

# Improving access - tackling unmet legal needs

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## *Executive summary*

Legal services can help us at the most important moment in our life - whether buying a house, dealing with an unscrupulous employer, or handling a relationship breakdown. Yet few people and small businesses use a solicitor when they have a legal problem. And the poorest and most vulnerable often have very limited access to legal services.

Such limited access means that many people are not getting the help they need to enforce or defend their rights. This can lead to poor outcomes and hinder the proper administration of justice.

Bodies such as the Legal Services Consumer Panel have undertaken research that shows barriers to accessing legal services include:

- the affordability of legal services
- a lack of information to choose and compare legal services providers.

The Competition and Markets Authority (CMA) have said that legal services market reform is needed to improve both the affordability of services and the availability of information. They say that this will increase access by helping people choose the best legal support, as well as driving competition, quality and innovation.

We are reforming our regulation to create a more open, modern and competitive legal services sector that works in the best interests of the public.

Law firms are improving access by:

- Growing and innovating. For example, expanding or adapting their business to reach new clients, setting up as an alternative business structure and using artificial intelligence to offer more efficient services to their clients.
- Making services more affordable and costs easier to understand. For example, offering unbundled legal services and fixed fees, and offering free and reduced cost services to those most in need.



- Improving information and standards of service. For example, using plain English with clients and potential clients, engaging with people and businesses online, and using emails and other messaging systems to speed up communications.

Our reforms are improving access by:

- Simplifying our regulatory rules and standards - getting rid of unnecessary bureaucracy and creating shorter, clearer principles and codes, reducing cost and complexity for law firms.
- Supporting firms to provide new services in new ways by removing constraints and helping new thinking through SRA Innovate.
- Freeing up solicitors to work where they choose, increasing public choice and access to expert services.
- Supporting consumers by sharing our information to help them make informed choices and increase competition.
- Reducing the costs of regulation through efficiencies - overhead cost savings that can be passed on by firms to the users of legal services.

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## *Introduction*

In the Risk Outlook 2016/17 we said that addressing the risk of the lack of access to legal services is one of our priorities. People want affordable and relevant legal services. But their needs are not being met. Only one in ten people use a solicitor when they have a legal problem, despite the fact that one in two adults had a legal need in the last three years. It is a similar problem for the small businesses that form the backbone of our domestic economy.

Legal services help people to enforce or defend their rights and help small businesses to succeed - by enabling them to take on their first employee, their first lease, complete their first online sale, export, or bring in investment. Accessible legal services support our economy, but only if businesses can afford them.

Improving access to justice is one of the eight regulatory objectives set out in the Legal Services Act 2007 (LSA). We are best able to meet this objective through reforming our regulation to help support a healthier and more competitive legal market. The CMA 2016 study of the legal services market concluded that:

- competition is not working well for consumers and small businesses
- there is a lack of transparency, particularly around information on price, quality and service



- it is hard for people to access the right service at an affordable price because of the lack of information and the wide variations in the cost of similar services
- better information will help people choose the best legal support as well as driving competition, quality and innovation.

We welcome the CMA's call for the reform of legal services to make the market more open and competitive. We are already exploring how people could access meaningful information on service, quality and price, so they can shop around for the best deal. And we will consult on detailed proposals later this summer.

We have already taken steps to support competition and growth. One of our key reforms is to free up solicitors to allow them to provide certain services to the public, through any business. The CMA supported this proposal and we hope to change our rules to allow such flexibility by the end of 2018.

This paper:

- sets out why access to legal services is a risk and the current barriers that people and small businesses face
- highlights actions that firms are taking to improve access
- discusses how our regulatory reforms and wider work can help improve access to legal services
- focuses on how technology, unbundled and pro bono advice can improve access even for those unlikely to ever afford traditional legal services.

### *Why does access to legal services matter?*

We work in the public interest. We protect the public, set and enforce high professional standards and support the rule of law and the proper administration of justice. Access to justice is set out as a regulatory objective in the LSA and we think supporting that access for those most in need or vulnerable is particularly important. Unmet need - the lack of access to legal services - is bad for individuals, for businesses and for the economy.

The current market for legal services is inaccessible to many people and businesses that need legal services. Only a few of those that have a legal problem take advice from a solicitor or barrister. Those that do not use regulated legal services may try to solve the problem themselves or do not address their problem. Some use "unregulated" (from a non-LSA regulated provider) legal services or another professional.<sup>1</sup> [n1] We need to ensure our regulation is proportionate and does not stand in the way of solicitors and firms meeting the demand of those who need legal help.

- Over half of UK adults faced a legal problem in the last three years.
- Small businesses face 8 legal issues every year.
- Only a third of people with a legal problem seek professional advice.
- Only one in 10 people and businesses take advice from a solicitor or barrister.
- Around a third of people with a legal problem obtain professional help from someone other than a lawyer.

### *Helping those in situations of vulnerability*

We know that people in situations of vulnerability are more likely to experience legal problems.<sup>2</sup> <sup>2</sup> And evidence suggests that people who may be vulnerable often do not seek help from solicitors.

