Nottingham Law School

Regulatory Leadership on Access to Justice

Report to the Legal Services Consumer Panel on Unmet Legal Need – Barriers and Creative Solutions to Access to Justice.

Liz Curran, Jane Ching, Jane Jarman
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"There is a great need in this country to understand and design services around not just people but knowing where people go to get help. No tool or no information and no service is much use if the problem is not solved. Very rarely do we have any evidence about this. It's not legal service use that's the issue, it's the problem in its complexity that needs to be solved."

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GLOSSARY

ABI	Association of British Insurers.
ACCA	Australian Competition and Consumer Association.
ACCA	Association of Chartered Certified Accountants.
AFCA	Australian Financial Complaint Authority.
ASIC	Australian Securities and Investment Commission.
AtJF	Access to Justice Foundation.
ATSILS	Aboriginal and Torres Strait Islander Legal Services.
Bar Council	Professional representative body for barristers in England and Wales and an approved regulator under the LSA.
BSB	Bar Standards Board (front-line regulator of barristers in England and Wales).
CII	Chartered Insurance Institute.
CILEX	Chartered Institute of Legal Executives (professional representative body for legal executives in England and Wales and an Approved Regulator under the LSA).
CIPA	Chartered Institute of Patent Attorneys (professional representative body for patent attorneys in England and Wales and an Approved Regulator under the LSA).
CITMA	Chartered Institute of Trade Mark Attorneys (professional representative body for registered trade mark attorneys in England and Wales and an Approved Regulator under the LSA).
CLCA	Community Legal Centre (Australia).
CLC	Council for Licensed Conveyancers (regulator of licensed conveyancers and probate practitioners in England and Wales).
CLS	Community Legal Services.
CLSB	Costs Lawyer Standards Board (regulator of costs lawyers in England and Wales).
CMA	Competition and Markets Authority.
CP	Child Protection.
CPD	Continuing Professional Development.
CRL	CILEx Regulation (front-line regulator of legal executives and ACCA probate practitioners in England and Wales).
DJCS	Department of Justice and Community Safety.
DWP	Department for Work and Pensions.
FCA	Financial Conduct Authority.
FSMA	Financial Services and Markets Act 2000.
HJP	Health Justice Partnership.
HMCTS	His Majesty's Courts and Tribunals Service.

ICAEW	Institute of Chartered Accountants in England and Wales (regulator of probate practice by accountants).
IOLTA	Interest on Lawyers' Trust Accounts.
IPReg	Intellectual Property Regulation Board (front-line regulator of patent and trade mark attorneys in the UK).
LAA	Legal Aid Agency.
LAC	Legal Aid Commission.
LAPG	Legal Aid Practitioners Group.
LASPO	Legal Aid, Sentencing and Punishment of Offenders Act 2012.
Law Society (E&W)	Law Society of England and Wales.
Law Society of Scotland	Professional body and regulator of solicitors in Scotland.
LEI	Legal expenses insurance.
LSA	Legal Services Act 2007.
LSB & CV	Legal Services Board and Commissioner, Victoria.
LSB	Legal Services Board, independent oversight regulator of approved regulators of legal services in England and Wales under LSA, s2.
LSCP	Legal Services Consumer Panel, advisory body to the LSB under LSA, s8.
Master of the Faculties	Regulator of notaries in England and Wales.
MIB	Motor Insurers Bureau.
MOJ	Ministry of Justice.
NLS	National Legal Aid Australia.
NPA	National Legal Assistance Partnership.
OECD	Organisation for Economic Co-operation and Development.
OISC	Office of the Immigration Services Commissioner (regulator of immigration advisers under the Immigration and Asylum Act 1999, Part V).
OLC	Office for Legal Complaints.
PPF	Public Purpose Fund.
PRA	Prudential Regulation Authority.
QWE	Qualifying Work Experience (for solicitors).
SDG	United Nations Sustainable Development Goal.
SEND	Special Educational Needs and Disabilities
SLAB	Scottish Legal Aid Board.
SQE	Solicitors Qualifying Examination.
SRA	Solicitors Regulation Authority (front-line regulator of solicitors in England and Wales).

UK	The United Kingdom of Great Britain and Northern Ireland.
YLAL	Young Legal Aid Lawyers.

DEFINITIONS

Approved regulators	As defined in the LSA, an approved regulator is a regulator of reserved legal activities. There are eight approved regulators under the LSA: the Association of Costs Lawyers, the Bar Council, the Chartered Institute of Legal Executives, the Chartered Institute of Patent Attorneys, the Chartered Institute of Trade Mark Attorneys, the Council for Licensed Conveyancers, the Law Society (E&W), and the Master of the Faculties. The approved regulators regulate the legal professions practising in England and Wales. Approved regulators must separate their representative and regulatory functions and do so by delegating their regulatory powers to *front-line regulators*. The LSB approves the regulatory arrangements of approved regulators and review, monitor and assess their performance against a Regulatory Performance Assessment Framework.
Consumer duty	The duty to achieve high and clear standards of consumer protection throughout consumer finance provision. Communications must be clear, products should offer fair value, support must be offered throughout the process, and advisors should consider the situational vulnerability of consumers. Compliance with consumer duty principles is monitored by the FCA.
Capability	The term ‘legal capability’ is used in access to justice literature and refers to the array of knowledge, skills and attributes that enable an individual to have an effective opportunity to make a decision about whether and how to make use of the justice system. The concept extends to external factors that also bear on the individual’s ability to navigate and use legal frameworks and achieve fair resolution of justiciable issues. This includes but is not limited to legal knowledge, recognition of the relevance of law, legal literacy and digital legal literacy, legal confidence, and attitudes to law (perceptions of lawyer accessibility, trust in lawyers and broad narratives of law).[1]
Front-line regulators	BSB, CLC, CLSB, CRL, Master of the Faculties, ICAEW, IPReg and SRA. They are independent regulatory bodies to which – other than for the CLSB and Master of the Faculties – *approved regulators* delegate their regulatory powers.
Front-line service agencies	Direct services agencies that deliver support to the community and others.
Integrated legal services	Integrated practice in a community agency setting with legal and non-legal services working alongside each

	other. Lawyers and other community service professionals work together to respond to the needs of community members. The seamless integration of practitioners' skills and expertise across disciplines enables a more holistic service response.
Judicare model	The model of legal aid provision used in England and Wales, where contracts are awarded to law firms and other providers to provide free or reduced costs legal services.
Justiciable	'Justiciable issues', or problems, are incidents in people's lives that raise legal issues (e.g., problems with rented housing, being injured in a car accident, being unfairly sacked from work), even though they may not recognise them as legal.[2]
Legal aid	Publicly funded legal advice, assistance, and representation in the UK under the Legal Aid, Sentencing and Punishment of Offenders Act 2012.
Legal Choices	Public-facing legal information website operated by the front-line regulators in England and Wales.[3]
Legal assistance services	Direct legal services that are delivered in Australia by Legal Aid Commissions (LACs), Community Legal Centres (CLCAs)/Law Clinics including Community Legal Services (CLS) and indigenous services (namely Aboriginal and Torres Strait Islander/First Nations Legal Services) in collaboration in civil and criminal legal aid. This work is performed by salaried inhouse public legal service providers targeting unmet legal need and focussing on communities known to have limited access to justice.
Licensing authority	An *approved regulator* entitled to license designated reserved legal activity under the LSA.
McKenzie friend	A person who encourages and supports a litigant in person in a court or tribunal. This includes notetaking, documentation assistance and emotional support. The right to such support was established in *McKenzie v McKenzie*.[4] The approach of the court, especially to McKenzie friends who seek a right to act as an advocate in a court, is set out in a guidance note.[5]
Mixed model	A mixed model is a variety of 'direct legal assistance service providers' catering to different communities and areas of law. The 'mixed component' is that they are publicly salaried staff (not to be confused with charity sector funding by government in the UK). These salaried staff deliver legal services (with core funding that includes information, advice, early intervention, public legal education, case work, advocacy, and policy reform) providing general and specialist offerings. The idea is to ensure a 'one stop shop' (with strong referrals in areas outside their legal expertise). Many can provide generalist advice in multiple areas of law with few demarcations on legal matter service areas. This is to minimise clients

	having to have their legal problems resolved in more than one location or changing personnel too often. It also enables connections to be made between case work trends which can shape and inform public legal education and policy. Specific expertise and knowledge about the needs of their client communities is developed by the focus on this work and the mixed model works alongside private lawyers in a judicare model sharing this insight.
Professional bodies	In England and Wales, the Bar Council, CILEX, Law Society (E&W), Chartered Institute of Patent Attorneys, Chartered Institute of Trade Mark Attorneys and other membership and representative organisations. These are referred to in the LSA as *approved regulators* but have delegated their regulatory functions to the *front-line regulators* to ensure the principle of independent regulation is maintained.
Reflective practice conversation	A reflective practice conversation draws out the valuable knowledge and experience that resides in people's heads. These can often be missed in other data collection or information systems. The conversation opens a space for participants (with the significant data presented to them from research) to pause and reflect on data and its significance. This informs a dialogue on how service responses can be better or any required recalibrations to ensure effective service delivery using an evidence-base for decision-making. This includes an examination of achievements and underlying success factors, challenges, and areas for improvement, what's working for whom, in what circumstances and why. It enables consideration of unexpected outcomes, lessons learned, growth and insight and what might be needed to be effective in future service delivery and strategic approach. Such a conversation formed part of the final phase of the data collection in this study. It occurred on 11 March 2024. It included representatives from the LSB, LSCP and SRA. The project team were present for the conversation. A data report was circulated to participants in advance. It was facilitated by the project lead.
Regulatory sandbox	A defined regulatory safe space in which innovative business models, policies, technology and products can be developed and evaluated. Under the supervision of a regulator, usual regulatory requirements can be modified or removed to facilitate innovation, reduce regulatory burden and provide evidence for policy and legislative change. Regulatory sandboxes are well established in the financial services sector but have also been used in many other contexts, such as transport and aviation.
Restorative practice	Restorative practice is an emerging alternative to contentious approaches within an overall umbrella of what is often known as 'restorative justice'. Litigious processes can take time and have limitations in outcomes where there are defined winners and losers. Restorative

	practice enables people to work with each other to make decisions about issues that directly affect them. The foundational restorative principles that capture complex goals are to ‘do no harm’ and to work with people and ‘set relations right’. Restorative practices are designed to address complex social issues which can include workplace relations and issues with housing, health and institutional abuse. They aim to strengthen, heal and rectify institutional behaviours and conduct. They require skilled facilitation which identifies appropriate formats for the type of situation and then the accommodation of individual, social, and cultural needs while working with people to set relations right. This does not simply mean repairing pre-existing relationships after harm but also deepening mutual understanding of each other and the improvement of effective processes that better manage conflict, resolving disputes and negotiating mutually beneficial agreements.[6]
People-centred	A recent international framework in access to justice adopted by the United Nations in response to SDG 16’s access to justice component, calls for five pillars to access to justice including a people centred approach to justice. This focuses on addressing people’s everyday justice and needs. It aims to improve the lives of all members of society through access to effective and efficient dispute resolution mechanisms, the legal protection of human rights and the ability for all people to live in safety and security. Starting from an understanding of people’s needs, experiences and expectations, a people-centred approach aims to strengthen systems to deliver justice and security services for all.[7]
Secondary consultation	Secondary consultations are where a lawyer gives one-to-one information or advice in a timely and approachable way to ‘trusted intermediaries’ likely to have contact with vulnerable and disadvantaged clients. It is an effective way of reaching clients who would otherwise not gain legal help or advice. The premise is that legal secondary consultations build capacity and confidence in professionals to identify legal issues and assist clients in navigating legal issues or processes. The trusted intermediary either supports the client or, where appropriate, refers clients who would otherwise not get help because of a range of inhibitors. Trusted intermediaries can also check in for further legal advice and support. Legal secondary consultations enable trusted intermediaries to identify legal issues which, if unidentified or unresolved, can impact significantly on clients’ lives.[8]
UN SDG 16	The UN SDG 16 requires member states to promote “peaceful and inclusive societies for sustainable development, provid[e] access to justice for all and build effective, accountable and inclusive institutions at all levels”.

PREFACE

The demand for legal services, especially from the most vulnerable in society, is under pressure. As the recent report from the Access to Justice Foundation and the Bar Council, *The Value of Justice for All* states, “pressure on other services can lead to greater demand being placed on advice providers”.[9]

The focus of this report, written by a team of specialists in access to justice, professional legal education, and insurance and financial services regulation, is on how to harness leadership on access to justice to drive change to provide solutions. Drawing on voices from stakeholders across the regulatory, legal advice, and legal assistance sectors, this report seeks to act as a springboard for collaboration and innovation in access to justice policy and delivery.

We hope these recommendations prove to be pragmatic and capable of implementation. It is critical to ensure improved access to justice as a fundamental underpinning of the rule of law and UN Sustainable Development Goal (SDG) 16. This goal is not unconnected to other SDGs, for example, inequality (SDG 10), health (SDG3) and partnerships (SDG 17) as the evidence in this report highlights. Consequently, collaboration across disciplines is required. Some recommendations are long-term and reach beyond the ambit of the possible based on the current regulatory framework. They have been included to promote policy engagement and debate, and to inform future aspirations including, where necessary, forming a catalyst for legislative change, further investigation or research.

Our aim is to engage with a wide readership within, and beyond, the regulatory, legal, and advice sectors. Just as the challenges that we identify have multiple points of origin, sustainable solutions point to a focus on sustained and collaborative effort. Consequently, we have written this report with such a readership in mind.

We are grateful to those participants who were willing to give their time to assist our research, whether in interviews or by way of written submissions. We also wish to record our grateful thanks to the LSCP and LSB for their support and feedback.

What follows are the views of the authors, based on a rapid review of the literature and our empirical research with participants in the UK and abroad.

Liz Curran, Jane Ching, Jane Jarman

2 December 2024

FOREWORD

The Legal Services Consumer Panel (LSCP) believes that insufficient attention is given to access to justice. Huge gaps in provision leave many people unable to access their rights.

In December 2023 we asked Nottingham Law School to consider this problem, by examining how regulators can be more creative in using their powers, levers and influence to find solutions to the problem of unmet legal needs in relation to access to justice.

The report produced by Nottingham Law School is a call to action. Lack of access to justice jeopardises the rule of law and equality before the law. Improving access to justice is one of the Legal Services Board's statutory objectives so it should not shy away from taking the lead even if, ultimately, responsibility is shared with the regulators. Tinkering around the edges is not enough, nor should the LSB and the regulators hide behind the argument that the problem will be resolved by increased government funding alone. The lack of leadership means little progress is made addressing access to justice at a time when charities and some in the private profession are being forced to abandon the field. Access to justice is now an imperative. The LSB should provide clearer, strategic direction to secure collaboration to help the regulators meet their core statutory objective.

Nottingham Law School's research captures the opinions of many organisations and individuals involved in providing and regulating legal services and considers the experience of other jurisdictions (for example, Australia with a "mixed model" of service delivery) and the potential of innovations and different models for application to England and Wales.

Access to justice is the ability of the citizen to be informed of their legal rights and position in law and to obtain competent and effective advice on legal issues and - where relevant - representation before courts and other authorities to obtain redress or hold authority to account. The report describes the lack of access to justice facing many in our communities, particularly the most vulnerable. This is well-recognised by the LSB which, in its *Ten-Year Report* in November 2020 explained:

> *'… 3.6 million adults in England and Wales have an unmet legal need involving a dispute every year. More than 1 in 3 adults (36%) have low confidence that they could achieve a fair and positive outcome when faced with a legal problem. Nearly nine in ten people say that 'law is a game in which the skilful and resourceful are more likely to get what they want'.*

The report's authors describe the problems that hinder delivery of the aspiration for improved access to justice. These include:

- Expense and complexity navigating a legal system whose features result in unmet legal need.
- Unavailability of publicly funded legal support alongside limited and reducing resources for charitably funded and student or volunteer staffed legal advice services.
- Low awareness and identification of problems as having a legal dimension, lack of trust in lawyers and the legal system, and a lack of capacity in some groups, leading to a susceptibility to inaction and engagement with legal professionals.

- Fragmentation and complexity in the regulatory structure, with eight front-line regulators acting independently with consequent inefficiency and duplication, operating with different codes, and creating difficulties for the LSB to co-ordinating, achieving consistency, securing quality outcomes, and delivering innovation.
- Challenge of exploiting digital technology while protecting vulnerable consumers.

They argue for:

- Greater prominence to access to justice in policy making, strategy development, operational delivery, and performance reporting.
- Cementing a professional identity across the legal professions that embraces their broad responsibility to society, including access to justice.
- Adoption of a problem-solving mindset and a willingness to look at the evidence to inform strategic action and practice; to improve development; to innovate, explore and be creative; and to gauge and measure positive impact on access to justice to inform future steps.
- Collaboration between the LSB, front-line regulators and other agencies – including with regulators in adjacent sectors – including around advocating changes to policy, legislation, funding and infrastructure.
- Moving, in the longer term, towards a single regulator.
- Developing creative models of service delivery addressing the barriers to access to justice, such as integrated practices addressing the problems experienced by some consumers dealing with multiple providers in numerous locations, and consequent re-traumatisation.
- Improvements to public legal education, empowering and enhancing the legal capability of members of the public, appropriately tailored to the needs of different consumer groups.
- Development of new funding options and potentially a new vision overall for legal services in England and Wales with access to justice as a key pillar of service delivery.

The report identifies five high priority actions:

1. Revise codes of conduct, conflict of interest rules, associated ethics training and approaches to compliance monitoring, for greater focus on access to justice, the rule of law and equality before the law, understanding the law, rights, and duties, promotion, and maintenance of the professional principles for clients/consumers.
2. Create an “access to justice innovation” sandbox, involving collaboration between LSB and front-line regulators, working with service agencies and others such as PII providers.
3. Enhance Public Legal Education across the sector so that it is appropriately tailored to different consumer groups, informed by best practice and extends reach to groups currently experiencing exclusion.
4. Create collaborative agreements across the sector to bring together and drive a passion and action for improved access to justice amongst an array of sectors including government.
5. Explore alternative funding streams for access to justice work, and reducing of prices, including cross-sectoral funding.

In addition to a further twelve actions, either of lower priority or for the longer term than those above, the report also recommends that the LSCP, that in addition to our work advising the LSB and supporting regulators through encouragement of consumer-focused regulation, commissioning research, convening, and advocacy, should develop a significant role in carrying out, monitoring, and evaluating research by reference to outcomes and in sharing best practice.

Tom Hayhoe, LSCP Chair

EXECUTIVE SUMMARY

0.1 This report, *Regulatory Leadership on Access to Justice*, was commissioned in December 2023 by the Legal Services Consumer Panel (LSCP) in collaboration with the Legal Services Board (LSB) to answer the overarching question "How can regulators be more creative in using their powers, levers and influence to find multiple (and creative) solutions to the problem of unmet legal needs as it relates to access to justice?" It makes suggestions for regulators on how to make access to justice an intentional and clearer focus and a centrepiece for their work.

0.2 The current fundamental problem is that improving access to justice does not receive as much prominence around the value in funding in public discourse as do other portfolios such as health and education. Yet, as this report demonstrates in its literature review, resolving justice problems can lead to a range of positive outcomes in health, income, housing and employment.[10] The impetus for necessary action and cohesive strategies from funders, government or in policy responses has been slow, despite the evidence. This is demonstrated in the literature discussed in this report on levels of unmet legal need. In an international context it is also noted that the UK government has committed to the implementation of the UN Sustainable Development Goals (SDGs) and that SDG 16 specifically requires provisions to provide access to justice.[11]

0.3 The House of Commons Committee of Public Accounts recently noted its concerns about the lack of responsiveness on access to justice:

> We are deeply concerned about [the Ministry of Justice's] and the Legal Aid Agency's (LAA's) lack of curiosity on the impact of decreasing numbers of providers on people's access to legal aid, despite evidence which suggests access is getting more difficult. In most categories of law, the proportion of people within ten kilometres of a legal aid office has fallen since 2013. Capacity within the housing and immigration advice, and police station duty schemes, are of particular concern. For example, there are areas of the country where people can only access housing advice remotely, but [the Ministry of Justice] and [Legal Aid Agency] do not know enough about how this impacts vulnerable groups who may find it more difficult to access legal aid in this way.[12]

The statutory context and the call for action

0.4. The Legal Services Board (LSB) was created by the Legal Services Act 2007 (LSA) to oversee regulation of legal services in England and Wales. It is a statutory office independent of government and the legal professions with nine specific statutory objectives (discussed in this report). The LSB has an independent oversight role over each of the regulators of legal services. That is, for the regulators of accountants licensed to carry out probate work; barristers; chartered legal executives (CILEX) and CILEx practitioners; costs lawyers; intellectual property attorneys; licensed conveyancers; notaries and solicitors. It is required to "assist in the maintenance and development of standards in relation to ... regulation [by the different professional regulators of their members] and … the education and training of [regulated lawyers]".

0.5 When discharging its regulatory functions under the LSA, the LSB is obliged to act in a way that is compatible with a list of statutory objectives. Amongst these is "improving access to justice" (LSA, s 1(1)(c)). The approved regulators for the different professions and, through them, the front-line regulators that are their delegates, share these objectives in the exercise of their independent regulatory functions. Whilst at first glance, the regulatory framework and nomenclature can appear opaque to the non-specialist, each has its own obligations to improve access to justice.

0.6 These bodies are, therefore, amongst a very few, possibly the only, entities in England and Wales with a statutory obligation that relates directly to the subject of this report. It is true that the Lord Chancellor has a constitutional duty to ensure access to

justice under the Constitutional Reform Act 2005 which, in practice, is exercised through the provision of legal aid. The public interest in the administration of justice, in s3(6)(c) includes adequate resourcing of the justice system, having regard both to the use of public funds and to access to justice. The Parliamentary Constitutional Committee, in its 2014 report on the *Rule of Law and Judicial Independence*, noted, however, that a narrowing view had been taken of the extent and nature of this obligation.[13]

0.7 This report is both critical and timely. Action needs to occur soon if confidence in legal services and the integrity of the legal system is not to be undermined. Evidence would suggest the risk of an emergent two-tiered justice system that sees those with fewer resources and less capability unable to avail themselves of the same rights and protections as those who have resources and capability. This was a view expressed by front-line agency participants in this study. Improving access to justice also affects the other statutory objectives including: "the protection and promotion of the public interest"; "support[ing] the constitutional principle of the rule of law" and "increasing public understanding of the citizen's legal rights and duties".

0.8 This report is a call to action for all parts of the system including government, the legal professions, charities, funders and, importantly, regulators, given the latter's duty to comply with the statutory objectives when exercising their regulatory functions, specifically that of improving access to justice. This gap jeopardises another key statutory objective, namely the rule of law and its critical underpinning of equality before the law. It is no longer enough to tinker around the edges. Collective responsibility is needed. This includes from all those with ability to make inroads to improve access to justice considering its importance to the rule of law, specifically equality before the law (discussed in the report). The issue is pressing due to a range of factors including the closure of legal advice centres, legal aid deserts, withdrawal from legal aid service provision and poor information about where and how to get assistance. Literature about such factors is referenced in this report.

0.9 This report demonstrates that increased coherent, consistent, and intentional action on access to justice – in this context, by regulators – is an imperative. It argues that the LSB as the oversight regulator can be a significant player and prominent leader in the wider system which should arguably be led by government with the LSB playing a role alongside it in sharing information, best practice and areas for collaboration. Whilst the LSB and LSCP have already initiated some fora, participants urge a movement from discussions to action. Other parts of the sector provide examples, for instance the judiciary in the new Transparency and Open Justice Board, chaired by Nicklin J and set up by Lady Carr.[14] The LSB has a crucial role in leading a clearer, strategic, and coherent direction when assessing regulatory performance and into any thematic review of assess to justice, with cross-sector collaboration both inside and outside the legal services sector as a key component. This centring of LSA, s1(1)(c), or improving access to justice, would also help all regulators do more when too many people are missing out on legal help, information, advice and representation.

0.10 In addressing the overarching question, therefore, the report focusses on problem-solving and the role of regulators and regulation in facilitating creative innovations to support access to justice within the wider eco-system over which the LSB has no direct levers. This is reflected in the recommendations. These recommendations are informed by research that provides an evidence-base that the LSCP can use to support and advise the LSB and the other front-line regulators, who have the direct regulatory levers, to effect change. Although the LSB and front-line regulators have different regulatory functions, they do share the statutory objectives and an interest in the agreement of action plans which have the potential to drive change. By doing this, the common ground of "improving access to justice" can find momentum for action and enable conversations focussing on ideas and problem-solving to encourage the forging of strategic alignments.

0.11 This engendering of change applies to the professions and their practices in delivering legal services in England and Wales. It includes cementing a professional identity that embraces a broad responsibility to society, including access to justice. It also includes collaboration between front-line regulators, the LSB and other agencies, and, potentially, advocacy for changes to policy, legislation, funding, and infrastructure. This need not involve reinventing the wheel. Exploring innovations shown to be demonstrably effective in other jurisdictions and other sectors is key, as is building on regional models or areas of law where access to justice is already being addressed. However, coherent literature on what works, rather than what is needed, across England and Wales is sparse. Such research could inform and scale up effective models. Other jurisdictions, as this report illustrates, show how regulators who are intentional and clear about access to justice expectations and operationalise their expectations around plans of action on access to justice can be enablers of change and action. Evidence shows that this requires:

- a problem-solving and a growth mindset;
- a willingness to look at the evidence to inform strategic action, practice and improve development;
- innovation, exploration and creativity; and
- measurement of positive impacts on access to justice of implementation and action, to inform, recalibrate and gauge progress and to inform future steps.

0.12 Encouragingly, most participants in the empirical aspect of the research underpinning this report observed that focusing on access to justice, the rule of law and equality before the law, provides a framework for action. This framework would provide a common purpose amongst all the regulators and could include regulatory leadership across the wider justice sector. Front-line service agencies and overseas participants in the research stated that such a common purpose is critical if progress, ownership, collaboration and 'buy-in' are to occur to enable access to justice, to place the value of access to justice firmly on the radar in public discourse, and to meet unmet legal need. Several of the six domestic front-line regulators who participated in this research, and a professional body, argued both for leadership by the LSB and collaboration amongst regulatory and other bodies.

0.13 There is a view emerging from the front-line service agency and overseas regulator participants in this study that fragmented regulation, and the number of regulators is making it even harder to act on access to justice and diverts limited resources away from 'real law'.[15] This is perceived to lead to confusion amongst consumers, issues around data sharing, and the stifling of innovation and action. It is also seen as inefficient and a reason for a lack of coherency and cohesion. It also creates potential for confusion amongst regulators. However, the focus of this report is on acting now and on what can be done within the current regulatory model.

Why is action currently so critical?

0.14 Part of the call to action to improve access to justice contained in the report is for greater collaboration between different stakeholders and, consequently, it is hoped that this executive summary impacts a readership beyond the legal and regulatory sectors. The evidence in the body of the report is clear about the interconnectedness of law with SDGs. Concerted action is needed for the necessary inroads to occur and collaboration with other disciplines and jurisdictions is essential if they are to do so. This report sees the LSB as having a critical role in encouraging such collaboration, given the statutory objective around improving access to justice. The report stresses this need for action, as access to justice has a key role in addressing other SDGs, given the impacts of poverty, inequality, health outcomes and cost of living pressures. Access to justice is the ability of the citizen to be informed of their legal rights and position in law, obtain competent and

effective advice on legal issues and – where relevant – have representation before courts and other authorities to obtain redress or hold authority to account. This includes remedies to avert levels of poverty and inequality. Access to justice is unavailable because of a range of barriers. These include (but are not limited to):

- low awareness and identification of problems as having a legal dimension;
- lack of capability[16] (see definitions section) amongst certain groups (often created by systemic conditions, ill health or a lack of resources) leading to a susceptibility to inaction. This means there may be a potential legal solution or option that is not utilised; and
- barriers created by failures in the market; because lawyers or the legal system are not trusted, or legal advice and support is too expensive or unnavigable. Literature identifying these issues is detailed and cited in the report (see also 0.17 and 0.22 below).

0.15 The link between worsening poverty, poor health and inability to access justice has been established in the literature.[17] In 2024 the Joseph Rowntree Foundation reported that 14.4 million people, 22% of the UK population, were in poverty in 2021/2022.[18] The Resolution Foundation estimates that "[a]n extra 300,000 people are projected to fall into absolute poverty" in 2024.[19]

0.16 Legal need and the imperative to find ways to address it is increasingly acute if inroads into inequality are to be effective. This is especially as the literature clearly identifies unmet legal need as disproportionately affecting people experiencing disadvantage. This includes poverty, disability and vulnerability.[20] Inadequate access to legal advice and support can challenge responsiveness (for example, to lack of provision of secure, stable or safe housing, to lack of sufficient income or to discriminatory conduct) can further entrench inequality. In 2020, the LSB presented evidence that:

> … 3.6 million adults in England and Wales have an unmet legal need involving a dispute every year. More than 1 in 3 adults (36%) have low confidence that they could achieve a fair and positive outcome when faced with a legal problem. Nearly nine in ten people say that 'law is a game in which the skilful and resourceful are more likely to get what they want'.[21]

0.17 These features create unmet legal need. The literature is clear that unmet needs disproportionately harm the most vulnerable in society and therefore prevent them from accessing protections offered under the rule of law. Lack of preventative action in the early stages of a problem and the low awareness of the legal dimensions and potential for problem resolution (described above) exacerbates problems, often leading to escalation. This causes further inequality.[22] It leads to further downstream costs in other areas including poor health outcomes,[23] specifically poor social determinants of health outcomes, in, for example, housing,[24] sufficient income, and wellbeing. This is why collaboration must occur, not just in legal systems and legal provision, but with other sectors. There may also be opportunities, even with current fiscal constraints in HM Treasury, for improvements to lead to savings by early legal support. It has recently been estimated in a report by the Access to Justice Foundation and the Bar Council that the provision of free specialist legal advice could save HM Treasury up to £11.2bn over a ten-year period.[25] Opportunities for earlier intervention are being missed and problems exacerbated and escalated. Not only does this have fiscal implications but significantly it affects people's exposure to harm, for example risk of eviction or inability to get the protections of domestic abuse orders for safety, placing children at risk.

0.18 The current approach to administration, funding and policy settings for legal aid in England and Wales has exacerbated advice deserts and unmet legal need. Public funding for legal aid was reduced in its scope by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO). The kinds of cases for which public funding

is in principle available have been reduced by LASPO, as have fees paid. Advice deserts have been created by this reduction in scope and amount of fees paid for work undertaken.[26] Firms that were able to remain profitable because they worked in a range of different legal fields (some which were loss leaders) are no longer able to stay afloat because the profitable aspects of their work are no longer publicly funded.[27]

0.19 The legal aid budget has been reduced by a quarter in real terms over the last decade.[28] Continued use of the market model, contracting for work in particular areas of law to lawyers, has led to payment rates that are commercially unviable,[29] or unmanageable administrative burdens.[30] Publicly funded legal advice and support is unavailable in wide geographical areas.[31] Charities, philanthropic funding, and law student clinics try, but – with limited and decreasing resources, staff and current levels of funding – cannot fill the gap. This creates a two-tiered justice system where those with resources can avail themselves of legal expertise and the courts while others cannot. This report explores the role all legal services regulators can play in improving access to justice. It does so through a series of key themes.

The key themes requiring action

The themes are, briefly:

Engendering trust and engagement so crystallising the obligation to serve the rule of law

0.20 Supporting the constitutional principle of the rule of law is, as noted above, one of the statutory objectives of the LSB and the front-line regulators when exercising their respective functions under the LSA. This report acknowledges the centrality of the rule of law as an underpinning ethical obligation. However, the front-line regulators have chosen to communicate this statutory objective to the professions and the public in different ways, with the potential for differences in understanding amongst professionals about the relationship between the rule of law and other ethical factors such as the duty to the individual client.

0.21 Each front-line regulator sets its own standards, including its own code of conduct, and the regulated community is expected to identify how to achieve them. Although guidance may be issued, more could be done to elaborate how the professions might better meet these standards. This includes drawing explicitly on the statutory objectives, including in improving access to justice. The LSB might consider a review of the codes of conduct for their explicit references to access to justice, and responsibilities to the rule of law and strategies. This could draw out an intentional and meaningful plan to inspire a balancing, or improved prioritisation, of the higher-ranking obligations of the professions.

0.22 The essential starting point is that access to justice for the most vulnerable requires trust in front-line service agencies, the legal professions, and the legal system. People will not disclose or act if such trust is absent, according to the literature[32] and empirical research presented in this report. If there is no disclosure, then community members cannot understand how the law affects them or identify pathways to gain access to legal expertise. Similarly, regulated lawyers need to trust their regulators, and vice versa. This is important for developing a shared sense of purpose and to enhance a commitment to standards of conduct and the drive to ensure quality service provision.

Recommendation i: The front-line regulators, with strategic direction and research leadership from the LSB, should revise codes of conduct, conflict of interest rules, associated ethics training and approaches to compliance monitoring for greater focus on access to justice, the rule of law and equality before the law. This can

include reference to understanding the law, rights and duties, promotion, and maintenance of the professional principles for clients/consumers.

0.23 In addition to revision of codes of conduct; education about conflicts of interest and a light touch approach to compliance, improving trust in lawyers and promoting sector-wide engagement in access to justice could be addressed by strategies such as use of sandboxes and development of autonomous paralegals who are 'trusted intermediaries'. These are introduced in this early section of the report, and then recur as concepts, throughout the remainder.

Recommendation ii: The LSB and the front-line regulators (working with others) should investigate the creation of an access to justice innovation sandbox for testing and trialling innovations.

Recommendation iii: The LSB should explore the potential for mandatory regulation of paralegals in the sector. This could facilitate a broader pool of people who can work in public education and as navigators of legal processes and systems for example through legal secondary consultations. In doing so, consider issues of risk, resourcing, appropriate and light touch regulation and training.

Encouraging holistic, people-centred services and boosting creative thinking and innovation

0.24 The LSCP, LSB and front-line regulators regularly commission, conduct and publish research, some of which is cited in this report. In the context of access to justice, there are opportunities to build on this work through a focus on measuring impact and establishing 'what works' in the context of holistic, integrated, and people-centred services. There is a need, demonstrated consistently in the access to justice literature, to produce more holistic and responsive approaches. While the LSCP may have a role to play, it is not merely to advise the LSB. It also works with front-line regulators to encourage consumer focused regulation, does research, engagement, convening and advocacy. The LSB could have a significant role in carrying out, monitoring, and evaluating research by reference to outcomes and in sharing best practice.

0.25 The role of technology is discussed in this section of the report, however, with qualifications as, although useful in some contexts, it is not a panacea. This is a point made consistently by participants in this study. In the context of access to justice, technology is an ineffective investment unless it is tailored to address barriers to access experienced by the most disadvantaged.[33] This means that such groups are currently missing out despite digital investment. The research is clear that the most vulnerable are likely to experience digital exclusion.[34] This adds another layer of exclusion if digital solutions are not responsive to factors that influence such digital exclusion. Where such digitisation investment occurs, it is most effective where people not only have access to internet-enabled devices but are sufficiently educated and skilled to use them in this context. However, for the digitally excluded,[35] access is more difficult and can be problematic. Some participants from front-line service agencies in this study reported that many digital options proffered by industry are not tailored to advice-seeking behaviours.

0.26 The research cited in this report suggests the funding landscape does not value and adequately support the important role of 'trusted intermediaries' in offering such support. This was a point made by all the front-line service agencies interviewed in this study. In the current landscape these agencies are already overstretched, under-resourced and exhausted. This hampers offerings of any additional support. This

becomes critical as increasingly agencies such as the DWP are requiring forms, applications and evidence to be uploaded into online portals for eligibility to be established.

0.27 Interventions need to be adjusted to accommodate the existing and large body of research on advice-seeking behaviours and barriers to access to justice for different groups. Participants reported that they need to be designed to acknowledge the barriers they face. They too often sit in a vacuum from the significant body of research on advice-seeking behaviours. Digital options can be useful to those who already have access or to triage those who have the wherewithal. This means that people with some degree of digital capability, access and resources can act. Resources saved by such access for that group can then be redirected to target those who are currently excluded and the services and trusted intermediaries that might be able to support them by using such digital options.

0.28 The LSCP Tracker Survey[36] has shown that

> 18% of consumers would have preferred to talk directly to a legal professional more than they did when they were using legal services – this rises to 28% among those who received their service primarily by email/online. Ethnic minority consumers were more likely to have wanted to speak directly to a legal professional more than they did, with being able to meet in person with the person working on their case also more important to them (76% vs. 71% for the total sample).

Recommendation iv: The LSB should create a more substantial research/evidence-base, measuring outcomes and the impact of innovative practice so that they are people-centred.

Recommendation v: The front-line regulators, with strategic direction and research leadership from the LSB, should promote integrated legal services that are shaped and informed by current research around barriers and advice-seeking behaviours, removing regulatory barriers to such practice.

0.29 The regulatory levers available to the LSB and front-line regulators are not confined to enforcement of sanctions or issuing waivers. They extend to facilitating innovation that addresses the statutory objectives. There are examples of creativity discussed in this theme and throughout this report. These include incentives for undertaking or investing in access to justice initiatives including for example, secondary consultations, integrated legal practice (such as health justice partnerships), use of paralegals, emeritus lawyer schemes and pro bono.

Recommendation vi: The front-line regulators, with strategic direction from the LSB, should investigate barriers and their removal for emeritus lawyer schemes to improve supervision, retain experience and expertise, mentor young lawyers and address issues around senior staff retention and loss of knowledge and expertise.

Providing leadership on access to justice

0.30 Whilst, as the oversight regulator, the LSB has a strategic leadership role in access to justice, it is concurrent with that of the front-line regulators who also have leadership obligations in relation to their regulated communities. The LSB has already led with strategic action, for example its 2021 *Reshaping Legal Services Report* and its

collection of research data on the demographics of people in the legal service landscape.[37] A next step might be to use some of the models discussed in this theme to focus future strategic and research effort on the improving access to justice statutory objective.

0.31 Interview participants indicated that they would welcome the LSB taking a greater leadership role. Its convening power could be deployed to bring stakeholders together to obtain and share consumer data and address advice deserts. It can thereby communicate its role, strategy, and policy more clearly to government and to stakeholders.

Recommendation vii: Within its statutory remit, the LSB should take a leadership role in ensuring that regulatory policy is informed by the research/evidence-base. This activity can inform other legislative and policy entities where there is a case for improvement in policy on access to justice for relevant sectors (e.g., other industry regulators) and with government, the legal sector and Parliament.

Addressing systemic causes of injustice

0.32 An aspect of the regulatory policy-setting role explored in the previous two themes is not simply that of identifying challenges and removing regulatory barriers, but of driving impact by seeking to solve problems in a creative way. There are examples from other jurisdictions that are of relevance to the LSB to explore in taking up a problem-solving posture and encouraging others to do so. These include models of service delivery such as integrated practices because they deliver holistic services in one place with multiple clients. Such models can identify trends from their case work because the services are less siloed and fragmented. Law centres are an example of agencies which undertake this sort of work. As a result, issues that emerge repeatedly are identified, and work can be undertaken to address their cause. This can include cross-sectoral and regulatory effort to improve, educate, and train staff or refine the policies, procedures, regulations, laws or administrative issues that sit behind the problem.

0.33 This report argues that regulators can look at removing regulatory barriers to allow for such innovative and evidence-based options. To examine this is beyond the scope of this small study. It will require a mapping of innovations, scoping of inhibitors and input from stakeholders on any proposed adjustments and checking that these might not have any unforeseen downstream implications.

0.34 The LSB can facilitate dialogue and collaboration where new innovative strategic problem-solving can occur which addresses the underlying causes of legal problems, or which can intervene earlier to resolve them. Examples such as ‘Bring your Bills Days’, ‘Bulk Debt Negotiation’ and restorative practices (see definitions section) are discussed in the report to give a flavour of what might be possible. New thinking about avenues that address issues that are quick, cost effective and do not expose clients to the delays, cost, risk, trauma and vagaries of adversarial processes have been facilitated in other jurisdictions. In such cases the regulators take a lead in supporting initiatives and ‘outside the box’ solutions. There is a role for regulators actively to participate in – and encourage – collaboration across different sectors in a solution-focussed dialogue that examines world best practice and uses the evidence-base to shape improvements in access to justice.

Recommendation viii: The front-line regulators, with strategic direction and guidance from the LSB, should explore whether and where there are regulatory

barriers to integrated service delivery and cross-sectoral responses both inside and outside the legal services sector, identify them and suggest changes that allow for such innovative and evidence-based options. Such further exploratory investigation, led by the LSB co-ordinating effort across all the regulated professions, would be worthwhile to implement coherent and sector-wide changes and innovations in service delivery. This includes measures that can promote preventative policy and campaign work (e.g., bulk negotiation discussed in the full report).

