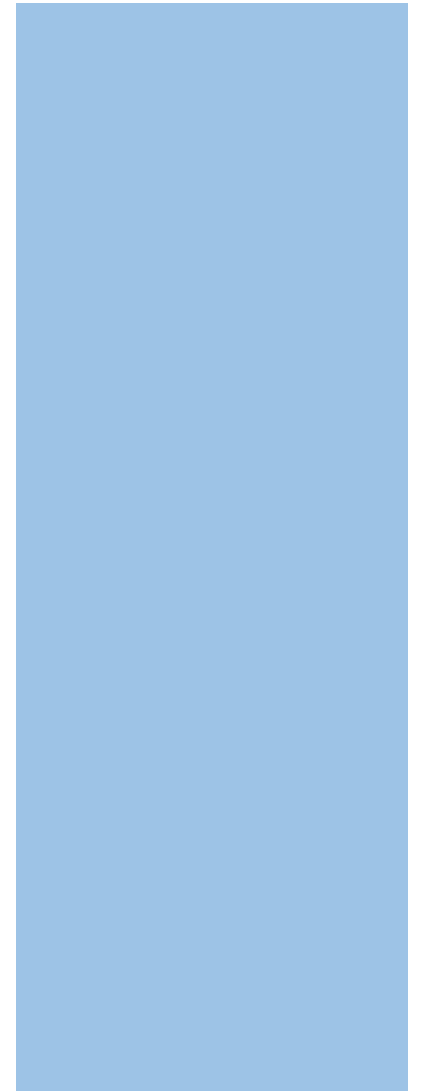


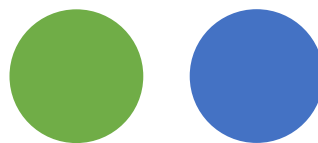
**THE LEGAL SERVICES
BOARD'S SMALL BUSINESS
LEGAL NEEDS SURVEY:**



**RESEARCHING LEGAL CAPABILITY,
LEGAL NEED AND
THE IMPACT OF COVID-19 AND
EXITING THE EUROPEAN UNION**



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The Legal Services Board's Small Business Legal Needs Survey:

*Researching Legal Capability, Legal Need and the Impact of Covid-19
and Exiting the European Union*

February 2021

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A. Introduction

This paper sets out conceptual frameworks for understanding the ‘legal capability’ of small and medium-sized enterprises (SMEs) in England and Wales and their ‘legal need’. It also provides practical frameworks for capturing legal capability data and measuring met and unmet legal need through the Legal Services Board’s (LSB) legal needs survey of small businesses (“the LSB survey”). Finally, it proposes methods for assessing the impact of the Covid-19 pandemic and the United Kingdom’s exit from the European Union on SMEs in England and Wales, in relation to both the prevalence of ‘justiciable’ problems and ways in which SMEs have dealt with problems.

The LSB survey was first conducted between December 2012 and January 2013.¹ Follow-up surveys were then conducted in 2015 and 2017. A draft questionnaire for a third follow-up survey is included as an appendix to this paper. The draft questionnaire implements the ideas discussed in this paper, as well as drawing on a detailed commentary on the 2017 questionnaire submitted to the LSB at an earlier date. The original LSB survey questionnaire adopted the approach set out in *A Framework for Benchmarking Small Business Consumers’ Need for and Use of Legal Services*.²

B. Legal Capability: Concept and Measurement

A Conceptual Framework

The Oxford English Dictionary defines capability as “the power or ability to do something.”

Lack of capability has long been described in the socio-legal literature as constituting “the most fundamental ... barrier to access [to justice],”³ and Pleasence and Balmer have recently argued that ‘legal capability’ is key to understanding both “patterns of civil justice problem experience and problem-resolution behaviour.”⁴

Referencing economist Amartya Sen’s ‘capability approach’ – and his description of capability as “the substantive freedom to achieve alternative functioning combinations (or, less formally put, the freedom to achieve various lifestyles)”⁵ – legal capability has been defined as comprising the capabilities “required for an individual to have an effective opportunity to make a decision about whether and how to make use of the justice system to try to resolve a problem.”⁶

¹ Pleasence, P. & Balmer, N.J. (2013) *In Need of Advice*, Cambridge: PPL

² Pleasence, P., Balmer, N.J., Blackburn, R. & Wainwright, T. (2012) *A Framework for Benchmarking Small Business Consumers’ Need for and Use of Legal Services*, Cambridge: PPL

³ Galanter, M. (1974) “Why the ‘Haves’ Come Out Ahead: Speculations on the Limits of Legal Change,” 9(1) *Law and Society Review*, pp.95-160.

⁴ Pleasence, P. & Balmer, N.J. (2019) “Justice and the Capability to Function in Society,” 148(1) *Daedalus*, pp.140-149.

⁵ Sen, A. (1999) *Development as Freedom*, Oxford: Oxford University Press.

⁶ Pleasence, P et al. (2014) *Reshaping Legal Assistance Services: Building on the Evidence Base*, Sydney: Law and Justice Foundation of New South Wales

In considering the range of capabilities required to make decisions about whether and how to use the justice system (in its broadest sense) to try to resolve justiciable problems, a number of authors have proposed frameworks for understanding legal capability.⁷ These have drawn on conceptualisations in other fields, such as finance,⁸ and typically referenced knowledge, skills and attitudes as key dimensions. However, as the recent OECD/OSJI global guidance on the conduct of legal needs surveys (“the OECD guidance”) observed, although there is “much agreement among recent accounts of the concept ... there is no consensus on the precise constituents of legal capability.”⁹

The Victoria Law Foundation (VLF), in preparing to undertake a first large-scale face-to-face public legal capability survey, has recently synthesised and refined the previously suggested multifarious dimensions of legal capability into a comprehensive legal capability framework.¹⁰ Drawing particularly on Collard et al.’s approach,¹¹ the VLF framework is represented as a matrix, with horizontal elements reflecting the stages of dispute resolution (along with more systemic addressing of justiciable problems: ‘recognition of issues’, ‘information/assistance’, ‘resolution’, ‘wider influence and law reform’)¹² and vertical elements reflecting the commonly recognised dimensions of knowledge, skills, attitudes and resources/environmental factors. The VLF framework is reproduced in Appendix 1.

Examples of ‘knowledge’ sub-dimensions include general and situational knowledge of law, knowledge of sources of information and advice, knowledge or dispute resolution process options and knowledge relating to the admissibility of evidence. Examples of ‘skills’ sub-dimensions include ability to identify justiciable problems as contentious (and, then, as having a legal dimension), ability to recognise capability limitations, information literacy, digital literacy, comprehension skills and negotiation skills. Examples of ‘attribute’ dimensions include legal consciousness, self-esteem, confidence and attitude to fairness. Examples of ‘resources/environmental’ dimensions include money, social capital, the availability of services and the availability of dispute resolution processes.

The OECD guidance describes the concept of legal capability as being applicable to communities as much as to individuals¹³ and we see no conceptual bar to the above definition and VLF

⁷ For example, Parle, L.J. (2009) *Measuring Young People’s Legal Capability*, London: Plenet, Jones, M. (2010) *Legal Capability*, London: Plenet, Collard, S. et al. (2011), *Public Legal Education Evaluation Framework*, Bristol: Personal Finance Research Centre, Canadian National Action Committee on Access to Justice in Civil and Family Matters (2013) *Responding Early, Responding Well: Access to Justice Through the Early Resolution Services Sector*, Ottawa: National Action Committee on Access to Justice in Civil and Family Matters, Pleasence, P et al. (2014) *Reshaping Legal Assistance Services: Building on the Evidence Base*, Sydney: Law and Justice Foundation of New South Wales, Community Legal Education Ontario (2016) *Building an Understanding of Legal Capability: An Online Scan of Legal Capability Research*, Toronto: Community Legal Education Ontario, Balmer, N.J. et al. (2019) *Law ... What is it Good For?* Melbourne: Victoria Law Foundation.

⁸ Basic Skills Agency (2006) *Adult Financial Capability Framework*, 2nd Edition, London: Basic Skills Agency, Atkinson, A. et al. (2006) *Levels of Financial Capability in the UK: Results of a Baseline Survey*, Bristol: Personal Finance Research Centre.

⁹ Pleasence, P. et al. (2019) *Legal Needs Surveys and Access to Justice*, Paris: OECD

¹⁰ Balmer, N.J. et al. (2019) *Law ... What is it Good For?* Melbourne: Victoria Law Foundation.

¹¹ Collard, S. et al. (2011), *Public Legal Education Evaluation Framework*, Bristol: Personal Finance Research Centre

¹² Recognition of issues, accessing information and assistance, the process of problem resolution, wider influence and law reform.

¹³ Pleasence, P. et al. (2019) *Legal Needs Surveys and Access to Justice*, Paris: OECD

framework extending to businesses. This is particularly so in the case of SMEs, given that over three-quarters of SMEs have no employees and over 95 per cent have fewer than ten.¹⁴

When businesses are comprised of a single person, then individual and business legal capability are largely the same. Where businesses are comprised of a number of individuals, key conceptual issues in mapping the VLF framework to businesses concern:

- whether there are aspects of business structure or composition that represent particular dimensions of legal capability; and
- whether there are dimensions of legal capability that are diffuse across businesses.

Clearly, some aspects of multi-worker business structure or composition are relevant to some business legal capability domains (such as whether a business has personnel resources dedicated to legal functions, in the case of the sub-dimensions of legal knowledge, legal reasoning, etc.). Similarly, there are also capabilities that tend to be diffuse across the personnel who make up multi-worker businesses (such as the ability to recognise problems and relevance of law). These become more difficult to measure as business size increases. However, we do not believe that this difficulty presents a significant practical barrier to making broad determinations of legal capability in the context of the LSB survey. As well as businesses included in the LSB survey tending to be very small (substantially limiting the measurement risks posed by this difficulty), broad legal capability will increase alongside business size, meaning that the measurement risks associated with this difficulty will, in policy terms, be offset by the diminishing capability-related risks faced by larger businesses.

We also consider that question A3¹⁵ within the LSB's small business legal needs survey makes it legitimate to assume that a representative respondent is well placed to answer the legal capability questions we propose for inclusion in future surveys below.

Measurement of Legal Capability Within a Legal Needs Survey

The VLF framework extends to, literally, hundreds of sub-dimensions of legal capability. Consequently, it would be impossible to consider all sub-dimensions for inclusion in a single survey. However, the framework is a useful starting point for determination of priority aspects of legal capability for inclusion within any given survey.

In determining which dimensions and sub-dimensions of legal capability warrant development of questions, prime considerations will be (a) the extent to which dimensions/sub-dimensions are specific to the legal domain, (b) the likely explanatory power of capability measures in relation to experience of or response to justiciable problems, (c) the feasibility of valid and reliable measurement and (d) the feasibility of valid and reliable measurement through a survey.

¹⁴ DBEIS (2020) *Business Population Estimates for the UK and Regions: 2019 Statistical Release*, Available from <https://www.gov.uk/government/publications/business-population-estimates-2019/business-population-estimates-for-the-uk-and-regions-2019-statistical-release-html> accessed 20 January 2021.

¹⁵ "Do you have a good knowledge of the day-to-day operations of your business across all areas of its activity? By day-to-day operations we require you to have knowledge of legal issues your organisation may have encountered as well as some knowledge of employment issues and finance."

A cursory glance over the VLF framework makes evident that many dimensions of legal capability are generic, in that they are aspects of capability more broadly. For example, important capabilities relating to problem resolution include organisational, planning, problem solving and decision-making skills, none of which are specific to the legal sphere. And the same can also be said of digital literacy (and other forms of literacy) and confidence in the use of technology. Thus, if such sub-dimensions of capability were to be explored through a legal needs survey, questions would most appropriately be drawn from non-legal research disciplines in which relevant questions are commonly used. In the case of digital literacy, we describe potential approaches to measurement below. However, we make no suggestions in relation to organisational, planning, problem solving and decision-making skills, which are domain sensitive, difficult to measure and, in particular, difficult to measure efficiently through a broadly focused survey.

