

A reflection on ten years of regulation

THE STATE OF LEGAL SERVICES 2020



LEGAL SERVICES
BOARD



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Chair's Foreword



The law matters. It keeps us safe. It provides ways to resolve disputes without violence, and gives the weak a voice in the face of the strong. In terms of economic life, it gives us the confidence to be able to transact and invest, and in so doing unlocks prosperity.

And it follows that for those who work in the law – lawyers and legal businesses – with rights come great responsibilities.

Over the decade the sector has performed strongly in economic terms with turnover increasing by 22% and employment by 24%. This is against a backdrop of two seismic events which have bookended the last ten years of legal services regulation. In 2009, when the LSB assumed its powers created by the Legal Services Act 2007, the UK was emerging from the 2008 financial crash. Today, in 2020, the country is facing an unprecedented global pandemic and Covid-19 is having profound consequences for people who need legal services and those who provide them. The UK's exit from the European Union could also have significant implications on the legal services market.

The pandemic is evolving, and the full ramifications of Covid-19 are not yet known. But the legal sector will emerge in a stronger

position to serve society if it understands its strengths and weaknesses and if it identifies and addresses the right priorities. This report aims to give a frank, evidence-based account of what the sector has achieved over the last decade of legal services regulation and the key challenges that remain. This volume draws on insights gleaned through meetings and conversations with stakeholders. It also refers to research that we conducted with our Public Panel – some citizens who shared their views on legal services and priorities for the sector. Volume two, an evidence compendium, presents a comprehensive analysis of the sector, drawing on a wealth of statistics, surveys and reports.

There is much to celebrate and it is easy to forget that the Legal Services Act 2007, while it enjoyed cross-party support, was a controversial piece of legislation. Objectors lamented reforms that would end professional self-regulation. They predicted that ABS would have dire consequences for the independence of lawyers, the maintenance of professional standards and the jurisdiction's international standing.

While the legislation may not yet have led to all the gains its proponents hoped for, it has not precipitated the sorts of problems its opponents had foreseen and has delivered some very real and important successes. Following the growth in alternative business structures, consumers enjoy more choice than ten years ago. Regulatory reforms have also enabled more legal professionals to set up in business and provide services in broader areas of law. Providers view regulation as much less of a barrier to innovation than in the past. Consumer satisfaction has improved, confounding critics of the reforms who predicted a race to the bottom in standards. The corporate sector has powered strong economic growth. England and Wales continues to be a dispute resolution centre of choice. Some overseas

jurisdictions have adopted our legislative model to open up their markets.

Despite these successes, many of the critical challenges facing the sector today existed when the Legal Services Act came into force a decade ago. Looking ahead, the underlying challenge is to shift the dial on these issues to deliver benefits for the public, consumers and legal professionals:

- **Fairer outcomes** – this includes widening public access to advice and support and ensuring that no one has a worse outcomes or quality of service due to their background or life circumstances. The sector must also build a more inclusive culture which enables anyone to enter the law and achieve their full career potential.
- **Stronger confidence** – this will involve resolving difficult questions around the scope of regulation and broadening access to redress. It also requires regulators to put the right mechanisms in place so that legal professionals deliver consistently competent and ethical legal services.
- **Better services** – this will require giving consumers the information and tools they need to drive stronger competition, compelling providers to deliver legal services that respond to their needs. It also entails regulators fostering responsible innovation that commands the trust of both the public and legal professionals.

These are long-term challenges for the sector to overcome. However, if it can meet these challenges, then society, consumers and legal professionals will benefit.

For example, if we are successful, there will be much less unmet need and a much more equal experience of using legal services. Legal Choices will be a well-known, trusted

resource that supports people to understand how the law can help resolve their issues and comparison services will help them to navigate the market. Shopping around will be the norm with consumers easily able to compare options and reward those firms offering high quality and affordable services. Consumers will consistently trust the advice they receive, knowing an independent and effective regulatory system is providing the essential protection they need. If they receive poor service, whatever type of provider they use, consumers will be able to complain to an independent body and obtain quick and fair redress.

Success will also mean a sector that better reflects the communities it serves. An inclusive culture will encourage people of all backgrounds to enter the law and support them to pursue rewarding legal careers. Systems of education and training will equip legal professionals with the knowledge, skills and ethical grounding, enabling them to meet society's needs. A modern regulatory system will be equipped to respond to the changing market, provide better value for money and support innovation. There will be greater respect in society for rule of law and the special contribution legal services makes to our lives.

Surely this is a contribution to society that the sector is uniquely placed to make and one that should galvanise our collective effort?



Dr Helen Phillips

Chair

EVIDENCE AND ENGAGEMENT

Developing this report

This report is informed by insights gleaned through conversations with people across and outside the legal services sector in England and Wales. We have also referred to research by the Legal Services Board and others.

We met with **organisations** **72**



from across legal services regulators, consumer groups, academics, legal professionals and the judiciary



We held **evidence sessions**



that covered diversity, technology, grassroots legal support, and consumer advice



We consulted **members of the public**

41

from across England and Wales

In 2019 we commissioned the largest legal needs survey ever run in England and Wales

28,663
people took part



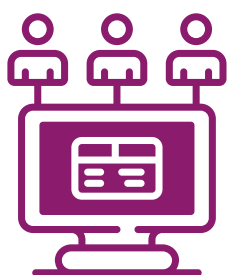
45 people attended our summit



for senior leaders in the legal services sector to discuss emerging themes for this report

We have drawn on research and statistics from over **organisations**

30



The research commissioned by LSB or the LSCP alone covers over

75,000 consumers
7,500 legal service providers
31,500 small businesses

TEN YEARS OF LEGAL SERVICES REGULATION

A wide range of evidence and research has informed this report.

The need for legal services



Six in ten adults experienced a legal issue in the last four years, or

7.5
million adults
a year



1.8 million small businesses experience legal issues every year

Achievements over the last 10 years

84% of customers 

are satisfied with the service they receive



22%+
Turnover

24%+
Employment

There are more than **1,400 ABS**, which make up around one in ten regulated firms



The legal services market doesn't work for everyone

50% of small businesses handle legal issues alone



36% of adults have low confidence that they could achieve a fair and positive outcome in different legal scenarios



3.6
million

adults in England and Wales have an **unmet legal need involving a dispute every year**

People struggle to find the best deal for them

Only **30%** of consumers shop around before choosing a law firm



Only **2%** of consumers use a comparison service to find a law firm

54% of consumers find it easy to compare the quality of firms



In small businesses, only

1 in 10 view lawyers as cost effective



The diversity of the profession needs to improve



9% of QCs from BAME backgrounds compared to **15%** of all practising barristers

There is a **20% gender pay gap** across legal professionals



77% of legal executives are women, but only **27%** of notaries are



40% of notaries and **37%** of barristers went to a fee-paying school

SUMMARY

A blue-tinted photograph of a woman wearing a hijab and a man looking at a laptop screen. The woman is in the foreground, looking towards the laptop with a slight smile. The man is in the background, looking at the same screen. The image has a dark blue background and a white geometric pattern at the bottom.

1. The LSB is developing a new strategy for legal services regulation that aims to set a long-term direction of travel for the sector that stakeholders can unite behind. To inform this process, this State of Legal Services 2020 report reflects on ten years of legal services regulation in England and Wales since the Legal Services Act 2007 came into force. Our purpose is to enable the sector to build on its strengths and identify the challenges it needs to tackle so that legal services can better meet the needs of society.
2. This volume draws together all the threads from the evidence that we have collected, an extensive programme of stakeholder engagement and research with our Public Panel – a group of citizens who gave their views on what our future priorities should be. It should be read alongside a second volume which sets out our data and analysis in detail.
3. There is much to celebrate. Following the growth in alternative business structures, consumers enjoy more choice than ten years ago. They are also more satisfied with the service they receive from law firms¹. Regulatory reforms have also enabled more legal professionals to set up in business and provide services in broader areas of law and providers view regulation as much less of a barrier to innovation than in the past². There has been strong and steady economic growth driven by a successful corporate sector. Internationally, England and Wales continues to be a dispute resolution centre of choice. Overseas jurisdictions have adopted our legislative model to open up their markets.
4. However, in several respects, the sector is failing to meet the needs of society.

