



Welcome to the third edition of *Research Roundup*, the Law Society's quarterly publication highlighting recent research on the legal services market published by legal sector bodies, the Ministry of Justice (MoJ), academics and others interested in the sector.

The following reports, scanned by the Society's Research and Insight team, were published over the last three months. They focus on a variety of areas including the impacts of technological change, limitations of the Public Access Scheme, unregulated providers of legal services and the costs of regulation.

Market trends



Over the last three to four months, discussions around technological innovation in US academic literature have focused on potential impacts on the legal system and benefits and risks to legal services.

Law and dispute resolution

Casey and Niblett (Chicago Law School and Toronto Faculty of Law) imagine how future developments in AI, machine learning and big data will affect the production and structure of law in [Self-Driving Laws](#), envisioning a world in which law-makers use machines to refine the law. Predicting that law will exist in a catalogue of precisely tailored directives, specifying exactly what is permissible in every possible unique situation, they warn of the need to address the consequences - relating to morality, privacy and autonomy - before these micro-directives arrive.

The potential of [increasing access to the justice system](#) through online resolution is examined by Bulinski and Prescott (University of Michigan), while Graves (Touro College) explores the possibilities in resolving [business to business disputes](#) in the context of cross-border arbitration for micro, small and medium enterprises.

Disruptive innovation

In [The Downside of Disruption](#), Brescia (Albany Law School) highlights some risks of technological change that could impact on low and moderate income consumers (and potential consumers) in the US – the group often claimed to be likely beneficiaries from tech innovation in legal service. He poses the following questions to stimulate discussion on ways of addressing the risks:

- Will disruption really bring about greater access to justice at the lower end of the legal services market?
- Are disruptive services truly competent and effective?
- Will technology-enabled services miss those without access to technology?
- Will technology-enabled 'triage' of clients miss important legal issues?
- Will disruptively innovative, yet digitized, commoditised and atomised services allow for systemic change?
- Will devoting resources to technology-enabled and commoditised services divert public funds for legal services?

[What We Know and Need to Know About Disruptive Innovation](#) explores the nature of the transformative shift taking place in the legal profession in the United States and its implications for lawyers and clients (which are also relevant in England and Wales). Brescia argues that the central disruption that appears to be taking place in the legal profession is not technology itself but the commoditisation arising from technology changing the supply chain. Drawing on his time in practice and known public scandals, he highlights further risks:

- Not everyone will fit into the one-size-fits-all box
- Cost cutting can lead to corner cutting, meaning important legal protections can be ignored.

For these reasons, he argues, law, legal process and providers of these services need to be aligned. Quality assurance protections need to be in place to avoid harm coming to consumers who use commoditised services; providers of such a service will have to build robust screening systems to identify cases appropriate for one-size-fits-all services; and law and legal processes need to be made simpler to create the appropriate conditions for commoditised services.

As technology facilitates greater commoditisation and the supply chain changes, he foresees three potential roles for lawyers:

- A bespoke legal services market will continue to exist
- Legal expertise will be required to create the systems that deliver appropriate services
- Individuals will need coaching in navigating the new legal supply chain

Purchasers of legal services



Findings from the largest ever survey of [Legal Issue Handling](#), commissioned by LSB and TLS, were published in May. While figures relating to respondents are not nationally representative, the sample of over 16,000 issues (with potential to be resolved through legal processes) provides robust insight into approaches to problem resolution strategies. A key finding is that type of issue, its severity and whether or not people classify an issue as legal are the main determinants of problem resolution approach.

