regulator, the key element is the relationship between regulation and access to justice. We define access to justice as the acting out of the rule of law in particular or individual circumstances. The tools to achieve that outcome range from informing the public about their rights, routine transactional legal services and personalised advice, through to action before tribunals and courts. The agents of delivery are wide and, of course, legal professionals are at the heart of this along with many other actors in legal services and the wider justice sector.

3.5 The 2004 Clementi Review⁸, which developed the LSA regulatory framework, utilises a wide concept of access to justice. This review considers access to justice along a number of dimensions. These are:

- Consumer focus
 - *"Access to justice requires not only that the legal advice given is sound, but also the presence of the business skills necessary to provide a cost-effective service in a consumer-friendly way."*
 - *"Consumer friendly services, run as commercial concerns, may provide easier and cheaper access to justice to some consumers than might the conventional high street solicitor's firm."*
 - *"Concerns about new practices often ignore the benefits that new service providers could bring. These benefits are not*

only that they can bring about lower costs; it is also that through longer opening hours, sophisticated telephony and advanced customer care skills, they may be able to offer consumers better access to certain other types of legal services.”

- Costs
 - *Access to justice is “an issue about access for those who are disadvantaged and in particular those who cannot afford to pursue their legal rights. The Regulator will be concerned that access is proportionate; it cannot be provided for all issues irrespective of cost”.*
 - *“The issue of costs is an important one: high quality legal services are important to society, but of limited value if available only to the very rich or those paid for by the State”.*
 - *“In general it should be expected that the admission of new capital will increase competition and reduce the cost of legal services, to the benefit of the objective of access to justice”.*
- Proximity of supply –
 - *“Access to justice has a geographic dimension”*
 - *“An argument made against permitting outside capital into LDPs[Legal Disciplinary Practices] is that such owners would seek to ‘cherry-pick’ the best pieces of business, to the detriment of the existing high street solicitor and possibly access to justice. “*
- A strong legal profession –
 - *“A regulatory objective of maintaining a strong and effective legal profession (including setting appropriate entry standards and supporting new entrants to the market) would help to ensure access to justice”*

3.6 For the LSB, justice is more than the resolution of disputes: it includes just relationships underpinned by law. Those rights that in a minority of circumstances might end up being upheld in court cannot be separated out from other legal rights, responsibilities and relationships. The escalation of a relationship (contractual, private or with the state) through disagreement to legal dispute and to legal action and court resolution is all acted out in a legal framework of justice. Justice is underpinned by legal knowledge, legislative frameworks, dispute resolution and the infrastructure of the legal services market and the court system as well as by the outcomes that consumers secure. Access to justice is the securing of these just outcomes rather than the process of dispute resolution.

3.7 Access to justice encompasses services delivered through any channel including face-to-face, telephone or internet. If legal advice is to become more accessible and, by implication, more affordable then legal services must engage more constructively with alternative forms of distribution beyond the traditional. These services can also be ones not tailored to the individual such as information services on the web, in leaflets or any other form. Access to justice encompasses services both individually tailored and those tailored to groups or provided to potential consumers. That

means access is provided by authorised persons and the wider legal services industry, related professions and related advice bodies in the public, commercial and third sectors.

3.8 This encompasses the whole range of consumer groups, problem types, and services required, as set out in the Oxera framework⁹. It also recognises that consumers of legal services are not homogenous, and the fact that their experience of and response to legal needs, as well as their preferences for service delivery, vary significantly.

Other stakeholders' definitions

3.7 The LSB is a relatively new organisation, and does not operate in isolation to the rest of the legal services environment, nor does it operate in the interests of any specific group, but rather takes a balanced view against the regulatory objectives as a whole. With this in mind, in developing this proposed set of measures, we have reviewed a wide range of literature to understand how others define access to justice. These are considered below.

3.8 The origins of the term access to justice are unclear. A review of 151 different Acts of Parliament found¹⁰ no statutory definition of access to justice despite the continued use of the term. A review of Hansard found frequent use of the term but no definition¹¹. The most common statutory reference is to the Access to Justice Act 1999, which focused on funding of litigation and legal aid.

3.9 A judicial definition was put forward by Lord Diplock in the case of *Attorney General v. Times Newspaper Ltd* (1974). Lord Diplock defines access to justice as citizens having access to courts of law for impartial decisions of disputes. This was further enhanced in the case of *Bremer Vulkan Schiffbau und Maschinenfabrik v South India Shipping Corp* (1981), where Lord Diplock stated *"Every civilised system of government requires that the state should make available to all its citizens a means for the just and peaceful settlement of disputes between them as to their respective legal rights. The means provided are courts of justice to which every citizen has a constitutional right of access in the role of Plaintiff to obtain the remedy to which he claims to be entitled in consequence of an alleged breach of his legal or equitable rights by some other citizen, the Defendant. Whether or not to avail himself of this right of access to the court lies exclusively within the Plaintiff's choice; if he chooses to do so, the Defendant has no option in the matter; his subjection to the jurisdiction of the court is compulsory."*¹² The focus on dispute resolution in courts is the key theme.

3.10 In a case concerning the removal of an individual from the UK, the opportunity to access a legal adviser was seen as key to access to justice: *"in the limited time available between serving the removal directions and the actual removal, it is frequently almost impossible that somebody served with removal directions will be able to find a lawyer who would be*

ready, willing and able to provide legal advice within the time available prior to removal let alone in an appropriate case to challenge those removal directions. There is a very high risk if not an inevitability that the right of access to justice is being and will be infringed".¹³ Other cases enshrine the right of access to legal advice for prisoners¹⁴. However more recently in a case concerning teenagers' rights in relation to detention, it was found that access to justice was not impeded by the failure of those detaining them to inform them of their rights.¹⁵ It is reasonable to conclude from this that access to justice is a flexible concept depending on the individuals affected.

3.11 The first major investigation into access to justice in was undertaken by the Florence Access to Justice project in the late 1970s and early 1980s. This was an international project which brought together academics from across the world to debate the issues relating to access to justice. This movement started from a 1973 study¹⁶ which was a large comparative study of the quality of justice – defined as the minimum standards of judicial fairness. This looked at the question of what is justice. The next step was to consider who has access to this justice system – i.e. justice for who - which culminated in the Florence Access to Justice Project (FAJP). The project observed that *"The words "access to justice" are admittedly not easily defined but they serve to focus on two basic purposes of the legal system – the system by which people may vindicate their rights and or resolve their disputes under the general auspices of the state. First the system must be equally accessible to all and second it must lead to results that are individually and socially just.*"¹⁷

3.12 This project identified a range of barriers to access to justice and ways of addressing these, which have been adapted and added to since. The FAJP talks of three 'waves' to address problems with access to justice, and subsequently others have identified a fourth and a fifth wave¹⁸.

3.13 These five waves are:

- I. Legal aid – funding for individuals for legal advice and representation before the courts, with legal aid funding provided for over two million consumers in 2011/12.
- II. Public interest law - *"Give representation to diffuse collective interest through such mechanisms as class actions public interest lawyers and the granting of standing to sue to consumer and environmental groups.*"¹⁹ E.g. Equalities & Human Rights Commission, taking legal action against those who discriminate on behalf of society as whole, or Citizens Advice campaigning on behalf of consumers.
- III. Informal justice such as alternative dispute resolution - *"The renewed focus on informal decision making, on small claims courts, and even for the first time the reorganisations of the systems for delivering legal services – through*

- paraprofessionals, legal insurance and group and prepaid legal services can be seen as part of this movement*".²⁰
- IV. Competition policy – used to ensure markets operate effectively minimising the occurrence of legal disputes, through organisations like the Office of Fair Trading and the Competition Commission.
- V. Requiring organisations to create access to justice mechanisms for their customers, employees, and other stakeholders - *“creating and improving everyday justice practices, rather than relying solely on elaborating professional systems of justice that are only ever utilized by the rich and the desperate”*.²¹ For example internal employee dispute resolution mechanisms to minimise direct escalation to a tribunal.

3.14 These waves imply that access to justice is comprised of a collection of different elements outside of courts. To some extent they reflect the consideration that *“Courts are expensive and often very slow and these features are aggravated by formal even formalistic procedures. Lawyers are charged with the task of assisting individuals in making use of the law and enforcing their rights, but violations of those new rights often generate claims of a small economic value, so that lawyers as a rule cannot economically handle them”*²². The courts should therefore be reserved for the most serious of issues that cannot be resolved through other means.

3.15 However, a large part of the discussion on access to justice focuses on funding of civil litigation, predicated on the view of the forum for determining justice – justice is only dispensed in court and is access to justice only real where an individual has the means to, if necessary, take a case to court. This must be a credible option if rights are to be enforceable.

3.16 The 1996 Lord Woolf report in to access to justice²³ focused on access to the courts – defining a number of principles the civil justice system should meet in order to ensure access to justice. These were:

- be just in the results it delivers;
- be fair in the way it treats litigants;
- offer appropriate procedures at a reasonable cost;
- deal with cases with reasonable speed;
- be understandable to those who use it;
- be responsive to the needs of those who use it;
- provide as much certainty as the nature of particular cases allows; and
- be effective: adequately resourced and organised²⁴

3.17 Under these principles access is afforded by costs, clarity and certainty as to outcomes. This focus on recourse to the courts is based on an interpretation of access to justice as the ability to enforce legal rights, and justice can only be assured where the ability to access a court is

credible. To quote a recent speech *“the Courts provide not just a dispute resolution service, there are many dispute resolution services that can be obtained, the Court provides a law enforcement service. The Courts underwrite the rights we have, without rights there is no civilised society and we know there are many societies in the world where rights are not worth very much, because they are not effectively enforced”*.²⁵

3.18 Some of the recent reaction to the Lord Justice Jackson proposals on the funding of civil litigation²⁶ and the amendments to the legal aid funding regime have focused on its likely negative impacts on access to justice. Broadly the argument is that the removal of ‘free’ advice for consumers, or an increase in costs they may face, will remove their ability to enforce their rights. This could be against landlords, for example, in relation to housing disrepair, or their right to compensation following a failure of quality of care by the NHS. In short the costs of legal services for an individual could prevent access to justice on the basis that justice is delivered through the courts as the independent adjudicator, and the system is complex enough to warrant the need for a legal adviser to help the individual navigate the complex justice system.

3.19 Taken to their logical conclusion these arguments might suggest that access to justice has such a high level of public good, as to mean lawyers should be free for all so that the enforcement of rights is universal and everyone has equal access to legal services. However, across the world legal aid schemes have always been means tested, and focused on priority problem areas, and not universal. This is true even in England & Wales, where at £39 per capita legal aid expenditure is among the highest in the world²⁷, with around a third of the population being eligible for some form of civil legal aid in 2007²⁸. As in many areas, government makes a decision on the best allocation of finite resources: *“Access to justice through legal aid is not an unlimited free good. Legal services procured through legal aid are delivered with finite resources which need to be managed within the government’s three year spending regime and judged alongside other priority areas, such as health and education. The challenge is to ensure access to justice within available resources, and to make the best possible use of the budget so that it supports the aims of the justice system”*.²⁹

3.20 The issue of finite state resources is recognised in the European Convention on Human rights. Article 6 of the convention sets out the right to a fair trial and specifically states that everyone charged with a criminal offence has the minimum right to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require. However this is less specific about funding for civil legal aid, but it has been held that in considering whether the right to a fair trial has been met on a case included a consideration of the granting of legal aid, but at the same time recognising finite resources. Key is that the access to the court to enforce rights should be a viable realistic open option to all and not theoretical and illusory.

3.21 However, society as a whole is not equal and some consumers have access to greater financial resources than others i.e. there is inequality of arms. The FAJP identified this as a key issue with the main author stating, *“Optimal effectiveness in the context of a given substantive law could be expressed as complete equality of arms – the assurance that the ultimate result depends only on the relative legal merits of the opposing positions, unrelated to the differences which are extraneous to legal strength and yet as a practical matter affect the assertion and vindication of legal right. This perfect equality of course is utopian as we have already implied; the differences between the two parties can never be completely eradicated. The question is how far to push toward the utopian goal and at what cost”*³⁰. For the purposes of this discussion we note that decisions on the allocation of finite resources are not the domain of the LSB. Rather our objective is to facilitate a market that improves access to justice.

3.22 Having presented the LSB definition against the dispute centric view on what access to justice means, the next section of this paper looks at access to justice from different perspectives. These perspectives are driven by the consumers of legal services, as part of building a set of proposed measures of access to justice in section 5.

