



The provision of unbundling in the legal services market

March 2021

Introduction

In the Legal Services Consumer Panel's (Panel) Work Programme for 2020/21 we committed to preparing a follow up paper on unbundling. By unbundling we mean the separation of tasks within a package of legal services between the consumer and the legal service provider. The two parties agree which parts of the package the provider will deliver and which tasks the consumer will undertake.

Our initial paper on unbundling, published in 2015,¹ explored the experiences and perceptions of consumers and providers who unbundled legal services. Following the publication of the research report, the Panel held a roundtable event where several recommendations were made to the regulators, representative bodies, and the Legal Ombudsman (LeO), *see the box below*.²

Recommendations made in 2015

- A review or case studies from LeO on unbundling, perhaps touching on client capability, with a view to informing clearer guidance for providers.
- Support for unbundling from representative bodies, in consideration of client capability, and further advice on dealing with the risks identified (such as Professional Indemnity Insurance matters).
- Regrouping in 6-9 months' time to see where we are and to further understand the changing landscape. (Consideration will be given to potentially focussing on one area, such as the pro bono/ mixed with fee-charging fixed fee work, and consumer capability).

It is clear that there are a number of different initiatives taking place across the sector that directly support unbundling or are related to developing clearer understanding. These include:

- CILEx Regulation has committed to hosting a couple of round tables with consumers to further explore the use of unbundling.
- The Law Society is incorporating a question on the provision of unbundling into its professional survey, and its joint research project with the LSB and the Legal Education Foundation into legal needs will also serve to provide more data.
- The Litigants in Person Support Strategy includes future reviews of unbundled work, and there is a series of developments across the not for profit and pro bono programs.

¹ [LSCP, Qualitative research exploring the experiences and perceptions of unbundled legal services, August 2015](#)

² [LSCP, Roundtable Note, November 2015](#)

In this paper, we consider the progress made by the regulators and LeO against the recommendations we made in 2015 by also considering the evidence from our Tracker Survey 2020.³ We also consider the use of technology in facilitating unbundling.

The benefits and challenges of unbundling

Our research of 2015 concluded that the use of unbundling benefited consumers by increasing their access to justice. It also reduced their cost of legal services by up to two thirds. Consumers also reported a greater sense of control and ownership. Those who had unbundled felt that it improved the outcomes of their case as well.

The Panel believes that there is scope for the provision of more unbundled services, and we remain of the view that this can help consumers access justice and reduce unmet legal need. However, there are challenges around consumer awareness and provider confidence or risk appetite.

Our research revealed that the option to unbundle was not promoted by providers either directly to consumers or through advertising. And providers mentioned the absence of a formalised process to assess the consumer's capability of taking on tasks assigned to them. For example, providers feared discrimination challenges if they explicitly informed consumers that they were not suited to unbundle, e.g if their English language skills were not strong enough.

We know that providers were unclear about the regulatory boundaries should a dispute arise. There was also insufficient information around how LeO might deal with cases. Taking these challenges into account, we have designed recommendations to address providers' concerns and raise consumer awareness.

The current state of play

The next section explores evidence from our Tracker Survey, as well as the progress regulators have reported to us.

Evidence from the Tracker Survey

We have noticed a consistent decrease in the use of unbundling as a percentage of legal services delivered, from 19% in 2015 to 16% in 2020. However, there are considerable differences in the use of unbundling by different ethnic groups, see *Figure 1*.

