

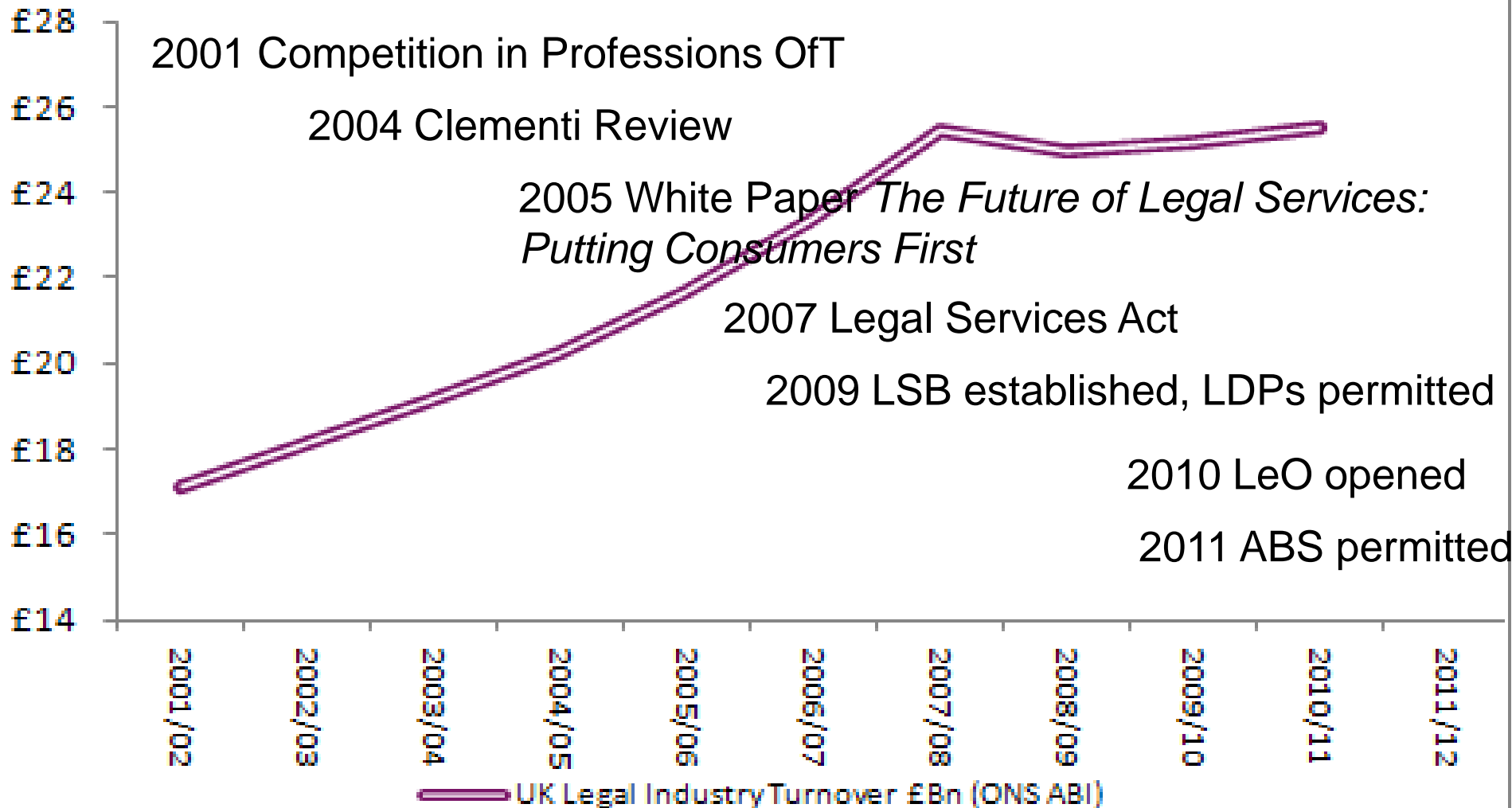
Evaluation: How can we
measure access to
justice for individual
consumers?

Outline



- LSB context for evaluation
- LSB definition of access to justice
- Different dimensions of access to justice
- Possible measures

LSA context & timeline



The Regulatory Objectives



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- RO1 Protecting and promoting the public interest
 - RO2 Supporting the constitutional principles of the rule of law
 - **RO3 Improving access to justice**
 - RO4 Protecting and promoting the interest of consumers
 - RO5 Promoting competition in the provision of services
 - RO6 Encouraging an independent, strong, diverse and effective legal profession
 - RO7 Increasing public understanding of the citizen's legal rights and duties
 - RO8 Promoting and maintaining adherence (by authorised persons) to the professional principles

Evaluation Framework:

Stakeholders	Outcomes
A. The profession	<ol style="list-style-type: none">1. Diversity of the legal profession shows greater similarity to the client population2. Quality of legal services is improved overall compared to 20093. The profession, judiciary and public maintain confidence in the independence and reputation of the legal sector4. Education and training of the legal workforce supports the delivery of high quality legal services
B. The consumer	<ol style="list-style-type: none">5. A higher proportion of the public are able to access justice6. Consumers have confidence in the regulation of legal services7. Consumers have confidence in the legal profession8. Consumers are confident and empowered in their dealings with legal services
C. The public	<ol style="list-style-type: none">9. Wide confidence in the law and the legal profession10. An efficient legal system delivering quality legal services at a reasonable cost11. Wide confidence in the standards and ethics of the legal profession
D. The market	<ol style="list-style-type: none">12. The market for legal services is more competitive13. More consumers are able to get legal services at an affordable cost14. There is a greater plurality of, and innovation in legal services offered
E. The investor	<ol style="list-style-type: none">15. A legal market which is attractive to all sources of finance including external investors16. Proportionate regulation allowing an in-flow of capital17. Risk based supervision of legal practitioners

What does ‘access to justice’
mean?