We have identified three broad and interrelated strategic themes where it needs to make progress: fairer outcomes, stronger confidence and better services. Many of the challenges sitting within these themes existed at the inception of the Legal Services Act reforms. At that time, there were significant levels of unmet legal need, a lack of innovation, and progress in improving diversity and inclusion was slow. More recent issues, such as the growth in unregulated providers and developments in technology, pose new challenges that the sector will need to grapple with over the next decade.

Fairer outcomes

5. Our data suggests that 3.6 million people have an unmet legal need involving a dispute each year³. Half of the small businesses experiencing legal issues handle these alone⁴. Reductions in the scale and scope of legal aid, pressure on third sector advice agencies, and a rise in litigants-in-person, are among the reasons why nearly nine in ten people agree that “law is a game in which the skilful and resourceful are more likely to get what they want”⁵. Despite its fundamental importance, the debate over the publicly-funded legal system sometimes masks the fact that there are significant access issues for population groups and areas of law that would be unlikely ever to be within the scope of even the most generously funded legal aid scheme. Although affordability is an insurmountable obstacle for many people, the barriers to access go beyond cost, embracing issues of legal capability and service design.
6. While legal services are out of reach for large parts of society, the same population groups – BAME communities,

people with disabilities, younger people, those on lower incomes and people with a low level of education – frequently appear in our data as worse off. This is true of their access to legal services, the quality of their experience when doing so and how fair they perceive the outcome of their issue to be. Further, these groups are more likely to experience serious legal issues that add to the existing problems they face. Often this reinforces a cycle of disadvantage that contributes to widening social inequalities. Ultimately, a legal system that serves some groups of people less well than others will struggle to command the public confidence central to the rule of law.

7. As well as unfairness for consumers, we also see unfairness present in the profession itself, and particularly in recruitment, retention and progression. Some legal professionals – or people who would have made excellent professionals had they not been deterred at entry – face a range of barriers that combine to favour people from some groups and serve to exclude others at senior levels of the profession, including, but certainly not limited to, the judiciary. Those barriers include preferences for “elite” educational institutions, working practices and cultures that exclude, unfounded perceptions of “hierarchy” between different types of legal professional, and “homophily” (a tendency to prefer people similar to ourselves). While the make-up of the profession better reflects the population it serves than ten years ago, the pace of progress addressing these and other barriers has been too slow. We know that this concern is shared by many others across the sector, not least the main professional representative organisations. However, while we see a wide range of initiatives taking place, evaluation is rare and that makes it much harder to know what moves the dial the most. Indeed, given the

slow rate of progress, we must at least consider the possibility that existing approaches are not working, and new, and perhaps more radical, ones are needed.

Stronger confidence

8. Generally, people trust lawyers and are satisfied with the advice they receive. But apart from bearing in mind the large numbers of people and businesses who do not get the legal help they need, for those who do access legal services there are concerns about the quality of advice and representation in critical areas like crime and immigration and asylum⁶. There is also evidence from public agencies that avoidable mistakes on forms are commonplace. Beyond the quality of work, across different tiers of the profession, from high-street law firms to city firms, there is need to maintain high standards of conduct that will maintain public confidence in lawyers as an ethical profession which has upholding the rule of law as its core purpose. Public confidence risks being undermined, for example, where there is widespread non-compliance by high-street firms and barristers’ chambers with rules designed to support consumer choice. At the other end of the spectrum, law firms and in-house lawyers serving corporate clients have been implicated in high-profile scandals, such as phone hacking, banking scandals and money laundering, that damage the public interest.
9. There is a need to build public confidence on firmer foundations, which match what consumers expect regulation to deliver for them. There are opportunities to strengthen protections within the existing system and by amending the Legal Services Act. This includes better systems that ensure lawyers remain competent throughout their careers and closing gaps in the regulatory framework that



deny consumers access to redress when using unregulated providers. The public also need to have confidence in the institutions that are there to protect them. A clear priority is to reduce delays for people making complaints to the Legal Ombudsman as this is where regulation touches the public most directly. It will also be important to ensure that regulatory bodies put the interests of the public and consumers at the heart of everything they do, being culturally as well as structurally independent of the profession. Public confidence also demands that each of the regulatory bodies has sufficient resources to do their jobs well and they collaborate effectively to advance shared objectives with sufficient ambition and pace.

10. Public confidence in legal services is also affected by issues that lie outside the control of regulators, but nevertheless bear on the regulatory objectives. This includes public policy decisions and the effectiveness of the justice system. Because it has such an impact on the regulatory objectives of the Act, it would not be credible not

to recognise the widespread concern about the legal aid system, and about the criminal justice system, and parts of the civil justice system. More widely, many commentators have identified what they describe as a worrying trend of diminishing respect for the law and lawyers in public discourse and a growing perception of domestic and global challenges to the rule of law. As noted above, the legal profession has a responsibility to act in ways that build public confidence consistently. However, all actors in the sector, including regulators, need to demonstrate leadership and help educate the public about the vital importance of the rule of law and the contribution that legal professionals make to a well-functioning economy and society.

Better services

11. The more effectively consumers engage in markets, the stronger the incentive is for providers to design services that are more accessible and respond to people's needs. A market study by the Competition and Markets Authority (CMA) in 2016⁷ led to the regulatory

bodies introducing transparency measures on price, quality, service and redress. However, despite greater transparency price competition is still weaker than we would wish to see, in particular, there remains a wide variation in price for similar services. Over the decade, shopping around has increased, but this trend has not accelerated since the CMA's study⁸. Online price comparison tools have not become mainstream. Better signals on the quality of providers would help drive greater price competition but consumers still lack access to this information. Overall, we assess that some limited progress has been made, but there is still much more that regulators and providers can do to improve consumer engagement and competition in the sector.

12. The LSB's research indicates that, pre-pandemic, levels of innovation were static despite deregulatory reforms that have removed restrictions on businesses⁹. Among service providers,

culture appears to be a more significant impediment to innovation than regulation. In fact, there are many examples of cutting-edge, consumer-focused innovation in the sector, although currently largely confined to the peripheries. The main regulatory barriers that do exist tend to be 'soft' ones like navigating the regulatory system. But the sector could overcome these by supporting new entrants with information, sandboxes, innovation funds, strategies and similar initiatives. The permissive regulatory framework created by the Legal Services Act is more conducive to technological innovation than some other jurisdictions. However, it does create some difficulties. For example, technology developers and overseas-based providers falling outside the scope of regulation, the focus on title-based regulation as opposed to activity-based regulation, the complexity involved in navigating the regulatory framework and the potential for different standards as a result of multiple regulators in the sector. These



factors could variously disincentivise innovators from entering the market and create gaps in consumer protection that regulatory bodies are unable to mitigate.

13. Technology has rare transformative potential to disrupt the market and widen access by removing cost from the provision of legal services. However, more digital exclusion could result unless the needs of those with no or low levels of digital capability are considered. Unlocking technology's potential to widen access requires a series of challenges to be met. One is creating clear and transparent datasets that developers rely on to build new solutions that could benefit consumers. Data can support the delivery of existing legal services and help drive innovation. In addition, consumers and legal services providers will only use technologies if they trust them. Advanced technologies, such as artificial intelligence, pose ethical and regulatory challenges, as well as opportunities, which require a careful regulatory response.