4 Access to justice perspectives

4.1 From the LSB's regulatory oversight viewpoint, access to justice while encompassing representation in courts whether civil or criminal, and issues of affordability, should be drawn much wider. We consider access to justice across five dimensions:

- I. Frequency of different legal issues
- II. Consumers' response to legal problems
- III. Geography of access
- IV. Technology and delivery of legal services
- V. Affordability of legal services

These are discussed in turn below.

Frequency of different legal issues

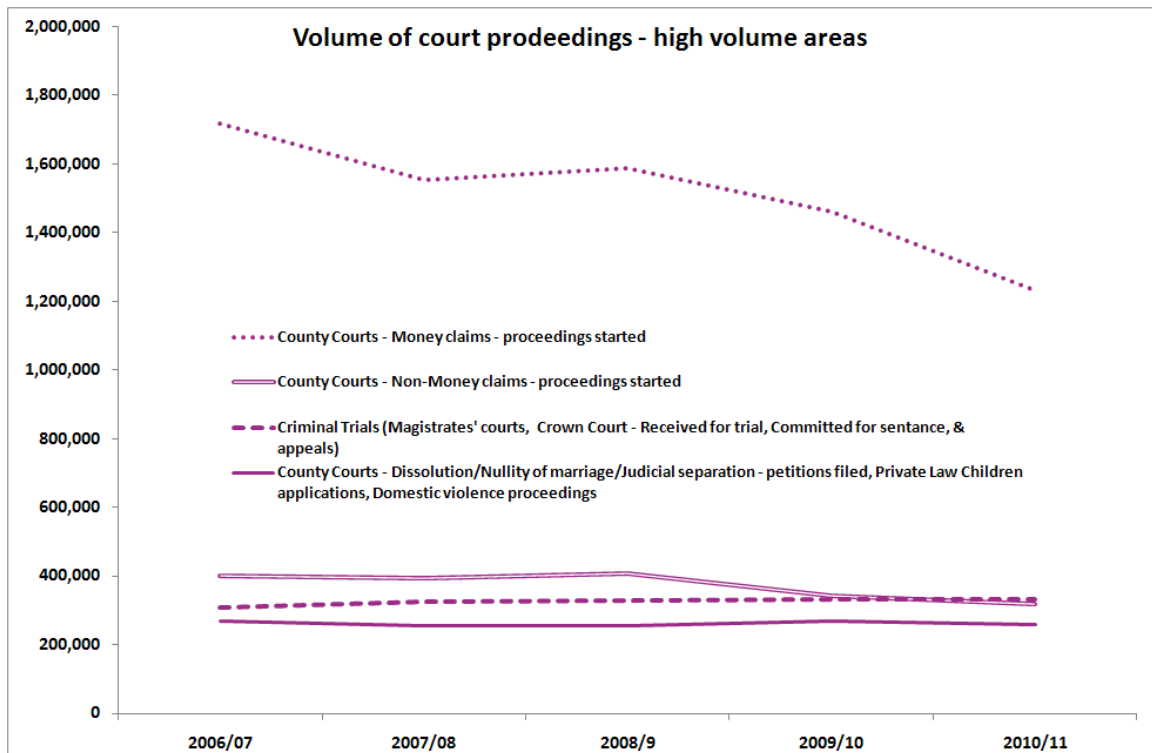
4.2 If we define justice as access to the law and enforceability of legal rights, a focus on funding of litigation before the courts belies the fact that the majority of consumer interactions with the law take place outside of the court: *"It is well known only a very small proportion of proceedings in the formal judicial machinery ever reach the stage of a full trial by a judge. The trial of actions in the ordinary courts of law is not the norm, but the exception; the impartial decision of a judge at a plenary trial between the parties is a comparatively rare occurrence"*³¹. The regulatory objective of improving access to justice does not suggest focusing only on those consumers who actually bring cases to court, but rather for society as a whole.

4.3 From a consumer's perspective this drives the question of what is the law for? High profile criminal justice and civil case are clearly a vital part of the law but these are only for the minority. The majority of consumers of legal services are using a range of different methods to undertake a legal transaction – for example conveyancing, probate, or straightforward divorces. Litigation represents a comparatively small volume of cases – all be it very important ones - normally in relation to a crisis of some form. The most voluminous type of proceedings in front of the courts is in fact to recover unpaid debts, show in Figure 1 below, as opposed to divorce or criminal justice proceedings. Further, law provides the framework in which society operates. This an important consideration because, *"the vitality of a market democracy premised on the rule of law... depends on the success with which law manages to serve in fact—not merely on the books—as the fundamental organizing principle of the institutions and relationships of the ordinary citizen. Is law routinely available, for example, to consult before deciding how to choose between market options, or to evaluate how one has been treated in a relationship governed by legal principles? Or is law merely alive in moments of crisis?"*³².

4.4 Further, litigation is not a normal state of affairs in which to find oneself. As one contributor to the FAJP stated *"Litigation is inconsistent with a vigorous active market ; the market thrives best when people do not break off*

commercial relations and sue each other at the least trouble or disagreement rather they absorb their losses in the short run and keep on trading. Legal agencies which are careful and slow which handle each transaction individually interrupt the rapid flow of trade. For a healthy economy then parties must stay out of court except as a last resort.”³³ There is no apparent reason why this view does not remain true today.

Figure 1. Volume of court proceedings



4.5 Taking conveyancing as an example, with 795k residential property transactions in England & Wales in 2010/11³⁴ – assuming a buyer and a seller for each transaction - there were approximately 1.6m individual consumers interacting with the law in relation to this area alone - excluding house sales that fall through and remortgage applications. This would have been 3m in 2006/07. Compare this to the volume of family law proceedings in court where the combined number of proceedings in relation to divorce and judicial separation was 123k, and assuming two parties to each set of proceedings this would mean around 246k individual consumers interacting with the law in this area³⁵. While the legal rights issues in each of these areas are clearly very different, and perhaps resolution of access arrangements to children fit more neatly with traditional concepts of justice than the process of a property transaction, they are all part of the consumer’s interaction with the law, and justice.

4.6 A key part of the initial thinking on access to justice appears to have been that around access to legal services: “*legal assistance means more than simply representation in court. It implies help in making people aware of their rights in order to plan their important transactions; indeed at its best it helps*

people to participate more effectively in the basic private and governmental decisions that affect their lives".³⁶ The motivation for individual consumers seeking advice demonstrates the range of reasons why people seek legal advice³⁷. Further thinking about sources of advice used, shown in Figure 3 below, and the types of advice received in Figure 4, show that traditional legal services professionals are not used in all circumstances, and where they are, they are used for a wide range of activities – not just in court.

Figure 2. Motivation for seeking advice

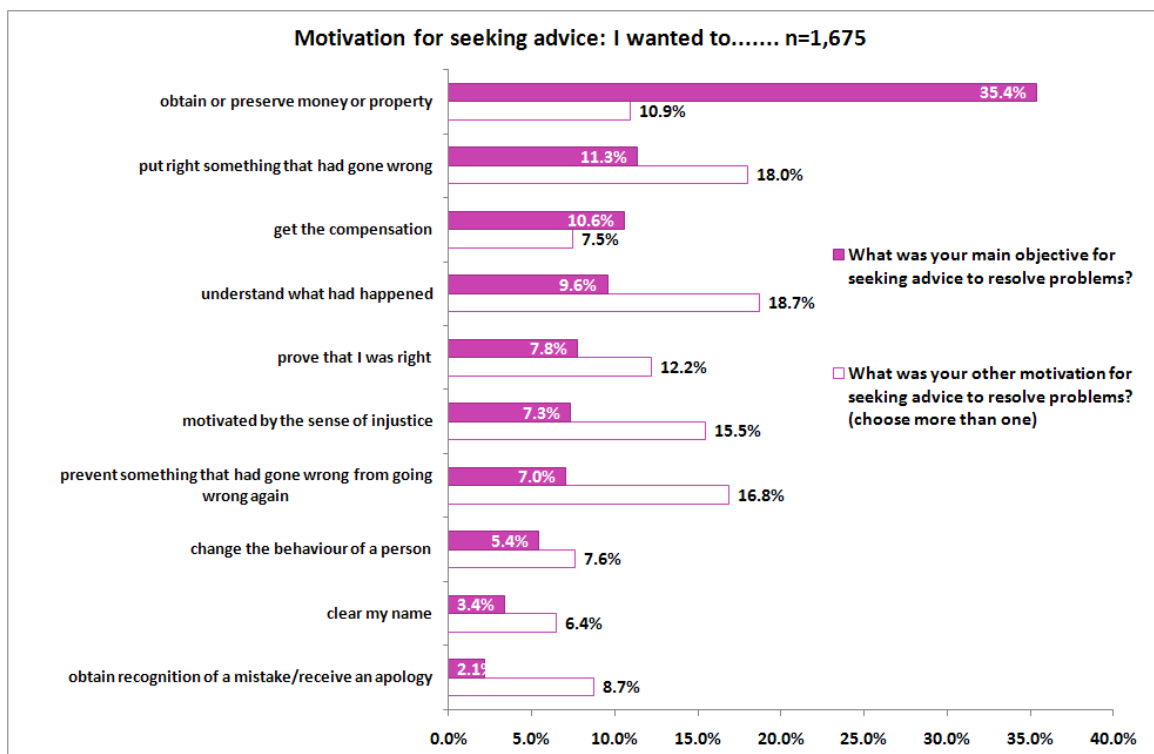


Figure 3. Sources of advice by problem type (n=1675)

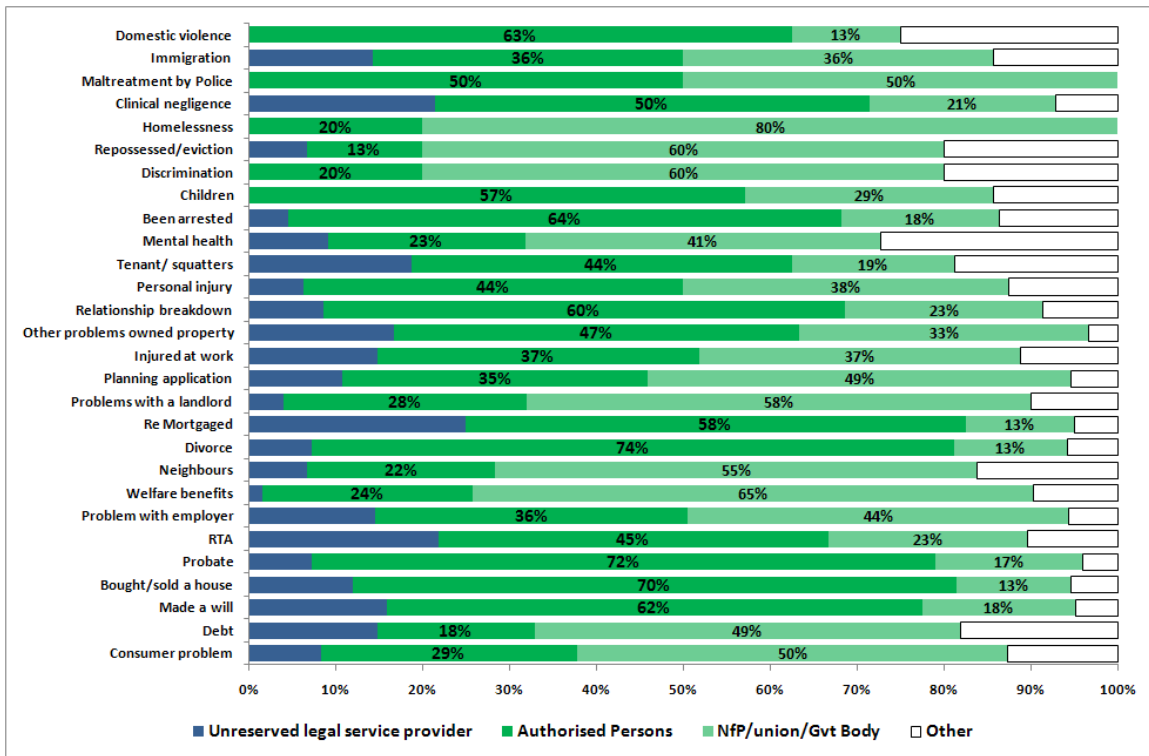
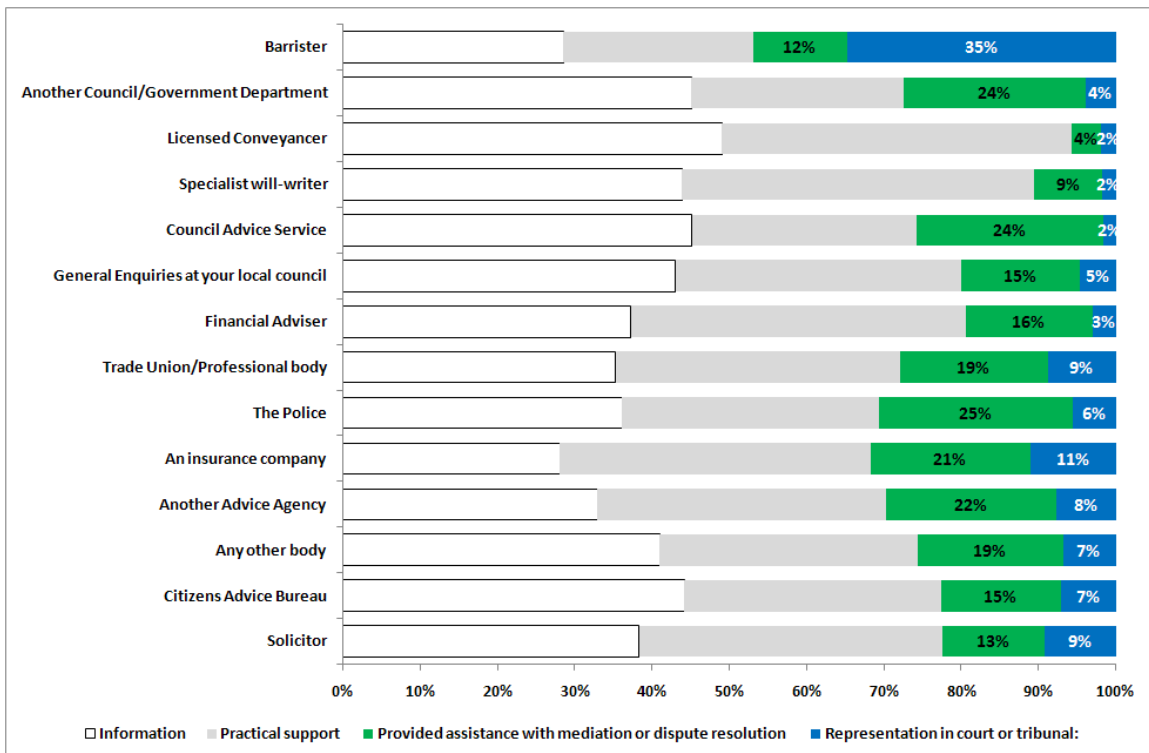