LSB definition of access to justice



“Access to justice is the acting out of the rule of law in particular or individual circumstances. The tools to achieve that outcome range from informing the public about their rights, through routine transactional legal services and personalized advice, through to action before tribunals and courts. The agents of delivery are wide and, of course, legal professionals are at the heart of this along with many other actors in legal services and the wider justice sector.”

Justice:

- Dispute resolution and just relationships

Access:

- services both individually tailored and those tailored to groups or provided to potential consumers

Clementi Review 2004



- A Consumer focus *“provide a cost-effective service in a consumer-friendly way... easier and cheaper access to justice to some consumers than might the conventional high street solicitor’s firm.”*
- *“longer opening hours, sophisticated telephony and advanced customer care skills, they may be able to offer consumers better access to certain other types of legal services.”*
- Costs: Access to justice is *“an issue about access for those who are disadvantaged and in particular those who cannot afford to pursue their legal rights.... high quality legal services are important to society, but of limited value if available only to the very rich or those paid for by the State....it should be expected that the admission of new capital will increase competition and reduce the cost of legal services, to the benefit of the objective of access to justice”*.
- Proximity of supply – *“Access to justice has a geographic dimension”*

Access to justice: Traditional view

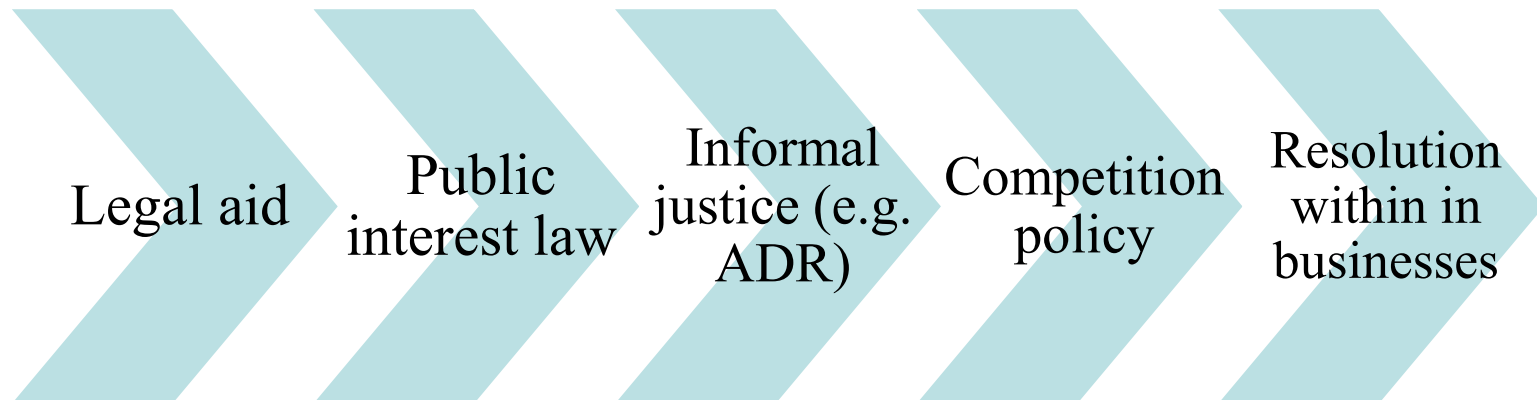
- *“Every civilised system of government requires that the state should make available to all its citizens a means for the just and peaceful settlement of disputes between them as to their respective legal rights. The means provided are courts of justice to which every citizen has a constitutional right of access in the role of Plaintiff to obtain the remedy to which he claims to be entitled in consequence of an alleged breach of his legal or equitable rights by some other citizen, the Defendant.”*

Lord Diplock in *Bremer Vulcan Schiffbau und Maschinenfabrik v South India Shipping Corp* (1981)

Access to justice: Traditional view

- *“The words “access to justice” are admittedly not easily defined but they serve to focus on two basic purpose of the legal system – the system by which people may vindicate their rights and or resolve their disputes under the general auspices of the state. First the system must be equally accessible to all and second it must lead to results that are individually and socially just.”*
Cappelletti (1978)