There is a risk that vulnerability is increased without appropriate legal support. For example, we know that in London more than one in five people seeking help from their MP have a disability. But as MPs cannot provide legal advice they tend to refer people to those that can.<sup>3</sup> <sup>3</sup> There is evidence that people that have been signposted to different services can suffer referral fatigue and give up seeking help.<sup>4</sup> <sup>4</sup>

### *Supporting business*

There are around five million small to medium sized businesses (SMEs) in the UK that make up 99 percent of the private sector. On average, SMEs experience eight legal issues every year, which costs the sector more than £13.6 billion per year.<sup>5</sup> <sup>5</sup> When small businesses need legal advice, they are more likely to go to accountants than solicitors.<sup>6</sup> <sup>6</sup> Although some solicitors are now working with accountants in providing a one-stop shop, many businesses do not get the legal help they need.

People and businesses need access to legal services, as a key component of access to justice.

### *Barriers to accessing legal services*

There is no one barrier that limits access to legal services. Factors that affect people's decisions about how to access legal services include the cost and reputation of the potential services, speed of delivery, location and specialist knowledge.<sup>7</sup> <sup>7</sup> The type and seriousness of the legal problem are also important factors in deciding whether to take legal advice.<sup>8</sup> <sup>8</sup>

A range of research indicates two main barriers to accessing legal services:

- affordability of services

- lack of consumer information.

### *Affordability of services*

The cost of legal services is one of the most important factors affecting decisions about whether to use a legal professional.<sup>9</sup> <sup>[#n9]</sup>

- two thirds of people feel that legal services are too expensive
- one third of all UK adults have less than £300 savings for unexpected events, which limits their ability to afford legal services
- 83 percent of small businesses see legal services as unaffordable, with over half of those that have a problem trying to resolve it on their own.

Perceptions that solicitors' costs are higher than they actually are also affects whether people seek formal legal advice.<sup>10</sup> <sup>[#n10]</sup> People do not know if the benefit of taking action is worth the time and cost. However, those using services feel that the outcome was better than if they had tackled the problem alone.<sup>11</sup> <sup>[#n11]</sup>

Law firms are already working to reduce the costs of legal services, as set out in the 'Improving access to legal services' chapter. And we are also taking action to help to make services more affordable, as you can see in the 'What we are doing' chapter.

Clearer information on costs could help tackle the problem, and the CMA has recommended that information on pricing in the legal market should be improved. They note that this is easier when the service is less complex, for example in residential conveyancing and will writing.<sup>12</sup> <sup>[#n12]</sup>

For some people on very low incomes, public funding is available for certain legal services. Legal aid enables access to legal services for many people that are dealing with issues that include, or even increase, vulnerability. For example, those taking legal action against someone that was domestically abusing them or those that are at risk of homelessness. There has been a reduction in the legal aid available for some work over recent years.<sup>13</sup> <sup>[#n13]</sup> However, legal aid is a matter of public policy and has never been able to provide legal services to all those that cannot afford them.<sup>14</sup> <sup>[#n14]</sup>

### *Lack of consumer information*

Transparency on costs is not the only challenge for the public. The CMA concludes that there is a lack of transparency which limits the ability of people to compare providers and limits competition and innovation.<sup>15</sup> <sup>[#n15]</sup>

People are often unaware that some legal services may not be regulated by an LSA approved regulator.<sup>16</sup> <sup>[#n16]</sup> Many do not know how to tell the

difference between a regulated and unregulated provider.<sup>17</sup> There is a risk that people are not able to make informed choices about the best course of action and the lack of advice from a regulated lawyer could be detrimental to their home, health, finances or family.<sup>18</sup>

People who may benefit from legal services often do not have the experience and knowledge to help them decide how best to resolve their problem.<sup>19</sup> Without the appropriate information:

- people can find it difficult to navigate the legal system, and may not select the right provider for their needs
- some find it difficult to characterise whether their problem is legal, financial, business or whether it is even solvable
- over a quarter take no action about their problem or do not think that anything can be done.<sup>20</sup>

This lack of appropriate information contributes to unmet legal need.<sup>21</sup> The CMA recommends that more consumer information should be made available by firms, and through comparison and educational websites.

### *Choosing and comparing providers*

Being able to compare legal service providers on a range of factors would enable people to find the best provider to suit their needs.<sup>22</sup> It is also important that firms are approachable and easy to deal with, so that people do not feel intimidated by approaching a solicitor.<sup>23</sup>

A third of people who use legal services are not satisfied that they have enough choice.<sup>24</sup> In some cases there is a lack of affordable, local options.<sup>25</sup> Consumer groups have reported to us that solicitors specialising in certain areas of law, such as mental health, are limited in some geographical areas.

People are not always aware of who can help.<sup>26</sup> Understanding the difference between a solicitor and a barrister; or between a court, tribunal, alternative dispute resolution service and an ombudsman can be difficult. Some providers of legal services do not attract legal services regulation, and those that do are regulated by one of nine approved regulators. This can make choosing an appropriate service provider a challenge.<sup>27</sup>

The quality of legal services can be hard to judge and it is difficult to compare providers in the absence of clear costs and impartial quality information about providers. Most people rarely use legal services and therefore do not know what to expect, often relying on their lawyer to tell them what service they need.<sup>28</sup>

The CMA notes that this can lead to people relying solely on personal recommendations to choose a provider, rather than trying to research what the sector has to offer.<sup>29</sup> <sup>[#n29]</sup> Almost two thirds of people rely on recommendations to choose their solicitor.<sup>30</sup> <sup>[#n30]</sup> Recommendations can be useful, but are not always objective and can provide limited information on which to base a decision.