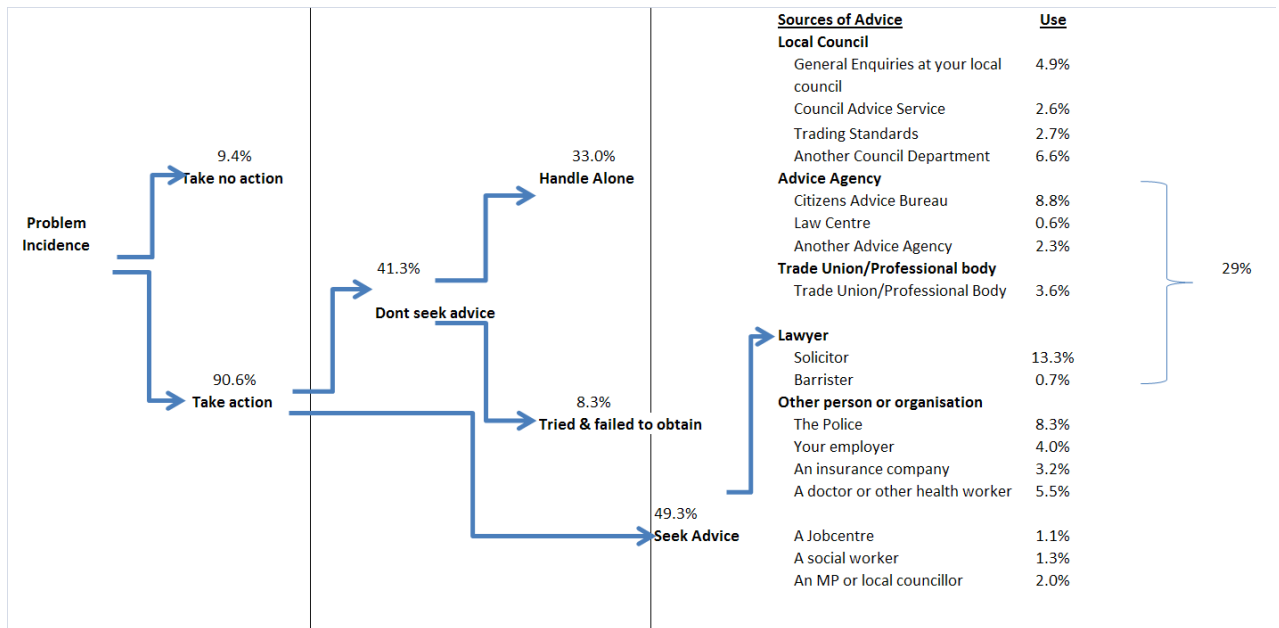
Figure 4. Advice received (n=1675)



Consumers' response to legal problems

- 4.7 The framework developed in legal needs surveys affords a more insightful consumer based understanding of how individuals experience and respond to legal problems, beyond disputes in front of the court. This gives us the ability to consider access to justice beyond traditional dispute based dimensions, such as enforcement of rights before the courts, and look at how consumers react to legal problems.
- 4.8 Using the findings of the 2006-09 Civil & Social Justice Survey for example, 36% of the adult population experience a civil and social justice problem over a three year period. Of these 9% take no action and 49% seek advice. Only 29% seek advice from traditional forms of legal adviser. Further, only 13.3% sought advice from solicitors. A simple flowchart of this process is shown in Figure 5 below.
- 4.9 Considering access to justice only in terms of dispute resolution overlooks these different dimensions of how consumers respond to legal issues. While this research shows that the likelihood of seeking advice increases with seriousness of problem, it also identifies a key factor in determining how people respond is the extent to which people characterise problems as 'legal' drives behaviour³⁸. Characterisations vary by individual demographics and by problem type. The Civil & Social Justice Survey findings show that while around 80% of Personal Injury problems are classified as legal, this falls to around a third for Rented Housing problems. *"Action take depends on characterisation of a problem as legal - Overall, whereas respondents said they would seek help from a lawyer in relation to 44% of problems characterised as legal, the same was true of only 11% of problems not characterised as such. For example, when problems concerning home ownership were not characterised as legal, just 11% of respondents suggested lawyers as a source of help. This rose to 55% when problems were characterised as legal"*³⁹.

Figure 5. Response to civil justiciable problems, Civil & Social Justice survey 2006-2009



4.10 The different responses vary across different categories of law, but as a minimum highlight a need for better information for consumers to help both identify legal problems and the services available to assist them in deciding how to respond. Simplification of the law, public legal education, less formal dispute resolution procedures, advertising of services, and free legal advice are all activities that have been undertaken to address these problems. There is a direct link between these and the five waves of access to justice.

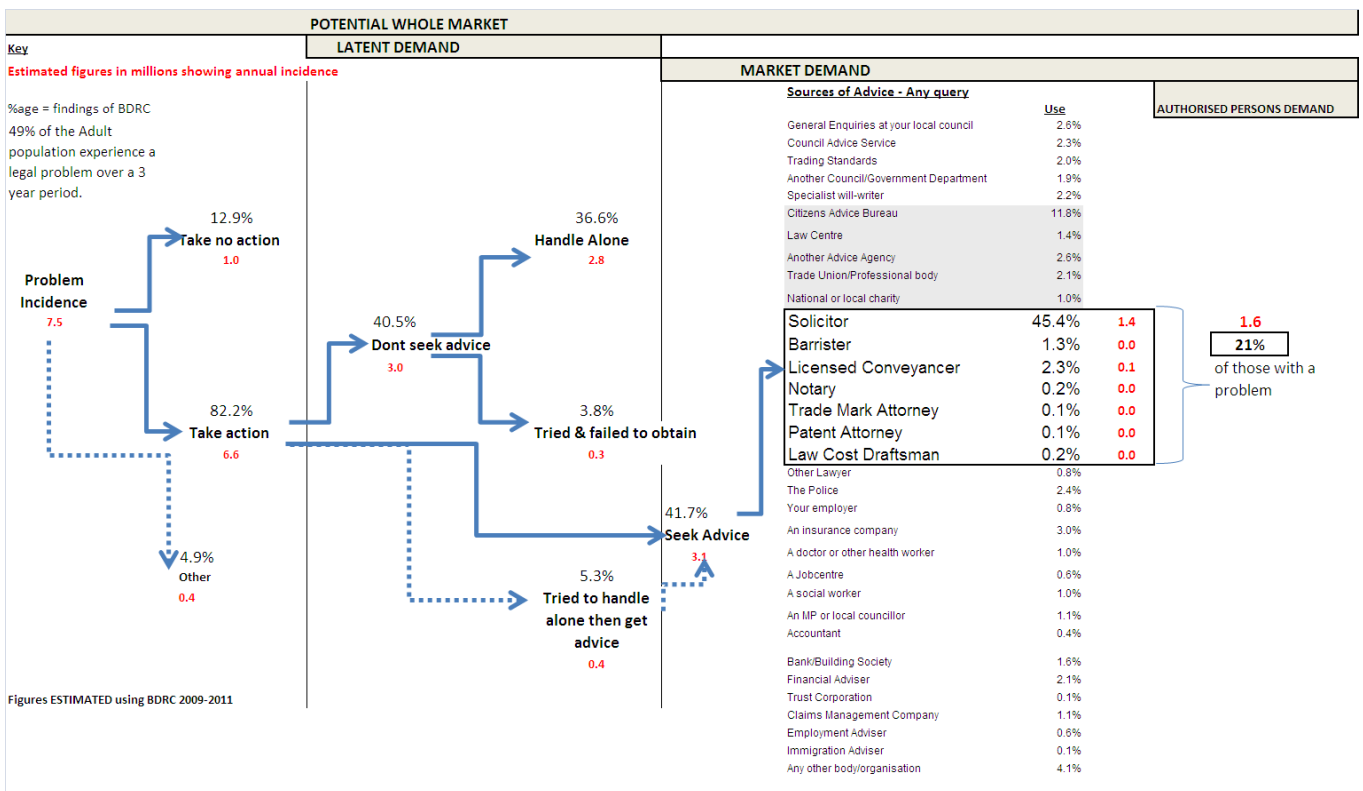
4.11 A wide range of surveys show consumers in need of more information about legal services. In one 2009 survey 28% complained about the general lack of information available on the law⁴⁰. Another survey about consumers' attitudes to the purchase of legal services reported that "*legal processes and procedures were often regarded as somewhat of a "black box", a service or process that is purchased without fully understanding exactly what is being provided, and what is involved in the service. The purchase of legal services is therefore approached with some trepidation, although recommendation tends to provide reassurance. There is also a general perception that legal services are expensive, and therefore concerns about cost and affordability*".⁴¹

4.12 The 2012 Benchmarking Legal Services survey⁴² using the same legal need methodology looked at 28 different problem types experienced by individual consumers. This is wider in scope than the Civil & Social Justice survey, so as to cover a range of transactional legal problems and deeper in terms of the questions asked about the nature of the services received. However there were similar findings in the two surveys.

4.13 The Benchmarking survey is representative of the UK adult population, and shows that over a three year period 49% of the adult population

experienced one or more legal problems. This research found that Social group DE were more likely to do nothing, as were people on lower incomes; 17% of those with household income of less than £20,000 took no action compared to 12% overall. But a lack of knowledge of services and perception of services is still a key factor. Overall 44% of ‘lumpers’ – those who take no action - thought nothing could be done, or they could not get any help, or even that advice was available. This was in part driven by a perception of services on offer – costs too much, not worth the hassle, do not trust lawyers, previous advice not helpful. The flowchart of responses to this wider range of legal issues is shown in Figure 6 below. Of the 40.5% of people who do not seek advice, 3.8% do try to get advice but for a variety of reasons end up taking no action. However over a third of people take a decision to handle their problem without seeking advice.