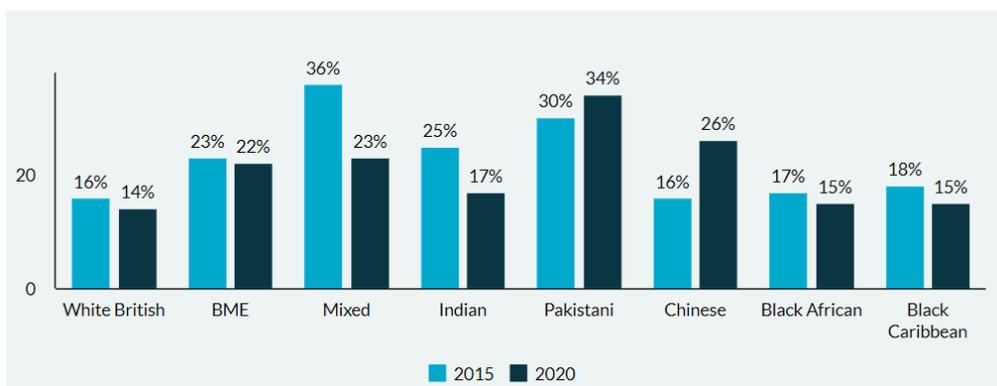


Figure 1. Unbundling of legal services by ethnicity, time series 2015 and 2020.

³ [LSCP, Tracker Survey 2020, August 2020.](#)

Most ethnic groups unbundled less in 2020 compared with 2015. By the end of this period only 14% of White British and 17% of Black Caribbean consumers unbundled their legal services, compared with 34% Pakistani and 24% Chinese consumers. These differences had been considerably less significant in 2015.

If we look at geographical areas, in 2020, consumers in London (21%) unbundled the most when compared with other regions in England and Wales. While the use of unbundling remained constant at 16% in Wales from 2015 to 2020, in England it decreased from 19% to 16% over the same period, see *Figure 2*. The English regions experiencing a considerable decrease over this period are Yorkshire and Humber, and East Midlands, while North East is the only area that increased its use of unbundling.

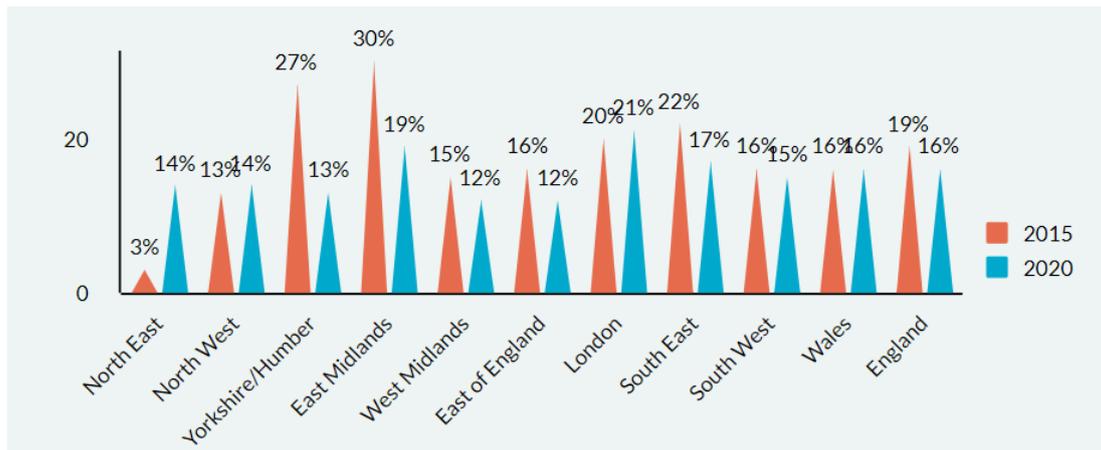


Figure 2. Unbundling of legal services by geographical areas, time series 2015 and 2020.

As for the use of unbundling by gender, its use decreased for both genders over the same period. However, it decreased much more for women from 21% to 16%, see *Figure 3*.

There are no significant differences in the use of unbundling by social groups in 2020 (around 16% for all groups), whereas its use in 2015 was notably greater, at 21%, for those in lower social economic groups (C2DE) than in higher social economic groups (ABC1), at 18%. Consumers who report having a disability unbundled less in 2020 (19%) than they had in 2015 (22%), see *Figure 3*.

