



A framework for understanding risks to affordability of legal services

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Executive summary

1. The LSB wants consumers' legal needs to be met, including where this need might be linked to the affordability of legal services. This is an important part of our strategic objective of enabling the need for legal services to be met effectively.
2. Research shows that perceptions about the cost of legal services contribute to unmet legal need among both individuals and small businesses. There is currently no definition of what affordability means in the context of legal services in England and Wales. Without a greater understanding of risks to affordability, identifying barriers to affordability and possible ways to overcome these barriers is made much more difficult.
3. In other economic sectors the Government and regulators have developed measures to assess affordability based on the ability of consumers to pay for a minimum level of a certain service. This often relates the cost of the service to levels of income; fuel poverty¹ is perhaps the best known example of this. In our view, whilst such measures may have indicative value in legal services, the complex nature of both legal needs and the legal market means a more nuanced approach is needed.
4. As an alternative, this report suggests a framework (overleaf) which includes the most common factors which interplay to determine the risk of a particular legal service being unaffordable to a particular consumer. In this situation the consumer might not access legal services or take on debt to do so. The framework focuses on four areas:
 - 1) type of legal service
 - 2) situation of consumer
 - 3) funding options
 - 4) ease of shopping around.
5. Two case studies – based on common conveyancing and divorce scenarios – are used to illustrate how the framework might be used in practice. See Annexes A and B.
6. We intend to embed the framework within the LSB's internal policy guidance for all colleagues to draw on. It is hoped that this contribution to understanding the issue of affordability in legal services becomes a valuable shared resource for the sector. We hope that approved regulators will have regard to the framework included in this report and feed any new learning into their own existing and planned initiatives. We recognise that this framework will be more relevant to some approved regulators than others. We also hope it will be useful for consumer organisations and legal services providers.

¹ which is a term for a household where customers have energy requirements that cost above the national average and were they to spend that amount they would be left with a residual income below the official poverty line

Table A - the framework

Indicators of higher risk to affordability	Indicators of lower risk to affordability
← Type of legal service →	
Distress purchase	Transaction purchase
Complex legal need	Simple legal need
Cost of legal service generally high	Cost of legal service generally low
Service is not delivered remotely	Service is delivered remotely
Service is bespoke	Service is standardised
← Situation of consumer →	
Low income and assets	High income and assets
Paid for via loan	Paid for via savings
High cost implications of location of provider	Low cost implications of location of provider
Severe consequences of non-use	Less severe consequences of non-use
Vulnerable consumer	Non-vulnerable consumer
Unconfident consumer	Confident consumer
Multiple legal needs	Single legal need
Price is not a choice factor	Price is a choice factor
← Funding options →	
No legal aid	Legal aid available
Consumer pays for service	Third party pays for service
Non-flexible payment options	Flexible payment options
← Ease of shopping around →	
Costs are not transparent	Costs are transparent
Costs are not predictable	Costs are predictable
Comparison of prices and providers is hard	Comparison of prices and providers is easy

Introduction

7. The LSB wants consumers' legal needs to be met, including where this need might be linked to the affordability of legal services. This document provides a framework for considering various factors that might increase or decrease the risk of legal services being unaffordable to individual consumers. Transactional services which are unaffordable will tend to result in unmet legal need as consumers refrain from purchasing this service or delay until such a time where they can afford it. Distress legal services which are unaffordable may still be purchased but at the cost of establishing debt or having a serious negative impact on the consumer's long term financial well-being.
8. Our research presents a mixed picture on the role of affordability in determining access to legal services. The main reason why some people do nothing about legal issues is because they think nothing can be done; cost was the main factor in only a small minority of cases. Similarly, consumers who handle issues alone mostly do so because they are confident it can be handled alone or they feel it would not be difficult to resolve. However, when those handling alone were asked why they did not try to use a solicitor, the main reason was they assumed it would be too expensive. Affordability is also a concern for small business consumers: just 13% view lawyers as cost-effective.
9. Some of our relevant research is summarised in the box on page 7. As well as exploring the role of affordability in shaping approaches to resolving legal issues, our data also provides insights into related factors such as price and charging practices.
10. This document is not an action plan to address barriers to affordability, nor a complete list of every issue that might impact on the affordability of legal services. Rather it is a contribution to wider considerations about affordability. We will embed the framework within our internal policy guidance for all colleagues to draw on. It is hoped that this contribution to understanding the issue of affordability in legal services becomes a valuable shared resource for the sector. We hope that approved regulators will have regard to the framework included in this report and feed any new learning into their own existing and planned initiatives.
11. Under the regulatory objectives² set out in the Legal Services Act 2007 (the Act), the LSB and all the approved regulators have a duty to "Improve access to justice". There is a range of barriers to access to justice. Alongside this paper on affordability, the LSB has also considered other barriers to accessibility in a report published on the LSB website in March 2016.³ In our Market Evaluation analysis, the LSB also included affordability as one of the key measures by which we assess the progress on the reforms to the legal services market in England and Wales.

² Legislation.gov.uk, Legal Services Act 2007 <http://www.legislation.gov.uk/ukpga/2007/29/section/1>

³ Lowering barriers to accessing services, http://www.legalservicesboard.org.uk/news_publications/publications/pdf/2016/20160331_Lowering_Barriers_Financial_Report.pdf

12. Legal services regulators do not set prices. Further, external factors that shape the affordability of legal services, such as the availability of legal aid and the general health of the economy, are clearly outside their control. However, regulators can make use of levers that have the potential to contribute indirectly to the affordability of legal services. Examples here include reducing the cost of regulation and measures aimed at improving competition such as promoting price transparency and giving consumers information to support shopping around.
13. Activity by regulators to address affordability most obviously contributes to the regulatory objective of improving access to justice. Yet other regulatory objectives are also relevant, including the objectives of promoting competition and about protecting and promoting the interests of consumers.
14. The legal sector does not have a definition of affordability. Without a common language people will mean different things when they refer to affordability in the legal services context, which impedes good policymaking. As a result affordability has become a catch all term which covers a very broad spectrum of price sensitivity levels.
15. The LSB has looked at how affordability is defined in other regulated sectors such as in utilities markets to see if there are relevant examples which can be used in the legal sector. Other regulated sectors have developed definitions for affordability based on economic measures such as income, savings or position in relation to the poverty line. This has allowed targeting of measures such as Winter Fuel Payments, Cold Weather Payments, the Warm Home Discount Scheme and grants to help pay off debts
16. This report describes measures of affordability used in other sectors, but considers that these have limited application to the legal services market. Instead the report suggests an alternative and broader approach based around a series of risks that might make legal services unaffordable to individual consumers. Our framework takes a four pronged approach to these risks by considering the type of legal service, the situation of the consumer, funding options and ease of shopping around.