Figure 6. Responses to legal problems, LSB Benchmarking Legal Services survey of individual consumers 2012



4.14 So why do 36.6% of people handle their legal problems without seeking advice? The range of reasons mentioned are shown below. Figure 7 shows the main reason mentioned, and Figure 8 shows the proportion of any mention. In most cases the main reason was an active decision to do it by themselves – reasons included having enough time (done it before, thought it would be easy to resolve, confident you can do it) - a healthy part of access to justice for society. It might be that this is because of the simplicity of the issue at hand in terms of the law, the availability of information, and any potential adverse consequences. However, if we exclude consumer problems from this analysis, active decisions to deal with a problem on their own remain prominent.

4.15 But consumers also reported not knowing about services that might help. This included not knowing what advice was available, where to get advice in some areas - the biggest areas being Clinical Negligence and Personal Injury, which is even more challenging given the personal injury industry advertising. Perhaps of more concern is the proportion of those who dealt with their problem alone because of a more negative assessment of the of services available, citing reasons such as it would take too long, cost too much, or having had help before which was not useful.

Figure 7. Proportion of individuals mentioning main reason for handling their problem alone

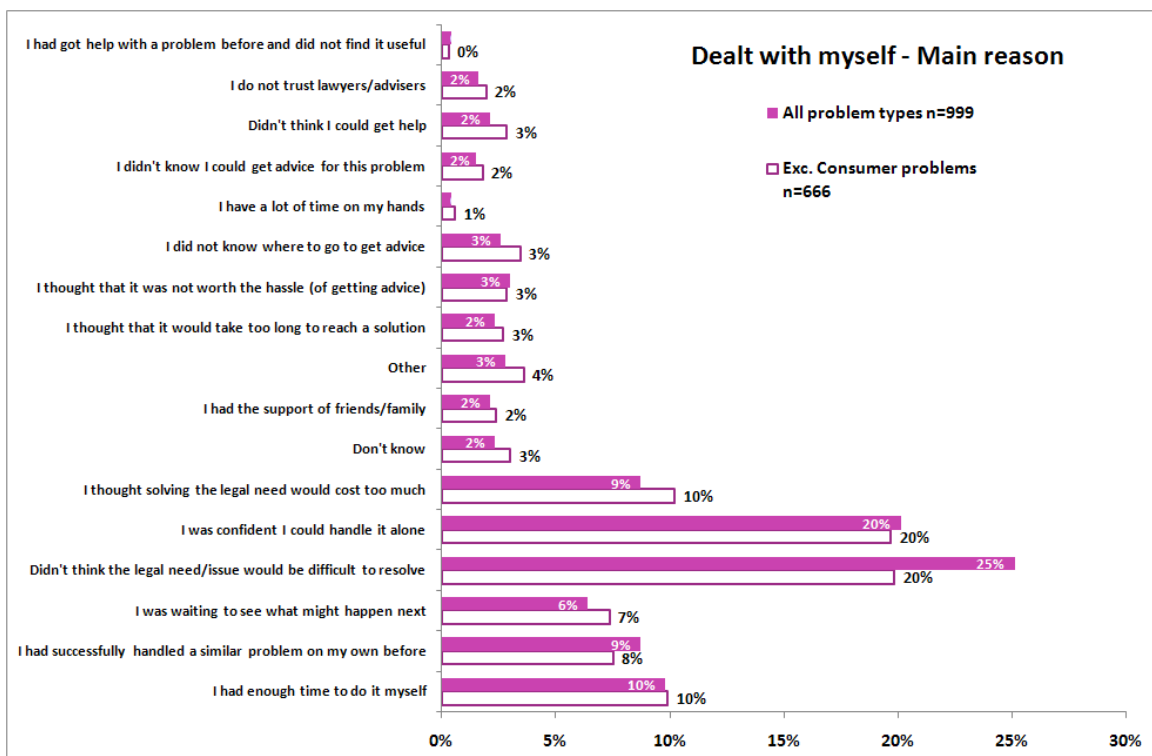
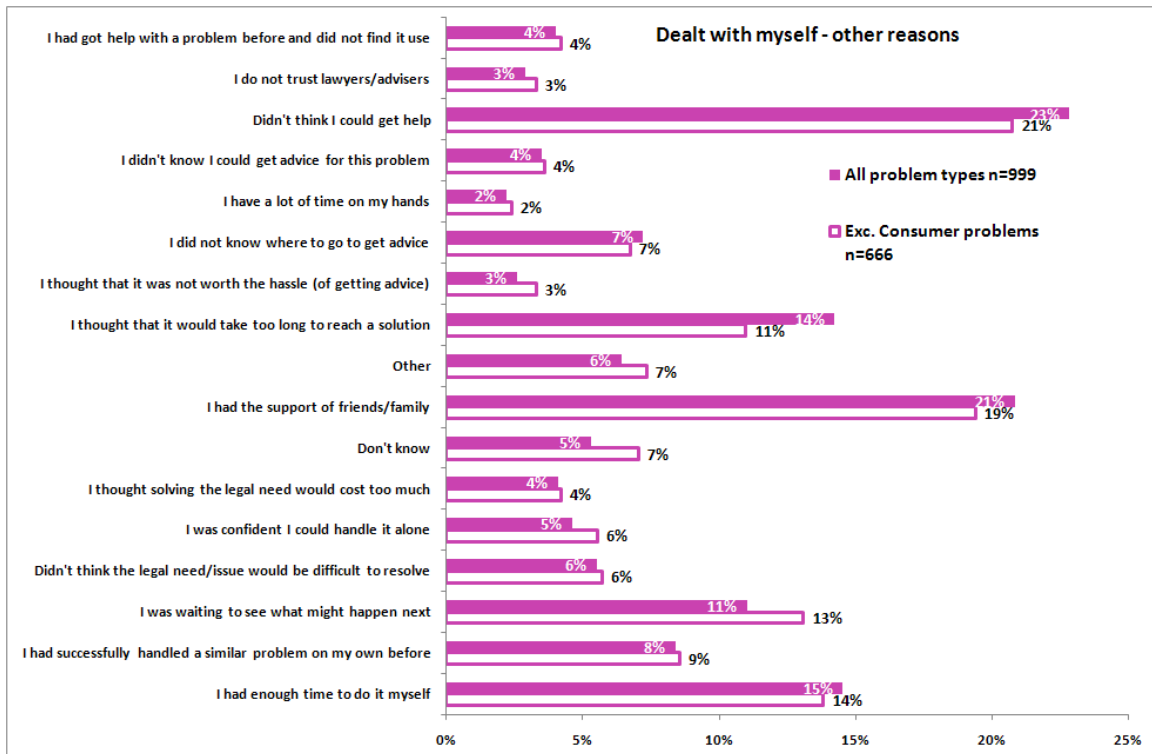


Figure 8. Proportion of individuals mentioning any of the following reasons as part of their decision to resolve the problem alone



4.16 While experiences vary along consumer demographic lines, and across problem types, of those dealing with the problem on their own overall 51% found the process of handling the legal need alone easy, with only 18% finding it difficult. Respondents reported that the experience of handling alone was more frequently easier than they had expected (where 44% thought it would be easy before the process). It appears that the experience of handling a legal need alone is normally a positive one, as the majority (69%) would do it again and a majority would recommend others to handle a similar legal need alone.

4.17 From an access to justice perspective this is a perfectly valid strategy for consumers to take in response to legal issues. Making an informed decision to deal with a problem on your own and allocate your finite resources to some other activity is a sign of empowerment. However where consumers deal with a problem themselves for more negative reasons such as perception of costs or because they do not know what services are on offer, this has more negative impacts on access to justice.

4.18 This mix of reasons can be found in other research. Research into cost and court procedures highlights that individual consumers do not use legal representation because they do not believe they need to. This research found a statistically significant relationship between legal representation and age, work pattern and socio-economic group. Those with legal representation are more likely to be women, aged 25-44, work (full or part-time) and be from socio-economic groups C2DE. Those without legal representation are more

likely to be men, aged 65+, have a household income of more than £45,000 and be more certain that their case will have a positive outcome. The results also show that those who are sure/quite sure that their case will have the desired outcome are less likely to have legal representation than those who are not sure, suggesting that confidence is a factor in whether or not people feel that they require legal representation (61% compared to 77%)⁴³. So in some incidences at least a decision is taken not to use legal services, but still representing access to justice.

- 4.19 An associated field of study to the legal need work, comes from the Netherlands. This is the Mapping Paths to Justice project, which takes a different approach to looking specifically at access to justice from a consumer's perspective. This methodology measures access to justice through the perceptions and attitudes of people who have travelled a path to justice. Its units of measurement are individuals who had a legal problem and acted to solve it with the means of state or non-state intervention⁴⁴. This approach considers access to justice along the lines of the costs of justice, the quality of the procedure and the quality of the outcome. Costs include elements such as out of pocket costs, costs of time, lost opportunity costs, and intangible costs (stress etc). The quality of the procedure is measured through elements including the perceived procedural fairness, restorative attempts to offer reparation to the user of justice, interpersonal experience – politeness and respect, and the validity of information provided by decision makers. Finally the quality of the outcome is measured in terms of equity, compensation, offenders remorse, just deserts, deterrence and incapacitation, rebuilding relationships, and precedence.
- 4.20 In this approach the measurement of access to justice uses the paths to justice approach which begins when the individual takes action in response to their legal problem: *“A Path to Justice begins when a user first takes action to solve the problem with the means of formal or informal justice. This can be the moment when the user seeks information about her possibilities, seeks legal advice (internet, legal adviser, police, mediator, etc.) or files a petition. There is an important period between the moment of the first action and the moment when the official or unofficial dispute resolution procedure commences. In this period the user can endure transaction costs in terms of stress, negative emotions, loss opportunities or money”*⁴⁵.
- 4.21 Both of these fields of research place the consumer and their response to and experience of legal problems in the context of the legal system. One of the more striking findings of the legal needs work is the range of different organisations providing legal advice, demonstrating that from an individual consumer's perspective, justice is clearly not just about going to court – a fourth concern with a definition of access to justice as court litigation. In the Civil & Social Justice survey *“one in four of those who obtained advice went directly to a solicitor for advice and just under one-fifth went directly to a CAB. Other common first points of contact for respondents trying to obtain help with their problem were local authorities, advice agencies other than CABs, trades unions or professional associations, employers, the police, and insurance companies. Almost one in five respondents, however, went to*

some “other” source of advice and these covered sources such as claims agencies, social workers, ombudsmen, housing association health professionals, court staff, barristers, MPs, religious organisations, the media, social security offices, and consultants of various sorts”.⁴⁶

4.22 The role of the not for profit sector in providing access to legal services in England & Wales is important to understand. As one piece of research points out *“the specific use of lawyers in the U.K. surveys is roughly the same as in the U.S. - 27% in England and Wales, 29% in Scotland versus 26% in the U.S. Where the substantial difference emerges is in the use of other third-parties. Moreover, because non-lawyers in the U.K. are authorized to give legal advice (such as volunteer-staffed Citizens Advice Bureaux or proprietary legal advice centres), the effective difference is even greater: Americans received advice from those who are able to give legal advice in only 37% of cases, compared to 60-65% of U.K. cases. Furthermore, a far smaller percentage of the U.K. respondents, as compared to U.S. respondents, “lumped” their problem by doing nothing at all: fewer than 5% versus 29%”*.⁴⁷ Access to legal services is a vital part of access to justice in some form, and excluding this part of the legal services sector seems to be missing a considerable aspect of justice viewed through the citizen’s perspective. This means thinking beyond just the regulated legal services sector when considering access to justice.

Geography of access

4.23 Another factor to consider is the ability of the consumer to physically access legal services. This is most often taken to mean geographical access to legal services. A study in 2010 considered the possible changes in geographical access to legal services that might arise from the introduction of ABS. This study defined geographic access to justice as the number of access points for the provision of private legal services *“The relevance of examining geographic access to justice is from the distributional perspective; it is possible that those consumers who currently use the services of firms that may close (in particular where there are no alternative providers as conveniently located to them) may face a significant reduction in their consumer welfare”*⁴⁸.