Building capability, responsiveness and legal empowerment by harnessing public legal education and improving ongoing professional development

0.35 Public legal education (PLE) is critical to the improving access to justice objective. It overlaps and intersects with another objective, "increasing public understanding of the citizen's legal rights and duties". PLE models overseas have often emerged out of need created through a lack of legal advice and support, advice deserts and minimal resourcing of legal aid by governments. Organisations have used PLE to enable and empower community members and their 'trusted intermediary' supports to access legal rights. Non-government organisations in Africa, South America, the United States, Canada, and Australia have led initiatives. Some are discussed or referenced in this theme.

0.36 There are innovative PLE practices identified in the report which could be shared more widely to develop tailored responses to diverse and complex need. To be effective, PLE must, however, heed the literature on advice-seeking behaviours, adult learning behaviours, power inequality and problems generated through the lack of trust and significant issues with legal capability of members of the public[38] and the interconnected, cascading and multifaceted nature of legal and non-legal issues.[39] The LSB and front-line regulators can take further steps to develop their roles in PLE, drawing on examples from other jurisdictions, empowering and enhancing the legal capability of members of the public.

0.37 Ongoing professional development of those engaging in legal services delivery is critical in driving client awareness so that services are appropriately tailored to client contexts and circumstances. This ensures advice is competent, understood, and drives the quality of service provision in a changing world. The LSB has a statutory remit to oversee education and training of the regulated professions and approves changes to training regulations as they are submitted to it by the front-line regulators. It also has a statutory remit for CPD (or "ongoing" or "continuing" competence) after qualification. The 2022 LSB statement of policy on ongoing competence required the regulators to have met the four outcomes set out in the policy by January 2024.[40] There are several initiatives in pre-qualification training and CPD from other jurisdictions that could promote access to justice by equipping and enabling work in the sector and facilitating retention of people who play a role in facilitating access to justice. The report also suggests a stronger link between the role of ethics, vulnerability, trauma informed practice and access to justice service delivery could be explored in CPD. This was suggested by the front-line service agency participants in the research as a critical need to ensure quality service to the most vulnerable.

Recommendation ix: The front-line regulators, led by the LSB and working with others in the sector, should support PLE across the sector so that it is appropriately tailored to different groups. It should be informed by best practice and in ways that extend reach to groups currently experiencing exclusion.

Recommendation x: The front-line regulators, led by the LSB, should investigate how regulatory frameworks can be used to encourage and facilitate lawyers to work in the access to justice field, using the sandbox approach to identify and resolve regulatory barriers.

Recommendation xi: The front-line regulators should examine the potential to use regulatory levers to provide CPD in access to justice work facilitating collaborative approaches and mentorship. This should also incorporate a stronger link between the role of ethics, vulnerability, trauma informed practice and access to justice service delivery.

Encouraging collaboration including promoting greater cross-sectoral engagement

0.38 The research literature examined (referenced throughout the report) is consistent and clear that fragmentation of the legal services landscape in England and Wales leads to exhaustion and referral fatigue, especially for people experiencing inequality who are giving up where they have rights at law.[41] This is also problematic given the interconnectedness of leaving legal problems unresolved as they have downstream impacts that cause poor outcomes in health, housing, safety, and income. In the context of access to justice, difficulty accessing legal advice and support and expertise at the time and in the places where it is required means that opportunities for early intervention are lost. Whilst the legal services sector is trying to meet the problems this presents, lack of funding, staff retention,[42] and the gaps in service provision are a challenge. This challenge requires a strategic vision and leadership to counter siloed approaches.

0.39 Consequently, splintering of services to different providers for different types of legal problems or legal activities is confusing to consumers. It is also often overwhelming. Clients in a crisis just want their problems solved. However, currently they need to navigate a complicated service model. People must retell their stories to multiple providers, which can be traumatising. Obtaining help often entails travel costs to the only available provider, which they cannot afford, or which become impractical due to poor health or caring responsibilities. Whilst online support can be made available as an alternative to face-to-face services in hybrid models of legal services, the research is also clear that for many groups, face-to-face is most appropriate (see 0.28 above). This is a recurring theme in the data from front-line service agencies in this research. The literature notes finding pathways and navigators and use of collaboration between interdisciplinary services is key. This occurs in trusted spaces and with holistic provision in one place. Such features have been recommended as critical in numerous studies (cited throughout this report). Such collaborations are key in overcoming barriers, especially for those people most likely to be currently missing out on access to justice.

0.40 Key for concerted action is collaboration, bringing together, and driving a passion for improved access to justice amongst, an array of sectors from inside and outside the legal services sector (including government). The regulators can play a more focussed role in commissioning research and showcasing the evidence of what works and what does not work. This is because regulators can bring stakeholders together to encourage cross-sectoral dialogue that addresses siloed thinking. Such dialogues ought to focus on how to improve problems rather than what the problems are. This is because there is already significant literature on what the problems are and more need to find evidence-based solutions which already have been rigorously evaluated as having an impact. This work can inform funding generation and allocation.

0.41 Such further research might include: identifying and removing identified regulatory barriers to innovative service models (see discussion below); how to design and reinforce people-centred and holistic approaches and identifying areas or pockets of

best practice that could be replicated, subject to local factors. The established evidence in worldwide literature of the interconnected nature of legal problems with other issues and low levels of legal capability, especially in groups experiencing inequality already provides a good evidence-base for how to address problems, what needs to change and what is needed.[43]

0.42 Currently, each front-line regulator develops its own policy, and, when change is desired, seeks LSB approval on a case-by-case basis. Domestic front-line regulators interviewed for this report gave examples of their collaboration with other regulators (and bodies outside the scope of the LSA). The LSB itself stated in 2020 that its

> 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. [44]

0.43 Participants also noted a role for greater collaboration with and between the domestic front-line regulators, suggesting an appetite to work together under the proactive leadership of the LSB. Further, collaboration might resolve issues such as awareness of costs and pricing, in which one regulator (CLSB) has special expertise, but which require a common, sector-wide approach.

0.44 There is an appetite in the sector for collaboration with the LSB, between front-line regulators and other bodies to share data and develop solutions. Other jurisdictions provide examples for the regulators in how such collaboration can lead to ownership of initiatives and thus 'buy in' and collaboration on goal setting and action.

Recommendation xii: The LSB, in collaboration with the front-line regulators and others (such as the LAA) should enhance collaborative agreements across the sector to bring stakeholders together and stimulate a passion for improved access to justice which averts siloed thinking. This will require clear objectives and monitoring and evaluation of progress (there is an overseas exemplar of this in Victoria).

0.45 This theme showcases some of the ways other sectors have worked to improve consumer rights and access. There are some valuable methods and initiatives. Some of the domestic front-line regulators were already collaborating with entities outside the legal services sector or had ideas that might involve doing so. Examples included community leaders, healthcare providers, front-line service agencies, HM Courts, and Tribunals Service (HMCTS) and Ministry of Justice (MOJ). This cross-sectoral review identified some initial areas for exploration outside the direct legal services context. The first of these is in the context of the Financial Conduct Authority's (FCA) "Consumer Duty".

Recommendation xiii: The LSB should work on a cross-sectoral basis with e.g., the Financial Conduct Authority and other non-legal regulators who may have insights on consumer protection and early advice opportunities.

0.46 A second area for exploration in the context of cross-sectoral collaboration is with the insurance sector. This has potential benefits both for consumers and as a quasi-regulatory lever for lawyers.

Recommendation xiv: The front-line regulators, facilitated by the LSB, should work with the insurance sector to explore the feasibility of an expansion of the legal expenses insurance market and its potential to impact unmet legal need.

Recommendation xv: The front-line regulators, working with the LSB and the insurance sector, should review professional indemnity insurance cover to identify and remove any regulatory barriers that impede access to justice.

Developing and increasing funding options to improve access to justice revenue over time

0.47 Most of the participants conceded that they had little expectation the UK government would address unmet legal need or access to justice through the injection of sufficient funds into charities, law centres and legal aid. However, the participants maintained that it was still a fundamental role of government to fund adequate access to justice, despite the concession.

0.48 Funding is a significant barrier to delivery of services and to education that enables lawyers to provide those services. There are a variety of domestic examples that could improve pricing. Other jurisdictions, specifically Victoria in Australia, have succeeded in generating alternative and significant funding streams that could be explored in England and Wales. In the UK, the Access to Justice Foundation has suggestions[45] informed by this overseas experience and a track record in generating funds (including from regulators).[46]

0.49 A longer-term, albeit ambitious, aim for the LSB would be drawing on overseas experience of other regulators in Canada and Australia is to open new avenues for funding access to justice. Overseas examples provided in this report show that although some stakeholders may argue the regulator should not have a role in generating income, this has been done elsewhere with improvements in independent sources of funding for access to justice work and innovative models. This was often met with initial reticence in other jurisdictions. However, over time a shift has been seen due to the income generated. Renewed enthusiasm and buy-in from sceptics, for example in the private legal profession, has come with a common shared vision, collaboration, culture change and clear visibility and evidence.[47] Legislative change would be required to enable this to take place.

Recommendation xvi: The front-line regulators should explore alternative funding streams for access to justice work, and reducing of prices, including cross-sectoral funding. This would need to be led by government, but examples have also been suggested by the Access to Justice Foundation. There is a role for the front-line regulators in looking to examples abroad that have successfully generated income for access to justice initiatives and innovations within regulatory and other frameworks and sharing these with stakeholders.

This shift to alternative streams of funding access to justice would require some legislative amendment as well as cultural change within the professions. This cultural shift would be supported by the range of other recommended measures in this report to increase a culture of commitment by all to improve access to justice (for example CPD including access to justice considerations and making the statutory objectives on the rule of law, consumer rights and improving access to justice more prominent in codes of ethics). The LSB can play a role in providing the evidence-base and in supporting the implementation of changes in legislation.

Promoting equality and resource justice

0.50 This report calls upon the regulated professions to play their part in ensuring the constitutional principle of the rule of law (see section 4) to address inequality in the legal system. This includes highlighting the disparity of resources amongst different categories of legal services and encouraging all stakeholders to play their part in ensuring resource justice. Those who pay taxes (including through VAT on services and goods) struggle to find legal help whilst their taxes are being used to fund the courts. There is a compelling case to be made by the LSB to lead a dialogue amongst policy makers, funders and those who have greater access to legal services and the courts due to their resources to consider the role they might play in improving equality and resource justice. Many large law firms in the private sector rely on this public system for profit and thus have a vested interest in ensuring that the public system remains viable.

0.51 Such corporate cases rely on a functioning court system, which is (a) funded by the public, and (b) does not exist without upholding the rule of law. Whilst these use taxpayer money and shareholders pay taxes, many are repeat players. Although the courts used by such organisations (e.g., the Commercial Court) are likely to be different from those dealing with social justice issues (e.g., the Family Court and tribunals) taxpayers fund both.

0.52 The Civil Procedure Rules and Family Procedure Rules both encourage early resolution of disputes through mediation and other forms of alternative dispute resolution and place this obligation both on the court and on lawyers. There might be further opportunities to incentivise earlier resolution of disputes with a greater focus on those who currently use court resources the most rather than those on lower incomes, provided resources are made available. However, there is little doubt that there is a gap in provision for mediation support. There is a risk that the infrastructure outside that of the free schemes already available may prove to be prohibitively expensive for those of even modest means. There is a need to mitigate the risk inherent in a system which may punish a failure to engage in mediation or other form of alternative dispute resolution when financial means may have played a significant part in the decision.

0.53 The focus of the MOJ and the Online Procedure Rule Committee[48] should not result in further reducing access of those who might have valid claims who can be further disadvantaged by 'funnelling' them inappropriately through digital options and mediation. Such measures are often introduced with little evidence to verify their effectiveness in improving outcomes[49] and whilst not addressing those who utilise significant court and administrative resources. To the extent that the more vulnerable are diverted away from litigation, they can miss out on enforcement of their legal rights and full remedies. The creation of legal precedent which can affirm accountability, enable scrutiny and call out wrongdoing is also at risk. Yet these avenues may remain more easily accessible for those who are better resourced (subject to possible costs penalties at trial which they are more able to bear). This creates a two-tiered justice system. In exploring the literature for this report there has been little examination of this topic. This might be worthy of further research to inform decision-making that enables greater resource justice and equality.

0.54 Equality and resource justice is, therefore, a different question to that of funding. It acknowledges that some do better in use of the legal system but that it is paid for by all. This thematic discussion examines this inequality and makes suggestions for the re-envisaging of the way in which services are funded and provided. It revisits the visions that predated the Rushcliffe Report in 1945[50] of, in, essence, a publicly funded National Legal Service, similar in model to the NHS.[51]

0.55 Perhaps in the longer term the regulators can encourage dialogue that creates an appetite for a new vision for legal services in England and Wales that cements access to justice as a key pillar of public service delivery. Unpredictable and uncertain funding of the charity sector leads to instability and uncertainty which has consequential effects for

staff retention, recruitment and consumer confusion about what is on offer. Other jurisdictions are cited in this report that proffer ideas for the development of new models of publicly funding legal services to those in greatest need. These have some merit and a long track record of success in making inroads into access to justice including the 'mixed model' of funding legal service delivery in Australia. This could be facilitated if the LSB was also able to act eventually as the sole regulator and with a role in exploring and facilitating potential sources of revenue. In the even longer term it might establish itself in access to justice as an independent statutory grant provider for innovative and tested effective service provision. This would require legislative change.

Recommendation xvii: In the long term, the LSB and front-line regulators who share the statutory objective relating to access to justice should work to re-envisage and revitalise the sector so that funding, policy, and regulation is evidence-based.

This should include securing stability in core baseline funding especially where services have been positively evaluated in the access to justice sector based on embedded positive evaluation. It should work towards a vision for holistic, accessible effective justice models including consideration of proposals for a National Legal Service. It should include the potential role of the LSB in the longer term as a single regulator which is also a grant-awarding body.

0.56 The themes identified in this report involved elements including: engendering trust and engagement so crystallising the obligation to serve the rule of law, encouraging holistic people-centred services and boosting creative thinking and innovation; providing leadership on access to justice; addressing systemic causes of injustice; building capability, responsiveness and legal empowerment by harnessing public legal education and improving ongoing professional development; encouraging collaboration and promoting cross-sectoral connections; developing and increasing funding options to improve access to justice revenue over time and promoting equality and resource justice, overlap. In combination they inform the recommendations made by this report. Those recommendations constitute the first iteration of the concrete plan of action requested by one of the interviewees:

> What we don't want to see is this research report being just a box that is ticked and filed away, and nothing happens. There needs to be a plan of action emerging out of this report. The LSB is the big regulator. It has an incredible role which is currently underdone. It can bring people together to learn and innovate. Please ensure the reflective practice conversation ensures action – results … they must plan and decide actions on access to justice to make things happen. It's too important. They are the ones with the statutory aims.

KEY RECOMMENDATIONS AND IMPLEMENTATION

Given the wide ambit of LSA, s1(1)(c) and the LSB's powers under LSA, ss3, 4 and 7, most recommendations in the table that follows sit within its statutory obligations, subject to its duties under LSA, s3(3). However, some recommendations would require legislative change.

		Key report section[1]	Method of implementation	Potential impact	Relative ease of implementation
i.	The front-line regulators, with strategic direction and research leadership from the LSB, should revise codes of conduct, conflict of interest rules, associated ethics training and approaches to compliance monitoring for greater focus on access to justice, the rule of law and equality before the law. This can include reference to understanding the law, rights and duties, promotion, and maintenance of the professional principles for clients/consumers.	4	Application by front-line regulators/statutory guidance by the LSB.	Enhanced reputation of professionals working in the sector and demonstrable commitment to society and to the rule of law, so improving trust from front-line service agencies and consumers.	Will require buy-in from the professions, especially if they perceive additional bureaucracy or market disadvantage. Time and cost of drafting, consultation and testing, application and approval and changes to training/assessment regimes.
ii.	The LSB and the front-line regulators (working with others) should investigate the creation of an access to justice innovation sandbox for testing and trialling innovations.	4	Collaboration between the LSB and front-line regulators, working with service agencies and others (including PII sector).	Innovations resulting from the sandbox have the potential to be transformational in the sector. sandboxes, or those in the financial services sector.	Time and cost of implementation, monitoring, and where necessary issuing waivers. Learning can, however, be transferred from existing IPReg and SRA sandboxes and FCA experience.
iii.	The LSB should explore the potential for mandatory regulation of paralegals in the sector. This could facilitate a broader pool of people who can work in public education and as navigators of legal processes and systems for example through	4	If regulation is to be mandatory, would require changes to the LSA.	Potential to enhance reputation and quality assurance of paralegals, though voluntary regulation is already available	Additional time and cost of additional training/assessment regimes will require buy in and demonstration that the

[1] On analysis, virtually all recommendations underpin, or facilitate, not only the theme in which they are mentioned, but all the other themes. Consequently, the sections listed here are those in which the key topic is discussed most fully.

		Key report section[1]	Method of implementation	Potential impact	Relative ease of implementation
	legal secondary consultations. In doing so, consider issues of risk, resourcing, appropriate and light touch regulation and training.			through CILEX and elsewhere.	extent of regulation is proportionate to the risk. Pushback might be expected from some in the regulated and unregulated sectors.
iv.	The LSB should create a more substantial research/evidence-base, measuring outcomes and the impact of innovative practice so that they are people-centred.	5	Internal research teams and external tenders to include measurement of outcomes and impact. Best practice could be shared by an annual event. Implementation could also include the who does what pro bono survey (section 11).	Sharing of existing research and best practice requires collaboration but reduces duplication and data gaps.	The additional time and cost in measuring outcomes and impact is offset by increased utility and demonstrable impacts of the results.
v.	The front-line regulators, with strategic direction and research leadership from the LSB, should promote integrated legal services that are shaped and informed by current research around barriers and advice-seeking behaviours, removing regulatory barriers to such practice.	5	Application by front-line regulators/statutory guidance by the LSB.	Facilitates practice in the sector by reducing regulatory barriers. Increases the visibility of, desirability, and utility of provision of legal services for the most vulnerable by meeting them where they are and ensures holistic responses to problems occurring in multiple contexts. Builds confidence and trust in lawyers of the public and 'trusted intermediaries' when done well. Builds confidence in the justice system and rule	A systematic evidence-base will need to be developed and disseminated, including outside the regulated community. This requires funding, planning and organisation. It will require buy in from those working in the sector together with those outside it such as in the NHS.

		Key report section[1]	Method of implementation	Potential impact	Relative ease of implementation
				of law. Increases collaboration and legal capability in members of different non-legal professionals about the role of laws in daily lives making the law relevant and less obscure/opaque – leads to greater consumer confidence.	
vi	The front-line regulators, with strategic direction from the LSB should investigate barriers and their removal for emeritus lawyer schemes to improve supervision, retain experience and expertise, mentor young lawyers and address issues around senior staff retention and loss of knowledge and expertise.	5	Application by front-line regulators/statutory guidance by the LSB. Waivers of practising certificate fees could be implemented by the front-line regulators.	The cost in reduced practising certificate fees is offset by the availability of a cohort of committed and experienced lawyers (subject to training) who could reduce some of the burden on those working in the sector, mentor, provide supervision and retain expertise.	Will require buy-in from those already working in the sector to demonstrate this is a real and not a sticking plaster approach.
vii	Within its statutory remit, the LSB should take a leadership role in ensuring that regulatory policy is informed by the research/evidence-base. This activity can inform other legislative and policy entities where there is a case for improvement in policy on access to justice for relevant sectors (e.g., other industry regulators) and with government, the legal sector and Parliament.	6	For LSB strategic activity (including a State of the Nation provocative report)	Distinct access to justice strategies and policies help to focus thinking and activity and enhance reputation.	There may be pushback from professionals and politicians who perceive such activity to constitute lobbying and to be outside the regulators' remit, but the statutory objectives provide the springboard here. Ensuring formal consideration and

		Key report section[1]	Method of implementation	Potential impact	Relative ease of implementation
					response by government might require legislation.
viii	The front-line regulators, with strategic direction and guidance from the LSB, should explore whether and where there are regulatory barriers to integrated service delivery and cross-sectoral responses both inside and outside the legal services sector, identify them and suggest changes that allow for such innovative and evidence-based options. Such further exploratory investigation, led by the LSB co-ordinating effort across all the regulated professions, would be worthwhile to implement coherent and sector-wide changes and innovations in service delivery. This includes measures that can promote preventative policy and campaign work (e.g., bulk negotiation).	7	May require legislation, creation of new bodies if this activity is perceived as outside the LSB/ legal professions' statutory remit.	Distinct access to justice strategies and policies help to focus thinking and activity and enhance reputation. Also, such initiatives can be quick, improve industry responses and so be seen as effective and lead to savings. For example, 'Bulk Negotiation', restorative practice, Health Justice and other integrated practices.	There may be pushback from professionals and politicians who perceive such activity to constitute lobbying and to be outside the regulators' remit.
ix	The front-line regulators, led by the LSB and working with others in the sector, should support PLE across the sector so that it is appropriately tailored to different groups. It should be informed by best practice and in ways that extend reach to groups currently experiencing exclusion.	8	Collaboration between all those working in the sector.	Increased awareness and legal capability in the public can reduce complex and expensive issues (e.g., costs to DWP, health systems, and to wider society).	Time and cost in designing and delivering a coherent PLE offering to all members of the public, including those in advice deserts and the digitally excluded if offset by potential results.
x	The front-line regulators, led by the LSB should investigate how regulatory frameworks can be used to encourage and facilitate lawyers to work in the access to justice field, using the sandbox approach to identify and resolve regulatory barriers.	8	Developing a menu of incentives will require collaboration between stakeholders, including government.	Increased awareness of, entry to, and retention in the sector.	Complex in terms of both incentive design and operationalisation, but potentially transformative. Suited to the sandbox space.

		Key report section[1]	Method of implementation	Potential impact	Relative ease of implementation
xi	The front-line regulators should examine the potential to use regulatory levers to provide CPD in access to justice work facilitating collaborative approaches and mentorship. This should also incorporate a stronger link between the role of ethics, vulnerability, trauma informed practice and access to justice service delivery.	8	CPD is not generally delivered by the regulators themselves. Incentives, such as fee waivers, could be issued by the front-line regulators.	Increased awareness of access to justice work throughout the regulated sector and potential to strengthen pro bono activity. Increased and tailored support for access to justice work including for those whose work only sporadically involves it.	Time and costs of designing and delivering new CPD offerings in a market based CPD economy. Expertise in the charity sector can be utilised. Existing buy in and push back issues from professions relating to CPD obligations generally. Leadership from the LSB in delivery options and broadening of ethical concepts to increase quality and competency by expansion of considerations to vulnerability, trauma-informed and access to justice.
xii	The LSB, in collaboration with the front-line regulators and others (such as the LAA) should enhance collaborative agreements across the sector to bring stakeholders together and stimulate a passion for improved access to justice which averts siloed thinking. This will require clear objectives and monitoring and evaluation of progress (there is an overseas exemplar of this in Victoria).	9	By collaboration between the LSB and the front-line regulators	Increased coherence, consistency, and strong basis for collaboration across the fragmented sector.	Will require buy-in but the Victorian model suggests it equally ensures ownership, culture change and such 'buy-in' as it is co-designed.
xiii	The LSB should work on a cross-sectoral basis with e.g., the Financial Conduct Authority and other non-legal regulators who may have insights	9	By collaboration led by the LSB. Adoption of an equivalent "consumer duty" would require legislation.	Advantages of learning what works from another domestic sector. Opportunities to develop	Initial terms of reference could be adopted at pace with insights informing further work.

		Key report section[1]	Method of implementation	Potential impact	Relative ease of implementation
	on consumer protection and early advice opportunities.			cross-sectorial approaches to, e.g., debt and vulnerability.	
xiv	The front-line regulators, facilitated by the LSB, should work with the insurance sector to explore the feasibility of an expansion of the legal expenses insurance market and its potential to impact unmet legal need.	9	Subject to actuarial and business case with the market. Extent to which compulsory cover could be embedded as standard would require legislation and market agreement.	Increased cover for some individuals and SMEs could reduce pressure on services for the most in need. PLE could encourage individuals and businesses to check whether they already have such coverage.	Liaison with the insurance market (perhaps via the ABI and CII) to assess feasibility of expansion and development of new products.
xv	The front-line regulators, working with the LSB and the insurance sector, should review professional indemnity insurance cover to identify and remove any regulatory barriers that impede access to justice.	9	Collaboration between the LSB, front-line regulators and insurers.	Facilitates practice in the sector by reducing (non-regulatory) barriers. A medium priority at present because of the volatility in the market.	Create an opportunity for discussions between regulators, the insurance market and brokers about the viability of new PII covers.
xvi	The front-line regulators should explore alternative funding streams for access to justice work, and reducing of prices, including cross-sectoral funding. This would need to be led by government, but examples have also been suggested by the Access to Justice Foundation. There is a role for the front-line regulators in looking to examples abroad that have successfully generated income for access to justice initiatives and innovations within regulatory and other frameworks and sharing these with stakeholders. This shift to alternative streams of funding access to justice would require some legislative	10	Some of the suggestions involve changes to legislation as well as to professional regulation. Requiring front-line regulators to report on (and possibly allocate to) their s51(4)(d) spend might be possible.	Works to address the withdrawal of public funding for legal services by reinvesting a variety of funds into the access to justice sector. Enhanced reputation in being seen actively to lobby for change.	There may be pushback from professionals and politicians who perceive such activity to be outside the regulators' remit. May address some of the issues in relation to funding innovative access to justice programmes demonstrated as possible by other jurisdictions such as Australia, the USA and Canada. These jurisdictions experience

		Key report section[1]	Method of implementation	Potential impact	Relative ease of implementation
	amendment as well as cultural change within the professions. This cultural shift would be supported by the range of other recommended measures in this report to increase a culture of commitment by all to improve access to justice (for example CPD including access to justice considerations and making the statutory objectives on the rule of law, consumer rights and improving access to justice more prominent in codes of ethics). The LSB can play a role in providing the evidence-base and in supporting the implementation of changes in legislation.				has been that, over time, buy-in occurs through evidence, clear visibility and culture change. This would require legislative change.
xvii	In the long term, the LSB and front-line regulators who share the statutory objective relating to access to justice should work to re-envisage and revitalise the sector so that funding, policy, and regulation is evidence-based. This should include securing stability in core baseline funding especially where services have been positively evaluated in the access to justice sector based on embedded positive evaluation. It should work towards a vision for holistic, accessible effective justice models including consideration of proposals for a National Legal Service. It should include the potential role of the LSB in the longer term as a single regulator which is also a grant-awarding body.	11	This would require legislation.	A reduction in the challenges of monitoring the fragmented sector, allowing greater focus on other priorities. LSB policy on the single regulator acknowledges the challenges of this proposal. A less radical change that empowered the LSB to award grants might be less controversial but would also require a funding stream perhaps from some of the options discussed in section 10.	Pushback can be anticipated from the existing front-line regulators and others. Has been done abroad with great effect e.g., Victoria. This would require legislative change.

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PART I

1. INTRODUCTION AND STRUCTURE OF REPORT

1.1 This report, *Regulatory Leadership on Access to Justice*, by a team of independent researchers at Nottingham Law School, was commissioned by the Legal Services Consumer Panel (LSCP) and the Legal Services Board (LSB) on 22 December 2023. The overarching question the research team was asked to investigate is 'How can regulators be more creative in using their powers, levers and influence to find multiple (and creative) solutions to the problem of unmet legal needs as it relates to access to justice?'. Action on this issue – and on a strategic approach to consumer vulnerability – forms part of the LSB's current business plan.[52]

1.2 The scope of the project is, therefore, to research unmet legal need, looking at how to overcome barriers and provide creative solutions to improve access to justice within a regulatory context. This report has as its central concern the impact of legal services regulation on clients whose access to justice and unmet legal needs present real challenges for England and Wales.

1.3 The report is divided into three parts.

Part I is the introduction (sections 1 to 2) and sets out the background to the project. It explains the regulatory context, including the roles and powers of the LSB, LSCP and the front-line regulators of the different legal professions. It also briefly outlines the approaches used by the researchers to gather and analyse data.

Part II (section 3) provides a literature review exploring 'what works' in addressing access to justice generally and by reference to initiatives used in some other jurisdictions. Some of these informed the research team's choice of interview participants and contribute to discussions in Part III.

Part III (sections 4 to 12) uses themes emerging from the data, the literature and material obtained from participants to report more fully, identifying specific levers and solutions that could be adopted by the LSB and the front-line regulators. The table that precedes Part I integrates the themes by evaluating priorities, method of implementation, impact, and ease of implementation. A final conclusion and answers to the initial research questions set for the research team appears in section 12.

Regulatory context

1.4 It is important first to define the existing regulatory arrangements for the provision of legal services in England and Wales. This is so that the later emergent themes, and suggestions for improvements to advance access to justice in the recommendations, are related to the regulatory remit explained in this section.

1.5 The Legal Services Act 2007 (LSA), s1 sets out the statutory objectives:

(a) protecting and promoting the public interest;
(b) supporting the constitutional principle of the rule of law;
(c) improving access to justice;
(d) protecting and promoting the interests of consumers;
(e) promoting competition in the provision of services within subsection (2);
(f) encouraging an independent, strong, diverse and effective legal profession;
(g) increasing public understanding of the citizen's legal rights and duties;
(h) promoting and maintaining adherence to the professional principles;
(i) promoting the prevention and detection of economic crime.[53]

1.6 The key objective for this report is (c): "improving access to justice". The LSB gains its authority here as one of the few – or possibly the only – statutory bodies in England and Wales that holds a legislative mandate for it. It is a recognition of this that presents the LSB,

as this report will highlight, with the galvanising opportunity to bring together all the front-line regulators and their professional bodies. The objective is wider than individuals and public law (e.g., it could encompass small business or any area of law). The key focus for this report, however, is on those individuals accessing public legal support who cannot currently readily access justice giving rise to unmet legal need. Specifically, those living in poverty, experiencing inequality, or who are facing barriers (such as, e.g., disability).

1.7 In saying this, it is noted that the Lord Chancellor has a constitutional duty to ensure access to justice under the Constitutional Reform Act 2005 which, in practice, is exercised through the provision of legal aid. The public interest in the administration of justice, in the Constitutional Reform Act, s3(6) includes adequate resourcing of the justice system, having regard both to the use of public funds and to access to justice. The Parliamentary Select Committee, in its 2014 report on the *Rule of Law and Judicial Independence,* noted, however, that a narrowing view had been taken of the extent and nature of this obligation.[54] It is also noted that the UK government has committed to making progress towards the United Nations Sustainable Development Goals (SDGs) and that SDG 16 specifically refers to the promotion of access to justice.[55] In line with recent developments and steps specified by the UN on ensuring 'people–centred justice', the term 'people centred' is used in this report.[56]

1.8 The LSA's regulatory power occupies two dimensions. First, it governs the six "reserved activities" (s12(1)). Broadly, anyone offering any of these services who is not a member of a regulated profession authorised to do so under s20 is committing an offence (ss13-17). Special provision is made for immigration work, but this does not necessarily involve reserved activities (except when it involves advocacy and litigation). Legal services outside litigation and advocacy, such as, for example, advice on benefit entitlement or employment status, required by the people experiencing disadvantage who are the focus of this report, therefore, do not normally involve the reserved activities. Consequently, they can in principle be provided by anyone without clear regulatory accountability.[57] As the Competition and Markets Authority (CMA) noted in 2017, the current reservations "are poorly aligned with the risks of providing legal services to consumers".[58] The implications of this lack of regulatory authority were noted by front-line agency participants, and one of the professional bodies, in the research:

> What concerns us is that there are some paralegals who are mavericks and unregulated. They put themselves out there as the go-to people when often they actually can cause more harm. What the regulator can do is let people know that we are a regulated and trusted profession and that lawyers have accountabilities, ethical standards end let people know that they can complain about lawyers. There are some poor performers in the legal profession who are allowed to give the profession a bad name and this leads to distrust in the community, and this is being reinforced by the regulator not being clear about the fact that solicitors and barristers are regulated, have ethical standards which they will be held to. But the regulator needs to ensure that this accountability exists when people do wrong in the profession.

1.9 Nevertheless, the second dimension is that members of the regulated legal professions are regulated in all their activities, even those that are not reserved activities. Consumer awareness of the implications is unclear. One domestic participant, from a professional body, for example, commented:

> [R]egulation needs to … make sure the regulatory framework protects the consumer ... And that means things like helping them understand what is and isn't regulated. What is and isn't in the scope of protections that are offered, and to understand who they're dealing with when they are using those services.

The Legal Services Board

1.10 The remit of the LSB, created by the Legal Services Act 2007 (LSA), is as oversight regulator for the sector with a duty to promote the statutory objectives in s3. It is, formally, a non-departmental public body sponsored by the Ministry of Justice (MOJ).[59]

1.11 On its website the LSB summarises its role as including:

- [R]egulation of approved regulators and the Solicitors Disciplinary Tribunal;
- Oversight of the Office for Legal Complaints (OLC), which is responsible for administering the Legal Ombudsman scheme;
- Making recommendations to amend the list of reserved legal activities [ss 24, 26]; and
- Setting up voluntary arrangements to improve standards (if required).[60]

1.12 The LSB, under s4, has obligations to "assist in the maintenance and development of standards" in relation to the regulation of the professions and for the standards, education and training of lawyers regulated under the LSA. Further powers and duties include:

- Setting and monitoring performance targets for front-line regulators (s31);
- Issuing directions to mitigate or remedy acts or omissions by front-line regulators with an adverse effect on a statutory objective (s32). Sanctions include public statement of censure (ss 35-36); financial penalties (ss 37-38) and direct intervention in the regulator's activities by the LSB (s41);
- Recommending to the Lord Chancellor that a front-line regulator cease to have that status (ss 45-48) or that its functions be changed (s69);
- Issuing statements of policy (s49). These may include policy directions given to the front-line regulators, to which they must respond;
- Requiring information to be provided by front-line regulators (ss 55-56);
- Responding to any CMA report on competition in relation to the front-line regulators) (ss 57-61); and
- Doing "anything calculated to facilitate, or incidental or conducive to, the carrying out of any of its functions" (s7). That is, it has a broad residual remit in relation to its regulatory activities.

1.13 This translates into an approach that the LSB on its website describes as:

61

Figure 1 LSB regulatory approach

The regulated professions

1.14 The LSA, s20, refers to "approved regulators" for the different professions listed in schedule 4 (see definitions section).[62] These cover the full costs of running the LSB and the OLC through a levy (s173). In most professions the approved regulator has delegated its

regulatory functions to the entities that in this report we refer to as front-line regulators (see definitions section). Where it is necessary to make a distinction, this report refers to the parent as a professional body (see definitions section). By LSA, s 29, the LSB is prohibited from exercising its functions in relation to the representative activities of the professional bodies.

1.15 It is important to acknowledge that this is a nuanced and complex regulatory architecture. For instance, the Law Society (E&W) is the approved regulator, but has delegated its function as such to the SRA as its front-line regulator because the Law Society is also the representative body of the profession.[63] This complexity has the potential to confuse not just the general public but also some within the legal sector who may not appreciate the differing functions of the LSB as the oversight regulator and the role of the front-line regulators in relation to individual professionals and regulated entities.

1.16 By s21, regulators are empowered to make rules about matters including education and training, licensing, practice and conduct rules and compensation. At present there are eight active front-line regulators, responsible for accountants licensed to carry out probate work, barristers, chartered legal executives and CILEX practitioners, costs lawyers, intellectual property attorneys, licensed conveyancers (and probate practitioners), notaries and solicitors. The same obligation as to the statutory objectives is placed on the professional bodies (s28) which, as noted above, they delegate to the front-line regulators.

1.17 Each profession is required to comply with the "professional principles" set out in LSA, s1(3). These amount to requirements of ethics and competence on the part of regulated lawyers.

1.18 LSA, s51 explains what the front-line regulators (through the professional bodies) are allowed to spend income from lawyers' annual practising certificate fees on. It also requires the LSB to make rules defining those permitted purposes. It does this through its Practising Certificate Rules 2021.[64] Rules that are relevant to the discussion in this report are:

- the regulation, accreditation, education and training of applicable persons and those wishing to become such persons (rule 8a);
- the participation by the approved regulator in law reform and the legislative process (rule 8c);
- the provision by applicable persons, and those wishing to become such persons, of legal services including reserved legal services, immigration advice or immigration services to the public free of charge (rule 8d);
- increasing public understanding of the citizen's legal rights and duties (rule 8g) (see section 8); and
- the promotion and protection by law of human rights and fundamental freedoms (rule 8e).

The LSB approves such fees and the activities to which they are applied.

The Legal Services Consumer Panel

1.19 The LSCP is established under LSA, s8 "to represent the interests of consumers", and the LSB must, by s10, consider, and respond to, any representations made to it by the LSCP. The LSCP's role is not merely to advise the LSB. It also works with front-line regulators to encourage consumer focused regulation, does research, engagement, convening and advocacy (s30(2)(a)). By s11 the LSCP is empowered to carry out research for, and give advice to, the LSB. Black, in discussing the role of consumer panels, notes,

> The development of consumer panels which are embedded within regulatory structures is good example of a form of accountability which is ongoing and 'interstitial', sitting between the visible, formal processes of consultation prior to decisions, and ex post reviews of performance … irrespective of any legal requirement that regulators take their views into account, consumer panels have to be afforded sufficient recognition by the regulator such that the

> regulator really does take note of what they say, and does not just 'go through the motions' of appearing to listen but in practice disregarding them.[65]

Implications of the regulatory context for access to justice

1.20 Regulatory levers relating to the statutory objectives are, therefore, available not only to the LSB, but to each of the approved regulators. This, coupled with the wide residual remit in LSA, s7, is significant in terms of the recommendations made in this report. Some of these are explicitly within the existing regulatory remit, some are implicitly so, and others would require legislation or action by government or entities outside the scope of the LSA.

1.21 Although there is explicitly no hierarchy of the objectives set out in the LSA, s1, many of them overlap if one considers them through the prism of improving access to justice. For example, underpinning the constitutional principle of the rule of law is the notion of equality before the law. The latter means "rights and obligations specified are universal, in that they attach to each individual considered as a legal person, irrespective of social position".[66] To have such equality people need to be able to understand the law, and their rights and duties.[67]

1.22 Lord Bingham provides guidance to help us define the rule of law.[68] This has been summarised as:

> 1. The Accessibility of the Law: The law must be accessible and so far as possible intelligible, clear and predictable.
>
> 2. Law not Discretion: Questions of legal right and liability should ordinarily be resolved by application of the law and not the exercise of discretion.
>
> 3. Equality before the Law: The laws of the land should apply equally to all, save to the extent that objective differences justify differentiation.
>
> 4. The Exercise of Power: Ministers and public officers at all levels must exercise the powers conferred on them in good faith, fairly, for the purpose for which the powers were conferred, without exceeding the limits of such powers and not unreasonably.
>
> 5. Human Rights: The law must afford adequate protection of fundamental human rights.
>
> 6. Dispute Resolution: Means must be provided for resolving, without prohibitive cost or inordinate delay, bona fide civil disputes which the parties themselves are unable to resolve.
>
> 7. A Fair Trial: Adjudicative procedures provided by the state should be fair.
>
> 8. The Rule of Law in the International Legal Order: The rule of law requires compliance by the state with its obligations in international law as in national law.[69]

1.23 Substantive equality before the law means that people with limited resources or power or who experience disadvantage have an equal capacity and capability to avail themselves of the rule of law. The objectives around protecting and promoting the interests of consumers cannot occur if consumers are unaware of their legal rights and duties. Also, if there is little oversight, transparency, and accountability in consumer mechanisms, then it makes it difficult to protect and promote these interests. Underpinning all this is the promotion and maintenance of the professional principles set out in LSA, s1(3). These professional principles are critical to ensuring trust in the integrity of those who are regulated. As the statutory oversight regulator, the LSB has a clear leadership role in explicitly framing its expectations of the professions.

1.24 This report highlights the role of all the statutory objectives in improving and forging a 'professional identity' that puts at the centre the rule of law, equality before the law, consumers and improving access to justice. Forming a 'professional identity', focussing on

fundamentals for the integrity of the legal system can also drive good ethical practice.[70] This is through a greater mindfulness of the broader consequential effects for the administration of justice of thinking about short term imperatives without also thinking about their wider implications for the rule of law and justice. An example is where commercial and client demands may not align, or might even compromise, broader considerations such as the integrity of the administration of, and confidence in, the justice system. A recent instance is the alleged behaviour of some of the lawyers involved in the Post Office scandal.[71]

1.25 This suggests a need for the front-line regulators to encourage their regulated communities to consider a greater focus on professional standards (including codes of conduct) and on adherence to all – and not just a selective consideration of – obligations and duties. This might be achieved through more explicit references in regulatory documents to access to justice, and responsibilities to the rule of law and equality before the law. An ethical professional identity that is clearly understood and acted on can foster the combination of trustworthiness, a good standard of service and transparency. These values can in themselves provide a competitive advantage, especially when contrasted with unregulated providers. More and more consumers are looking to make choices based on good corporate governance and ethical conduct.[72]

1.26 The statutory objectives in LSA, s1 currently have no order of priority, and can, potentially conflict as well as overlap and reinforce. Most regulated lawyers are in private practice, running a commercial business. Access to justice work is often not lucrative for law firms and, if they find it uncommercial, they retreat from it.[73] In competition, the public interest is not always the winner and equality before the law can be a casualty. As one participant said: “[t]his further compounds the asymmetry of the service landscape”.