Summary Box about research on affordability

Research on affordability

Cost as a barrier to access

28%

Of individuals do not use solicitors because they assume they will be too expensive

13%

Of small businesses view lawyers as cost-effective

9%

Of individuals handle their issue alone because they think advice will cost too much

8%

Of individuals pay for legal services by borrowing from family/friends or taking out a loan

Sources: Ipsos MORI, Individual Legal Needs Survey, 2016; Kingston University, The legal needs of small businesses, 2015

Fixed Fees

Billing method	Percentage
Fixed fee	63%
Estimate	23%
Hourly rate	10%
Retainer/pricing structure	4%

63% of consumers who paid for their legal service were quoted a fixed fee
Source: Ipsos MORI, Individual Legal Needs Survey, 2016

9-90% cheaper than other charging methods depending on area of law
Source: OMB, Prices of individual legal services, 2016

Available even in more complex matters, e.g. 23% in estate administration
Source: OMB, Prices of individual legal services, 2016

Source: Ipsos MORI, Individual Legal Needs Survey, 2016

Price savings available to consumers

- £90 - A standard will
- £195 - A lasting power of attorney
- £250 - Conveyancing on purchase of a freehold property
- £1,150 - Divorce with dispute over children
- £1,625 - Estate administration

Source: OMB, Prices of individual legal services, 2016

The need for a more nuanced approach to affordability of legal services compared to other sectors

17. In January 2015 the UK Regulators Network⁴ published a report entitled “Understanding affordability pressures in essential services.”⁵ This report sets out how affordability is defined and managed in the water, energy and communications sectors. There is currently no formal definition of affordability shared by these sectors. However a standard academic definition was used for the purposes of the report: “The ability of consumers to pay for a minimum level of a certain service.”⁶
18. Flowing from this standard definition each sector has its own definition of affordability. In the energy sector, affordability is assessed through the concept of ‘fuel poverty’. Fuel poverty in England is measured by the Low Income High Costs definition, which considers a household to be in fuel poverty if customers have required fuel costs that are above average (the national median level) and were they to spend that amount they would be left with a residual income below the official poverty line.⁷ The Government’s position in water is not to advocate a single measure or definition of affordability but to ask companies to design schemes to help their customers. In communications, there are a range of measures to assess affordability through calculating the percentage of consumers who are able to purchase the service without incurring undue hardship.
19. For the first time the LSB has collected robust data on the average price of some common legal services⁸, which can be compared to average weekly earnings (£496⁹) or savings (£145,566¹⁰) as set out in Table B on the next page. This helps to put the cost of legal services into some context. However, one of the limitations of such measures is that they are averages with wide underlying variations such as the fact that 36% of people across the UK in 2015 have no savings, including deposits or investments.¹¹ Furthermore,

⁴ The UK’s economic regulators have joined together in the UK Regulators Network (UKRN) to ensure effective cooperation between sectors. The LSB is an observer member of the UKRN. More information about UKRN can be found on their website: <http://www.ukrn.org.uk/>

⁵ UKRN, Understanding affordability pressures in essential services, <http://www.ukrn.org.uk/wp-content/uploads/2015/01/UKRN-Affordability-Report.pdf>

⁶ Page 4, Paragraph 1.6, UKRN, Understanding affordability pressures in essential services, <http://www.ukrn.org.uk/wp-content/uploads/2015/01/UKRN-Affordability-Report.pdf>

⁷ Gov.uk, Fuel poverty statistics, <https://www.gov.uk/government/collections/fuel-poverty-statistics>

⁸ Prices of Individual Consumer Legal Services, <https://research.legalservicesboard.org.uk/wp-content/media/Prices-of-Individual-Consumer-Legal-Services.pdf>

⁹ UK Labour Market: February 2016, Office for National Statistics, <http://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/bulletins/uklabourmarket/february2016#average-weekly-earnings>

¹⁰ This is Money Website, Household savings rise 300% since 1975 thanks to pensions - but we’re putting less and less into bank accounts, <http://www.thisismoney.co.uk/money/saving/article-3187100/Average-household-savings-rise-294-real-terms-1975-largely-thanks-pensions-tucking-away-savings-accounts.html>

¹¹ This is Money Website, Household savings rise 300% since 1975 thanks to pensions - but we’re putting less and less into bank accounts, <http://www.thisismoney.co.uk/money/saving/article-3187100/Average-household-savings-rise-294-real-terms-1975-largely-thanks-pensions-tucking-away-savings-accounts.html>

data from the Office of National Statistics shows that in April 2015 the bottom 10% of full-time employees earned less than £297 per week¹².

Table B - Legal prices compared to average earnings and savings¹³

	Mean price	Compared to multiple of average weekly earnings	Compared to savings
Sale (Freehold)	£640	1.3	0.4%
Sale (Leasehold)	£730	1.5	0.5%
Purchase (Freehold)	£722	1.5	0.5%
Purchase (Leasehold)	£815	1.6	0.6%
Sale & Purchase (Freehold)	£1,283	2.6	0.9%
Uncontested divorce (Petitioner)	£722	1.5	0.5%
Uncontested divorce (Petitioned)	£453	0.9	0.3%
Uncontested divorce - Children	£953	1.9	0.7%
Complex divorce - Children	£1,653	3.3	1.1%
Complex divorce - Assets	£2,608	5.3	1.8%
Standard will	£168	0.3	0.1%
Complex will	£206	0.4	0.1%
Lasting power of attorney	£414	0.8	0.3%
Grant of probate	£829	1.7	0.6%
Estate administration	£1,926	3.9	1.3%

Legal services: the need for a more nuanced approach

20. However, we consider measures used in other sectors have limited application to the legal market. Due to the complexity of legal needs and the nature of the market a more nuanced approach is needed. The key reasons why a standard economic definition of affordability as used for utilities has limited application to legal services, are set out in the paragraphs below.