In terms of direct access by the public to barristers, the BSB-LSB survey on [Barristers' Perceptions of the Public Access Scheme](#) finds that nearly two-thirds of respondents had been registered to undertake public access work for three or more years but just over 10% had been able to conduct public access work since the scheme began in 2004. Whilst barristers expect the volume of public access work to increase in the next few years, barriers to overcome include:

- Lack of public awareness of the scheme
- Clients not being able to fill the role normally provided by solicitors
- Clients having unrealistic expectations of the service

Briefings based on the sixth sweep of the LSCP Tracker Survey were published in July, looking at how consumers are [choosing](#) and [using](#) legal services. Consumers are increasingly shopping around, however, overall the figure remains small with just one in four actively comparing. Reputation continues to be the feature most commonly cited when identifying factors which are important to choosing a legal service provider. Price and convenience are also commonly cited. The [Insights Report](#) notes that solicitors in small local firms are the main ways people use a legal service. 85% of legal service users were satisfied with the outcome of their matter and 80% were satisfied with the service they received. 61% of users believed the legal service received was value for money.

Providers of legal services



For-profit [Unregulated Providers](#) are estimated by Economic Insights, for LSB, to account for 10-13% of the family/divorce and property markets, and 7-9% of the wills/probate and intellectual property markets. Estimates were based on analysis of the LSB-TLS jointly funded Online Survey of Individuals' Handling of Legal Issues (above), which cannot be generalised to the population, so market estimates are likely to be indicative only.

The Law Society's [GC 350 Benchmarking Survey](#) shows that demands on in-house legal teams in FTSE 350 companies are increasing due to the volume and complexity of wider business regulation and pressure to reduce costs. The need to reduce costs is driving GCs to expand their in-house capacity. Growth in the in-house sector is also highlighted in the Law Society's [2015 Annual Trends in the Profession](#).

In [Mapping the Moral Compass](#), Richard Moorhead and others examine how individuals, systems and cultures combined to increase or reduce ethical risk in a survey of 400 lawyers working in-house in business and government. They estimated that 30-40% of in-house lawyers sometimes experienced ethical pressure to advise on unlawful and/or unethical practices; in 10-15% of the sample, such pressure was described as 'elevated'. The research establishes links between a stronger commercial orientation and weaker ethical inclination, with other conceptions of the in-house role, such as 'neutral adviser' and 'exploitation of uncertainty' also having potential to be problematic.

The research indicates that behaviour is not always consistent with the approach required under professional codes. Stronger ethical infrastructures, as well as individual, team and professional orientations are all associated with more ethical and more professional in-house lawyers. The researchers plan to produce a white paper, in discussion with the in-house community, which sets out ideas about how to structure the in-house role and manage in-house legal functions for ethical practice.

Regulation



The five most concerning issues relating to regulatory costs, highlighted by LSB's overview of its programme of work on [Costs of Regulation](#), are:

- Professional Indemnity Insurance
- Administration relating to the practising certificate renewals
- Continuing professional development
- Enforcement mechanisms
- Anti-money laundering requirements.

In June LSB published its [Evaluation of Market Reforms](#), concluding that positive developments around competition are evident but improved outcomes for consumers are emerging slowly; the trend to handle issues alone is being driven by better technology (e.g. online probate applications and commercial DIY services) and legal aid reform (e.g. increase in litigants-in-person); and, quality of legal services have improved across most areas measured.

The Legal Services Consumer Panel identified family and relationships, housing, asylum and immigration as [priorities](#) for the LSB's work on resolving unmet demand. The prioritisation is based on desk research, a call for evidence and stakeholder engagement and an assessment against criteria for areas in which:

- further LSB work could have a high impact
- issues of affordability and accessibility and/or information asymmetries exist
- there have been recent policy changes
- regulatory intervention could be used to address the above
- potentially involve vulnerable clients.

Research in the pipeline



Purchasers of legal services

- **Legal problem resolution survey (MoJ):** a nationally representative survey on the prevalence of civil justice problems in England and Wales – generating a sample of 3,000 people with legal problems. Initial findings from the survey are likely to be available in early 2016.
- **Consumer Tracker Survey 2016 briefings (LSCP):** comparisons between England and Wales; experiences by ethnicity.

Providers of legal services

- **Diversity Profile of Solicitors** - September
- **Earnings of solicitors (TLS)** – September
- **2015/16 law firm survey top line findings (TLS)** – September
- **Review of the personal injury market (SRA)** - September