1.27 This refocussing on what these objectives mean for the community and the role of the regulated legal professions is critical if public trust is to be sustained. This could position all the professions to meet the challenges the 21st century presents. This includes the opportunity posed by technology. Each of the objectives serves a purpose in meeting these challenges. Unless the professions work together, are more transparent, and explicitly demonstrate their value to their clients and the broader community then they will fast lose relevance.

1.28 This report also explains how the focus of the objectives on the role of the professions to the broader public benefit is often lost in translation. Each of the eight front-line regulators complies with LSA, s1(3) by setting its own competences, standards, and codes of conduct, subject to the approval of the LSB. As shown in section 4, these can sometimes be interpreted as focussing solely on duties to the immediate client without clearly emphasising ways in which professional principles can be understood and operationalised to the public good.

1.29 This report, *Regulatory Leadership on Access to Justice*, identifies ways to address these key challenges by centring equality before the law and the improvement of access to justice to this end. It urges a need to be brave by all the regulators and the possibilities for them to try new, creative, systemic, innovative ways of improving access to justice (section 5). In this, importantly, the regulators can learn from other jurisdictions and sectors such as financial services (section 9) which have demonstrated what can make a difference. Changes in culture and behaviours and a growth mindset are all important. These must be backed up by professional development (section 8) and good practice being shared and evaluated for impact (section 5). This will be facilitated by improved collaboration (section 9) focussing on the common purpose defined by the statutory objectives.

1.30 All the overseas participants, as well as those from domestic front-line service agencies. endorsed a view that focusing on access to justice, the rule of law and equality before the law, understanding the law, rights, and duties, promotion, and maintenance of the professional principles for clients/consumers provides a framework for a common purpose amongst all of the regulators and other stakeholders involved in the legal system. They

agreed that such a common purpose is critical if progress, ownership, collaboration and buy-in are to occur to enable access to justice and to reduce unmet legal need. Indeed, one participant said:

> Government drives the market whether it's the commercial or the individual. The reality it's government who's creating the need. They passed the laws and the policies. This means that people need the law. The law firms are making lots of money. But the regulator sits on the bridge or the fence or the bench. The regulator needs to combine stick and carrot approach. The regulator can do better. An example of this is that during covid a market report has found that the industry that made a killing was the legal profession industry. It's not all about the market. What about market failure? The whole legal aid issue and access to justice is not about law firms making more money out of it. It is about the public interest. It is about equality before the law.

1.31 It is clear from the review of the literature in Part II that all the levers, innovations and opportunities will require a concerted effort. It is no longer enough, given the harm being caused, to say:

> I have heard it said, "it's everyone's responsibility"' which means no one takes responsibility … It is time for … [each of the] the various component parts to recognise the role that they must play. They need to support, not hinder, developing strategies to support the super regulator in its very important statutory objectives. It's time to go beyond talking about the problem. There is enough research and experience out there for us to know what the problem is and how to solve it … It's time to get beyond why everything's not possible to look at examples in other jurisdictions that have been tested and are working. The LSB ought to have a key role in bringing these to light, bringing the architects of such initiatives together with us by convening sessions on best practice with key players who are committed and leaders. The conversation must move beyond talking about the problem over and over again and saying what's not possible and looking to solutions.

1.32 The requirement to promote the objectives is to minimise risk of harm to the community and drive ethical conduct and competence for the public benefit. This is important in ensuring trust in each profession, both by their clients and by the community at large.

The task of the regulators

1.33 The task of the regulators, however, is not easy. As Black notes,

> Regulators thus have accountability relationships with a number of different bodies or 'accountors' (those to whom they must call to account), in the sense that they are asked, and often agree, to give an account of their operations and performance against a range of criteria … it is often because the tension between independence, political control and political accountability creates an ambiguity in the responsibilities of the core executive and regulatory agencies which both, but particularly the executive, can seek to exploit.[74]

Black also observes "[r]egulation is a continuous process of negotiation, compromise, and challenge – on both sides of the 'regulator-regulatee' relationship. It is very hard for outsiders to penetrate or have visibility of that process".[75] Nevertheless, the front-line regulators and other organisations who participated in the project by interview or written response, were frequently very forthcoming about their strategies, initiatives, and projects. They also expressed a desire for the LSB to take a leadership role in promoting change (section 6) and an interest in collaboration (section 9).

1.34 The CMA report on the legal services market in 2020 noted that driving quality in service provision is integrally connected to compliance with regulatory standards. The importance of consumer feedback as a mechanism for ensuring trust was signalled for all

regulators.[76] The number of front-line regulators under the LSA, however, each acting independently,[77] de-incentivises innovation across the sector.[78] It makes it difficult for the LSB to bring about coordination; leads to lengthy efforts to convince; difficulties with consistency; fragmented decision making, inefficiency and duplication. These ultimately do not assist the consumer and lead to a 'status quo bias'.[79] The professions have acted on transparency, both before[80] and after this report, albeit independently. Front-line regulators who participated in this report were open about their initiatives in this respect. This is encouraging.

1.35 The data collected for this report, demonstrating an interest of the front-line regulators in collaboration under the leadership of the LSB, also gives rise to hope. Action, however, must be informed and based on evidence-based studies. The LSB, LSCP and front-line regulators can use levers they have, and creative innovations, to make a difference to the lives of so many people. Specifically, to the most vulnerable in society, who are currently missing out as they cannot get the legal help they need and are harmed as a result (see section 3). The regulators will also need to secure compliance by their regulated communities, which is a further issue.[81] Throughout this report suggestions are made for reinforcement through professional development and driving cultural change (sections 4 and 8 in particular).

1.36 Action by the LSB and the front-line regulators alone will not solve unmet legal need in England and Wales. The initiatives, evidence and ideas in this report are presented, however, as means to further the statutory objective on access to justice and the principles of the rule of law: namely equality before the law. Section 1.12 above highlights a number of powers and duties under the LSA that can facilitate this.

2. INVESTIGATIVE APPROACH

2.1 The research concentrated on evidence-based solutions in response to research questions determined by the LSCP (see section 12). These questions are nested below the overarching research question and introduce interconnected themes (see section 1). Often the motivations that shape strategic directions, nuances, work-arounds, difficulties and cultural aspects are not contained in documents published by regulators and other bodies. For this reason, alongside the literature review and analysis, an empirical element was undertaken. Ethics approval for this was given on 12 January 2024 by the Business, Law, and Social Sciences Research Ethics Committee of Nottingham Trent University.

2.2 Interviews were conducted, and written responses obtained, between 14 January and 16 February 2024. The interview research was conducted in parallel to the literature review as matters emerged from interviews that were then followed up in the literature.

2.3 All eight front-line regulators working under the LSB, together with the professional bodies for the three largest professions, were asked to nominate a senior person for interview (smaller regulators were offered the opportunity to make a written response instead). Interviews also took place with senior personnel of organisations in Australia and Canada selected because of the 'rapid' literature review reported in Part II. Additional interviews took place with key front-line service agencies and funders in the UK (identified in consultation with the LSCP).

2.4 Organisations in the financial and insurance sector were approached, as were legal services organisations in Scotland, but none participated. Extra approaches were made by the research team to the Legal Aid Agency (LAA) for its participation in this study given its critical role in legal aid service delivery. The role of the LAA could not be ignored in this study if it is to examine unmet legal need and improving access to justice. They did not respond to these approaches.

	Number of interviews	Number of interviewees	Number of written responses
Non-UK regulators and professional bodies	4	6	
UK front-line service agencies	3	4	
Front-line regulators and professional bodies in England and Wales	6	6	2
	13	16	2

Table 1 Participants in the first empirical stage

2.5 The last empirical phase was the reflective practice conversation on 11 March 2024. At this meeting, a data report was presented, its implications discussed and further ideas for future priority and action were identified. At this reflective practice conversation – with members of the LSB, LSCP and an SRA representative – decisions were made about the focus of this shorter final report. An interim report was provided on 19 March and subsequently revised after feedback from the LSCP on 30 April 2024. The key thematic headings used in Part III were identified in the reflective practice conversation and refined by the LSCP feedback. Material from the longer data report (not referred to in this report) does, however, inform the answers to the research questions and the recommendations.

2.6 The core period of research activity (12 January 2024 – 31 March 2024) and the data analysis occurred in that phase. The reflective practice conversation on 11 March 2024 considered the data report and provided feedback on identified themes during the conversation based on the data analysis. This also has informed the shape of this report. Additional and more recent material after April 2024 has been included but only if it was considered pertinent and provided further evidence supporting the initial data and conclusions that were analysed in the period to the end of March 2024.

PART II

3. SETTING THE SCENE

3.1 This literature review includes ‘grey’ literature such as reports, websites, blogposts and operational and strategic documents of organisations, especially regulators. These provide material that is often not captured in traditional academic literature, but which can inform and shape the strategic directions of the LSB and front-line regulators and the operationalisation of actions.

The issues

3.2 The problem relating to access to justice has been discussed in an extensive body of research over the past three decades.[82] The nature of the problem is known, as are the complexities that sit behind advice-seeking behaviour, including lack of trust in lawyers and the legal system (often overlooked in initiatives) and the unnavigability of the current legal aid landscape referenced throughout this report. A number of these issues link directly to the themes in Part III of this report.

3.3 However, to provide a context for readers of this report new to this field, that existing research is now briefly summarised. The research shows that legal issues that go unresolved can have a significant impact on people's lives. This includes harmful impacts on health,[83] employment, housing, morbidity, confidence,[84] social exclusion, discrimination. These lead to disempowerment and increased inequality. People experiencing disadvantage, poverty or vulnerability are associated in the literature with having low levels of legal literacy and legal capability (see definitions section).[85] Accordingly, they may not be in a position to identify that their problem has a legal dimension in the first place, and so are

unaware it may be capable of a legal solution (i.e., 'justiciable': see definitions section).[86] Even if they can identify they have a legal issue, they may not have the wherewithal to take the necessary steps (for example due to poor health, competing priorities or limited resources and capacity that prevent them from prioritizing or being able to respond so they can utilise legal options).[87] Specific groups with low access to justice include lone parents,[88] people with disabilities,[89] people with mental illness,[90] young people,[91] older people,[92] and people from minoritised ethnic and cultural backgrounds.[93] There is a shortage of translators, an important feature of helping individuals to understand their legal position and their options.[94] It has been observed,

> [r]egulators can reflect on capability in defining who can provide different types or levels of support, what standards are set, and what practice might be encouraged standards, encourages better practice.[95]

3.4 The typical legal service delivery models in the UK, requiring a client to make an appointment with a specialist legal advisor presumes, however, that this client can identify an issue as being legal in nature. The literature suggests otherwise, namely that many areas where law provides an option are not understood, as – as discussed above – many people are unaware their problem may have a legal dimension.[96] Consequently, responses by professionals, regulators and policymakers and what is measured examine 'expressed legal need'.[97] A recent empirical study from an international team of researchers (Balmer (UK and Australia); McDonald (Australia); Pleasence (UK) and Sandefur (USA)) is deepening the understanding of legal literacy, confidence, trust, experiences of justice and legal capability.[98] These are all-important to inform development of service responses.[99] This study builds on another published earlier in 2024 examining the relationships between legal capability, demographics and

- justiciable problem-solving behaviour;
- whether people obtain the legal assistance they need;
- legal need and unmet legal need; and
- satisfaction with the progress/outcome of efforts to resolve justiciable problems.[100]

3.5 This work explores data at a deeper level than has been suggested in previous international studies. It shows that people's skills in managing a legal problem, experiences of the system, and their attitudes about the law can affect behaviour and outcomes. This includes demonstrating that the level of satisfaction people have with the progress and resolution of the legal matters they face has a bearing on their ability to seek help, act on legal information or resolve issues. In light of findings in this recent study, it is critical that services are informed by the evidence about the complex interplays including legal capability asymmetries that lie behind, reinforce, and operate alongside demographic differences. It has been noted in Australia that "asymmetrical skills lead people down different paths to justice, present different obstacles, impact the value of services and process and feed through to outcomes".[101]

3.6 It is important that regulators respond to this new research. Some of it challenges the ways services are delivered and might require significant adjustments to their design, the way law is practised and development of more tailored and people-centred approaches. Some of the possibilities are discussed throughout the report and in its recommendations.

What works?

3.7 In pursuit of effective solutions, however, the research indicates that the responsiveness expanded on in section 5 needs to be tailored to different communities. It comes in many forms including holistic, integrated services. These are often referred to as 'one stop shops' where a range of legal problems are all resolved in one place or with close connections and solidly resourced partnerships. Such holistic service responses can provide legal information, advice, representation, advocacy, negotiation, and other problem-solving options in a joined-up way. This is particularly important as we know that problems do not occur in isolation.[102] Additional options may include community development, advocacy

training for ‘trusted intermediaries’, policy and law reform, strategic action on repealing or improving poor laws or administration, and restorative practice (see definitions section).[103] This range of activity ought to be intrinsic to the core funding of such services in order to be effective.[104] The integration of such options acknowledges the context of other pressing social, economic, health and cultural contexts. It moves away from the siloed view of ‘areas of law’, acknowledging that people do not want to be referred to multiple legal providers for their family, debt, housing, consumer, criminal, safety, discrimination, and welfare matters. The focus is on the needs of the people rather than the services, in the sense that is expanded on in sections 5 and 7.

3.8 Service models should be evaluated to establish whether they are responsive, effective and efficient. Such evidence should drive service delivery to ensure it is relevant and addressing the barriers referred to earlier. Some are discussed in sections 4 and 5. There may be ways in which the regulators can facilitate these, as is illustrated by discussion in this report of what is possible in comparisons with similar jurisdictions. Many of these service models recognise the problem of multiple referrals and impacts of siloed approaches on people with vulnerabilities.

3.9 Increasingly, such services are often delivered in places trusted by communities where the professionals work in an interdisciplinary way so that trust and safety are a focus. This facilitates disclosure and minimises the trauma that occurs by relaying the same information to different services. These legal offerings are now being offered in local community organisations with strong access to specialist legal (public interest and pro bono) collaborations and other services. Other examples are where lawyers leave their offices and directly reach into communities. For example, in Canada, the Legal Clinic of Guelph and Wellington County (the Guelph clinic) enhanced its legal services in rural Wellington County using a mobile service called the WellCoM’s van. This targeted people unlikely to find their way to legal support or who were unable to do so due to distance or poor understandings that their problems might be justiciable[105] (see definitions section).

3.10 Such initiatives are funded under long term partnership agreements with government and the legal assistance sector.[106] This ensures consistency and certainty in the service landscape.[107] As one participant said:

> It's all about presence and relationships and you're not going to build trust and get people access to justice without these things. We need lawyers to go to the places where people are likely to turn to for help. These are often known places and then those people such as the trusted intermediaries facilitate the contact with the lawyer.

Problems

3.11 A key point that is explored further in section 4, is that many people experiencing inequality have low levels of trust in lawyers and the legal system, which affects their engagement with the regulated sector.[108] This is also affected by what is described in the literature as “low self-efficacy” given characteristics that may be associated with people living in poverty, experiencing vulnerability, etc., because of commonalities across their circumstances. We note these characteristics are not intrinsic to this population, nor is it a causal relationship but rather often stems from poor experiences of the legal system or how it responds to these groups of people.[109]

3.12 In some surveys, however, when people are asked about their direct experience of their lawyer, the results are more favourable.[110] This is the case especially, for example, among older people but less in younger people, those with disabilities and single parents.[111] There are also differences according to the area of law involved, especially those which are more transactional, non-contentious areas (e.g., contracts, conveyancing, leases, wills), by contrast with family and criminal law where the contentious, emotional and adversarial settings can be more challenging.[112] A lack of legal capability amongst certain groups (often created by systemic conditions or ill health and a lack of resources) leads to a susceptibility

to inaction. A real concern, evident in some UK studies, is that a lower quality of legal service is often seen in areas of law that particularly affect certain community members who also experience inequality. For example, they may experience racial discrimination or be single parent families in poverty. Some improvements in the quality of advice in housing and family law have, however been noted.[113] A recent report highlights, however, that these areas are experiencing a retreat from service delivery.[114]

3.13 For people experiencing disadvantage, legal problems usually sit within the context of other problems including health, social, economic, and cultural issues. They are often systemic in nature rather than due to action by an individual potential defendant. System-wide responses to the provision of legal services continue to individualise legal problems, overlooking the systemic causes of individuals' legal problems. An example is where despite having a valid claim, poor decision-making by an authority leads to unfair outcomes. For example, error-prone administrative decision-making on individual claims in the first instance results in the need for individuals to appeal these claims when, if the underlying systemic problems with decision-making were resolved in the first place, fewer individuals would have to do so.[115]

3.14 Thomas argues that systemic failures occur and the explanatory factors behind these are ignored[116] (see section 7). This has significant impacts in terms of entrenching inequality. Problems for those in this group are often multiple, cascading and layered.[117] Even if they can characterise their problem as justiciable, individuals often do not have the capability or confidence[118] to take the next steps; cannot afford them or are unaware of what help is available. As noted, there is a strong link between poor legal capability, low levels of trust in the legal system, and unmet legal need that is particularly high in minoritised communities.[119] Many rely on their friends or family for information, which can be incorrect or misinformed, leading to problem escalation or lack of awareness of options, so limiting choices.

3.15 Nevertheless, people also often make disclosure about legal problems (not knowing they are justiciable) to 'trusted intermediaries' i.e., people who they trust for support for their other issues (e.g., social workers, counsellors, refuge workers or health professionals)[120] Unless trained and supported, these trusted intermediaries are also unlikely to be able to identify a problem as legal.[121] As one participant said, access to trusted resources, especially for the digitally excluded, is reducing:

> Wales has next to no coverage although it has a new law centre in the north. Technology is only part of the solution, but this should also mean that it's about a phone call because many clients need to see the person on the other end. This goes back to trust. The biggest geographical problem is the closure of the local courts. This is often where people would be picked up if they had a problem or looked bewildered etc now they're excluded. This was where the duty lawyers were.

3.16 The existing advice model relies on referral from front-line agencies and trusted intermediaries. There is, first, a discernible reticence to refer clients because of poor perceptions of the way in which the legal system operates and for fear clients will be harmed by the system, or spiral (or relapse) into poor mental health,[122] and where people experience trauma.[123] Many charities who act as 'trusted intermediaries' have closed, or increased their gatekeeping, which reduces their offering. They have significant waiting lists or no capacity, are overstretched and exhausted.[124] Recruitment and retention of staff is at a low ebb (see section 8).

3.17 Further, specialisation in areas that support disadvantaged, vulnerable, and poor people – such as trauma informed practice – is being lost or is already lacking. A trauma-informed practice sees the practitioner or service adjust their practice approach to be responsive to a client's traumatic experiences. This includes aspects such as understanding trauma and its impact on individuals (such as children), families and communal groups, employing culturally competent staff. It involves adopting practices that acknowledge and demonstrate respect for specific cultural backgrounds and support victims and survivors of

trauma to regain a sense of control over their daily lives and actively involve them in the healing journey.[125] The literature is clear that referral roundabouts cause disengagement.[126]

3.18 Secondly, the public funding known in England and Wales as 'legal aid', is provided under the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO), administered by the LAA (outside the remit of the LSB). The significance of this to the context of this report is developed later in this section.

3.19 Efforts to digitise justice as the primary response can suit certain groups and certain demographics. For some, however, digitised justice can be problematic due to the advice-seeking barriers discussed above and so are limited solutions.[127] Increasingly, government departments such as the Department for Work and Pensions (DWP)[128] are requiring people to use online systems to access their legal rights. There have been efforts to provide direct support and legal advice to the public online, some of which are referred to in section 5. However, people who are digitally excluded can find such systems hard to navigate. Even if they have access to the necessary computer hardware and internet capacity, they lack the support they need to navigate and understand the information at the point of need.[129]

3.20 In other words, all the evidence indicates that the system for those who have dire need for legal advice and support and expertise is broken. This is the springboard for this report.

What has worked in other jurisdictions?

3.21 A second aspect of the literature review in this project was a 'rapid' review of the activities of regulators in jurisdictions outside England and Wales. A filter was then applied assessing where active steps had been taken to improve access to justice. Only those jurisdictions which had gone beyond mere statements of principle or intent, and had taken significant steps, were followed up for interviews.

3.22 Nevertheless, some information from jurisdictions that were not pursued, or where it was not possible to secure interviews, merits reporting. These examples may provide points of reference, or ideas, for the LSB and domestic front-line regulators. We begin with those examples.

Germany

3.23 As in England and Wales, there is a movement to promote many disputes into alternative dispute resolution. There was little in the literature[130] that revealed the regulator was taking a key role in addressing or using levers or innovative approaches to access to justice. There is, however, a statutory body, Pro Bono Deutschland, with its own dedicated portal that may be of interest to domestic regulators.[131]

The Netherlands

3.24 The Dutch Bar Association[132] is both a representative and regulatory body. Under art 28 of the Lawyers Act (Advocatenwet) it is empowered to issue regulations on "the requirements to promote the professional competence of lawyers and the quality of professional practice".[133] The most notable initiative in the Netherlands is its approach to regulating professionals – which, like that undertaken in Australia – is a 'trust-based' approach to monitoring. This works on the basis that legal professionals will do the right thing, rather than assuming fraudulence or high risk in monitoring. This approach informs our discussion in section 4. The Dutch online portal[134] is also referenced in section 5. A word of caution, however, is that in considering initiatives in different jurisdictions an evaluation of their effectiveness in rollout is needed. At the recent International Legal Ethics Conference and the European Clinical Legal Education Conference in July 2024, (hosted by Amsterdam Law School) significant problems with the online portal were identified by Dutch experts. Although initially intended to be more interactive[135] than its domestic equivalent, *Legal Choices*, it has not been able to achieve its initial aims. In particular, it has abandoned its online dispute resolution function.[136]

New Zealand

3.25 In 2022 the New Zealand Ministry of Justice issued a Regulatory Impact Statement on access to justice[137] in the context of funding "to implement changes to key legal aid policy settings". This notes, with supporting evidence, that "access to justice is worsening in New Zealand for people on low incomes who cannot afford legal assistance". Several options to achieve these changes are evaluated, of which the preferred option would require legislative amendments to change eligibility thresholds. It was anticipated that those would come into effect in January 2023. However, no further update has been provided online in 2024. Drawing on the Australian Pro Bono Centre and UK Collaborative Plan models, however, a nationwide pro bono framework has recently been established.[138]

3.26 In 2023, the Ministry also published *Wayfinding for Civil Justice*: a national strategy for access to civil justice.[139] This is designed to provide a framework to encourage a "unified and coordinated approach" of efforts by government and non-government entities. Civil justice stakeholders led its development, and it is not formally a strategy of government or of regulators. It sets out principles and an overarching vision, so that "[t]hose working in the civil justice sector can use [it] to inform how they select, coordinate, and plan their civil justice initiatives." Some of these align with the themes in this report and its development might inform future action by regulators in England and Wales.

3.27 One aspect that may be of interest, however, is its call for the establishment of a National Civil Justice Observatory to be hosted by a university. This would document all strategies and initiatives in relation to civil legal aid justice; bring a range of stakeholders together; provide feedback to relevant bodies and facilitate stakeholder engagement.[140]

Nordic countries

3.28 Kristiansen reports that:

> Public administration in the Nordic states is highly digitalised … In Denmark and Norway, access to administrative recourse displaces to some degree the role of the court in securing access to justice. This means that citizens can appeal an administrative decision to another administrative body.[141]

3.29 As noted in section 1 above, and further discussed in section 5, digitalisation can constitute a barrier, with a "real risk that social inequality is reinforced through digital inequality".[142] The literature examined tended to focus on the role of government and ministerial departmental funding, rather than that of regulators. For example:

> Non-LAA schemes provide a major share of the total supply of non-commercial legal services in both Finland and Norway. They cover a far larger volume of service needs than the general legal aid schemes and both countries allocate significant public funds to them … The existence of a large third sector in both countries is also an important indicator that governmental non-court advice schemes are seriously inadequate, although there is no reliable mapping. Finland is aware of the challenge and has developed a countrywide telephone service from the public law offices.[143]

Scotland

3.30 Scotland provides a useful comparator for work in England and Wales because many of the issues are common to both jurisdictions, not least the identification of unmet legal need in the context of a similar crisis in legal aid provision. In a report in October 2023,[144] however, the Scottish Legal Aid Board (SLAB) recognised the need for legislative reform. It has also introduced elements of a 'mixed model' of legal aid (see definitions section) following recommendations made in 2018.[145] The reform of legal services in Scotland is under review at present, with access to justice being a key factor.[146]

3.31 In addition, a recent collaboration between the Faculty of Advocates, the Law Society of Scotland, and the charity JustRight Scotland led to the introduction of an online guide to pro bono resources and a pooling of limited resources leading to greater collaboration.[147]

3.32 This report returns to the question of collaboration in section 9. Although it was not possible to secure interviews in Scotland, there is scope for the LSB and front-line regulators in sharing of information about these and other developments.

Uganda

3.33 It was suggested that the researchers investigate Uganda. In Uganda there have only recently been moves to have a legal aid bill. The National Legal Aid Bill 2022 was read for the first time on 28th September 2022. This has now been returned to Parliament, having been passed after its second reading. The object of the bill is to regulate the provision of legal aid services by legal aid service providers in Uganda. In particular, it will make provision for the grant of legal aid services to indigent, marginalised and vulnerable persons, for eligibility for the grant of legal aid for the termination of legal aid and for the payment of court fees, costs and damages by an aided person. It will create a Legal Aid Funding Account; recognise legal aid service schemes existing in Uganda; Justice Centres and amend the Poor Person's Defence Act.

3.34 The Uganda Law Society has a mandate to enhance access to justice. To this end, PULIDAWO, a mobile-based application, connects lawyers to vulnerable people in real-time for free advice. The available literature revealed little that regulators had done (that had not been done elsewhere). No evaluations or specific regulatory actions were located, so the effectiveness of this (non-regulatory) approach was unclear.[148] Uganda is, however, one of the few countries that requires mandatory pro bono work and there are active autonomous paralegals in the access to justice sector (see section 4).[149]

3.35 Two jurisdictions were identified as of interest for further investigation.

Australia

3.36 In all the jurisdictions examined, Australia had undertaken the most action in relation to access to justice. For this reason, relevant entities in Australia identified in the literature review were selected to approach for interview (including from other sectors such as financial and medical regulation). It was the State of Victoria that stood out as having the most regulatory initiatives on access to justice. In addition, there were some Australia-wide initiatives by other regulators who are using their levers to improve access to justice. The initiatives from Australia, specifically by the Victorian regulator, the Legal Services Board and Commissioner Victoria (LSB & CV) are detailed in discussions throughout this report.

3.37 The August 2024 study in Australia referred to at 3.4 above is highly pertinent to the regulatory context of this study. It concluded:

> Taken together the findings and ideas set out above, and further elaborated across the three volumes of the PULS report, suggest the need for a step change in thinking and significant reform. Regulators, policymakers and practitioners all have critical roles to play. Regulators set the stage in terms of who can provide different types and levels of support in relation to matters of law, as well as in setting standards and encouraging better practice.[150]

Canada

3.38 In Canada, the Legal Aid Program provides contribution funding to the provinces and territories for the delivery of legal aid services for people in poverty and/or experiencing disadvantage. This federal-provincial/territorial collaboration on criminal legal aid is based on shared responsibility for criminal justice by the federal government, including legal aid. Legal aid funding to the provinces and territories is provided through consolidated access to justice services agreements. As in Australia, provinces and territories each independently determine civil legal aid spending, not the Department of Finance. Transfer of money that the federal government provides to provinces and territories is to support comparable service quality across the provinces and the federal government has little power over the expenditure.[151] The experience of three provinces in particular merits further consideration.

British Columbia

3.39 The Law Society regulates lawyers practising law in British Columbia and can encourage and require improvements to their involvement in delivering legal services through legal aid plans. In 2017 it set up a Task Force to consider how improvements in access to justice and legal services could be achieved. This made recommendations to be considered by the Benchers. In its report the Law Society recommended:

> The Law Society was instrumental in the creation of legal aid but has largely been silent on key matters for almost 15 years. The public interest mandate set out in s3 of the Legal Profession Act requires that the Society take a leadership role once again. In order to do so in a principled manner, it is essential that the Law Society adopt a vision for legal aid. That is only the first step, however. The Law Society must also establish internal systems to ensure its commitment to legal aid does not waver, and that it can be an effective advocate for legal aid in the future.[152]

3.40 In December 2020, the Benchers adopted an *Access to Justice Vision for the Law Society of British Columbia*.[153] It set out principles on access to justice for the public and how the Law Society will enhance and reduce barriers to access to justice. Since its announcement in 2020, however, there has been little publicly available information on its progress.[154] It did suggest setting up a regulatory sandbox that would permit alternative legal service providers to apply to the Law Society (see section 4). Other than this announcement and mention of the *Access to Justice Vision*, there is very little literature that could be found up until 20 April 2024 in relation to progress in this regard. The Law Society was approached for an interview but did not respond.

Ontario

3.41 Initially discussions with some members of the legal profession indicated that this province might be worth examining. On further examination of the literature there had been some work, but it was splintered and not through the regulator. However, section 4 considers the increasing use of paralegals in Ontario to address unmet legal need.

Saskatchewan

3.42 The Law Society of Saskatchewan regulates the legal profession in the province but is also the membership organisation. Its core mandate is to protect the public interest. It is involved in a legal needs study whose most recent report was released in 2023.[155] This project is designed to uncover some of the specific barriers to access to justice for residents within its province. Its rules were amended to include an expanded list of exemptions to authorised practice on 1 January 2020. In addition, the Law Society of Saskatchewan is identifying groups and individuals providing limited legal services, who are not lawyers, and did not fit into a list of exemptions: this is discussed in section 4. It has a task team which has been exploring the provision of legal service in the province and legal service needs. Its Senior Policy Counsel is examining the rollout. The initiatives that have been drawn from Saskatchewan are detailed throughout this report.

Conclusion

3.43 Having conducted this rapid review, the jurisdictions where regulators appeared to have undertaken some steps beyond vision statements were in Canada (specifically Saskatchewan), Scotland and in Australia. These became the focus of the rest of the literature review. Further literature was investigated in parallel with the interviews, particularly with the front-line service agencies and with the overseas regulators who identified resources that could aid the LSB in meeting its statutory objectives on access to justice, public understanding, protecting the consumer and the rule of law.

The Legal Aid Agency as de facto regulator

3.44 As noted earlier in this report, consideration of the provision of legal aid by the LAA in England and Wales is required as the remit of this study is access to justice. Not to include it in the discussion or to convey the data from participants in this study on its role in improving access to justice would create an incomplete picture and not provide a reflection of the participants' views on its key role (see section 10).

3.45 Legal aid did not, in fact, have its point of origin as a pillar of the welfare state in 1945.[156] It has a much more chequered history of piecemeal development since the 19th century based on an amalgam of the Poor Man's Lawyers movement and individual pro bono activity. The Legal Aid and Advice Act 1949 allowed for representation in all courts and tribunals to those of small or moderate means, with a free limit and a sliding scale of contributions. Legal aid was state funded but administered by the Law Society. Since its foundation in 1949, legal aid expanded in both cost and remit until the late 1990s, which saw the Access to Justice Act 1999 and a series of policies, such as those establishing Community Legal Service Partnerships, with varying degrees of success, as well as a new method of administering both civil and criminal legal aid, revised tests for eligibility and reductions in scope.[157]

3.46 The current position is that the LAA is an agency of the MOJ. For clarity, it does not fall under the oversight of the LSB. Powers to make decisions about legal aid work are delegated by the Lord Chancellor to the Director of Legal Aid Casework, who is also the CEO of the LAA. The LAA provides legal aid for issues that fall with the scope of LASPO in criminal and civil (including family law) and where applicants satisfy means (eligibility thresholds) and merits tests. It provides public funding for civil and criminal access to justice work in England and Wales under LASPO. It contracts with providers who may be law firms or other providers (a 'judicare' model).

3.47 However, some areas of law may not be commercially viable under the current funding model, or outside the scope of LASPO in any event. Geography and personal finance may cause problems in accessing a contract held some distance away. The impacts of this produce siloed, fragmented coverage according to the literature cited in this report (see section 3.2). Firms are withdrawing from legal aid work, or routinely say they have reached capacity, producing advice deserts in numerous areas of the country. They also report that they can no longer sustain the level of paperwork for the remuneration offered or afford the reduced rates and compliance expectations of the LAA's contracting arrangements.[158]

3.48 The "exceptional cases funding" introduced by s10 of LASPO to fill some gaps is said in several reports to be too unwieldy to make it cost effective[159] for lawyers to do this work.[160] The lengthy references in endnote 82, in addition, highlight that interactions with the LAA and regulation in general were a key factor in exhaustion levels and withdrawal from this work (see also the question of retention in section 8). The LAA's infrastructure has also been reported to be inefficient:

> There is excessive bureaucracy in the Legal Aid Agency adversely affecting the efficiency of the legal aid system generally. While the overall budget of the Legal Aid Agency was cut by 25 per cent, the administration budget has stayed relatively steady. The complexity of the legal aid scheme needs to be addressed urgently and any unnecessary bureaucracy removed.[161]

3.49 Consistent with this, all the front-line service agency participants interviewed for this report reported on its micromanagement and investment in significant staffing and manpower. These participants indicated energy would be better spent on direct service delivery to those in need or 'real law'.[162] This was a point also stressed by the front-line service agencies interviewed for this report. For example:

> LAA [has] the role effectively as a regulator as it manages legal aid contracts and sets the tone of the contract in great detail. We are consulted but the

> detail of these contracts is not negotiated. The lawyers have no veto over any of the contract conditions. The Legal Aid Agency then pushes back on time spent on tasks with complexity. Even when the caseworker working with client explains the needs of the client and why they are doing the case in the way that they are they get penalised for requiring the additional time. It is bureaucratic, it is complex, and it is not independent. It has no remit to improve access to justice, merely to micromanage those people who understand the client and who do the case work. It is a point of great criticism and stress for the profession. It also is another reason people are leaving and not doing legal aid work.
>
> ***
>
> There are so many concerns about the Legal Aid Agency and the way it spends all its time questioning what is done instead of maximising legal aid stretching the funding to allow the caseworkers to just get on with what they need to do for their case. These things are not controversial. This study needs to look at the Legal Aid Agency and how they operate.

In England and Wales, some gaps in LAA funding are supplemented by other sources such as philanthropy or local council funding (currently in short supply).

3.50 All interviewees from the three domestic front-line service agencies, and the interviewee from one domestic professional body, described the LAA as, in effect, playing the role of a regulator as described in the previous paragraph. This is because of its management, monitoring and oversight over legal aid contracts and the way in which it supervises and monitors compliance. In addition, some of the overseas regulators (five participants from three regulatory or statutory bodies in Canada and Australia) reflected that legal aid agencies, whilst not specifically badged as 'regulators', did in effect perform a 'de facto' regulatory role. This flowed from their roles in monitoring and ensuring standards amongst legal professionals in the delivery of legal aid or legal assistance services.

3.51 These interviewees argued, therefore, that this de facto regulatory role could not be overlooked in the context of this research project. The separation between the LAA and the professional regulators may impede creativity and innovation. In Australia, collaboration between the legal professional regulator, the legal professions, government, funders, and the legal aid agencies has elicited some ideas which have significant potential to be explored in England and Wales.

3.52 However, the comparison is not direct. It is important to understand this when considering the Australian examples cited throughout this report. Australia has a 'mixed model' for the delivery of legal assistance services (see National Legal Assistance Partnership (NPA) discussed below). This contrasts with the judicare model used by the LAA[163] where the third-party funder enters an existing lawyer/client relationship. The third-party controls access to public funds via a range of eligibility tests, pre-approval requirements and tests usually through a contractual arrangement. It is designed to support the traditional private sector delivery model. Terminology also differs. In Australia, 'legal assistance services' have an explicit mandate under the NPA to "focus service delivery on people facing disadvantage". The judicare model only forms a small part of the legal landscape in the delivery of access to justice services in Australia. Scotland, as noted, is exploring a mixed model, suggesting there is no inherent impediment to its adoption in the UK.

3.53 The Australian mixed model is reflected in the National Legal Assistance Partnership 2020-25 (NLAP), currently in the process of renewal. This is a National Partnership Agreement between the Australian Government and all states and territories for Australian Government funded legal assistance services.[164] Mundy's recent review of the NLAP recommended long-term funding for service predictability and strategies to tackle issues of staff recruitment and retention especially in regional areas. It also discusses the value of integrated models in addressing legal need and how systemic reform can lead to problem-

solving earlier, and the value for funders of outcomes measurement.[165] The Australian model provides an example of what is possible if agencies collaborate. In addition, there is a focus on outcomes of legal service delivery for clients. For example, the Federation of Community Legal Centres works to an Outcomes Measurement Framework[166] as does the LSB &CV that are worthy of examination underpins some of the recommendations in this report. The National Strategic Framework is an example worth consideration with its "shared aspirational objective".[167]

3.54 This 'mixed model' of legal assistance has been seen as an exemplar for legal aid schemes internationally.[168] The key component is the variety of 'direct legal assistance service providers' catering to different communities and areas of law. These are provided by publicly salaried staff (as opposed to a charity sector or – in most cases – private sector law firms). These salaried staff deliver both general and specialist legal services in a variety of areas of law, including the linking of – and between – information, advice, early intervention, public legal education, case work, advocacy, and policy reform.

3.55 The idea is to ensure a 'one stop shop' (or with strong referrals for things outside in-house legal expertise or for related non-legal supports such as counselling which might be identified in the client interview). This minimises clients having to have their legal problems resolved in more than one location. Each has developed specific expertise and knowledge about the needs of their client communities. They then work alongside private lawyers in a judicare model in training and service improvement for these client groups. This overcomes some of the difficulties presented by the issue of LAA contracts on activities and in areas of law which inhibit holistic client, people-centred and responsive services. This is significant considering what is known about the intersecting nature of legal and other problems, their multiplicity, and barriers to accessing, trusting, and engaging[169] with legal service providers.

3.56 In Australia, the LACs are individually responsible for managing the grants of legal aid made in house, to some legal centres and to the private profession. They issue regular reports on performance to ensure the public understands their priorities, decisions, performance, and financial position. Possibilities for 'light touch' regulation emerge from documents that could provide insights for the LAA, especially considering participant feedback on the disincentive effects of micromanagement approaches viewed as flowing from the current LAA regulation.[170]

3.57 The LAA's Memorandum of Understanding with the MOJ, by contrast with the LAA Framework Document, does not refer to access to justice or unmet legal need. Section 4(4) of LASPO states the Secretary of State must not give a direction or guidance in relation to an individual legal aid application. However, some front-line service agency participants perceived that the relationship with the MOJ remains problematic. As Lord Bach noted, the LAA lacks statutory independence and an access to justice focus as its centrepiece. Such statutory priority exists in other legal aid bodies in Australia and Canada. In 2017 he concluded:

> [a]n independent body that operates the legal aid system at arm's length from government should replace the Legal Aid Agency…[171]

3.58 More recently, the National Audit Office has noted limitations in data and deficits that mean it cannot understand true levels of need and expressed concerns about the operations of the MOJ and the LAA.[172] It has also commented:

> While one of LAA's three strategic objectives is delivering access to justice, its performance indicators on access focus on its operational processes, such as time to process applications or answer customer calls. The NAO's guide to improving operational delivery in government recommends performance information should include a balance of quality, people, cost, and output measures.[173]

3.59 The LSB could play a role in encouraging government and the LAA to explore the different approaches to legal aid administration in other jurisdictions that might lead to the prioritisation of the access to justice. This might require some legislative change.

3.60 In Australia the regulatory framework for legal practitioners is the Legal Services Council and Commissioner for Uniform Legal Services Regulation. Together, they oversee the Legal Profession Uniform Law scheme. This applies to legal practitioners in New South Wales, Victoria and Western Australia. The Uniform Law harmonises regulation of the legal profession between the participating jurisdictions. It creates a single system to govern legal practice. The Legal Services Council makes the Uniform Rules and monitors implementation of the law to ensure consistency across participating States.[174] A key point of contrast between England and Wales and Australia is that the role of the oversight regulator (the LSB) extends to more service providers than in Australia.