Only 25 percent of people shop around for help and only one percent use a price comparison website to choose a solicitor.<sup>31</sup> <sup>[#n31]</sup> The lack of available information to compare providers and understand how legal services might help means that people cannot easily make informed decisions to choose a provider.

The CMA recommends that more data is made available by firms and regulators to enable the development of comparison tools and to encourage people to shop around. Comparison websites can have limitations, but are used successfully in other markets as a way of providing targeted, meaningful information to the public<sup>32</sup> <sup>[#n32]</sup>. We support the development of comparison websites offering meaningful and relevant information in the legal market.

### *Improving access to legal services*

#### *Growing and innovating*

We know that many law firms and solicitors are working to improve access to legal services.

There are several ways that firms are innovating and growing which include developing:

- people, to foster a culture that supports change and encourages new ideas<sup>33</sup> <sup>[#n33]</sup>
- new or changed corporate strategies or structures, such as alternative business structures (ABS) and increasing brand awareness through marketing<sup>34</sup> <sup>[#n34]</sup>
- services and service delivery, for example unbundling and online services, which for some people allows access to expert legal advice that they would not otherwise be able to receive<sup>35</sup> <sup>[#n35]</sup>
- processes, such as offering fixed fees, outsourcing work and using paralegals and document review services to cut costs.<sup>36</sup> <sup>[#n36]</sup>

People's problems do not fit into neat compartments. Some firms take a holistic approach to problem solving, by partnering or collaborating with other local professionals to deliver services that complement one another.<sup>37</sup>

<sup>[#n37]</sup>

In the last year, 236 firms have taken advantage of our reform of the separate business rule.<sup>38</sup> This means a law firm can be connected to a business that offers non-reserved legal services whether or not that business is regulated. Law firms are able to be part of wider groups of professional services businesses and offer greater choice to people.

And there is some development of legal services within a multidisciplinary practice (MDP), alongside other professional services.<sup>39</sup>

We are also seeing increased use of technology to better serve people who need help. Technology allows some law firms to "deliver a competitive fee without compromising quality."<sup>40</sup> Website development is one of the highest areas of investment for firms over the last few years.<sup>41</sup> Over a third of businesses and almost half of individual consumers want online legal services, so there is a clear demand that firms are seeking to meet.<sup>42</sup>

### *Holistic, innovative advice for small businesses*

"We set up as an ABS to offer legal, financial, consultancy and HR advice as a one-stop shop for small businesses. We deliver legal and financial services differently. Rather than clients having to explain their problem to several professionals, our team of lawyers, accountants, HR directors, learning and development specialists, management consultants and finance directors work together to solve the problem. Many of our clients pay through a monthly subscription, with almost all the rest paying fixed fees."

### **ABS firm**

### *Alternative business structures (ABSs)*

The Legal Services Act (LSA) introduced the option for non-lawyers to invest in, own and take part in the management of legal practices. This also enables different types of professional service providers to set up an ABS together.

ABSs have been said to "facilitate certain forms of access to justice" largely because of their more efficient working practices.<sup>43</sup> There is also evidence that ABS firms are more likely to innovate than non-ABS firms,<sup>44</sup> which is important in a changing market.

The nature of ABSs and their financing can also mean that some are able to fund other activities that support people to access legal services. Where an ABS brings law together with other professions, for example, accountancy, financial services and business advice, they offer people a one-stop shop. A particular strength of these businesses is that they are more likely to have a diversity of ideas, flexibility and propensity to innovate,



as well as potentially being a business that people already know about and trust.<sup>45</sup> [n45]

### *University forms ABS to widen access*

"University law clinics give students the chance to gain experience and deliver legal services to people that are in need. We decided to become an ABS so that we could offer reserved legal services, which widens the experience for our students and access to legal services. It offers us the flexibility to meet the needs of individual clients and small businesses."

### **University law clinic**

### *Artificial intelligence*

Artificial intelligence (AI) is increasingly being used by firms for reading and sorting documents. It can allow solicitors to focus on work where they can add more value. A potential benefit of AI on access to legal services is that it can reduce costs, as the AI software will be doing the work that a lawyer would have done before.

Some firms are also using AI to communicate with their clients, such as having online portals to automatically answer basic queries.

### *AI supports law centre*

London's first LegalTech Hackathon was organised to help a Community Law Centre deliver more cost-effective legal advice. The Hackathon led to AI-powered tools being used for a triage service for incoming queries.

### *AI delivers free advice*

A computer program has been developed to advise asylum seekers for free, as well as allowing people to challenge parking ticket decisions and other common legal problems. This not only provides free help, but also, where appropriate, it recommends people engage with a lawyer.

### *Providing affordable services*

### *Fixed fees*

Around half of consumer legal services are completed on a fixed fee basis, compared to just 38 percent in 2011.<sup>46</sup> [n46] Some firms publish their fixed fees on their website. The benefits of fixed fees are that they:

- are easier for people to understand than an hourly charging rate
- remove any misconceptions about costs and help to alleviate concerns that the cost might escalate and become unaffordable

- allow people to compare the costs of different providers, provided the fees are easy to find before the firm is instructed.