21. **Diversity of legal need vs uniformity of need:** The legal sector caters to a very wide range of different legal needs whereas utilities address just one need such as clean water. Because many legal needs are unique to the individual consumer, each requiring different amounts of time and skill to resolve, an average cost is difficult to determine. However, as the LSB's prices research, which was published in April 2016, showed it is

¹² Annual Survey of Hours and Earnings: 2015 Provisional Results, main points, released 18 November 2015 <http://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/bulletins/annualsurveyofhoursandearnings/2015provisionalresults>

¹³ Mean prices from 'Prices of Individual Consumer Legal Services', <https://research.legalservicesboard.org.uk/wp-content/media/Prices-of-Individual-Consumer-Legal-Services.pdf>, Conveyancing scenarios and lasting power of attorney based on average house prices of £205,000, assets in complex divorce of £500,000 and estate value for wills and grant of probate and estate management of £255,000. Full scenario descriptions can be found in Annex C of the published report.

possible to develop good indications of prices based on commonly experienced legal need scenarios.

22. **Transaction or distress legal purchases vs purchases of essential services in utilities:** Legal needs can be divided into those needs that lead either to distress or transaction purchases. Distress purchases have the common feature that the legal need is unexpected and urgent and consumers, who are often in a vulnerable situation, cannot choose to ignore the legal need. In such circumstances, legal services providers may not need to be flexible on pricing as consumers have limited opportunity to shop around or delay their purchase. One would expect that consumers normally save up for the cost of transactional services such as wills or conveyancing and/or can choose to delay or not make such purchases if they cannot afford them. By contrast purchases of utilities are generally services which are essential for human survival, such as heating.
23. **One off purchase of legal services vs ongoing consumption of utilities:** Generally legal services are a one off or infrequent purchase, whereas utilities are consumed on an ongoing basis. When a product is consumed on an ongoing basis then the consumer has the opportunity to grow in confidence when shopping for this product. An example includes telecoms where consumers generally already know what their needs are as they use these services on a regular basis. However, consumers of legal services generally start from a weaker position of not knowing what their needs are.
24. **Diversity of provision in the legal sector vs smaller number of providers of utilities:** There is a very large number of legal services providers offering their services to consumers. Providers range from sole practitioners, to large law firms and include both regulated and unregulated providers. Whereas in utilities consumers may just have one provider (water) or a relatively few large providers (energy) and all providers are regulated. This diversity of providers means that the market place for legal services is much more fragmented than for utilities.
25. In light of these key differences a different approach to understanding affordability in the legal sector is required. The LSB's approach is centred around the risks that an individual consumer faces which could make legal services unaffordable. The strength of a risk based approach is that it takes into account the large variety of legal services, individual circumstances and market conditions which all combine to influence the relative affordability of a legal service to a particular consumer. This approach also allows for different indicators to be assigned relatively higher or lower priority to reflect the individual situation.

The framework

The framework at a glance

26. We have developed a framework which seeks to include the most common factors which interplay to determine the risk of a particular legal service being unaffordable to a particular consumer. This framework is based on the idea that there is a spectrum of affordability, reflecting several underlying factors where some might indicate a higher risk of a service being unaffordable and some a lower risk.
27. The LSB recognises that not all indicators in Table A on page 4 will apply to all situations. Moreover, the relative importance of different indicators will depend on the individual situation. Nevertheless, the LSB hopes that this framework helps inform understanding of whether a legal service might be at risk of being unaffordable to a particular consumer or a segment of the market. As we illustrate in the case studies that follow it is advisable to avoid making broad statements; some aspects of say family law will generally be more affordable and others not, but this will also depend on the individual circumstances of the consumer in each case.

Table A - the framework

Indicators of higher risk to affordability	Indicators of lower risk to affordability
← Type of legal service →	
Distress purchase	Transaction purchase
Complex legal need	Simple legal need
Cost of legal service generally high	Cost of legal service generally low
Service is not delivered remotely	Service is delivered remotely
Service is bespoke	Service is standardised
← Situation of consumer →	
Low income and assets	High income and assets
Paid for via loan	Paid for via savings
High cost implications of location of provider	Low cost implications of location of provider
Severe consequences of non-use	Less severe consequences of non-use
Vulnerable consumer	Non-vulnerable consumer
Unconfident consumer	Confident consumer
Multiple legal needs	Single legal need
Price is not a choice factor	Price is a choice factor
← Funding options →	
No legal aid	Legal aid available
Consumer pays for service	Third party pays for service
Non-flexible payment options	Flexible payment options
← Ease of shopping around →	
Costs are not transparent	Costs are transparent
Costs are not predictable	Costs are predictable
Comparison of prices and providers is hard	Comparison of prices and providers is easy