3.61 The Commissioner for Uniform Legal Services Regulation is responsible for raising awareness of and promoting compliance with the Uniform Law. They do not have a direct role in the regulation of law practices and legal practitioners. Day to day regulation of the legal profession rests with the local regulatory authorities.[175] In Victoria this is the LSB & CV. In contrast to England and Wales with eight front-line regulators, the Australian framework is more streamlined. In Victoria salaried legal assistance sector lawyers are regulated by the LSB & CV. This includes the legal aid salaried solicitors and barristers (public defenders and inhouse lawyers). Both CLCAs and the Australian legal practitioners engaged in legal practice for, or on behalf of, a CLCA are bound by the Uniform Law and Uniform Rules 4, including the Uniform General Rules, Legal Practice Rules, Legal Profession Conduct Rules, and Continuing Professional Development Rules.

3.62 This report refers to innovations in a variety of jurisdictions, but principally that of Australia. It is important, therefore, in considering those examples, to understand the different regulatory and funding structure. Nevertheless, although it would involve wholesale legislative change, it offers an alternative for discussion by the LSB and its stakeholders as a model for the future. Even within the domestic regulatory and funding model, the Australian model provides examples of ways in which a regulator, working in collaboration, can successfully foster innovation and cultural change. There is some evidence that the LAA is on the agenda of the new government in the UK.[176]

PART III

The headings (in bold italic in this paragraph) used in Part III reflect the overarching themes that have consistently emerged from the data, including literature, interviews, and written responses. These themes were also refined and recalibrated during the reflective practice conversation and following feedback from the LSB and LSCP.

The headings recognise that within each there are significant complexities, methods, tools (for example technology and pro bono) and underpinnings. These elements are unpacked through subheadings which are also informed by the data, but which also overlap across these themes. The headings are listed in a logical sequence as follows:

- **engendering *trust and engagement***; so **crystallising *the obligation to serve the rule of law*** (including equality before the law and the other statutory objectives);
- **encouraging *responsive, holistic people-centred legal services*** and **boosting *creative thinking and innovation*** (what is possible informed by the experience of people, evidence and different jurisdictional progress) including the delivery of integrated legal service models with different disciplines evaluated as effective in addressing access to justice;
- **providing *leadership on access to justice;***

- **addressing *systemic causes of injustice***;
- **harnessing *public legal education*** and **promoting *ongoing professional development***;
- **encouraging *collaboration*** (drawing on the common professional identity of all stakeholders) including **promoting *greater cross-sectoral engagement*** (including with other industry regulators);
- **developing** and **increasing *funding options* to improve access to justice revenue over time;**
- **promoting *equality and resource justice***.

4. ENGENDERING TRUST AND ENGAGEMENT SO CRYSTALLISING THE OBLIGATION TO SERVE THE RULE OF LAW

4.1 The essential starting point is that access to justice for the most vulnerable requires trust in front-line service agencies, the legal professions, and the legal system.[177] People will not disclose or act if such trust is absent, according to the literature and empirical research presented in this report.[178] If there is no disclosure, then community members cannot understand how the law affects them or identify pathways to gain access to legal expertise. As one of the domestic professional body participants pointed out:

> One of the barriers we found from consumers is trust and confidence. If they feel like the legal profession is elite, out of touch, nothing like them, doesn't understand them, doesn't communicate with them in a way that they're comfortable with then they self-select out of the system. They're intimidated by the system. So that's one of the ways I think regulators have a really important role to play is to champion diversity and inclusion and to make sure that barriers are identified and being tackled. Our experience is that that's not the case universally across the sector at the moment. And it's actually more about culture than policy.

4.2 Similarly, regulated lawyers need to trust their regulators, and vice versa. This is important for developing a shared sense of purpose and to enhance a commitment to standards of conduct and the drive to ensure quality service provision. An observation made by one participant was that the LSB has a role in "driving change that secures public confidence in legal services."[179]

4.3 In addition, supporting the constitutional principle of the rule of law, as noted in section 1, is one of the statutory objectives of the LSB and front-line regulators. Two key aspects are related to how more conceptual obligations to, for example, the rule of law, are represented in the relevant codes of conduct. Moorhead, Vaughan and Tsuda point to different approaches amongst the professions:

> The Solicitors Regulation Authority, CILEx Regulation, the Intellectual Property Regulation Board, and the Master of the Faculties place express rule of law obligations (via professional principles, through Codes of Conduct etc) on the individual lawyers they regulate. Three other frontline legal services regulators – the Bar Standards Board, the Council of Licensed Conveyancers, and the Costs Lawyers Standards Board embed, we suggest, individual lawyers' duties to the rule of law in more particularised requirements.[180]

4.4 The SRA places this topic in its overarching Principles. These in fact give priority to matters such as the rule of law:

> Should the Principles come into conflict, those which safeguard the wider public interest (such as the rule of law, and public confidence in a trustworthy solicitors' profession and a safe and effective market for regulated legal

> services) take precedence over an individual client's interests. You should, where relevant, inform your client of the circumstances in which your duty to the Court and other professional obligations will outweigh your duty to them.[181]

4.5 The status of the duty is, therefore, clear to the front-line regulator. There is a risk, however, that professionals themselves give greater attention to the more instrumental parts of the code of conduct that are directly relevant to individual clients, and overlook these significant obligations, seeing them as a mere preamble to the text of the codes.

4.6 A further point is that the domestic codes underplay the importance of pro bono activity in, or supporting, the access to justice sector in honouring the constitutional principle of the rule of law. This is more explicit in the codes of conduct of other jurisdictions (see table 2).

4.7 Finally, although it is understood that the list in the LSA does not involve any hierarchy or priority amongst the statutory objectives, Mayson has argued that "the public interest should be the principal rationale for the regulation of legal services".[182] Legislative (and cultural) change in this direction might drive enhancement to ethical legal professional standards and deepen the understanding of the role of the regulated professions in the functioning of the legal system beyond their immediate client and reinforce the role they can play in improving overall justice outcomes.

Trust in and amongst legal professionals: 'Light touch' compliance management.

4.8 A key focus of the LSB's activity involves the enforcement processes of the front-line regulators, perceiving that an "impartial and rigorous disciplinary procedure is vital to sustaining public trust in the legal profession and the maintenance of professional standards".[183] Data collected for this report indicated that there is a balance to be struck, and that light touch compliance requirements can engender greater levels of trust.

> Alongside the formal regulator in Victoria, the LSB &CV plays a role in ensuring standards and conduct amongst those that receive its grants [and] any organisations for which they have accountability…They are their files not ours, they know the clients, they are the legal experts in the area of law under consideration and they should be left to get on with the running of the cases with little interruption or intervention from us. Finite money for legal aid should be best spent providing services to those most in need, not on bureaucracy.

4.9 Another aspect of trust is between regulators and their regulated communities. The literature, and most interviews, favoured regulators undertaking 'light touch' compliance with their members. The international regulators and literature indicated that this could occur without an increase in fraud or risk.

4.10 Interviewees from the front-line agency and overseas regulators suggested that the approaches of the front-line regulators in England and Wales could tend towards micromanagement, leading to high levels of frustration, bureaucracy and time spent that could be directed at access to justice direct service delivery.[184] A recent report reiterates the extent of the administrative load in this kind of work.[185] This same report also notes that the absence of early intervention contributes to unnecessary high costs for consumers, for example taking more litigious steps than is necessary.[186]

4.11 A challenge for regulators is to create a balance between (over) interference and protection of standards. Several of the domestic participants, including front-line regulators, commented on this. For example,

> And so … actually we don't want overregulation, we don't want a cost burden and a bureaucratic burden, necessarily, but we also want to make sure that there is enough scope of protection for the fringes of service as well …

> [R]egulation should be as much about removing barriers as to using carrots or sticks to, for example, require innovation. I think it's very difficult for a regulator to require or incentivize innovation. But what it can do is it can make sure that the regulatory framework isn't a barrier to that … [A] key thing for regulation is to be open to variety and choice and different routes into the law and into meeting the standard, whilst making sure that the standard is universally met regardless of how you got there. And really, that's the job of the regulator. (UK professional body)

***

> [I]f you've got access to justice concerns, then making it harder to operate as a regulated lawyer is not going to be helpful. So getting that balance right between regulatory protections and making sure that they're proportionate and targeted, I think that's really important. (UK front-line regulator)

4.12 Some front-line service agency participants in this research commented specifically on the SRA approach. There was a concern that regulated agencies doing pro bono work, whose model did not fit the traditional law firm, had to meet SRA processes perceived to be designed for a 'one size fits all' model. There was comment that the 'tick a box' formula for compliance had little nuance and created administrative burdens for agencies whose primarily focus is on access to justice, often with limited resources. Whilst the SRA's regulatory framework assumes compliance and is more nuanced than perceived, the perception of complexity may have had a chilling effect. [187] It might be possible to adopt an approach taken in Canada, the Netherlands and Australia. There it is taken 'as a given' that the profession already operates to standards mandated by their regulators which require a certain standard of practice for continued licensing.

4.13 One might compare the SRA Enforcement Strategy, for example, and its list of "sanctions and controls"[188] with the approach taken at the LSB & CV. The latter states it:

> uses a range of regulatory tools to address immediate and emerging issues. In determining which tools to use, it assesses the impact of the conduct we are seeking to prevent or mitigate and apply an appropriate tool in a way that is consistent with our guiding principles. We use 'light touch' regulatory tools wherever possible to assist lawyers to comply with their obligations and address low level harm. However, we also have 'harder edge' tools at our disposal to address serious issues, particularly where there is substantial harm to consumers of legal services and corresponding damage to the reputation of the legal profession. We work across the organisation to ensure our regulatory activities are coordinated and our regulatory tools are consistently applied. In designing our education programs and setting regulatory standards, we aim to be proactive and to address emerging areas of risk in a way that is consistent with our principles. We use intelligence gathered from our work, including data collected from lawyers, complaints, and compliance monitoring activities to inform the development of programs to respond to emerging risks.[189]

4.14 Then, in table form, it sets out specifically and in detail what factors will be triggered for the following levels of conduct: potential responses to high impact conduct; potential responses to service-related issues and other conduct with a low likelihood of disciplinary finding; ongoing regulatory activities – proactive and targeted to address emerging issues. It may carry out specific compliance audits and/or investigations but only if triggered by complaints and other notifications about individual lawyers as part of compliance monitoring. It does not do this as a routine practice as some front-line service agency participants indicated the SRA does. Like most domestic front-line regulators, the LSB & CV monitors risks of harm by conducting planned programmes of trust account investigations and CPD audits. It requires annual independent examinations of trust records to be conducted by external examiners and assesses the results.[190] The participants from the LSB & CV and Victoria Legal Aid indicated they take the light touch approach to compliance triggered by wrongdoing basing it on the assumption that lawyers will do the right thing and abide by the

standards set by the regulator and under the conduct rules, supported by mandatory annual CPD on ethics. Victoria has not seen a significant rise in misconduct. If anything, the interview participants representing the regulators in Victoria suggest that this light touch approach brings out the best in the profession.

4.15 In the Netherlands there is a tradition of what is termed 'cooperative compliance'. This is where regulation and compliance are based on the establishment of a trust-based cooperative relationship between the profession and the regulator. It aligns with the OECD's concept of cooperative compliance.[191] The aim is to increase trust in the authorities and build a service climate to promote voluntary compliance.[192] This was discussed as a model worthy of the LSB's consideration in three of the interviews. Perhaps the LSB, the front-line regulators and the front-line service agencies could consider such discussions within the ambit of LSB's cooperative compliance approach.

Codes of conduct, ethics training and the rule of law

4.16 The outcomes-focused model of regulation used by the front-line regulators in England and Wales at present presents problems if the wider statutory objectives are to be facilitated. This may be an area where the LSB could require consistency. Each front-line regulator sets its standards, including the ethical code, and the regulated community is expected to identify how to achieve them. Although guidance may be issued, more could be done to elaborate how the profession might better meet these standards.

4.17 This includes drawing explicitly on the statutory objectives including in improving access to justice. As noted above, the drafting of some codes of conduct may allow practitioners to focus on duties to existing clients, and overlook overarching principles that emphasise the wider community, the rule of law, or those currently unable to become clients.[193] Oaths and expected competences are largely under-used as a means of inculcating a sense of wider responsibility amongst practitioners. Only CILEX and the notarial profession, for example, explicitly require an oath. Other professions have duties to their consumers. For example, the FCA "consumer duty" is discussed further in section 9. Whilst the client is the primary focus, commercial advantage could lead to lawyers to overlooking, or subordinating, higher-ranking obligations, and duties.

4.18 A common refrain from the overseas regulators and the front-line service agency interviews was that ethics training is currently too limited and that access to justice is in part about ethics and driving quality. There was consensus, as we have seen above, among participants interviewed for this research that it is important to build trust in lawyers to enable more people in the community, specifically those in more marginalised groups, to feel comfortable making the disclosures necessary to gain legal help as discussed earlier in this report.

4.19 Ethics is integrally linked to quality. If lawyers are unable to deal with diverse clients and clients do not fully understand their options or the advice they are being given because of their difficulties, this is an ethical issue. Other standards about the standard of service to clients (and in some cases elements of a profession's competence statement) and references in codes of conduct to matters such as "tak[ing] account of your attributes, needs and circumstances"[194] may also be compromised. All the research is clear that vulnerability and trauma impede understanding and that trust is an issue for marginalised groups. Therefore, ethics – and ethics training – must include considerations of access to justice if the standards for effective legal practice are to be adhered to in practice.

4.20 Curran has argued:

> Under … Conduct Rules … lawyers have duties to the administration of justice. Accordingly, legal professionals have a role in identifying systemic problems because of their explicit obligations to ensure confidence in and integrity of the legal system. Being a lawyer is not limited just to the delivery of legal services as part of an industry. Lawyers as officers of the court have a deeper ethical obligation to identify and respond to systemic problems that

> impede confidence in the legal system and undermine its integrity. The advocacy by lawyers for clients through law reform and campaigns for change to policy administration are core to the lawyers' ethical duties where laws are unjust and unfair.[195]

4.21 There is opportunity here to develop a greater focus. In relation to the teaching of ethics in the classroom, previous work has noted that this tends towards the precursors of ethical action (knowledge of the code and application to hypothetical situations), rather than to establishing resilience in acting ethically in difficult circumstances in the workplace.[196] *Giving Voice to Values* provides an excellent applied ethical framework and its use ought to go beyond the pre-qualification stage to ongoing CPD.[197]

4.22 There would not be resistance from some of the domestic front-line regulators and professional bodies to exploration of adjustments to the codes of conduct, at least in specific contexts, if not explicitly in terms of the wider concept of the rule of law advocated by Moorhead, Vaughan and Tsuda. For example, one domestic professional body participant said:

> And that's what we would advocate. The principle of price transparency being within the code of conduct; within professional guidance, help about what that looks like and really following principles of visibility up front. …
>
> [Mandatory pro bono activity] would need to be embedded not just in the individual professional's code of conduct, but also in the business code of conduct. So the code of conduct that law firms, regulated businesses are required to [have].

4.23 Of the domestic professions, only CILEX members appear to be required to undertake relevant annual CPD activity in this area (though the context is "professionalism", which is not confined to ethics).[198] The BSB demands two ethics assessments, one during the vocational course and one during pupillage. One participant noted that some of the impediments to access to justice caused by misunderstanding conflict of interest rules have been addressed by Australian regulators through CPD. This leads to a greater understanding in the legal profession of how to explain this to clients (given the challenges of failed referrals and how this can impact on trust) and reduces the misapplication of those rules. This can hinder access to justice, particularly where there are advice deserts.

Recommendation i: The front-line regulators, with strategic direction and research leadership from the LSB, should revise codes of conduct, conflict of interest rules, associated ethics training and approaches to compliance monitoring for greater focus on access to justice, the rule of law and equality before the law. This can include reference to understanding the law, rights and duties, promotion, and maintenance of the professional principles for clients/consumers.

An integrated access to justice 'sandbox'.

4.24 In addition to revision of codes of conduct; education about conflicts of interest and a light touch approach to compliance, improving trust in lawyers and promoting sector-wide engagement in access to justice could be addressed by strategies such as use of sandboxes and development of autonomous paralegals. The idea of a regulatory sandbox (see definitions section) is not new. The Financial Conduct Authority (FCA) pioneered the use of the sandbox to support innovation by providing a 'safe space' in which new modes of business delivery of product development can be tested without the potential for unintended regulatory consequences. These have potential to boost innovation.[199] Alongside this, some FinTech and then Insurtech initiatives have been launched using the FCA regulatory framework and the SRA launched its Lawtech Sandbox in 2016. IPReg has an insurance sandbox.[200] Utah created a legal regulatory sandbox in 2019.[201]

4.25 A regulatory sandbox is generally understood to be a framework, facilitated by a regulator, in which specific regulatory requirements are removed or relaxed at the discretion of the regulator to promote market innovation without undermining overall regulatory cohesion.

4.26 Whilst the sandbox method is not without its detractors (with care needed and specific criteria agreed for any cohort of participants), it does offer a method by which innovative access to justice scheme initiatives could be developed and avoid a regulatory or liability insurance chilling effect. The fact that the first sandboxes have had a commercial or technology base should not disguise the fact that they can be used to support other innovations. The idea of a 'Legal Innovation Sandbox' has been discussed, as has the potential for an impact on consumer choice in terms of greater access to justice.[202] There is the potential not just for an innovative legal sandbox but an integrated sandbox, operated across the legal and financial sphere. Some of the areas of most acute need often defy clear labels at the point of need and do require assistance that falls within the definition of reserved legal activity. For instance, what appears to be a housing or tenancy issue might, at its heart, be a problem with a loan agreement which a banking specialist would be best placed to solve. A sandbox, not just for innovation, but specifically to support access to justice (perhaps made up of several cohorts of differing participants) could provide a safe space in which to experiment with new forms of delivery. A sandbox would also generate evidence on effectiveness which could inform any additional policy or legislative adjustments which may be necessary.

4.27 Regulators do cooperate: the SRA and FCA cooperate in relation to financial services legislation and Conduct of Business rules for solicitors, for instance. Consequently, there is at least a possibility of collaborative work in this area, not least since the advent of the retail consumer duty which is discussed below. Collaboration and cross-sectoral work are discussed more generally in section 9.

4.28 The concept of 'enabling trust' as demonstrated by a sandbox, fits within the focus of this report in that it is not only those seeking advice that need to trust those providing the service. Those providing the service must have trust in the regulatory frameworks and institutions/organisations and wider processes that surround them. Trust is at the centre and radiates out in the direction of service need and service provision. Where regulatory hurdles exist (or where they are perceived) this sandbox method could be adapted for use in the not for profit, pro bono, and commercial space to support innovation in access to justice provision. Some solutions will be digital and some more traditional in ambit. In some respects, the key is to provide a safe space in which innovation can both take place and be evaluated using expertise from both new and more traditional participants.

Recommendation ii: The LSB and the front-line regulators (working with others) should investigate the creation of an access to justice innovation sandbox for testing and trialling innovations.

Trust in and from the community

4.29 An additional approach to engendering trust is to engage more directly with those currently outside the scope of the LSB (unless under supervision of a regulated lawyer). Given low levels of trust in the legal profession and the legal system by the groups most likely to have legal problems (including multiple legal problems) indicated in recent studies (discussed earlier in this report),[203] it becomes critical that services be offered by people whom clients trust, including people from their own community groups. Adding reserved activities to the statutory list or expanding the list of front-line regulators would require legislation. That said, the LSB and existing front-line regulators might have a role to play in

facilitating advice through those who can command the kind of trust from vulnerable individuals that conventional lawyers may struggle with. This might involve, for example, attention to conflict of interest rules. This can mean, if rigidly applied, people in advice deserts have nowhere to turn as once a conflict of interest occurs, there are no other services in their area they can turn to, so creating an advice desert.

Educating front-line advisors

4.30 In Australia and Canada, legal secondary consultations (see definitions section) have been independently evaluated and have been found to be effective in providing training for trusted intermediaries who provide services at a client's point of need. Legal secondary consultations, if done well, overcome the challenge of low trust that consumers and other professionals have in lawyers and allow legal services to reach some of the most excluded groups.[204] They enable greater reach to people who are likely to disclose legal problems to their non-legal advice and support systems and target efficiently those least likely to gain access to a lawyer. Legal secondary consultations become a critical method of building the capability of front-line advisors to provide critical information when members of the community are likely to reach out for help. They have also been shown to increase the trust of non-legal professionals in the role law can play in problem resolution.

4.31 Another development is the growing use of restorative practice in Australia for example, in areas that are traumatic for clients such as institutional abuse and employment. They extend the availability of legal knowledge and the repertoire that trusted intermediaries can use to help clients with their problem-solving.[205] The LSB may wish to examine inhibitors to the potential use of models such as restorative practice, integrated service delivery and legal secondary consultations, including conflicts of interest and confidentiality management. These have been successfully managed in other jurisdictions such as Australia, Canada and the United States.[206] Use of restorative practice is emerging in the UK.[207] This could enable regulated lawyers more easily to offer legal secondary consultations to trusted intermediaries by telephone, or online. There has been an appetite for increasing use of such models to be supported for some time in the UK since the Low Commission examined it in 2015[208] but they have been slow to gain momentum compared to Australia, Canada and the USA, possibly due to funding constraints.[209] An example of a legal secondary consultation was provided by a front-line agency participant in England:

> We are relying increasingly on this trusted intermediary to notice there is a problem and to know that they can contact the law centre. As an example, I note the Harrow Law Centre. At a school a girl was crying. The teacher noticed this, and she sought advice from the Harrow Law Centre. This facilitated the girl gaining critical legal help and information. The cause of the girl crying was that the local council was forcing them to move out of London. The teacher saw it and knew the law centre would help. The law centre interventions helped saved the little girl's home, and the family secured stable housing.

4.32 Legal secondary consultations and integrated service delivery (see definitions section) have also been evaluated as effective in building up relationships of trust between the legal profession, trusted intermediaries and community when done well. Through such community connections, law clinics in Canada[210] and CLCAs in Australia have been able to extend their reach. These legal secondary consultations have been shown to help not just one client in need but many more downstream.[211] Legal secondary consultations are often used effectively as part of the design model in interdisciplinary integrated practices including health justice partnerships (see also section 7 below).[212]

Paralegals

4.33 In England and Wales, legal advice that is outside the six reserved activities in the LSA is not confined to the various regulated legal professions. Some is given by members of non-law regulated professions such as counsellors or social workers, and some agencies,

seeking to provide an integrated service, are multiply regulated. Some is provided outside the ambit of any regulation other than the law of contract. ‘Paralegal’ is not a clearly understood or defined term, though their existence in one form or another, is long established.[213]The most disadvantaged, who are more likely to be those with unmet legal need, should not be offered a substandard or low-quality service just because they are marginalised or socially, economically, or culturally excluded.

4.34 This regulatory complexity, with its multiple providers, poses a challenge for the consumer, related to the issue of trust, in determining the competence of advisors; what they are allowed to do; who consumers can complain to and whether they might receive compensation for poor advice:

> … There's no regulation for consumers from paralegals and not much protection for the client. This goes very much to the heart of what the LSCP should be trying to avert.

One front-line regulator had been working on public information about this in the context of immigration work, noting the challenge in determining the appropriate level of regulation:

> [T]here is a huge shortage of immigration practitioners. People qualified to do immigration work in the country at the present moment in time. If we are starting to put more barriers in the way [of training and accreditation], then actually all you're going to do is make immigration work become really unattractive as a career to anybody. … [Y]ou need to think about what is proportionate that we're expecting people who are delivering immigration services actually to do.

Adjunct paralegals

4.35 Many paralegals work with regulated lawyers in private practice, in advice centres, and in student clinics and so are covered by their entity or supervisor’s regulation.[214] Modern paralegals may have completed some or the qualification route for one of the legal professions, or are voluntarily regulated through CILEX, the National Association of Licensed Paralegals, a will writing/probate organisation or as accredited paralegals with the Law Society of Scotland. A Paralegal Apprenticeship[215] is available and police station representatives, if funded through legal aid, must be separately accredited.[216] Nevertheless, the “single voluntary system of certification/licensing for paralegal staff” recommended in 2013 by the *Legal Education and Training Review* remains to be seen.[217] The CILEX interviewee, however, identified that having taken over the Professional Paralegal Register would help them enable the consumer “to identify those paralegals that are trained, qualified, held to standards, regulated and make an informed choice about who they want to use”.

4.36 Paralegals can, clearly, play a valuable role in reducing cost of delivery, in triage and in client relationships. Adjunct paralegals are also covered by the insurance and regulatory arrangements of the regulated lawyer or entity employing them. They are likely to represent a more diverse demographic than many of the legal professions, with significant advantages in communication and establishing trust. The gearing of an organisation may therefore prioritise use of paralegals. See, for example, the work of the Legal Services Commission of South Australia, which established its paralegal-reliant advisory services in 1979.[218]

Autonomous paralegals

4.37 The more significant challenge is where paralegals operate independently of the regulated professions. The LSCP has already, for example, considered the issue of fee-charging McKenzie friends.[219] The risk for the consumer is higher if the advice is poor, but autonomous paralegals fill gaps in the market[220] and have significant advantages in reaching and working with communities (including as intermediaries in legal secondary consultations). Such paralegals in Australia, Canada, Africa, and South America have been serving an important function in access to justice since the 1980s.[221] Indeed, they are commonplace in Australia,[222] serving a critical means of extending access to justice.

4.38 The question of extending mandatory regulation to paralegals has been canvassed. Mayson, for example, has suggested the repeal of LSA, ss 63(2) and (3)[223] to enable the LSB to bring paralegals into the regulated sector. Some jurisdictions do, in fact, license specialist paralegals, often entitled to practise autonomously, specifically to address unmet legal need.[224] A call for legislative amendment leading to mandatory regulation also appeared in the data collected for this report:

> The LSB and the other professional bodies are not doing the consumer any favours in this resistance to regulate.

4.39 In the USA and Canada, while entry routes may accommodate existing experience, requirements for training courses and examinations for such paralegals can be substantial. Washington has now closed its scheme for cost benefit reasons[225] though there is other evidence that it had some success.[226] The requirements for paralegals in Ontario are lighter and now include arrangements for autonomous family law practitioners.[227] Five years after introduction, the scheme was determined to have been successful.[228] By 2023, 11,061 paralegals had been licensed, and 4,604 were providing legal services.[229]

4.40 A Canadian participant also discussed the limited licensing pilot in Saskatchewan which takes a case-by-case approach. The Law Society of Saskatchewan says in its policy statement that it works with “alternative legal service providers, the public and other stakeholders” in developing and extending a “flexible regulatory structure” so that it can “[promote] access to justice while minimizing risk to the public”. By filling out a ‘Notice Form’ and self-identifying to the Law Society an alternative provider is given the opportunity to be considered for inclusion within existing or expanded exemptions, pilot projects or newly developed categories of limited licence. This enables existing low-risk service providers to obtain confirmation that they may continue to provide limited legal services, in their identified areas of work (subject to appropriate restrictions and conditions), without fear of sanction by the Law Society. This occurs whilst their status is considered in the context of new regulatory structures. The pilot is currently paused pending the introduction of a formal licensing procedure. [230]

4.41 The Law Society of Saskatchewan takes a watching brief approach with a view to expanding opportunities for a greater range of non-legal professionals to reach into hard-to-reach communities in advice deserts or which lack trust in lawyers and the legal system. This participant noted a role for regulators to encourage use of paralegals with quality controls and new licensing arrangements:

> Pricing points [for paralegals are] on average lower than for lawyers in similar types of work. We've also found that paraprofessionals in the Pilot are travelling to underserved areas or providing the needed services and the support in areas where there is no other legal help. We're also finding that some have multiple languages so this helps to address need. In other words, its saving dollars, and they are competent, and they are reaching some of the rural and remote people who would otherwise not have legal help. We anticipate using lessons from the Pilot to expand to two classes of licences. The idea is to enable paraprofessionals to broaden areas of practice without unnecessary regulatory barriers while ensuring the public is protected. Longer term we may have to amend the rules on business structures and fee sharing.

Community paralegals

4.42 A sub-category of the autonomous paralegal, signalled in the experience in Saskatchewan, is that of the trusted individual in the community, with the language, cultural understanding, trust and skills to engage credibly with those who need advice by travelling to (or being located in) the places where they are and feel comfortable (including in some cases, in the criminal justice sector).[231] This has power, if considered in England and Wales, to expand reach through legal advice and support into advice deserts and to groups that currently miss out on legal advice and support. Such individuals can also, as discussed in

section 8, participate in public legal education to their communities, empowering and increasing legal capability. Such approaches are comparatively common in Africa.[232] There has been important – and long-established[233] – work in Australia both in terms of longer-term community-based strategies and those that occur at point of need.[234] This is underdeveloped in England and Wales. As observed, such advisors occupy an important role in legal secondary consultations. These jurisdictions provide good models which include 'peer to peer' learning, and community organisations with cultural liaison workers who connect with, and understand, their community.[235]

4.43 The nearest equivalent in England and Wales is the immigration adviser,[236] regulated by the Office of the Immigration Services Commissioner (OISC), outside the LSA. Numbers are not large, but Refugee Action has reported an effective collaborative, co-operative model of training (and retaining) advisors at no cost to them or their employers.[237] This form of community paralegal could be replicated in other fields where work does not have to be done by lawyers, and where the connection of the individual to their community is the key factor. Discussions of extending the regulation of paralegals could facilitate greater prominence and quality assurance for them as well as increasing the pool of people who can provide legal advice and support. Training and regulation of this group should, however, be linked to risk and avoid being over-burdensome. This could be explored through a sandbox.

Recommendation iii: The LSB should explore the potential for mandatory regulation of paralegals in the sector. This could facilitate a broader pool of people who can work in public education and as navigators of legal processes and systems for example through legal secondary consultations. In doing so, consider issues of risk, resourcing, appropriate and light touch regulation and training.

Pro bono activity

4.44 A further means by which trust from the community is generated is through pro bono activity by regulated lawyers. The legal profession is often depicted in the popular imagination as focused entirely on money. Pro bono work by law firms shows them in a different light as contributing to the public good by volunteering their time and services for free. This voluntary contribution can increase levels of trust in the profession as it has potential to counter stereotypes about lawyers and can support efforts to improve access to justice. In England and Wales, the National Pro Bono Centre advertises volunteering opportunities, and has set up Pro Bono Expert Support, to offer free litigation support services, including investigators and e-discovery providers. In 2024 it has also launched a project to measure the impact of legal pro bono activity.[238] In Australia, the Australian Pro Bono Centre links pro bono providers to services, gathers research on pro bono service, supports efforts through professional indemnity insurance support, conducts training, examines the financial contributions of pro bono and fosters targets. All of these are helpful in creating a culture of pro bono in law firms small, medium, large and global.[239]

4.45 A variety of ways in which legal regulators incentivise pro bono work is set out in Table 2. Although access to justice work in the current climate is uneconomic and there are significant resource constraints (see endnote 82), the task of persuasion to engage in it need not be difficult. There is evidence, for example, that some jurisdictions see pro bono activity as a moral responsibility, linking it to professional identity. In other jurisdictions similar resource constraints do not appear to have been so significant a barrier. Nevertheless, well-intentioned volunteering, by lawyers whose expertise lies in legal fields outside the access to justice field, can never be a complete answer. It is no substitute for well-trained and resourced experts, nor for properly funded legal advice, support and expertise given the UK government's tax raising capacity and the importance of the rule of law in democracy as noted in Part 1.

Approach	Example
CPD credit	"[B]y mentoring an attorney on a pro bono case, you and your mentee are eligible to earn up to 5 hours of CLE credit, including 1 hour of ethics." (Texas, USA).[240]
Fee waivers for e.g., emeritus attorney schemes	"However, certain categories of [Ontario] lawyers can apply to exempt themselves from paying [the annual insurance] premium. These include lawyers who are fully retired from the practice of law, estate trustees, emeritus lawyers, judges, and others no longer practising law."[241]
General principle stated in code of conduct	"A lawyer should accept without hesitation, and if need be without fee or reward, the cause of any person assigned to the lawyer by the court, and exert every effort on behalf of that person." (British Columbia).[242] By analogy "A commitment to the delivery of Pro Bono Legal Work is encouraged throughout a lawyer's professional life, as a student and in practice, through to and including retirement." (Advocate and LawWorks, UK).[243]
Mandatory minimum annual requirement	This is rare, and subject sometimes to payment of a fee for waiver of the requirement.[244] The approach has both proponents and critics.[245]
Quantifiable expectation stated in code of conduct	"Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least 50 hours of pro bono public legal services per year." (USA).[246]
Specialist accreditations and kitemarks	Some of the Law Society's existing accreditation schemes cover areas of social justice work.[247] Accreditation should be clear whether it represents individual or firm expertise. Such accreditations signal standards (and expertise). They may assist in attracting funding, or, by demonstrating corporate social responsibility, attract other clients.
Voluntary pledge	See, e.g., the Advocate pledge of 25 hours pro bono work for the Bar;[248] the Pro Bono Recognition list announced in 2024[249] and the UK Collaborative Plan for Pro Bono.[250]
Voluntary requirement, mandatory reporting	Even if participation is voluntary, reporting may be mandatory.[251] As need increases in the community as a whole, however, this approach has not necessarily made substantial inroads.[252]

Table 2 Regulatory approaches to pro bono activity

4.46 In some of the explicit pro bono models, an individual can escape the command by paying a fine, so that the pro bono requirement might in effect become a tax or levy on the profession (or some parts of it). A similar phenomenon has been seen when CPD systems required minimum hours, of individuals gaming the system, and employers frustrating it.[253] An interviewee from one of the domestic front-line regulators could see challenges in this respect in a mandatory pro bono system.[254]

4.47 However, as discussed in section 5, other jurisdictions have managed to shift the culture so that mandatory pro bono activity is seen as part and parcel of professional obligations. This has required considerable effort in changing behaviours and the professional culture over time. This is evidenced by the fact that in Victoria the recent expectation that those tendering for government work will carry out pro bono work met with little resistance (see section 5). There is an appetite to undertake this work because there is a clear expectation of it by the private profession and the link to the profession's role in the public good. We return to discussion of this issue in section 5.

Conclusion

4.48 There is a need to improve trust in lawyers. Improving trust in lawyers and innovations that support access to justice could be addressed by attention to legal secondary consultations, use of sandboxes, development of autonomous paralegals, revision of codes of conduct, education about conflicts of interest and a light touch approach to compliance.

4.49 Supporting the constitutional principle of the rule of law is, as noted above, one of the statutory objectives of the LSB when exercising its functions under the LSA and front-line regulators. This report acknowledges the centrality of the rule of law as an underpinning ethical obligation. However, the front-line regulators have chosen to communicate this statutory objective to the professions and the public in different ways, with the potential for differences in understanding amongst professionals about the relationship between the rule of law and other ethical factors such as the duty to the individual client.

4.50 Each front-line regulator sets its own standards, including its own code of conduct, and the regulated community is expected to identify how to achieve them. Although guidance may be issued, more could be done to elaborate how the professions might better meet these standards. This includes drawing explicitly on the statutory objectives including in improving access to justice. The LSB might consider a review of the codes of conduct for their explicit references to access to justice, and responsibilities to the rule of law and strategies. This could draw out an intentional and meaningful plan to inspire a balancing, or improved prioritisation, of the higher-ranking obligations of the professions. The report by Moorhead, Vaughan and Tsuda provides a significant starting point for this endeavour.[255] As this report makes clear there are synergies between ethical conduct and equality before the law (meeting unmet legal need being critical to access to justice).

4.51 The LSB might build this review into its Professional Ethics and the Rule of Law (PERL) stream of activity.[256] In doing so it could also encourage cross-sector accreditations and enhance quality measures for their explicit references to access to justice, and responsibilities to the rule of law. This could lead to strategies to draw out an intentional and meaningful plan to inspire a balancing, or improved prioritisation, of the higher-ranking obligations of the professions.

5. ENCOURAGING HOLISTIC, PEOPLE-CENTRED SERVICES AND BOOSTING CREATIVE THINKING AND INNOVATION

5.1 There is a need, demonstrated consistently in the access to justice literature, to produce more holistic and responsive approaches. To do so, a solid evidence-base is required. The LSCP (under LSA, s11), LSB and front-line regulators regularly commission, conduct and publish research, some of which is cited in this report. In the context of access to justice, there are opportunities to build on this work through a focus on measuring impact and establishing ‘what works’ in the context of improving holistic, integrated, and people-centred[257] services. While the LSCP may have a role to play, it is not merely to advise the LSB. It also works with front-line regulators to encourage consumer focused regulation, does research, engagement, convening and advocacy. The LSB could have a significant role in carrying out, monitoring, and evaluating research by reference to outcomes and in sharing best practice.

5.2 Research by the SRA and CLSB has been supported by the Regulatory Pioneer Fund. That said, none of the LSB, LSCP or the front-line regulators are at present formally constituted as grant-awarding organisations, by contrast with the LSB & CV. One participant commented:

> Community groups at law centres funds are so reduced people are trying to act. Often, it’s community organisations who are the ones harassing on behalf of clients. They're the ones going to the places and demanding action and using tactics so that the people that they're trying to help get help. The

> way the system currently works is that by annoying and using negotiating tactics and phone calls that's the best way they can get their clients in even to a lawyer. That's the reality. Lawyers could also play a role here in training clients about negotiation and persuasion tactics … The other issue is there will be no evidence without the community because it's them who helped build the case about why intervening is important. Short access to a lawyer to face a huge problem is not enough. To address access to justice we need to reach in wider and deeper.

Creating an evidence-base

5.3 A useful example of the use of the grant-awarding power of the LSB & CV to improve access to justice is by empowering organisations to develop and implement programmes is one addressing the root causes of female incarceration and reoffending.

5.4 The context for this research was that in 2016, the number of women in prison in Victoria had increased by 75% in the decade. Almost half were on remand for lesser offences. It also appeared that changes to bail laws had an unintended consequence of increasing the imprisonment of women, who statistically are the majority of victims of domestic abuse. The LSB & CV conducted research which revealed that for women affected by trauma, addiction, or poverty, even a short stay in prison can be devastating.[258] This evidence-based approach then led them to launch a thematic-grants round in 2017 aimed at finding better ways to keep women out of the justice system. This has since funded seven projects over five years, all of which are required to have outcome-based evaluations as part of their funding conditions. The Victorian LSB Commissioner and her delegate discussed the immense value in terms of credibility amongst the regulated community, and with government, of the regulator being an alternate provider of innovations in legal assistance delivery that shapes research and funds direct service delivery using its rigorous evidence-base.

Measuring outcomes

5.5 Measuring impact of interventions was discussed by three of the domestic professional bodies and front-line regulators. This drives innovation, ensuring action on access to justice by prompting ongoing dialogue about what works to facilitate improvements so that siloed thinking and the temptation to focus on problems shifts to examination of outcomes, effectiveness and how to achieve them. The LSB & CV participants recognised the challenge in doing so but also the benefits of collaborative economies of scale:

> A lot of the research with the population to understand where unmet need is, where it **has** been met, why was it met in this circumstance and not in the other? That sort of thing is very expensive to do because of the numbers of people you've got to reach. And that feels to me like something that needs to be done centrally but to a brief that everybody's contributed to.

> So we evaluate things in different ways. There often isn't a clear “we're going to have improved access to access to justice.” It’s such a big thing and a regulator isn't going to solve access to justice. What we can do, we do evaluate the bigger work or that we do like the reforms to the handbook and the transparency rules, for example, to try and see what's going on at that global level.

5.6 One domestic profession discussed parameters to measure consumer awareness that they had developed, but felt there was a distinct role for the LSB, with the front-line regulators, to lead:

> So one of the things I think that the sector lacks is an accepted, consistent set of measures for this. And so one of the things I’d advocate is bodies like the Consumer Panel, that there is space for them to lead on that, develop it in partnership with us … And then from that baseline, we'd be more clearly able to identify movement and trend in perception, access and confidence, trust and proportion who are excluded. And then that breaks down into the

> barriers for why they're excluded and that could be affordability, you know, accessibility, vulnerability … So there's a tendency at the moment to measure inputs because we don't have ways of measuring impact …
>
> I think **definitely** something around measuring impact. I think that's got to be a joint effort and I think that the consumer panel is less constrained in what it can suggest and its thinking. It's got more ability to be more innovative and problem solve a bit more.
>
> So I think that that's an important value add that they can bring.