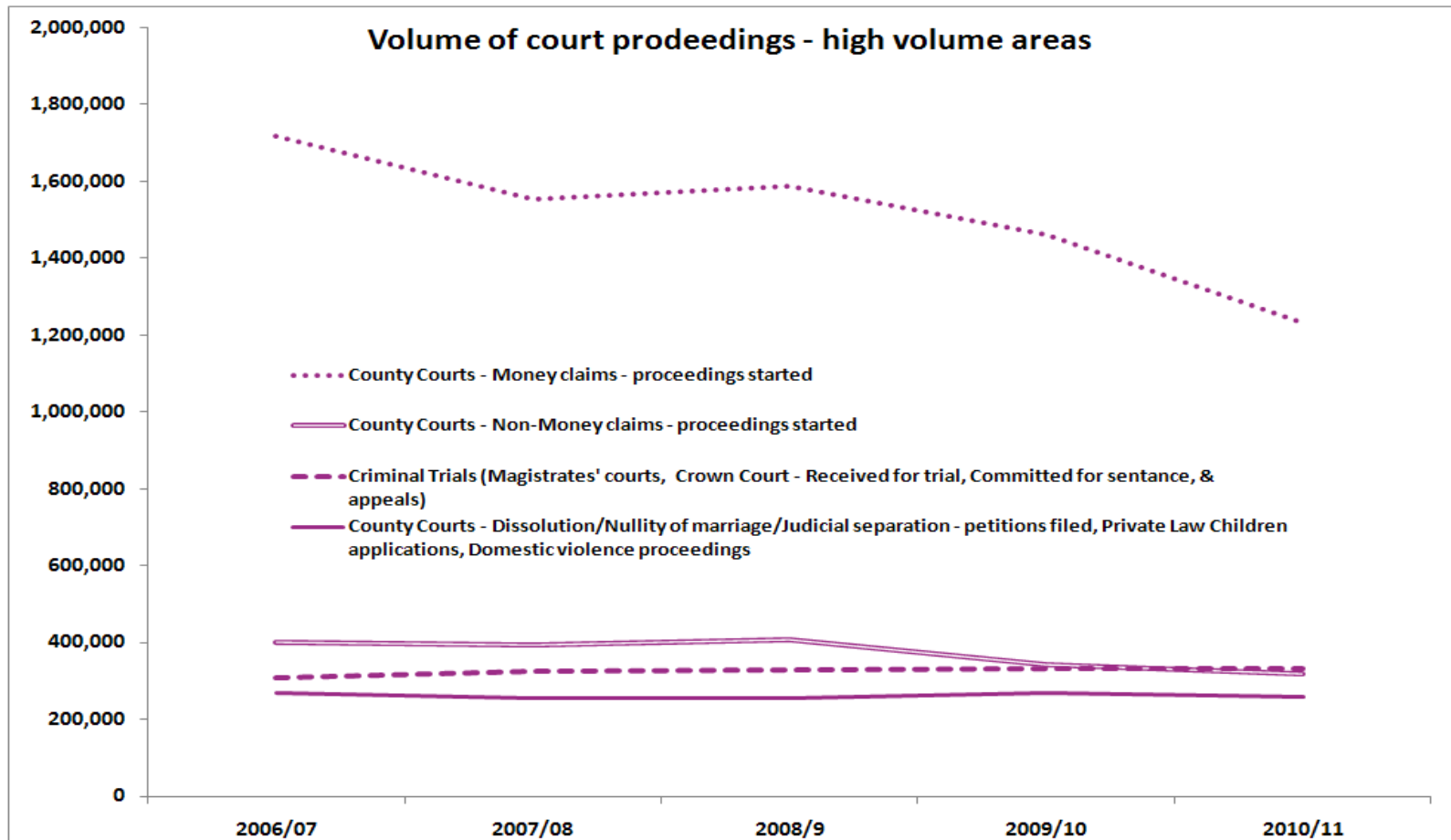
- Five waves:



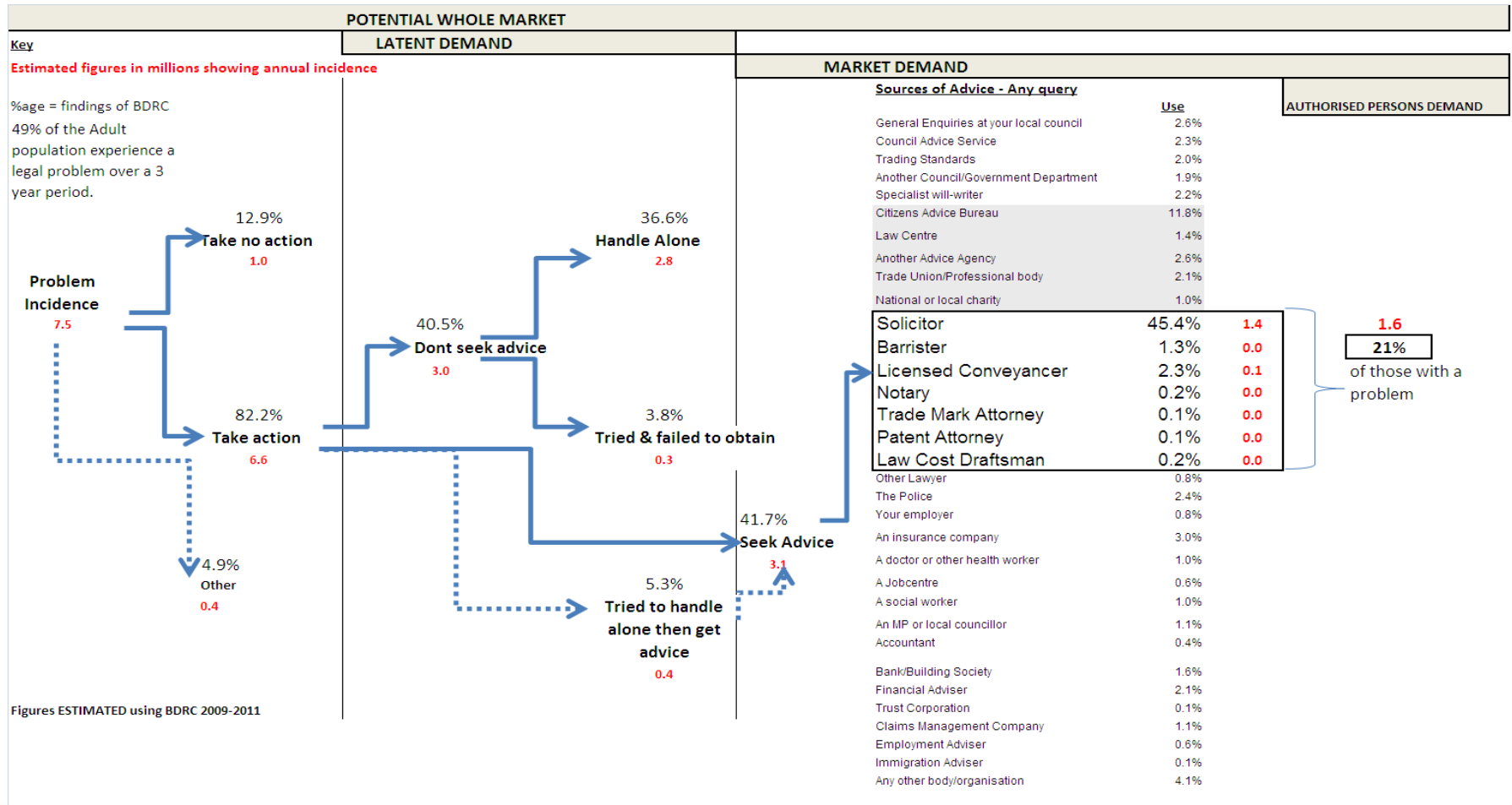
Access to justice as dispute resolution & enforcement?

- *“Litigation is inconsistent with a vigorous active market ; the market thrives best when people do not break off commercial relations and sue each other at the least trouble or disagreement rather they absorb their losses in the short run and keep on trading... For a healthy economy then parties must stay out of court except as a last resort.” Friedman (1979)*
- *“the vitality of a market democracy premised on the rule of law... depends on the success with which law manages to serve in fact—not merely on the books—as the fundamental organizing principle of the institutions and relationships of the ordinary citizen. Is law routinely available, for example, to consult before deciding how to choose between market options, or to evaluate how one has been treated in a relationship governed by legal principles? Or is law merely alive in moments of crisis?” Hadfield (2010)*