Covid-19

14. Covid-19 overlays many of these challenges. The pandemic is increasing legal need, broadening and entrenching social inequalities, and threatening the sustainability of parts of the profession. There are potential risks arising which might make it harder for certain groups to start legal careers and progress to senior roles, putting the justice system under strain, and creating challenges for regulators and complaint and disciplinary bodies. Like the disease itself, the pandemic is exposing and attacking existing weaknesses. Often, the challenges are not new but more acute, and they have become more urgent to tackle. However, it is also possible that Covid-19 could prove a watershed moment that leads to positive change. The sector adapted remarkably quickly to the effect of lockdown, triggering a wave of innovation in a matter of months that otherwise might have taken years. Permanent changes in working practices could support a more diverse workforce.
15. Some argue that the sector needs a period of stability to recover from the effects of the pandemic. However, we need to seize the opportunities afforded by major policy reviews into legal aid, the criminal justice system and other aspects of public policy. Society will not allow the legal sector to continue to inch forward on improving diversity; a step-change is required. Society itself has changed, and expectations are different in many ways. Given the right tools, consumers could create a more competitive environment that will force changes to the delivery of services that better meet their needs. Developments in technology hold the potential to remove cost from the provision of legal services resulting in changes that could put the law into more people's hands. Regulation will also need to evolve, to both foster this change and adapt to it.
16. Legal services will be crucial to the nation's recovery from the pandemic since they underpin a well-functioning economy, the rule of law and the very fabric of our society. In turn, effective regulation will support the sector to better meet society's needs by giving the public confidence that they are well-protected, promoting a diverse and inclusive environment for those who work in the law, and creating market conditions that foster innovation and empower consumers to find good deals that meet their needs.

ACHIEVEMENTS



17. The Legal Services Act 2007 represented a major change from the previous system of regulation. The government's vision was for "a legal services market where excellence continues to be delivered; and a market that is responsive, flexible, and puts the consumer first"¹⁰. Key elements of the reforms included: a simpler regulatory system, which would be more independent of the legal profession; the creation of a single, independent complaints handling service; and removal of restrictions on competition to allow new ways of delivering services for consumers.
18. The sector has yet to fully deliver on this vision, but we consider there have been significant advances for citizens, consumers and legal professionals over the decade. Also important, problems that critics of the Legal Services Act had foreseen, such as lower standards and loss of the sector's international standing, have not materialised.
19. In fact, the reforms have been closely followed internationally. In several key jurisdictions, self-regulation and restrictions on business practices are gradually giving way to models of independent regulation and market liberalisation. This may become more important as the UK negotiates new trade deals with partners post EU exit.
20. On the following pages, we pick out four broad areas of success.



Consumer choice

21. Regulatory reforms allowing legal professionals to set up in business and offer a broader range of services have provided more choice for consumers. For example, barristers can establish entities and ABS, practise litigation and offer a more comprehensive range of public access work. Legal executives can run businesses and provide legal services in more areas of work. At the same time, accountants have been authorised to conduct probate work. These changes have coincided with a broader societal shift where people expect to have a wide choice and are more assertive in their role as consumers.
22. There are more than 1,400 ABS, which make up around one in ten regulated firms. The model has been successfully adopted by local government, universities and charities as well as by commercial entities. Our surveys suggest that ABS are more innovative than traditional law firms¹¹. The Big Four accounting firms all hold ABS licenses, and their scale and multi-disciplinary approach holds the potential for disruption in the corporate market. Available data shows that ABS have no worse a disciplinary record than other types of law firm, which suggests they have not lowered standards as was feared¹².

Better experience for consumers

23. Although experience differs across users of legal services, in overall terms, surveys show that consumers are more satisfied with the service they receive, the quality of advice, and value for money than they were ten years ago.
24. It is easier for consumers to navigate the market. The Legal Choices website is helping people to understand their rights as citizens and how to choose lawyers, exceeding its target of 2-3 million visits ahead of schedule. There has been a significant shift away from hourly rates to fixed-fee deals that offer greater certainty for consumers¹³. A package of reforms is increasing transparency in the market with evidence of more consumers shopping around and finding it easier to do so¹⁴.

Creating the conditions for innovation

25. A concerted effort has led to the removal of barriers to entry and unnecessary regulation. This includes major changes to many regulatory bodies' codes of conduct and routes to qualification. Many of these reforms were controversial, but there is no evidence that they have led to adverse outcomes for consumers.
26. The CMA gave the sector a mostly clean bill of health on barriers to entry and exit¹⁵. Survey evidence suggests a significant drop over time in providers citing regulatory constraints as a barrier to innovation. At the same time, providers are increasingly reporting a more competitive environment as a factor driving innovation.
27. During Covid-19, there has been no need for significant emergency changes to regulatory bodies' rules that were preventing providers from adapting to social distancing restrictions. Indeed, providers and public institutions have adjusted remarkably quickly in challenging circumstances. Latterly, there has been significant government financial and practical backing for lawtech, while the creation of sandboxes by LawtechUK and some regulatory bodies is supporting innovation. There are signs that the benefits of technological advances are beginning to reach beyond the corporate sector and feed through to individuals and small businesses.

Economic success

28. Over the decade the sector has performed strongly in economic terms with turnover increasing by 22% and employment by 24%¹⁶.
29. Law firms are trading on the stock exchange, while external investors, private equity and litigation funders are injecting new sources of capital into the sector.
30. The sector has continued to perform well internationally. UK legal services net exports doubled over the last decade. England and Wales has maintained its position as a dispute resolution jurisdiction of choice. The jurisdiction continues to perform well on international measures on low levels of corruption and confidence in the judiciary¹⁷.

CHALLENGES



31. Looking across the evidence we have collected, and our engagement with the Public Panel and a considerable number of stakeholders, we have identified nine critical challenges that a future strategy for the sector should seek to address.
 32. We have organised these challenges under three strategic themes: fairer outcomes, stronger confidence and better services. However, many of the challenges relate to all three themes.
- No one area can be taken in isolation – all need to be brought together and addressed in an integrated way. For example, slow progress in improving diversity and creating an inclusive culture within the profession raises fundamental issues of fairness. It also undermines public confidence in legal services and acts as a brake on innovation, which prevents law firms from fully meeting the needs of the diverse communities they serve.

Fairer outcomes

Tackling unfairness that harms the public and the profession

- 1 – Lowering unmet legal need prevalent across large parts of society
- 2 – Achieving fairer outcomes for people experiencing greater disadvantage
- 3 – Dismantling barriers to a diverse and inclusive profession at all levels

Stronger confidence

Building public and professional confidence on strong foundations

- 4 – Ensuring high quality legal services and strong professional ethics
- 5 – Closing gaps in consumer protection
- 6 – Reforming the justice system and redrawing the regulatory landscape

Better services

Enabling consumers to spur responsible innovation

- 7 – Empowering consumers to obtain high quality and affordable services
- 8 – Fostering innovation that designs services around consumer needs
- 9 – Supporting responsible use of technology that commands public trust

FAIRER OUTCOMES



1 – Lowering unmet legal need prevalent across society

33. The central challenge is to find ways to put the law into more people's hands at a time when Covid-19 is creating wider legal need, but people have less money to pay for legal services. Barriers to access go beyond cost, embracing legal capability and the extent to which the market successfully connects with its customers by delivering services which meet their needs. Yet, for many people, cost is an insurmountable barrier to access. While these access challenges may be more acute today, they are not new. Indeed, the general feeling among stakeholders is that the scale of the access challenge is at least as great today, if not greater, than when the Legal Services Act came into force.
34. The LSB's major survey of legal needs found that 3 in 10 people who experience legal issues – about 3.6 million citizens in England and Wales each year – fail to have legal needs involving a dispute met¹⁸. This either happens because they do not get professional help, it takes too long to resolve their issue, or they do not get the information or assistance they need. The Law Centres Network has estimated that millions of people fall into a 'justice gap' where they cannot afford legal services but do not qualify for legal aid¹⁹.
35. Problems accessing legal services also confront small businesses²⁰. Only a quarter obtain professional help to deal with legal issues, while half try to handle them alone. And just one in ten small business owners view lawyers as cost-effective. Obtaining timely legal advice can, at its extreme, mean survival or failure for small businesses.
36. Large sections of the population and small businesses see legal services as simply out of their reach because they cannot afford help from lawyers. In our Individual Legal Needs Survey, 87% agreed that 'lawyers are too expensive for most people to use'²¹. The survey also shows that the public view the justice system as fundamentally unfair. 82% agreed that 'people with less money generally get a worse outcome' and 88% that 'law is a game in which the skilful and resourceful are more likely to get what they want'. Our Public Panel echoed the sentiment that law is a gamble where the odds are stacked against ordinary people²². Survey data support these perceptions: the LSB's Individual Legal Needs Survey shows that when people obtain professional advice, they are more likely to believe they receive a fairer outcome.
37. While regulation can act as a barrier to access by adding to the cost of legal services and stifling innovation, it is not the root cause of unmet legal need. Instead, the inability of so many citizens to afford legal services is rooted in wider social and economic inequalities. However, lack of access to justice contributes to a decline of social justice. When everyday legal

issues go unresolved, this causes harm to people's finances, relationships, physical and mental health. This can, in turn, trigger other social problems, such as unemployment and crime. This comes at a financial cost to society by undermining economic productivity and adding to the cost of services outside of the justice system like healthcare and social welfare. It also makes society poorer by undermining trust in the rule of law and our public institutions.