We expect firms to be clear to clients about the costs being charged, whether this is a fixed fee or other fee arrangement.<sup>47</sup> Disbursements also need to be clearly set out at the start of the work

[<https://www.sra.org.uk/consumers/instructing/costs-legal-aid/>] . Legal Choices

[<http://www.legalchoices.org.uk/>] also offers advice to people about costs.

### *Free or reduced cost services*

Some solicitors or other legal advisers provide free advice or representation (this is known as 'pro bono'). Pro bono services are often available through charities, such as LawWorks, who provide local clinics for free initial advice. Some large firms provide funding or equipment for law centres.

Some regulated firms also offer pro bono services, particularly for initial advice.<sup>48</sup> This allows them to provide basic advice or establish whether and how they can help someone. Free initial meetings also allow people to meet the solicitor before deciding whether to instruct them.

The number of people with access to free legal services has fallen to 17 percent in 2016 compared to 24 percent in 2012.<sup>49</sup>

We are supportive of firms offering pro bono services, but we recognise the limits of such arrangements.

### *Unbundling*

Unbundling involves breaking legal work up into specific tasks and agreeing with the client who will do what.

A client might be offered a variety of options, for example:

- a 'pay as you go' model, where they can get advice from a solicitor as and when needed
- 'menu pricing', where a solicitor deals with certain parts of a matter for a fixed fee.

This can make services more accessible<sup>50</sup> .

### *Why offer unbundling?*

The main reasons for people choosing to unbundle are the reduced cost and the opportunity to exercise greater control over their case.<sup>51</sup>

Therefore, unbundling could allow access to legal services for those who would not otherwise be able to afford it and those who perceive legal costs to be expensive. Access will be improved further if people are aware of the



unbundled services available to them when they are deciding how to resolve their problem and whether to seek professional help.

Clients might also want to use unbundled services where they have been working on an issue themselves, but find they need legal advice on a specific point.

Clients who have used unbundled services often feel that it improved the outcomes of their case. Some judges thought that unbundled legal services from regulated advisers was helpful to unrepresented people. 52 [n52]

People taking an active role in their case across civil, family and immigration matters can feel more empowered and informed about the process. This seems to be particularly true for high stakes cases such as those relating to child contact.<sup>53</sup> [n53] One in three family cases currently has both parties unrepresented.<sup>54</sup> [n54] Sources suggest that these litigants in person would benefit from access to advice and information about the validity of their case and how to represent themselves effectively.<sup>55</sup> [n55]

### *Managing the risks*

We believe that unbundled services, provided these are entered into in a clear and structured way, can deliver real benefits for some clients.

Unbundling carries some risks, but solicitors can take steps to overcome these.

- Solicitors should agree with their clients the scope of any work being done for them. This should include agreement on the work that the solicitor would normally do, but has been excluded due to unbundling.
- Unbundled services may be subject to claims of negligence. This risk is greater when clients are not clear on the boundaries of the work their solicitor will perform. This is a rapidly developing area of case law and solicitors should keep up-to-date with recent developments. From a regulatory point of view, our focus will be on the reasonable expectations of the client and the solicitor as to who will be responsible for what tasks, risks and issues.
- Solicitors should give clear advice about the work the client will need to do. When doing so, solicitors should take into account the individual needs and circumstances of each client to ensure that unbundling is appropriate for the matter in hand.
- Where information or instructions are provided by the client and these are inadequate, or insufficient to allow the solicitor to act, or it is clear that these leave them open to risk, the solicitor should bear in mind their duty to act in the best interest of their client. This is likely to include advising them of the reasons why they are unable to act and what needs to be done in order to enable them to do so, and of any clearly evident risks.

- Clients need to be made aware of how their decisions on unbundling will affect the total cost of their work. Also, they need to be made aware of the impact on the cost if they later change their mind.

### *Improving information and standards of service*

Many complaints about solicitors relate to communication issues: most commonly about clear information about costs and progress of the work.<sup>56</sup> [n56] Using plain English means that people are more likely to find the legal profession approachable and easy to engage with.<sup>57</sup> [n57] It is important to use language and communication methods that make the legal work easy to understand, particularly when working for people who may be vulnerable.<sup>58</sup> [n58]

### *Developing policies that improve services*

"We used the SRA's 'Providing services to people who are vulnerable [<https://www.sra.org.uk/archive/risk/risk-resources/vulnerable-people/>]' report to produce a policy and training for staff. We make reasonable adjustments for clients who are vulnerable, which ultimately improves access to legal services ensuring high standards of client care and engagement. It seems there is a poor perception of legal services and we want to address this by being approachable.

We also centralised our complaints process, so there is an independent contact for complaints and each complaint is acknowledged, investigated and responded to promptly. The outcomes are then logged, categorised and reported to our Risk Committee to use complaints as a tool for improvement. Our quality assurance process independently audits files to improve consistency and quality. Each audit is scored and reported quarterly to our Partners and Risk Committee, promoting governance and integrity."