As regards capability dimensions/sub-dimensions that are likely to shed light on patterns of justiciable problem experience and responses to problems, we regard legal consciousness (as it relates to the process of ‘naming, blaming and claiming ...’¹⁶), awareness of law and legal services and legal confidence as the most important. The last of these are also included within our proposed approach to measurement of legal need and unmet legal need, described in section C.

Refining the LSB Survey to Better Capture Legal Capability

Capability relevant questions in the 2017 LSB small business legal needs survey

Question A8 of the 2017 LSB small business legal needs survey asks whether anybody within a business is ‘a qualified lawyer or trained in handling legal issues’. This gives an indication of level of legal skills within a business. However, as businesses become larger, it is possible that such qualified lawyers or persons trained in handling legal issues could have little or no responsibility for the legal affairs of a business. Question B8 asks whether people identified through question A8 would be consulted in relation to a legal issue encountered ‘as part of [a] business’s normal activities’. This gives some insight into whether a business exploits its internal legal capacity, but only partial insight.

We suggest that when a business is comprised of more than one person, additional follow-up questions be used to identify whether internal legal capacity is routinely harnessed:

A10. [If S4>1 & A8 = Yes] Does the legally qualified or trained person (or people) have responsibility for the business’s legal affairs?

1. Yes
2. No

A11. [If A10 = No] Is the legally qualified or trained person (or people) expected to identify and help deal with legal issues that are related to their legal specialism?

1. Yes

¹⁶ Felstiner, W.L.F., Abel, R.L. & Sarat, A. (1980) “The Emergence and Transformation of Disputes: Naming, Blaming and Claiming ...” in 15(3/4) *Law and Society Review*, pp.631-654.

2. No

A12. [If A10 = Yes] Is the primary job of one or more legally qualified or trained persons to deal with legal issues?

1. Yes
2. No

Question C32 asks respondents to characterise followed-up justiciable problems as any of: 'bad luck', 'moral', 'private business matters', 'criminal', 'legal', 'bureaucratic' or 'social'. This question concerns 'legal consciousness' and goes to the heart of the VLF framework *recognition of issues* stage 'knowledge' and 'skills' domains. Legal consciousness has been repeatedly shown to be a factor in problem resolution decision-making.

Question C35b, also part of problem follow-up, asks whether family/friends/colleagues who provide assistance in resolving problems have relevant legal/professional knowledge. While not directly an issue of the business's legal capability, the question does relate to the legal capability of those from whom help is sort. This is relevant in relation to our approach to measuring legal need, detailed in section C.

Questions C49, C51, C52a, C52b, C53, C54, and C55, also all part of problem follow-up, ask about aspects of decision making in relation to support services. All are relevant to the VLF framework *information/assistance* stage 'locate information sources' and 'assess costs/benefits of information sources' sub-domains of the 'information literacy' sub-domain of the 'skills' domain (and the associated 'situation specific sources' sub-domain of the 'sources' sub-domain of the 'knowledge' domain).

Question E53 captures business turnover. This is relevant to the various 'money' sub-domains of the 'resources/environment' domain.

Question E62 concerns respondent attitudes to law, lawyers and dispute resolution processes. This is relevant to the various 'attitudes' sub-domains of the 'attributes' domain.

Although not included in the 2017 LSB survey, the original LSB small business legal needs survey included a specific question concerning digital capability, an *information/assistance* stage sub-domain of the 'information literacy' sub-domain of the 'skills' domain.

B70. Thinking of accessing any type of services for your business, including use of any services you have already mentioned, did your business use the Internet to do any of the following things in the past 12 months?
[MULTIPLE]

1. Download a contract/terms and conditions template
2. Download another type of legal document template
3. Obtain information about the law/regulations
4. Obtain information about ways to resolve disputes
5. Obtain tailored advice about a legal issue
6. Start legal proceedings (e.g. using Money Claim Online)

7. Start an online dispute resolution (e.g. eBay dispute resolution)
8. None of the above

Suggested questions for future LSB small business legal needs surveys

Knowledge of law, knowledge of services, adequacy of services and legal confidence

Currently missing from the LSB survey problem follow-up questions is the OECD guidance's model legal capability question set (concerning problem-related legal knowledge, knowledge of services, adequacy of services and legal confidence).

This (problem specific) question set provides an easy route to obtaining core capability data relating to particular problems experienced by businesses. It also provides data that can be incorporated into the measurement of legal need, as detailed in section C. We suggest an equivalent new question be included in future surveys:

- C66. To what extent do you agree or disagree with the following statements about the problem?
 [GRID, with RESPONSE OPTIONS:
 strongly agree, mainly agree, mainly disagree, strongly disagree]

The relevant person(s) in the business ...

1. [IF CONCLUDED "Understood" / IF ONGOING "Understands"] the business's legal rights and responsibilities.
2. [IF CONCLUDED "Knew" / IF ONGOING "Knows"] where to get good information and advice about resolving the problem.
3. [IF CONCLUDED "Was able" / IF ONGOING "Will be able"] to get all the expert help needed
4. [IF CONCLUDED "Was" / IF ONGOING "Is"] confident about achieving a fair outcome

Standardised measures of legal capability

In future, the LSB survey could also adopt one or more of Pleasence and Balmer's standardised legal capability scales; the first standardised legal capability scales developed using modern psychometric methods. Three of these scales were incorporated into the 2019 LSB/Law Society *Survey of the Legal Needs of Individuals in England and Wales*:¹⁷ the General Legal Confidence (GLC) scale,¹⁸ the Legal Self-Efficacy (LEF) scale and the Inaccessibility of Justice (IOJ) scale.¹⁹

The original form of the GLC scale was framed by reference to (example) justiciable problems experienced by individuals, rather than businesses ("being unreasonably sacked by your employer, injured as a result of someone else's negligence, involved in a dispute over money as

¹⁷ YouGov (2020) *Legal Needs of Individuals in England and Wales: Technical Report 2019/20*, London: YouGov.

¹⁸ Pleasence, P. & Balmer, N.J. (2019) "Development of a General Legal Confidence Scale: A First Implementation of the Rasch Measurement Model in Empirical Legal Studies," in 16(1) *Journal of Empirical Legal Studies*, pp.143-174.

¹⁹ Pleasence, P. & Balmer, N.J. (2018) "Measuring the Accessibility and Equality of Civil Justice," in *Hague Journal of the Rule of Law*.

part of a divorce, or facing eviction from your home”). However, the six scale items are equally applicable to individuals and businesses (subject to minor alterations to references to ‘you’).

Initial development of the GLC scale indicated that:

“It showed good overall fit, item fit, person fit, targeting (not too easy or difficult), and internal consistency (ability to discriminate between individuals). All items had ordered thresholds (respondents were able to differentiate between the four Likert descriptors), there was no response dependence, items were unidimensional, and there was no evidence of differential item functioning (on the basis of gender, age, problem experience, or legal experience).”²⁰

The scale has also been found to function well outside England and Wales.²¹ Thus, we think it reasonable to anticipate it would function reasonably in the context of a business survey; although, it would be prudent to either run an initial pilot to test the scale in such a context or psychometrically evaluate a first set of survey data to assess the scale’s longer-term promise.

An adapted form of the GLC question set, for use in a future LSB survey could be:

E70. If your business found itself facing a significant legal dispute – such as a dispute concerning a contract, invoice, your business premises, employees, taxation or regulation – how confident are you that your business could achieve an outcome that is fair and the business would be happy with in the following situations?

[GRID, with RESPONSE OPTIONS:

very confident; quite confident; not very confident; not confident at all]

1. Disagreement is substantial and tensions are running high.
2. The other side says it ‘will not rest until justice is done’.
3. The other side refuses to communicate with your business except through their solicitor.
4. A notice from a court says your business must complete certain forms, including one setting out your case.
5. The problem goes to court, a barrister represents the other side, but your business represents itself.
6. The court makes a judgement against your business, which you see as unfair. Your business is told it has a right to appeal

Following administration, for each respondent the six item responses must be aggregated to yield, first, a ‘raw’ score – summing 0 (not confident at all) to 3 (very confident) scores for each question – then a Rasch²² converted GLC score. Raw scores will range between zero and 18. Rasch scores are calculated using the method set out in the scale’s technical paper and 2019 LSB/Law Society survey report.²³

²⁰ Pleasence, P. & Balmer, N.J. (2019) “Development of a General Legal Confidence Scale: A First Implementation of the Rasch Measurement Model in Empirical Legal Studies,” in 16(1) *Journal of Empirical Legal Studies*, pp.143-174.

²¹ Victoria Law Foundation (forthcoming).

²² A form of analysis used in scale development.

²³ Pleasence, P. & Balmer, N.J. (2019) “Development of a General Legal Confidence Scale: A First Implementation of the Rasch Measurement Model in Empirical Legal Studies,” in 16(1) *Journal of Empirical Legal Studies*, pp.143-174; YouGov (2020) *Legal Needs of Individuals in England and Wales: Technical Report 2019/20*, London: YouGov.

Turning to self-efficacy – which refers to “beliefs in one's capabilities to organise and execute the courses of action required to produce given attainments”²⁴ – although the psychological trait is self-referential, not a trait of businesses (although the related concept of entrepreneurial self-efficacy concerns business related attainment²⁵), it would be possible to adapt the LEF scale to focus on attainment by a business rather than the individual being asked about a business. However, the scale would require more significant adaptation than the GLC scale, and one of its six items (“I can remain calm when facing difficulties because I can rely on my coping abilities”) has no straightforward business counterpart (at least in the case of larger businesses). Thus, we do not recommend attempting to incorporate the LEF scale into the LSB survey at this stage.

Turning to broad perceptions of access to justice, the IOJ scale could more easily be adapted for use in the LSB survey. Although, as with the GLC scale, it would be prudent to either run an initial pilot to test the scale in a business context or psychometrically evaluate a first set of survey data to assess the scale's longer-term promise. Again, the scale has been found to function well, with its only real disadvantage being length, at nine items.

An adapted form of the IOJ question set, for use in a future LSB survey could be:

E71. Now a question about your general impression and experience of the justice system.

We are not concerned with the ‘criminal’ justice system. We are concerned with the justice system that deals with disputes concerning such things as contracts, invoices, business premises, employees, taxation or regulation?

[GRID, with RESPONSE OPTIONS:

Strongly agree, mainly agree, mainly disagree, strongly disagree]

Thinking about issues like this, to what extent do you agree or disagree with the following statements

1. Issues like this are usually resolved promptly and efficiently.
2. Those with less money generally get a worse outcome.
3. For issues like these, law is like a game in which the skilful and resourceful are more likely to get what they want.
4. It is easy to take issues like these to court if needed.
5. For issues like these, lawyers are too expensive for most small businesses to use.
6. The justice system provides good value for money.
7. For issues like these, businesses like mine can afford help from a lawyer.
8. Large businesses’ lawyers are no better than small businesses’ lawyers
9. Taking a case to court is generally more trouble than it is worth.

²⁴ Bandura, A. (1997) *Self-Efficacy: The Exercise of Control*, New York: W.H. Freeman & Company.

²⁵ Chen, C., Greene, P. & Crick, A. (1998) “Does Entrepreneurial Self-Efficacy Distinguish Entrepreneurs from Managers?” in *13 Journal of Business Venturing*, pp.295-316.

Following administration, scoring should be calculated using the method set out in the scale's technical paper and 2019 LSB/Law Society survey report.²⁶

Of the two remaining standardised scales developed by Pleasence and Balmer, the Perceived Inequality of Justice (PIJ) scale could again be reasonably adapted for use in the LSB survey. However, scale items overlap with the IOJ scale and two scale items are focused on individuals' protected characteristics, so not easily translated to a business context. We do not therefore recommend attempting to incorporate the PIJ scale into the LSB survey at this stage.²⁷ The final scale, the Legal Anxiety (LAX) scale, is not suitable for broad use in a business context.