5.7 In Australia, one of the levers that has been used to build the credibility of regulators in the access to justice space and the authority to speak on matters of access to justice is a wraparound monitoring and evaluation or outcomes framework. This intelligence around what works well is shared across the sector to inform other access to justice innovations. It also enables appropriate replication of effective models (always subject to tailoring an adaptation for the specific client group targeted by the service). The regulators interviewed from Australia said that this had driven evidence-based practice to ensure responsive, holistic, and people-centred (see definitions section) services, to recalibrate things when they go wrong. As importantly, it raises expectations and quality standards, not only in legal assistance services but with the private legal aid providers on the panel. All the overseas participants agreed that impact measurement undertaken with collaborative input from the sector also leverages improved collaboration and buy-in from regulated professionals and their membership organisations.[259] The domestic front-line regulators and professional bodies interviewed for this report also welcomed collaborative research, seeing the LSB as able to 'champion' sharing of data.

Monitoring and evaluating impact

5.8 It was suggested by some of the overseas regulator and the UK front-line service agency participants that the regulators in England and Wales may like to consider monitoring and impact evaluation of their own work and progress in their statutory objectives as to access to justice. It would also lend credibility to the LSB's role as a leader in access to justice innovation were it to become a provider of grants to support innovative service delivery with wrap-around monitoring and evaluation of outcomes. This would, of course, involve changes to its legislative and funding basis. Nevertheless, many interview participants thought it would be a desirable longer-term aim. Five of the domestic participants in this study kept reiterating this throughout their interviews and specifically mentioned the LSB & CV as a good example of how such a role might be undertaken. They acknowledged that it would take time and some regulatory and statutory adjustments (see section 10). For example:

> What people keep looking for is something 'new and snazzy' without putting more money into the underfunded legal aid system. There needs to be an adult conversation. What do you think is the role of a regulator?... It needs to bring everybody around the table and provide detailed evidence-based information for discussion … A case in point is the discussion around using interest on clients trust accounts for legal aid in other jurisdictions [such as] the US [and] Canada. Note Australia, particularly Victoria, have all taken a lead. It's taken time but there has been a demonstrable shift. In terms of funding the regulator needs to look at a range of options. These include the following:
>
> - Levies on professional bodies; [in this report, see section 10]
> - Insurance; [in this report, see section 9]
> - Residual funding from collective action. [in this report, see section 10]
>
> I'd like to come back to this as there's so much opportunity.

***

> Again, the structure of the regulatory requirements in relation to trust accounts in Victoria, require this statutory deposit account where lawyers are required to deposit a certain percentage of the amount of money they hold in their trust accounts with us in a central fund. NSW has it, but it operates differently and in California, for example, they do get interest on lawyers' trust accounts, but only certain trust accounts and only certain transactions within trust accounts …

Sharing best practice

5.9 Securing holistic, people-centred services and making them available as widely as possible also demands the sharing of evidence-based best practice. Incorporating best practice into the LSB's activities can be achieved by developing an organisational outcomes evaluation and impact monitoring framework. This has been undertaken by the LSB & CV and informs their work and next steps. The sharing of best practice in service provision is facilitated by such evaluative approaches. Increasingly, worldwide, this approach is occurring to enable accountability, transparency and openness by being clear about the impact services (including regulators) are seeking to achieve, planning how to achieve it and assessing progress along the way allowing for recalibration (for example the Research Excellence Framework[260] in the UK university sector). Those involved in service delivery[261] are being required to demonstrate their impact through evaluation of their services identifying what works well and why (or why not). One overseas regulator noted the effects of doing so.

> So I think one of the things that this has really done is being able to lift up the conversation around how do we use funding levers to also assist access to justice outcomes in … regulation and for the profession and vice versa. How can regulation also impact back into funding … that's one thing that I've seen that in the time that I've been in the organization that has changed. And it's still work in progress, but I think that's … been a really positive change.

The project lead for this research is an experienced professional in evaluation and impact evaluation and is happy to provide further suggestions.

Recommendation iv: The LSB should create a more substantial research/evidence-base, measuring outcomes and the impact of innovative practice so that they are people-centred.

Boosting creative thinking and innovation

5.10 The regulatory levers available to the LSB and front-line regulators are not confined to enforcement of sanctions or issuing waivers. They extend to facilitating innovation that addresses the statutory objectives. There are examples of creativity discussed in this section and throughout this report. These include incentives for undertaking pro bono work or investment in access to justice initiatives including for example, use of paralegals, emeritus lawyer schemes and pro bono. They can be facilitated by the use of the sandbox approach.

5.11 One domestic professional body interviewee suggested that in their experience, it is feasible and useful to develop a 'community of practice' on specific areas of endeavour and developing expertise, where practitioners reflect and demonstrate to each other what was possible, what has been effective in encouraging practitioners to innovate, demonstrate models and make exchanges. In addition:

> [I]mpact is the place to start. Helping everyone buy into the end result that's being sought after and that everyone sees that as meaningful. And then working backwards from that to *encourage* as opposed to *require,* but I think help people see the value of engaging in that way.

5.12 Another domestic interviewee also saw the issue as one of persuasion "… your business is going to be more efficient. Your clients are going to be served better. Transaction times will come down". Indeed, the LSB has welcomed "supporting new entrants with information, sandboxes, innovation funds, strategies, and similar initiatives".[262]

Incentivising

5.13 Whilst it is possible to have an entirely incentive-based regulatory system, even an outcomes-based system is likely to include some level of incentive, often financial or reputational.[263] There is a view that the statutory objective relating to competition conflicts with some of the other objectives. However, a lever to drive best practice including ethical and quality practice is to demonstrate how such innovations provide lawyers with market advantage. This could include the provision of more transparency around pricing, statements of law firm values and approach to ethical conduct. Examples, some of which were mentioned by domestic interviewees, include waivers of fees (e.g., for pro bono activity), pledges and accreditations. Another form of incentive is, as discussed in section 4, to embed expectations into the culture of the profession through the code of conduct and related ethics training.

5.14 Table 2 shows that this is sometimes done to inculcate an expectation of pro bono activity. In the main, domestic front-line regulator interviewees referred to initiatives seeking to remove barriers (see e.g., SRA Innovate, in effect a sandbox for technological innovation) and show how innovations could benefit individual practitioners and organisations (in e.g., efficiency, ability to compete etc). More active promulgation of the benefits could occur, led by the LSB. These can facilitate innovation, where there is a will to do so, without mandating it. There may be a role for regulators, however, in limited direction about the kinds of innovation that are especially welcomed, or innovation may be top-down, with front-line regulators taking responsibility for a sector-wide reimagining of process.

Facilitating integrated legal services

5.15 Integrated legal services (see definitions section) can address advice deserts and capability issues through working with 'trusted intermediaries' (see also discussion of paralegals and legal secondary consultations in section 4) who support groups of people who have unmet legal need and poor access to justice. These trusted intermediaries are often located in places where people experiencing poverty or other forms of disadvantage are likely to seek help and often have high levels of trust. Such integrated service delivery models provide opportunities that are currently under-explored in England and Wales.

5.16 These integrated service delivery models[264] do not only focus on GP practices but are broadened to include early childhood services, schools, homelessness and drug and alcohol services, women's refuges, multicultural organisations, maternal and child health services, mental health services[265] and so on. Law centres with legal expertise and their strong community connections and Law for Life are agencies that are ably positioned for this expansion in their roles. They are already working closely with community organisations; use 'trusted intermediary' models and have indicated a willingness to find ways of working in integrated practices. Harrow Law Centre[266] and Central England Law Centre[267] are examples. Such initiatives must, however, consider the issues of digital exclusion that are addressed in section 5.

Recommendation v: The front-line regulators, with strategic direction and research leadership from the LSB, should promote integrated legal services that are shaped and informed by current research around barriers and advice-seeking behaviours, removing regulatory barriers to such practice.

Emeritus schemes

5.17 One way of addressing advice deserts and supervision gaps is to recruit retired lawyers to act pro bono. In England and Wales, LawWorks, Advocate and the National Pro Bono Centre make efforts to encourage this on an informal basis.[268] The International Senior Lawyers Project facilitates it in social justice work in the Global South.[269] An emeritus project has recently been launched for medical consultants in the NHS.[270]

5.18 Domestically, such activity could include mentoring[271] and training as well as service delivery. It also has the benefit of providing supervision for junior lawyers that could be done online, whether in advice deserts or to remedy the shortage of experienced supervisory lawyers. As noted in section 8, the requirement for supervision of workplace training takes experienced lawyers away from direct service activities, which may in turn cause them to opt out of training new lawyers.

5.19 Incentives for retired lawyers would be enhanced if challenges around practising certificates (for reserved activity), CPD and training and insurance are met. The potential for the 'emeritus solicitor' to be insured on an individual basis could be explored, perhaps using the SRA's Freelance Solicitor model, or a finesse upon it targeted at the retiring solicitor. This might link the status to the purchase of run-off cover from practice or a waiver of practising certificate fees. Such lawyers should be relatively low risk, subject to usual management requirements. There are potential advantages for such lawyers, in terms of the negotiation of run off cover on cessation of practice, or the waiver of a practising certificate fee after a certain amount of service. This is a whole system response to unmet legal need, but it is in alignment with the stated aims of the LSA.

5.20 Waiver of the practising certificate fee is common in Australia and North America, and within the power of the regulators. In Victoria, for example, no fee or surcharge is payable for an Australian practising certificate that authorises the holder to engage in legal practice only as a volunteer at a CLCA. In New South Wales, no fees are payable for solicitors to hold a volunteer practising certificate. At least 44 US states have emeritus programmes, the majority of which offer waivers or reduced fees.[272]

5.21 Some US schemes also exempt such lawyers from CPD obligations designed for the wider practising profession. Emeritus lawyers do, however need to acquire or secure competence to work in the access to justice field, and some of the USA programmes require them to work not only with specific providers, but also under supervision. The emeritus lawyer does, therefore, need CPD, but needs it to be targeted. A more effective incentive, then, may be to provide free ethics and access to justice related CPD, as in Australia. In Saskatchewan, free CPD was provided:

> The Law Society has approved a range of pro bono organisations giving them status to engage with inactive and retired lawyers. To encourage these lawyers to deliver pro bono services, we provide access to free professional development. We encourage them to volunteer. We allow them to practise on the basis that they are exclusively volunteering with approved pro bono services organizations and there are five of these currently. We waive their practising certificate, and we cover them for insurance, and they get, as I mentioned, free professional development. This is how we've incentivized and tried to encourage inactive and retired lawyers to deliver pro bono legal services.

5.22 In England and Wales, the ICAEW squares this circle by requiring chartered accountants who wish to volunteer as charity trustees to undertake specific training, but provides this itself, and without charge.[273] This was not intended as an incentive, but the ICAEW participant commented "it might be that it would encourage more members to become charity trustees because there is this technical support and guidance on how to do it". Beyond this, chartered accountants only engaged in voluntary work are broadly exempt from CPD requirements.[274] This does not appear to be the norm in lawyer CPD schemes

(but these may only apply if a practising certificate is required). This is an area that could be explored by the LSB as a short-term effort towards improving access to justice and filling the gap that advice deserts create.

Recommendation vi: The front-line regulators, with strategic direction from the LSB should investigate barriers and their removal for emeritus lawyer schemes to improve supervision, retain experience and expertise, mentor young lawyers and address issues around senior staff retention and loss of knowledge and expertise.

Mandatory pro bono schemes

5.23 Whilst pro bono work of the private profession is already a valuable contribution (see section 4 and table 2), there are some possibilities and levers which the LSB can explore with government. Although pro bono services are not a substitute for proper government funding of access to justice and legal aid services (a point noted by many regulators and front-line service delivery agency participants), in the absence of a prioritisation or change in view of government for many decades, other strategies again come into significance.

5.24 There may be a role for the LSB in convincing government that this could be a mechanism to improve access to justice through its own requirements for tendering for government work. Domestic lawyers employed by government, at present, engage in pro bono in a similar way to law firms.[275] In the private sector, however, influential in-house lawyers have recently committed to at least asking external law firms to disclose to them their pro bono contribution, though the effectiveness of this strategy is yet to be seen.[276]

5.25 In Australia, there are schemes which are designed to promote the provision of pro bono work particularly from the larger law firms involved in government work. The Australian government has pro bono guidelines and requirements for its work,[277] as does the Victorian Government Solicitor.[278] Canada has similar schemes.[279] The Australian Government Solicitor scheme requires employees to undertake pro bono work in certain areas of work where there is not a conflict of interest.[280]

5.26 Victoria pioneered this when, in 2002, Attorney General Rob Hulls decided to make it a requirement for all government tendered work that law firms had to provide a minimum level of pro bono hours.[281] Initially there were some problems around the definition of pro bono, as some of the law firms were trying to include their existing voluntary activities in it. For example, lawyers sought to treat volunteering on their local primary school board of trustees or on the board of a hospital, undertaken largely to secure hospital work for the law firm, as ‘pro bono’ under the new rules. The definition was tightened after concern that this interpretation did not meet the aim of the government. Although it took some time, an improved definition of pro bono was arrived at after consultation with the law firms and the legal assistance sector in Victoria.[282]

5.27 This definition of pro bono[283] makes clearer the intention behind the mandatory requirement as primarily to improve access to justice. It has been in place in Victoria for more than a decade and is documented in the “Government Legal Services Panel Deed of Standing Offer for the Provision of Legal Services” between the State of Victoria – through the Department of Justice and Community Safety – and the relevant law firm.[284]

5.28 Safeguards would need to be put in place were such a scheme to be adopted by the UK government. These are needed to ensure there is no significant burden on the already stretched resources of law centres but that rather such pro bono is a complement, and of value. The idea is, or has been, an element of recent Labour party policy.[285]

Law centre partnerships with large law firms for ‘pro bono clinics’.

5.29 What is interesting is that the LSB & CV Commissioner highlighted the fact that the larger law firms in Australia were keen for their staff to engage in pro bono activities. This is because larger law firms often saw it as a way of bringing worth to their employee's work. In mundane work staff got bored or weary and left the profession because they found some of the legal work tiresome or just about money-making. It was the pro bono work which gave them a sense of value and enjoyment. Private law firm feedback is that pro bono offerings addressed issues of retention and job satisfaction and a sense of relevance and meaning for their staff. Similar motivations have been found in UK law firms.[286] Rather than reinvent the wheel, Victoria offers a good example of what can be done and to good effect.

5.30 There are some examples of law centres partnering with large law firms. Typically, solicitors (often junior) from the law firm attend the law centre in shifts. As this contribution amounts only to provision of legal expertise, it can be highly problematic for law centres. For the law centre to run these clinics it is usually at their own expense or premises or at charities. They must run them with the electricity on, hire extra security, provide reception and other administrative support, for which in-kind contributions may not be made. As noted above, this needs to be addressed through exploration of how these overheads might be ameliorated. Another issue is harder to address is around authenticity of the pro bono firms' offerings and the respect for the expertise of law centres and charities in the needs of the specific client groups. This is linked to section 4 as instilling a greater awareness of the importance of the rule of law. Proffering technical legal advice whilst valuable is not enough. As noted earlier, proper training, trauma informed practice and appreciation of the important of trust and interpersonal skills are all important in pro bono work.

5.31 LawWorks notes:

> … increase in demand for their services, with an increase of 64% in 2022 compared to 42% in 2021. In an already underfunded and understaffed legal aid system, the need for legal assistance continues to rise and individuals residing outside of major cities or in rural areas are facing increasing challenges in obtaining access to legal advice and support.[287]

5.32 If the government were to be convinced to introduce a mandatory pro bono scheme for any government legal work, a component could be for the wealthier law firms to properly resource and provide a secondee to the law centre. This is now mandated in Victoria for government work with little push back from the profession. The LSB & CV identified this as likely to be due to the perceived importance of pro bono work for the public good. There is a role here potentially for the LSB to leverage such an initiative from the MOJ and all the other departments that retain law firms to undertake their work using taxpayers' money.

Technology – a tool but not the panacea

5.33 Recent reports by the LSB and others have investigated technology generally and specifically in relation to access to justice.[288] In the latter context it is sometimes known as 'Justicetech'.[289] Further work on this is anticipated in the LSB's current business plan.[290]

5.34 Justicetech, although useful in some contexts, is not a panacea. It cannot be assumed to be generally effective for all groups. There are, in this context, three main groups: the general public; those, often in the front-line service agencies, who assist the general public and regulated lawyers.

5.35 Offerings to the general public may be, as with the front-line regulator operated *Legal Choices*,[291] directed towards individual (empowered)[292] consumers:

> [O]n *Legal Choices*, our glossary is so good, it's often the first result anyway, or certainly on the first page, so that's good. And that leads people to *Legal Choices* to find out a bit more. But that's generally, once they're all too aware that they've got a problem with a potential legal solution (UK front-line regulator)

5.36 Sophistication and an awareness of people-centred delivery and the literature on advice-seeking behaviour (see section 6) and barriers are often underplayed. This is a point made consistently by participants in this study (as will be highlighted in this section). In the context of access to justice, technology is an ineffective investment unless it is tailored to address barriers to access experienced by the most disadvantaged.[293] This means that such groups are currently missing out despite often significant digital investments. The research is clear that the most vulnerable are likely to experience digital exclusion.[294] This adds another layer of exclusion, if digital solutions designed to be used directly by the general public are not responsive to factors that influence such digital exclusion. A "digital by default" or even a "digital with purpose"[295] approach adopted by government departments, may exacerbate such exclusion unless care is taken.[296] Problems can arise if IT systems are not updated,[297] and non-online options may be cumbersome to use without help.[298]

5.37 Where such digitisation investment occurs, it is most effective where people not only have access to internet-enabled devices but are sufficiently educated and skilled to use them in this context. It has value in assessing better and triaging out of the system those who do not need tailored support and who, when armed with the correct information, are able to use problem-solving skills effectively.

5.38 Savings made through such investment might then be ploughed back into the system to enable front-line service agencies (including trusted intermediaries) to benefit from improved funding to support those who are already digitally excluded. Even with adaptations they are at risk of being further excluded. More and more government bodies and corporations are moving to online options, and this includes those tasked with providing essential services, such as utilities. This can involve a one size fits all assumption that what applies to the general population applies to all. These systems are often designed by the well-educated.

5.39 The risk is further disadvantaging the digitally excluded, further entrenching inequality. For example, the use of artificial intelligence, whilst it has some value in reducing administration, can see design, without diversity in mind, becoming inadvertently discriminatory in its assumptions and operations.[299] Chat bots can be helpful, at least for those who are skilled.[300] For example, Social Security Rights Victoria's Medical Evidence Bot for medical practitioners helps formulate claims for disability support pensions. Law for Life also has offerings through its Advice Now portal where it provides fact sheets on a range of issues such as "How to Challenge Personal Independence Pensions". Individual charities may also use chatbots in specialist legal sectors.[301]

5.40 In the future, problems with over-reliance on algorithms presents challenges for those who are digitally excluded. Examples of harm caused, and risks involved, to certain vulnerable groups are evident both in the UK and in other jurisdictions. These include problems with housing benefit in the UK;[302] Robodebt in Australia[303] and in the child support system in the Netherlands.[304]

5.41 Some participants from front-line service agencies reported that many digital options proffered by industry are often not tailored to advice-seeking behaviours. There is also scope for informed and targeted collaboration in this context, identified by a domestic front-line regulator:

> Equally regulators and governments could support unserved areas by either supporting residents to become more 'tech-savvy', or collaborate further with advice centres and local charities so that they can help access services.

5.42 Even when technological solutions are intended to support law firms, they may not be adequately designed or supported.[305]. Especially when directed to consumers and front-line agencies, technology was often cited by participants as being purveyed as a panacea for deep rooted problems that required far more sophisticated analysis:

> Technology is not the answer all the time…Technology is not the answer all the time. Often technology or digitisation is given of as a panacea often because it's thought it will save money. There needs to be a recognition that access to justice is part of an ecosystem. **There needs to be an awareness and sense in the regulators' piece on access to justice that is not isolated from this. There is currently no oversight and no aligning of models across the different services.** Technologies and their use are siloed. It's about individual organisations and professional bodies having a different relationship with different individual tech companies. There's so many bits and pieces out there and they look very different. These interactions mean that the interface is all based on individual relationships and all these need to be managed. There is an allowance for people with expertise and understanding to work in a chosen area, but usually this is very piecemeal. The use of technology feels like it's led by government and the private tech companies and private legal services pitching to a market. It's either led by one or the other. It's not shaped or informed in collaboration with the people they claim to be acting in the interests or for the purposes of. The approach is more 'I've got a great idea we can adapt it for you and tailor it to your approach' … offerings in a vacuum by private companies … not faced with the reality of the research or an understanding of consumer behaviours or fit for the 21st century. There is very little understanding of the potential of doing it differently. It is rare that it is designed with the actual advice-seeking behaviour which as [participant] said, we know so much about.

5.43 Two participants from front-line service agencies particularly lamented that often technological innovations were driven by the private market and offered to legal service providers on a take it or leave it basis. Their experience was that the technology was often untested, unpiloted and without independent evaluation as to its effectiveness. There was a concern amongst participants that this led to direction – often of limited resources – into projects which were not likely to make effective inroads into access to justice whilst at the same time being resource-intensive and often expensive.

5.44 For many services, technology was considered a huge asset in terms of managing accountabilities, assisting with human resources and office management. Its utility was limited unless it was evidence-based or properly evaluated. It was often not informed by the literature on advice-seeking behaviour;[306] nor was it people-centred or tailored to individual diverse, multiple, and cascading needs. Four participants commented on the fact that often technological solutions from abroad were implemented, without waiting to examine the evaluative material that demonstrated whether they were effective or efficient. This highlights the importance of the discussion in section 5 around development of outcomes frameworks that formulate an evidence-base of effective practice.

5.45 In interviews, the domestic professional bodies and front-line regulators often discussed the use of technology, either for consumers to use themselves (e.g., *Legal Choices*,[307] or *Advice Now*[308]), or to support front-line advisors. 'SRA Innovate' is an example of a regulator seeking to facilitate and celebrate creative innovations through technology by using in effect a sandbox, that places lawyers in contact with Justicetech suppliers. Nevertheless, suggestions were made for ways in which this could be improved, together with a call for recognition of the digitally excluded. For example:

> But ultimately, **at the moment**, digital only would not service the full population. And therefore, regulation needs to recognize that and make sure that it's not pushing too hard down that pathway but equally it's creating an expectation on providers that they are looking at that and supporting the digitally excluded group in what they do. (UK professional body)

***

> Or perhaps working with Age UK or Refuge, or whoever it might be, to look at how we might support the design of services by people who understand

> how to redesign services through new platforms. So that it might become viable. (UK front-line regulator)

5.46 Technology is discussed in the references related to unmet legal need in endnote 82. Clearly some of these initiatives are effective, and some have wider reach than others, but the picture is fragmented. As indicated above, few are independently evaluated and fewer still actually map the impact of technological interventions on peoples' lives or in resolving their problems. Each initiative, whether by a law firm, a charity, or a student clinic working with a charity, is designed independently. As explained in the report commissioned for the SRA, relationships with technologists can be difficult, resulting in legal services providers resorting to self-development.[309] Consequently, interfaces are different, fragmentation occurs, and the technology developed and used (often at great cost) may not be easily equipped to deal with intersecting problems, or – if consumer-facing – be interactive or supported by a trusted intermediary.[310] However, it is vital to collaborate with information technology professionals with an interest in access to justice and legal advice deserts. These do exist.[311]

Conclusion

5.47 There is a need demonstrated consistently in the access to justice literature to produce more holistic, people-centred and responsive approaches. The LSB could explore having a significant role in carrying out, monitoring, and evaluating research by reference to outcomes and in sharing best practice. This could be facilitated if it was also able to establish itself as an independent statutory grant provider for innovative and tested effective service provision (see section 11).

5.48 Design of interventions needs, however, to be adjusted to accommodate the existing and large body of research on advice-seeking behaviours and barriers to access to justice for different groups. Participants reported that they need to be designed to ensure they acknowledge the barriers they face and too often sit in a vacuum from the significant body of research on advice-seeking behaviours. Digital options can be useful to those who already have access or to triage those who have the wherewithal. This means that people with some degree of digital capability, access and resources can act. Resources saved by such access for that group can then be redirected to target those who are currently excluded.

5.49 The LSCP Tracker Survey[312] has shown that

> 18% of consumers would have preferred to talk directly to a legal professional more than they did when they were using legal services – this rises to 28% among those who received their service primarily by email/online. Ethnic minority consumers were more likely to have wanted to speak directly to a legal professional more than they did, with being able to meet in person with the person working on their case also more important to them (76% vs. 71% for the total sample).

5.50 The role of technology is discussed, therefore, with qualifications as, although useful in some contexts, as noted above, is not a panacea. This is a point made consistently by participants in this study. In the context of access to justice, technology is an ineffective investment unless it is tailored to address barriers experienced by the most disadvantaged in access. This means that such groups are currently missing out despite digital investment. The research is clear that the most vulnerable are likely to experience digital exclusion.[313]

5.51 This adds another layer of exclusion if digital solutions are not responsive to issues or factors that influence such digital exclusion. Where such digitisation investment occurs, research cited in this report suggests the funding landscape does not value and adequately support the important role of 'trusted intermediaries' in offering such support. This was a point made by all the front-line service agencies interviewed in this study. In the current landscape front-line agencies are already overstretched, under-resourced and exhausted. This hampers offerings of such additional support. Front-line service agencies in this study

reported that many digital options proffered by industry are not tailored to advice-seeking behaviours. This becomes critical support as increasingly agencies such as the DWP are requiring forms and applications and evidence to be uploaded into online portals and their increasing use of algorithms and artificial intelligence in determining eligibility.

6. PROVIDING LEADERSHIP ON ACCESS TO JUSTICE

6.1 Whilst, as the oversight regulator, the LSB has a strategic leadership role in access to justice, it is concurrent with that of the front-line regulators who also have leadership obligations in relation to their regulated communities. This report has a range of recommendations that can address unmet legal need and access to justice. As discussed in Part I of this report, there is a need for action. Some suggestions in this report are short, medium or longer term. However, if inroads are to be made in addressing unmet legal need, a level of ambition is needed as the status quo and sticking plaster solutions will not address the challenges outlined in this report.

6.2 The LSB has already led with strategic action, for example its 2021 *Reshaping Legal Services* report and its collection of research data on the demographics of people in the legal service landscape.[314] Its annual business plans – published in advance for consultation – update on progress in relation to its objectives.[315] The section on 'Reshaping legal services to better meet society's needs'[316] in *Reshaping Legal Services* was, however, brief. A next step might be to use some of the models discussed in this theme to focus future strategic and research effort on the improving access to justice statutory objective. An example is provided by one of the Australian interviewees:

> The Legal Services Commissioner really drove this collaboration, particularly with the professional association, so that we had very clear ground rules and buy-in and shared objectives around how we wanted to collaborate and work together. We have collaboration principles.
>
> These are agreed with the Law Institute of Victoria, which is the professional association for solicitors, and a separate collaboration principles agreement with the Victorian Bar. And that was really quite productive work where we're actually looking to refresh those collaboration principles in this sort of coming year, starting with the Law Institute, because both organisations have really seen the benefit of that and particularly in terms of then targeting the funding. Like the UK our lawyers also saw the Public Purpose Fund (PPF) in a similar way to the way that the English lawyers might see their own trust accounts. This was because PPF was a creature of the Law Institute. It was their original idea for a PPF. I think the relationships piece is key and that does take a lot of work and a lot of personal investment and leadership. And so from my perspective, I think that was something that certainly helped us then shift the dial in terms of then having transparent conversations about how do we use this money in a way that's not just a transaction. For example, "Here's your pot for the year", but rather "What are our shared objectives around its use and how will we measure outcomes?"

Strategic thinking

6.3 Several of the domestic interviewees, including professional bodies, front-line regulators and front-line service agencies, and one overseas interviewee, called for a stronger leadership role by the LSB. Overseas regulators referred to their own leadership activities and some participants referred to such a leadership role more implicitly. This might include identification of clear priorities. In this research the front-line service agencies pointed to the work of Victoria's regulator in this regard, specifically their work on access to justice.

6.4 The LSA, s6, requires the LSB to submit an annual report to the Lord Chancellor including the extent to which the statutory objectives have been met, and this is placed

before Parliament. At the LSB and LSCP "Reshaping Legal Service Delivery" Conference on 7 March 2024, a conference delegate suggested that the leadership role for the LSB in the policy and Parliamentary realm could be taken even further by publicly tabling a document which he described as "The State of the Legal Nation". This would go beyond tabling publications such as *The State of Legal Services 2020* or statutory annual reports, reinforcing the important statutory objectives and contextualising what was shown in the research by calling for necessary steps at a legislative, policy and funding levels incorporating some of the ideas in this report. It is also noted the LSB can draw on its further power under LSA, s49 as authority for undertaking such work. This "State of the Legal Nation" report would focus on access to justice. It could be used as a tool to raise the rule of law and the underpinnings necessary for it in the public consciousness. The conference delegate suggested that this document could require a governmental response. Although it might take legislative change to ensure there was a formal response, as a very public document at a governmental level, it could showcase the importance of access to justice and the other statutory objectives and highlight the important role of all players in the system – including government, the LAA and other stakeholders – to deliver on this as a fundamental underpinning of liberal democracy.

6.5 There is a precedent for this from abroad. In Australia the LSB & CV has in place a "Policy Statement on Access to Justice"[317] underpinned by a "Strategy on Access to Justice". It has also just released its new strategic direction document in 2024 entitled "A Clear Direction".[318] The strategy combines with a more detailed Corporate Plan. This sets out, over three years, goals, activities, and measures of success against this plan. The Victorian Government also has a "Legal Assistance Strategy Victoria 2022-2025". This strategy has been produced by the Department of Justice and Community Safety (DJCS) in partnership with the Victorian legal assistance sector in particular: Victorian Community Legal Centres; Federation of Community Legal Centres; Victoria Legal Aid, and the Victoria Law Foundation. The LSB could, in combination with its existing strategic documents and business plans which embed access to justice work amongst other priorities, issue material devoted specifically to a detailed access to justice strategy in a similar way, within its existing remit under the LSA (e.g., s49) or any expanded remit in the future. This was done in Victoria by the LSB & C as a sign of leadership for the sector on access to justice rather than due to any statutory or regulatory obligation. Nonetheless it has revealed a clear pathway for all in the legal sector to follow.

Sharing a strategic direction

6.6 The LSB publishes an annual business plan setting out its priorities and annual workstreams and invites responses to a consultation on the draft. Front-line regulators publish regulations and guidance which may include explanations of the criteria and approach used in specific aspects of regulatory decision-making. They may also issue updates to their regulated community. Access to justice could become a recurring theme to support other efforts to drive awareness, as a shared and common aim, and forge collaborative endeavours. It may be possible to enhance the effect of these initiatives to a greater effect by increased articulation of the thinking behind setting and enforcing regulatory policy.

6.7 For example, in Australia, the LSB & CV uses "Regulatory Approach Statements"[319] that outline how it performs its role as the regulator of the legal profession in Victoria. It highlights the approach it is taking to deliver on its legislative responsibilities by explaining how it sets regulatory priorities, makes its resource allocation decisions, and applies the range of regulatory tools at its disposal. It also forewarns the profession annually as to what its priority areas of focus will be in any given year. The LSB & CV interviewees indicated this intentional approach often led the industry and profession to pre-empt any need for change. The profession was often proactive, resolving issues identified within the statements of their own initiative.

6.8 In this regulatory statement the LSB & CV not only looks at immediate issues but identifies emerging issues: “We use data to identify future trends and design programs of regulatory work that proactively address emerging risks. Such programmes may also include strategic education to the profession”.[320]

6.9 The Legal Services Commissioner, Fiona McLeay, also sends out an e-mail to all legal professionals each month, like those already issued by the LSB and, e.g., the SRA. Her “Commissioner Update” also highlights some of the expectations and provides the rationale and reasons that sit behind some of the LSB & CV initiatives or intentional focuses of the LSB & CV. All of this goes to transparency and enables the regulated profession to understand the motivations and feel encouraged to participate in these strategic aims.[321] As part of the literature review, a number of these Commissioner Updates were examined over the past five years. The tone of these is up-beat. The focus is on the possibilities and the role of the profession in these including specific references to, and reminders of, the need for action and the importance of access to justice in the work of the profession it regulates.

Using the LSB’s convening power

6.10 The LSB’s regulatory remit entitles it to act as a ‘convening power’, bringing the regulated professions together (and, as some interviewees suggested, promoting collaboration with other entities such as the MOJ or FCA). Domestic interviewees emphasised a role for the LSB and the LSCP in this. For example, from a professional body:

> And this is where I think bodies like the Consumer Panel, the Legal Services Board, the convening powers if you like, could be better used or maximized more in terms of bringing people to get the players together. … To do that, I think there's a fine line. Because if the regulators feel they're being **compelled** to do something, there's a big thing at the moment about overreach of some of these bodies. And it's where there's a perception amongst some that bodies are spreading themselves too thin and not sticking to their core business. So I think there’s a fine line.

6.11 The Consumer Panel of the LSB & CV provides an illustration of how convening powers can be used. In a rapid review of consumer experience, it was concluded that very little was known about the experience of consumers in the operation of the private profession. This led to development of a Consumer Experience Tracker Survey which was based on the LSCP’s Tracker Survey (of legal services consumers).[322] The latter includes those whose services were funded by legal aid (6% in 2024).[323] It has been running since 2012 and takes place annually. This is an example of how other jurisdictions also look to the regulator and the LSCP in England and Wales for ideas. It is important, as noted in section 9, to continue looking for ways to collaborate in filling other gaps in data. Some of the domestic interviewees also commented on data gaps across the sector and a desire to collaborate in relation to the data. For example:

> But there's definitely a need for qualitative research and things like this actually you know in terms of getting a baseline. So I think we lack a baseline at the moment across the sector. … I think that the consumer panel and the LSB both have the ability to champion that and create a facility to share data in a collaborative way that I don't think would be welcomed if it was one of the professional bodies suggesting it, for example. (UK professional body)

6.12 In England and Wales, the CMA[324] found in 2020 “little evidence of empirical research differentiating between groups of consumers in the population of interest on the basis of legal capability or what have been described as vulnerability risk factors (e.g., cognitive impairment, mental health problems, disability)”.[325] Existing work by e.g., the LSB;[326] SRA[327] and other professional bodies and front-line regulators could be built on across the sector to explore whether consumers with vulnerability risk factors are more likely than others to be involved in complaints, or complaints of different types. The LSCP 2021 Tracker Survey report on how consumers were choosing legal services also attempted a

segmentation categorisation based on that data.[328] This data can also assist the LSB in shaping its approach to education and training and inform its approach to the standards set by the front-line regulators for their professions (LSA, s4).[329]

6.13 The articulation of the risk-based principles of the LSB & CV in its regulatory approach might be helpful in achieving this:

> We target our resources to the areas of greatest potential harm. We proactively identify areas of greatest risk to consumers of legal services or to the reputation of the profession and prioritise our resources accordingly. We work towards more accessible and streamlined assistance to consumers. We provide guidance and targeted responses to lawyers to improve consumer service.[330]

Advice deserts

6.14 One aspect of the convening role of the LSB is in cementing a national approach informed by local differences. It is widely acknowledged that advice deserts exist across England and Wales where there are no available regulated lawyers in certain areas of work (or with LAA contracts to offer such work).[331] This is a considerable impediment to access to justice. Consequently, approaches to access to justice must take geographical difference into account.

6.15 A starting point is to recognise that different factors affect Wales in particular. Several areas of law, including education, housing, and social welfare, are devolved to the Senedd. The Wales Act 2017, s 45 imposes a public sector duty on socio-economic inequality that is not replicated in England. By the Welsh Language (Wales) Measure 2011, there is a right to live and work in the Welsh language, and to speak it in court. 'Linguistic exclusion' necessarily deprives individuals of access to justice[332] (and this is not of course confined to Wales).

6.16 In the context of advice deserts, data published by the Law Society (E&W) indicates that small numbers of legal aid practitioners are seeking to serve large geographical areas in Wales in a way that is different from the situation in England.[333] Digital exclusion is "a real problem".[334] However, the Welsh Government's Single Advice Fund, an integrated system of co-ordinated advice, has been successful in addressing intersecting problems, supplementing the effect of LASPO.[335] While there are distinct challenges, the autonomy (and access to funding) of the Welsh Government suggests what can be done through collaboration when the will is present.

6.17 There are, of course, also significant advice deserts in England (see also section 8). How these manifest, and what local initiatives have been put in place by front-line regulators, practitioners and universities varies. They may be targeted to, for example, particular local minority communities, or areas to which asylum seekers are routinely dispersed.[336] Segmentation studies such as those undertaken by the LSB[337] provide some overall picture of different kinds of client, but do not necessarily explore different geographical areas or as noted above, fully unpack divergence in different communities. This goes significantly to the evidence in the literature on advice-seeking behaviour and unmet legal need[338] and the bluntness of many proposed solutions that do not factor in the need for responsive, people-centred, and holistic services. These are needed considering the cascading, intersecting and multi-faceted nature of problems affecting those who have experienced some form of disadvantage. There is a significant data gap in relation to the effectiveness in local areas of innovative practices that address these gaps. This could be useful in informing and shaping people-centred service delivery, as discussed earlier in this report.

6.18 Domestic front-line regulator and front-line service agency interviewees referred to attempts to engage practitioners across the country. The focus of much activity by front-line regulators was on technological solutions. Nevertheless, there is evidence of attention being paid to differing needs of the regions in Parliament, initiated by local MPs,[339] and by advisors with local knowledge such as the Manchester Law Centre.[340] This local knowledge is

indispensable in ensuring services are tailored to communities. The problem is that these initiatives are often little known outside their own areas. The LSB could be encouraged to take a role in broadening the process for sharing best practice beyond the variety of forums which the charity sector has established. This includes networks such as the Access to Justice Foundation's Justice and Innovation Group[341] and the Advice Services Alliance's Standing Council on Advice Research and Evaluation[342] (SCARE) gatherings. The LSB could (as noted above) take on this greater role in convening, commissioning research, and developing a community of best practice that includes stakeholders in access to justice, private sector law firms and others in a joint learning and sharing environment. This is something the LSB & CV also leads in Victoria. The Commissioner indicated a willingness to discuss the approach with regulators in England and Wales.

Developing policy and frameworks

6.19 Strategic and policy documents issued by the LSB have been noted above, and domestic front-line regulators publish their own material on their websites. Participants from the LSB & CV discussed the need for intentional policy and the development of frameworks specifically on access to justice as critical for a regulator. These let the professions know where they stand and what the regulator's expectations are. They are transparent to other stakeholders including politicians, funded agencies, the professionals that they regulate and consumers.

6.20 For example, in Saskatchewan, the Law Society's Strategic Plan 2019-2022 and implementation policy explicitly states it intends to:

> Demonstrate a commitment to improving access to legal services in regulatory structure, policies, and initiatives and support the provision of accessible legal services by Saskatchewan firms, lawyers, legal service providers, and other legal organizations.
>
> Reduce barriers to access to legal services caused by the Law Society's regulatory framework.
>
> Increase support to Saskatchewan firms, legal organizations, lawyers and legal service providers to diversify the service delivery methods used to provide legal services to underserved segments of the public.
>
> Increase collaboration with stakeholders to develop novel ways to address unmet legal need.[343]

6.21 This Law Society implementation document identifies in a table the three entities that need to operationalise their strategic plan as the government, itself, and its collaborators (which includes ministerial activity). It sets out a timeline and actions required towards creating a more flexible regulatory environment which has the key objective to improve unmet legal need and to address under-servicing of certain segments of the public. The LSB could, if it adopts the recommendation around the annual "State of the Nation" document to Parliament, articulate this intentional policy on access to justice and framework in a similar way. This would signal to all stakeholders that it intends to take its statutory obligations on access to justice to a new level.

Recommendation vii: Within its statutory remit, the LSB should take a leadership role in ensuring that regulatory policy is informed by the research/evidence-base. This activity can inform other legislative and policy entities where there is a case for improvement in policy on access to justice for relevant sectors (e.g., other industry regulators) and with government, the legal sector and Parliament.

Conclusion

6.22 Interview participants indicated that they would welcome the LSB taking a greater leadership role. Its convening power could be deployed to bring stakeholders together to obtain and share consumer data and address advice deserts. It can thereby communicate its role, strategy, and policy more clearly to government and to stakeholders. The question of collaboration is discussed further in section 9.

7. ADDRESSING SYSTEMIC CAUSES OF INJUSTICE

7.1 An aspect of the regulatory policy-setting role explored above is that not simply of identifying challenges and removing regulatory barriers, but of driving impact by seeking to solve problems in a creative way. A significant aspect of this is in attention to systemic causes that prevent individuals and communities accessing support. Such attention, in some cases, can prevent legal problems arising in the first place.

7.2 There are examples from other jurisdictions that are of relevance to the LSB to explore in taking up a problem-solving posture and encouraging others to do so. These include models of service delivery such as integrated practices (see definitions section) because they deliver holistic services in one place with multiple clients. A specific example is that of health justice partnerships, an idea led, promoted and fostered by the LS & CV for example. This helped overcome some of the barriers of multiple providers in numerous locations which risk retraumatising clients (see section 5).