“Accessing legal services is just something so far beyond the scope of what even an average person could dream of affording. Much like gambling, this isn’t even guaranteed to work, it’s too much of a risk. The law is here for all of us, not just the wealthy.”

LSB’s Public Panel

38. Despite the ‘whole system costs’ that legal issues cause, civil legal aid spending nearly halved (-46%) in real terms between 2010/11 and 2015/16. The Ministry of Justice took some of the biggest hits to its budget across Whitehall during the austerity years. There has been widespread criticism that the LASPO reforms²³ have resulted in many solicitors being forced to abandon legal aid work. This has resulted in ‘advice deserts’ in areas like housing and community care²⁴. There has been a rise in litigants-in-person who are now the norm in many types of cases. Not-for-profit organisations have also borne the brunt of funding cuts.
39. Since 2015/16, the civil legal aid budget has increased by 21% in real terms, and the Ministry of Justice has put in place a Legal Support Strategy. The recent emphasis on prevention, early intervention and solutions like health justice partnerships has been welcomed. The advice sector has adapted within its resource constraints, and there has been welcome growth in university law clinics and support for litigants-in-person. However, there is a broad consensus that there is more to do to redress the balance. Newly announced reviews of civil and criminal legal aid take place against this backdrop.
40. Stronger competition may help to widen access by spurring innovation and lowering prices. However, the early evidence of the transparency reforms introduced since December 2018 – the primary competition intervention in the sector to date – is that market outcomes for consumers are not yet improving. While efforts to empower consumers should continue, equally, it is not realistic to expect market forces alone to fill all gaps in provision. The underlying complexity of many legal issues and the effort and expertise required to resolve them means professional help will continue to be out of reach for large parts of the population to fund privately. Society often turns to insurance as a solution to finance the cost of unplanned and expensive events like ill health and housing disrepair. However, legal expenses insurance is rarely used to pay for legal services, unlike in some other jurisdictions, despite policies being widespread.

41. The headline graph on turnover in the sector presents a surface picture of healthy growth. This largely reflects strong performance by the corporate sector. Experts told us that the market is increasingly divided along different tiers with some parts struggling, even before Covid-19. There are concerns about the sustainability of the profession, especially where the next generation of crime and social welfare lawyers to serve people's legal needs will come from. As students face the realities of tens of thousands of pounds of debt upon qualification, it is little surprise that universities we spoke to told us that

more students are pursuing careers in much better remunerated areas. The commercial success of the corporate sector contributes greatly to the nation's wider economic health and international standing. The corporate sector also voluntarily puts significant investment into pro bono initiatives, which is not always fully recognised. Even so, we also heard calls for this part of the sector to make a greater contribution to widening access to legal services for ordinary people.

- **33%** of adults agree that “people like me can afford help from a lawyer”
- **36%** of adults have low confidence that they could achieve a fair and positive outcome in different legal scenarios
- **50%** of small businesses handle legal issues alone
- **79th** – UK's international ranking on the accessibility and affordability of civil justice
- **3.6 million** adults in England and Wales have an unmet legal need every year involving a dispute
- **8.6 million** adults estimated to have legal expenses insurance

2 – Achieving fairer outcomes for groups experiencing deeper disadvantage

42. The Social Mobility Commission considers that social mobility has stagnated over the last four years at virtually all stages from birth to work²⁵. The Equality and Human Rights Commission argues that Britain's most at-risk groups of people are in danger of being forgotten and becoming trapped in disadvantage. Its 'State of the Nation' report²⁶ found prospects for disabled people, some ethnic minorities, and children from poorer backgrounds have worsened in many areas of life, and that this inequality risks becoming entrenched for generations to come, creating a two-speed society.
43. Against this backdrop, at each stage in a legal issue, from experiencing a need to receiving a good level of service, our research shows²⁷ that certain parts of society consistently experience deeper disadvantage. The same population groups – BAME communities, people with disabilities, younger people, those on lower incomes and people with a low level of education – frequently appear in our data as being worse off.
44. Firstly, these groups tend to face legal issues more often. However, socio-economic factors also shape the types of legal problems that specific population groups face. Black and Asian communities are far more likely to experience the legal issues connected with rights and involving disputes. As well as encountering more complicated legal matters, BAME communities also have among the highest levels of unmet legal need. This is also the case for younger people, those on lower incomes and those having a low level of education.
45. Next, some population groups find it harder to deal with legal issues. The concept of legal capability involves people believing they can handle difficult situations in a legal context, confidence they can personally achieve fair and positive outcomes, and their perceptions of the accessibility of the justice system. The survey data establishes a link between lower legal capability and higher unmet need. Women, those aged under 55, people with a disability and people with lower incomes have lower legal capability.
46. Perhaps due to the type of legal issues they face, younger people, some BAME groups and people with a disability are more likely to obtain professional help than others. However, each of these groups, along with those on lower incomes, are also more likely to try but fail to get advice. BAME communities are much more likely to borrow to pay for legal services, whereas White respondents are more likely to draw on

“As a socially responsible nation we need to ensure that the vulnerable and socially deprived are able to access legal services.”

LSB's Public Panel

savings, suggesting legal advice has a harder impact on their finances.

47. BAME communities are less satisfied with the customer service they receive, quality of advice and value for money²⁸. BAME communities have less confidence in complaining about lawyers²⁹ but make up 1 in 5 users of the Legal Ombudsman's service³⁰. Nearly 3 in 10 complainants to the Legal Ombudsman report having impairments or a disability. While it is interesting that these groups are reaching the Legal Ombudsman, it raises questions about the underlying causes of their dissatisfaction with service providers.
48. Finally, Covid-19 is widening and entrenching existing inequalities, creating a deeper disadvantage for those worse off in society and magnifying the exclusion of those with low digital literacy or who lacked access to technology before the pandemic. However, in addition, some new groups of people are suddenly finding themselves facing hardship for the first time. Many issues where unmet legal need is greatest – housing, benefits, family, employment – are those where Covid-19 is creating even more demand for help.

- **12%** of black and Asian respondents faced an issue concerning their legal rights in the last four years compared to 5% of white respondents
- **20%** of 18-29yr olds didn't get professional help due to not knowing where to go compared to 6% of those aged 65+
- **34%** of people on incomes £32k or less have an unmet legal need compared to 26% earning £60k or more
- **39%** of black African respondents would trust lawyers to tell the truth compared to 68% of white respondents
- **42%** of black respondents who paid for legal services financed this through borrowing compared to 10% of white respondents

3 – Dismantling barriers to a diverse and inclusive profession at all levels

49. Our analysis of published data³¹ paints a mixed picture of the composition of the profession. In particular, the pace of progress over the last decade in closing attainment gaps at senior levels of the profession and in the judiciary has been too slow.
50. There have been some successes. The year 2019 marked one hundred years of women working in the law, but also the milestone of there being more female than male solicitors for the first time. Compared to the UK workforce average there are higher proportions of BAME lawyers in most professional groups, while there is parity of both black solicitors and barristers on this basis. There are more LGBTQ+ lawyers than the UK population average. Some professional groups have particularly strong records on specific protected characteristics: three-quarters of legal executives and licensed conveyancers are female, while three in ten costs lawyers are from BAME backgrounds.
51. However, some groups are less well represented. The proportion of disabled lawyers appears to be well below the UK workforce average. A study by Cardiff University³² found that lawyers with disabilities face daily discrimination because of ignorance and unconscious bias as well as blatant prejudice. There is substantial overrepresentation of lawyers who were privately educated - 40% of UK educated notaries, 37% of barristers and 21% of solicitors attended fee-paying schools. This compares to the UK population average of 7%, although it is on a slightly downward trend.
52. There remain issues with retention and significant gaps in progression to more senior roles. For example, half of solicitors are women, but only a third of partners. And, while 38% of barristers are women, only 16% are QCs. This is reflected in a gender pay gap of 20% across legal professionals, which is not improving. The pace in closing attainment gaps has varied across the profession. For example, there was a 10% increase in female solicitor partners between 2014 to 2019, but only a 3.2% increase in female QCs between 2015 and 2019. While there is the same proportion of BAME partners as in the overall solicitor population, only 9% of QCs are BAME compared to 15% of all barristers, and the BSB has noted slow progress in closing the gap.
53. Going to a fee-paying school or having a parent in a legal occupation is a distinct advantage in career progression across the sector. As set out in a report³³ by the Judicial Diversity Forum, of which LSB is a member, judicial diversity is gradually increasing and progress has been made on making the appointments process fairer, but women and BAME groups remain underrepresented, especially in senior judicial roles. Most court judges have a background as a barrister and representation of solicitors falls throughout the judicial selection process.