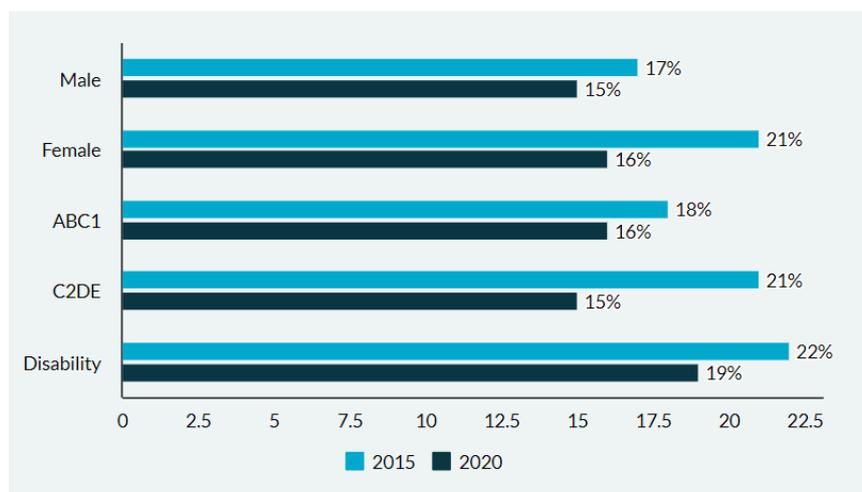


Figure 3. Unbundling of legal services by other demographics, time series 2015 and 2020.

Consumers from younger age groups, between 18 and 34, used unbundling more than the other age groups. However, between 2015 and 2020 its use decreased among younger consumers while remaining relatively constant for the rest of the groups.⁴ As for the areas of law, unbundling has been used the most for immigration services, advice about benefits or tax credits, probate, employment disputes and family matters.⁵

Considering the data for 2020 only, 19% of consumers who unbundled said they did not have much choice, or none at all, when deciding on a provider compared with 15% who said they did. Moreover, more consumers who do shop around have also unbundled (18%) in contrast to those who did not (15%).

The progress made by regulators

We recently wrote to the regulators, the representative bodies and LeO asking for an update on their work on unbundling and if they have any work planned further to the recommendations we made in 2015. It is disappointing that only the Solicitors Regulation Authority (SRA), the Bar Standards Board (BSB) and LeO shared an update with us.

The update received from the SRA

The SRA highlighted in its 2017 report '*Improving access – tackling unmet legal needs*'⁶ the benefits of unbundling, as an approach to increase access to legal services. The report also covered how firms could manage risks that come with unbundling and had relevant signposting, including the Law Society's practice note on unbundling⁷ published in 2016. However, we note that the use of unbundling for solicitors decreased from 16% in 2015 to 14% in 2020.

In the same year, the SRA published another research paper on the '*Experiences of consumers who may be vulnerable in family law*'.⁸ The research into 115 law firms showed that 85% of firms said they offered unbundled services, but concluded that this is difficult in a family law context. Furthermore, 80% of firms said that unbundling family law services had caused problems for cases and 52% said it had caused issues for the firm.

The SRA said it used the research findings to build up their understanding of the practicalities of unbundling, but also to develop clearer messaging for the public. Together with the other regulators, the SRA said it has built its messaging to help consumers understand and consider using unbundled legal services. The use of the Legal Choices website is one example. We note the work the SRA has done on building consumer knowledge through the Legal Choices website and we encourage them to continue.

Since 2016 the SRA has run 'SRA Innovate' – an initiative that encourages firms to innovate, with a strong focus on making services more accessible to consumers. At its roadshow events the SRA has encouraged the unbundling of services⁹ and its 2018 publication *Technology and Legal Services* highlights how unbundling gives scope for

⁴ The base sizes for this data are small and therefore the results are indicative.

⁵ Ibid.

⁶ <https://www.sra.org.uk/risk/risk-resources/legal-needs/>

⁷ <https://www.lawsociety.org.uk/topics/civil-litigation/unbundling-civil-legal-services>. The Law Society's practice note was pushed for a wider range of civil claims, as a response to cuts in legal aid provisions.