Digital capability and digital legal capability

As our social, economic and political lives have become increasingly entwined with digital technologies, the importance of digital capability has grown in prominence. Recognising the need for individuals to possess such capability, the United Nations Sustainable Development Goal (SDG) indicator 4.4.1 lays down the challenge of increasing the "proportion of youth and adults with information and communications technology skills."²⁸ This objective has been supported by the establishment of the Digital Literacy Global Framework (DLGF) project, drawing on the European Commission's Digital Competency Framework for Citizens (DigComp 2.0).²⁹ The expansion of online legal services and information and the introduction of a range of digital services within the Courts and Tribunal system and expansion of online courts reinforce the need for digital competence within the legal domain.³⁰ Particularly since the onset of the Covid-19 pandemic, digital capability is often required to successfully navigate the law and interact with the justice system.³¹

Digital capability is no less important for SMEs than it is for individuals. The life and success of SMEs is equally entwined with digital technologies and digital technologies feature at the centre of efforts to increase business productivity. Moreover, the relevance of digital capability to businesses' capabilities to understand and navigate the world of law, including their capability to effectively deal with the justiciable issues they face, is as great as for individuals.

²⁶ Pleasence, P. & Balmer, N.J. (2018) "Measuring the Accessibility and Equality of Civil Justice," in *Hague Journal of the Rule of Law*; YouGov (2020) *Legal Needs of Individuals in England and Wales: Technical Report 2019/20*, London: YouGov.

²⁷ The question stem is the same for the PIJ and IOJ scales, meaning that – given the item overlap – both the scales could be implemented through a single 13 item question set. The additional items (to the PIJ items) would be: the law always treats both parties fairly, whatever their character; judges have their own agendas separate from the law; the decisions and actions of courts are influenced by pressure from the press and politicians; courts and tribunals always treat both parties fairly, whatever their character.

²⁸ Details at <https://sdgs.un.org/goals/goal4> accessed on 20 January 2021

²⁹ Law, N. et al. (2018) *A Global Framework of Reference on Digital Literacy Skills for Indicator 4.4.2*, Quebec: UNESCO Institute for Statistics. Vuorikari, R. et al. (2016) *DigComp 2.0: The Digital Competence Framework for Citizens*, Luxemburg: European Union.

³⁰ See e.g. Ministry of Justice (2016) *Transforming Our Courts and Tribunals - Summary of Reforms and Consultation Paper*, London: Ministry of Justice.

³¹ See e.g. HM Courts and Tribunals Service (2020), 'New Video Tech to Increase Remote Hearings in Civil and Family Courts', Available from <<https://www.gov.uk/government/news/new-video-tech-to-increase-remote-hearings-in-civil-and-family-courts>> accessed 20 January 2021; Justice Committee (2020), *Coronavirus (COVID-19): The Impact on Courts* (HC 2019-21, 519) Available from <<https://committees.parliament.uk/publications/2188/documents/20351/default>> accessed 20 January 2021.

Defining and measuring digital capability

Digital capabilities are broadly defined as those which “equip someone to live, learn and work in a digital society” and, in the case of organisations extend to how “the culture and infrastructure of an institution enables and motivates digital practices.”³² As we have already noted, the great majority of SMEs have none or one employee. Thus, in most instances the digital capability of a small business will be a reflection of the digital capability of a single person, or a small group of people. Individual focused digital capability measures may therefore present a reasonable proxy for business digital legal capability within the context of the LSB survey.

Within the existing literature, seemingly little attention has been paid to conceptually unpacking the concept of digital capability. Studies have instead favoured defining digital literacy, though definitions have tended to conflate skills, competencies, knowledge and access.³³ Law *et al.* for example, define digital literacy as “the ability to access, manage, understand, integrate, communicate, evaluate and create information safely and appropriately through digital technologies.”³⁴ Efforts to distinguish between competencies, knowledge and skills have seen digital skills framed as “the more practical and measurable outcomes of media, information or digital literacies,”³⁵ that “enable [a] user to operate effectively with software tools, or in performing basic information retrieval tasks.”³⁶ Digital competencies have been defined as “the ability to apply knowledge and skills to different contexts”.³⁷ Digital literacy has also been used to refer to broader ICT competencies such as the ability to organise folders on a computer, or the use of various types of software, as well online skills specifically.³⁸

Measurement of digital literacy has typically taken a functional approach, with respondents asked to indicate their use of technology in relation to a range of applications (general or Internet-specific). While the exact suite of skills included have differed from study to study, Internet-related skills presented to respondents have commonly spanned the domains of information seeking/management, communicating, creating, problem solving and transacting.³⁹ Under these broad headings, respondents have been asked about their use of the Internet for a range of specific tasks, including:

³² Jisc, *What Is Digital Capability?*, Available from <<https://digitalcapability.jisc.ac.uk/what-is-digital-capability/>> accessed 18 January 2021.

³³ Martin, A., & Grudziecki, J. (2006) “DigEuLit: Concepts and Tools for Digital Literacy Development,” in 5(4) *Innovation in Teaching and Learning in Information and Computer Sciences*, pp.249-267, 256.

³⁴ Law, N. et al. (2018) *A Global Framework of Reference on Digital Literacy Skills for Indicator 4.4.2*, Quebec: UNESCO Institute for Statistics, 6.

³⁵ Iordache, C., Mariën, I., & Baelden, D. (2017) “Developing Digital Skills and Competences: A Quick-Scan Analysis of 13 Digital Literacy Models,” in 9(1) *Italian Journal of Sociology of Education* pp.6-30, 8.

³⁶ Buckingham, D. (2016) “Defining digital literacy,” in B. Bachmair (ed.), *Medienbildung in Neuen Kulturräumen*. Wiesbaden: VS Verlag für Sozialwissenschaften, pp. 59-71, 59

³⁷ Iordache, C., Mariën, I., & Baelden, D. (2017) “Developing Digital Skills and Competences: A Quick-Scan Analysis of 13 Digital Literacy Models,” in 9(1) *Italian Journal of Sociology of Education* pp.6-30, 8.

³⁸ See e.g. European Commission (2017) *Human Capital and Digital Skills: Methodological Note*, Available from <http://ec.europa.eu/newsroom/dae/document.cfm?action=display&doc_id=15823> accessed 18 January 2021; Law, N. et al. (2018) *A Global Framework of Reference on Digital Literacy Skills for Indicator 4.4.2*, Quebec: UNESCO Institute for Statistics.

³⁹ See e.g. Iordache, C., Mariën, I., & Baelden, D. (2017) “Developing Digital Skills and Competences: A Quick-Scan Analysis of 13 Digital Literacy Models,” in 9(1) *Italian Journal of Sociology of Education* pp.6-30;

- using a search engine to look for information online (information seeking/management)
- using email or video conferencing (communicating)
- writing a blog or sharing comments online (creating)
- verifying information found online, troubleshooting a device or digital service or transferring files between devices (problem solving)
- shopping online or paying a bill online (transacting)

Safety has also been identified as a necessary competence for digital literacy under the European Commissions 'Digital Competency Framework' (and arguably for Internet literacy specifically), but indicators for this domain remain under-developed.⁴⁰

The presence of higher-level Internet skills can be assumed where people report use generally considered more difficult. So, 'searching for information online' could be viewed as more advanced than 'navigating to a known website'. Alternatively, respondents can be asked to self-assess their ability across a range of skills.⁴¹ While self-rating has been criticised for leading to over- and under-estimating skills, it nonetheless remains the most common approach, as it enables a large number of questions on a wide range of skills to be presented efficiently and adopts a simple scoring framework.⁴²

Simple Likert scales intended to capture skill level, such as beginner/average/ advanced/expert enable individuals to claim high skills on something they have never done and also inhibit those who perform tasks frequently from classifying themselves as having low skills.⁴³ One way around these problems has been to combine self-assessment with recent usage. For example, GoOnUK's Basic Digital Skills Assessment questions allow respondents to indicate both whether they could perform tasks (I have no idea what you're talking about/ I could do this if I was asked to/ I couldn't do this if I was asked to) and when tasks were last performed (I have done this in the last 3 months/I haven't done this in the last 3 months).⁴⁴ To isolate those who claim high competency on tasks they have never performed, an additional response category would need to be offered along the lines of "I have never done this".

Law, N. et al. (2018) *A Global Framework of Reference on Digital Literacy Skills for Indicator 4.4.2*, Quebec: UNESCO Institute for Statistics; Vuorikari, R. et al. (2016) *DigComp 2.0: The Digital Competence Framework for Citizens*, Luxembourg: European Union; European Commission (2017) *Human Capital and Digital Skills: Methodological Note*, Available from <http://ec.europa.eu/newsroom/dae/document.cfm?action=display&doc_id=15823> accessed 18 January 2021; Ipsos Mori (2015) *Basic Digital Skills – UK Report*, London: Ipsos Mori; Thomas, J. et al. (2019) *Measuring Australia's Digital Divide: The Australian Digital Inclusion Index 2019*, Melbourne: RMIT University and Swinburne University of Technology for Telstra. Skills have also been more broadly grouped as being 'technical', 'critical', 'social' or 'creative'. See Helsper, E.J. & Eynon, R. (2013) "Distinct Skill Pathways to Digital Engagement," in 28(6) *European Journal of Communication*, pp 696-713.

⁴⁰ Vuorikari, R. et al. (2016) *DigComp 2.0: The Digital Competence Framework for Citizens*, Luxembourg: European Union; European Commission (2017) *Human Capital and Digital Skills: Methodological Note*, Available from <http://ec.europa.eu/newsroom/dae/document.cfm?action=display&doc_id=15823> accessed 18 January 2021.

⁴¹ van Deursen, A., Helsper, E. & Eynon, R. (2014) *Measuring Digital Skills: From Digital Skills to Tangible Outcomes*, London: LSE.

⁴² *Ibid*, 10.

⁴³ Helsper, E.J. & Eynon, R. (2013) "Distinct Skill Pathways to Digital Engagement," in 28(6) *European Journal of Communication*, pp 696-713, 697; van Deursen, A., Helsper, E. & Eynon, R. (2014) *Measuring Digital Skills: From Digital Skills to Tangible Outcomes*, London: LSE, 11.

⁴⁴ Ipsos Mori (2015) *Basic Digital Skills – UK Report*, London: Ipsos Mori.

Although it has been observed that digital literacy should not be abstracted from the context in which it is applied, measures of digital/Internet literacy tend to be broadly applied.⁴⁵ As yet, specific tools to measure digital *legal* literacy have not been developed. Doing so would involve tailoring the skills presented to those relevant to dealing with justiciable issues. However, the construction of such measures would require development work, both to identify the key skills necessary in such a context and, also, real-world exemplars not so narrowly defined that they have marginal relevance to (and so related experience within) a general population. For example, asking a respondent if they could file court documents online lacks general utility, as few people are familiar with the particular nature of court documents. However, if it were considered that the skills required to file court documents online are essentially the same as those required to file a tax return online, instead of asking whether an individual could file court documents online, we might ask whether they could file a tax return online.

In addition to asking respondents to assess their abilities with respect to specific tasks, respondents have also been asked to simply rate their ability to use the Internet on a scale of 1 ('bad') to 5 ('excellent') with responses operating as a proxy for confidence and familiarity with the Internet.⁴⁶ Such questions have also been combined with others intended to measure user attitudes, specifically, willingness, control, enthusiasm and trust,⁴⁷ as well as questions intended to capture frequency of Internet use and/or Internet access locations. While the relevance of access and attitudes has been contested in relation to the measurement of digital literacy, if we are to define digital capabilities as those which "equip someone to live, learn and work in a digital society,"⁴⁸ access to the Internet and a positive attitude towards the use of it present as core features, if not of literacy, then certainly of capability.

Access to the Internet

Individuals' access to the Internet can be ascertained via a single question, either framed with reference to frequency of use or points of access. An example of a frequency of use question is:

- D1. Over the last month, how often have you used the Internet on your mobile phone, a tablet, a laptop or desktop computer? This includes at work and in your free time.
1. Several times a day
 2. Daily
 3. At least weekly
 4. At least once
 5. Not at all
 6. I do not have access to the Internet

⁴⁵ Buckingham, D. "Defining Digital Literacy," in B Bachmair (ed), *Medienbildung in neuen Kulturräumen*. (VS Verlag für Sozialwissenschaften 2010).