### **Mid-sized firm in the East Midlands**

People are seeking help online more, particularly for wills, employment matters and divorce<sup>59</sup> [n59]. Many firms recognise that making their services available online increases their competitive advantage, as well as increasing access. For example, answering legal questions on a free online forum is both helpful to those people and makes the firm visible to potential clients. Similarly, some firms use social media to advertise, as well as to provide legal updates or free information.<sup>60</sup> [n60]

The recently proposed digitisation of court processes may benefit people and the proper administration of law through the potential for cost savings and more efficient processing of cases. Technology has the potential to

improve communication between solicitors and their existing and potential clients. Firms are increasingly using emails and texts to keep their clients informed of progress. Our latest paper on Information Security provides information on the benefits and risks of using technology to keep information safe.

## *What we are doing*

### *Enabling growth and innovation*

We are reforming our regulation to enable growth and innovation in the market and to strike the right balance between reducing regulatory burdens and ensuring consumer protection.<sup>61</sup> In this way, the market will be able to better serve the changing needs of the public and small businesses.

Our recent reforms include:

- encouraging external capital and expertise into legal services through authorising ABSs and MDPs
- changing our approach to separate businesses, allowing solicitors to own any kind of legal business
- improving our processes, saving firms time and money. For example, approving firms faster, including the approval of firms who deliver both regulated legal activities and other legal and professional services. In the last two years we have reduced the time we take to approve ABSs by 38 percent. Our authorisation requirements will be reformed further at the end of 2018.

We are significantly reforming our regulation through our Looking to the future programme to ensure solicitors and firms have the flexibility to meet legal need. The programme will revise the lengthy and complex Handbook to make our principles, codes and rules clearer and more concise. Detailed rules increase the compliance burden and cost, so our reform will reduce costs for firms and allow more flexibility. We plan to introduce two shorter codes of conduct at the end of 2018:

- The individual code for solicitors will be focused on high professional standards rather than a set of prescriptive rules.
- The code for firms will set out the systems and controls we expect firms to have in place, but allows flexibility about how firms meet these standards.

The proposed new codes have a sharp focus on high professional standards, making it easier for solicitors and firms to understand how our regulation applies in a range of situations. This will enable them to focus on providing a high quality service, as well as allowing innovation and change.

We also plan to launch a comprehensive toolkit to support solicitors in achieving compliance.

We also want to provide more flexibility for solicitors in how and where they can practice by 2019. There is growing market of non-LSA regulated firms providing legal services such as will-writing and resolving employment disputes. Yet the current rules mean that solicitors are banned from working in these firms - they can only offer services to the public through an LSA-regulated law firm.

Reforming our rules on this will mean that any business will be able to employ solicitors to give advice on certain areas of the law. For instance, a business advisory service could employ a solicitor to provide employment and commercial law advice. This will give people increased access to competent, ethical, legal help. The CMA states that this proposal "is likely to have a positive impact on consumers by generating greater competitive pressure on price, and creating new routes and choice for consumers to access advice from qualified solicitors."<sup>62</sup> <sup>[#n62]</sup>

We believe innovation can increase the reach of legal services to a wider set of prospective clients, including those that do not get help at all now. It can benefit people and businesses by providing them with greater choice in quality, access and value. We are supporting firms to be innovative in a variety of ways

- SRA Innovate<sup>63</sup> <sup>[#n63]</sup> is an initiative that provides guidance and materials to support firms trying out new ways of working. Over a quarter of solicitors have introduced an innovation to their business, increasing to 40 percent in ABSs.<sup>64</sup> <sup>[#n64]</sup>
- Innovation is about more than updating technology. For example, our Innovation Space also lets firms explore new ways of working face-to-face with vulnerable or hard to reach communities.
- Our regular Innovate conferences allow innovative law firms to share how they are making a real difference to the people and businesses that use their services.
- We have consulted on simplifying our criteria for granting waivers to our rules. These changes would remove barriers that could be preventing solicitors and firms to innovate, while making sure the public remain protected. Our aim is that the policy is more transparent and makes it more straightforward for firms to apply for waivers.

### *Enabling firms to address legal need*

We have granted a waiver to allow a solicitor to work in a non-LSA regulated business. The solicitor specialises in a range of non-reserved legal services for start-up and small businesses, not for profit and public

sector organisations. They want to provide competitively-priced fixed-fee services for a sector that has an unaddressed legal need.

We seek to ensure high professional standards in a range of ways: from providing accessible information in the Risk Outlook, providing toolkits, support and guidance through to our professional ethics web chat and small firms' helpline. And in serious cases of misconduct we, of course, take proportionate enforcement action to protect the public. Regulation focusing on high professional standards and proportionate protections, rather than prescribing business models and particular ways of working, is likely to be more effective in delivering outcomes that benefit the public.<sup>65</sup> It is also more likely to be future-proofed, against the background of the increased pace of change in the legal market.

### *Reducing costs*

We know that regulation costs time and money. These costs may be passed on to clients, so we are making sure that our rules and regulations are proportionate and targeted. We have a clear commitment to reducing costs, both through making sure we offer value for money and through cutting unnecessary bureaucracy.