⁸ <https://www.sra.org.uk/sra/how-we-work/reports/vulnerable-consumers>

⁹ [Innovation: a risky business? \(sra.org.uk\)](https://www.sra.org.uk/sra/how-we-work/reports/vulnerable-consumers)

technology to be used alongside traditional methods of delivery service.¹⁰ Its Legal Access Challenge supported providers to do this in practice with learnings being widely publicised.¹¹

The SRA has not issued any regulatory guidance that emphasises the role of unbundling in widening access, the opportunity it provides for increased business amongst providers, or guidance on assessing consumers' capability.

Thus, we would recommend that guidance is published to address the concerns raised by providers. This should also include insights highlighted above from the SRA's own research and set out the types of scenarios where unbundling can best be provided. Moreover, the SRA could provide more support to providers in their assessment of consumer capability, e.g. it could publish useful examples or case studies for providers to use. This could support the work that the SRA is currently leading to improve the access to information on quality for consumers when choosing for a legal service provider,¹² and the relaunch of the SRA's Innovation web pages scheduled later this year.

The SRA should explore the feasibility of encouraging providers to offer unbundled services as a standard feature, while assessing consumers' capability and any potential risks at the same time. Lastly, the guidance should cover the use of technology in unbundling legal services. We will cover this in the next section.

The update received from the BSB

The BSB said that Public Access work¹³ and advocacy¹⁴ undertaken by barristers are open to unbundling. The key regulatory issues for the BSB arise where a Public Access barrister takes responsibility for overseeing the whole matter. The Tracker Survey shows that use of unbundling (as defined by us) decreased for services provided by barristers from 31% in 2015 to 25% in 2020.

In 2020, the BSB published the latest version of its Public Access guidance¹⁵ which explains the barrister's obligations, particularly in dealing directly with consumers. The BSB said the key regulatory issues in relation to unbundling are also covered in the Public Access training courses it accredits, which are completed by barristers before they undertake any Public Access work.

The BSB confirmed that a review of available literature suggested consumers using Public Access barristers may be less likely to receive clear and understandable information at the start of the legal process, compared to referred consumers, including explanations of what is expected of them.

The BSB has informed us that it is commissioning qualitative research to identify the extent to which consumers understand what is expected of them, including the documentation

¹⁰ [SRA, Technology and legal services, November 2018](#)

¹¹ [SRA, Legal Access Challenge](#)

¹² [SRA, Comparison websites and quality indicators](#)

¹³ Where a consumer does not instruct a solicitor and might therefore instruct a Public Access barrister to help them with a particular aspect of their case. For example, standalone legal advice to help them to present their own case in court, or a 'letter from counsel' to help them to negotiate with another party.

¹⁴ Public Access advocacy is when the barrister is not authorised to conduct litigation is also a form of unbundling, because the consumer will need to undertake their own litigation.

¹⁵ [BSB, Public Access guidance for the public, April 2020.](#)

and information they need to provide. The research will also cover how best to manage the sharing of responsibility between the consumer and the barrister. We welcome the research and are particularly pleased that the results will inform the BSB's Code of Conduct for public access services.

The BSB's 2020 guidance does not offer any examples or supporting materials for barristers on how to ensure that the documentation they share with consumers is clear and accessible. The guidance does not give any steers on developing a formalised process to assess the consumer's capability for unbundling or explaining the work agreed to be undertaken by the consumer.

Thus, we recommend that the BSB provides guidelines to barristers delivering Public Access work on how to deliver clear and understandable information to consumers about the agreed work, building on the BSB's current Public Access guidance and the expectations set out in the BSB's Code of Conduct. The guidelines should include practical examples underlining the importance of using plain English and less legal jargon, and templates with agreements of the tasks agreed between consumers and providers.

The update received from LeO

In 2015, we recommended that LeO undertakes a thematic review or case studies on unbundling; we suggested that this could assess consumer capability, with a view to informing clearer guidance for providers. Unfortunately, LeO has not compiled any case studies in this area, but the Ombudsman has expressed a willingness to consider this in the near future.