“Diversity is always a good thing. I think when people need legal services it can often be at a stressful time in their lives and talking to someone with a similar background might make the process easier and reduce any possible communication barriers.”

LSB’s Public Panel

54. Beyond the statistics, there is powerful testimony of differential treatment of specific groups who face additional hurdles to starting and then pursuing successful careers as lawyers. External events, notably, but by no means only, the death of George Floyd in the United States have increased focus on issues of racial inequality and the treatment of women in the legal workforce. Survey evidence suggests there are higher levels of harassment and bullying of both women and BAME lawyers. Research also highlights attitudes and workplace practices impacting on disabled lawyers that limit opportunities and slow career advancement. There are high levels of work-related stress and mental ill-health stemming from a long-hours culture, fixation with billable hours and dealing with the pressures that come from managing client expectations.

55. Covid-19 makes it more urgent to drive further and faster progress on diversity. One positive sign may be changes in working practices that make possible a 'new normal' of remote working, which facilitates flexible working patterns. Recent regulatory changes, such as SRA reforms permitting solicitors to work on a freelance basis, support this. Overall, however, the diversity implications of the pandemic are concerning:

- It may become harder to begin legal careers, for example, due to fewer training contracts or pupillages being available. Covid-19 may exacerbate existing inequalities, e.g. those who face the greatest challenges to achieving the grades needed for law school entry are from lower-income families where there are higher proportions of BAME people
- It may be harder to progress to senior roles if, for example, the economic impacts of Covid-19 create fewer opportunities for progression, or people who work remotely due to caring responsibilities are overlooked for promotion
- The professionals forced out of the market because of Covid-19 may be the groups with the most diverse representation. Surveys have indicated the greatest risks are to legal aid practitioners, junior barristers, small firms and sole practitioners
- Mental health issues risk being overlooked due to remote working, and there is evidence that wellbeing has worsened, especially among decision-makers



56. There is a need to address the three related issues of composition, conduct and culture. The quality of data is improving but is inconsistent across the sector, and we heard that data is not being used to learn what works, drive change or provide accountability. We also heard that City law firms have put positive initiatives in place, but commitment is variable across the sector, and these are not yet delivering better tangible outcomes. Stakeholders suggested that regulators need to use their levers to tackle behaviours that need rooting out, while fostering a culture where victims feel safe to come forward and report issues knowing that they will be properly dealt with and learned from.
57. The pace of progress needs to rapidly accelerate to ensure that the legal profession at all levels reflects the diversity of the communities it serves. While there are examples of leadership and good practice, our experience points to deep-seated inertia that requires a harder-edged regulatory response to force the necessary pace of change and hold people to account where meaningful progress is not being made.

- **6%** of barristers and legal executives report a disability – this is the highest in the sector but is well below an average of 15% in the UK workforce
- **9%** of QCs from BAME backgrounds compared to 15% of all practising barristers
- **20%** gender pay gap across legal professionals
- **40%** of notaries and 37% of barristers went to a fee-paying school
- **44%** lawyers in city law firms who have suffered from stress or depression
- **77%** of legal executives are women, but only 27% of notaries are

STRONGER CONFIDENCE



4 – Ensuring high-quality legal services and strong professional ethics

58. The law is more than a market and being a lawyer is not just a job. Society requires that the public place their trust in professionals who are competent to provide expert advice and support on the most serious issues that any of us might face and to do so with respect and empathy. This includes supporting people who may be very vulnerable. Being a legal professional comes with certain benefits balanced by a set of obligations, which are underpinned by regulation. It is also given meaning by a set of shared values, including unshaking support for the rule of law and adhering to the professional principles. These aspects of professional culture are first inculcated through the education and training system but must be maintained throughout lawyers' careers.
59. Generally, people who use legal services trust lawyers and respect their expertise. Satisfaction with the quality of advice and customer service has stayed high over the decade, and even improved a little, although importantly some demographic groups are less satisfied.
60. Consumers should be able to trust that legal professionals have the necessary skills and knowledge to provide good quality legal services and that these are kept up-to-date and relevant over time. However, the public makes false assumptions about the checks and balances that are in place. For example, the Public Panel was surprised to learn that lawyers do not have regular external checks on their competence, such as those used in other sectors like healthcare, aviation or teaching. The LSB is considering whether the current practice of ensuring ongoing competence throughout a legal professional's career is fit-for-purpose.



“Similar to how pilots have to take many retests and do safety checks throughout their careers, I feel lawyers have people’s lives in their hands also and this should be mandatory throughout the legal services industry.”

LSB’s Public Panel

61. There is also a challenge for regulators to address some unhealthy behaviours in legal services, suggesting an underlying culture inconsistent with what society expects of an ethical profession. This includes issues relating to diversity and inclusion where, as set out in the first group of challenges, the public expects real leadership to be shown. Cultural issues also underpin how providers serve consumers on a day-to-day basis. An example that touches the public directly is significant non-compliance with transparency

rules designed to help consumers make more informed choices³⁵. Similarly, providers are getting better at handling complaints³⁶ but many still exhibit a defensive attitude rather than a culture that proactively encourages feedback and facilitates complaints. This is important because research shows that people lack the confidence to complain³⁷ and are sceptical that lawyers will handle their complaint fairly or even take notice³⁸. In fact, over a third of dissatisfied consumers do nothing about the issues they experience³⁹.

62. At the other end of the spectrum, the role of lawyers on issues of public concern has come under scrutiny. Examples of these issues include

facilitating aggressive tax avoidance schemes, bad practice by banks and phone hacking by newspapers. Most recently, a report by Parliament's Intelligence and Security Committee⁴⁰ found that lawyers were part of a growth industry of 'enablers' wittingly or unwittingly helping to extend Russian influence. As has been noted by Professor Richard Moorhead and Dr Steven Vaughan⁴¹, in-house lawyers are at the frontline of difficult ethical questions, faced with the tensions of professional obligation and commercial pressure. However, where a small minority of lawyers cross the wrong side of these ethical boundaries, this risks diminishing the trust that the public places in all lawyers.

- **36%** dissatisfied consumers who do nothing, but down from a peak of 49%
- **65%** recent users of legal services who would trust lawyers to tell the truth
- **80%** complaints resolved by solicitor firms in-house, compared to 72% in 2012
- **84%** overall service satisfaction

5 – Closing gaps in consumer protection

63. In our Public Panel research, people felt vulnerable when they needed to use legal services knowing that lawyers can have such a significant impact on their lives. Most participants felt there should be a large amount of regulation to protect people from mistakes, rather than letting consumers manage their own risks. In this context, there was surprise and concern that some legal services are unregulated. Survey data also shows that a significant minority of consumers do not know and do not check if their provider is regulated, mainly because they wrongly assume this is the case⁴².

“It is odd that the list of regulated services has not been reviewed for some time. With the advance of internet-based services, this is in danger of being left behind the pace of the real world and new ways of providing advice that ought to be regulated.”