The framework – a closer look

Type of legal service

28. Indicators under this grouping reflect the type of legal service that a given consumer requires to address their legal need. There is significant diversity of legal need reflecting the variety of consumers' experiences and circumstances. Nevertheless, the indicators in this group may form the basis of deciding whether a particular legal service is at greater or lower risk of being unaffordable.
29. **Distress or transaction purchase:** Distress purchases have the common feature that the need for a legal service is unexpected and urgent and consumers, who are often in a vulnerable situation, cannot choose to ignore the legal need. As such providers may not need to compete as fiercely on price as consumers have limited opportunity to shop around or delay the purchase of legal services. Consumers would normally save up for the cost of transactional services such as wills or conveyancing. However, if transactional services become time critical such as drafting a will when facing terminal illness then saving up may not be possible and a transactional service then becomes a distress purchase. Nevertheless, even in these circumstances, the behaviour of providers (eg in terms of pricing) should be moderated by the fact that most of their business is done on a more discretionary/optional basis and they will wish to protect their reputations. Therefore a distinction between distress purchases and purchases which are in general (but not always) transactional is useful when considering affordability.
30. **Complex or simple legal need:** The complexity of a consumer's legal need will have an impact on the time and expertise required to resolve a legal issue which tends to translate into higher costs for the consumer. Using the example of divorce, a complex divorce might be a situation where the parties need to go to court to resolve disagreements over parenting arrangements or finances. A simple legal need would be a situation where the two parties have an amicable divorce and merely need to complete the relevant legal documents and processes.
31. **High or low cost for legal service:** Some legal needs cost more to resolve than others. This is likely due to the time and skill needed to address the issue. All things equal there is more likelihood that more expensive services will be less affordable for consumers, although clearly this depends on the individual's circumstances (wealthy people may be able to afford high cost services). The LSB's prices research sets out mean prices for a range of legal services in the areas of conveyancing, divorce and life planning¹⁴. As an example an uncontested divorce costs £722 which is just under 1.5 times average weekly earnings of £496.¹⁵ An example of a more expensive service is

¹⁴ Prices of Individual Consumer Legal Services, <https://research.legalservicesboard.org.uk/wp-content/media/Prices-of-Individual-Consumer-Legal-Services.pdf>

¹⁵ UK Labour Market: February 2016, Office for National Statistics, <http://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/bulletins/uklabourmarket/february2016#average-weekly-earnings>

estate administration which comes at a cost of £1,926 which is slightly less than 4 times average weekly earnings.

32. **Legal service is delivered remotely or not:** In principle most legal services could be delivered remotely to consumers based in a different location to the legal provider. However, certain aspects such as assessing mental capacity does need to be done in a way that ensures that the lawyer feels confident about their client's ability to make a decision. The relevant legislation¹⁶ does not specify the appropriate medium for this process. However face-to-face or other similar means of communication such as video conferencing or a phone conversation may all be appropriate ways of doing this. Research into individual legal needs¹⁷ shows that across all legal needs 60% of consumers access legal services remotely, which mean that their main channel of communication with their lawyer was not face to face/in person. In theory services that are delivered remotely are open to more competition which should deliver lower prices for consumers. The price research shows that for conveyancing services 52% of legal firms offer services remotely (simply defined as any method used to deliver services to a customer not living in the provider's local area) but for other services such as obtaining a lasting power of attorney only 15% of providers offer services remotely..
33. **Legal service is bespoke or standardised:** If a legal service is bespoke to the individual consumer it is likely to be more expensive than if the solution to a legal problem is standardised. Bespoke legal services might include drawing up a very complex will that needs to take account of a set of uncommon requirements, such as children from a series of informal relationships or complex financial arrangements. On the other end of this spectrum, one might find a standard single will drafted using automated software with a person leaving all their belongings to a spouse or child.

Situation of consumer

34. The LSB recognises that whether legal services are at risk of becoming unaffordable also depends on the individual situation of the consumer. While it may be clear that consumers toward the lower end of the socio economic spectrum might be at higher risk of finding legal services unaffordable, this may also true for consumers whose situation makes them more vulnerable and potentially less able to navigate the legal market to secure a good deal. The individual circumstances of consumers vary greatly. Nevertheless, the indicators in this group may form the basis of identifying whether a particular consumer is at greater or lower risk of finding legal services unaffordable.
35. **Low or high levels of income and assets:** Affordability is by nature a relative concept. Consumers with high levels of income and assets are likely to have a much higher threshold for affordability than a consumer at the opposite end of this spectrum. Which end of this spectrum a consumer belongs to is particularly relevant for distress purchases where there is no time to save up to pay for legal services.
36. **Paid for via loan or savings:** Risks to affordability of legal services can be significantly influenced by whether a consumer is able to pay for the legal service out

¹⁶ Section 3, Mental Capacity Act 2005, <http://www.legislation.gov.uk/ukpga/2005/9/section/3>

¹⁷ <https://research.legalservicesboard.org.uk/news/latest-research-12/>

of savings or must establish debt to do so. For those consumers who have to establish debt to pay for legal services, there is a risk of long term negative impacts to their personal finances. This is especially true for those consumers who are unable to secure low interest rates on loans due to a low personal credit rating. The jointly commissioned 2015 legal needs survey¹⁸ collected information on how consumers paid for legal services. It found that 57% of consumers paid for their legal service using savings, 11% took out a loan or relied on borrowing money from family and friends

37. **High or low cost implications of location of provider and/or consumer:** If the required legal service is not available remotely or if a consumer is not confident in (or capable of) using remote services, any risks to affordability can be compounded by the location of the legal services provider and/or consumer. One factor is potentially high travel costs to visit a lawyer. Government statistics show that in 2013 17.1% of the UK population lived in rural areas.¹⁹ Consumers might have high travel costs if they need to travel far to see a lawyer or if they have to rely on expensive modes of transportation to make the journey to see the lawyer. Another factor is the geographic location of the provider. The LSB's prices research shows that service providers based in the South East of England are significantly more expensive than providers based elsewhere in England and Wales but service providers in deprived areas (based on the official government classifications²⁰) are generally cheaper.
38. **Severe or less severe consequence of non-use:** The more severe the consequences of not obtaining legal advice (for example, losing access to children), the more highly a consumer is likely to judge the necessity of a legal service. As the necessity increases the willingness to establish debt to pay for the required legal advice may also increase. The higher the impact of non-use the more likely it is that the service is a distress purchase.
39. **Vulnerable consumer or non-vulnerable consumer:** Some consumers might be generally vulnerable due to individual risk factors e.g. a long term medical condition. Alternatively, a consumer might be affected by 'situational vulnerability', which may increase the risk of a consumer finding legal services unaffordable. Situational vulnerability is based on the idea that any consumer can be vulnerable at certain times in their life. Vulnerability can be caused by illness, entering a new stage of life (retiring or living alone for the first time), a financial shock such as unemployment or an emotional shock such as bereavement. Any or a combination of these may place a consumer at higher risk of finding legal services unaffordable. While some of this risk stems from financial vulnerability generally, a part of this risk also stems from vulnerable consumers being in a traumatic or new situation where their usual ability to navigate the legal market is temporarily reduced.