⁴⁶ Helsper, E.J. & Eynon, R. (2013) "Distinct Skill Pathways to Digital Engagement," in 28(6) *European Journal of Communication*, pp 696-713, 701.

⁴⁷ See e.g. Thomas, J. et al. (2019) *Measuring Australia's Digital Divide: The Australian Digital Inclusion Index 2019*. Melbourne: RMIT University and Swinburne University of Technology for Telstra; Morse, B.J. et al (2011) "The Development of an Internet Attitudes Scale," in 27(1) *Computers in Human Behavior*, pp.480-489. As used in Borg, K. & Smith, L. (2016) *Digital Inclusion: Report of Online Behaviours in Australia 2016*, Melbourne: BehaviourWorks Australia, Monash Sustainability Institute.

⁴⁸ Jisc, *What Is Digital Capability?*, Available from <<https://digitalcapability.jisc.ac.uk/what-is-digital-capability/>> accessed 18 January 2021.

This question negates the need to ask about points of access since it is implicit that those who are accessing the Internet regularly will have at least one access point. However, given that certain tasks are harder to perform via mobile phone, it may be preferable to capture mobile phone use separately. A question designed to identify points access to the Internet is:

- D2. Over the last month, where have you accessed the Internet?
Please indicate all that apply.
1. Home, using a dial-up, broadband or mobile data connection
 2. Work, using a dial-up, broadband or mobile data connection
 3. On a mobile phone
 4. Public space (e.g. Internet café, library)
 5. Other

In the context of a business, the availability of Internet points within a business may also be asked about.

- D3. [If S4=1 “Do you”; If S4>1 “Do people working within your business”] have good access to the Internet?
Please indicate all that apply.
1. Yes, using a fixed Internet connection
 2. Yes, using mobile phones
 3. Yes, in another way [OPEN TEXT]
 4. No

However, given that the LSB survey is conducted online, we do not see great utility in asking questions concerning Internet access.

Attitudes to the Internet

The purpose of asking questions concerning attitudes to the Internet is to gather data that may explain skill patterning. For those who exhibit a lower range of digital skill, probing attitudes can help illuminate whether responses to skills questions reflect entrenched negative attitudes towards Internet use or lack of opportunity or need to perform Internet related tasks.

The existing methods of measuring attitudes to the Internet tend to involve the use of specific scales that can be of considerable length. For example, the General Internet Attitude Scale (GIAS) runs to 21 items⁴⁹ and Morse *et al.*'s Internet Attitudes Scale runs to 17 items (although a 14-item version has been used⁵⁰).⁵¹ While it is preferable to use a psychometrically validated measure, a shorter-item question set that captures notions of control, enthusiasm, learning, and confidence can nonetheless provide useful data. One example of such a question set is that used in the

⁴⁹ Joyce, M. & Kirakowski, J. (2015) “Measuring Attitudes Towards the Internet: The General Internet Attitude Scale,” in 31(8) *International Journal of Human–Computer Interaction*, pp.506-517.

⁵⁰ Borg, K. & Smith, L. (2016) *Digital Inclusion: Report of Online Behaviours in Australia 2016*, Melbourne: BehaviourWorks Australia, Monash Sustainability Institute.

⁵¹ Morse, B.J. et al (2011) “The Development of an Internet Attitudes Scale,” in 27(1) *Computers in Human Behavior*, pp.480-489.

Australian Digital Inclusion Index (ADII).⁵² This is comprised of five items, with respondents asked to indicate agreement on a 5-point Likert scale. The five items are: computers and technology give me more control over my life; I am interested in being able to access the Internet wherever I am; I go out of my way to learn everything I can about new technology; I find technology is changing so fast, it's difficult to keep up with it; I keep my computer up to date with security software.

Given the complexity of measuring attitudes to the Internet, its second-level explanatory role and space limitation within the LSB survey questionnaire, we do not recommend that the LSB consider including this type of question within the survey at the current time.

Internet Skills

To establish Internet skills within a business, it is possible to ask about forms of Internet usage and online tasks undertaken by businesses and/or for self-assessment of a business's ability to perform tasks.

For example, the approach developed by GoOnUK (now DotEveryone) in 2015 employs a grid in which respondents are asked a series of questions relating to their use of the Internet for particular activities, with respondents having to indicate both whether they could perform such a task and whether they have performed such a task within the last 3 months.⁵³ The grid is set out in Table 1.

As per the GoOnUK mappings, items 1, 2 and 3 map to 'managing information', items 4 and 5 map to 'communicating', items 6 and 7 map to 'transacting', items 8 and 9 map to 'problem solving' and items 10 and 11 to 'creating'. However, the distinction between skills domains is not as clear cut as the GoOnUK mappings would suggest and a number of statements could be said to map to more than one domain.⁵⁴

Adopting the GoOnUK questions could be of some value within the LSB survey as the questions play a role in evaluation of online government services. Each digital service produced by MOJ/HMCTS is graded from 1-9 on the level of skill it requires for use, with 'Basic Digital Skills' occupying position '7' on the scale. Thus, the GoOnUK questions, which indicate whether a survey respondent has Basic Digital Skills, provide a fairly straightforward method of determining whether a respondent exhibits the skills necessary to effectively engage with certain digital tools and systems developed by various government departments.⁵⁵ This would enable a respondent's level of digital skill to be contextualised with reference to the online legal services developed by

⁵² Thomas, J. et al. (2019) *Measuring Australia's Digital Divide: The Australian Digital Inclusion Index 2019*. Melbourne: RMIT University and Swinburne University of Technology for Telstra.

⁵³ Ipsos Mori (2015) *Basic Digital Skills – UK Report*, London: Ipsos Mori.

⁵⁴ Those who have 'Basic Online Skills' report the ability to perform the majority of the skills listed under managing information; communicating; transacting; creating. Those who present with 'Basic Online Skills' *and* Problem Solving are said to demonstrate 'Basic Digital Skills'. As observed previously, to isolate those who claim high competency on tasks they have never performed, an additional response category would need to be offered along the lines of "I have never done this" which does not appear in the original GoOnUK response format.

⁵⁵ Collins-Rees, A. (2019) Reflecting on how we Developed the Digital Inclusion Scale, Available from <https://userresearch.blog.gov.uk/2019/02/22/reflecting-on-how-we-developed-the-digital-inclusion-scale/> accessed 18 January 2021.

HMCTS/MOJ. It would also be possible to include either a response format that focuses on self-assessment, or one that focuses on frequency of use, without combining both response types.

Table 1. GoOnUK Internet skills grid question

Item no.	Item description	Response option					
		I have no idea what you are talking about	Could you do this?		Have you done this in the last 3 months?		
			I could do this if asked to	I couldn't do this if asked to	I have done this in the last 3 months	I haven't done this in the last 3 months	I have never done this
1.	Use a search engine to look for information online*						
2.	Download/save a photo you found online						
3.	Find a website you have visited before*						
4.	Send a personal message to another person via email or online messaging service*						
5.	Carefully make comments and share information online						
6.	Buy items or services from a website*						
7.	Buy and install apps on a device						
8.	Solve a problem you have with a device or digital service using online help						
9.	Verify sources of information you found online						
10.	Complete online application forms which include personal details*						
11.	Create something new from existing online images, music or video						

The disadvantage of the GoOnUK approach is its length, complexity and incorporation of broad items (so not tailored to legal tasks).

Question B70, set out above, provides an example of a question that addresses tasks that are specific to the legal domain. It provides a more direct insight into digital legal capability than the GoOnUK questions. Thus, the LSB may consider it useful to include question B70 again in a future survey, particularly as this would allow comparison with previous findings.

Sitting between the approach of the GoOnUK questions and question B70 is the approach, suggested above, of asking about skills/tasks specifically designed to be analogous to those involved in dealing with justiciable issues. Unlike the GoOnUK approach, this approach is untested and so – in the absence of development work – adoption in the LSB survey would be more speculative. However, we feel the approach has some merit, particularly as question B70 could be easily adapted to encompass such analogous skills/tasks. A short skills question adopting this approach could be:

- E72. Did your business use the Internet to do any of the following things in the past 12 months? If not, would it be able to do so easily or require help?
[MULTIPLE]
[RANDOMISE]

[GRID items: 'Has used' // 'Easily able', 'Able with help', 'Not able, even with help']

1. Pay an invoice using online banking
2. Send an email
3. Communicate using Skype, Teams, Zoom or something similar
4. Find specific information (e.g. operating instructions for a printer or about eligibility for business rates relief)
5. Set up 2-step verification to access secure information using your computer and mobile phone
6. File a HMRC return or make use of an online accountancy/HR service
7. Create, edit or maintain a business website
8. Complete, save and print out an online form

Broadly speaking (noting that there are crossovers between the domains), item 1 would map to 'transacting', items 2 and 3 to 'communicating', item 4 to 'information seeking', item 5 to 'security' and 'problem solving', item 6 to 'transacting' and 'problem solving', and items 7 and 8 to 'creating' and 'problem solving'.

C. Legal need and unmet legal need: Concept and Measurement

A Conceptual Framework

As the OECD guidance observed, “despite their name, few legal needs surveys have sought to operationalise the concepts of legal need and unmet legal need for the purposes of measurement.” As the report of one of the few surveys that did do so pointed out, this is because the concept “cannot be measured directly.”⁵⁶ The concept has also been described as ‘elusive’ and difficult to pin down⁵⁷ and it remains contested.

Nevertheless, there is now a broadly shared understanding of the elements of and complexities involved in defining legal need.

In the 1970s, it became accepted that there are many potentially appropriate responses to justiciable problems, many of which involve no recourse to legal services or processes. As Lewis famously asked of a tenant with a leaking roof, do they need a lawyer or a ladder?⁵⁸ Choice, preference, context and the costs and benefits of different responses can all be relevant to whether legal need arises.

The 1980 report of the Royal Commission on Legal Services in Scotland nudged discussion further along by pointing to two distinct stages of legal need: need for information about law and legal services, to enable properly informed choices, and then, if a legal solution is sought, need for

⁵⁶ Ignite Research (2006) *Report on the 2006 National Survey of Unmet Legal Needs and Access to Services*, Wellington: Legal Services Agency.

⁵⁷ Engel, D.M. (1998) “How Does Law Matter in the Constitution of Legal Consciousness,” in Garth, B.G. & Sarat, A. (eds.) *How Does Law Matter*, Evanston, IL: Northwestern University Press.

⁵⁸ Lewis, P. (1973) “Unmet Legal Needs,” in Morris, P., White, R. & Lewis, P. (eds.) *Social Needs and Legal Action*, Oxford: Martin Roberston

legal services.⁵⁹

In terms of Bradshaw's taxonomy of social need,⁶⁰ the Royal Commission's two-stage definition of legal need reflected a preference for 'felt need' (self-defined) over 'expressed need' (felt need expressed in action), 'normative need' (expert defined) and 'comparative need' (assessed by reference to service use by others in similar circumstances). This leaves open the key policy question of the extent to which constitutional or social welfare considerations give rise to governmental responsibility to meet so-defined legal needs.⁶¹ Moreover, as the OECD guidance has made clear, "given limited public resources, these issues must be considered alongside the effectiveness of services, citizens' resources and prioritisation of needs ... [and] attention must be given to a further dimension of need - relative need - and draw on the theories of the hierarchy of needs (as done, most famously, by Maslow⁶²)."

However, it is now evident that broad policy questions can be considered separately to the conceptualisation of legal need.

The OECD guidance provides a contemporary definition of legal need. Legal need arises ...

"whenever a deficit of legal capability necessitates legal support to enable a justiciable issue to be appropriately dealt with."

A legal need is unmet if ...

"a justiciable issue is inappropriately dealt with as a consequence of effective legal support not having been available when necessary to make good a deficit of legal capability."

As in the case of legal capability, we see no conceptual bar to the above definitions extending to businesses. Although, as we discuss below, there are additional complexities to measuring the legal need and unmet legal need of businesses.