LSB’s Public Panel

64. The LSB has highlighted that the current list of reserved activities is an ‘accident of history’ and not based on a consumer protection rationale⁴³. Further, this list was not reviewed prior to the Legal Services Act. The market has evolved since the 2007 Act with technology fast changing how legal services are

delivered, and by whom. Clearly, the Legal Services Act could not contemplate some of these technological changes, which transcend regulatory boundaries. A question to address with growing urgency is whether there is sufficient flexibility within the current framework to keep pace with these developments and provide adequate protections that can command public confidence.

65. While the unregulated market remains small, will-writing is an example of where new entrants have successfully used technology to serve large numbers of consumers. LSB’s research⁴⁴ suggests that unregulated providers tend to be more innovative and cheaper – these are significant benefits given challenges around unmet legal need. Against this, survey evidence shows that consumers are more dissatisfied with the service they receive from unregulated providers. Yet the regulatory framework means they cannot access the Legal Ombudsman to seek redress. Covid-19 is likely to accelerate a permanent shift to more remote delivery of legal services, which could see unregulated providers grow in influence, and thus gaps in consumer protection widen.

66. This issue requires balancing competing tensions of protecting consumers, enabling innovation and increasing the affordability of legal services. The solution in the short-term may lie in broadening the scope of regulation but in a light-touch way⁴⁵. If there is universal access to redress across legal services, this might close gaps in protection and give more consumers the confidence to use unregulated providers.

67. More broadly, our view is that the legislative framework has initially served the sector well but is increasingly unsustainable. As we have set out previously, the flaws in the current regulatory framework arise from both its architecture and the widespread inflexibility that this architecture engenders⁴⁶. As well as making the scope of regulation more risk based, legislative reform will be necessary

to fully address issues relating to the independence of regulation and the institutional landscape. At present, there is little government appetite for wholesale reform of the Legal Services Act. Should this remain the position, the challenge for the sector will be to make the most of remaining potential within the current framework alongside any smaller scale short-term legislative reforms.

- **20%** of consumers using unregulated providers who were dissatisfied
- **34%** of legal services mainly delivered by email/internet/online
- **35%** of consumers do not know or do not check if their lawyer is regulated
- **49%** of the public who feel their consumer rights would be protected using lawyers
- **130,000** minimum estimated wills written each year by unregulated providers

6 – Reforming the justice system and redrawing the regulatory landscape

68. The evidence compendium mainly focuses on the market for legal services, but an analysis of the state of public confidence in the sector would be incomplete without some commentary on the wider justice system⁴⁷ and the performance of the regulatory and complaint handling institutions that exist to protect consumers.
69. Firstly, lawyers operate in justice systems that many perceive as being in a “state of crisis”. In criminal justice, concerns include inefficiencies and poor performance in the courts against a backdrop of financial pressures, court closures, concerns about the quality of advocacy, failures in disclosure of evidence and falling prosecutions for rape. The civil justice system is also facing mounting case backlogs with associated delays and there are concerns about ensuring equality of arms for litigants-in-person, especially for people in vulnerable circumstances such as those with mental health problems or low literacy. A review⁴⁸ into how the family courts handle domestic abuse and other serious offences raised concerns that victims and children were being put at unnecessary risk. In administrative justice, users of various tribunals and ombudsman schemes also face severe delays. Overlaying this, as discussed previously, is the large ‘justice gap’ that excludes people and small businesses from accessing the justice system at all.
70. Turning to regulation, the complaints-handling system touches the public most directly. Should this fail, it undermines public and professional confidence in the whole regulatory system. Prior to the Legal Services Act, people lacked confidence in a system where professional bodies handled service complaints about their members. It has been a great benefit that consumers can complain to a single, fully independent ombudsman scheme, which has investigated around 70,000 complaints over the decade. However, the Legal Ombudsman has experienced significant caseload backlogs for several years, which Covid-19 has compounded. Under new leadership in 2020, the organisation also needs to strengthen its leadership, culture, change management, systems and governance. There is a need to find dispute resolution models that can deliver timely and effective redress for consumers. Ultimately, and this should only be a last resort, if it becomes evident that the Legal Ombudsman cannot improve, this includes contemplating alternatives to the current arrangements.
71. The Legal Services Act was designed to improve public confidence by bringing an end to a system of regulation of lawyers by lawyers. Following the introduction by LSB in 2020 of revised Internal Governance Rules, the public can be confident that the regulatory bodies are more operationally independent of approved regulators. It is welcome that almost every part of the

sector has gone beyond these minimum requirements to voluntarily establish greater institutional separation between the regulatory bodies and approved regulators. However, without primary legislation, full independence that would deliver maximum public confidence in the independence of regulation cannot be achieved. Further, while there is now more structural independence, time will tell if structural independence will translate into more cultural autonomy and greater consumer focus.

72. The regulatory bodies look very different than ten years ago in making a transition from self-regulated membership bodies towards becoming modern professional regulators. Today's regulators must grapple with more complex risks and issues than previously, such as anti-money laundering, designing price transparency remedies and assessing the implications of artificial intelligence. Modern professional services regulators are expected to develop a more sophisticated understanding of the



needs of consumers and the diversity of their regulated communities. All these things require sufficient resources to deliver good quality regulation that commands public confidence. This raises challenges for smaller regulators in particular.

73. The LSB's position remains that ultimately moving to a single regulator for all legal services would have significant public benefits. However,

until primary legislation can bring this about, better cross-sector collaboration is needed to deliver effective regulation in the public interest. Better coordination and collaboration between regulators may help to overcome issues of scale. This is also important because the current system of multiple organisations regulating the same activities does not deliver clarity and simplicity for consumers, risks inconsistency of standards and



approach, and duplicates cost. However, recent experience of collaboration is mixed. The Legal Choices website is an example where the regulators initially collaborated successfully. However, regrettably, one regulator withdrew from this scheme. Then, in seeking to agree on a future programme and funding, the remaining regulatory bodies struggled to resolve competing viewpoints or commit to a long-term plan.

74. Intimately linked to the question of regulatory structures are the questions how and to whom regulation should be applied. The legal sector in England and Wales has developed over a long period, with parts of it having visible roots stretching back centuries, and most of it at least pre-dating moves seen in other sectors to build services more

clearly around consumers. The structure of the sector, with its many divisions and subdivisions of professions, is not well-understood by the public, and nor are related concepts like reserved legal activities. What is likely to matter most in terms of access, public confidence and quality of service, is to start from the needs of consumers. This suggests placing less focus on the category of lawyer providing a service, and more on the legal activities and delivery models that will best meet these needs, and the associated training, competence and indemnification necessary to maintain public confidence.

- **32%** domestic violence applicants who are unrepresented
- **50%** of judges in a survey highlighting loss of judicial independence
- **70,000** complaints investigated by Legal Ombudsman since opening
- **437,000** outstanding cases in the Magistrates Courts in June 2020
- **£124.7m** practising certificate fees collected across the regulators in 2020-21

BETTER SERVICES



7 – Empowering consumers to obtain high quality and affordable services

75. In 2016, the CMA concluded that competition was not working well for consumers due to a lack of information on price, service, regulation and redress⁴⁹. Since then, a concerted regulatory effort has sought to support consumers to drive stronger competition by improving transparency by service providers. Four years on from its market study, the CMA will soon report on the progress that the sector has made.
76. There are positive signs. New rules have delivered price transparency across large parts of the market. Transparency has improved in areas of law, such as divorce, that were not covered by the new rules⁵⁰. Survey evidence shows that shopping around is increasing, and consumers are finding it a little easier to compare providers on price and quality⁵¹. The Legal Choices website has been revamped and is reaching a much wider audience. Consumers can more easily verify if a law firm is regulated by using digital tools provided by some of the regulatory bodies.
77. Regulators are currently evaluating the impact of the changes they introduced, and some of these interventions may need more time before taking full effect in the market. Overall, though, on the available evidence so far, they appear to be having a limited impact on consumer outcomes. Shopping around has inched up on the same gradual trajectory as before the new rules came into force⁵². A significant minority of consumers report finding information about price and quality difficult, while most still find out the price by having a discussion with a provider rather than finding it on a website⁵³. There is no clear pattern of the spread of prices for similar services narrowing, while most prices are going up and there is evidence of firms increasing prices because competitors are doing so⁵⁴. As described previously, there remain significant pockets of non-compliance with elements of regulatory bodies' transparency rules among solicitors and barristers.