- Our reform programme removed over 40 pieces of red tape over an 18 month period. We are working closely with the profession as we take the programme forward.
- We are making our accounts rules simpler so they allow firms more flexibility. Our aim is that less time and money will be spent on technical compliance, so that firms can focus on what matters - managing the very real risk of keeping their clients' money safe. Firms that only hold payments in advance for unbilled fees and disbursements may want to hold money in the firm's business account if the firm does not otherwise need to have a client account. These reforms should be implemented at the end of 2018.\*  
[#note]
- Some people that might benefit from legal services are unlikely to be able to afford them, even in a more competitive environment. Our reforms will support more solicitors working for charities and other third sector bodies, as we are not imposing additional restrictions on these 'special bodies'. We will be working with 'special bodies' to develop bespoke toolkits and support.
- The CMA highlights that in-built regulatory costs, such as the required level of professional indemnity insurance (PII), can limit innovation and competition.<sup>66</sup> Our insurance arrangements have had minimal change for nearly 20 years. We must balance the need for the right level of protections without firms incurring additional expense. We need to take the right approach, based on up-to-date evidence, so we are looking at what more we can do to review PII requirements.

## *Improving information for consumers*

The needs of people who need legal services are varied. Therefore, there are several ways that we are working towards improving the information available to the public to enable them to make informed choices and to drive competition forward. For example:

- Our law firm search tool [<https://www.sra.org.uk/solicitors/standards-regulations/glossary/register/>] allows people and businesses to check that a firm is regulated, and provides accessible, free data for the growing number of comparison websites.
- We published a discussion paper on what sort of regulatory data we should publish and the information we may require our regulated firms and solicitors to provide to people.<sup>67</sup> Next steps are to consult in detail on making the sector more transparent by increasing the availability of useful information during 2017.
- The CMA recommends the development of a consumer education hub that is available to people when they first engage with the sector.<sup>68</sup> As part of our consumer information strategy, we will develop materials that will provide more clarity about what people should expect from their solicitor and how they are protected.
- Legal Choices [<http://www.legalchoices.org.uk/>], the joint regulator website for consumers, provides information to support people to access legal services. We are working with the other legal regulators to develop Legal Choices further to provide more information. For example the regulatory protections available to people, as well as practical tips about choosing the right lawyer and paying for their services.
- We are exploring how behavioural science can help the way we interact with people and firms. And we are working to make sure we target our communication resources effectively, which will also feed into making the promotion and content of Legal Choices more relevant.

## *Getting involved*

As part of our Looking to the Future consultation we published 'The changing legal services market' which brought together existing research on themes including consumer experience of legal services and levels of innovation and change in the market.

Below we draw out key pieces of research that are relevant to the risk of access to legal services. We consider five broad themes: how people access legal services, redress, innovation, the impact of regulation on growth and the economic rationale for regulatory reform.

## *How people and businesses access legal services and make decisions*



Online survey of individuals' handling of legal issues in England and Wales 2015, Ipsos Mori Social Research Institute for The Legal Services Board and the Law Society, 2016

- Only a third of people with a legal need seek any kind of third party advice.
- Only one in ten people experiencing legal problems instruct a solicitor or barrister, often because they assume it would be too expensive or is poor value for money.

Unjust Kingdom: UK Perceptions of the Legal and Justice System, Innovation in Law Report 2015, Hodge, Jones & Allen, 2015.

- 63 percent of people do not believe that professional legal advice is affordable for ordinary people.

Legal Services 2015 [<https://yougov.co.uk/news/2015/04/15/usage-legal-services-remains-unchanged/>], YouGov, 2015

- 75 percent of people say cost influences their choice of legal provider

The legal needs of small businesses, Kingston University, commissioned by the Legal Services Board, 2015

- Most small businesses have little contact with legal providers and are more likely to ask an accountant for advice.
- Over half of businesses that experience a problem try to resolve it on their own.

How people resolve 'legal' problems, Legal Services Board, 2014

- Consumers are more likely to obtain help from a law firm on problems they self characterise as 'legal' and vulnerable people have difficulties accessing appropriate help.
- When people have been signposted they can suffer referral fatigue and give up.
- Most respondents who obtained help from an advice agency rather than a lawyer did so because of the perceived cost.

Understanding Decision Making in Legal Services: Lessons from Behavioural Economics, Maule, J. for the Legal Services Board, 2013

- The legal market is complex and people lack the knowledge or time to evaluate or compare different providers, so they rely on key pieces of information or signals to make decisions.

- Short, simple and clear information is preferable to all of the possible relevant information.

Tracker Survey, Legal Services Consumer Panel, 2016

- Factors that affect people's decisions about how to access legal services include cost, reputation, speed of delivery, location and specialist knowledge.
- A third of people who use legal services are not satisfied that they have enough choice.
- Almost two thirds of people rely on recommendations to choose their solicitor.
- Only 25 percent of people shop around for help and only one percent of those using solicitors in 2016 used a price comparison website to choose a solicitor.

### *Redress and consumer empowerment*

Consumer Impact Report, Legal Services Consumer Panel, 2014

- 44 percent of consumers who were unhappy with a legal services provider did not complain.

Mapping potential consumer confusion in a changing legal market,  
University of Leicester & the Legal Ombudsman, 2011

- Consumer rights to complain and pursue redress vary depending upon the type of organisation that they choose, even though the service offered is substantially similar.
- Provider title (such as solicitor or barrister) rather than activity determines whether additional rights over statutory protections apply.