¹⁸ Question F.33 How did you fund the payment of your legal services?, 2015 Survey of legal needs, Ipsos Mori, 2016, LSB and TLS <https://research.legalservicesboard.org.uk/news/latest-research-12/>

¹⁹ Gov.uk, Rural population and migration, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/443234/Rural_population_and_migration_2014.pdf

²⁰ Indices of Deprivation are published every three years by the Department for Communities and Local Government for England. Similarly, the Welsh Government produces the Welsh Index of Multiple Deprivation.

40. **Level of confidence of consumer:** The level of confidence of a consumer is likely to impact on their desire and ability to secure affordable legal services. A confident consumer is better placed to access more affordable solutions such as unbundled legal services where the consumer does part of the legal work and the lawyer only does the parts where professional input is needed. The annual Tracker Survey published by the Legal Services Consumer Panel (LSCP) in November 2015 shows that 19% of consumers used unbundled legal services²¹. However, a consumer may only be offered this on request and, even if offered, a non-confident consumer might not want to handle aspects of a legal need on their own. Ironically, this may mean that cheaper ways of accessing services are not available to those consumers who most need them.
41. **Multiple legal needs or single legal need:** If the legal need of a consumer has the potential to grow then this might impact on the affordability of legal services simply because they will require more legal advice than initially expected to address their legal need(s). An example of multiple legal needs might be a consumer with an unfair dismissal claim. Such a consumer is at risk of also experiencing debt problems if they remain unemployed. Debt problems can then potentially escalate into housing problems etc. Legal needs surveys have established that legal problems often occur in clusters with one issue triggering one or more other issues.
42. **Price is or is not a choice factor:** Risks to affordability are influenced by whether price is a choice factor for consumers. The LSCP Tracker Survey 2015 shows that price is a very important factor in choice of provider for one-third of consumers.²² The importance of price relative to other factors varies by area of law, for example it is of more importance in conveyancing than family law. Economic theory suggests that in a well-functioning market (and absent other complicating factors), the more important price is as a choice factor the more low cost options are likely to be available.

Funding options

43. Indicators under this grouping take account of the fact that the funding options available for a particular service can both increase or decrease the risk that a consumer finds that particular legal service unaffordable.
44. **Legal aid is or is not available:** Consumers can get legal aid to fund certain limited categories of legal needs such as situations involving domestic abuse. However, there are many legal areas which do not qualify for legal aid such as conveyancing. If a consumer is able to access legal aid (which is means-tested) this may significantly increase the affordability of legal services to that consumer. The individual legal needs data shows that 6.6% of recent users received legal aid funding.²³

²¹ Data for recent users, q20c. Before commissioning the work, did you agree with your legal service provider how the work would be carried out? A: Yes – we agreed the legal service provider would carry out some specific tasks on my case and I would do the other parts,
http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/

²² Data for recent users, Q80_a. How important were the following factors when choosing your provider? – Price,
http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/

²³ <https://research.legalservicesboard.org.uk/news/latest-research-12/>

45. **Consumer or third party pays for service:** Third party funding is an indicator of lower risk of unaffordability for the consumer concerned. The LSCP Tracker Survey 2015 contains data on who typically pays for different types of legal services. For legal services in general 64% of consumers pay for their service themselves with the rest using services paid for by a third party.²⁴ Third party funding sources include insurance, No-Win-No-Fee arrangements²⁵, trade unions, third party litigation funders in group litigation or other free services. Consumers might also be able to access free or discounted legal advice from charities such as Citizens Advice or lawyers working pro bono. Finally, this category also covers situations where free legal work is included as part of a wider deal such as lenders offering free conveyancing services in their mortgage deals.
46. **Flexible payment options are or are not available:** In situations where the consumer does pay for the legal service, the availability of flexible payment options is likely to reduce the risk of a legal service being unaffordable. If a consumer can pay in instalments or use legal services on a pay as you go basis with a pre-defined cap that cannot be exceeded this provides the ability to spread payments and exercise a degree of control over costs. The LSB's prices research shows that for the scenarios included in that research about two-thirds of providers offered flexible payment options.²⁶

Ease of shopping around for different legal needs

47. Indicators under this grouping take account of how easy it is for consumers to shop around and find the most affordable legal services to address their legal need. The easier it is for consumers to shop around, the more the market is likely to deliver services that match the needs of consumers including in relation to price (assuming the market is otherwise functioning effectively). As legal services differ significantly from each other in type and complexity, this report recognises that some services lend themselves more easily to shopping around.
48. **Costs are / are not transparent:** The LSB's prices research shows that 17% of firms display their prices on their websites and that firms who do display prices on their websites are generally cheaper than those who do not.²⁷ The LSCP Tracker Survey 2015 shows that 76% of recent consumers of legal services were satisfied with the clarity of information on the costs to be charged.²⁸ If a service has transparent costs this may make consumers who cannot afford economic shocks, such as an unexpectedly expensive legal bill, more likely to buy discretionary legal services.

²⁴ Data for recent users, Q25. Which ONE of the following BEST describes how the use of the legal service was funded?, http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/

²⁵ Consumers pay for winning a law suit under NWNF but not if they lose.