78. Despite the move towards greater transparency, and although there is evidence that many consumers search online for reviews of legal services providers, comparison websites and customer review sites remain little established. The LSCP's annual tracker survey found just 2% of consumers use one to choose their provider⁵⁵. There has been significant investor backing behind new comparison websites, but insufficient law firms have signed up to these services to make them commercially viable. On the supply side, the relatively small scale of the sector, its highly fragmented supplier base and issues with comparing apples and pears, are among factors that inhibit comparison services.

“If consumers had a better idea of what legal services would cost them and the quality of said firm, they would be a lot more willing to at least look into legal services instead of writing off legal services as something they can’t afford.”

“Unless people understand what lawyers can and can’t do, they can’t get the best out of the service they provide.”

LSB's Public Panel



79. Better signals on the quality of providers would help consumers to drive competition. However, as has been highlighted by the LSCP⁵⁶, consumers lack access to information to help them make comparisons and confident choices, whether that is objective data or customer feedback. Instead, they must rely on 'gut feel', or else a recommendation or personal

experience. Several public agencies collect data on errors made by lawyers that consumers might find useful, yet do not publish it. The solutions in this area are not obvious but there was a lack of attention paid to this issue by the regulatory bodies for too long. The LSB is currently developing proposals for practical solutions.

- **2%** consumers using a comparison service to find a law firm
- **25%** law firms fully compliant with SRA transparency rules
- **30%** consumers who shop around before choosing a law firm
- **54%** consumers who find it easy to compare the quality of firms

8 – Fostering innovation that designs services around consumer needs

80. The less effectively consumers engage in markets, the weaker the incentive is for providers to innovate and design services that are responsive to their needs.
81. On a weekly basis, there are stories in the trade press about fresh injections of capital, innovations in service delivery and new entrants promising to change the future. However, it is much harder to identify examples of change over the last ten years that have been truly transformative. There is nothing equivalent to the impact made by challenger banks in disrupting financial services, for instance.
82. This is supported by survey data showing overall levels of innovation in the market have remained unchanged over time⁵⁷. Legal services have performed no worse than the entire economy on this measure. However, the figures are disappointing given that the market liberalisation reforms were a centrepiece of the Legal Services Act and the removal of unnecessary regulatory restrictions since then.
83. There are some positive markers for the future. Survey evidence⁵⁸ shows that providers are increasingly reporting a more competitive environment as a factor driving innovation. Perceptions of legal services regulation acting as a

barrier to innovation have reduced considerably over time⁵⁹. In their report⁶⁰ on the Legal Access Challenge, the SRA and Nesta found that the barriers to innovation from regulation were ‘soft’ rather than ‘hard’. These included challenges faced by new entrants in navigating their way through overlapping sectoral regulatory regimes and the regulated boundaries of legal advice. Some of these difficulties could be overcome by clearer, coordinated information.

“...competition promotes innovation and this would help consumers greatly, as it has done in almost every other industry, driving costs down and pushing quality up. Lower costs would mean more consumers/better revenues for firms, more justice being served and more confidence in the law and legal system.”

LSB’s Public Panel

84. The Legal Access Challenge also showed that innovation in public-facing legal technology is mainly coming from unregulated organisations, but that some consumers are wary of using them. This feeling was echoed by the

LSB's Public Panel who highly valued the protections that regulation provides. The Legal Services Act maintained a permissive regime where only a small number of legal activities are reserved to individuals and businesses authorised by one of the regulatory bodies. There is mixed evidence on the extent to which unregulated providers have penetrated the market, with signs of success in areas like will-writing, employment and divorce. These markets are typically high volume, low-value areas, and so more easily disrupted. However, the immense influence of the solicitor and barrister 'brands' on consumer choice makes it tough for all types of alternative provider to make deep inroads. As discussed above, bringing unregulated providers inside the regulatory tent – even if this just means providing access to redress – may give more consumers the confidence to use them.

85. A consistent theme from our stakeholder engagement is that the prevailing culture in the legal profession is a barrier to innovation. The fact that lawyers typically occupy roles that involve mitigating risks for their clients does not foster a natural innovation mindset that encourages them to try delivering legal services in new ways. Experts suggest that the traditional partnership model contributes to risk aversion and slow decision-making. The ABS licensing regime should challenge this since it introduces external thinking into law firms by non-lawyer owners and investors. However, while there is evidence that ABS are more innovative than traditional firms, investors perceive legal services as a 'sleepy' market⁶¹ and the sorts of multi-disciplinary practices that the architects of the Legal Services Act reforms envisaged have not materialised as much as expected.

- **26%** of providers recording service innovation over a three-year period
- **40%** of providers report legal services regulations as a constraint on innovation
- **48%** of SRA regulated firms are incorporated, up from 19% in 2010/11
- **1,413** ABS: data suggests these are more innovative than traditional firms
- **176,650** authorised persons, up 24% since 2010/11

9 – Supporting responsible use of technology that commands public trust

86. In 2018, LSB research found relatively modest adoption of technology by most law firms⁶². While the Cloud and ID checking tools were commonplace, tools like blockchain and artificial intelligence were little used, nor were law firms planning to use these in the next three years. A common perception is that technology has mostly benefited corporate clients as city firms have invested heavily in incubators and new services to serve their clients, but the public has benefited much less.
87. However, in the world of technology, change can happen very quickly. A report in 2019 stated that the highest concentration of legal tech startups was in ‘consumer services’ that individuals and small businesses should benefit from⁶³. Government has invested £2million to support the ‘digital transformation’ of the legal sector and appointed Tech Nation to work with the Lawtech Delivery Panel. It has put technology at the heart of court modernisation reforms and online delivery is making it easier and cheaper for consumers to self-serve in areas including powers of attorney, probate and divorce.
88. Covid-19 has forced law firms to transition to remote delivery of a wide range of legal services at remarkable pace. Public agencies have responded to the pandemic by accelerating digital transformation programmes. As has been observed, ‘many of the technologies and techniques that have been forged in the heat of mobilisation and lockdown will be regarded as preferable to the traditional ways’⁶⁴.
89. Technology has tremendous potential to unlock access to justice since it can remove cost from the provision of legal services in ways that few other interventions can. However, to successfully build on the momentum that Covid-19 has created, there are a series of challenges to be successfully met.
90. One is to make sure that technology does not exclude some, possibly vulnerable, groups in society. While numbers of people lacking access to digital tools is diminishing, a significant minority still do. Many more are anxious about using online services or find this difficult. This should not prevent technology from being used more widely, but alternatives for essential services should be maintained.
91. The creation of artificial intelligence and other technological applications is hindered by the difficulties that developers face in accessing the quantities and quality of data, such as court judgments, contracts and other legal documents, on which these tools are built. This information may be considered commercially or personally confidential, or may not be available in the right format. So far, predictive analytics technologies have been used in areas like commercial litigation, where the raw data is more readily available. However, these types of tools could also improve access to justice. Data trusts



and data institutions to steward and govern the sharing of data can increase access to data to maximise its societal and economic value, while limiting and mitigating potential harms⁶⁵.

92. Another challenge is that consumers and legal professionals will only use technologies if they trust them. There is public debate on when it is appropriate for technology to be used, for example the use of video hearings for criminal trials and facial recognition in policing. Should artificial intelligence (AI) play a bigger role in the delivery of legal services, especially where this substitutes for human involvement, it needs to proceed in ways that are 'socially acceptable'. The Centre for Data Ethics and Innovation has highlighted that public distrust is a 'fundamental brake on innovation... In the absence

of trust, consumers are unlikely to use new technologies or share the data needed to build them, while industry will be unwilling to engage in innovative programmes for fear of meeting opposition and experiencing reputational damage⁶⁶.