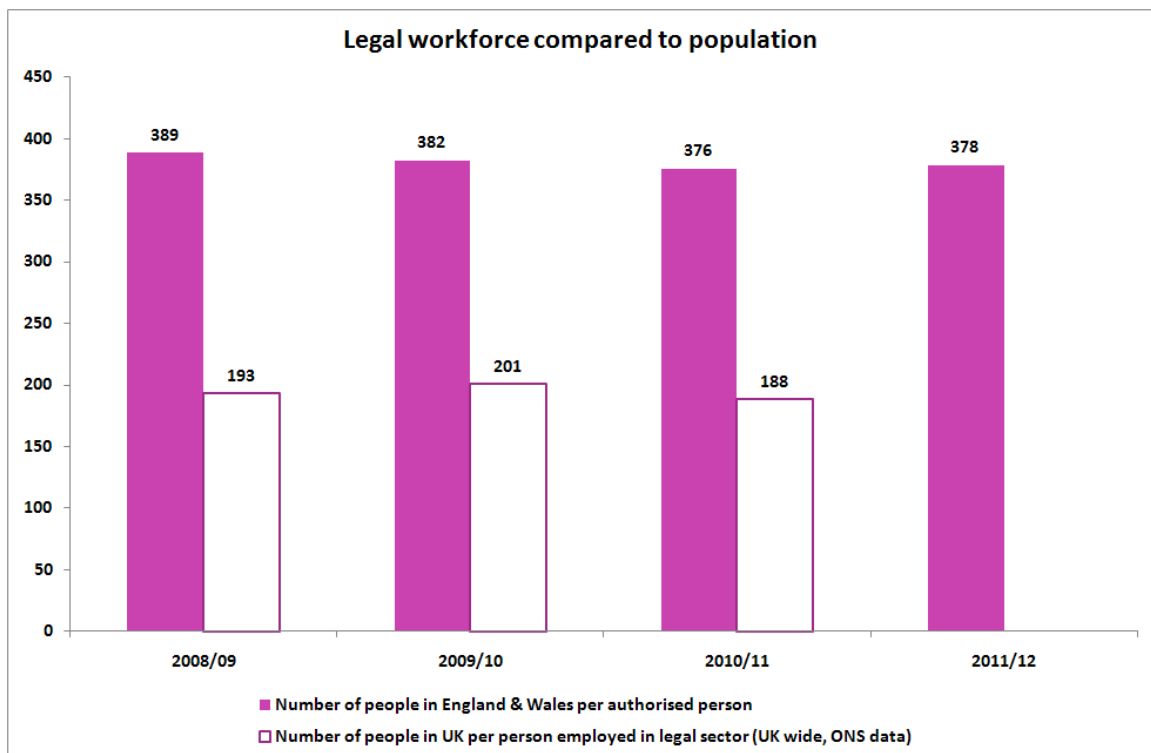
4.24 Here a drop in access would mean a reduction in the number of physical locations offering the current range of legal services, and a narrowing of the range of legal services offered by locations reducing overall range of services. It has been said that one of the impacts of ABS will be increased competition and that competition on price is a threat to access to justice. One view is that *“concentration on price brings a decline in consumer choice, which bears an added meaning in legal services. Price drives concentration of enterprise into larger and larger organisations with market power and the capital to invest. Small practices can compete but the commoditisation of services drags that work from them. The result will be consolidation and the removal from the market of the local practice. This raises real access to*

*justice issues and will tend to anonymise even further a service that consumers in a crisis are scared enough of”.*⁴⁹

4.25 For any closure of service delivery points to cause a reduction in geographic access to justice, it would also be necessary for the current level of services to be spread thinly enough so that a reduction in the number of firms in that area would mean that some areas are under-served. This means that for consumers needing face to face legal services they would need to travel to access legal advice.

4.26 At a national level, available information points to a growing supply of legal services. If we consider trends in the number of authorised persons we see that in the past four years the growth in authorised persons has outpaced the growth of the general population in England & Wales. The picture is more static for the legal workforce as a whole, shown in figure 9 below. However this does not account for the range of services offered.

Figure 9. Size of legal workforce compared to population



4.27 Nationally the breadth of services offered by solicitors’ law firms is quite broad, and services offered are not static. A key element of the title of solicitor is the ability to undertake work in any area of law, even if it does not represent an area of specialism. How often solicitors firms provide services beyond their area of experience is unclear, but as a group they do change the services they offer over time. Initial LSB analysis of a sample of 7,806 solicitors’ firms SRA turnover data⁵⁰ suggests that in between 2010 and 2011 in each category of law, solicitors’ firms start to offer new services and withdraw from others – there is a churn in the types of services offered. This

is against a background of the number of solicitors firms growing overall. Other commentators have suggested that when it comes to the types of services offered “*the core values of lawyers are not justice oriented, but economic. Law and specialisation within the law is predominantly a tool for business success*”.⁵¹

Figure 10. Churn of solicitors firms by Oxera category of work

	Percentage of firms reporting any turnover in 2011	New entrant	Incumbent	Withdrawn (%age of 2010 firms)
Civil liberties	1%	65%	35%	73%
Consumer problems	4%	100%	0%	100%
Welfare and benefits	4%	35%	65%	53%
Intellectual property rights	6%	24%	76%	31%
Other business affairs	6%	41%	59%	36%
Immigration and nationality	15%	10%	90%	12%
Crime—prosecution & Crime—defence	26%	9%	91%	11%
Injury	31%	9%	91%	13%
Corporate structuring and finance	33%	14%	86%	15%
Property, construction and planning	41%	15%	85%	18%
Employment	42%	13%	87%	14%
Family	50%	5%	95%	6%
Conveyancing - Commercial	53%	7%	93%	7%
Wills, trusts and probate	58%	5%	95%	5%
Conveyancing - residential	59%	3%	97%	5%
Other	64%	11%	89%	10%

4.28 Geographic access has been a key part of the debates around legal aid funding. Reports of “advice deserts” are relatively common⁵². These are areas of the country where no legal aid providers exist. However the 2010 study states that for “*a reduction in geographic access to justice to be meaningful from a consumer welfare perspective it is also necessary that face to face contact be highly desirable for some services or for some consumer groups (in the sense that remote access via the telephone Internet or post is an inferior substitute) and that lawyers would not be willing to travel to their clients (at a cost acceptable to customers). If it is possible to provide legal advice remotely with no deterioration in service or if lawyers are willing to travel to clients (at a cost acceptable to consumers), the geographic location of the customer relative to that of the legal adviser would be irrelevant*”⁵³.

4.29 Consumers do not choose legal advice providers purely on the basis of their location or geographic proximity – other factors are at play. In a recent survey of consumers who did seek advice, geographic factors were the most important fact for just 16% - half as much as the reputation of providers (32%), but more than costs (13%) and specialism (12%).⁵⁴ However location of provider is one of the other factors that consumers consider when choosing a provider – being mentioned by 24% of consumers. This is shown in Figure 11 below.

4.30 Figure 12 utilises the findings of the 2011 and 2012 Legal Services Consumer Panel Tracker surveys to consider how this is changing over time. What can be seen is a small but significant reduction in use of previous providers with small increases in other areas.

Figure 11. Most important factor in choosing a provider

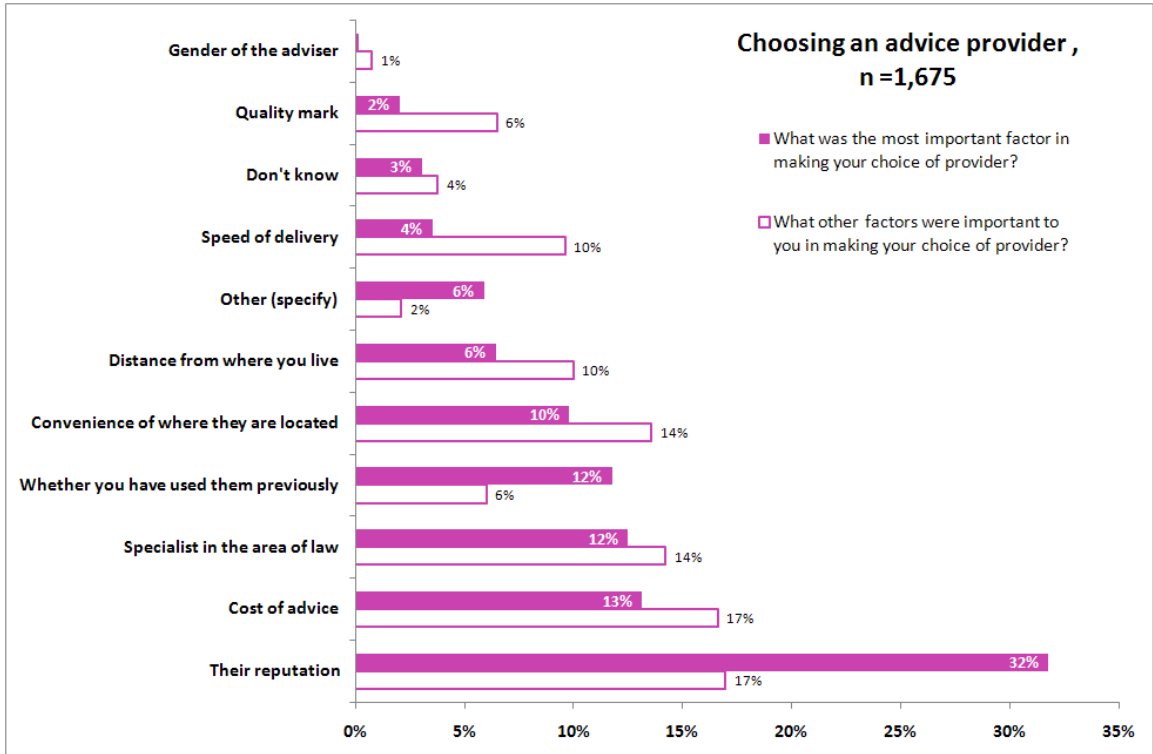
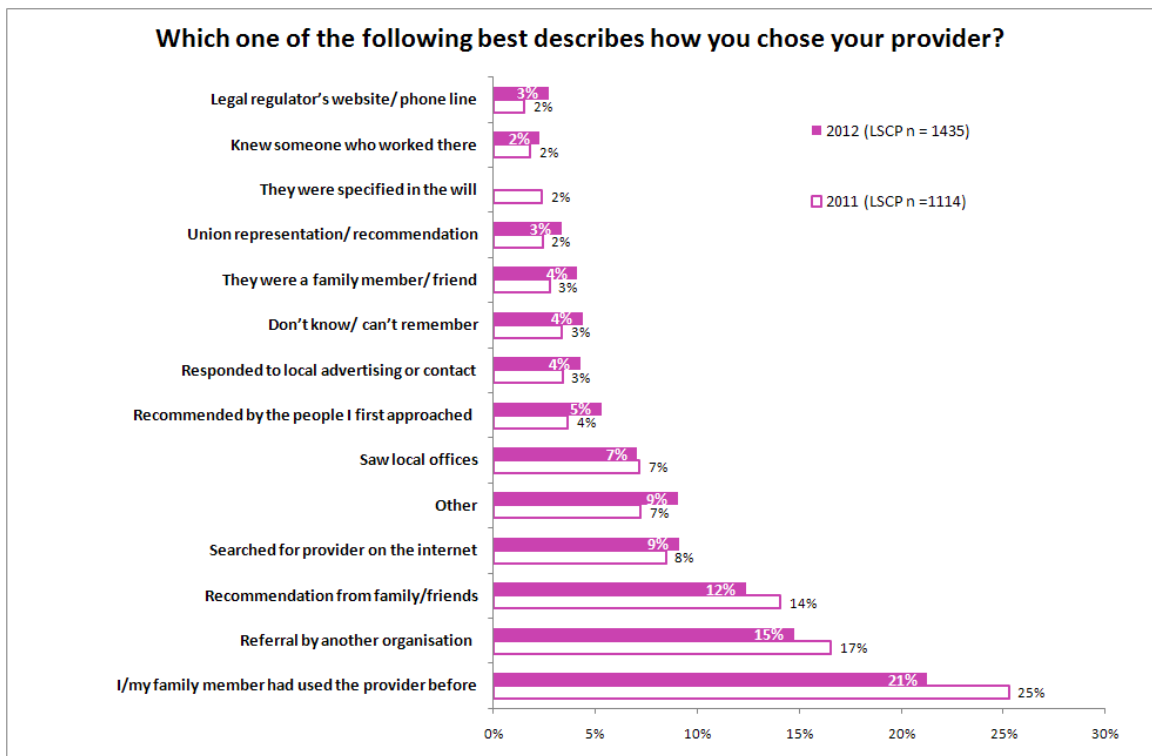
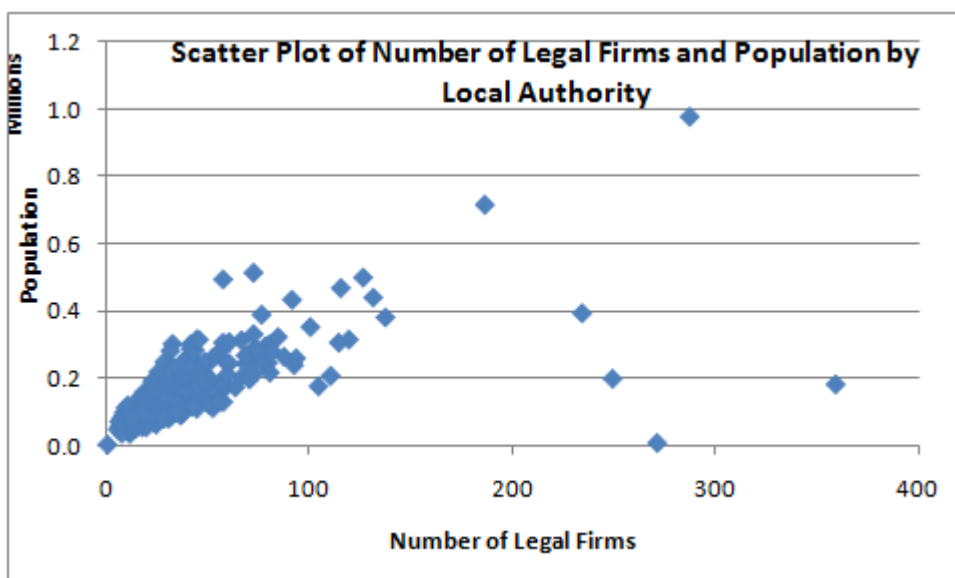