²⁶ Prices of Individual Consumer Legal Services, <https://research.legalservicesboard.org.uk/wp-content/media/Prices-of-Individual-Consumer-Legal-Services.pdf>

²⁷ Prices of Individual Consumer Legal Services, <https://research.legalservicesboard.org.uk/wp-content/media/Prices-of-Individual-Consumer-Legal-Services.pdf>

²⁸ Data for recent users, Q130_b. We would like to get your views on different aspects of service provided by your legal service provider. For each aspect of service, please say how satisfied or dissatisfied you were with it. - The clarity of information on the costs to be charged, http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/

49. **Costs are / are not predictable:** The LSCP Tracker Survey 2015 also contains information about whether fixed fees are common for different legal services. The data for recent users of legal services shows that 46% of them were charged a fixed fee.²⁹ If a service has predictable costs this may make consumers who cannot afford economic shocks more likely to buy a service. The LSB's prices research shows that providers adopting a fixed fee approach to charging tended to offer the lowest prices. Fixed fees predominate for less complex matters such as conveyancing where about 80% of providers typically charged fixed prices. As the services became more complex, providers were more likely to say they would typically charge in other ways, for example an hourly rate or by estimating the total cost.³⁰ An example is estate administration where only 23% of providers reported they typically charged a fixed fee – even here, though, a significant minority of providers typically charge on this basis.
50. **Comparison of providers and prices is hard/easy:** The LSCP Tracker Survey 2015 asks consumers who had shopped around whether they found it easy to compare providers. The easier it is to compare providers the easier it should be to shop around leading to a decreased risk of legal services being unaffordable as consumers can more easily find the best deal for them. In this dataset only 25% of recent users shopped around when selecting their legal provider.³¹ 57% of respondents who shopped around said they found it easy to compare providers and 28% said they found it difficult.
51. Annex A and B provides illustrative examples of how to apply this framework in practice by focusing on a consumer with a need for conveyancing services and a consumer with a need for divorce services. The LSB has assigned each indicator a red, amber or green rating. A red rating shows an increased risk to affordability and green shows a low risk to affordability. The LSB has assigned these ratings based on a combination of the available official data and primary research for a particular indicator and the individual situation as described in each scenario. Our hope is that others can use this approach to identify whether a particular legal service and proposed change to how a legal service is regulated might impact on the affordability of that service to a particular individual or group of individuals.

²⁹ Data for recent users, Q35. When you received the final bill, how was the cost calculated?, http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/

³⁰ Prices of Individual Consumer Legal Services, <https://research.legalservicesboard.org.uk/wp-content/media/Prices-of-Individual-Consumer-Legal-Services.pdf>

³¹ Data for recent users, Q70. Did you shop around for the provider you chose? (By shopping around we mean comparing services or prices from a number of different providers before selecting the provider you used.), http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/

Annex A: Illustrative example - Conveyancing

The scenario is a couple moving to their neighbouring council area for work and buying a three bedroom family home and selling their existing three bedroom family home. The family lives in an urban area outside the South East of England. For simplicity the value of the two properties match the national average for property prices based on official data. This is a move which is non-urgent, as the adult with a new job is able to commute while waiting to complete the property transactions in the usual time required. This family belongs to social group ABC1 and has some savings to pay for conveyancing services.

In the table below LSCP refers to the Panel's annual tracker survey which maps consumers' experiences of legal services. In this data source conveyancing is defined as 'legal work involving buying, selling or transferring property'. As such this data indicates general trends across this segment rather than specifically for the scenario set out above.

In the table below ILNS 2015 refers to the individual legal needs survey published by the LSB and Law Society in spring 2016.

In the table below price research refers to a study into the price of conveyancing, divorce, wills, powers of attorney, probate and estate administration published by LSB in April 2016.

Factors impacting on affordability for conveyancing

← Type of Legal Service →			
Indicators of higher risk to affordability	R/A/G	Indicators of lower risk to affordability	Notes:
Distress purchase	Green	Transaction purchase	Usually, as in this case, this legal need is not unexpected and/or urgent.
Complex legal need	Green	Simple legal need	This consumer has a simple legal need. Usually this service ends once the purchase/sale is completed. However, unforeseen problems do emerge in conveyancing which can mean costs can escalate unexpectedly.
Cost of required service generally high	Amber	Cost of required service generally low	The price research shows that the mean price of conveyancing for sale and purchase of a home is £1,283. This is just over two and a half times average weekly earnings. The price of conveyancing needs to be seen in the context of other costs of moving home.

← Type of Legal Service cntd. →			
Indicators of higher risk to affordability	R/A/G	Indicators of lower risk to affordability	Notes
Service is not delivered remotely	Green	Service is delivered remotely	The price research shows that 52% of providers offer this service remotely. This means that providers from across England and Wales can be used if the consumer does not want a face-to-face service.
Service is bespoke	Green	Service is standardised	LSCP data lists this as the most common service, with 31% of consumers having used this legal service in the last two years. HMRC data shows there were 1,050,630 property transactions in England of a value above £40K in 2014. ³² The frequency of this service means that some legal providers may standardise their services which may reduce cost for the consumer.
← Situation of consumer →			
Low income and assets	Amber	High income and assets	ILNS data shows that 39% of conveyancing consumers have a household income of up to £32,000, which for a dual income family means both adults earn significantly below the average wage. ³³ Our assumption is that the higher a social class a consumer belongs to the more likely he or she is to have high income and assets.
Paid for via loan	Amber	Paid for via savings	ILNS data shows that 51% of consumers with conveyancing legal needs have more than £8,000 in savings, shares or investments. A working assumption is that conveyancing services are paid for via savings for a house purchase and any proceeds of a house sale.

³²Data for recent users, Q70. Did you shop around for the provider you chose? (By shopping around we mean comparing services or prices from a number of different providers before selecting the provider you used), http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/ndlabourmarket/peopleinwork/employmentandemployeetypes/bulletins/uklabourmarket/february2016#average-weekly-earnings

← Situation of consumer cntd. →			
Indicators of higher risk to affordability	R/A/G	Indicators of lower risk to affordability	Notes:
High cost implications of location of provider	Green	Low cost implications of location of provider	Along with the majority of the UK population, the consumer in this case study lives in an urban area. This means that they are at low risk of having high travel costs to their legal provider. Moreover, as 52% of providers of this service offer legal advice remotely this further mitigates any travel costs that our consumer might have. The family does not live in the South East of England which means their prices, should they use a local provider will not have a "London premium"
Severe consequences of non-use	Green	Less severe consequences of non-use	Usually there are no negative consequences of delaying or refraining from this purchase. However, in order to sell or buy property it is necessary to go through a legal process so to an extent conveyancing is a non-optional purchase
Vulnerable consumer	Green	Non-vulnerable consumer	Both vulnerable and non-vulnerable consumers have this legal need. However, it is not a legal need that is generally triggered by an underlying vulnerability which enables the consumer to engage more strongly in securing a good deal when purchasing conveyancing services. However, this legal need can be triggered in situations of bereavement and family breakdown.
Unconfident consumer	Amber	Confident consumer	Our consumer is time poor and does not have the confidence to engage with unbundled services which might lower the price.
Multiple legal needs	Green	Single legal need	This consumer's legal need is unlikely to generate additional legal needs, except perhaps updating their will.