Measurement of Legal Need and Unmet Legal Need

Building upon the above definitions of legal need and unmet legal need, the OECD guidance sets out a practical framework for measuring them through legal needs surveys ("the OECD framework"). Reflecting the definitions, the OECD framework requires the collection of data relating to (a) legal capability, (b) whether issues are appropriately dealt with and (c) the nature of support obtained. Each of these raise complex conceptual and measurement issues. As noted above, legal need cannot be measured directly. Moreover, efforts to develop valid and reliable proxy measures of conceptual components of legal need are in their infancy. For example, context (i.e. experienced problem) specific measures of legal capability have only recently

⁵⁹ Royal Commission on Legal Services in Scotland (1980) Report, Edinburgh: HMSO (Cmd. 7846). Thus, the report went on to declare that "When we speak of 'unmet need' we are concerned about instances where a citizen is unaware that he has a legal right, or where he would prefer to assert or defend a right but fails to do so for want of legal services of adequate quality or supply."

⁶⁰ Bradshaw, J.R. (1972) "The taxonomy of social need," in McLachlan, G. (ed.) *Problems and Progress in Medical Care*, Oxford: Oxford University Press.

⁶¹ Dignan, T. (2006) *Northern Ireland Legal Needs Survey*. Belfast: Northern Ireland Legal Services Commission.

⁶² Maslow, A.H. (1943), "A theory of human motivation," in *50 Psychological Review*, pp.370-396.

emerged and been subject to only limited testing. Similarly, user derived measures of adequacy of legal services rely on user understanding of quality and value, which is inherently problematic.⁶³ However, the OECD guidance indicates the types of question that can be used to generate data for the OECD framework and provides a small number of example model questions.

The OECD framework includes a seven-stage logic tree for proxy measurement of legal need and unmet legal need. As is illustrated Figure 1, the logic tree components are:

- problem duration (appropriate resolution of problems is argued to involve timely resolution)
- problem severity (linking to proportionality and, thus, appropriateness),
- legal awareness/understanding (an element of legal capability)
- legal confidence (an element of legal capability)
- process fairness (an element of appropriateness)
- support (a determinant of whether a need is met)
- adequacy of support (an additional determinant of whether a need is met).

Duration	Seriousness	Legal awareness / understanding	Legal confidence	Process fairness	Expert help	Adequacy of support	
Long	High/ Moderate/ Low	Yes/No	Yes/No	Yes/No	Yes/No	Yes/No	
Short/Moderate	High	Yes/No	Yes/No	Yes	Yes	Yes	
				No	No	N/A	
				Yes	Yes	Yes	
				No	No	N/A	
	Moderate	Yes	Yes	Yes	Yes/No	N/A	
				No	Yes	N/A	
				No	No	N/A	
				Yes	Yes	Yes	
				No	No	N/A	
				No	No	N/A	
		No	Yes/No	Yes/No	Yes	Yes	Yes
					No	No	N/A
					Yes	Yes	Yes
					No	No	N/A
					Yes	Yes	Yes
					No	No	N/A
	Low	Yes/No	Yes/No	Yes/No	Yes/No	Yes/No	N/A

No legal need

Legal need

Met legal need

Unmet legal need

Figure 1 – Logic Tree for Proxy Measurement of Legal Need and Unmet Legal Need (Reproduced from Pleasence et al. (2019) *Legal Needs Surveys and Access to Justice*, Paris: OECD)

⁶³ Sherr, A., Moorhead, R. & Paterson, A. (1994) *Lawyers – The Quality Agenda*, London: HMSO.

The logic tree is not intended to be definitive. There are many further subtleties that could be incorporated into measurement of legal need and unmet legal need. The logic tree is, rather, intended to be sufficiently well specified to be meaningful, but also capable of implementation through a typical legal needs survey.

Also, the logic tree was not designed with the legal needs of businesses in mind. In applying this logic tree to the legal needs of small businesses, it is therefore necessary to recognise that legal capability may need to be addressed differently in the case of SMEs of different sizes.

A first ‘experimental’ implementation of the OECD framework in the UK was attempted within the 2019 LSB/Law Society *Survey of the Legal Needs of Individuals in England and Wales* (“the 2019 survey”). As the authors of that survey’s report made clear, the implementation represented only a first step, with many judgements and assumptions necessary “to create a workable model with the available data.”⁶⁴ Nevertheless, we reference the 2019 survey, as well as the OECD guidance and framework, in setting out an approach to the measurement of SME’s legal needs below.

Refining the LSB Survey to Measure Legal Need and Unmet Legal Need

We recommend that the logic tree illustrated in Figure 1 form the basis for any measurement of legal need and unmet legal need using future LSB survey data. The LSB survey already captures data relating to most of the components of the logic tree and simple modifications can address gaps to improve the validity and reliability of measurement. In this sub-section we address each stage of the logic tree in turn.

Duration

The 2019 LSB/Law Society survey report followed the Colombian approach that “even complex cases should have some kind of substantive decision after two years,”⁶⁵ and defined problems as having a ‘long’ duration if they lasted for two years or more. We recommend a similar approach be taken for the LSB survey.

Problem duration can be calculated using questions C47 (problem start date) and C48 (problem end date).

Seriousness

Within the logic tree illustrated in Figure 1, problem seriousness is a key determinant of routing. Low seriousness problems *never* give rise to legal need, while high seriousness problems *always* give rise to legal need.

The allocation of problems to ‘low’, ‘moderate’ and ‘high’ seriousness categories rests on value judgements – both on the part of respondents and on the part of those determining thresholds. The 2019 survey incorporated a 10-point problem seriousness scale. Scores of up to 3 were

⁶⁴ YouGov (2020) *Legal Needs of Individuals in England and Wales: Technical Report 2019/20*, London: YouGov.

⁶⁵ La Rota, M.E., S. Lalinde & R. Uprimmy (2013), *Encuesta Nacional de Necesidades Jurídicas Análisis General y Comparativo Para Tres Poblaciones*, Bogota: Dejusticia.

deemed 'low' seriousness, from 4 to 7 as 'moderate' seriousness and 8 and above as 'high' seriousness. We recommend a similar approach be taken for the LSB survey.

We have recommended elsewhere that the scoring for question C33 (problem seriousness) be refined to a 10-point scale. This will allow simple implementation of this recommendation. In refining question C33, the anchor descriptions used should be reviewed to reflect the LSB's view of what constitutes 'low' and 'high' seriousness, and the anchors then placed at the threshold points on the seriousness bar represented within the question.

Legal capability: legal awareness/understanding and legal confidence

The 2019 survey adopted the OECD guidance model legal capability question set, which we have recommended for incorporation into the LSB survey as question C66 (above).⁶⁶ The first of these (C66(1)) addresses understanding of law, the second (C66(2)) awareness of relevant sources of information of advice and the fourth (C66(4)) legal confidence.

The 2019 survey report used the first and fourth questions to establish the logic tree's third (legal awareness/understanding) and fourth (legal confidence) components, respectively. We suggest that the same approach is adopted for the LSB survey.⁶⁷

Beyond this, questions A8, A9 and proposed questions A10, A11 and A12 could be allowed a veto over question C66(1). This would involve assuming legal knowledge/understanding if a business contains someone who is legally trained (A8), specialist in the field of the problem under investigation (A9) and can be taken to have some responsibility in relation to the problem (A10/11/12). The advantage of doing this would be to recognise the relatively high level of relevant legal knowledge/understanding of such a business, particularly if A12 indicates a specialist legal function relevant to a problem under investigation. However, if questions A8 to A11 suggest legal knowledge, but question C66(1) points to a specific knowledge deficit in the case of the problem under investigation, then such a veto would mean legal need would not be attributed to a business despite the business claiming a capability deficit. Our view is that A12, if adopted, should be given veto powers (in combination with A8 to A11), and that the same probably ought to be true of A10 and A11. But, ultimately – as with many of the components of the logic tree – this is a matter for policy judgement. Types and degrees of need are relevant, as too are businesses' resources (another potential complexity here⁶⁸), but each complexity introduced into a composite measure militates against its simplicity and transparency (both of which – as the OECD guidance makes clear – are valuable properties).⁶⁹

⁶⁶ The 2019 survey asked the questions about 'the time the issue first started'. This gives the best indication of legal capability in facing identified problems. The OECD guidance model question is asked simply 'about the problem'. This may occasionally yield different responses. For example, a respondent may initially feel confident about being able to achieve a fair resolution, but subsequently come to appreciate that this will be harder than first thought.

⁶⁷ It would be possible to define legal need more narrowly by also using question C66(2) in relation to the logic tree's third component (i.e. requiring self-assessed knowledge of law *and* awareness of relevant sources of information of advice for a 'yes' determination for this component).

⁶⁸ A business may have a legal department that is better resourced and functionally better equipped than a specialist external legal service.

⁶⁹ Even greater complexity could be introduced to measures by using question C66's 4-point Likert response scale differently for SMEs with different levels of internal legal capacity and resources.

Whichever choice the LSB ultimately makes, we recommend that future LSB survey data is used to explore the extent to which this conceptual complexity is of relevance in practice.

Process fairness

The OECD guidance discusses the relative merits of including measures of both process and outcome fairness in calculations of legal need and unmet legal need. The logic tree illustrated in Figure 1 refers only to the former. At present, the LSB survey does not explicitly address either. However, we have recommended elsewhere that future surveys incorporate both the OECD model process fairness and outcome fairness questions.

The OECD model process fairness question is as follows:

- C71. Regardless of the outcome of this problem, do you feel the process through which the outcome was reached was basically fair or unfair to everybody concerned?
[SINGLE]
1. Fair to everybody concerned
 2. Not fair to everybody concerned

Expert help

What should amount to a business having obtained expert help will vary between problem types and reflect policy concerns. Currently, expert help is asked about through the LSB survey's questions C35, C35b and C36m.

There is a good case for refining question C36m to enable separate collection of data concerning (passive) information gathering and (interactive) obtaining of advice/ representation. This would involve restricting C36m to the latter form of help and the addition of a separate question focused on the former. This would expand the potential forms of help identified and allow greater insight into the use of technology in accessing legal services. A separate information question could be:

- C36b. ["Excluding sources of help you have just mentioned"] Did your business obtain any information or documents to help it better understand or resolve the problem from any of the following?
[MULTIPLE]
1. A government website (e.g. gov.uk, Companies House, Information Commissioners Office, Small Business Commissioner)
 2. An online document provider
 3. Another website or 'app'
 4. Any other source [OPEN TEXT]

Response items 1 and 2 could be followed-up with further list-based questions to establish use of help sources of interest, such as 'government advice website', 'solicitors' firm', 'ACAS', 'the Federation of Small Businesses'. Potentially, information from such a source could be included as expert help.

There is also a good case for splitting question C36m into two or more questions and/or reducing the number of response items. As with the current question B1 (to which the same logic applies), there are too many response items and insufficient conceptual clarity. In the revised draft questionnaire set out in Appendix 2, question C36m is split and the number of items reduced (with additional items included in two follow-up questions).

Adequacy of support

Currently, the LSB survey collects limited information on the adequacy of support provided by expert helpers. Question C60 asks about satisfaction with the overall service provided by a business's *main* help provider. However, satisfaction may attach to aspects of service delivery that are not relevant to its adequacy for meeting legal need. Moreover, adequacy of support may be dependent upon a further help source.⁷⁰

The 2019 survey incorporated a question asking whether respondents wished they had done anything differently. If respondents indicated that they wished they had obtained “more information or assistance”, then support was deemed to be inadequate.

The proposed question C66(3) – which asks whether a business was able to get all the expert help needed in relation to a problem – offers an alternative, and we suggest simpler, route to assessing adequacy of support. Indeed, as question C66(3) does not refer to a particular source of expert help, it could even be used to determine adequacy of support without previously establishing whether expert help was obtained. This would reduce the seven-stage logic tree to six-stages. Though, we do not recommend this. Information about expert help is central to the LSB survey and provides additional refinement and context for headline measures of unmet legal need.