Figure 12. Choice of advice provider over time



4.31 It is possible to live next to a solicitors office but not have access to legal services for a range of reasons – consider an individual living in the City of London with the highest ratio of solicitors per head of population but none of whom provide services to individuals on low incomes. The LSB undertook a simple analysis of the location of authorised legal service providers in 2010, looking for links with other factors. Looking at a local authority level, we found a strong correlation between population and the number of legal service providers, shown in Figure 13 below.

Figure 13. Location of providers and population

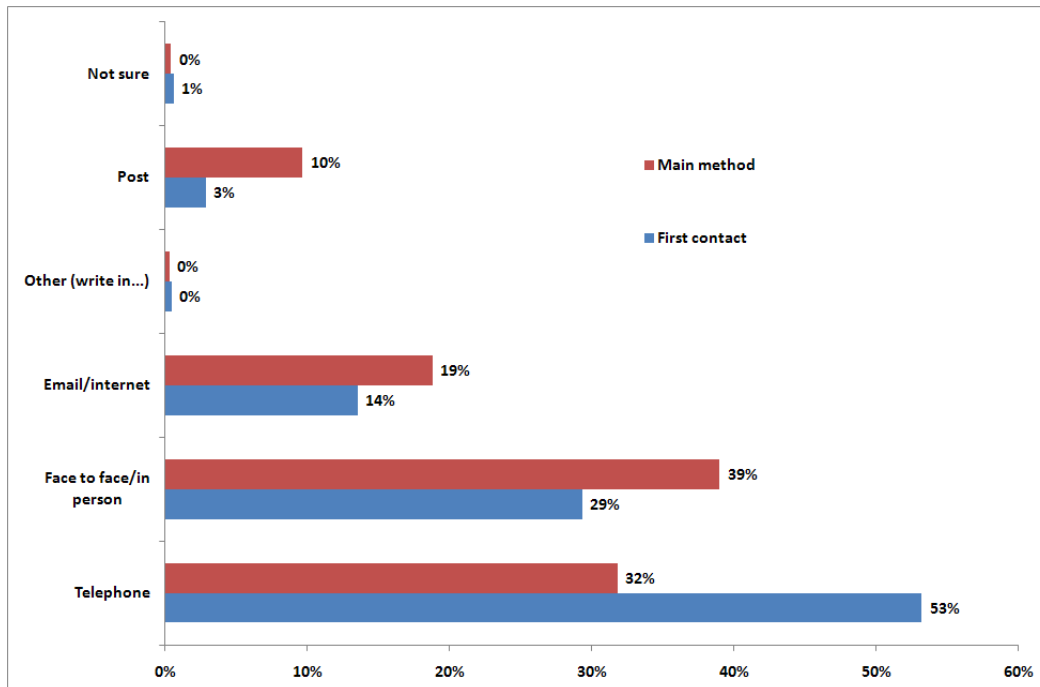


- 4.32 We found a lower correlation between population density measured by the number of people per hectare (0.48). The three outliers with low levels of population and high numbers of legal firms are Westminster, Camden, and City of London, reflecting the prevalence of legal firms serving businesses as opposed to the general public, with law firms based in close proximity to other businesses. A correlation coefficient of 0.62 between the number of notaries and scriveners, who provide services for businesses and trade supports this theory. Other outliers with large number of law firms are Leeds, Birmingham and Cardiff – large cities with big populations. The two outliers with larger populations and less legal firms than trend are Sandwell and Durham.
- 4.33 The levels of incidence of a legal problem do have a positive correlation between the number of legal firms per local authority. This suggests that the location is influenced by demand for services, as we would expect. In line with the findings of the Civil and Social Justice Survey⁵⁵, there is a strong positive correlation between the number of law firms and the level of victims of crime (0.76), and the level of lone parent households (0.71). The correlations between income support claimants, rented housing tenure, and unemployment are also in line with the survey findings.
- 4.34 The number courts in a local authority has a limited relationship to the number of legal firms, with a correlation coefficient of 0.52. This is likely to be higher for specific areas of law such as Crime, but underlines the range of legal services being delivered outside of the courts. There is little correlation between the number of unreserved legal firms and reserved legal firms by local authority, with the correlation coefficient between the number of Will Writers in a local authority being just 0.31 and Citizens Advice being just 0.14. An area where there is some correlation, is those variables related to Personal Injury and Clinical Negligence. The number of legal firms has a strong positive correlation with the number of Road Traffic Accidents (0.67) and with the number of Claims Management Companies – the main intermediaries in Personal Injury- (0.58). Further analysis of this data is required.
- 4.35 Another element of geographic access is open hours. A survey of consumers in 2009 reported that a *“few respondents have complained about the opening hours of services. For example a client with an employment law problem complained that solicitors and NfP agencies only opened during office hours and he could not get time off work to attend an appointment. Other clients complained that due to their disabilities they could not attend open door services to queue and because agencies did not answer their phones they were unable to make an appointment to see someone”*⁵⁶. This varies by different groups of consumers, with a 2004 survey of lone parents reporting *“25% had gone to an advice source, waited too long to be seen and given up. 23% felt an advice source had inappropriate opening hours. 15% were put off because an advice source did not provide appointments. However, 18% were put off because an appointment was provided too far in the future. 14% felt an advice source was too intimidating.”*⁵⁷ The same research reported that only 10% considered an advice source was too far to

travel to. The Clementi review, outlined above, highlighted better service offering as a key part of the innovations that liberalisation of ownership of legal service firms would bring.

- 4.36 Geography of access is linked to the debate on when face to face contact is necessary for the delivery of legal services. The geographic study reported the views of solicitors that face to face contact with a legal adviser was most valuable for “*cases involving highly distressed consumers (typically in family law), consumers with communication problems (e.g. where a client has poor English), consumers with some degree of mental impairment (e.g. certain elderly clients), consumers who lack IT literacy (frequently preference was made to elderly clients), the consumer attending court*”⁵⁸.
- 4.37 Research into the use of the telephone as an alternative to face to face advice points to high levels satisfaction with an evaluation of National Debt line reporting two-thirds of clients surveyed preferred telephone advice to face-to-face services. However a more detailed investigation found “*that clients may not act on telephone advice because they do not remember what to do, feel implementing advice is too difficult and/or do not understand the advice they have been given*”⁵⁹.
- 4.38 Face to face contact with a legal adviser was described as not necessary for Personal Injury, Will writing, conveyancing, and simple legal issues. Economic analysis suggesting there is a minimum efficient scale⁶⁰ in legal services – which make it uneconomic to deliver services in some geographical locations – are predicated on the assumption that legal services must be delivered face to face. This assumption is open for debate in light of the geography of access study, and the findings of consumer research on how providers are contacted and communicated with, shown in Figure 14 below. However geography does continue to play a part in access to legal services.

Figure 14. Methods of communication in the provision of legal services



Technology

4.39 The impact of technology on legal services has been the subject of much speculation for the past fifteen years or so. Technology is propounded as the enabler for consumers to help themselves without lawyers, for lawyers to provide cheap online services, and as fundamentally changing the provision of legal services so that lawyers are no longer the keepers of the law⁶¹. It is argued that IT will enable the mass delivery of standardised legal services: *“Clients will eschew bespoke services, demanding more efficient, less costly points on the continuum to commoditization. Lawyers will pay more attention to recognition (of the need for legal advice), selection (of the source of legal advice) and service (the process of delivering legal advice and assistance), and IT will optimize each of these stages”*.⁶² Susskind suggests that this will lead to five types of lawyers in the future: Expert trusted advisers; enhanced practitioners who support the delivery of the standard and commoditized packages produced; legal knowledge engineers utilising legal expertise; legal risk managers who are counsellors who avoid legal problems; and legal hybrids schooled in complementary disciplines aligned to law, project managers, strategy consultants, etc.

4.40 In access to justice terms, the LSB views the internet as a key enabler to the delivery of more affordable legal services: *“With legal aid facing cuts, the importance of market liberalisation and alternative provision to ensure access to justice grows. The cost of advice (itself driven in part by complexity of the legal system) provides one of the greatest challenges to increasing access. Public legal education has tried, and so far failed to bridge this (growing) gap.*

*In this context, the LSB was interested in the extent to which the Internet could be used to increase access to justice by both lowering the cost of advice and potentially providing a greater range of routes for consumers to access advice*⁶³. Combining digital applications with traditional human service is seen as a way to make small profit margin work economical to deliver, through reducing the amount of time that the attorney spends on each transaction⁶⁴. This thinking was also evident in a Citizens Advice Bureau (CAB) survey where a zero based review reported on the need for CABs to *“take advantage of new technology for divert clients from the most labour-intensive and expensive-to-provide service of face-to-face counselling so that this service can be reserved for those who really need it, especially socially deprived people. The diverted clients would be expected to help themselves to a significant extent, rather than have full advice provided tailor-made to their circumstances”*⁶⁵.

4.41 Research commissioned by the LSB⁶⁶ found that where in the past individuals buying services sought recommendations from friends, family, neighbours, now online communities provide a much wider source of knowledge and experience from which to find suitable recommendations. The research found that consumers could see real benefits in simply going to an online community and finding directly relevant examples of similar experiences in legal services as in other services, rather than asking around until they found someone with an experience like theirs. This highlighted consumer demand for something that could take their legal problem and ideally lead them directly to the service that would help them solve their legal need.