← Situation of consumer cntd. →			
Indicators of higher risk to affordability	R/A/G	Indicators of lower risk to affordability	Notes:
Price is a not choice factor	Green	Price is a choice factor	LSCP data shows that 81% of consumers who used this legal service said price was a choice factor against an average of 69% of consumers across all surveyed services rating price as a choice factor. The assumption is that the more important price is as a factor in choosing a provider the more likely it is that competition will ensure that prices drop to a more affordable level.
← Funding options →			
No legal aid	Red	Legal aid available	Legal aid is not available for conveyancing services.
Consumer pays for service	Red	Third party pays for service	LSCP data shows that 92% of consumers “paid for all of it myself or with the help of family or friends”. This is against an average of 64% answering the same across all services. It is worth noting though that some mortgage offers include basic legal fees. LSCP data shows that 1% of consumers got a free service and insurance also funded 1% of conveyancing services. This compares to an average of 9% and 6% for those areas across the LSCP data set respectively.
Non-flexible payment options	Green	Flexible payment options	The price research shows that 69% percent of providers offer flexible payment options across all the scenarios (which includes conveyancing) included in the research. The more flexible payment options such as instalments exist in a market the more options low income, low saving consumers have to fund their legal need.

← Ease of shopping around →			
Indicators of higher risk to affordability	R/A/G	Indicators of lower risk to affordability	Notes:
Costs are not transparent	Amber	Costs are transparent	The price research shows that 10% of conveyancing firms display prices on their website. LSCP data shows that 85% of conveyancing consumers were “satisfied with the clarity of information on the costs to be charged” against an average of 76% of consumers across all services surveyed giving the same answer. This suggests that consumers are unlikely to get an unpleasant surprise when the final bill is received.
Costs are not predictable	Green	Costs are predictable	Price research data shows that for conveyancing nearly 80% of providers typically charge fixed fees. LSCP data shows that 68% of consumers used this approach when paying for their conveyancing. If a consumer is billed on a fixed fee basis this makes costs more predictable and easier to budget for.
Comparison of prices and providers is hard	Amber	Comparison of prices and providers is easy	LSCP data shows that 33% of conveyancing consumers shopped around (against an average of 25% across all services surveyed), 83% of consumers felt they had a great deal or a fair amount of choice (against an average of 70% across all services), 59% thought it was easy to make comparisons between providers (against an average of 57% across all services)

Are conveyancing services at risk of being unaffordable?

Whether a service is affordable or not will ultimately be a qualitative judgement and depend on the individual circumstances of the consumer. For the selected scenario the framework suggests conveyancing services are at lower risk of being unaffordable to our consumer than certain other legal services.

In summary, this is a transactional purchase, with no severe negative consequences of delaying the purchase. Moreover, it is a very common legal service, which is likely to be standardised and available on a fixed fee and not require face to face advice. Furthermore,

as price is a choice factor, competition in the market may lead to more affordable prices for this type of legal service. Finally, comparison of prices and providers is comparatively easy for conveyancing services.

The key risk around affordability of conveyancing services is that costs could increase unexpectedly should issues arise during the process, although the research data indicates that fixed fee deals are very common. The cost of conveyancing also has to be seen in the context of the other costs of moving home.

Annex B: Illustrative example – Divorce

The scenario is the divorce of a married couple, with two dependent children. One spouse (the petitioner) is seeking a divorce on the grounds of unreasonable behaviour. The consumer in this illustrative example is the respondent who had not expected the divorce. This family is not entitled to legal aid to pay for legal advice regarding their divorce but are entitled to legal aid to pay for any mediation services. Legal advice regarding the divorce is a distress purchase as it is urgent and (for the respondent) unexpected. This family hopes mediation to agree the terms of the divorce will be successful so it is not contested before the court. This family has a household income of less than £32,000 and has limited savings to pay for divorce services. Only the petitioner pays court fees.

In the table below LSCP refers to the Panel's annual tracker survey which maps consumers' experiences of legal services. In this data source divorce is part of a wider data group called "family matters". As such this data indicates general trends across this segment rather than specifically for the scenario set out above.

In the table below ILNS 2015 refers to the individual legal needs survey published by the LSB and Law Society in spring 2016.

In the table below price research refers to a study into the price of conveyancing, divorce, wills, powers of attorney, probate and estate administration published by LSB in April 2016.

Factors impacting on affordability for divorce

← Type of Legal Service →			
Indicators of higher risk to affordability	R/A/G	Indicators of lower risk to affordability	Notes:
Distress purchase	Red	Transaction purchase	Family breakdown, divorce or abuse may often be unexpected and/or urgent. This generally means that consumers are less able to shop around for the best priced legal advice or save up to pay for this advice. The divorce was unexpected for our consumer.

← Type of Legal Service cntd. →			
Indicators of higher risk to affordability	R/A/G	Indicators of lower risk to affordability	Notes:
Complex legal need	Amber	Simple legal need	This type of legal need has the potential to become complex as agreeing parenting arrangements might be more difficult than first anticipated. As the time needed to reach a successful conclusion is not known in advance, the costs could increase unexpectedly for our consumer.
Cost of legal service is generally high	Red	Cost of legal service is generally low	The price research shows that divorce cases requiring mediation cost between £1,653 and £2,608 in legal fees. At the upper end this is more than five times average weekly earnings. In addition to these costs, mediation services cost £1,241 for 5 sessions.
Service is not delivered remotely	Red	Service is delivered remotely	The price research shows that for this type of legal need only about 30% of providers offer remote services. This means that for many consumers their choice is limited by location which may increase prices.
Service is bespoke	Amber	Service is standardised	LSCP data lists family law as the fifth most common service (11% of consumers). However, as our consumer faces uncertainty over parenting arrangements an element of the legal service is bespoke. Nevertheless, the price research shows that for complex divorce scenarios involving children 42% of providers offer fixed fee deals.