7.3 Such models can identify trends from their case work because the services are less siloed and fragmented. Law centres are an example of agencies which undertake this sort of work. As a result, issues that emerge repeatedly are identified, and work can be undertaken to address their cause. This can include cross-sectoral and regulatory effort to improve, educate, and train staff or refine the policies, procedures, regulations, law or administrative issue that sit behind the problem.

7.4 Reflective practice[344] enables improvement in practice that follows from reflection before, during and after action. It is an ongoing process is a cycle that informs and guides constant improvements in practices to assist clients. These processes are intentional in making changes necessary to improve and innovate. Such analysis looks at what it is working; how it does, why and when it does, and what might need to be revisited or redesigned. It can be far reaching, if problems are solved pre-emptively so that legal help is never needed. Leering's work in Canada on the power of such reflection is helpful here.[345] By doing this, the LSB can promote such innovation and position itself as a thought leader.

7.5 Australia has a long tradition of strategic problem-solving in a context of scarce resources. In the past decade the LSB & CV has funded or undertaken research around such initiatives. This approach recognises that creative solutions are necessary where there is limited access to legal advice and support and problems arise through systemic causes beyond the individual. Such issues are not unique to Australia but are prevalent in the UK.[346] Solving people's problems through strategic, integrated, and collaborative work – as the examples in this report demonstrate – can also make a real difference (see section 5). This can be seen in an example of strategic problem-solving in Australia that has a preventative and activist, rather than remedial, approach.

7.6 Examples of grants made in 2023 by the LSB & CV include a project to assist disadvantaged communities in south-east Melbourne "proactively address the emerging legal impacts of climate change, with a focus on identifying, preventing, and mitigating the causes" of problems such as laws which have unintended consequences, or which are administered inappropriately (see section 11 on the need to do forward planning for emergency relief).[347] Another example of gathering information on a systemic issue is where renters are representing themselves without any legal assistance (also sometimes a problem in England and Wales) and how that affects their experiences and outcomes. A funded LSB & CV project:

> aims to increase the number of renters asserting their rights at the [civil cases] tribunal, with a particular focus on helping the legal sector better understand the experiences of renters who represent themselves. [It] will involve collecting data and making recommendations to improve support. It will also involve an internship programme to empower graduate law students to play a more active role and foster their interest in social justice. [348]

7.7 A further illustration of gathering information to address a systemic issue is a project on:

> child protection (CP) interventions from the perspective of Muslim mothers and adults, including those who experienced CP interventions as children. [This new project] will pilot an integrated response to identify and address barriers and challenges, providing legal and casework support for Muslim women to reduce the risk of CP cases progressing to court.[349]

7.8 Another example of strategic access to justice initiatives includes ‘bulk debt negotiation’ (gathering 100 case profiles per industry group). Here, instead of going to court (which was costly, time-consuming, and involved delay), cases of clients exposed to poor debt practice were collated and taken directly to the executives of the relevant industry body. After consideration, the debts were found to be unlawful, never owed or hardship had been ignored. This ‘bulk’ negotiation saved consumers millions of dollars over many years. This is a good example of how a large group of people, who otherwise might not have been able to secure legal advice and support, were able to gain access to justice.[350]

7.9 In the ‘bulk’ negotiation strategy, volunteers gathered data from financial counsellors and community lawyers. Legal Centres and National Legal Aid then bargained with high level executives firstly in each of the major banks, then telecommunications companies and utilities. Here a critical mass of different legal services, non-legal community services, regulators and others worked together to achieve organisational change. This included changes in training of front-line staff, middle management, changes in policies and procedures and the development of new protocols for example, in domestic abuse situations. Such measures were critical in preventing harmful practices at lower level, in middle management, and creating strategies to improve practice from CEOs and at board level. The outcome was that different industry sectors repaid debtors or reduced or erased debts of consumers owed amounting to millions of dollars and changed their policies, procedures and improved the training of front-line staff. This illustrates the power of creative thinking and collaboration by different sectors.

7.10 A final example is the ‘Bring your Bills Days’ where community organisations bring together community members, regulators, and lawyers to consider whether people's bills are lawful, have been appropriately rendered, whether they are eligible for hardship consideration, properly compliant according to industry codes of conduct, required procedures and so on. Similar initiatives have addressed coercive control and family violence.[351] By challenging their bills (and being prompted to do so), the companies have changed their approaches, forms and debt collection practices and early information is provided. The ‘Bring your Bills Days’ like the “bulk debt negotiation” approach (discussed above) have successfully highlighted problems in how companies behave. This includes highlighting to regulators practices that may not align with conduct rules and ethical standards. This work is facilitated by combinations of the pro bono sector, industry regulators (such as financial and utility regulators). The community legal and non-legal sector, trusted intermediaries, community leader participation in these days and/or in PLE is critical in helping reach vulnerable groups and building legal capability. Key in this has been encouraging lawyers to use their knowledge to help identify and address systemic issues (for example breaches of the code of conduct or other regulations and procedures). Regulators are also invited to attend and intervene to support or assist the community members.[352]

7.11 These examples are not presented to suggest that public interest litigation does not have an important role in access to justice to address wrongdoing, improve accountability

and set precedent. However, other innovative ways of achieving systemic change such as those outlined above have demonstrably improved law, policy or their administration. They have also resulted in positive outcomes for individuals and improved access to justice outcomes, without the cost, delays and trauma of formal litigation routes.[353] Such collaborations through industries and community organisations and campaigning can be quick and intelligently executed. Key in all these examples mentioned has been the role and use of free legal advice as a quicker and less expensive way to deliver results than strategic litigation could achieve.[354]

7.12 Policy and campaign work to address systemic injustices can have a critical role in early intervention to prevent legal needs arising in the first place. It also has a role in ensuring that resources are used strategically, efficiently, and effectively for the benefit of consumers, even when litigation is required. For example:

> In this Robo Debt Public Interest Litigation the case it took a long time, but our impact has been considerable. There were so many individual cases, but we took them all on as a test case in strategic litigation not just to help individuals but to provide a civil service accountability. We also sought to have return of the money taken unlawfully. We took on federal agencies and they have been reformed. We have created by doing this strategic litigation accountability a cultural shift. The way that this worked was early identification of a range of people who did not know their legal rights and bringing them together and informing them. Then they were able to ask for help which we could provide in conjunction with other agencies that we have relations with such as financial counsellors and community legal centres, including specialist community legal centres that we also support through our funding model for example Consumer Action Law Centre and Social Security Rights Victoria. Because we have all these relationships and all of these individuals coming before us [we] can see the bigger picture that there was something wrong. There has been no other body that can really bring things together. We then went to the federal court who ruled it as unlawful.
>
> ***
>
> What about other areas of service provision? What do they do to help people in their day-to-day lives by making requirements to provide legal advice? We could do so much more work with banks, the telecommunications industry, energy companies etc. The LSB could work with them to get them to prompt people to seek legal advice early, e.g., notify them of ‘a cooling off’ period and that they can signpost. In consumer matters and other issues in their daily lives that are important, if they get legal advice and support and advice earlier, then they can get help with their legal issue. This will prompt them to know that some things are legal in nature and there may be a legal solution. “Phone this number” for example. There are examples of this approach in Australia e.g., “Do not Knock” (Bring your Bills days)[355] etc.

7.13 In the domestic context, the role of the regulator might be to facilitate such alternative methods of resolving system-wide problems amongst organisations and other instrumentalities through encouraging dialogue, problem identification of trends, research, innovative approaches to problem-solving and greater collaboration. This includes through the cross-sectoral work inside and beyond the legal services sector discussed elsewhere in this report.

7.14 The consideration of such strategic approaches to problem-solving is worthy of exploration in England and Wales through communities joining together and using legal strategies to address problems earlier and at scale. This includes restorative practice (discussed in section 4). This would allow people to work together, be involved and have a voice. In the recent Post Office scandal, a key aim of the Post Office was to isolate and stigmatise community members. This meant that the sub-postmasters often gave in as they were not aware others had the same experience.[356] Such strategic approaches tend to be community-led in partnership with legal experts, regulators, legal agencies, and non-legal

advice and support and can identify and sharing emerging trends in case work and system-wide failures. This did not occur for many of the sub-postmasters. There is significant power in examining such inclusive methods of accessing justice that might not involve the courts but involve the use and critiquing of law as a critical feature.

Conclusion

7.15 Regulators can facilitate dialogue and collaborations that seek to address the underlying causes of legal problems that might be addressed through strategic problem-solving. The variety of examples outlined above give a flavour of what might be possible. New thinking about avenues that address issues that are quick, cost effective and do not expose clients to the delays, cost, risk, and vagaries of adversarial processes have been facilitated in other jurisdictions. In such cases the regulators take a lead in supporting initiatives and 'outside the box' solutions. There is a role for regulators actively to participate and encourage collaboration across different sectors in a solution-focussed dialogue that examines world best practice and uses the evidence-base to shape improvements in access to justice.

7.16 Further exploratory work would be worthwhile. The LSB could commission such investigation to work out how to free it from regulatory barriers – if there are any – to innovations in service delivery.

7.17 Such investigation, in the level of detail required, is beyond the scope and timescale of the current project However, some initial questions arise:

- Does regulation act as a deterrent to the provision of legal secondary consultations to 'trusted intermediaries'?
- Could regulation enhance practitioners' preparedness to undertake multidisciplinary work (such as health justice partnerships) to enable innovations in interdisciplinary practice to address unmet legal need?[357] This is important to explore, given the literature indicates legal secondary consultations have scope to reach people who would otherwise not gain legal help.[358]
- How might the LSB encourage the professions to think about their role in countering systemic injustice (as those who understand it from a legal point of view) and what they can do about it. This might engage codes of conduct and incentives to carry out pro bono work (see section 4).
- Are there levers that regulators might use for this amongst their regulated communities?

7.18 Regulators can look at removing regulatory barriers to allow for such innovative and evidence-based options. To examine this is beyond the scope of this small study. It will require a mapping of innovations, scoping of inhibitors and input from stakeholders on any proposed adjustments and checking that these might not have any unforeseen downstream implications.

7.19 The LSB can facilitate dialogue and collaboration where new innovative strategic problem-solving can occur which addresses the underlying causes of legal problems, or which can intervene earlier to resolve them. Examples such as 'Bring your Bills Days', 'bulk debt negotiation,' and restorative practices (see definitions section) give a flavour of what might be possible. New thinking about avenues that address issues that are quick, cost effective and do not expose clients to the delays, cost, risk, trauma and vagaries of adversarial processes have been facilitated in other jurisdictions. In such cases the regulators take a lead in supporting initiatives and 'outside the box' solutions. There is a role for regulators actively to participate in – and encourage – collaboration across different sectors in a solution-focussed dialogue that examines world best practice and uses the evidence-base to shape improvements in access to justice (see section 9).

Recommendation viii: The front-line regulators, with strategic direction and guidance from the LSB, should explore whether and where there are regulatory barriers to integrated service delivery and cross-sectoral responses both inside and outside the legal services sector, identify them and suggest changes that allow for such innovative and evidence-based options. Such further exploratory investigation, led by the LSB co-ordinating effort across all the regulated professions, would be worthwhile to implement coherent and sector-wide changes and innovations in service delivery. This includes measures that can promote preventative policy and campaign work (e.g., bulk negotiation).

8. BUILDING CAPABILITY, RESPONSIVENESS AND LEGAL EMPOWERMENT BY HARNESSING PUBLIC LEGAL EDUCATION AND IMPROVING ONGOING PROFESSIONAL DEVELOPMENT

8.1 The question of education and professional development in the field involves two core dimensions. The first is that of public legal education (PLE). Some aspects of this have been discussed in section 4 in the context of paralegals and legal secondary consultations. The second is the education of legal professionals specially signalled in LSA, s4.

Harnessing public legal education

8.2 PLE overlaps and intersects with another objective: "increasing public understanding of the citizen's legal rights and duties". PLE models overseas have often emerged out of need created through a lack of legal advice and support, advice deserts and minimal resourcing of legal aid by governments. Organisations have used PLE to enable and empower community members and their 'trusted intermediary' supports to access legal rights. Non- government organisations in Africa, South America, the United States, Canada, and Australia have led initiatives that focus on building public legal capability and legal empowerment. Mapping those that currently exist in the UK and exploring and sharing good practice in this area might be worthwhile for further research to build on what is currently being done and to share it to inform other legal and other community services. For example, one interviewee said:

> We work with and identify the most excluded and disadvantaged for legal needs, using literature on this. Our focus is on expectations and what they can't access and trying to provide support and help building capability. We build capability of community but also have trusted intermediaries because often we can't access the individuals who are in need. These trusted intermediaries however are other likely places where people will turn to for help. This includes statutory workers, front-line services, community and social groups.

8.3 In England and Wales PLE is also undertaken by community groups, charities, and clinical students, and through online resources such as *Legal Choices*,[359] Law for Life and in projects sponsored by regulators.[360]

8.4 There are innovative PLE practices which could be shared more widely to develop tailored responses to diverse and complex need. To be effective, PLE must, however, heed the literature on advice-seeking behaviours, adult learning behaviours, power inequality and problems generated through the lack of trust and significant issues with legal capability of members of the public[361] and the interconnected, cascading and multifaceted nature of legal and non-legal issues.[362] This is frequently stressed in the literature and eloquently summarised by Balmer et al in 2024:

> Different types of capability deficit give rise to different legal policy and practice challenges. For example, negative attitudes to law, legal services or

> processes are a challenge to their reach. Even extensive physical outreach programs may struggle to engage with those who describe law as 'the last place I would turn for help' (one of the components of the 'resist' narrative of law), in the absence of extensive community engagement and trust building efforts. Once engaged, those who are both skilled and confident may need little more than information and direction. Conversely, people with poor legal skills and/or low legal confidence challenge services and institutions to provide appropriate and effective levels of support. People-centred justice means recognising differences and responding accordingly, in form and intensity of service, in how decisions are made and communicated, and the extent to which complementary services are to be drawn on and coordinated. A policy of legal empowerment cannot only be a policy of empowering people to do it themselves. That is too great an ambition. Rather, it must amount to a policy of empowering through provision of appropriate levels of support to ensure fairness. One size does not fit all, and considering capability is key to a better, more tailored fit. The need to tailor to capability is not the responsibility solely of publicly funded legal services. The challenge extends to private practice and how it engages the public, frames, and designs services, and communicates with clients, as well as to the broader 'non-legal' advice services that were shown to make such a critical contribution.[363]

8.5 Ways of working with communities and responding are not new. There is guidance in how to do this both in terms of longer-term strategies that are community based and those that occur at point of need.[364]

8.6 Clinical Legal Education[365] (CLE) in universities operates as a motivator to work in social justice law and is a learning experience that allows students to broaden their career awareness beyond the private firm to legal advice and support for the disadvantaged, some of which is PLE. This motivation can be tracked into students' working lives[366] although this is not necessarily a given[367] especially with disincentives such as tuition fees or student loans (potentially) to be repaid and cost of living pressures on students.

8.7 In the UK the first CLE clinic was established in 1970, informed by established CLE in Australia, Chile, India, South Africa, the United States, and Zimbabwe. All jurisdictions have seen it as an important measure for exposing students to social justice and offering legal advice and support.[368] Some clinics provide legal advice under supervision, others conduct activities such as Street Law projects in which students provide PLE to communities.[369] The Clinical Legal Education Organisation (CLEO) provides legal clinicians in the UK with advice, support, guidance, and expertise and is a not-for-profit charitable agency seeking to address unmet legal need and improve access to justice.

8.8 CLE in the UK has increased significantly in the past decade. More recently it has expanded to include 'policy law clinics' that focus on doing systemic work, often for charities.[370] There are also clinics doing work for small- and medium-sized business enterprises or (often innovative) startups or sole traders with few resources. In 2017 there were 118 law school clinics registered with the LawWorks network. The charitable status of public universities enables them to be considered "special bodies" for the purposes of the LSA (ss 23, 106), although this is, technically, a temporary concession.[371] A further development is the teaching law firm, fully regulated by the SRA and funded by a university[372] and providing critical access to justice.[373] The SRA has clarified the regulatory position of lawyers working, or volunteering, in this sector, which helps to allay misconceptions of regulatory barriers.[374] This has meant that many clinical programmes can continue to provide legal advice and support students under supervision.

8.9 CLE provision is, therefore, significant but, as Sylvester once described it, risks being a "plug for shortfall caused by the reducing legal aid sector".[375] The authors invite the regulators to consider how PLE, through CLE and other initiatives, can be enhanced and any remaining regulatory barriers to their establishment and operation addressed.

Recommendation ix: The front-line regulators, led by the LSB and working with others in the sector, should support PLE across the sector so that it is appropriately tailored to different groups. It should be informed by best practice and in ways that extend reach to groups currently experiencing exclusion.

Promoting ongoing professional development

8.10 Ongoing professional development of those engaging in legal service delivery is critical in ensuring lawyers deliver services that are client-centred and appropriately tailored to each client. This ensures advice is competent, understood, and drives the quality of service provision in a changing world. CLE in universities is discussed earlier in this section and the education of paralegals and ethics training in section 4. This theme, however, relates more generally to both the pre- and post-qualification education and training of regulated lawyers.

8.11 The LSB has a remit to oversee education and training under LSA, s4 and approves changes to training regulations as they are submitted to it by the front-line regulators. The LSB also has an interest in CPD (or "ongoing" or "continuing" competence) after qualification.[376] The 2022 LSB statement of policy on ongoing competence expected the regulators to have met the four outcomes set in the policy by January 2024.[377]

Equipping lawyers with relevant knowledge and skills

8.12 Not all new lawyers have completed a three-year LLB in which access to justice topics are sometimes covered as optional modules or through CLE. Neither the LSB nor the front-line regulators require providers to offer access to justice options in their pre-qualification courses. To the extent that syllabi for vocational courses teach to a competence statement or test that also excludes access to justice topics, this is perhaps inevitable. This was questioned by a participant:

> Why isn't the SQE also requiring training and skills in working with the most vulnerable? There's a focus on getting more people to study social security law yes this is true but people who have social security needs are the vulnerable, people with disabilities, people who are poor, people from trauma backgrounds, this is not enough. Lawyers need to understand that to be good at their job and to provide quality service they have to understand this.[378]

The SRA is aware of the implications of omission of such subjects from the SQE and does not currently propose any change.[379]

8.13 Clearly there is a need for specialist development required for those lawyers specialising in the wide range of access of justice areas of law such as welfare benefits, immigration, employment, and housing. A more challenging issue is the extent of the education and experience that should be required of every trainee lawyer, including those who will never work in this field. Nevertheless, a regulated benchmark of relevant knowledge and skills would facilitate transfer into the field, referral, clinic or pro bono work, and improve the professions' overall ability to support more vulnerable clients. It would also signal the importance of the topic to ethical duties and the rule of law (see section 4). Its scope and extent would be different for each of the different professions. Its emphasis might be different in pre-qualification syllabi, pre-qualification work experience requirements and in mandatory CPD. Such a minimum should not, however dilute, or divert resources from, the training of those who need depth in the sector. There is a further project to be done on feasibility and implementation once the question of principle is determined.

Pre-qualification work experience

8.14 All regulated legal professions in England and Wales require a period of work experience (normally paid) prior to qualification or, in the case of the Bar and the notarial profession, autonomous practice.[380] Regulations do not mandate that this period (or any part of it) should be served in an access to justice context, though this is often possible and is, sometimes, specifically funded.[381]

8.15 As with pro bono, work in the access to justice sector is a valuable learning experience.[382] Nevertheless, opportunities for such experience (and later employment) may be limited.[383] Impediments include lack of resources, staff supervision and funding.[384] There is also pressure on supervisors in front-line work that inhibits opportunities for them to train junior colleagues.[385] By way of contrast, however, in some jurisdictions in South America, the approach is the reverse: work experience *must* take place in a social justice/legal aid service.[386] That may not be feasible in England and Wales, nor for all legal professions, Nevertheless, a wider variety of secondment opportunities for all trainee lawyers, together with increased support for those committed to working in the field, could be explored.

CPD and specialist qualifications

8.16 CPD can both support those working in the field and facilitate those who wish to move into it. A stronger link between the role of ethics (see section 4), vulnerability, trauma informed practice and access to justice service delivery could be explored in CPD. This was suggested by the front-line service agency participants as a critical need to ensure quality service to the most vulnerable.

8.17 Specialist qualifications and ‘badges’ promote recognition and may assist in attracting staff and external support as indicating a threshold level of existing expertise. One domestic interviewee suggested:

> So, going back to your point on pro bono, for example, is there something that could be done around that that could be endorsements of some sort [for pro bono activity]? Because that sort of pushes the right buttons in terms of kite marks, endorsements, things that add credibility, badges and awards. All of that stuff is quite effective in legal services, because it's how firms think that they can differentiate between each other.

8.18 The Law Society (E&W) offers accreditations in some relevant areas (e.g., immigration, children law, family law, mental capacity).[387] There is also lifetime lawyer accreditation (“the gold standard when it comes to supporting vulnerable and older people with legal advice”) available from the Association of Lifetime Lawyers (formerly Solicitors for the Elderly).[388] CILEX offers a specialist pathway in family law.[389] There has been some proactive work undertaken by Law for Life UK through its Advice Now and Self Represented Litigants schemes and in reduced cost family lawyering, which are worthy of further exploration. These programmes have been positively evaluated.[390]

8.19 Finding suitable and cost-effective training for those already in the field is a ‘pain point’ in England and Wales. It is likely to prevent a proportion of lawyers continuing to offer services in the sector[391] though there are competing priorities.[392] Provision may be patchy.[393] There is scope for consolidation of training resources with some economies of scale which has the potential to reach into advice deserts. An example is the potential regional training hub in Bristol and South Wales identified by Wilding.[394]

8.20 Training in running a practice and in managing LAA contracts is also available.[395] The latter activity, from the Civil Legal Aid survey and other sources, is, as indicated in section 3, a considerable pressure on lawyers working in this sector.

8.21 Organisations such as the Legal Aid Practitioners Group (LAPG) and Young Legal Aid Lawyers (YLAL) also provide a supportive community of practice. There is nothing in the CPD frameworks of the regulated professions that prevents individual lawyers undertaking training in the knowledge and skills required for access to justice work. Neither, however, is

there anything that explicitly encourages or mandates it. Other jurisdictions do, however, use CPD credit as an incentive.[396]

8.22 The cost and means of delivery of such CPD, if it cannot be subsidised (as for example, with the Criminal Bar Association bursary), constitute a barrier, especially to those already working in the sector. Post-pandemic online training may, however, have ameliorated some of this pressure.[397]

8.23 The design of the majority of CPD available in the market tends towards updates on law and regulatory requirements. Skills training is more intensive, and therefore more expensive to deliver. Further, attention must be paid to support for experiences such as vicarious trauma.[398] This could be shifted. There are exemplars in Australian CPD that are offered by the LSB & CV and Victoria Legal Aid to the public, government, and private practitioners. Creative, low cost, accessible and responsive (collaborative) approaches may also be more successful. See, for example the approach taken by the Open University to the training of OISC advisors.[399]

Enabling lawyers to work in the field after qualification

8.24 Even if suitable pre-qualification work experience can be secured, a lawyer must obtain and retain a job in the field. In the USA, where early sole practice is possible, universities and regulators offer mentoring programmes, incubators and launchpads to support young lawyers.[400] One in Texas, designed for the access to justice sector, offers a year-long online programme including "group training, personal coaching, and access to resources to grow their businesses".[401] Whilst the qualification structure is different, regulatory support to help establish and grow a business is feasible. CRL's "law firm in a box" is of this kind.[402]

8.25 Support for a variety of distributed, online (virtual law firm) options might facilitate delivery of services outside the main urban centres and more effectively face to face within communities.[403] Caution is needed for service provision directly to consumers in digital form as the research shows such options are not useful unless 'trusted intermediaries' with technical knowledge are here to offer support (see section 4). These can be found in innovative offerings in places such as libraries (as occurs at Ealing Law Centre[404]).

8.26 Another approach is seen in the City of London Law Society Social Welfare Solicitors Qualification Fund[405] which reached £1m in donations, sufficient to support 98 candidates, in its first four years of operation.[406] Working with BARBRI, LPAG, YLAL and the Law Centres, it targets those *already* working in the social justice context to help them qualify as solicitors by completing the SQE. The LSB could play a role as convening power to extend such initiatives.

Rural areas and advice deserts

8.27 As the Law Society has shown, as reported by Wilding, and as noted in section 6, advice deserts are now universal in England and Wales in categories of work that attract even residual legal aid funding.[407] Pro bono work and student clinics also more likely to be in urban centres, though they may have some capacity for outreach. The Open University, for example, has successfully supported a clinic in Cornwall, with recourse to specialist support from a centre in London.[408]

8.28 Education itself cannot solve the problem of advice deserts. The issue is both in encouraging lawyers to work in those areas and enabling them to do so. Where this involves funding, the ability of the regulators to spend practising certificate fees on both education and on "the provision by relevant authorised persons, and those wishing to become relevant authorised persons, of reserved legal services, immigration advice or immigration services to the public free of charge" (LSA, s 51) may be useful.

8.29 Initiatives in Canada and Australia have included placements, incubators, specialist careers advisors, social activities, and mentoring.[409] Similarly, fellowships, summer programmes and the like have been used in the USA.[410]

8.30 North American inducements to go, and to stay, are, however, also financial. In Illinois, the Bar Association pays a stipend.[411] In South Dakota, an incentive worth 90% of a year's university fees is offered to those who agree to work for five years in a rural county.[412] As elsewhere, numbers are small, but 12 of the 15 South Dakota award recipients were reported in 2023 to have remained practising in their communities after the end of the scheme. Some of the funding options discussed in section 10 might also fund such incentives.

8.31 In Canada, sharing of trainees between rural providers has been suggested "making it easier to absorb the costs of hiring a student".[413] Different approaches to the distribution of trainees, as, for example, that of Accutrainee[414] or FlexLegal[415] should be considered. Secondment,[416] and the loosening of the SRA's QWE requirements is capable of ameliorating this. Nevertheless, the extent to which regulation inhibits – or appears to inhibit – flexible means of satisfying work experience requirements (e.g., where supervision must be by a member of a specific profession) should be explored. The sandbox suggested in section 4 could be a vehicle for doing so.[417]

Recommendation x: The front-line regulators, led by the LSB, should investigate how regulatory frameworks can be used to encourage and facilitate lawyers to work in the access to justice field, using the sandbox approach to identify and resolve regulatory barriers.

Retention

8.32 There is an endemic and substantial problem of retention in the legal aid sector in England and Wales[418] with significant challenges in Wales,[419] both for individuals and the firms in which they might train.[420] Kinghan found that the three most common reasons for leaving were to obtain better pay and conditions, career progression and pursuit of "an easier / less stressful position".[421] The Legal Aid Census in 2021 produced similar results[422] and in criminal work Thornton found retention to be informed by interconnected challenges related to frustrations with working life, finance, systemic issues and morale.[423] Hynes notes the significant impact of vicarious trauma in immigration work.[424] Stress and finance issues cause more experienced lawyers, who are also dealing with management, administration[425] and bureaucracy, to leave the sector.[426] Impact on work-life balance has been shown to be a factor in decisions to leave the practice of law altogether[427] and may be more acute in this sector.[428] In Australia, CPD offerings can include management of vicarious trauma and wellbeing and, while this is sometimes available in the UK,[429] its reinforcement has been called for.[430]

8.33 The focus of the various schemes and subsidies is on qualifying new lawyers. The requirements of supervision of workplace training takes experienced lawyers away from direct service activities, which may in turn cause them to opt out of training new lawyers.[431] Even where funding is available, training is frustrated without supervisory capacity.[432] As Wilding points out, the lack of capacity means there is also no capacity to reach into advice deserts remotely.[433]

8.34 In Australia the LSB & CV was also involved in encouraging an initiative entitled the "adaptive leadership training programme"[434] for CLCAs. This programme trained junior staff for leadership roles in the sector. It provided experienced mentors[435] and explored the development of junior lawyers in leadership. It led to retention and reinvigoration of the sector. Many of these junior practitioners are still working in CLCAs despite significant

resource constraints and low pay. Many are now in leadership positions. This sort of project offers an alternative pathway than into more lucrative private practice.

8.35 Kinghan suggests that mechanisms to help in retention include: intergenerational mentorship opportunities; a mid-career community of practice; extended funding terms applicable to recruitment of positions;[436] and supporting the development of legal education and research in areas with low levels of recruitment.[437] The latter could form part of the investigation, evaluation and sharing of good practice that is recommended in section 5.

8.36 Affinity groups such as LPAG, YLAL and the Criminal Bar Association work to promote and support education and training in the sector. The work of the City of London Law Society and the Legal Education Foundation is valuable, but a drop in the ocean. Care should however be taken to provide support not just to those entering the sector, but to those wishing to remain in it. Universities, especially those with strong CLE offerings, can do much in the way of motivation, and in many cases will start to equip undergraduates with relevant knowledge, skills, and attitudes. The regulators have a role in this, not only in regulation of CPD but also in their ability to disseminate amongst and energise their own communities. The SRA has, for example, carried out considerable work in Justicetech, bringing together lawyers and IT professionals:

> we see that that's something that we really can do to try and support innovation and law tech that can help consumers and we've put a particular focus on some access to justice in our strategy. … We speak to a lot of law techs and others too. And we do see examples of consumer facing innovation and law tech that come through that and have some positive effects I think.

8.37 Similar resource could be invested in funding and sharing of resources for access to justice in mutual support, collaborative CPD and supervision as well as facilitation – of the mentoring and communities of practice recommended by Kinghan.

Recommendation xi: The front-line regulators should examine the potential to use regulatory levers to provide CPD in access to justice work facilitating collaborative approaches and mentorship. This should also incorporate a stronger link between the role of ethics, vulnerability, trauma informed practice and access to justice service delivery.

Conclusion

8.38 In England and Wales PLE is undertaken by community groups, charities, and clinical students, through online resources such as *Legal Choices*,[438] by Law for Life and in projects sponsored by regulators.[439] There is a range of innovative PLE practices which could be shared more widely to develop tailored responses to diverse and complex need. To be effective, PLE must, however, heed the literature on advice-seeking behaviours, adult learning behaviours, power inequality and problems generated through the lack of trust and significant issues with legal capability of members of the public and the interconnected, cascading and multifaceted nature of legal and non-legal issues.[440] The LSB and front-line regulators can take further steps to develop their roles in PLE, drawing on examples from other jurisdictions, empowering and enhancing the legal capability of members of the public.

8.39 Ongoing professional development of those engaging in legal service delivery is critical in driving client awareness so that services are appropriately tailored to client contexts and circumstances. This ensures advice is competent, understood, and drives the quality of service provision in a changing world.

8.40 There are several initiatives in pre-qualification and CPD from other jurisdictions that could promote access to justice by equipping and enabling work in the sector and facilitating retention.

9. ENCOURAGING COLLABORATION INCLUDING PROMOTING GREATER CROSS-SECTORAL ENGAGEMENT

9.1 The need for collaboration across sectors was a recuring theme in the interviews. As one front-line advice agency participant noted:

> Relationships take work and personal investment and leadership.

9.2 The legal services landscape in England and Wales is both highly deregulated and highly fragmented. The LSB exists to oversee the regulation of eight separate front-line regulators, some of which cover more than one profession (e.g., IPReg) and some may combine mandatory regulation of lawyers with voluntary regulation of paralegals (e.g., CRL and CILEX). ICAEW practitioners are regulated through the LSB in relation to their probate work, but not in relation to their accountancy work (similar dual regulation may affect some in-house lawyers, such as those in the civil service). Intellectual property lawyers may be registered as both trade mark and patent attorneys (as separate professions but both regulated by IPReg).

9.3 In the context of access to justice this is especially problematic, making it difficult to access legal advice and support and expertise at the time and in the places where it is required. This often includes legal expertise offered in non-legal service settings such as health services, women's refuges, youth and counselling services etc. For example, development of the ‘one stop shops’ and in integrated service models referred to earlier. These are places where holistic problem-solving occurs and can be inhibited if, for example, those organisations do not contain, or have access to, lawyers with the rights to conduct litigation or advocate in court (as reserved activities) or to provide tailored advice. Clients and trusted intermediaries must go to different legal agencies for support – or initial agencies are obliged to create referral systems – with an array of problems that are intersecting and interrelated. This includes services suggested as available online as points of referral, no longer available due to their withdrawal or because of a retreat from legal aid. This out-of-date information creates more challenges for advice services especially where a response time is critical This was a point noted by front-line service agencies participating in this research and in studies on the service landscape.[441]

9.4 There are also issues where the reserved activities under the LSA and the distribution of LAA contracts inhibit speedy and holistic responses. Clients must seek help with different legal problems from different and often multiple legal providers, rather than just in the one place. This involves cost of travel and available transport. The literature is clear this fracturing of the different professional responsibilities (for example where health and counselling professionals work alongside legal professionals) often leads to referral roundabouts and can be overwhelming with people giving up on legal advice and support hindering justice and their legal capability.[442] Whilst the legal services sector is trying to meet the challenges it presents (including through integrated practice and informal networks of referral partners), lack of funding, ethical considerations (such as confidentiality and conflicts of interest),[443] staff and rising need require a strategic vision and leadership from above. Key for concerted action is a role for collaboration to bring together and drive a passion for improved access to justice amongst an array of sectors including government. The regulators can play a more focussed role in commissioning research and showcasing the evidence of what works and what does not work. This is because regulators can bring stakeholders together to encourage cross-sectoral dialogue that addresses siloed thinking. Such dialogues ought to focus on how to improve problems rather than what the problems are. This is because there is already significant literature on what the problems are and

more need to find evidence-based solutions which already have been rigorously evaluated as having an impact. This work can inform funding generation and allocation.

9.5 Such further research might include: identifying and removing identified regulatory barriers to innovative service models (see discussion below); how to design and reinforce people-centred and holistic approaches and identifying areas or pockets of best practice that could be replicated, subject to local factors. The established evidence in worldwide literature of the interconnected nature of legal problems with other issues and low levels of legal capability, especially in groups experiencing inequality already provides a good evidence-base for how to address problems, what needs to change and what is needed

9.6 Currently, each front-line regulator develops its own policy, and, when change is desired, seeks LSB approval on a case-by-case basis. The LSB has itself called for better collaboration.[444] While the LSB has in the past said that there should be a single regulator there is no prospect in the foreseeable future of the Lord Chancellor spending the time, effort and political capital to make it happen. Nevertheless, it is suggested that the idea should not be discounted as a longer-term prospect.[445]

9.7 Domestic front-line regulators and professional bodies interviewed for this report gave examples of their collaboration (or desire to collaborate) with other regulators (and bodies outside the LSA), and the significance of doing so. For example:

> You need to have the round table discussion where you talk about all of the consequences of what you are doing.
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> ***
>
> [T]o get stronger together … in terms of the power of combined resources and combined efforts and expertise, I think is the biggest lever we have. And recognizing that the alternative would be duplication of effort that none of us can afford to do and without with less than results ultimately.
>
> ***
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> We have cross-regulator research and risk forums where we get together with other regulators to share knowledge. … And we have done research with other regulators in the past as well. So I think we do try and join up as much as possible, and certainly share learning and allow input. I think it's valid.

9.8 The LSB has itself called for better collaboration as an interim measure pending legislative change to a single regulator.[446] Participants also noted a role for greater collaboration between the domestic front-line regulators, suggesting an appetite to work together under the proactive leadership of the LSB. The latter might involve working on a manageable set of focused priorities or redesigning from first principles:

> [A]ctually we need a Chatham House, no fear, … environment where … you can …. say, a blank sheet of paper, what would proper legal services delivery for the next half of the century [look like]? (UK front-line regulator)

9.9 Further, collaboration might resolve issues such as awareness of costs and pricing, Further, collaboration might resolve issues such as awareness of costs and pricing, which require a common, sector-wide approach, although one regulator (CLSB) has special expertise:

> Boosting the number of qualified, regulated Costs Lawyers may help to fill gaps in legal aid provision through, for example, increased participation in legal aid work or helping to boost consumer awareness of legal costs.

9.10 A specific step that regulators could take would be to hold a joint, open, solutions-focussed discussion with key parties aimed at identifying – and operationalising – action that would make a tangible difference to costs predictability and planning. Change in this area will need a holistic, sector-wide approach; improving costs predictability and planning

is not an issue that can be solved by individual regulators working alone and will need the cooperation of government departments and other organisations.

9.11 When a range of different organisations – including the regulator – work in collaboration this can create a groundswell for strategic and practical initiatives with a focus on improving access to justice. The examples in this report highlight how agencies working together in conjunction with the oversight regulator, other regulators and relevant stakeholders and partners in collaboration work to drive change and create a framework for inroads to be made in access to justice. It is the combined effort that can achieve this.

9.12 Such collaborative examples from abroad include Health Justice Australia[447] and National Legal Aid (NLS) in Australia. NLS is a body that represents the directors of the eight state and territory LACs in Australia. They describe themselves as "thought leaders in the legal assistance sector proactively influencing policy".[448] This body was formed largely to provide a combined voice of LAC directors across Australia linked in with other legal assistance sector agencies and informed by service experiences with clients from the legal assistance sector. It can lobby for improvements in funding, policy and to drive system-wide improvements to address inequality that is experienced by recipients of LAC services.[449]

9.13 Tangible examples of formal collaborative agreements designed to facilitate such activity were canvassed in the discussions with the participants from the LSB & CV,[450] NLS and Victoria Legal Aid.[451]

Recommendation xii: The LSB, in collaboration with the front-line regulators and others (such as the LAA) should enhance collaborative agreements across the sector to bring stakeholders together and stimulate a passion for improved access to justice which averts siloed thinking. This will require clear objectives and monitoring and evaluation of progress (there is an overseas exemplar of this in Victoria).

Promoting cross-sectoral obligations

9.14 In addition, there is a role for collaboration with entities outside the legal services sector. Some of the domestic front-line regulators and professional bodies were already doing so or had ideas that might involve doing so. Examples included community leaders, healthcare providers, front-line service agencies, HMCTS and MOJ. Participants also had suggestions:

> There's a role for the regulator to talk to the financial regulators to iron out issues certainly there's a role for the regulator in learning from other endeavours to improve access to justice in other spheres.
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> ***
>
> [W]here regulation can do more and we perhaps should be focusing on is collaboration and partnership with other touch points that can reach consumers … working in partnership with whether it's local libraries or again Citizens Advice or other centres where people can go and be supported in digital access.
>
> ***
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> I think it happens in some contexts already. So for example, [in the] anti-money laundering supervisory regime, there's professional body supervisors across accountancy, and the legal sector and the gambling sector and financial services in terms of banking and there is cooperation between all those groups. It's in a particularly narrow context in terms of compliance with regulatory requirements, looking at what the Treasury are doing in terms of changing the law in that area. But there's a forum that gets together … maybe twice a year, but all of those participants and the government

> representatives all come together in a room and they talk about what's happening. And they talk about emerging threats and they talk about guidance. And so there is a model for it in those kind of parameters.
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> ***
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> I think if it comes to financial institutions, it's very slow going because UK Finance, the representative body, really is just a convener for them and it doesn't drive things forward. So you've really got to speak to the FCA or the PRA and if you want those sorts of buttons to be pressed in the financial sector and the banks themselves … If we could go to government with a package which is "We're incubating not just new IT but actually just new processes here that don't need to be IT-enabled but will help unmet legal need. We're rethinking how legal services are delivered". We can say that the sector is doing its bit, it's reaching out, it's doing its public legal education, but … government need to come in with £20 million to make sure that Citizens Advice can do this more effectively.

9.15 As noted in section 2, it was not possible to interview representatives in the financial services (except for a participant on the board of the Australian regulator) and insurance sector during the data collection stage. However, a desk review of the research questions prompted some tentative recommendations for potential collaboration with the financial services sector, and adoption of legislative interventions over the last decade.