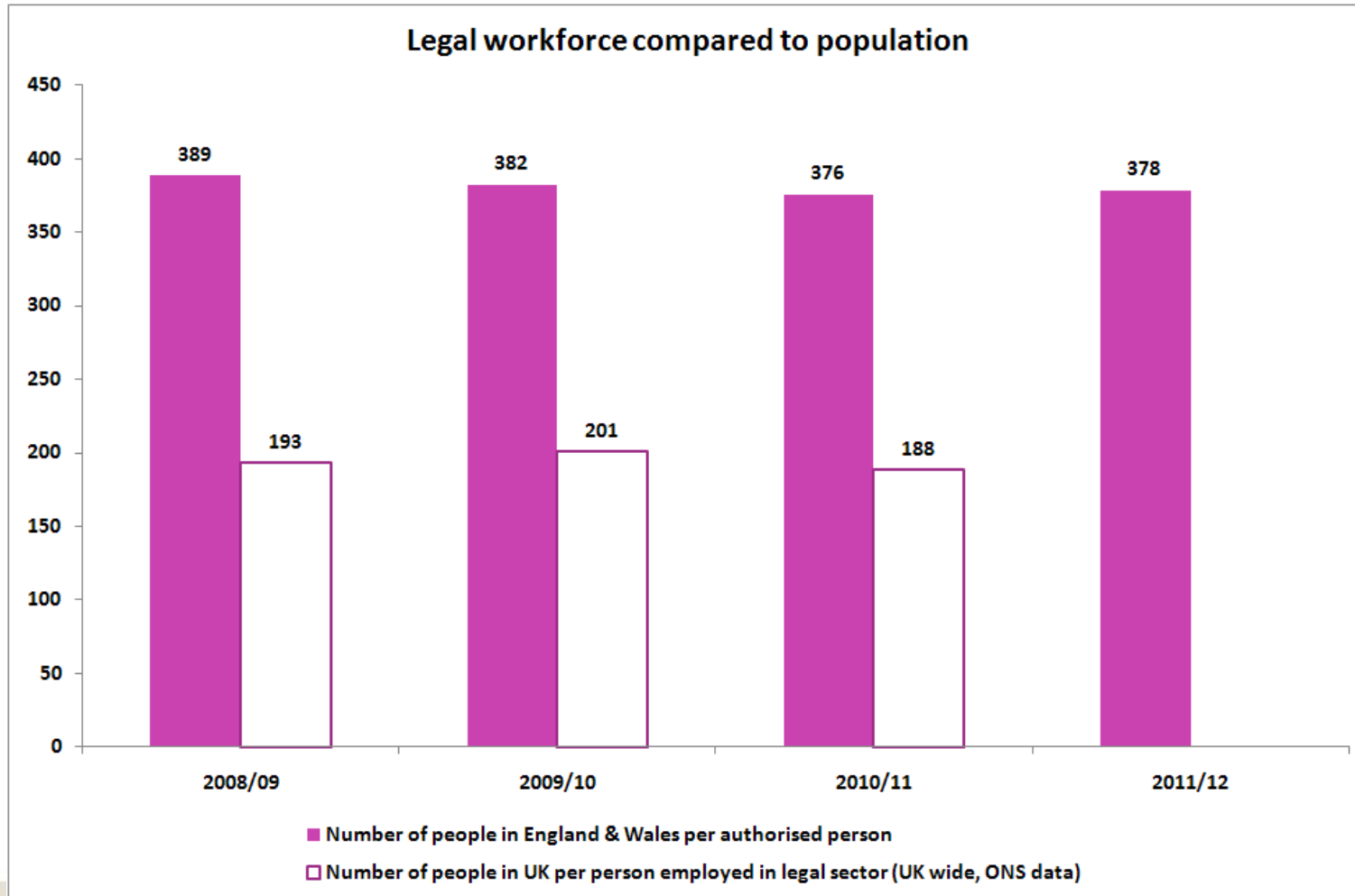
Wider perspective: Relative frequencies



Wider perspective: Response to legal problems



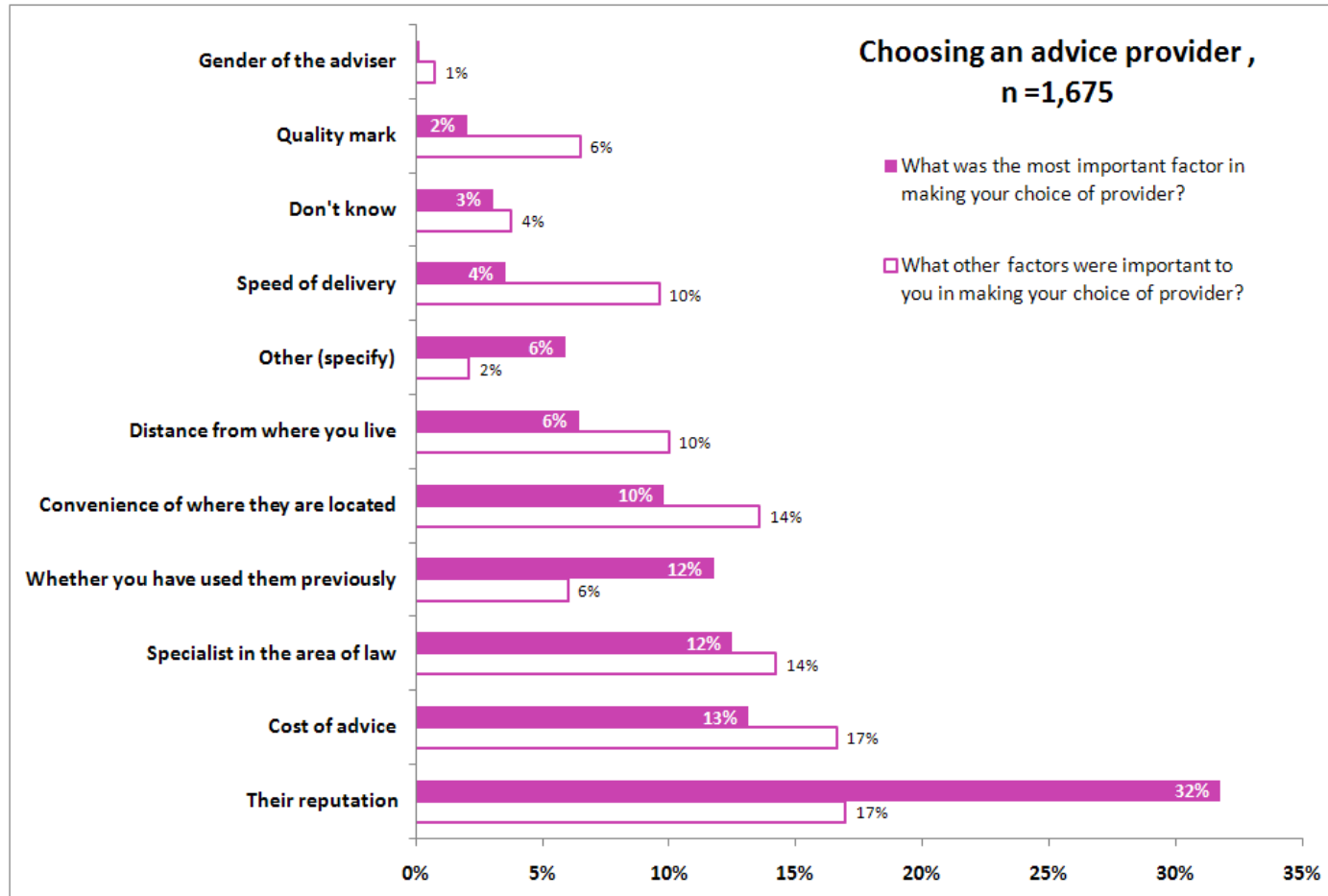
Wider perspective: Geography



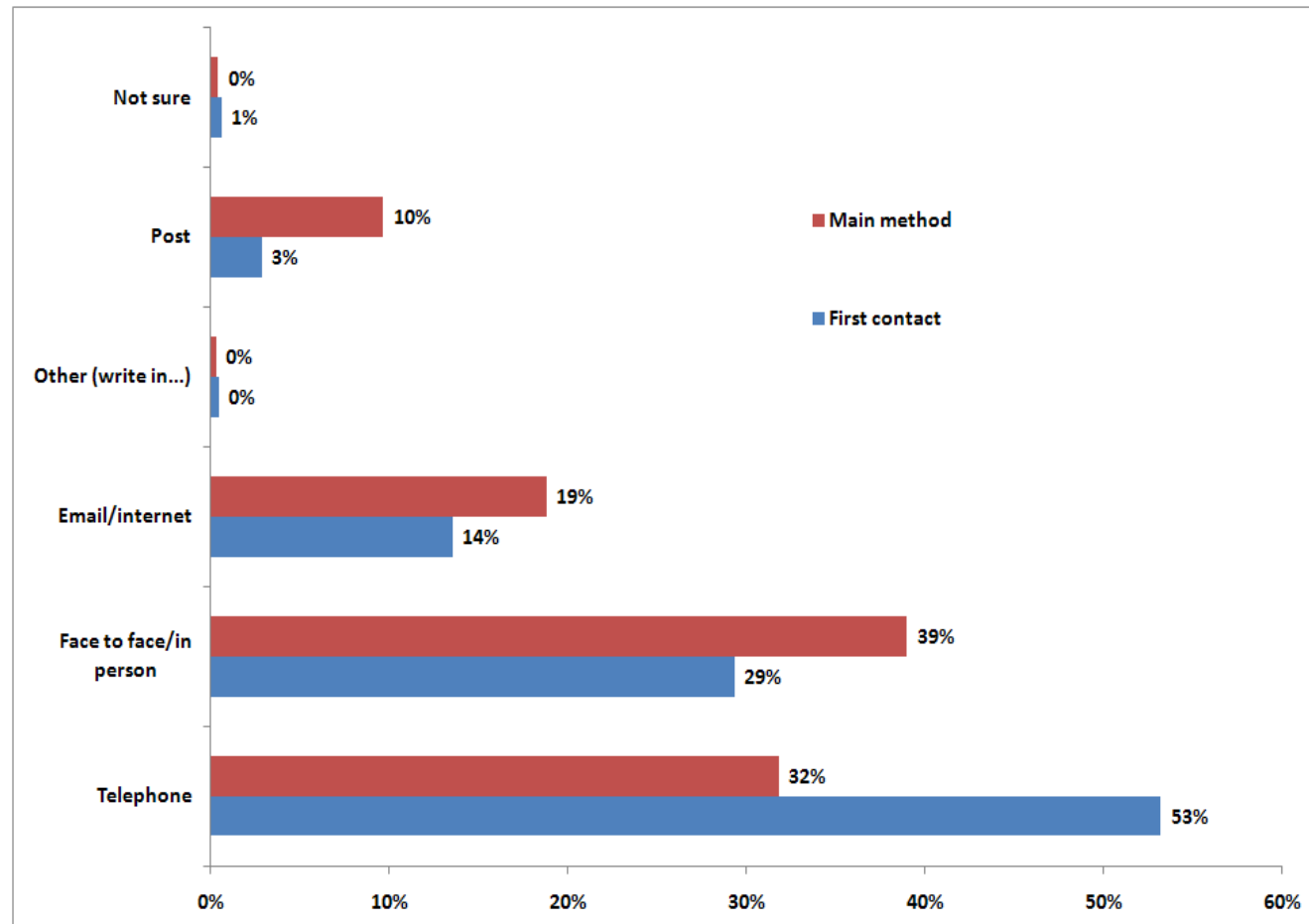
Wider perspective: Geography

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

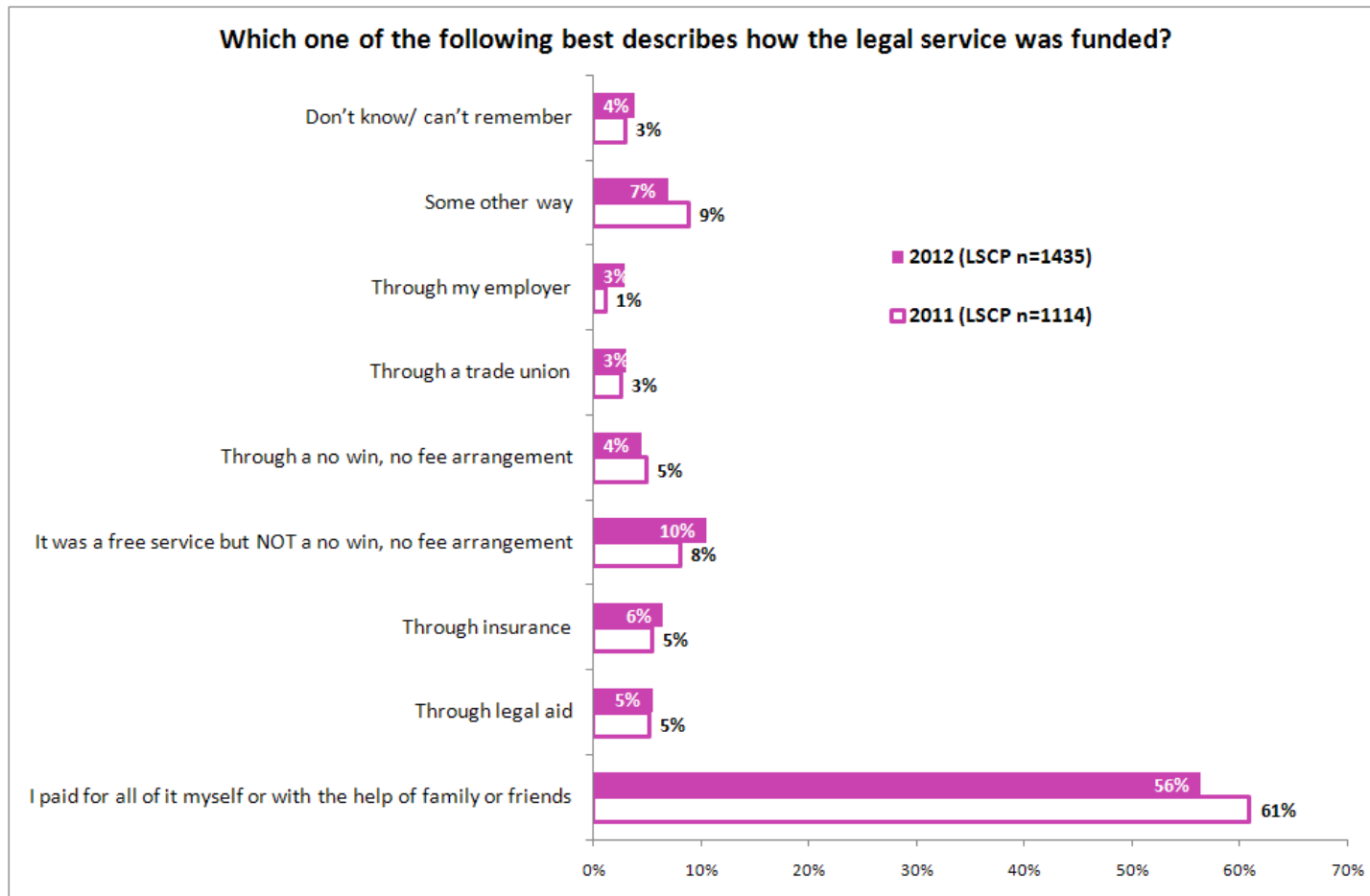
Wider perspective: Geography



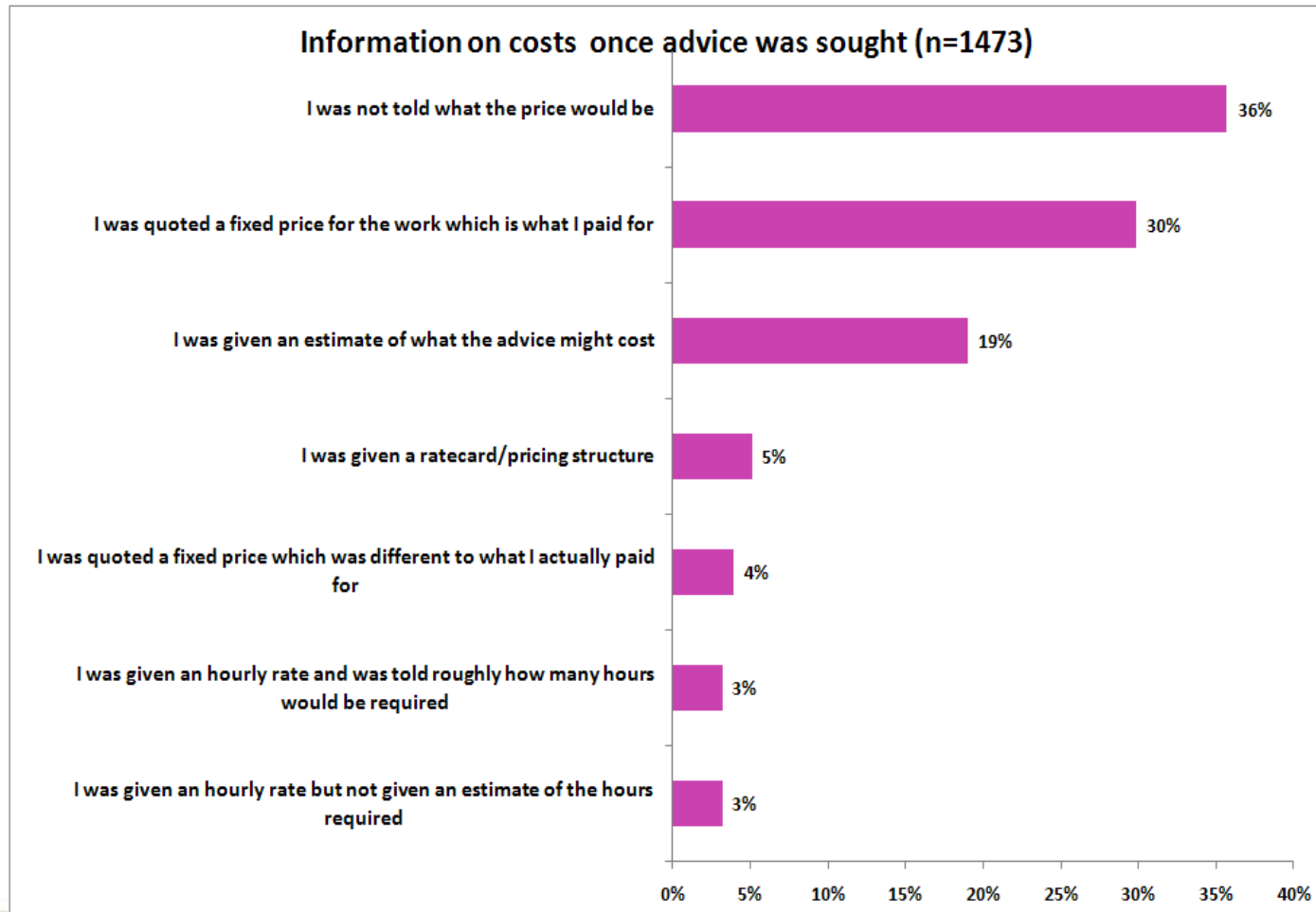
Wider perspective: Technology



Access to justice a wider perspective: Costs



Access to justice a wider perspective: Costs



How can we measure access to
justice?

18 Proposed measures (1)

	Area	Measure	Rationale
1	Demand for legal services	Annual review of proxy indicators for demand for legal services as set out in LSB Interim baseline report.	Understanding trends in the wider potential demand for legal services gives context for the interpretation of other factors.
2	Paths to justice	Breakdown of responses to legal need over time (take no action, handle alone, seeking legal advice).	How the response to the incidence of a legal need changes, in particular the rationale for handling problems without advice, affords greater insight into changes in access to justice.