Other matters

Subject to the next paragraph, all problems followed-up within the LSB survey can be included in calculations of levels of legal need, as determinations of legal need (as distinct from unmet legal need) only make reference to the characteristics of problems and respondent businesses, both of which are determinable independently of the paths ultimately taken to justice (or injustice). However, determinations of unmet legal need are only possible with reference to paths taken to problem conclusion. Consequently, the population of problems used in calculating levels of unmet legal need should be restricted to concluded problems plus problems with a duration of 2 years or more (which involve an unmet legal need by definition).⁷¹

As indicated above, it may be that – in the context of measuring legal need and unmet legal need – conceptual complexities disallow legitimate grouping of micro-businesses and large profitable SMEs with dedicated legal functions. Above we have noted that the population of SMEs means that larger SMEs will contribute few observations to the LSB survey. Here we go further and suggest that the LSB consider regarding all legal needs of larger profitable SMEs with dedicated legal functions and relevant legal specialism as met for the purposes of broad legal need related

⁷⁰ This does not detract from the broader utility of question C60 outside of the legal need measurement context.

⁷¹ This last qualification will lead to slight inflation of calculated levels of unmet legal need, but the alternative approach – to exclude ongoing long duration problems – could lead to absurdly low estimates were problems to commonly fall into the long duration category.

analysis. Questions A8 to A11/A12, combined with questions S4, E53 and E54 can provide the basis for this. The qualitative nature of the needs of larger businesses with relevant legal functionality are different from those of other businesses. Of course, this does not mean such businesses are immune from problems relating to legal capability and legal need, and it is possible that even a large legally capable business could indicate inadequacy of support through question C66(3). However, the qualitative difference in capability of larger businesses with relevant legal functionality provides reason for exploring the implications of support inadequacy separately.

Finally, it should be noted that in those jurisdictions in which measures of unmet legal need have been implemented it has been common for multiple specifications to be developed. Even a seven-stage process using tailored questions will, inevitably, miss much of the nuance involved in the concept of legal need. A composite measure should not obscure the important insights provided by its components and contextual data.

D. Assessing the Impact of Covid-19 and the United Kingdom’s Exit from the European Union on SME Experience of Justiciable Problems

Access to Justice and the Covid-19 Pandemic

The Pathfinders report *Justice in a Pandemic* has pointed to the huge access to justice related stresses that the Covid-19 pandemic is placing on businesses worldwide;⁷² stresses that, as the OECD and Law and Justice Foundation of New South Wales have noted, “will be especially significant for Small to Medium Enterprises (SMEs), which are being hit the hardest by the crisis.”⁷³ As well as having to cope with solvency, employment, contract and taxation issues, SMEs are also likely to have “legal needs to interpret the rapidly-evolving emergency regulations on business conduct (such as occupational health and safety), and to ensure that they benefit from the numerous different schemes set out by governments to protect SMEs.”⁷⁴

The LSB survey presents an ideal opportunity to investigate the impact of the Covid-19 pandemic on SMEs use of professional services and experience of justiciable problems. However, there is only limited potential to incorporate new questions focused on Covid-19. So, here we focus only on providing an overview of Covid-19’s impact.

To obtain an overview of this impact, we recommend that additional questions are incorporated into sections B (general use of professional services), C1 (justiciable problem identification) and C2 (problem follow-up) of the LSB survey questionnaire.

In section B, following question B4 we suggest that respondents are asked whether any use of services identified through question B1 related to the COVID-19 pandemic. Follow-up questions could also explore the type/nature of the services, the extent and cost of Covid-19 related service

⁷² Pathfinders for Peaceful, Just and Inclusive Societies (2020) *Justice in a Pandemic – Briefing Two: Justice for All and the Economic Crisis*, New York: NYU Center on International Cooperation.

⁷³ OECD & Law and Justice Foundation of New South Wales (2020) *Access to Justice and the Covid-19 Pandemic*, Paris: OECD.

⁷⁴ OECD & Law and Justice Foundation of New South Wales (2020) *Access to Justice and the Covid-19 Pandemic*, Paris: OECD.

use, whether Covid-19 restrictions made it more difficult to access services and whether restrictions impacted on the way in which services were accessed. However, these additional questions would constitute a significant expansion of section B.

In section C1, we suggest that immediately after enumerating problems in each category, a question is asked to establish whether the COVID-19 pandemic caused or exacerbated any of the reported problems. Asking about problems in aggregate, rather than individually (in section C2), would allow far greater coverage and improve estimates of the number of affected businesses. Follow-up questions could also explore the proportion of problems connected to Covid-19 and their impact. Again, though, this would constitute a significant expansion of questioning.⁷⁵

We suggest that a question asking whether Covid-19 caused or exacerbated problems is also included in section C2, along with follow-up questions to establish whether Covid-19 related restrictions affected the ability of businesses to access help and/or the way in which help was accessed.

More broadly, respondents could also be asked about how well they understood the Covid-19 public health restrictions, how difficult it was to comply with the restrictions and whether they experienced any problems concerning non-compliance. They could also be asked about the extent to which Covid-19 impacted on their businesses in general. Such questions would most easily sit in section E.

Access to Justice and the United Kingdom's exit from the European Union

The impact of preparation for and implementation of the United Kingdom's (UK) exit from the European Union (EU) has been largely overshadowed by the Covid-19 pandemic. However, for businesses that trade in the EU or have EU customers or suppliers, the impact of the UK exiting the EU (and the build-up to exiting the EU) may have been considerable. Furthermore, this impact may occasionally have manifested (and continue to manifest) in justiciable problems concerning international trade, regulation, employment, etc..

We recommend that the LSB survey's approach to the UK's exit from the EU mirrors the approach set out above in relation to Covid-19, with the exception that questions need not be routinely asked about (additional) difficulties accessing services or the ways in which services have been accessed.

Depending on the space available for questions, the Covid-19 and EU exit related questions could run in parallel or be (or sometimes be) combined. Combination would take the form of asking about, for example, 'the Covid-19 pandemic or the UK's exit from the EU (including preparations for exit)'.

In the revised questionnaire set out in Appendix 2, we have included a combination of separate and combined questions. We do not suggest the approach we have taken is optimal. Instead, we

⁷⁵ Section C1 could conclude with an additional question: "Apart from anything you have mentioned so far, has your business experienced any significant problems brought about by the Covid-19 pandemic or associated public health regulations?" Problem types could be recorded through an open text follow-up.

have wanted to illustrate the different forms of approach, and hope to have struck a reasonable balance.

E. Concluding Remarks

This paper has set out conceptual frameworks for understanding the ‘legal capability’ of SMEs in England and Wales and their ‘legal need’, provided practical frameworks for capturing legal capability data and measuring legal need and unmet legal need through the LSB survey and proposed methods for assessing the impact of the Covid-19 pandemic and UK’s exit from the EU on small businesses’ experiences of justiciable problems and the ways in which SMEs have dealt such problems.

We have noted that the OECD guidance describes the concept of legal capability as being applicable to communities as much as to individuals and that the adopted definition of legal capability and the VLF’s comprehensive legal capability framework can be naturally extended to encompass businesses. In relation to measurement of legal capability, we suggest that there are few conceptual or practical obstacles to adopting similar forms of questions and measures for SMEs as have been developed for individuals. Over three-quarters of SMEs have no employees and over 95 per cent have fewer than ten.⁷⁶

We have advanced similar thinking in relation to the measurement of legal need and suggested only minor deviations from the approach to measurement of legal need and unmet legal need adopted in the reporting of the 2019 LSB/Law Society *Survey of the Legal Needs of Individuals in England and Wales*.⁷⁷ This approach follows that set out in the OECD guidance, and makes use of data relating to legal capability, use of legal services and dispute resolution processes within the framework of a seven-stage logic tree.

Finally, we have set out simple amendments to the LSB survey that can capture broad strategic data concerning the impact of the Covid-19 pandemic and UK’s exit from the EU on small businesses’ experiences of justiciable problems and the ways in which SMEs have dealt such problems.

All of our thinking, along with suggestions set out in an earlier comprehensive commentary on the 2017 LSB survey, has been applied to the draft revised LSB survey questionnaire set out in Appendix 2.

⁷⁶ <https://www.gov.uk/government/publications/business-population-estimates-2019/business-population-estimates-for-the-uk-and-regions-2019-statistical-release-html>

⁷⁷ YouGov (2020) *Legal Needs of Individuals in England and Wales: Technical Report 2019/20*, London: YouGov.

Appendix 1.

A Comprehensive Legal Capability Framework

(Reproduced from Balmer, N.J., Pleasence, P., Hagland, T. and McRae, C. (2019) *Law ... What is it Good For?* Melbourne: Victoria Law Foundation)

Stage	Knowledge		Skills		Attributes	Resources/ Environment
Recognition of issues	Core legal concepts / principles	<ul style="list-style-type: none"> Distinction between criminal and civil law Types of rights and obligations (incl. nature of law) Impact of law on oneself and others Other core concepts (rule of law, right to a fair trial, etc.) 	Recognise issues	<ul style="list-style-type: none"> Identify justiciable problems as contentious / problematic 	Legal consciousness Open mindedness Self-awareness Self-esteem Social awareness Attitude (to) <ul style="list-style-type: none"> Law Etc. 	Time
	Content of (substantive) law	<ul style="list-style-type: none"> General Situation specific 	Recognise relevance of law	<ul style="list-style-type: none"> Identify that justiciable problems have a legal dimension Frame issues / situations in legal terms 		
Information / assistance	Capability limitations	<ul style="list-style-type: none"> Knowledge Skills Attributes Resources (time, Money, etc.) 	Recognise capability limitations	<ul style="list-style-type: none"> Knowledge Skills Attributes Resources 	Self-awareness Self-esteem	Time Money Social capital Availability of services Etc.
	Sources <ul style="list-style-type: none"> Information Advice Representation 	<ul style="list-style-type: none"> Common sources (incl. main types of legal professional, main sources of generalist advice, etc.) Situation specific sources Accessibility <ul style="list-style-type: none"> Location Cost Eligibility Etc. How to access 	Information literacy <ul style="list-style-type: none"> Generic Law specific 	<ul style="list-style-type: none"> Recognise when information required (incl. about sources) Understand what information required Locate information sources Assess costs / benefits of information sources Compile information Evaluate information (incl. sources and substance) Apply information (incl. advice) 	Open mindedness Patience Persistence Confidence (in/to) <ul style="list-style-type: none"> Ability to acquire information Ability to understand / evaluate information Seek help Communicate Ask about law related issues In sources of help Etc. 	
			Digital literacy	<ul style="list-style-type: none"> Technical / functional Social Etc. 	Confidence (in/to) <ul style="list-style-type: none"> Technology use Etc. Attitudes (to) <ul style="list-style-type: none"> Technology Etc. 	