9.16 This cross-sectoral review has identified some initial areas for tentative exploration. Firstly, the potential impact of the integration of consumer need as a key statutory duty in the legislative framework culminating in the launch of the FCA's "Consumer Duty" requirements in July 2023 (see section 9). Secondly, it revealed the utility of an 'Access to Justice Sandbox' especially in areas which address financial vulnerability and debt advice, combining legal and financial expertise without unnecessary regulatory impediment (see section 4). Finally, a reconfiguration of the perceived hurdle of appropriate professional indemnity cover to ensure that it does not operate as a perceived chilling agent to involvement in the provision of access to justice interventions, whether pro bono or at reasonable consumer cost. In this context, the SRA's freelance solicitor[452] model could be explored as a possible base for innovative collaborative clusters of professionals, subject to suitable insurance and financial viability projections. Suggestions from overseas participants included:

> Use the Legal Services Board's role as a regulator to broker other regulators such as insurance, finance, banks, telcos to get them to better provide legal information at important tipping points. This can have huge flow on effects for rights and referrals. People do not know what services they can turn to at different junctures or that their problems are legal. For example, in disaster legal help it's not easy to have to work your way through a lot of legal issues and it can be hard to think of a lawyer when you're suffering from a flooded home or a burnt-out property. You need assistance in responding. Lawyers are part of a bigger picture, and [clients] need to understand how to make their way to them. For example, in a disaster they may need help in identifying documents that they will need for insurance, or they may have lost their documents where a lawyer can help. The regulators have a key role in providing leadership and direction for the profession. Trusting the legal profession is key. And without this there is a risk to the profession. This risk is a loss of trust. Access to justice is about equality before the law and this is important but poorly understood. (overseas front-line regulator, Australia)
>
> ***
>
> Now, we do a lot of work with government services such as financial and consumer affairs. But thinking about the other regulators and the sort of information that they could put on their websites to give people an understanding of their legal rights and what to do and how to do it would

> really be a good form of earlier intervention. I can see this being relevant with banks, telecommunications, utilities and so on. It's an area I think that we need to really think about and it's all about the regulator having a role in leveraging these relationships and building an understanding that for everyone it is a good way of managing risk and ensuring people don't fall into harm's way. (overseas front-line regulator, Canada).

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> An example is in the finance industry in Australia where the financial regulator has requirements for complaint handling and standards that are required of its members to inform people of the ombudsman. There are complaints handling mechanisms clearly explained in plain English on all their materials and there is an expectation of their members to do so. There's also the provision of dispute resolution services. here are areas where there are opportunities for instance in housing and residential tenancies. (overseas front-line regulator, Australia)

9.17 In the context of England and Wales, the role of statutory services outside the LSA, such as the Housing Ombudsman Service, also fall for consideration as part of the web of complexity and potential collaboration.[453] Such ombudsman schemes, however, may also experience underfunding and delays (which may be connected with increased use and expanding mandates).[454] Improving collaboration might also assist such bodies in meeting their mandates.

9.18 The cross-sectoral theme that has emerged from the initial review points to a need for collaborative work and learning with the financial services industry.

Financial services regulation: the rise of consumer duty

9.19 The Financial Services and Markets Act 2000 (FSMA) sets out the UK regulatory environment for financial services. As amended, it creates an overarching framework for financial services legislation and regulation in the UK and provides delegated statutory authority for HM Treasury to enact secondary legislation and empowers the Prudential Regulatory Authority (PRA) and the Financial Conduct Authority (FCA) to enact rules and guidance for businesses providing financial services. The rules are complex but do provide a context in which the legislation points at a need for the consumer to have trust in the process and the advisor, and to know their rights. The need is especially acute given the financial scandals and pension mis-selling of the 1980s onwards.[455]

9.20 The scope of the regulation extends to issues of ownership, solvency, supervision, management, underwriting and operation of insurance businesses as revealed by the extensive *PRA* and *FCA Handbooks* (as revised from month to month). Responsibility for the management and enforcement of UK insurance regulation is divided between the two regulatory agencies.

9.21 The PRA supervises the financial solvency of UK domiciled financial services providers.

9.22 The FCA supervises both the financial solvency of UK domiciled insurance intermediaries and the conduct of business of the entities it regulates. The *FCA Handbook* is critical both to ensure compliance with FSMA and its associated regulations. In particular, the FCA imposes conditions setting out high level standards. These are set out in the FCA Handbook, referred to as PRIN, which mirror, in a financial context, some of the themes central to the LSA, such as integrity, skill and care and treating customers fairly. A new chapter and requirement, the consumer duty, was added as PRIN 12.

9.23 PRIN 12 identifies the need for a “high level of protection” for retail customers for “reasons including”:[456]

> (1) that they typically face a weak bargaining position in their relationships with firms;

> (2) that they are susceptible to cognitive and behavioural biases;
>
> (3) that they may lack experience or expertise in relation to products offered through retail market business; and
>
> (4) that there are frequently information asymmetries involved in retail market business.

9.24 It is worth noting the similarities of focus and context in both the legal and financial services markets as they point to a potential for collaboration that has yet to be realised. The "Consumer Duty" requirement, that "we will all benefit from increased competition and innovation, and we should see a reduced need for future regulatory and supervisory action"[457] could include collaborative work in relation to unmet legal need and financial vulnerability.

9.25 Access to justice in the financial services context focuses on the protection of the vulnerable customer and to prevent, as far as possible, foreseeable harm. The main initiative in this area in recent years has been the launch of the consumer duty in July 2023 as a central plank of the regulatory framework alongside the Vulnerable Consumer Guidance.[458] This is to ensure that the vulnerable customer has access to "outcomes that are as good as everyone else".[459] The consumer duty "cross cutting rules" support its practical application with a focus on good faith, prevention of foreseeable harm. Importantly it includes the support of customers to achieve their aims. This provides guidance on not just evidencing, but internalising, trust. The CLSB is, in its "Policy Statement on Good Consumer Outcomes"[460] already moving in this direction.

9.26 The centrality of the consumer duty is subject to the need to embed it within the financial service organisation and is subject to audit and enforcement mechanisms. The supporting guidance notes, issued by the FCA (s 139A FSMA), point to a sophisticated treatment of the causes and manifestation of vulnerability. These include financial exclusion, difficulty in accessing services (including low digital capability).[461] Even Fintech does not provide a whole solution, and it is consistent with views in section 5 that the FCA acknowledges that a pivot to digital is not a panacea for client need, especially for the vulnerable. However, the statement on consumer duty also points out a positive impact for the industry which could support its willingness to act and innovate with new products.

9.27 In recent years, the intervention of the FCA in the financial services sector has been aggressive around the consumer duty. This approach is central to its Business Plan to 2024 which aims to make.

> …the Consumer Duty, a core part of our work on the cost of living, financial inclusion, and access to cash. The Consumer Duty sets a higher standard of care that firms must provide to consumers in retail financial markets. With firms focusing on delivering good consumer outcomes, we will all benefit from increased competition and innovation, and we should see a reduced need for future regulatory and supervisory action.[462]

9.28 The research on financial inclusion is focused on addressing issues consumers face when accessing the products and services they need. A commitment to reflect the importance of appropriate treatment of consumers struggling with debt due to cost-of-living pressures could be something that the legal regulators can also explore with financial service providers. The advent of the consumer duty is just the latest in a line of legislative changes that have redressed the balance for the consumer in financial service provision.

9.29 A subtle example of the legislative shift towards protection of consumers, in relation to insurance, can be found in the architecture of the Consumer Insurance (Disclosure and Representations) Act 2012 (the 2012 Act) which moved the centre of gravity in the disclosure obligations of consumers on placement of risk. Taken together, ss 2 - 4 of the 2012 Act changed the dynamic in the insured and insurer relationship. The insurer must now ask pertinent questions as part of the underwriting process and the insured must simply take "reasonable care" not to make a misrepresentation. The insurer is left only with dishonest

representation as an exit clause and, even then, is only able to avoid the contract and retain the premium save to the extent that it would be unfair. The draconian trap for consumers of the 'basis clause' was also abolished, which had previously enabled an insurer to avoid a policy for a minor inaccuracy, with no link to the damage claimed.[463]

9.30 This change may seem overly technical. However, it is illustrative of an aggressive legislative intervention in the market. The risk of an adverse decision on a consumer insurance claim is now reduced in the event of a simple mistake by the consumer without any intent to mislead the underwriter. In addition, the fact that the Financial Ombudsman Service can now award up to £430,000 for complaints referred to it, rather than £195,000, has moved the consumer out of the court system and into the ombudsman's ambit. This legislative change, again, redresses an imbalance.[464] This intervention at a legislative, regulatory and operational level points to an opportunity to work with the FCA on a new model of integrated consumer protection. Working with the FCA could lead to the development of innovative, integrated legal and financial services solutions to address overlapping needs of consumers.

Recommendation xiii: The LSB should work on a cross-sectoral basis with e.g., the Financial Conduct Authority and other non-legal regulators who may have insights on consumer protection and early advice opportunities.

Legal expenses insurance

9.31 The potential for an 'Access to Justice Sandbox' was introduced in Section 4. In many respects, financial service providers often work with people who are struggling with aspects of unmet legal need, especially debt-based advice, which requires skilled intervention at times. There have been some tentative moves towards collaboration between the legal and financial services sector, but such initiatives could be accelerated by the development of suitably badged, visible, and insured options, with regulatory and professional body 'buy in' and support.

9.32 Better signposting of preexisting products could have a positive impact in a short timeframe. Legal Expenses Insurance (LEI) is well established but often overlooked. It does not have the same visibility to the public as private healthcare policies. The potential to develop the LEI market is largely untapped. This is recognised by the Law Society in their 21st Century Justice Project[465] as well as by the LSB.

> The FCA estimates that 17% of UK adults, or 8.6 million, have legal expenses/ protection insurance. In the LSB's Individual Legal Needs Survey, 7% of people who did not pay for the services provided by their main adviser used insurance. Often, legal expenses insurance will be provided as part of motor and household insurance, or packaged within a bank account, and people may be unaware of this. A report by the International Bar Association identified three high-level key barriers to address before use of legal expenses insurance could become more widespread: lack of awareness and information available to consumers; gaps in indemnity (common legal issues like family and crime tend to be excluded); and the perception of conflicting interests.[466]

9.33 The level of claims on LEI is low. This is for a range of reasons but includes a lack of awareness and a lack of wherewithal to make a claim. The legal sector and the financial services industry could make the availability of LEI cover a visible and affordable option. Recent research has highlighted a lack of awareness of the existence and breadth of LEI cover.[467] LEI is available at relatively low cost and, often, is embedded within financial products as an additional benefit. Access to information can operate as a form of regulatory lever in this limited sense. It is likely such initiatives will be of more benefit to consumers who

can navigate the systems and are more articulate than some of those who face the inequalities and barriers mentioned in Part II. Whilst LEI cannot be a total panacea in all circumstances, it does have a role to play in the development of access to justice strategies beyond legal aid or pro bono. The fact that it has existed for over 50 years and the main hurdle seems to be one of access to information and messaging, greater use of the facility should be promoted. A figure of £50,000 of legal cover for a £30 to £50 premium uplift could be of benefit to a cohort of consumers who may need legal assistance but do not have access to sufficient funds. LEI can operate to level the playing field in areas of consumer law, in particular.

9.34 In addition, there is also potential for a redesign to develop an advisory bridge between financial and legal advice and to integrate the offering. An individual is unlikely to articulate a problem as a legal or a financial need; it is just a need. It is possible that the differing regulatory requirements between financial services professionals and lawyers have a chilling effect in collaboration in the unmet need space. This is because some unmet legal need involves a level of financial instability that a financial professional, skilled in consumer duties principles, may be better able to diagnose and cure, as well as anticipate issues before they arise.

9.35 Research commissioned by the FCA in its 2022, 2023 and 2024 *Financial Lives Survey*[468] provides useful information on financial vulnerability and resilience, especially in the context of the cost-of-living crisis.[469] The Money Advice Trust[470] and the UK Finance Vulnerability Academy[471] have been especially active, including support for those working within the sector to understand the situational context of vulnerability in the selection and management of financial products, including debt management.[472]

9.36 Financial pro bono is still under developed but does exist.[473] Initially developed around financial education, such as the Personal Finance Society's initiative in financial education explored in an article in *The Financial Times Advisor*, the need for expertise, pro bono, in the financial sector has been acknowledged by the Chartered Institute of Taxation and the Association of Taxation Technicians professional indemnity cover for pro bono work.[474] In 2010, the Chartered Insurance Institute and the Personal Finance Society published a joint paper, *Everybody wins: Pro bono work as a hallmark of the professional*[475] which highlighted the work of the Money Plan initiative.[476] An attempt to integrate financial advice and legal advice in much the same way as commercial clients and private clients can access would fit within the FCA's overall strategy if the intent is to:

> ... take vulnerable consumers into account at all stages of the product and service design process, including idea generation, development, testing, launch and review, to ensure products and services meet their needs.[477]

9.37 The potential for collaboration in product design and delivery in unmet need is significant and ready to be explored on a strategic and operational basis. The issue here is that concerted work would need to be done to ensure it is operationalised in a way that does not place the burden on the consumer to act. That would undermine such an initiative. There are examples in Australia in domestic abuse cases where the onus is on the provider (e.g., the bank) to follow the issue up proactively in favour of consumers (e.g., doing the relevant paperwork). The Australian financial regulator participant indicated such measures are leading to improved outcomes for those experiencing domestic abuse.

Recommendation xiv: The front-line regulators, facilitated by the LSB, should work with the insurance sector to explore the feasibility of an expansion of the legal expenses insurance market and its potential to impact unmet legal need.

Professional indemnity cover

9.38 Professional indemnity insurance (PII) cover, or the potential lack of it, could operate as an unintended regulatory brake to involvement in unmet legal need initiatives, especially pro bono work. Despite the hardening of the PII market in recent years, this perceived hurdle has been removed in recent years by a flexible approach by regulators, such as the new arrangements for in-house lawyers.[478] However, there is a potential for a new product range of PII policies to support access to justice work, replacing the patchwork level of provision and supporting new structures. Bespoke provision could prove easier to manage than the potential gap in cover and associated problems of well-meaning but uninsured pro bono work.

9.39 Much will depend on the specific underwriting criteria applied to the risk offered (including any minimum terms and conditions specified by the front-line regulator), considering the insurer's appetite and capacity for risk in a specific area. The difficulty of emergent risk is typically a lack of claims data, as well as a volatile insurance market, where professional indemnity insurance premiums increase and the underwriting criteria contract.

9.40 Fee income in pro bono PII is unlikely to be profitable in terms of premium generation. Much would depend on actuarial analysis of the market,[479] but there are elements of the risk that would be of potential interest to the insurance market should pro bono offerings become more stable in terms of delivery methods and protocols.

9.41 Firstly, most pro bono or voluntary based work is likely to be low risk in terms of basic financial exposure. The main issue is likely to be exposure to the potential volume of claims. Professional negligence claims are inevitable, but a centralised method of underwriting and, most importantly, the collection of data on claims experience obtained over time, would make the risk profile of pro bono work easier to define, manage and price in the long term. This might be an area for some research. Risks are usually associated with service delivery types, and it is unlikely that pro bono would result in the kind of exposure 'spike' such as domestic conveyancing, commercial, or international work. Some areas of pro bono work such as landlord and tenant and employment tribunal work are subject to known limitation risks and potential 'loss of a chance' professional negligence claims.[480] However, again, the risks in these areas are known and understood in terms of the dimensions of claim exposure and value.

9.42 Secondly, there is a benefit to the insurance industry in having PII products written specifically for the pro bono sector, to support unmet legal need initiatives. In the case of solicitors, although the professional indemnity regulations have become less prescriptive, there is still a requirement to comply with the SRA's Authorisation of Individuals Regulations 2019.[481] However, the position is still far from clear and the solicitor volunteer would need to be sure about their professional indemnity position on the basis of the policy held by the law firm, the pro bono organisation, in house team, or use a policy identified by organisations such as LawWorks.

9.43 The market for PII in the legal sector is small and specialised, with few insurers writing risks. There is, therefore, a potential for a bespoke policy or badged scheme, perhaps not on a fully commercial basis, given the lack of fee income, but the associated data gained from underwriting the risks could inform insurers as to the scale of the market and work type. This data has a value when writing indemnity risks in other contexts.

9.44 There is also the potential for other investment in the scheme by interested parties such as HM Treasury, the front-line regulators, and the legal professions with a pro bono contribution as part of the compulsory professional indemnity requirements. Whether such an arrangement would be via a compulsory levy, or a voluntary contribution is a matter for discussion, but a robust indemnity structure would be easier to manage and would simplify lawyer provision to the voluntary sector. For instance, it may be possible to discount PII

cover for law firms based on the number of voluntary hours spent on pro bono work. The mechanism for an affordable and badged scheme, transparent for both lawyer and the voluntary sector, could unlock additional participation.

9.45 Provision has been made for this in Australia where CLCAs secure insurance through the state government's insurer. If they are not eligible for it, then Community Legal Centres Australia has a market insurer at a reduced fee, and it is provided through the regulatory liability committee.[482] There is also a precedent for this identified by one participant for law centres in the UK. This could be free insurance or, in the UK case, could incur a reduced fee.

9.46 In insurance, the question of risk management and control is central, especially to the overall functioning of the system. One further area for discussion is whether there is the appetite for some form of levy, such as that which set up the Motor Insurers Bureau (MIB) under the Road Traffic Act 1988, to support lawyers who wish to provide advice on a voluntary basis. Although the rules on PII coverage have been related in recent years to come within the rules relating to equivalence of cover, there could also be an associated levy, such as the MIB one, to enable business in that market. It has yet to be done, but it could be a point of innovation. The FCA is looking for innovation in product design; this approach would be a finesse on that aim, as it aligns with the stated statutory requirements of the LSA in any event.

Recommendation xv: The front-line regulators, working with the LSB and the insurance sector, should review professional indemnity insurance cover to identify and remove any regulatory barriers that impede access to justice.

Other cross-sectoral opportunities

9.47 This cross-sectoral analysis has isolated two interconnected themes that are worthy of consideration with the financial services sector at both a strategic and an operational level:

- legislative intervention to recognise the special place of the consumer; and
- adjustment to insurance to facilitate new models of integrated service design and delivery.

9.48 Other cross-sectoral opportunities are presented in the funding space (see section 10). This potential is exemplified by what some of the overseas jurisdictions have done, a point noted by several participants. The Australian Securities and Investment Commission (ASIC) has in some circumstances, the power to commence proceedings on behalf of a private claimant, or to indirectly assist claimants to themselves enforce their rights.[483] Intervention as a party requires ASIC to commit resources to preparation of the case and, in some circumstances, exposure to costs orders. ASIC weighs this against the broader benefit to the public of intervention.

9.49 The Australian Competition and Consumer Commission (ACCC) has developed a remit for its Consumer Consultative Committee that includes a role in improving consumer and community understanding of the role of the ACCC, facilitating consumer and community organisations' access to administrative processes of the ACCC and educating consumers/users about their rights and responsibilities in relation to emerging consumer issues and developing education and information strategies. Its membership includes National Legal Aid; the Public Interest Advocacy Centre and a specialist CLCA, the Consumer Action Law Centre.[484]

Conclusion

9.50 The research reinforced existing understandings of the fragmentation of the legal services landscape in England and Wales. Leaving unresolved legal problems leads to impacts causing poor outcomes in health, housing, safety and income. In the context of access to justice this is especially problematic, when it is difficult to access legal advice and support and expertise at the time and in the places where it is required. Whilst the legal services sector is trying to meet the problems this presents, including lack of funding, staff attrition [485] and lack of strategic vision. This demands leadership to counter siloed approaches. Key for concerted action is collaboration bringing together and driving a passion for improved access to justice amongst, from inside and outside the legal services sector (including government).

9.51 There is an appetite in the sector for collaboration with the LSB, between front-line regulators and other bodies to share data and develop solutions. Other jurisdictions provide examples for the regulators in how such collaboration can lead to ownership of initiatives and thus 'buy in' and collaboration on goal setting and action. Other jurisdictions in this theme provide examples for the regulators in how such collaboration can lead to ownership of initiatives and thus 'buy in' and collaboration on goal setting and action.

9.52 This theme showcases some of the ways other sectors have worked to improve consumer rights and access. There are some valuable methods and initiatives. Some of the domestic front-line regulators were already collaborating with entities outside the legal services sector or had ideas that might involve doing so. Examples included community leaders, healthcare providers, front-line service agencies, HMCTS and MOJ. This cross-sectoral review identified some initial areas for exploration in the context of the FCA's "Consumer Duty" and a reconfiguration of professional indemnity insurance.

10. DEVELOPING AND INCREASING FUNDING OPTIONS TO IMPROVE ACCESS TO JUSTICE REVENUE OVER TIME

10.1 Funding is a significant issue. Most significant is the deficit in public funding of access to justice work. Most of the participants conceded that they had little expectation the UK government would address unmet legal need or access to justice through the injection of sufficient funds into charities, law centres and legal aid. However, participants maintained that it was still a fundamental role of government to fund adequate access to justice, despite the concession. For example:

> **Meeting unmet need is a public good** and **should** be paid for from the public purse. It's never going to be funded the way that we might think it should be. But I think there is work to do there to demonstrate to government. It's that old thing of spend a penny save a pound". (UK front-line regulator)

10.2 Many of the domestic professional body, front-line regulator and front-line service agency participants recognised the gulf in funding for access to justice was great, some suggesting that new ideas must be explored. Some expressed reticence about having to acknowledge this, when government both raises revenue and makes the laws about which people need advice. It was noted by at least three participants that even where there is public funding, often it is short term, and so reduces expectations among consumers who feel precarious about the temporary support. This was irrespective of the costs of not providing funding, in terms of consequential costs to other government departments through the failure to resolve problems, and the impact on the lives of community members. The domestic front-line service agencies in particular, therefore asked the research team to examine innovative ways in which revenue can be generated to address the crisis in legal aid funding in England and Wales. For example:

> We could be maximising more legal aid funding and start to acknowledge that it's unlikely that we are going to get government to put more money in. At the moment, there are some competition law cases where there should be a considerable amount of money being awarded but where there will not be claims on these funds. This is one of the levers that the regulator could facilitate but now it's very opaque. They could be conducting and commissioning research into alternative funding models and then get the stakeholders in a round table who are genuinely interested and find out what might work and have a conversation. They need to select the right stakeholders. Those that have a burning desire to generate more income for legal aid rather than keep inviting the naysayers into the room who say, 'everything is not possible'. Some creative thinking could occur if only the right stakeholders were brought into the room, the thinkers, and things tried and tested things from other jurisdictions.

This aligned with the brief for the research team from the LSCP and the LSB.

10.3 The LSB is empowered to issue financial penalties against front-line regulators (LSA, ss37-38). Domestic front-line regulators also issue fines, but the money often goes to HM Treasury.[486] There is a case to be made by the LSB for legislation to provide that where the final penalty is imposed by a front-line regulator for poor practice or poor conduct affecting a consumer, it should be directed to access to justice. Income from such fines should be used to enable other consumers to have the protection of the law, call on legal expertise and advice and should fund agencies that undertake this work. An Australian participant mentioned anecdotally a number of regulators in Australia who impose fines or penalties and utilise these funds to provide funding for relevant charitable organisations that have access to justice aims such as CLCAs. This included contributions to community legal centres in utility regulation. Efforts were made to find the literature on this point.

What works?

10.4 This section makes suggestions as to how the LSB might generate sufficient income over time to be able to position itself to be a leader in funding of innovative access to justice programmes that meet unmet legal need and ensuring these are assessed for effectiveness and shared to inform possible replicable models of good practice. One participant suggested:

> The other role for the regulator is funding and looking at what works. Even putting money into evaluation to do this.

10.5 This generation of sufficient income over time would need legislative adjustment and it requires acceptance from government that certain funds not be returned to HM Treasury. This might not be easy as it will be reluctant to relinquish the income. Nonetheless, this is no reason not to put forward, publicly, convincing, and compelling arguments considering the LSB's statutory objective on access to justice. In the longer term, overseas experiences in increasing funding for access to justice might be an area worthy of further consideration and some ambitious thinking given the current fiscal constraints in England and Wales.

10.6 The LSB & CV, for example, has built up a substantial amount of money for its public purpose fund (PPF) which it has used to meet its statutory objectives around access to justice and meeting unmet legal need through its grants programme. The money raised is not returned to government as revenue but is invested:

> [t]he [Victorian Legal Services] Board is an independent statutory body, and it manages the Public Purpose Fund as a trust. There is no mechanism for Treasury to dip their fingers into the pot.

10.7 This has produced a significant return over many years. It is then reinvested according to its statutory aims, including access to justice. Recently, it has decided to focus investment in areas that are likely to improve access to justice, lead to sustainable outcomes, have demonstrable impact and have no negative effects on the community. This

includes investing in measures which may avert the rising need for legal help in vulnerable communities. In the LSB & CV 2023 grants round, it awarded “a record $8 million AUD in funding to support 27 projects being delivered by legal and community organisations in Victoria” to improve access to justice.[487]

10.8 Generating a momentum for change, taking the success of other jurisdictions as a model could be led through the LSB’s role as convener as discussed earlier. This approach would, further, be able to make a transparent link between public funding, early intervention, and prevention of harm. Such funds would, in this proposal, be administered by a statutory independent board of the LSB in line with its statutory objectives, as is the case with the Victorian regulator.

Establishing a grants body

10.9 In addition, for over a decade, the LSB & CV has been using its PPF to commission, through its statutory independent board, grants for innovative programmes to address access to justice issues. It has, in the last decade taken a thematic approach and required that all its funded service programmes include evaluations around impact and effectiveness. It also includes a model of reflective practice and continuous improvement as the projects it funds unfold. These models are then used to inform other replicable models and to drive innovation. This is because they are shown to have made demonstrable inroads into addressing unmet legal need an access to justice in the specific disadvantaged communities targeted. These initiatives have combined over time to establish the credibility of the LSB & CV as an important and critical leader on access to justice. It has used its statutory duties to access to justice to venture into providing funds for the legal assistant sector and other agencies in partnership.

10.10 For over five years, for example, it had a thematic funding stream on Health Justice Partnerships (HJPs)[488] which was a pivotal influence in their proliferation in other jurisdictions across Australia.

10.11 The current Chair of National Legal Aid (NLA) noted in interview over time that NLA commissioned through use of its own funds the first (and last) Australia-wide-survey into unmet legal need in 2012,[489] and, more recently a report, *The Benefits of Providing Access to Justice*.[490] This examined consequential costs of not providing adequate legal assistance service, and consequential savings because of such funding. It found that the provision of legal assistance delivers $600 million in savings to the community, government, and the justice system. This report may be something that could be replicated as part of the research programme of the LSB to complement its case for establishing a PPF.

Levies on professional bodies

10.12 Front-line regulators issue annual financial reports, which state the annual income from practising certificates paid for by practising lawyers and the statutory levies from this which fund the LSB and OLC. The research team did not, however, locate references to ringfencing of such funds to specific access to justice activities under LSA, s51(4)(d) in annual accounts documents examined. Further transparency in this to the public and the regulated community might help to engender trust.

10.13 The PFF demonstrates a different way to source funding from the professions. It is a statutory fund established under Victorian legislation. Its primary function is to meet the costs of regulating the legal profession in Victoria, while also providing funding for several other purposes that benefit the public and consumers of legal services, including addressing legal need and access to justice. Sources of such funds include:

- Interest on money held in trust by lawyers and approved barristers’ clerks on behalf of their clients.
- Investment returns. The LSB & CV invests some PPF funds into a diversified investment portfolio to generate further income. The LSB & CV’s prudence has

allowed the value of the PPF to grow over time. The Victorian Auditor General has noted that the LSB &CV management of the PPF is sound and diligent with a thorough approach to assurance, risk management and administration.

- The annual licensing fees paid by lawyers and any fines imposed on lawyers following disciplinary action taken against them in the courts (contrast the position in England and Wales noted above).

10.14 The LSB & CV administers the PPF through its independent statutory board. The legislation specifies the various bodies which may receive funds from the PPF. All funding allocations from the PPF are included in an annual budget which must be approved by the Victorian Attorney-General.

10.15 Details of amounts allocated each year are listed in the LSB & CV's annual reports. The largest allocation from the PPF is made to Victoria Legal Aid to cover "a significant component of its annual operating costs". Funds are also "allocated to the Victoria Law Foundation[491] to develop and provide resources for community legal education and to the Victorian Law Reform Commission to review and recommend changes to laws".[492] A further allocation of money is made each year to deliver the LSB & CV's discretionary Grants Program:

> [p]rojects funded through the Grants Program are designed to improve the administration of laws, increase community access to justice, improve legal services and inform and educate the wider community about legal services. Projects which receive funding are carefully monitored and their outcomes evaluated …[493]

Residual funding from collective action

10.16 In Canada, Australia, and the UK unclaimed monies in court cases and other residual funding have been redirected to the funding of access to justice services. A good example of this is the work of the Access to Justice Foundation (AtJF) in the UK in generating funds to provide grants to various charitable services to provide access to justice to the community. Its Community Justice Fund, set up during the COVID pandemic, raised £17.3m and made 420 grants to advice-giving charities across the UK.[494] It was a collaborative initiative which provided a vehicle to bring together funders to support the sector. In addition, the AtJF has been stimulating ideas for the use of IOLTA funds (see below and quotations from participants) and other distributions including unclaimed monies in court cases and residual funds. The AtJF explains that it was:

> brought into being (alongside the Access to Justice Foundation) by the Legal Services Act 2007 [s 194] advocates acting pro bono are able to request that the court makes an order for costs as if the client had been fee paying. Those costs are then paid to Access to Justice Foundation for use in our onward grant making. In 2022 pro bono costs were extended to tribunals. Despite our best efforts, awareness of this hugely impactful access to justice tool is still very low, and there is significant potential for this to increase.[495]

10.17 The LSB and those front-line regulators whose members conduct litigation and advocacy, and the CLSB, might take a lead in promoting awareness of "pro bono costs orders"[496] in particular (LSA, s194). In addition, in pursuit of the statutory objective for access to justice, securing oversight of unclaimed monies and other residual funding might be an avenue for generating funds, as the LSB & CV has done through the PPF to generate innovative access to justice research programmes. It could also aid in the development of the levels of credibility and authority that participants noted exists in Victoria in terms of the high esteem that the regulator is held in on matters to do with access to justice. This is because of its role in providing grants and the leadership that flows from this. The latter is informed by its ability to fund innovations in service delivery and programming that is driven by the research it conducts. The Victorian model was also understood and favoured by participants from domestic front-line service agencies who identified it as a model of envy.

Exemplary damages

10.18 Where exemplary damages are awarded for bad conduct or harm caused but where there is no specific individual who can receive the exemplary damages, these could be used to support access to justice services. For example:

> Another thing that will help legal aid further which we have done quite successfully in Australia is to used test case monies to establish legal aid centres such as a Consumer Credit Legal Service now Consumer Action Law Centre. This came from an award in the Walton case which was directed to the establishment of this centre in the area of law that was under consideration to enable other people to have access to legal help.

10.19 There is a precedent for this in Australia. At present the award of exemplary damages in England and Wales remains governed at common law by *Rookes v Barnard*,[497] so legislative intervention might be required. Historically, however, government has been inclined to restrict, rather than extend, exemplary damages.[498] There might be a role for the LSB in advocating for these to be paid to access to justice institutions as a disincentive to poor conduct that impacts a consumer, which is why such damages are generally awarded.

'Interest on lawyers' trust accounts' (IOLTA) schemes

10.20 There was a view, amongst most of the interviewees that a renewed discussion around IOLTA is needed and ignoring this would be a missed opportunity.

> The money that comes from lawyers' interests on trust accounts has been important machinery in Australia for improvements in access to justice. Libraries, foundations, and legal aid money have been secured through this. It is unbelievable but this has not yet happened in the UK. There is no good reason why this should not occur. It is client's money, and lawyers should not be arguing that it should be used to run their own businesses.

10.21 These participants felt that the historical resistance could have been met using evidence of work done elsewhere. One front-line service agency participant noted,

> What is it any different to elsewhere in the world? The same arguments against [it] were made and overcome in different jurisdictions. The proof is there. It just needs some leadership.

Another participant stated:

> What is so different about the United Kingdom when so many other jurisdictions find it possible? It's all about having the will to do it. We cannot presume that the government will change its mind on funding. The legal aid and access to justice issues are getting worse. It's time for action and the LSB could be leading this. Can I suggest that you talk to the person who manages the IOLTA scheme in Victoria and the LSB there? Also, I think in NSW [they have] have done some interesting things with winnings.[499]

10.22 The question of instituting an IOLTA scheme in England and Wales was canvassed by the MOJ in 2011. It was then met with arguments in opposition, noting responses to a consultation, and a Law Society response listing a number of charitable and pro bono purposes to which solicitors already put such monies. Consequently, it was not then implemented.[500] More recently the SRA has issued guidance on client interest.[501] In 2024 the Ministry of Justice has commissioned research on law firms' practices in relation to accumulated client interest in support of its own investigation of the concept.[502]

10.23 Other jurisdictions use IOLTA money for training, law libraries, financial benefits, and the funding of legal aid. IOLTA programmes were first established in Australia and Canada in the late 1960s and early 1970s to generate funds for legal services for low-income and disadvantaged individuals.[503]

10.24 In the USA, the American Bar Association's IOLTA takings amounted to over $175 million in 2020 and were used for a variety of purposes such as free legal advice and legal

education initiatives.[504] In Canada, there are IOLTA programs in 10 Canadian provinces and three territories. Such funds have been instrumental in improving access to justice in all these jurisdictions.

10.25 The overseas regulators universally expressed disbelief that there was so much resistance in the UK to these schemes and the advantages that might flow from them. The empirical data presents some insights as to how these objections have been overcome.

Apprenticeships

10.26 Funding is a significant inhibitor in legal education[505] impacting all stages: pre-qualification courses and assessments;[506] salary and supervisor time during mandatory pre-qualification work experience; and costs of CPD and similar resources.

10.27 Apprenticeships are available in the regulated professions[507] and outside them in unregulated activity.[508] They cover the individual's salary, course, and examination fees and in small organisations, the employer pays 5% of the total cost. The fact that a proportion of the levy can be transferred to another organisation, and so could be donated to subsidise training in the access to justice field, may be under publicised[509] and front-line regulators and professional bodies could have a role in remedying this. Current government proposals to broaden the uses to which the levy can be applied should be monitored for the effect, positive or negative, on training in the access to justice sector.[510]

10.28 Whether through apprenticeships or otherwise, most of the domestic legal professions are able to recruit school leavers directly, and those whose course fees are lower than others, or are staged (such as CILEX) potentially have an advantage over those relying on university degrees. The causal relationship between qualification route, cost of training and the statutory objective on improving access to justice is worthy of further research by the LSB. The scope of this research is outside the remit of the current project but in the context of apprentices alone could explore, for example:

- The diversity of apprentices and any advantages they may have in terms of the trust of minoritised communities;
- The extent to which, if at all, larger organisations donate their levy to subsidise training in the access to justice field;
- Whether the availability of apprenticeships has expanded opportunities to train in the access to justice field (so increasing legal services provision in the sector); and
- The destinations of apprentices after qualification.

Use of penalties in consumer areas

10.29 One problem in the daily lives of vulnerable clients is the behaviour and lack of accountability of authorities. Examples include local authorities in housing, special educational needs (SEND) and in relation to looked after children[511] and care leavers, the Home Office and the DWP. This was a key theme from data in a study in England and Wales on the experiences of front-line service agencies and community members including those with disabilities, young people, migrants, and those experiencing mental health issues.[512] Authorities were reported to make poor decisions, fail to follow the law, fail to provide quality, and treat people badly.[513]

10.30 Participants shared experiences where there was little accountability for poor decision-making. There was also little recourse due to a lack of legal aid and other barriers so that such decisions often were not appealed. There is evidence that many appeals in the tribunal sector are successful.[514]

10.31 A possible, if radical, response would be the imposition of a financial penalty on such authorities. The question would be whether this could act as a deterrent and might induce such authorities improve their quality of decision making. This could demonstrate that consequences can flow from maladministration. This might be worth investigating. It is not without precedent elsewhere. Some of the participants suggested that this approach has

been used to effect by Australian regulators such as the Australian Companies and Securities Commission and the Australian Competition and Consumer Commission with penalties generated being used to support access to justice services to support consumers. This would, of course, require legislation.

> There are two forms of justice. There are those who have the resources already such as the companies and the government and they can get lawyers and have access to lawyers and can afford the lawyers… For poor decision making there is no accountability and no recourse and often because of the lack of legal aid very few people get to review stage through tribunals and so bad practice just continues. It would be great if there was some sort of tax on the authorities. It might make them improve their quality of decision making. This would lead to some accountability. Some sectors don't like this as they say it's 'robbing Peter to pay Paul'.
>
> There is a key role that can be achieved by the winning of cases and using the funds if there are no claims on them to feed back into funding further strategic litigation where wrongdoing occurs against vast amounts of consumers. In Australia the consumer credit and consumer law centres originated using penalties awarded in these cases. These fund these legal organisations to run cases that are very costly in partnership with pro bono. Such schemes can be very helpful for making pro bono and attending to serious harm caused *en masse* to community and consumers by poor conduct of companies and so on. (overseas regulator)

Strategic incubators

10.32 One initiative that was mentioned in an interview with an Australian participant was the Grata Fund. This is a new initiative in Australia.[515] The LSB and front-line regulators could explore this as an innovative model for England and Wales.

10.33 By way of background, the literature review revealed that the:

> Grata Fund is Australia's first specialist non-profit strategic litigation incubator and funder. Grata develops, funds, and builds sophisticated campaign architecture around high impact, strategic litigation brought by people and communities in Australia. We focus on communities, cases and campaigns that have the potential to break systemic gridlocks across human rights, climate action and democratic freedoms.
>
> Grata removes the enormous financial barriers to court and supports people and communities facing injustice to integrate litigation with strategic movement-driven campaigns.
>
> Australians are regularly blocked from exercising this basic democratic right because of insurmountable financial barriers to groundbreaking litigation, making it almost impossible to hold powerful governments and corporate leaders accountable …
>
> Grata breaks down these barriers in three keys areas: climate justice, human rights, and democratic freedoms' It 'chips in to fund expensive litigation costs and remove barriers to the power of the court.'[516]

10.34 The authors approached the Grata Foundation Board to find out more information but they responded too late for follow-up and inclusion in this report.

Conclusion

10.35 Funding is a significant barrier to delivery of services and to education that enables lawyers to provide those services. There are a variety of domestic examples that could improve pricing. Other jurisdictions, specifically Victoria in Australia, have succeeded in generating alternative and significant funding streams that could be explored in England and Wales. In the UK, the Access to Justice Foundation has suggestions[517] informed by this overseas experience and a track record in generating funds (including from regulators).[518]

10.36 A longer-term, albeit ambitious, aim for the LSB, would be drawing on overseas experience of other regulators in Canada and Australia to open avenues for funding access to justice. Overseas examples provided in this report show that although some industry groups may argue the regulator should not have a role in generating income, this has been done elsewhere with improvements in independent sources of funding for access to justice work and innovative models. This was often met with initial reticence in other jurisdictions. However, over time a shift has been seen due to the income generated. Renewed enthusiasm and buy-in from sceptics, for example in the private legal profession, has come with a common shared vision, collaboration, culture change and clear visibility and evidence.[519] Legislative change would be required to enable this to take place.

10.37 Governments have little appetite for further funding. If access to justice is to improve and legal need is to be addressed, boldness in this area is required.

Recommendation xvi: The front-line regulators should explore alternative funding streams for access to justice work, and reducing of prices, including cross-sectoral funding. This would need to be led by government but examples have also been suggested by the Access to Justice Foundation. There is a role for the front-line regulators in looking to examples abroad that have successfully generated income for access to justice initiatives and innovations within regulatory and other frameworks and sharing these with stakeholders.

This shift to alternative streams of funding access to justice would require some legislative amendment as well as cultural change within the professions. This cultural shift would be supported by the range of other recommended measures in this report to increase a culture of commitment by all to improve access to justice (for example CPD including access to justice considerations and making the statutory objectives on the rule of law, consumer rights and improving access to justice more prominent in codes of ethics). The LSB can play a role in providing the evidence-base and in supporting the implementation of changes in legislation.

11. PROMOTING EQUALITY AND RESOURCE JUSTICE

11.1 This report calls upon the regulated professions to play their part in ensuring the constitutional principle of the rule of law (see section 4) to address inequality in the legal system. This includes highlighting the disparity of resources amongst different categories of legal services and encouraging all stakeholders to play their part in ensuring resource justice. Those who pay taxes (including through VAT on services and goods) struggle to find legal help whilst their taxes are being used to fund the courts. There is a compelling case to be made by the LSB to lead a dialogue amongst policy makers, funders and those who have greater access to legal services and the courts due to their resources to consider the role they might play in improving equality and resource justice. Many large law firms in the private sector rely on this public system for profit and thus have a vested interest in ensuring that the public system remains viable.

11.2 Such corporate cases rely on a functioning court system, which is (a) funded by the public, and (b) does not exist without upholding the rule of law. Whilst these use taxpayer money and shareholders pay taxes, many are repeat players. Although the courts used by such organisations (e.g., the Commercial Court) are likely to be different from those dealing with social justice issues (e.g., the Family Court and tribunals) taxpayers fund both.