93. This leads to a group of challenges relating to the regulatory environment. As identified above, technology developers, legal services providers and investors need help to understand the regulatory requirements. This is complicated by multiple legal services regulators who may have different rules, as well as an overlap between legal services and other regulatory regimes. Further, some regulators may lack knowledge of technology, which could either lead to excessive responses that stifle innovation or a failure to

anticipate or respond to risks that harm consumers. They need to find the right balance which accepts the risk that technological innovation may not work, while protecting consumers and the overall legal system from harm. Practical steps, such as technology strategies, advisory panels and sandboxes, can help regulators to develop their approach. Although advanced technologies like AI remain relatively immature, the implications of these technologies need to be considered now, including the skills that legal professionals need, and what sector-specific regulation, if any, is required.

94. The market is developing such that a diminishing amount of legal activity happens within the scope of the regulation. In part, this is a legacy of a

title-based system. However, as noted above, unregulated businesses face a credibility gap that may inhibit their growth. Those outside the framework include technology developers and suppliers based outside of England and Wales as well as unregulated businesses in this jurisdiction. A risk-based approach could open up access to innovative service providers and enable providers to design services around consumer needs rather than regulatory boundaries. Technology will always move faster than regulation, but a legislative framework written for an analogue age may increasingly struggle to keep pace with the changing market.



“AI in this field needs to be constructed and trialled carefully to make sure quality is maintained.”

“This is a future minefield of loopholes and issues which have to be sorted before any AI is globally adopted.”

LSB’s Public Panel

95. In sum, the challenge for legal services regulators will be to create an environment that fosters a flourishing of responsible innovation at the same time as ensuring technologies are applied in ways that are socially acceptable, so that their use does not diminish fundamental rights or legal protections, and their benefits outweigh their risks.

- **2%** of law firms in 2018 using blockchain
- **20%** of law firms in 2018 using automated document assembly
- **34%** of law firms citing legal services regulation as a barrier to adopting lawtech
- **48%** of law firms saying technology had made them more responsive to client needs
- **£290million** invested in law tech startups and scaleups in 2019

CONCLUSION



96. Despite the real successes of the last decade, many of the critical challenges facing the sector today existed when the Legal Services Act came into force. The legal sector seems 'stuck on repeat'. Whether involving issues of fairness, confidence or service delivery, where progress is evident, it has inched forward rather than made great strides. Looking ahead, the underlying challenge is to shift the dial on these issues delivering benefits for the public, consumers and legal professionals.
97. These are long-term challenges for the sector to overcome. However, despite Covid-19 and other pressures in the external environment, we are optimistic that it can do so. Therefore, we close by offering three grounds for optimism about the future.
98. First, some stakeholders feel their longstanding concerns about public policy issues are at last being listened to. Major reviews of legal aid and the criminal justice system have commenced, which offer opportunities for radical change. In the market, the CMA's progress review is an important opportunity to enable individuals and small businesses be a greater force, building on signs that consumers are becoming more assertive with service providers. On regulation, there is scope for solutions – making use of the existing framework as well as small-scale legislative reform – that could enhance consumer protection.
99. Second, society is much more conscious about inequalities facing certain groups in the population, and less tolerant of social injustice more broadly. Regulators can draw from this to accelerate progress on these issues as they impact on legal services. There are opportunities to make legal services more inclusive so that everyone can obtain a good service and fair outcome regardless of their background or life circumstances.
100. Third, Covid-19 has forced a naturally conservative legal profession to adopt technology and innovate on a scale and at a pace that could not have been imagined before the pandemic. The pandemic has demonstrated that culture, more than regulation, has held back change. It will be essential to ensure that technology does not exclude vulnerable groups, is used in appropriate circumstances and the right protections are in place. Yet, if the right balance is struck, technology has great potential to make legal services more affordable, convenient and simpler to use.
101. The challenges set out in this report will not be easy to overcome, but we live in a transformational environment where changes in practice unthinkable less than a year ago have become the new normal. Covid-19 is a challenge no-one wanted, but it might be the challenge the sector needed to reinvent itself and embrace a culture that puts the needs of consumers at its heart. With a clear strategy, good leadership and collective effort, there is great potential to build a market that delivers on the three strategic themes we have identified: fairer outcomes, stronger confidence and better services.

ENDNOTES



Summary

- ¹ Based on the LSCP Tracker Survey – see evidence volume.
- ² LSB, Technology and Innovation in Legal Services – Main Report, 2018.
- ³ YouGov, Legal Needs of Individuals in England and Wales. Prepared for LSB and Law Society, January 2020.
- ⁴ BMG Research, The Legal Needs of Small Businesses 2013-17. Prepared for LSB, 2018.
- ⁵ YouGov, Legal Needs of Individuals in England and Wales. Prepared for LSB and Law Society, January 2020.
- ⁶ Based on evidence collected for LSB's ongoing competency project – see evidence volume.
- ⁷ CMA, Legal Services Market Study: Final Report, December 2016.
- ⁸ Based on the LSCP Tracker Survey – see evidence volume.
- ⁹ LSB, Technology and Innovation in Legal Services – Main Report, 2018.

Achievements

- ¹⁰ Department for Constitutional Affairs, The Future of Legal Services: Putting Consumers First, October 2005.
- ¹¹ LSB, Technology and Innovation in Legal Services – Main Report, 2018.
- ¹² SRA, Upholding Professional Standards 2017/18, July 2019.
- ¹³ Based on LSCP Tracker Survey – see evidence volume.
- ¹⁴ Based on LSCP Tracker Survey – see evidence volume.
- ¹⁵ CMA, Legal Services Market Study: Final Report, December 2016.
- ¹⁶ Based on ONS statistics – see evidence volume.
- ¹⁷ Based on surveys by the World Justice Project and World Bank – see evidence volume.

Fairer Outcomes

- ¹⁸ YouGov, Legal Needs of Individuals in England and Wales. Prepared for LSB and Law Society, January 2020.
- ¹⁹ Law Centres Network, Justice For All, July 2020.
- ²⁰ All figures from BMG Research, The Legal Needs of Small Businesses 2013-17. Prepared for LSB, 2018.
- ²¹ YouGov, Legal Needs of Individuals in England and Wales. Prepared for LSB and Law Society, January 2020.
- ²² Community Research, LSB Strategy Development: Public Panel report, August 2020.
- ²³ Legal Aid, Sentencing and Punishment of Offenders Act 2012.
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- ²⁶ Equality and Human Rights Commission, Is Britain Fairer? The state of equality and human rights, 2018.
- ²⁷ All figures in this section from the following source unless otherwise stated: YouGov, Legal Needs of Individuals in England and Wales. Prepared for LSB and Law Society, January 2020.
- ²⁸ Based on LSCP Tracker Survey – see evidence volume.
- ²⁹ Based on LSCP Tracker Survey – see evidence volume.
- ³⁰ Legal Ombudsman data available in its annual report and website.
- ³¹ See diversity and inclusion section of the evidence volume for all statistics unless otherwise stated.
- ³² Cardiff University Business School, Legally Disabled? The career experiences of disabled people working in the legal profession, January 2020.
- ³³ Ministry of Justice, Diversity of the judiciary: Legal professions, new appointments and current post-holders. 2020 statistics, September 2020.

Stronger Confidence

- ³⁴ See technical quality section of evidence volume.
- ³⁵ Based on exercises conducted by the SRA and BSB. See price transparency section of evidence volume.
- ³⁶ SRA, First-tier complaints 2019-2020, 2020.
- ³⁷ Based on LSCP Tracker Survey – see Seeking redress section of evidence volume.
- ³⁸ Economic Insight, Research into the experiences and effectiveness of solicitors' first-tier complaints handling processes. Commissioned by SRA and Legal Ombudsman, October 2017.
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Better Services

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- ⁵³ Based on LSCP Tracker Surveys
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- ⁵⁵ Based on LSCP Tracker Survey 2020.
- ⁵⁶ LSCP, Consumers feedback on quality indicators in legal services, July 2020.
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- ⁵⁸ LSB, Technology and Innovation in Legal Services – Main Report, 2018.
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- ⁶¹ LSB, Evaluation: ABS and investment in legal services 2011/12-2016/17 – Main report, June 2017.
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- ⁶⁶ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/894170/CDEI_AI_Barometer.pdf