Redress for legal services [<http://www.legalombudsman.org.uk/?portfolio=redress-for-legal-services>] , Legal Ombudsman & Northumbria University, 2014

- The redress available across legal services is disparate and fragmented.
- To make redress effective, the options are either to simplify the regulation of the market itself or simplify the redress mechanism available.

Age of the Client [[https://www.lexisnexis-es.co.uk/assets/files/LexisNexis\\_Bellwether2015\\_Age\\_of\\_the\\_Client.pdf](https://www.lexisnexis-es.co.uk/assets/files/LexisNexis_Bellwether2015_Age_of_the_Client.pdf)] , LexisNexis  
Bellwether Report: 2015, LexisNexis, 2015



- 80 percent of lawyers think they deliver 'above average' service, but only 40 percent of clients say they receive it
- 95 percent of lawyers think they explain the charging system clearly at the outset, but only 70 percent of clients agree.

Quality of legal services for Asylum Seekers [<https://www.sra.org.uk/sra/how-we-work/archive/reports/asylum-report/>] , SRA, 2016

- The complexity of the asylum legal process makes it difficult for asylum seekers to recognise the difference between the different types of legal adviser and what protections they have through the legal regulators.
- Community groups and some community representative bodies sometimes signpost asylum seekers to poorer quality or unregulated advice.

### *Levels of innovation in legal services*

Innovation in legal services

[<https://www.sra.org.uk/globalassets/documents/sra/research/innovation-report.pdf?version=4a1aba>] , Enterprise Research Centre for the SRA and the Legal Services Board, 2015

- 25% of all legal services providers have introduced a new and improved service in the last three years.
- ABSs are more innovative than all types of providers, including unregulated providers.

### *The impact of regulation on market growth*

Understanding Barriers to Entry [<https://legalservicesboard.org.uk/>] , Exit and Changes to the Structure of Regulated Law Firms, Regulatory Policy Institute, 2013

- Insurance was the major, single regulatory requirement that gave rise to difficulties for firms at each of the stages of entry.
- Simplifying regulation will help small businesses.

In-depth investigation into the costs of regulation in the market for legal services [<https://legalservicesboard.org.uk/>] , ICF for the Legal Services Board, 2015

- The areas of regulation where incremental costs of regulation (or regulatory burden) were highest were professional indemnity insurance, professional development, and information from the regulator.

## The regulated communities' views on the cost of regulation

[<https://legalservicesboard.org.uk/>] , Legal Services Board, 2015

- Many regulated entities and individuals considered areas that are not regulations specific to legal services (for example complying with Money Laundering regulations under the Proceeds of Crime Act 2002) to be a regulatory cost.
- Many lawyers are unaware what they are paying for when obtaining a Practising Certificate each year.

## *Economic rationale for regulatory reform*

Understanding the economic rationale for legal services regulation, George Yarrow and Chris Decker for Legal Services Board, 2010

- Professional restrictions or practices (such as fixed or minimum prices, bans on advertising, restrictions on organisational form, and exclusive rights) can result in restricting new entry and stifling innovation, including in relation to different ways of doing business.
- The potential alternative structures for legal service regulation should be assessed for their possibly beneficial effects of specific rules, such as ensuring quality in service provision, balanced with the potential for the rules to be used anti-competitively and to adversely affect economic welfare.

Assessment of the economic rationale for, and possible impacts of, proposed changes to the Solicitors Regulation Authority Handbook

[<https://www.sra.org.uk/globalassets/documents/sra/consultations/code-of-conduct-annexes.pdf?version=4a1ad3>] , Chris Decker for the SRA, 2016

- Consumers are expected to benefit from a wider number of providers and delivery mechanisms available to them. Support must be given to consumers to help them navigate and understand what protections apply.
- Where change results in more intense competition consumers are likely to benefit from lower prices, high quality and new services.

## Notes

1. There are a number of approved regulators in the LSA

[<https://legalservicesboard.org.uk/>] . When referring to LSA-regulated firms, this means those who are authorised to deliver reserved legal activities under the LSA. Both LSA regulated and non-LSA regulated firms can deliver legal activities outside the reserved legal activities. For instance, legal services such as will writing, or advice on employment or immigration law.

2. The groups that were most likely to experience a high number of legal problems were those with a limiting illness or disability, were unemployed, a

lone parent with dependent children, living in a household with an annual income below £15,000 or living in rented accommodation (Findings from the Legal Problem and Resolution Survey, 2014-15

[<https://www.gov.uk/government/publications/legal-problem-and-resolution-survey-2014-to-2015>] ; MOJ, 2017).