Stage	Knowledge		Skills		Attributes	Resources/ Environment
			Communication <ul style="list-style-type: none"> • Generic • Law specific 	<ul style="list-style-type: none"> • Textual (reading and writing) • Verbal (speaking and listening, face-to-face and remote) • Non-verbal • Visual • Clarity • Comprehension • Listening • Questioning • Etc. 	Adaptability Assertiveness Empathy Open mindedness Persistence Self-awareness Self-esteem Confidence (in/to) <ul style="list-style-type: none"> • Break the ice • Communicate • Ask questions • Seek clarification • Challenge • Etc. Attitudes to <ul style="list-style-type: none"> • Lawyers • Etc. 	
			Inter-personal	<ul style="list-style-type: none"> • Rapport building • Relationship • Conflict management • Etc. 	Emotional intelligence Empathy Self-awareness Self-esteem	
Resolution	Process / resolution options	<ul style="list-style-type: none"> • Forms of process • Parties • Perspectives (of different parties) • Individual / collective process • Legal / extra-legal • Institutions <ul style="list-style-type: none"> – Common – Situation specific • Accessibility <ul style="list-style-type: none"> – Location (real/ virtual) – Cost – Eligibility – Etc. • How to use (incl. steps involved) 	Legal reasoning / analytical Information literacy Digital literacy Communication (incl. with other parties, arbitrators, mediators, etc.)	(as above)	Adaptability Assertiveness Empathy Fortitude Open mindedness Persistence Readiness to act Self-awareness Self-esteem Confidence (in/to) <ul style="list-style-type: none"> • Challenge behaviour • Start / progress informal / formal dispute / process • Negotiate • Advocate • Etc. Attitude (to) <ul style="list-style-type: none"> • accessibility of process (general / specific) • Fairness of process (e.g. trust) • Etc. 	Time Money Social capital Availability of services Availability of processes Etc.
	Evidence	<ul style="list-style-type: none"> • Forms of evidence • Admissibility • How to obtain • How to build a case 	Decision making	<ul style="list-style-type: none"> • Record keeping • Time management • Etc. 		
	Outcomes	<ul style="list-style-type: none"> • Common forms • Situation specific forms • Means of enforcement • Consequences of failure to resolve • Possibilities • What is wanted 	Organisation	<ul style="list-style-type: none"> • Goal setting • Forecasting • Etc. 		
			Dispute resolution	<ul style="list-style-type: none"> • Negotiation • Advocacy 		
			Problem solving	<ul style="list-style-type: none"> • Creative / lateral thinking • Etc. 		
				<ul style="list-style-type: none"> • Recognise options • Recognise risks • Evaluation • Etc. 		
Wider influence and law reform	Nature of law-making / regulatory process	<ul style="list-style-type: none"> • Judicial precedent • Origins of legislation • Legislative process (incl. options for achieve goals) • Influences on legislative process 	Legal reasoning / analytical Information literacy Digital literacy Communication (incl. with other parties, arbitrators, mediators, etc.)	(as above)	Adaptability Assertiveness Empathy Fortitude Open mindedness Persistence Readiness to act Self-awareness Self-esteem Social awareness Confidence (in/to) <ul style="list-style-type: none"> • Enter public discourse Attitude (to) <ul style="list-style-type: none"> • Accessibility of process (general / specific) • Utility of process 	Time Money Social capital Availability of services Availability of processes Etc.
	Institutions involved in law-making / regulatory process	<ul style="list-style-type: none"> • General • Situation specific • Accessibility • How to access • Internal process 	Empathy Organisation Planning Problem solving Negotiation Advocacy Conflict resolution Evaluation / judgment			
	Outcomes	<ul style="list-style-type: none"> • Possibilities • What is wanted • Individual and broader outcomes / impact 				

Appendix 2.

Draft Revised LSB Small Business Legal Needs Survey Questionnaire

SECTION A. SCREEN AND BUSINESS CHARACTERISTICS

S2. Which one of the following BEST applies to you?
[SINGLE]

1. I'm employed by an organisation
2. I'm self-employed
3. I am not working

[EXIT if S2 = 3]

S3. What level of management responsibility do you hold in your current position?
[SINGLE]

1. Owner/ Proprietor
2. Partner
3. Chairman
4. Chief Executive
5. Managing Director
6. Non-Executive Director
7. Other board-level manager/ director
8. Other senior manager or director below board level
9. Middle manager
10. Junior manager/ team leader/ supervisor
11. Executive/ clerical/ other worker with no managerial responsibilities
12. Other
13. None of these

[EXIT if S3 = 9,10,11,12,13]

S4. How many people work within the business, including yourself? If you are self-employed please think of your own business rather than a business you may be based at currently.
[NUMBER]

[EXIT if S4 >49]

A2. [If S4 >1] Are you the most senior person in day-to-day control of your business?

1. Yes
2. No

A3. [If A2=2] Do you have a good knowledge of the day-to-day operations of your business across all areas of its activity? By day-to-day operations we require you to have knowledge of legal issues your organisation may have encountered as well as some knowledge of employment issues and finance

1. Yes
2. No

[EXIT if A3 = 2]

Thank you for agreeing to participate in this survey.

It has been commissioned by the Legal Services Board – the independent body responsible for the regulation of lawyers in England and Wales – to investigate use of the broad range of professional services that assist businesses deal with everyday problems concerning finance, sales/purchasing, staff, business premises, regulation, etc.. The survey will help inform future change in the professional services market, aimed at promoting access to services and more competitive services.

If the business you work for is part of a group of businesses, or you work with more than one business, please provide answers only in relation to one business, which should be the business that you have the most involvement with and knowledge of.

We have tested the survey and found that, on average it takes around 15 minutes to complete. This time may vary depending on factors such as your Internet connection speed and the answers you give.

In order to begin the survey please click below.

A4. Is your business a company, a partnership or are you a sole proprietor (also known as a sole trader)?

[SINGLE]

1. Sole proprietor/sole trader
2. Private limited company (Ltd)
3. Public limited company (PLC)
4. Limited partnership (LLP)
5. Partnership
6. Other [OPEN TEXT]

A5. How many years has the business been trading? If your business has been trading for less than a year, please type in zero.

[NUMBER]

A6. [If A5=0] How many months has the business been trading?

[NUMBER]

A7. And in which specific sector does your business or organisation primarily operate?
[SINGLE]

1. Agriculture, forestry and fishing
2. Manufacturing
3. Construction
4. Mining and extraction
5. Energy and water supply
6. Primary and secondary schools
7. Further and higher education
8. NHS
9. Other private healthcare
10. Voluntary and not-for-profit sector
11. Hotels, catering and leisure
12. IT industry
13. Transport and communications (including media)
14. Consultancy services
15. Finance, insurance and real estate
16. Wholesale and retail trade
17. Other business services
18. Public administration – central government
19. Public administration – local government, including fire services
20. Armed forces
21. Quango

A8. [IfS4 >1] Are you or is anybody else within your business a qualified lawyer or trained in handling legal issues?

1. Yes
2. No

A8b. [IfS4 =1] Are you a qualified lawyer or have you had training in handling legal issues?

1. Yes
2. No

A9. [IfA8=1orA8b=1] What areas of legal specialism do you have within the business?

1. Contract
2. Tax
3. Crime
4. Employment
5. Personal injury
6. Property
7. Intellectual property
8. Regulation/competition
9. Business ownership
10. Other [OPEN TEXT]

98. Don't know

A10. [If S4>1 & A8 = Yes] Does the legally qualified or trained person (or people) have responsibility for the business's legal affairs?

1. Yes
2. No

A11. [If A10 = No] Is the legally qualified or trained person (or people) expected to identify and help deal with legal issues that are related to their legal specialism?

1. Yes
2. No

A12. [If A10 = Yes] Is the primary job of one or more legally qualified or trained persons to deal with legal issues?

1. Yes
2. No

SECTION B. USE OF BUSINESS SUPPORT SERVICES

B1a. Which of these independent professional services, if any, has your business made use of in the last 12 months?

Please exclude any service from which you only obtained information or documents, without any communication or tailored advice.

Please exclude any services that you deliver as part of your business.

[MULTIPLE]

1. Accountant
2. Tax or financial adviser
3. Independent not-for-profit advice organisation (e.g. Chamber of Commerce, Citizens Advice Bureau)
4. Solicitors' firm
5. Barrister
6. Patent/trademark attorney (excluding patent/trademark filing agent or invention promotion company)
7. Other legal service (e.g. licensed conveyancer, costs lawyer, notary, insurance company legal helpline)

98. Don't know

99. None of these

B1p. [If B1a(3) = Yes] What was the name of the advice agency/charity?
[OPEN]

B1q. [If B1a(6) = Yes] What type of 'other' legal service was it that your business made use of?
[MULTIPLE]

1. Licensed conveyancer
 2. Costs lawyer ([ADD IN HOVER DEFINITION FOR TEXT TO RIGHT OVER 'COSTS LAWYER']
Costs Lawyers can help with any legal matter that has legal costs associated with it such as general advice on costs, bills of costs, points of disputes, costs management and costs budgeting)
 3. Notary
 4. Legal Executive
 5. Insurance company legal helpline
 6. Other legal helpline (please specify) [OPEN TEXT]
 7. Other (please specify) [OPEN TEXT]
98. Don't know

B1b. And which of these independent professional services, if any, has your business made use of in the last 12 months?

Please exclude any service you have already mentioned.

Please exclude any service from which you only obtained information or documents, without any communication or tailored advice.

Please exclude any services that you deliver as part of your business.
[MULTIPLE]

1. Membership or trade body (e.g. Federation of Small Businesses)
 2. Government advice service
 3. Debt collection/recovery service
 4. HR/Employment service (including outsourcing)
 5. ACAS (Advice, Conciliation and Arbitration Service)
 6. An insurance service (other than for to obtain cover or make a claim)
 7. Patent/trademark filing agent or invention promotion company
 8. A business consultant / consultancy service
 9. A business adviser in your bank
 10. Other independent professional service (e.g. company secretary service, angel investor) (please specify) [OPEN TEXT]
98. Don't know
99. None of these

B2. Do you have an on-going contract with any organisation to provide you with legal services – in general, or of a particular type – as your business requires?

1. Yes
 2. No
98. Don't know

B3. [If B1b=4 AND S4>1] do you have an ongoing contract with an HR/Employment service?

1. Yes
 2. No
98. Don't know

B4. [If any at B1a] In which areas did the services you have mentioned help your business in the past 12 months? Please select at least one response for each column.

[GRID – B1a RESPONSES]

[MULTIPLE]

1. Trading (including commercial contracts)
2. Tax
3. Employment (excluding work related injury/illness)
4. Work related injury/illness
5. Business premises
6. Finance/insurance
7. Debt
8. Intellectual property
9. Government regulation/competition
10. Business set-up/legal-status/ownership
11. Other (please specify) [OPEN TEXT]

98. Don't know

B5. [If any at B1a] How was the service provided by the following MAINLY delivered to your business?

[GRID – B1a RESPONSES]

[SINGLE]

1. In-person meetings
2. Telephone conversations
3. Video calls (e.g. Skype, Zoom, etc.)
4. Email
5. Post
6. Other [OPEN TEXT]

98. Don't know

- B9. [If any at B1a] Was any professional service use you have mentioned necessitated or expanded because of the Covid-19 pandemic (or related public health regulations) or the United Kingdom's exit from the European Union (including preparation for exit)? Please indicate all that apply.
[SINGLE]
1. Yes, the Covid-19 pandemic
 2. Yes, the UK's exit from the EU
 3. No, neither
- B10. [If more than one service at B1a AND B9=1] Which [If no services at B1b "if any"] of the following professional services did you use more because of the Covid-19 pandemic?
[GRID – B1a RESPONSES]
[MULTIPLE]
1. Yes
 2. No
- B11. [If any B10=1] What would you estimate was the total cost of services obtained from [SERVICE, SERVICE, etc.] that your business required because of the Covid-19 pandemic?
[AMOUNT – POUNDS]
- B12. [If more than one service at B1a AND B9=2] Which [If no services at B1b "if any"] of the following professional services did you use more as a result of the UK's exit from the EU?
[GRID – Responses selected at B1a]
[MULTIPLE]
1. Yes
 2. No
- B13. [If any B12=1] What would you estimate was the total cost of services obtained from [SERVICE, SERVICE, etc.] that your business required because of the UK's exit from the EU?
[AMOUNT – POUNDS]
- B14. [If any at B1a] Over the past 12 months, did the Covid-19 public health restrictions make it easier or harder for your business to obtain help from the following services?
[GRID – B1a RESPONSES]
[MULTIPLE]
1. Much easier
 2. Easier
 3. Neither easier nor harder
 4. Harder
 5. Much harder

B15. [If any B14=4,5] Why was it harder for your business to obtain help from [B14=4,5 Service(s)]?
[GRID – B1a RESPONSES]
[MULTIPLE]

1. Harder to locate services
2. Harder to communicate
3. Other [OPEN TEXT]

B16. Apart from anything you have already mentioned, has your business obtained any information or documents from any of the following sources in the last 12 months?
[MULTIPLE]

1. A government website (e.g. gov.uk, Companies House, Information Commissioners Office, Small Business Commissioner)
2. An online legal document provider
3. A tax, legal or regulation related information website or 'app'
4. A tax, legal or regulation related book, pamphlet or other publication

B8. [If A8=1 OR A8b=1] If your business encounters a legal issue as part of the business's normal activities (for example, around employee rights) which of the following is most likely to happen first?