LeO also said that the data it gathers does not specifically capture instances of unbundling. However, they have anecdotal evidence shared by the ombudsmen looking at complaints. LeO said that unbundling is not a common feature of the complaints, and whether they note it or not is determined by the nature of the complaint or how the instruction is recorded in the client care letter.

When unbundling is reported, it is most common in areas such as family, litigation, and property disputes. Often the complaints in these areas will relate to a grievance about a service the consumer believed the provider failed to deliver. However, LeO believes it is more to do with the fact that the consumer's request was out of the scope of the instruction that the provider received.

Observations on regulators' interventions to date

Steps taken so far by the regulators and LeO on unbundling show a rather fragmented picture, which might explain consumers' sporadic use of this service. The Panel still expects LeO to undertake a thematic review or case studies on unbundling, touching on consumer capability, but also to ensure it collects data on the use and impact of unbundling.

Regulators, in fulfilling their statutory objective of widening access to justice, should take proactive steps to understand why unbundling is dwindling or stagnant. They should also assess whether this is still a credible method of closing some of the access to justice gap.

We recommend that the regulators provide more effective guidance and encourage providers to be more proactive in the promotion of efficient and effective unbundling services. When consumers decide to unbundle, the instructions and outline of the tasks to be carried out by consumers should be clear and set out in a stand alone document.

The use of technology

The Panel believes technology has the potential to support unbundling, especially in the context of the pandemic and beyond. However, we acknowledge that these technological tools will not be a panacea.

Technology could be used by providers to develop a case management system and assess consumers' capability. The case management system should be accessible to consumers, giving them an overview of the process and outlining the tasks to be delivered by each party. This could help in preventing delays by informing consumers of overdue tasks and provide them with updates on the case. Here consumers could also access supportive reading materials if they wish to enrich their knowledge of the legal services they purchased. However, if such systems are adopted the regulators must ensure the technology is appropriately tested with a wide range of consumers.¹⁶

In terms of assessing consumer capability, it is important to acknowledge that some consumers might have limited access to IT services and/or limited digital literacy. We know that roughly 9 million people in the UK (16%) are unable to use the Internet and their device by themselves.¹⁷ Additionally, there are consumers who might have the digital skills, but are excluded for reasons such as poor broadband infrastructure in rural areas or outdated technology.

We would therefore encourage regulators to be mindful of this and to consider alternative ways for vulnerable consumers to benefit from unbundling in order to access legal advice. For example, the consumer assessment could be carried out over the telephone or in person by the law firms' personnel.

Given that the legal services market is fragmented, delivering technological solutions could be challenging in practice. The oversight regulator will be instrumental in streamlining the efforts of the regulatory bodies in ensuring a concerted effort is achieved on unbundling, without being too prescriptive.

Conclusions

We believe unbundling of legal services has an untapped potential. We understand providers' reluctance to engage or to promote this type of delivery. However, with the support of clear and effective regulatory guidance and technological tools, providers can reduce the risks associated with unbundling. This would support many consumers in accessing much needed legal advice.

The conditions in which unbundling can thrive are probably also linked to the delivery of public legal education at the point of need.

The Panel would like to see, in the near future, improved promotion either directly to consumers or through appropriate advertising of unbundling services. There needs to be a formalised process to assess consumer's capability and the agreements of tasks between consumers and providers. Better use of case management systems and technological tools can improve the efficiency and reduce the risks for unbundled services.

¹⁶ Some useful examples we came across are [Hoowla](#) that do the client portal pretty well and [Clio](#), a client portal for law firm preferred pattern of the Law Society. However, we are not suggesting that regulators should recommend these case management systems to be adopted by providers.

¹⁷ Lloyds Bank UK Consumer Digital Index 2020.

The Panel plans to host a roundtable (probably online) in the next 12 months to discuss the proposed recommendations with the Legal Services Board, the regulatory bodies and LeO.

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