3	Use of legal services	Breakdown of the different ways in which consumers use legal services – information, advice, representation etc	As technology impacts the legal sector an increase in people choosing to handle a problem alone can be seen as measure of access to justice.
4	Perception of legal services	General perceptions of legal services including issue of affordability, understanding of what's required etc	Changes in the perception of legal services link to the changes in responses to a legal need.
5	Costs of legal services	Trends in the overall cost of legal services.	Changes in cost of services are assumed to be associated with changes in response to a legal need.
6		Trends in charging methods.	To consider the lack of certainty of cost of legal services, and shifts in types of funding of legal services
7		Sources of funding of legal services.	To account for changes in proportions of consumers paying for legal services themselves

18 Proposed measures (2)

	Area	Measure	Rationale
8	Number of agents of delivery – depth of services	No. of individual authorised persons compared to the population	An indicator of capacity of supply or reserved legal services considered in context.
9		No. of people working in the legal sector compared to the population	An indicator of capacity of supply considered in context.
10		No. of businesses offering reserved services compared to the population	To account for changes in the provision of reserved legal services
11		No. of legal advice businesses and charities compared to the population	To account for changes in the provision of unreserved legal services
12	Scope of delivery – breadth of services	Range of categories of work in which regulated entities report turnover	To address the issue of changes in the breadth of legal services offered by providers.
13		Proportion of consumers getting advice on clusters of problems from the same provider.	To address the issue of changes in the breadth of legal services offered by providers.
14	Geography of services	Proportion of agents of delivery by local authority (geographical location).	To understand how geographic access changes over time
15		Methods of communication and client interaction.	To account for changes in the use of technology and its potential to impact on the geography of services.
16	Access to the courts	Trend in volumes of trials across range of problem types.	To understand how dispute resolution changes over time, compared to incidence of legal problems.
17		Trend in number of days sat by judges per trial, and length of time between court proceedings being issued and resolution of the case.	These are proposed as a proxy measure for measuring changes in the complexity of cases before the courts
18		Trends in satisfaction with the justice system.	To capture the perceptions and attitudes of people who have been to court

In summary....

- Access to justice is difficult to define but for the LSB is wider than just court based disputes.
- Access to justice has a range of elements covering individual perceptions of legal services, and response to legal problems.
- Do the proposed measures provide a comprehensive picture of access to justice?

For more information

- LSB research pages for all research reports
- Discussion paper published in due course
 - [http://www.legalservicesboard.org.uk/what we do/Research](http://www.legalservicesboard.org.uk/what_we_do/Research)
- Market impacts of the LSA Interim report
 - [http://www.legalservicesboard.org.uk/what we do/Research/Publications/pdf/market impacts of the legal services act interim baseline report.pdf](http://www.legalservicesboard.org.uk/what_we_do/Research/Publications/pdf/market_impacts_of_the_legal_services_act_interim_baseline_report.pdf)
 - Interim report published for comment
- Contact Alex Roy or Robert Cross
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 - Robert.cross@legalservicesboard.org.uk