← Situation of consumer →			
Indicators of higher risk to affordability	R/A/G	Indicators of lower risk to affordability	Notes:
Low income and assets	Red	High income and assets	ILNS data shows that 60% of consumers needing legal advice for divorce had a household income of less than £32,000, which means that one or both of the adults earn less than the average annual salary. This is also the case for our consumer.
Paid for via loan	Red	Paid for via savings	ILNS data shows that 60% of consumers needing legal advice for divorce had less than £8,000 in savings, shares or investments (as a household). That is also the case for our consumer. Our consumer also belongs to the roughly 20% of consumer in the legal needs survey that paid for divorce services via a loan from friends, family or the bank.
High cost implication of location of provider	Amber	Low cost implications of location of provider	Like the majority of the UK population our consumer lives in an urban area and so has relatively low travel costs to the nearest provider. However, our consumer lives in the South East of England which means that there is a price premium for local services here as shown by the price research.
Severe consequences of non-use	Red	Less severe consequences of non-use	Ignoring this legal need is not an option. Not obtaining advice could have severe consequences such as loss of access to the children.
Vulnerable consumer	Red	Non vulnerable consumer	As our consumer is experiencing family breakdown (s)/he is likely to be emotionally (and potentially financially) vulnerable. Being vulnerable leaves the consumer less able to secure a good deal.

← Situation of consumer cntd. →			
Indicators of higher risk to affordability	R/A/G	Indicators of lower risk to affordability	Notes:
Unconfident consumer	Red	Confident consumer	This is a consumer facing an unforeseen divorce. As such their confidence has been shaken by events. This means that they are less likely to have the confidence to use unbundled services.
Multiple legal needs	Amber	Single legal need	There is a risk that our respondent to a divorce petition may experience multiple legal needs triggered by the divorce. This could be problems with debt after paying for the cost of a divorce, and possible child support while having to pay for new accommodation on one salary.
Price is a not choice factor	Amber	Price is a choice factor	LSCP data shows that 73% of family law consumers said price was a choice factor for them when choosing their provider. This compares to an average of 69% of consumers across all services listing price as a choice factor. The assumption is that the more important price is as a factor in choosing a provider the more likely it is that competition will to an extent encourage prices to drop to a more affordable level. However, our consumer is less price sensitive as s/he would want to ensure access to their children regardless of price.

← Funding options →			
Indicators of higher risk to affordability	R/A/G	Indicators of lower risk to affordability	Notes:
No legal aid	Amber	Legal aid available	Legal aid is only available for abuse/domestic violence cases ³⁴ and for mediation ³⁵ in divorce cases. ILNS data show that that 29% of consumers funded their legal advice through legal aid, Legal Services Commission or Community Legal Service Fund. Our consumer is entitled to some legal aid to pay for mediation.
Consumer pays for service	Red	Third party pays for service	LSCP data shows that 62% of consumers stated that "I paid for all of it myself or with the help of family or friends". This is against an average of 64% of consumers answering the same across all services. Our consumer also paid for this service themselves.
Non-flexible payment options	Green	Flexible payment options	The price research shows that over 90% of providers for this legal need offer flexible payment options. The more that flexible payment options such as instalments exist in a market the more options low income, low saving consumers have to fund their legal need. Our consumer is also able to take advantage of flexible payment options.

³⁴ Page 2, Legal aid if you have experienced domestic violence, A guide to family law legal aid, Rights of Women <http://rightsofwomen.org.uk/wp-content/uploads/2014/10/PDF-guide-to-Family-Law-Legal-Aid.pdf>

³⁵ National Family Mediation, Legal Aid for family mediation, <http://www.nfm.org.uk/index.php/family-mediation/legal-aid?qclid=CNH92faW2csCFWcq0wodnWgHRA>

← Ease of Shopping around →			
Indicators of higher risk to affordability	R/A/G	Indicators of lower risk to affordability	Notes:
Costs are not transparent	Amber	Costs are transparent	Price research data shows that roughly 25% of providers list prices for divorce on their website. LSCP data shows that 73% of consumers were “Satisfied with the clarity of information on the costs to be charged”. This compares to an average of 76% of consumers across all services giving the same answer. This suggests that consumers, including ours, are unlikely to get an unpleasant surprise when the final bill is received.
Costs are not predictable	Amber	Costs are predictable	Price research data shows that roughly 40% of providers operate a fixed fee for this type of legal need. However, ILNS data shows that only 29% of consumers had fixed fee as their payment type when paying for legal advice regarding divorce. Our consumer is typical of the majority of customers who will only know the cost of their legal bill once the divorce proceedings have been completed. This lack of predictability makes it difficult for consumers to budget for this type of legal need.
Comparison of prices and providers is hard	Amber	Comparison of prices and providers is easy	LSCP data shows that 33% of consumers shopped around (against an average of 25% across all services surveyed), 80% of consumers felt they had a great deal or a fair amount of choice (against an average of 70% across all services) and 60% of consumers thought it was easy to make comparisons between providers (against an average of 57% across all services)

Are divorce services at risk of being unaffordable?

Whether a service is affordable or not will ultimately be a qualitative judgement and depend on the individual circumstances of the consumer. For the selected scenario the framework suggests that legal advice on divorce is at a higher risk of being unaffordable than some other legal services.

Based on our fictional consumer there are a number of factors which increase the risk of this legal service being unaffordable. Most importantly, this is a distress purchase, where the consumer cannot defer their response to this legal need until they can afford the cost of legal fees. Furthermore, the consumer is in a vulnerable situation which impacts on his/her ability to confidently shop around or negotiate a good deal. As legal aid is not available, except for mediation, and the likely expense is many times the average weekly earnings, this unforeseen legal need has the potential to trigger other legal needs, e.g. debt issues and conveyancing due to the need to sell their existing home and find a new place to live.