4.42 Technology is already having an impact on legal services, and this is likely to grow going forward with implications for all stakeholders, challenging existing practices. As one recent discussion concluded: *“It will be difficult to maintain charges for information so that there should be overt acceptance that information is being provided for all and for free. Then further support should be provided as necessary. The first line of support should be through skype or telephone to someone physically present but not in the room. Advisers in offices should be the second line of support. That requires a considerable retooling by the advice and law centre sector”*.⁶⁷

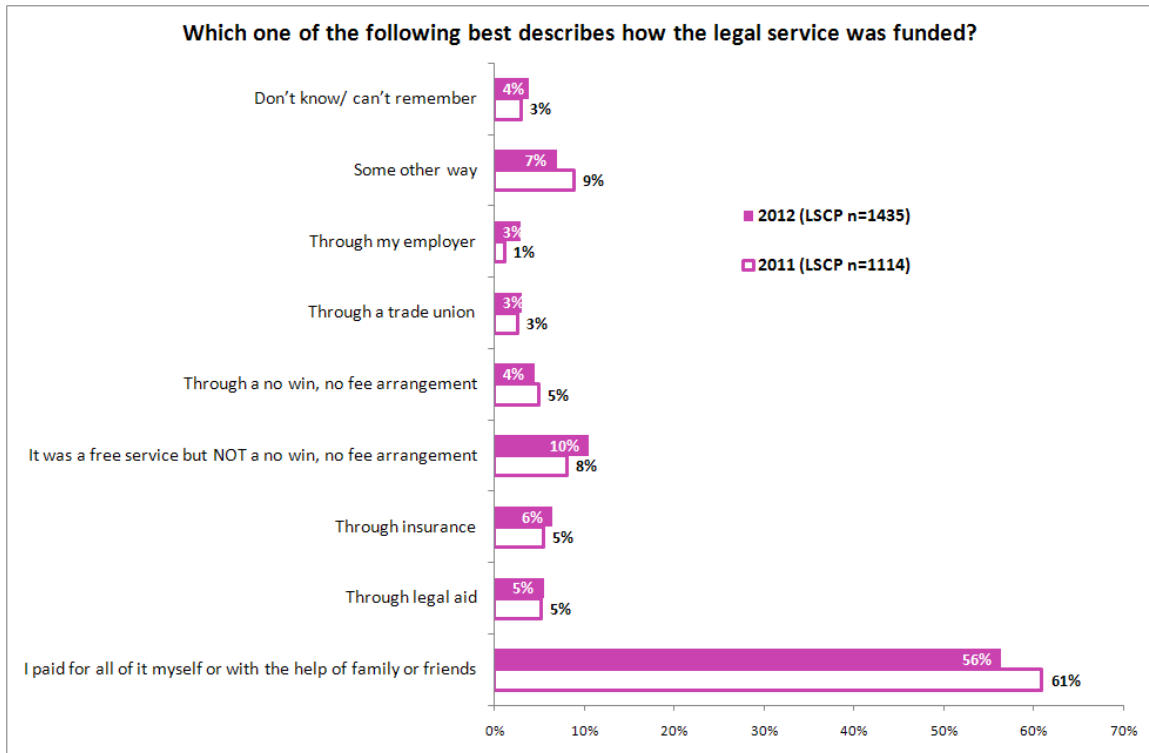
Costs

4.43 The cost of legal services drives much of the debate around access to justice, be it the level of legal aid funding necessary to provide access to justice, or who should pay for litigation. Clearly there is some element of cost in a person’s decision in how to respond to legal problems, as set out above. Surveys of consumers repeatedly show perceived costs to be an issue in accessing legal services. A range of research between 2007 and 2010 has repeatedly reported a general perception that legal services are expensive and unaffordable⁶⁸. For example, in a 2009 survey of individual consumers, 29% of respondents complained that the cost of legal assistance precluded them from getting help with their problem⁶⁹. This was also an issue for one in five lone parents in a 2004 survey⁷⁰. Litigants in Person research⁷¹ points to

costs of services being one of a range of factors driving use of legal services. Other research⁷² looking at the response to civil and social justice problems shows that after taking account of problem type, for problem types where legal aid is most available, people eligible for legal aid are significantly more likely to use lawyers than those on low incomes, but not eligible for legal aid⁷³.

- 4.44 Recent research points to a perception of legal services as expensive: *“Solicitors are £60 before you walk in the door ... so you’re almost pushed to do everything you possibly can through friends and family and the Internet... you’ve got to be in a really serious position before you engage a solicitor cos it costs a lot of money”*⁷⁴. Indeed the inability to know costs and judge value for money was at the heart of consumers’ reluctance to engage with legal services altogether. Investigations into whether probate administration should be regulated looked at why people consider but turn down a provider type for writing wills. Of participants that considered but decided against using a solicitor, 61% gave a solicitor being too expensive as a reason, compared to 40% that considered but rejected a will-writing company⁷⁵.
- 4.45 Whether such reluctance would be overcome in the presence of simple transparent pricing together with consumer recognition of brands will be interesting to see as the market develops. However at present these perceptions may not be far from the truth for the traditional solicitor business model. Using figures from The Law Society Law Management Section survey of 200 firms, shows that the combined costs of overheads and salary mean that each fee earner still needs to bill more than £76,000 before they cover their individual costs and begin to contribute towards support staff salaries and eventually profit. Assuming they can bill 1,100 hours a year they need to average £69 per hour. Every hour of work not billed means that this rate – or the number of hours worked – has to increase⁷⁶.
- 4.46 Legal aid is traditionally a key part of funding for individual consumers of legal services, but is not an answer on its own: *“Judicare solves the costs barrier but it does little to affect the barriers caused by other problems typically encountered by the poor. For one thing it relies on the poor to recognised legal claims and seek assistance; it fails to allow for efforts by individual practitioners to help the poor understand their rights and identify the areas where they may be entitled to legal remedies”*.⁷⁷ While legal aid continues to play an important role in funding individual legal services there are a range of different ways in which legal services for individuals are funded, shown in figure 15 below.

Figure 15. How legal services for individual consumers are funded



4.47 In both years of the LSCP survey, legal aid funding accounted for 5% of legal service funding, far outstripped by the proportion of individuals paying for legal services themselves – 56% in 2012 down from 61% in 2011. In the 2010 baseline survey of legal service users⁷⁸ this was 78% and legal aid accounted for 6%.

4.48 The LSB also has a regulatory objective to promote competition in the legal services market. Competition is seen by some as a way of delivering lower cost legal services through competitive pressure driving innovation, and is seen by others as a threat to the quality of legal advice. There is similar dichotomy of views in relation to competition and access to justice: *“In the consumer legal services market there are no existing household brands. As a result consumers end up playing a yellow-pages lottery to access legal help and assistance and they are very nervous about it. CLS believes that as a result of this nervousness many people who need legal advice and assistance never take it. Companies with which people already have an affinity – to whom they have already turned to help for other matters – will be far more approachable. Consumers will feel more at ease and more confident in seeking help in the first place”*.⁷⁹

4.49 Changes in competition are not just about changes in price, in most markets, products are differentiated and consumers also care about product quality and choice. This gives rise to the view that *“the LSB’s priority would be to ensure legal services become more affordable (and so accessible), whilst ensuring consumer confidence in the quality of legal services. In public policy terms, the idea is win-win: consumer trust and affordability can both increase*

the size of legal service markets. It is also reasonably clear in its trajectory, being deregulatory in approach: the case for regulation has to be made with evidence not the other way round. The central idea is that regulators need to be sure that the markets they govern stimulate competition on quality rather than just price".⁸⁰ The consideration of quality of legal service provided is reflected in the Clementi discussion of the elements of access to justice, set out above. However this does not mean that higher fees are an indicator of quality: *"The higher fees were not expected to be accompanied by a better product. Notably, when it was put to consumers that the higher fees might actually imply better legal advice, they often questioned how the company would be able to prove such a case (referring back to the discussion around consumers' inability to tell whether they were getting 'better' legal advice)*".⁸¹

4.50 Currently there is little data on what the actual costs of legal services are. Findings from the Legal Services Consumer Panel (LSCP) Impact Report points to a growing number of individual consumers being provided services with fixed fees, but the Legal Ombudsman also reports rises in the number of complaints about the cost of legal services. The LSCP reported that consumer satisfaction with the transparency of lawyers' pricing fell by 10% to 70% in the past year and that the Legal Ombudsman (LeO) had received almost 1,400 complaints about "*deficient cost information*" in 2011/12.⁸² This is supported by the findings of the 2012 consumer survey, shown in Figure 16, which found that 30% of consumers were quoted a fixed price and ended up paying that price, but 4% were quoted a fixed price and paid something different⁸³.

4.51 The 2012 consumer survey found that consumers paid a range of different prices, shown in Figure 17 below. Changes in prices over time are not known, but available measures suggest prices are rising, at least as fast as inflation⁸⁴.

Figure 16. Information on the cost of advice

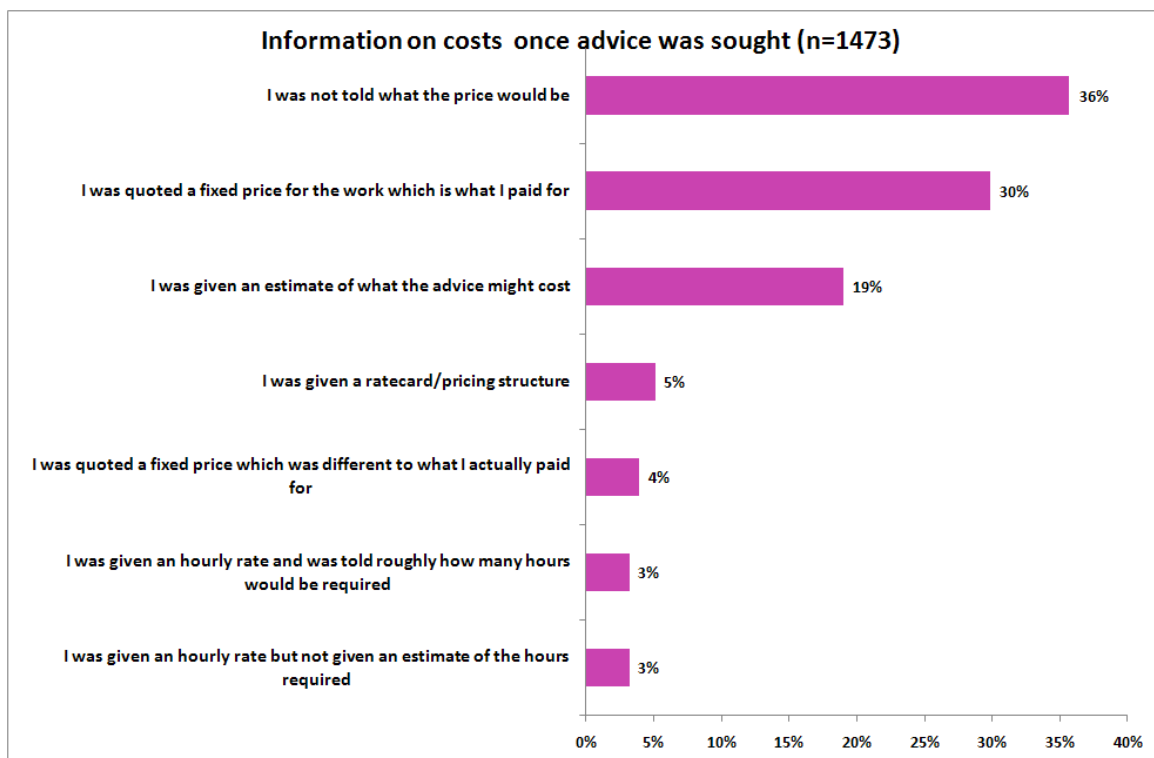
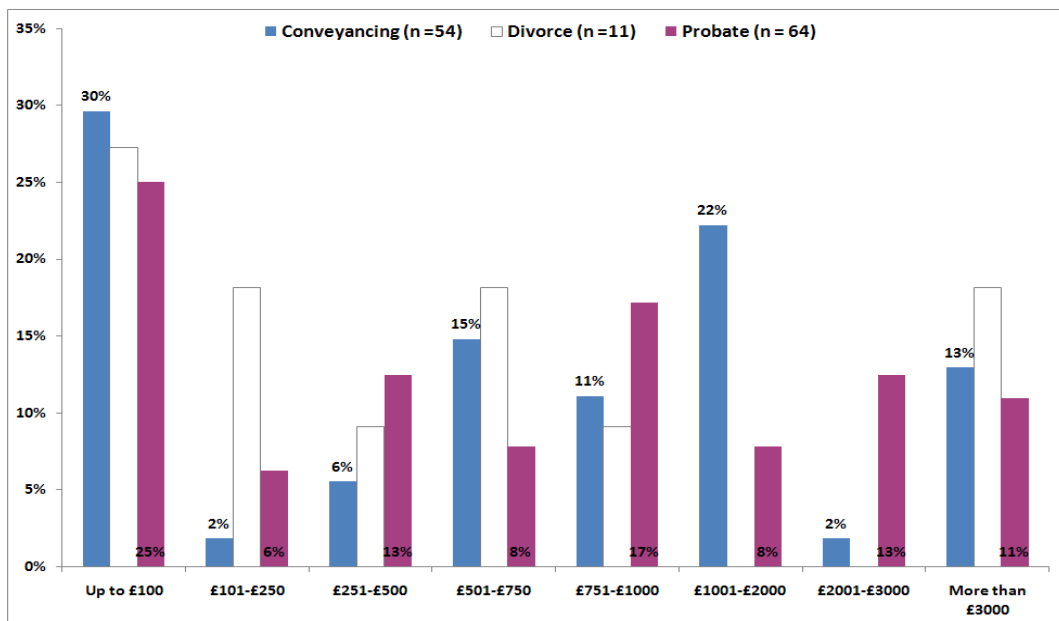


Figure 17. Range of prices paid for legal services



5 Proposed measures of access to justice

5.1 On the basis of these different dimensions on access to justice, the table below sets out a proposed set of measures. These are proposed on the basis of both efficacy and practicality. Data on the legal services market is scarce, and is likely to remain so in the short to medium term. Therefore findings of existing research, and use of existing published data are key. For example while trends in the number of website providing legal advice would be useful in understanding the impact of technology, it is not deemed a realistic measure on which data could be collected, since there is no need to register such sites. Another example would be trends in litigants in person at courts, but numbers are not routinely collected, let alone any information about who the litigants in person actually are and why they are without representation. Since the LSB is not aware of any plans to collect this information over the coming years we discount this as a practical measure of access to justice. However, we can approach these areas from the demand side, and utilise the findings of consumer research to understand how the market is changing. This approach minimises regulatory burden and allows the limited LSB research budget to be targeted at particular areas. This does commit funding for a legal needs survey at least once every two to three years.