11.3 The Civil Procedure Rules and Family Procedure Rules both encourage early resolution of disputes through mediation and other forms of alternative dispute resolution and place this obligation both on the court and on lawyers.[520] There have been some attempts to assist the small business sector in mediation with fixed fee costs, such as, for

instance the scheme offered by CEDR[521] However, accommodation and legal costs remain. Judicial mediation exists in the Employment Tribunal[522] and there is a voucher scheme available for some eligible family disputes.[523] Since 22 May 2024, parties to many small claims below £22,000 have been referred to an integrated, one hour, mediation service.[524] However, there is little doubt that there is a gap in provision for mediation support for those who wish to use it. There is a risk that the infrastructure outside that of the free schemes already available may prove to be prohibitively expensive for those of even modest means. Whilst fixed fee approaches point the way to accessibility, there is a need to mitigate the risk inherent in a system which may punish a failure to engage in mediation or other forms of ADR when financial means may have played a significant part in the decision.

11.4 There might, therefore, be further opportunities to incentivise earlier resolution of disputes with a greater focus on those who currently use court resources the most rather than those on lower incomes, provided resources are made available.[525] However, the focus of the MOJ and the Online Procedure Rule Committee[526] should not result in in further reducing access of those who might have valid claims, who can be further disadvantaged by 'funnelling' them inappropriately into digital options and mediation.[527] Such measures are often introduced with little evidence to verify their effectiveness in improving outcomes[528] and whilst not addressing those who utilise significant court and administrative resources.

11.5 To the extent that the more vulnerable are diverted away from litigation, they can miss out on enforcement of their legal rights and full remedies. The creation of legal precedent which can affirm accountability, enable scrutiny and call out wrongdoing is also at risk. Yet, these avenues may remain more easily accessible for those who are better resourced (subject to possible costs penalties at trial[529] which they are more able to bear). This creates a two-tiered justice system. In exploring the literature for this report there has been limited examination of this topic. This might be worthy of further research to inform decision-making that enables greater resource justice and equality. It might be noted in this context that in 2017 Lord Bach suggested a 'polluter pays scheme' to fund lower fees.[530] This would also obviate to a degree participant views that a 'two-tiered' system is emerging and that this threatens the integrity of the justice system.

11.6 Equality and resource justice is a different question to that of funding. It goes to equity and the lack of ability of certain sections of the community to obtain equality before the law. It increases the responsiveness of those with resources and those who are currently privileged in being able to access the existing legal system (including the courts) while others cannot. There is a role here for all the regulators to lead the dialogue and highlight the imbalance and opportunities to ensure equity and equality. These go to the heart of the rule of law.

Wealthier law firms

11.7 Recent economic studies of the legal professions in England and Wales highlight that government work funded by taxpayers' money is extremely lucrative for law firms and their profit margins. For example, in 2021/2022 half of top 50 law firms received fees from the government, with a total annual spend on external lawyers of £36.57m.[531] More recently, it has emerged that law firms acting for the Post Office – a government-owned entity – received £256.9m in costs and disbursements in connection with the Horizon IT scandal.[532]

11.8 This lucrative work that is provided to private law firms by government, which generates substantial income from the public purse, increases their profits. Arguments of recession and increasing costs to law firms in the context of globalisation are often used to deflect action on access to justice. However, similar arguments could be made in other jurisdictions where there is much more buy in from wealthier firms than in the UK. In Australia for example, there has been use of IOLTA funds and significant pro bono provision, a willingness for government incentives and mandatory pro bono requirements to improve access to justice. The legal regulators have also fostered such a commitment. Profit margins in doing government work in the UK, some of which come at the expense of those

experiencing inequality and the lowest access to legal support and the courts. For example, those who have to self-represent because they cannot gain legal representation before courts and tribunals in DWP and special educational needs or disabilities (SEND) matters. These people then face well-represented government entities. These people – who, are ironically, indirectly, paying for this work – ought not be ignored or understated.

11.9 More generally, a report by PwC in 2021 highlights record profitability of the top law firms in the UK in general (not necessarily in government work). Over 85% of the top global law firms and over 75% of the top 100 UK law firms reported increases in fee income that year. The top 100 law firms posted 20% increase in profit, while the top global law firms increased their profit by 24%.[533] The top 50 law firms increased their revenue to over £20bn during the first financial year of the pandemic (also not necessarily just on government work).[534] The PwC report provides a stark contrast to studies into the other side of service delivery for the most disadvantaged in the UK discussed in Part II. Although the 2023 PcW Report[535] indicates falling profits, the profits are still significant especially amongst the top tier law firms. The overall point still stands in view of the developing two-tier justice system and lack of viability and struggles of so many legal advice and support and advice agencies by comparison to the options available to corporations and government departments.

11.10 Many of the corporations and government departments that retain large law firms for contentious legal work use more of the resources of the courts. This includes judicial time, court administration in cases that often take many weeks, months and sometimes years to resolve. They are also repeat players in the court system, thereby absorbing more of the resources in comparison to those who are most likely to have limited access to justice. This creates a two-tiered system of justice. By contrast, the smaller cases of poor or disadvantaged individuals are currently not receiving the same value for money out of the legal system.[536] There is a case here for equity and resource justice, as equality before the law is not currently being made available to significant numbers of the general population. Smith and Madge have suggested in their proposal for a National Legal Service (below) that there should be consideration of ways of recovering the costs of people represented through the National Legal Service payable by losing parties in litigation.[537]

11.11 It has been suggested that an additional levy raised through a change to practising certificate fees can fund access to justice work.[538] A universal levy might be argued as damaging existing access to justice providers. However, there may be an argument for levying top-tier law firms. Smith and Madge advocate for such a levy and on court and hearing fees in the High Court and above. Government policy on this proposal has changed over time,[539] although there have been suggestions that a Labour administration might revive the idea.[540] The issue is now so acute that it merits reconsideration, although it would be controversial. If the permission in LSA s 51(4)(d) to spend practising certificate fees on access to justice work does not in terms permit an increase by way of levy in such fees to do so, then legislation may be required.

11.12 The Access to Justice Foundation is also building its own research to explore options including levies on the private profession to subsidise access to justice and is calling for future collaboration in exploring methods including residual funds from collective action, pro bono costs orders, interest on lawyers' trust accounts, levies and insurance.[541] All of these items are discussed in this section and in section 10 and many are occurring in other jurisdictions. Cross subsidising such firms to promote access to justice has been suggested by participants in this study as a way of generating much needed funds in the absence of any likely increase by government.[542]

11.13 Large law firms do, however, also report substantial initiatives and resources in pro bono activity.[543] Not all is necessarily client-facing, but might involve fundraising, in kind support or policy work that does not necessarily fall within conventional definitions of pro bono legal activity.[544] Although work has been done in this direction,[545] a suggested research project would be to map more comprehensively the picture of pro bono activity across

England and Wales and what form this takes. This would provide critical information about how much is being done, by whom and how much is being saved to the public purse by such pro bono efforts. It might also rebuild public trust if this information was more transparently visible. The LSB and front-line regulators could lead this.

Penalties from corporate and other misconduct

11.14 The Consumer Rights Act 2015 now allows collective actions in competition law to protect consumer rights. Its amendment to the Competition Act 1998,[546] ss 47A-D permits opt-out claims to the Competition Appeal Tribunal to be taken on behalf of a whole class of affected individuals. Damages may be awarded under s47C reflecting the entire loss of that class and so the full extent of the defendant's wrongful acts.

11.15 A number of such opt-out claims are in progress.[547] The authors have not been able to establish that any have yet reached trial, although at least two have settled out of court wholly or in part, one for a reported £25m.[548] If an award is made, then, if there are individuals in the class who cannot be contacted or otherwise do not claim their damages, there will be unclaimed damages of the kind discussed in section 10.[549] By s47C(5) these can be paid to charity in the same way as pro bono costs orders (LSA, s194). Potentially these could be large sums, although only arising on an ad-hoc basis.

11.16 A powerful historical example of how such an award has been utilised after wise investment to fund a consumer and consumer credit legal service exists in Australia. The award in the case emerged from a finding against Waltons department stores, in respect of its "1980s insidious debt collecting practices".[550] In deciding how to use the award for damages the judge was convinced to hold the monies in trust. It was then distributed to establish a new consumer credit legal service that is the forerunner to the current Consumer Action Law Centre in Victoria. The funds were wisely invested, and the interest has assisted this specialist community legal centre, enabling it for many years to be independent of reliance on government funding.

Reducing fees

11.17 While transparency of pricing is required by regulators, innovation is, as with technology, fractured.[551] Further regulatory developments are, however, taking place, with one domestic front-line regulator now requiring universal price transparency,[552] and an LSB statement of policy on the topic against which the front-line regulators' performance is due to be assessed.[553]

11.18 Brokering a reduction of cost – including cost predictability and planning and creative and flexible pricing – for private lawyers particularly in family law was a concern of the LSCP. A number of domestic activities have been noted in this respect and pricing transparency requirements were discussed with the domestic front-line regulators. For example:

> If the presumption is that everybody's not profiteering and we're not going to start bringing in price caps – and we can look at the uproar in Ofgen, can't we, that we're all paying for our electricity and gas and so forth, then the companies are making mega profits still ... So let's work out what genuinely is it we can do …
>
> … reducing legal costs is not at the forefront of priorities for all legal regulators. There are also several other bodies with direct interest in this issue, such as HM Courts and Tribunals Service, the Ministry of Justice and representative bodies. Taking forward work in this area will therefore necessarily mean working jointly with organisations and agencies such as government departments, international regulators, civil society bodies and consumer/user groups, as well as approved regulators who are interested in this issue.

11.19 The Law for Life interviewee reported that it offers a range of packages including Advice Now. Law for Life has negotiated arrangements with law firms to broker a reduced

fee in its family law advice in its Affordable Advice Service. This has been positively evaluated, as have other services, as routine embedded practice.[554] There is a role for regulators in facilitating and celebrating such innovation and encouraging evaluation practice that ensures consumer feedback.

11.20 Finally, there is an argument that there is a need for an entirely new model of funding and service provision, as “the system is broken”. For example:

> Government drives the market whether it's the commercial or the individual. The reality it's government who's creating the need. They passed the laws and the policies. This means that people need the law. The law firms are making lots of money. But the regulator sits on the bridge or the fence or the bench. The regulator needs to combine stick and carrot approach. The regulator can do better. An example of this is that during Covid a market report has found that the industry that made a killing was the legal profession industry. It's not all about the market. What about market failure? The whole legal aid issue and access to justice is not about law firms making more money out of it. It is about the public interest. It is about equality before the law. These further compounds the asymmetry of the service landscape.

11.21 In its leadership role, the LSB can start a dialogue with front-line regulators and others around innovation that might lead to the development of a model that is more responsive to community need and which borrows the best of other models. Several of the participants noted that the regulation and quality control of lawyers was not always clear to the public. Further, it might be too easy for politicians to denigrate the work of lawyers, ignoring their role in the rule of law:

> The regulator has a role in regulating objectively the recent attacks by government claiming that lawyers who work to enforce the law or provide people with legal help for their human rights are ‘lefty lawyers' or references to the legal industry should be counted with reminders of the obligations of lawyers, their independence and that lawyers are regulated and have a standard and have ethics to adhere to. The regulator currently is silent in the public sphere on this. It should say itself, not necessarily as getting into the fray, but as providing an accurate commentary on what the regulation of lawyers (barristers and solicitors and others) requires. [555]

11.22 This depreciates notions of equality before the law, confidence in the legal system and the need for independent scrutiny and proper process to call unlawful conduct account. A comparison point is the NHS, which is much loved by the public and is viewed as an essential service. It also struggles as it is underfunded and experiencing great difficulty. To develop a concept like the NHS has been the proposal for a national legal service that concludes this section.

Future proofing

Emergency relief

11.23 Climate change will increase legal needs and issues around access to justice. Legal issues are bound to cascade and interest. Individuals affected by floods, fire, drought, and other climate catastrophes will have to navigate a range of legal problems which will cascade and can elevate their disadvantage. Issues around housing, finances, insurance, sufficient income, mental health, trauma, loss of life, family separation will all emerge.

11.24 Encouragingly, the Law Society (E&W) interviewee indicated that they had been having discussions with Victoria about its emergency relief legal advice and support. This is something that the LSB might become engaged in to facilitate collaboration across the sector and across sectors. One of the key dangers in emergency relief is that inherent in other pro bono work. Lawyers volunteer their services for a short period of time, flying in and out without an understanding of individuals’ wider contexts and the need for ongoing legal help and support.

11.25 The model in Victoria has been supported by the LSB & CV through grants funding and encouragement of the different regulated professions to participate in it. The Victoria Legal Aid Commission is the lead agency. It ensures the coordination and multidisciplinary connections that are needed considering the overlapping issues that go beyond just the legal problems of survivors of emergency events. Disaster Legal Help Victoria co-ordinates legal assistance for people impacted by disaster and provides community legal education to build resilience. It is a partnership between the Federation of Community Legal Centres, Justice Connect, the Law Institute of Victoria, Victoria Legal Aid, Victorian Aboriginal Legal Service, and the Victorian Bar Association.[556]

11.26 The Australia-wide regulator has seen its role as supporting such initiatives by creating a "Legal Disaster Resource Centre" to support a national, multi partner website to meet the civil legal needs of low-income disaster survivors more effectively. It uses the website to provide resources and critical information for legal aid providers, pro bono lawyers and other volunteers and emergency management agencies and survivors.[557] Some essential lessons in how this was formed are provided in Victoria Legal Aid's report *Legal assistance and community recovery after the 2009 Victorian bushfires. The Bushfire Legal Help response*.[558] It also explains some of the key factors that were essential in forming a cohesive partnership to enable quick mobilisation and coherence for service uses in times of distress. This might be a useful document for the LSB to encourage similar collaboration. This is potentially timely in view of the interest already demonstrated by the Law Society (E&W).[559] Other examples are provided by LawWorks' group of volunteers to respond to emergencies and the Legal Aid Disaster Resource Center in the USA.[560]

A framework for future direction

11.27 Roger Smith, a member of the International Legal Aid Group, former Head of Justice UK and Nic Madge, a retired barrister and judge, published *The National Legal Service – a New Vision for Access to Civil Justice*. This has been circulated through the Legal Action Group.[561] Much of this model for a new National Legal Service, is founded on the public support for the NHS. It is also informed by attributes of the mixed model of publicly funded legal assistance services delivered in Australia and the recent venturing into a mixed model in Scotland.

11.28 The mission of the proposed National Legal Service is to:

1. deliver a mixed model of provision deploying private practitioners, salaried lawyers, Law Centres, national charities, advice agencies and others as required and available – devolving the detail on a regional basis.

2. manage and coordinate a national service providing access to justice that would commonly badge all those providing services as part of the National Legal Service, whether or not they are directly funded by the service.

3. ensure that it provides an integrated and seamless service to its users, putting their needs first.

4. explore innovation of delivery and new uses of technology – fostering in particular the development of self-help Digital Plus tools and the integration of in-person and automated provision.

5. manage an annual challenge fund for projects giving innovative delivery and other technological advances.

6. monitor performance and conduct national and international benchmarking.

7. develop policy for presentation to the Ministry of Justice for the development of the service.

8. foster the coordination of a strong and dynamic legal assistance sector – including the educational development and training support for its employees and volunteers.

9. work with partners to create fairer and more effective laws and procedures.

11.29 This proposal could provide a launching pad for a dialogue. in the longer term sponsored by the regulators with the aim of creating an appetite for a new vision for legal services in England and Wales that cements access to justice as a key pillar of public service delivery. This, and other issues ventilated in this report could, for example, form the basis of an annual access to justice event hosted by the LSB and LSCP.

Recommendation xvii: In the long term, the LSB and front-line regulators who share the statutory objective relating to access to justice should work to re-envisage and revitalise the sector so that funding, policy, and regulation is evidence-based.

This should include securing stability in core baseline funding especially where services have been positively evaluated in the access to justice sector based on embedded positive evaluation. It should work towards a vision for holistic, accessible effective justice models including consideration of proposals for a National Legal Service. It should include the potential role of the LSB in the longer term as a single regulator which is also a grant-awarding body.

Conclusion

11.30 Attention to inequality in the legal system, and to disparity of resource amongst different categories of legal services provider leads to proposals for redistribution of resources through funding and other initiatives.

11.31 Equality and resource justice is, as identified above, a different question to that of funding. It acknowledges that some do better in use of the legal system but that it is paid for by all. This thematic discussion examines this inequality and makes suggestions for the re-envisaging of the way in which services are funded and provided. It revisits the visions that predated the Rushcliffe Report in 1945[562] of, in essence, a publicly funded National Legal Service, similar in model to the NHS.[563]

11.32 Perhaps in the longer term the regulators can encourage dialogue that creates an appetite for a new vision for legal services in England and Wales that cements access to justice as a key pillar of public service delivery. Unpredictable and uncertain funding of the charity sector leads to instability and uncertainty which has consequential effects for staff retention, recruitment and consumer confusion about what is on offer. Other jurisdictions proffer ideas for the development of new models of publicly funding legal services to those in greatest need. These have some merit and a long track record of success in making inroads into access to justice including the ‘mixed model’ of funding legal service delivery in Australia.

11.33 Jurisdictions such as Victoria provide an example of the benefits of a consolidated, single-entity approach. There is a need for consistent, streamlined, and clear leadership which is currently complicated by so many regulators (as noted earlier in this report). To enable action, strategy, and coherence on access to justice more holistic and responsive approaches might be facilitated through a single regulator. The LSB could explore developing a significant role in carrying out, monitoring, and evaluating research by reference to outcomes and in sharing best practice. This could be facilitated if the LSB was also able to act eventually as the sole regulator[564] and with a role in exploring and facilitating potential sources of revenue. This would place it in a position to carve out a role more effectively in exploring and facilitating potential sources of revenue. In the even longer term it might establish itself in access to justice as a provider for innovative and tested effective service provision. This would require legislative change.

12. CONCLUSION AND ANSWERS TO THE RESEARCH QUESTIONS

12.1 The current fundamental problem is that improving access to justice does not receive as much prominence around the value in funding in public discourse as do other portfolios such as health and education. The report is, therefore, a call to action for all parts of the system to play a part in addressing and meeting the huge gaps in provision that leave many community members unable to assert their rights. This jeopardises another key statutory objective, namely the rule of law and its critical underpinning of equality before the law. It is no longer enough to tinker around the edges. Collective responsibility is needed. This includes from all those with ability to make inroads to improve access to justice considering its importance to the rule of law, specifically equality before the law. This lack of coherence minimises inroads into addressing access to justice particularly when other sectors (including charities and some in the private profession) are being forced, for a range of reasons, to abandon the field. This report argues that coherent, consistent, and intentional action on access to justice is now an imperative. It argues that over the longer term with the LSB's lead and facilitation a clearer, strategic, and coherent direction with cross-sector collaboration as a key component will help the regulators meet their core statutory objectives.

12.2 This report was commissioned to address the question "How can regulators be more creative in using their powers, levers and influence to find multiple (and creative) solutions to the problem of unmet legal needs as it relates to access to justice?" The answers to the research question answers show a context where there is significant evidence of a systemic problem. There has been market failure in relation to the current legal aid system. Substantial increases to the legal aid budget from government are unlikely in the foreseeable future. The current model is broken. Despite efforts by a wide range of individuals, firms, advice agencies, regulators, professional bodies and others, the continuous patching up of legal services for those most likely to have unmet legal need, is not enough to address systemic causes and barriers to access to justice. This lack of access to justice is entrenching inequality, impacting on community trust and is inefficient, unresponsive, and ineffective. Solutions are fragmented, often ill-resourced, and there is little independent evidence that the legal services system is leading to improved outcomes for those most likely to have unmet legal need.

Answers to the research questions

12.3 Some of the answers may derive from data presented at the reflective practice conversation not fully related in this report.

Can the regulators' oversight of education and training help to encourage practitioners into areas of the law where unmet legal need is particularly severe or lessen providers exiting some areas of law?

12.4 In section 4, the report noted that ethics training must include considerations of access to justice if regulatory standards for effective legal practice are to be adhered to in practice. If codes of conduct are amended to emphasise high responsibilities to the rule of law and access to justice, this emphasis must carry forward into the classroom. In relation to the teaching of ethics in the classroom, previous work has noted that this tends towards the precursors of ethical action (knowledge of the code and application to hypothetical situations), rather than to establishing resilience in acting ethically in difficult circumstances in the workplace, which requires a different educational approach. The LSB already has amongst its strategic plans a focus on reinforcement of ethical behaviour amongst regulated professionals and proposes to evaluate its education and training guidance on ethical issues.[565] We recommend that these issues form part of that evaluation.

12.5 This report addressed education and training, including CPD, more generally in section 8. The LSB has a statutory remit to oversee education and training of the regulated

professions and approves changes to training regulations as they are submitted to it by the front-line regulators. It also has a continuing interest in CPD (or 'ongoing' or 'continuing' competence) after qualification. However, the oversight or control exerted by the regulators over the educational processes differ. The nature of the regulator's oversight also varies – from a formal oversight of a single vocational course, as in some of the smaller professions – to the SRA's reduction in its formal oversight of the formal education that is a precursor to successful completion of the SQE. Where there is such limited formal oversight, there is a necessary reduction in the ability of the front-line regulator to motivate, equip or enable entrants to work in the access to justice sector other than through incentivising.

12.6 There are, however, several initiatives in pre-qualification and CPD from other jurisdictions that could promote access to justice by equipping and enabling work in the sector and facilitating retention. The report also suggests a stronger link between the role of ethics, vulnerability, trauma informed practice and access to justice service delivery could be explored in CPD.

12.7 The question is not, however, solely about encouraging practitioners 'into' such fields, but of enabling and encouraging them to remain there through specific initiatives that including funding (or analogies such as waivers). That is in large part a question of sustained and sustainable funding, reduction of administration and bureaucracy and appropriate CPD as well as support for trauma and wellbeing. A development, which the domestic regulators might monitor, is the recently commissioned research by the LSB & CV, the Law Society of NSW, and the Legal Practice Board of Western Australia being undertaken by Webb, Holmes, and others. This project is researching the relationship between lawyer wellbeing, workplace culture and ethics in Victoria, New South Wales, and Western Australia and has carried out a survey which closed in March 2024.

12.8 Section 5 suggests the use of emeritus lawyer schemes to bolster supervisory capacity to help redress this deficit. Section 14 also explores a variety of funding schemes that could be used to support training for those working in this sector.

Can education and training be adapted to pre-empt the rise of advice deserts?

12.9 Advice deserts (see section 6) cannot be pre-empted or resolved by education and training alone. Education can, perhaps, motivate and to some extent equip lawyers to work in the field (section 8). Funding (section 10) remains a significant issue, though strategic use of the apprenticeship levy could be more widely disseminated.

12.10 There are a range of other methods that can address advice deserts including the greater use of and facilitation of integrated service delivery (section 5), the use of legal secondary consultations to build the capability of trusted intermediaries, the regulation and expansion of paralegal work (section 4), peer-to-peer learning and the use of groups who represent those who are often excluded or left on the margins. This includes community groups, disability services and mental health providers. An example of this is the use of HJPs whose evaluation has shown that they can make inroads into advice deserts and expand their reach downstream. They also empower members of the community to take the next steps or to challenge poor decision making. There is a role for building advocacy in community organisations so that they are better able to question and challenge poor decision making at an early stage. Lawyers can play a critical role in building this legal literacy and capability, understanding of people's rights and responsibilities and support in navigating complex legal processes.

Cost and the perception of high costs is a barrier to access; can regulators do more around cost predictability or planning especially in contentious areas like family law? If so, what specifically can regulators do?

12.11 There is a recognition that the legal aid budget will not be increased. Funding is a significant barrier to delivery of services and to education that enables lawyers to provide those services. Data reported in sections 10 and 11 suggest ways of fund raising that should

be explored in a feasibility study. Attention to pricing, however, will not resolve the unmet legal need of the most vulnerable in society.

12.12 Issues relating to this question are discussed in sections 8 and 11. Domestic front-line regulators have introduced regulations about price transparency, which they enforce. This is a start, but not a complete answer. There is a tension between regulation and what regulators perceive to be inappropriate interference in practitioners' business models. That said, regulators are, often individually, seeking to foster innovation by their regulated communities including unbundling and more cost-efficient forms of delivery. Some examples were cited of top-down projects (including in family law) instigated by the regulator and of individual, but fragmented, innovations by individuals and law firms. There has been some proactive work undertaken by Law for Life UK through its Advice Now and Self Represented Litigants schemes and reduced cost family lawyering, which are worthy of further exploration. These programmes have been positively evaluated.

Can innovation around creative and flexible pricing (cost) and other approaches (including but not limited to economic tools) be encouraged? If so, how?

12.13 Issues relating to this question are discussed in sections 8 and 11. The regulatory levers available to the LSB and front-line regulators are not confined to enforcement of sanctions (questions of pricing transparency could, for example, be included in codes of conduct) or issuing waivers. They extend to facilitating innovation that addresses the statutory objectives. Beyond pricing, examples of creativity discussed in the report include incentivising, use of paralegals, emeritus lawyer schemes and pro bono. There was a desire for the LSB to take pro-active leadership across the sector to facilitate collaboration and a holistic – and consistent – approach in this and other areas (sections 6 and 9).

Can regulation incentivise more firms to develop new approaches and services that address unmet legal needs, benefit consumers, and promote competition (delivery)?

12.14 A challenge for the domestic front-line regulators in the current fragmented landscape is that if they impose a requirement not imposed on other lawyers (operating in the same practice area), this would be perceived as unfair, or prompt regulator-shopping. Demonstrating the benefits of innovation through e.g., peer learning, is a more effective and credible way of encouraging innovation by showing concrete benefits in operation that may have a competitive advantage for providers. Other initiatives such as waivers and emeritus schemes (section 5) could act as regulatory incentives for work in the access to justice sector. Although the statutory objective for competition is acknowledged, there was an appetite for enhanced collaboration and sharing of data across the sector (sections 5 and 9) rather than being siloed in the hands of individual regulators. The report has also suggested, in section 4, the use of the sandbox approach to facilitate innovation.

How can regulators incentivise, encourage innovation that addresses unmet legal needs?

12.15 The key argument running through this report is that, given the current environment, access to justice requires individual, accountable, and measurable attention, and should not be subsumed into other activities. Technology (section 5), while useful in some contexts, is not a panacea as the most vulnerable are likely to experience digital exclusion. There were suggestions for enhancements to such solutions, specifically *Legal Choices* and professional registers, that might be more effective in meeting potential clients where they are. The theme of collaboration suggested an appetite amongst the domestic regulators for working not only with other regulators, but with other organisations (section 9). The approach of the FCA (section 9) and the sandbox approach (section 4), as well as innovations in strategic problem-solving (section 7) have been recommended as vehicles to assist in meeting unmet legal needs. Enhancement of codes of conduct and more effective use of pro bono activity (section 4) would also act as an incentive.

Any other levers regulators may have to address advice deserts.

12.16 The report discusses approaches to advice deserts in section 6, and other approaches, including legal secondary consultations and increased use of reliable paralegals in section 4. Through the LSB, and as a group with other regulators, there could be levers with government. Collaboration between regulators was also seen as critical (section 9).

Any regulatory barriers as well as creative levers to enhance and support front-line advisory bodies in delivering early advice to promote access to justice and increase public understanding of the citizen's legal rights and duties.

12.17 There are approaches from other jurisdictions that should be explored to assist the front-line service agencies, specifically the urgent need to explore alternative sources of income (section 10). Improving trust in lawyers and innovations that support access to justice could be addressed by attention to legal secondary consultations, use of sandboxes, development of autonomous paralegals, revision of codes of conduct and education about conflicts of interest and a light touch approach by front-line regulators to compliance by agencies that operate in a different way to the conventional law firm (section 4).

12.18 There is a range of innovative PLE practices (section 8) which could be shared more widely to develop tailored responses to diverse and complex need. To be effective, PLE must, however, heed the literature on advice-seeking behaviours, adult learning behaviours, power inequality and problems generated through the lack of trust and significant issues with legal capability of members of the public and the interconnected, cascading, and multifaceted nature of legal and non-legal issues. The LSB and front-line regulators can take further steps to develop their roles in PLE, empowering and enhancing the legal capability of members of the public.

With a key challenge for regulators (having the insights from this project identifying existing, emerging, and future legal needs) being to highlight the needs to policy makers and other actors in the wider system, how might it plan to meet some of these needs using all their regulatory levers?

12.19 The key in the data is collaboration (section 9) and a proactive leadership role for the LSB (section 6) with individual, accountable, and measurable attention, not subsumed into other activities. There was a desire for the LSB to take pro-active leadership across the sector to facilitate collaboration and a holistic approach. The report has also, in section 5 and elsewhere, recommended research (monitored and with evaluation of its outcomes) as well as funding (section 10) as a means of establishing the LSB as the preeminent stakeholder in the sector, with the trust of the professions and able to command the ear of government.

Finally

12.20 By way of summary, the table below outlines some of the innovations that have been discussed, from a variety of jurisdictions, in this report.

	Australia (specifically Victoria)	Canada (Saskatchewan and Ontario)	England and Wales	Scotland	USA (federally or specific states)	Other countries
Autonomous/ community paralegals are regulated	Yes	Yes	CILEX and other voluntary regulation; OISC	Voluntary regulation	In some states	In some countries, especially in Africa
Code of conduct refers to access to justice/rule of law	Yes	S: “A lawyer must encourage public respect for and try to improve the	Broadly, in some professions.[566] CILEX[567] and notaries[568] swear an oath.	Mentioned in code for advocates[569]	ABA Model Rules “special responsibility for the quality of justice”.[570]	Varies

	Australia (specifically Victoria)	Canada (Saskatchewan and Ontario)	England and Wales	Scotland	USA (federally or specific states)	Other countries
		administration of justice".				
Code of Conduct refers to pro bono	Yes	Yes[571]	No	No	ABA Model Rule 6.1 reflected by most states[572]	
Emergency relief structures	Yes	No	LawWorks	No	Grants and resources[573]	
Emeritus/ retired lawyer schemes	No	Some concessions[574]	No	No	In several states[575]	
Incentives to practise in advice deserts	Yes	Some schemes[576]	No	No	Some schemes[577]	
IOLTA schemes	Yes	Through law foundations[578]	Unclaimed funds can be donated.[579]	Unclaimed funds can be donated.[580]	Through courts/legislation[581]	
Mandatory pro bono	For government work	No	No	No (though it was proposed in 2010)	Minimum 50 hours expectation, reporting may be mandatory[582]	In some countries[583]
National advice website	Yes. Federal only and area-specific/patchy. Each state generally via statutory legal aid commissions	No	*Legal Choices*	Government site[584]	No	E.g., Netherlands[585]
Public funding/legal aid model	Mixed model	Mixed model[586]	Judicare model	Mixed model[587]	Through e.g., NFPs[588]	Varying models[589]

Table 3 Innovations mapped across comparative jurisdictions.

12.21 Engendering of the change necessary to improve access to justice applies to the professions and their practices that deliver legal services in England and Wales. This includes cementing a professional identity that embraces a broad responsibility to society, specifically access to justice. It also includes collaboration between front-line regulators, the LSB and other agencies, and, potentially, advocacy for changes to policy, legislation, funding, and infrastructure. Exploring innovations shown to be demonstrably effective in other jurisdictions and other sectors is key. These other jurisdictions, as this report illustrates, show how regulators who are intentional and clear about access to justice expectations and operationalise their expectations around plans of action on access to justice, can be enablers of change and action. This requires a problem-solving and growth mindset and a willingness to look at the evidence to inform strategic action, practice, improve development, innovate, explore and be creative and to gauge and measure positive impact on access to justice to inform future steps.

12.22 The LSB as oversight regulator (see earlier discussion) has an interest in the quality, standards, and ethics of the front-line regulators for each of the regulated legal professions in England and Wales. The individual front-line regulators of the different legal professions share this objective. They are, as noted in section 1, amongst a very few, possibly the only, entities in England and Wales with a statutory obligation to improve access to justice. This is why this report, and its commissioning is critical and timely. Action needs to occur soon if confidence in legal services and in the integrity of the legal system are not to be undermined.

12.23 The imperative to improve access to justice is clear. Unless this occurs, the emergent two-tier justice system which sees those with fewer resources and less capability unable to avail themselves of the same rights and protections as those who have resources and capability will be entrenched. This can only lead to consequential effects in other areas of expenditure. The research is clear about the impacts of unresolved legal problems on health,[590] welfare, and wellbeing as well as alienation, safety and crime and ultimately trust in the integrity of the legal system that supports our democracy. Improving access to justice also affects the LSB's other statutory objectives including: the protection and promotion of the public interest; support the constitutional principle of the rule of law and increasing public understanding of the citizen's legal rights and duties.

12.24 Improving access to justice is no easy task, and some of what needs to be done would require significant legislative change. In exploring what works, and importantly, what has been demonstrated to work, here and in other jurisdictions, this report provides ideas, and a springboard for action.

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Julie Bishop, CEO, Law Centres Network

Gerard Brody, The Australian Financial Complaints Authority (AFCA) board; Former chief executive of the Consumer Action Law Centre; Board of the Energy & Water Ombudsman Victoria since 2014; Board of the Telecommunications Industry Ombudsman since 2022; Chair, Community Legal Centres Australia, the peak body for community legal centres, since 2021; Chair, Consumer Panel of Victorian Legal Services Board and Commissioner of Victoria; Chair, Law Centres Australia, Board Member and Australian Financial Complaints Authority and Chair of the Consumers' Federation of Australia

Clare Carter, Access to Justice Foundation

Costs Lawyer Standards Board (written response)

Linda Ford, Registrar, Chartered Institute of Legal Executives

Louise Glanville, CEO Victoria Legal Aid, Chair, National Legal Aid

Chris Handford, Director of Regulatory Policy, Solicitors Regulation Authority

Intellectual Property Regulation Board (written response)

Pamela Kovacs, Law Society of Saskatchewan

Fiona McLeay, Legal Services Commissioner, Legal Services Board and Commissioner Victoria

Rowan McRae, Victoria Legal Aid

Kerri-Anne Millard, Legal Services Board and Commissioner Victoria

Richard Miller, Head of Access to Justice, Law Society of England and Wales

Martha de la Roche, Access to Justice Foundation

Sophie Wales, Head of Regulatory Affairs and Policy, Institute of Chartered Accountants in England and Wales

Stephen Ward, Director of Strategy and External Relations, Council for Licensed Conveyancers

Lisa Wintersteiger, CEO, Law for Life.

Reflective practice conversation

David Abbott, LSCP member

Anonymous LSCP member

Anonymous member of the LSB

Lisa Davis, LSCP member

Heidi Evelyn, LSCP secretariat

Chris Handford, Director of Regulatory Policy, SRA

Tom May, Research Manager, LSB

THE RESEARCHERS AND REPORT AUTHORS

Associate Professor Liz Curran, PhD, SFHEA, solicitor (non-practising): project lead

Liz's research, evaluation, practice and academic work has led to policy change, funding for community agencies and developments in good practice. Her work fosters organisational, collective and individual reflective practice using evidence-based changes in practice to produce positive outcomes in service delivery. She teaches practical legal skills to prepare students for the realities and challenges ahead.

Liz is an Associate Professor in Clinical Legal Education and the school Research Impact Lead at Nottingham Law School. She is also Evaluation Adviser for Law for Life UK; contracted research for the Hume Riverina Community Legal Services and Albury Wodonga Aboriginal Health Services Health Justice Partnership (HJP) (2022-2025) and ARC Justice Ltd HJP (2015-2019). Previously she was a consultant for Australian Disability Rights Law Centre HJP, (March 2023-March 2024). She was expert adviser to the Law Council of Australia's Justice Project (2017-2018). She was commissioned by the Australian Attorney General's Department Literature Review, 'Examining the Literature on How to Measure the 'Successful Outcomes': Quality, Effectiveness and Efficiency of Legal Assistance Services' (2012).

She is a member of the board of Nottingham Law Centre; the editorial board of the Evaluation Journal of Australasia and the Law Teacher: International Journal of Legal Education; the Justice and Innovation Group UK; Network for Justice UK; the Standing Council on Advice Research and Evaluation (UK) and the Transparency and Open Justice Stakeholder Committee Forum, Judicial Office (UK). She was Associate Director of the Australian National University Centre for the Profession Education and Regulation in Law (2016-2020).

She has been pioneering work on health justice partnerships in Australia from 2001 and a legal practitioner for three decades. Many use her ground-breaking research and book *Better Law for a Better World* (Routledge 2021). She has advised on many start-ups of HJPs, not only in Australia but in Ontario, Canada, Denmark and the UK, delivering workshops on the evidence-base and 'how to' 'start-up' training.

She was formerly Executive Director of a human rights NGO; team leader in a humanitarian agency advocacy branch, and worked in policy with government departments, statutory offices and Parliamentarians as well as in legal practice, education and research.

Liz has also published widely on access to justice, human rights, youth justice, restorative practice and multidisciplinary practice.

She routinely uses research to shape and inform evidence-based justice policy and funding in the UK, Canada and Australia. Her suggestions have been adopted by various statutory officials, reviews, and by governments.

Further details and publications: https://www.ntu.ac.uk/staff-profiles/law/liz-curran

Professor Jane Ching MA (Cantab), PhD, PFHEA, solicitor (non-practising)

Jane is a qualified solicitor and the Professor of Professional Legal Education at Nottingham Law School, working with colleagues in the Centre for Legal Education, of which she is the director. In 2019, she received the NTU Vice Chancellor's Award for Outstanding Academic Practice in recognition of her work. She is a Principal Fellow of the Higher Education Academy.

Jane's PhD was on the learning of early career litigation solicitors. Her research interests include the working and learning experiences of young lawyers, especially in the workplace and professional qualification regulatory frameworks, including competence statements. Between 2008 – 2013, she led the paralegal component of the SRA's work-based learning pilot, a large-scale action research project to evaluate methods of providing a training contract experience to paralegals working in a wide range of legal services sectors. In 2016, with Pamela Henderson, she carried out an empirical and comparative study on the contribution of work experience (clinics, placements, training contracts) to professional competence for the SRA.

She has worked on projects for legal and educational regulators and professional bodies in, to date, more than 20 different countries (Antigua and Barbuda, Armenia, Bahamas, Barbados, Belize, Canada, Dominica, England and Wales, Grenada, Guyana, Hong Kong, Jamaica, Mauritius, Mongolia, Montserrat, Republic of Ireland, St Kitts and Nevis, St Lucia, St Vincent and the Grenadines, Trinidad and Tobago). This includes the influential Legal Education and Training Review in 2011-2013, commissioned by the BSB, SRA and CILEx Regulation, the most comprehensive review of legal education in England and Wales since 1971, informing LSB policy and that of the front-line regulators

She has presented at conferences in Australia, Hong Kong, Italy and Turkey as well as in the USA and UK. She has supervised PhD and Doctorate in Legal Practice candidates working on topics including the skills components of an Irish law degree; proposals for an Islamic law curriculum for solicitors in England and Wales; innovation and marketing in small English law firms and the skills required for Chinese international commercial lawyers.

Further details and publications: https://www.ntu.ac.uk/staff-profiles/law/jane-ching

Professor Jane Jarman BA, ACIArb, FRSA, solicitor

Jane is a solicitor and Professor of Legal Practice at Nottingham Law School. In 2018, she received the NTU Vice Chancellor's Award for Outstanding Academic Practice in recognition of her work. Jane has a special interest in the integration of legal education into compliance and risk management frameworks in the workplace. She as advised regulators on legal education and professional regulation in the UK and internationally.

Jane practised as a professional indemnity litigation solicitor for many years, specialising in professional negligence claims against solicitors. Her expertise is in intellectual property, legal professional privilege and professional ethics as well as the education of legal practitioners and regulation of legal practice. Jane supports and advises on regulatory and compliance matters within NLS Legal (the school's teaching law firm) and utilises her expertise to support its Business and Enterprise Law Service and Intellectual Property Service, over and above her academic commitments.

Jane is a contributor to the Legal Sector Affinity Group Guidance on Anti Money Laundering (2021) and is a specialist in the application of legal professional privilege in the context of anti-money laundering legislation.

She has supervised LLM, PhD and Doctorate in Legal Practice candidates working on papers relating to anti money laundering compliance, insurance law, and legal education in the workplace.

In 2022, Jane was appointed as Chair of the Chartered Insurance Institute's Disciplinary Decisions Review Panel and is also a member of the Professional Standards Committee.

Further details and publications: https://www.ntu.ac.uk/staff-profiles/law/jane-jarman

Joseph Godfrey

Joseph completed his LLM at the University of Cambridge and has particular expertise in the areas of intellectual property, data science, and artificial intelligence. He has published in leading peer-reviewed journals including the Intellectual Property Quarterly and the Hastings Science & Technology Law Journal. Formerly a research assistant at the Alan Turing Institute, Joseph worked across a wide range of legal fields during his period of employment as a research assistant at Nottingham Law School from February-July 2024. Joseph is currently undertaking doctoral research in the field of intellectual property law.

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