3. Mind the gap an assessment of unmet legal need in London: A Survey of MPs' Surgeries Oct- Nov 2016, All-Party Parliamentary Group on Pro Bono and Hogan Lovells, 2017

4. How people resolve 'legal' problems, Legal Services Board, 2014

5. The financial impact of SMEs' failure to take care of their Legal Business, LawBite, 2017

6. The legal needs of small businesses, Kingston University for the Legal Services Board, 2015

7. Tracker Survey, Legal Services Consumer Panel, 2016; Lessons for law firms: The client experience [<http://www.lawnet.co.uk/media/1189/excellence-mark-white-paper-final.pdf>] , LawNet, 2015

8. Legal Services Benchmarking Report, Legal Services Board, 2012

9. Tracker Survey, Legal Services Consumer Panel, 2016; Usage of legal services remains unchanged [<https://yougov.co.uk/news/2015/04/15/usage-legal-services-remains-unchanged/>] , YouGov, 2015

10. Online survey of individuals' handling of legal issues in England and Wales 2015, Ipsos Mori Social Research Institute for The Legal Services Board and the Law Society, 2016

11. Online survey of individuals' handling of legal issues in England and Wales 2015, Ipsos Mori Social Research Institute for The Legal Services Board and the Law Society, 2016; Qualitative Research Exploring Experiences and Perception of Unbundled Legal Services [<https://www.legalservicesconsumerpanel.org.uk/what-we-do/research-and-reports>] , Legal Services Board, 2015

12. Legal services market study: Final report, Competition and Markets Authority, 2016

13. Total net programme expenditure (excluding administration costs), October 2015 to September 2016.

14. How People Resolve 'Legal' Problems report to the Legal Services Board, Pleasence, P. and Balmer, N.J., 2014

15. Legal services market study: Final report, Competition and Markets Authority, 2016

16. There are a number of approved regulators in the LSA [<https://legalservicesboard.org.uk/>] . When referring to LSA-regulated firms, this means those who are authorised to deliver reserved legal activities [<https://legalservicesboard.org.uk/>] under the LSA. Both LSA regulated and non-LSA regulated firms can deliver legal activities outside the reserved legal activities. For instance, legal services such as will writing, or advice on employment or immigration law.
17. Mapping potential consumer confusion in a changing legal market, University of Leicester for the Legal Ombudsman, 2011
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25. Mind the gap an assessment of unmet legal need in London: A Survey of MPs' Surgeries Oct- Nov 2016, All-Party Parliamentary Group on Pro Bono and Hogan Lovells, 2017
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27. Quality of legal services for Asylum Seekers [<https://www.sra.org.uk/sra/how-we-work/archive/reports/asylum-report/>] , SRA, 2016
28. Lawyers, markets and regulation, Stephen, Frank H., 2013
29. Legal services market study: Final report, Competition and Markets Authority, 2016

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33. Innovation in legal services, Enterprise Research Centre for the LSB and SRA, 2015
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36. Here be MONSTERS, Insight: Legal Process Outsourcing, Legal Business, 2014; A perspective on the legal market 2014, Tsolakis, J., The Royal Bank of Scotland (RBS), 2014; 95 Unbundling a market: The appetite for new legal services models, Allen & Overy, 2014
37. Experiences of consumers who may be vulnerable in family law, Ecorys for the SRA, 2017
38. Changes to the separate business rule and to activities with recognised bodies and recognised sole practices Q&A, SRA, 2015
39. Multidisciplinary practices, SRA, 2015
40. Innovation in legal services, Enterprise Research Centre for the LSB and SRA, 2015
41. The riddle of perception, LexisNexis Bellwether Report, 2016
42. Unbundling a market: The appetite for new legal services models, Allen & Overy, 2014; UK Legal Services Market Report 2015 – Press Release, IRN Research, 2015
43. Report to Convocation by the Law Society of Upper Canada, 2015. This report included a review of ABS firms in England and Wales.
44. Report to Convocation by the Law Society of Upper Canada, 2015; Innovation in legal services, Enterprise Research Centre for the SRA and

Legal Services Board, 2015

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48. Experiences of consumers who may be vulnerable in family law, Ecorys for the SRA, 2017

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53. Qualitative research exploring experiences and perceptions of unbundled legal services-, Ipsos MORI, 2015

54. Family court statistics quarterly England and Wales: Annual 2016, Ministry of Justice, 2017

[[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/604030/family-court-statistics-quarterly-q4-2016.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/604030/family-court-statistics-quarterly-q4-2016.pdf)]

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[<http://www.lawsociety.org.uk/support-services/advice/practice-notes/client-care-letters/>] ,

2016; Research into client care letters

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services: lessons from other sectors

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[<https://www.sra.org.uk/archive/risk/risk-resources/vulnerable-people/>] , SRA, 2016

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[<http://www.legalfutures.co.uk/associate-news/probate-and-employment-top-consumers-online->





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[<http://reports.yougov.com/news/2013/06/25/potential-surge-diy-divorces/>] , YouGov, 2013

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[<https://www.sra.org.uk/solicitors/innovate/sra-innovate>] .

64. Innovation in legal services, Enterprise Research Centre for the SRA and Legal Services Board, 2015

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67. SRA Discussion paper: Regulatory data and consumer choice in legal

services [<https://www.sra.org.uk/sra/consultations/discussion-papers/regulatory-data-consumer-choice-legal-services/>] , 2016

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69. Our view is that a small firm can be best defined as a sole practitioner or a firm with no more than four partners, members or directors, which has an annual turnover of no more than £400,000.

\* In an earlier version we mentioned third party account reform would be by end of 2018 but we have recently issued new guidance on their use bringing this date forward.