5.2 The proposed measures can be split into two broad areas: Supply and Demand. This enables us to consider both inputs and outputs: *“Looking at the inputs of the system could provide some knowledge on the general legal infrastructure, but the input-based approach could, at best, provide an approximation for the performance levels. The outcomes of the legal system are a more valid representation of its ability to solve problems, provide legal certainty and reinforce the social order”*.⁸⁵

Figure 9: Measures of access to justice - 18 proposed indicators

	Area	Measure	Information source
1	Demand for legal services	Annual review of proxy indicators for demand for legal services as set out in LSB Interim baseline report. Why? Understanding trends in the wider potential demand for legal services gives context for the interpretation of other factors.	Annual data published by range of government departments (see interim report for full list)
2	Paths to justice	Breakdown of responses to legal need over time (take no action, handle alone, seeking legal advice). Why? How the response to the incidence of a legal need changes,	Probate office, Intellectual Property Office Civil & Social Justice survey LSB Benchmarking Legal Services

		in particular the rationale for handling problems without advice, affords greater insight into changes in access to justice.	survey
3	Use of legal services	Breakdown of the different ways in which consumers use legal services – information , advice, representation etc Why? As technology impacts the legal sector an increase in people choosing to handle a problem alone can be seen as measure of access to justice.	LSB Benchmarking Legal Services survey
4	Perception of legal services	General perceptions of legal services including issue of affordability, understanding of what's required etc Why? Changes in the perception of legal services link to the changes in responses to a legal need.	LSCP Consumer Impact tracker survey LSB Benchmarking Legal Services survey
5	Costs of legal services	Trends in the overall cost of legal services. Why? Changes in cost of services are assumed to be associated with changes in response to a legal need.	LSB Benchmarking Legal Services survey ONS prices index
6		Trends in charging methods. Why? To consider the lack of certainty of cost of legal services, and shifts in types of funding of legal services	LSCP Consumer Impact tracker survey LSB Benchmarking Legal Services survey
7		Sources of funding of legal services. Why? To account for changes in proportions of consumers paying for legal services themselves	LSCP Consumer Impact tracker survey LSB Benchmarking Legal Services survey
8	Number of agents of delivery – depth of services	No. of individual authorised persons compared to the population Why? An indicator of capacity of supply or reserved legal services	Approved Regulator annual membership lists ONS population statistics

		considered in context.	
9		No. of people working in the legal sector compared to the population Why? An indicator of capacity of supply considered in context.	ONS SIC annual reports ONS population statistics
10		No. of businesses offering reserved services compared to the population Why? To account for changes in the provision of reserved legal services	Approved Regulator entity lists
11		No. of legal advice businesses and charities compared to the population Why? To account for changes in the provision of unreserved legal services	Companies House SIC data Charity Commission data CITA data
12	Scope of delivery – breadth of services	Range of categories of work in which regulated entities report turnover Why? To address the issue of changes in the breadth of legal services offered by providers.	Approved Regulator data
13		Proportion of consumers getting advice on clusters of problems from the same provider. Why? To address the issue of changes in the breadth of legal services offered by providers.	LSB Benchmarking Legal Services survey
14	Geography of services	Proportion of agents of delivery by local authority (geographical location). Why? To understand how geographic access changes over time	Approved Regulator and ONS data Companies House SIC data Charity Commission data CITA data
15		Methods of communication and client interaction. Why? To account for changes in the use of technology and its potential to impact on the geography of services.	LSB Benchmarking Legal Services survey

16	Access to the courts	Trend in volumes of trials across range of problem types Why? To understand how dispute resolution changes over time, compared to incidence of legal problems.	HMCTS Open Justice data
17		Trend in number of days sat by judges per trial, and length of time between court proceedings being issued and resolution of the case. Why? These are proposed as a proxy measure for measuring changes in the complexity of cases before the courts	HMCTS Open Justice data
18		Trends in satisfaction with the justice system. Why? To capture the perceptions and attitudes of people who have been to court	HMCTS Court user survey

5.3 Why this breadth of measures? The discussion in section four above demonstrates the range of dimensions of access to justice. This means any attempt to measure it needs an array of different individual elements which must be considered as a whole. Further, movement in one measure alone cannot be interpreted as change in access to justice – with such a complex concept there is a need for a basket of indicators. While we have looked at legal services as a whole in this discussion, future analysis will consider each of the market segments.⁸⁶

5.4 So a fall in the number of agents of delivery associated with an increase in consumers acting for themselves poses a question of cause and effect. Taking probate as an example, the rise in people making probate applications without using solicitors does not give a clear understanding of changes in access to justice. Not using lawyers could be driven by simplification of the process for probate and trademark applications, as much as other factors such as affordability, perceived value for money, a reduction in the number of providers offering these services etc⁸⁷.

5.5 If over time we saw a fall in providers offering these services, an increase in prices charged, and a rise in consumers dealing with the problem themselves stating they thought the legal need would cost too much, it would be reasonable to conclude that the liberalisation of the market had failed to deliver better access to justice in this incidence. Conversely if we saw a fall in the number of providers offering these services, a rise in consumers dealing with the problem themselves stating they were confident they could handle the issue alone or they thought it would be easy to resolve, we might look to process simplification or public legal education as possible

explanations. Contextual information remains the key aide to understanding movements in these indicators over time.

6 Next steps

6.1 Our aim here is to set out a range of measures that can be used to baseline access to justice, as part of the evaluation of the impacts of the LSA. It is hoped that these indicators can be seen as a positive contribution to a discussion about how best to measure changes in access to justice.

6.2 We have published the data from the Benchmarking Legal Services survey on our website, and the LSCP has published the data behind its annual tracker survey. This is designed to allow others to undertake their own analysis, to support the debate around access to justice and other policy areas.

6.3 We are seeking feedback on these proposed measures, their relevance, efficacy and usefulness. Please email robert.cross@legalservicesboard.org.uk with any comments.

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⁴ http://www.legalservicesboard.org.uk/news_publications/publications/pdf/evaluation_framework_april_2011.pdf

⁵ http://www.legalservicesboard.org.uk/what_we_do/Research/Publications/pdf/market_impacts_of_the_legal_services_act_interim_baseline_report.pdf

⁶ For a summary of the range of benefits see Why the courts are as important as hospitals to the nation's health Professor Dame Hazel Genn, UCL Laws http://www.ucl.ac.uk/lh/lhpub_autumn2009/07_031109

⁷ SOCIOLOGY OF CRIME LAW AND DEVIANCE VOLUME 12 ACCESS TO JUSTICE Edited by Rebecca L Sandefur 2009 COMMENT: A REVIVAL OF ACCESS TO JUSTICE RESEARCH? Bryan G Garth

⁸ Review of the Regulatory Framework for Legal Services in England and Wales, Sir David Clementi, 2004 http://www.jambar.org/clement_report.pdf

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¹⁰ Accessed using LexisNexis, searching for the phrase “access to justice”. These Acts were (Title of Act (No of references to “access to justice”)):
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Procedure Act 1865 (1), Criminal Procedure and Investigations Act 1996 (2), Domestic Proceedings and Magistrates' Courts Act 1978 (1), Domestic Violence, Crime and Victims Act 2004 (1), Employment Rights Act 1996 (1), Enterprise Act 2002 (1), Equality Act 2006 (2), Evidence Act 1851 (1), Explosive Substances Act 1883 (1), Extradition Act 2003 (2), Family Law Act 1996 (9), Finance Act 2007 (1), Football (Disorder) Act 2000 (1), Forced Marriage (Civil Protection) Act 2007 (1), Freedom of Information (Scotland) Act 2002 (1), Freedom of Information Act 2000 (2), Gambling Act 2005 (1), Greater London Authority Act 1999 (3), Highways Act 1980 (1), House of Commons Disqualification Act 1975 (3), Housing Act 1985 (1), Housing Act 1988 (1), Human Fertilisation and Embryology Act 2008 (1), Immigration Act 1971 (2), Immigration and Asylum Act 1999 (1), Inclosure Act 1845 (1), Inquiries Act 2005 (1), Insolvency Act 1986 (1), International Criminal Court Act 2001 (2), Judicial Pensions and Retirement Act 1993 (2), Justice (Northern Ireland) Act 2002 (3), Law of Distress Amendment Act 1908 (2), Legal Aid Act 1988 (55), Legal Aid, Sentencing and Punishment of Offenders Act 2012 (9), Legal Services (Scotland) Act 2010 (1), Legal Services Act 2007 (6), Licensed Premises (Exclusion of Certain Persons) Act 1980 (1), Licensing (Scotland) Act 2005 (1), Licensing Act 2003 (1), Local Democracy, Economic Development and Construction Act 2009 (1), Local Government (Wales) Act 1994 (1), Local Government Act 1888 (1), Local Government Act 1972 (1), Local Government Act 2003 (1), Local Government Finance Act 1992 (1), Local Government and Housing Act 1989 (1), London Building Acts (Amendment) Act 1939 (1), London Hackney Carriage Act 1853 (1), London Hackney Carriages Act 1843 (1), London Hackney Carriages Act 1850 (1), Magistrates' Courts Act 1980 (18), Maintenance Orders (Facilities for Enforcement) Act 1920 (2), Maintenance Orders (Reciprocal Enforcement) Act 1972 (6), Maintenance Orders Act 1950 (3), Maintenance Orders Act 1958 (4), Manoeuvres Act 1958 (1), Marriage Act 1949 (1), Mental Capacity Act 2005 (1), Merchant Shipping Act 1995 (1), Metropolitan Magistrates' Courts Act 1959 (1), Metropolitan Police Act 1839 (2), Metropolitan Police Courts Act 1840 (1), Metropolitan Police Courts Act 1897 (3), National Loans Act 1968 (1), Nationality, Immigration and Asylum Act 2002 (1), Northern Ireland Assembly Disqualification Act 1975 (1), Pensions (Increase) Act 1971 (1), Police and Criminal Evidence Act 1984 (2), Police and Magistrates' Courts Act 1994 (1), Policing and Crime Act 2009 (3), Powers of Criminal Courts (Sentencing) Act 2000 (10), Prevention of Crimes Act 1871 (1), Prison Act 1952 (1), Proceeds of Crime Act 2002 (2), Promissory Oaths Act 1868 (1), Prosecution of Offences Act 1985 (5), Public Notaries Act 1801 (1), Public Notaries Act 1843 (1), Public Passenger Vehicles Act 1981 (1), Public Records Act 1958 (1), Public Works Loans Act 1965 (1), Railway Rolling Stock Protection Act 1872 (1), Reserve Forces Act 1996 (1), Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 (1), Road Safety Act 2006 (1), Road Traffic (New Drivers) Act 1995 (1), Road Traffic Act 1988 (1), Road Traffic Offenders Act 1988 (13), Road Traffic Regulation Act 1984 (1), Salmon and Freshwater Fisheries Act 1975 (1), Senior Courts Act 1981 (13), Serious Crime Act 2007 (2), Sexual Offences Act 2003 (2), Social Security (Consequential Provisions) Act 1992 (1), Social Security Administration Act 1992 (1), Solicitors Act 1974 (11), Statute Law (Repeals) Act 1993 (1), Statute Law (Repeals) Act 2004 (2), Superannuation (Miscellaneous Provisions) Act 1967 (1), Tax Credits Act 2002 (1), Taxes Management Act 1970 (2), Terrorism Act 2000 (2), Trade Union Reform and Employment Rights Act 1993 (1), Tramways Act 1870 (1), Tribunals and Inquiries Act 1992 (1), Tribunals, Courts and Enforcement Act 2007 (1), Violent Crime Reduction Act 2006 (1), Welfare Reform Act 2009 (1), Welfare Reform Act 2012 (1), Youth Justice and Criminal Evidence Act 1999 (2).

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¹⁵ *Children's Rights Alliance for England v Secretary of State* [2012] EWHC 8 (Admin),

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