1. [If S4>1] Talk to lawyer in the business
2. [If S4>1] Talk to another colleague in the business
3. Talk to a lawyer outside the business
4. Talk to someone else outside the business
5. Look for information/resources on the Internet
6. Other [OPEN TEXT]

B70. Thinking of accessing any type of services for your business, including use of any services you have already mentioned, did your business use the Internet to do any of the following things in the past 12 months?
[MULTIPLE]

1. Download a contract/terms and conditions template
2. Download another type of legal document template
3. Obtain information about the law/regulations
4. Obtain information about ways to resolve disputes
5. Obtain tailored advice about a legal issue
6. Start legal proceedings (e.g. using Money Claim Online)
7. Start an online dispute resolution (e.g. eBay dispute resolution)
8. None of the above

SECTION C1. PROBLEM IDENTIFICATION AND ENUMERATION

The following questions are about different types of problems that your business might have faced over the past 12 months.

A problem is an issue that diverted or distracted you or anybody else within your business, in a significant way, from everyday work activities or responsibilities

We are only interested in problems that started within the last 12 months, or problems that started longer than 12 months ago, but are still on-going. Please do not include problems which ended longer than 12 months ago.

Also, please only include problems faced by the business, not problems that you may have faced in your personal capacity.

TRADING

C19a. In the last 12 months, has your business faced any significant problems concerning the following? Please indicate all that apply.

[MULTIPLE]

GOODS OR SERVICES PROVIDED TO YOUR CUSTOMERS

1. Not as described / not of satisfactory quality/fit for purpose
2. Unacceptably late delivery
3. Unacceptably late or non-/partial-payment
4. Distance selling consumer rights (e.g. Internet, telephone, mail order)
5. Other contract problems or disputes
- 5a. Customer insolvent

GOODS OR SERVICES PURCHASED BY YOUR BUSINESS

6. Not as described / not of satisfactory quality/fit for purpose
7. Unacceptably late delivery
8. Unacceptably late or non-/partial-payment
9. Other contract problems or disputes
10. Supplier insolvent

FRAUDULENT/WRONGFUL TRADING

11. Fraudulent or wrongful trading (concerning insolvency)

PUBLIC TENDER

12. Unfair operation of a public tender

INTERNATIONAL TRADING

13. Legal/regulatory issues relating to international trading

98. Don't know

99. None of these

C19b. [For ALL C19a positive responses] And how many individual significant problems of these types has your business experienced in the past year?

[GRID]

[NUMBER]

C19d. [If ANY positive responses at C19a] [If n=1 “Was this trading related problem” / If n>1 “Were any of these trading related problems”] caused or made worse by the COVID-19 pandemic or associated public health regulations?

1. Yes
 2. No
98. Don't know

C19e. [If ANY positive responses at C19a] [If n=1 “Was this trading related problem” / If n>1 “Were any of these trading related problems”] caused or made worse by the United Kingdom's exit from the European Union (or preparations for exit)?

1. Yes
 2. No
98. Don't know

TAX

C20a. In the last 12 months, has your business faced any significant problems concerning the following? Please indicate all that apply.

[MULTIPLE]

1. Liability for tax / amount of tax owed
 2. Errors in your business tax return
 3. Failure to maintain appropriate records (for tax purposes)
 4. Failure to register/report changes when required (e.g. VAT registration, registration as a sole trader)
 5. International taxation
98. Don't know
99. None of these

C20b. [For ALL C20a positive responses] And how many individual significant problems of these types has your business experienced in the past year?

[GRID]

[NUMBER]

C20d. [If ANY positive responses at C20a] [If n=1 “Was this problem” / If n>1 “Were any of these problems”] concerning tax caused or made worse by the COVID-19 pandemic or associated public health regulations?

1. Yes

2. No

98. Don't know

C20e. [If ANY positive responses at C20a] [If n=1 "Was this problem" / If n>1 "Were any of these problems"] concerning tax caused or made worse by the United Kingdom's exit from the European Union (or preparations for exit)?

1. Yes

2. No

98. Don't know

EMPLOYEES

C21a. In the last 12 months, has your business faced any significant problems concerning the following? Please indicate all that apply.

[MULTIPLE]

1. Staff misconduct (including unauthorised absence and disciplinary procedures)
2. Dismissal (or threat of dismissal) of staff
3. Making staff redundant
4. Content or exercise of parental rights (including maternity) leave/pay or flexible working requests
5. Payment of wages/pension
6. Working conditions
7. Employee injury at work
8. Other employment contract issues (including changes to contract terms)
9. Adjustments to jobs/workplace for disabled workers
10. Complaints/grievances made by employees/job applicants (including allegations of discrimination and harassment)
11. Employment of foreign nationals

98. Don't know

99. None of these

C21b. [For ALL C21a positive responses] And how many individual significant problems of these types has your business experienced in the past year?

[GRID]

[NUMBER]

C21d. [If ANY positive responses at C21a] [If n=1 "Was this problem" / If n>1 "Were any of these problems"] concerning employees caused or made worse by the COVID-19 pandemic or associated public health regulations?

1. Yes

- 2. No
- 98. Don't know

C21e. [If ANY positive responses at C21a] [If n=1 "Was this problem" / If n>1 "Were any of these problems"] concerning employees caused or made worse by the United Kingdom's exit from the European Union (or preparations for exit)?

- 1. Yes
- 2. No
- 98. Don't know

BUSINESS PREMISES

C22a. In the last 12 months, has your business faced any significant problems concerning the following? Please indicate all that apply.
[MULTIPLE]

RENTED/LEASED BUSINESS PREMISES

- 1. Rent arrears
- 2. Eviction/threat of eviction
- 3. Repairs/maintenance or provision of services by landlord
- 4. Terms of rental agreement/lease
- 5. Boundaries/rights of way
- 6. Recovery of rental deposit

OWNED BUSINESS PREMISES

- 7. Mortgage arrears
- 8. Repossession/threat of repossession
- 9. Repairs/maintenance of communal areas
- 10. Boundaries/rights of way
- 11. Planning permission
- 12. Conveyancing
- 13. Squatters
- 98. Don't know
- 99. None of these
- 100. Not applicable – The business has no premises

C22b. [For ALL C22a positive responses] And how many individual significant problems of these types has your business experienced in the past year?
[GRID]
[NUMBER]

C22d. [If ANY positive responses at C22a] [If n=1 “Was this problem” / If n>1 “Were any of these problems”] concerning business premises caused or made worse by the COVID-19 pandemic or associated public health regulations?

1. Yes
2. No

98. Don't know

C22e. [If ANY positive responses at C22a] [If n=1 “Was this problem” / If n>1 “Were any of these problems”] concerning business premises caused or made worse by the United Kingdom's exit from the European Union (or preparations for exit)?

1. Yes
2. No

98. Don't know

FINANCE AND INSOLVENCY

C23a. In the last 12 months, has your business owed money to any creditors that it has been unable to pay?

1. Yes
2. No

98. Don't know

C23b. [If C23a=1] At any stage in the last 12 months has your business been officially declared insolvent?

C23c. In the last 12 months, has your business been threatened with or subject to any of the following? Please indicate all that apply.

[MULTIPLE]

1. Bankruptcy
2. Receivership
3. Administration
4. Winding up order
5. [If A4=1] Individual voluntary arrangement
6. [If A4=2,3] Company voluntary arrangement
7. Debt relief order
8. [If A4=4,5] Partnership voluntary arrangement

98. Don't know

99. None of these

C23d. [If C23a=1 OR ANY positive responses at C23c] [If n=1 “Was this problem” / If n>1 “Were any of these problems”] concerning finance caused or made worse by the COVID-19 pandemic or associated public health regulations?

1. Yes
2. No

98. Don't know

C23e. [If C23a=1 OR ANY positive responses at C23c] [If n=1 “Was this problem” / If n>1 “Were any of these problems”] concerning finance caused or made worse by the United Kingdom's exit from the European Union (or preparations for exit)?

1. Yes
2. No

98. Don't know

INTELLECTUAL PROPERTY

C24a. In the last 12 months, has your business faced any significant problems concerning the following? Please indicate all that apply.

[MULTIPLE]

INFRINGEMENT OF YOUR BUSINESS' INTELLECTUAL PROPERTY

1. Trademarks (e.g. brand name, business name, logo, slogan)
2. Copyright (e.g. text, software, sound recording, drawings)
3. Design right/registered design
4. Database rights
5. Patents
6. Disclosure of trade secrets

ALLEGED INFRINGEMENT OF INTELLECTUAL PROPERTY BY YOUR BUSINESS

7. Trademarks (e.g. brand name, business name, logo, slogan)
8. Copyright (e.g. text, software, sound recording, drawings)
9. Design right/registered design
10. Database rights
11. Patents
12. Unlawful obtaining of trade secrets

98. Don't know

99. None of these

C24b. [For ALL C24a positive responses] And how many individual significant problems of these types has your business experienced in the past year?

[GRID]
[NUMBER]

C24d. [If ANY positive responses at C24a] [If n=1 “Was this problem” / If n>1 “Were any of these problems”] concerning intellectual property caused or made worse by the COVID-19 pandemic or associated public health regulations?

1. Yes
2. No

98. Don't know

C24e. [If ANY positive responses at C24a] [If n=1 “Was this problem” / If n>1 “Were any of these problems”] concerning intellectual property caused or made worse by the United Kingdom's exit from the European Union (or preparations for exit)?

1. Yes
2. No

98. Don't know

REGULATION

C25a. In the last 12 months, has your business faced any significant problems concerning the following? Please indicate all that apply.
[MULTIPLE]

1. Mandatory licenses/permits/accreditation
2. Product safety
3. Other health and safety
4. Data protection
5. Import/export regulation
6. Mandatory insurance
7. Filing/content of annual company accounts
8. Need for/outcome of audit
9. Other government regulation
10. Advertising standards

98. Don't know
99. None of these

C25b. [For ALL C25a positive responses] And how many individual significant problems of these types has your business experienced in the past year?

[GRID]
[NUMBER]

C25d. [If ANY positive responses at C25a] [If n=1 “Was this problem” / If n>1 “Were any of these problems”] concerning regulation caused or made worse by the COVID-19 pandemic or associated public health regulations?

1. Yes
 2. No
98. Don't know

C25e. [If ANY positive responses at C25a] [If n=1 “Was this problem” / If n>1 “Were any of these problems”] concerning regulation caused or made worse by the United Kingdom's exit from the European Union (or preparations for exit)?

1. Yes
 2. No
98. Don't know

STRUCTURE

C26a. In the last 12 months, has your business faced any significant problems concerning the following? Please indicate all that apply.
[MULTIPLE]

1. Technicalities of business start up
 2. Change of legal status
 3. Break-up of partnership
 4. Partnership/shareholder disputes
 5. Merger
 6. Take-over of another business
 7. Sale of business (in part/whole)
 8. Joint venture
98. Don't know
99. None of these

C26b. [For ALL C26a positive responses] And how many individual significant problems of these types has your business experienced in the past year?
[GRID]
[NUMBER]

C26d. [If ANY positive responses at C26a] [If n=1 “Was this problem” / If n>1 “Were any of these problems”] concerning business structure caused or made worse by the COVID-19 pandemic or associated public health regulations?

1. Yes
 2. No
98. Don't know

C26e. [If ANY positive responses at C26a] [If n=1 "Was this problem" / If n>1 "Were any of these problems"] concerning business structure caused or made worse by the United Kingdom's exit from the European Union (or preparations for exit)?

1. Yes
 2. No
98. Don't know

OTHER

C27a. In the last 12 months, has your business faced any significant problems concerning the following? Please indicate all that apply.
[MULTIPLE]

1. Defamation
 2. Incorrect information held by a credit reporting agency leading to the refusal of credit
 3. Mismanagement of business money/investments by financial service
 4. Personal injury of a customer
 5. A breach of commercial confidentiality
98. Don't know
99. None of these

C27b. [For ALL C27a positive responses] And how many individual significant problems of these types has your business experienced in the past year?
[GRID]
[NUMBER]

C27d. [If ANY positive responses at C27a] [If n=1 "Was this last problem" / If n>1 "Were any of these last problems"] caused or made worse by the COVID-19 pandemic or associated public health regulations?

1. Yes
 2. No
98. Don't know

C27e. [If ANY positive responses at C27a] [If n=1 "Was this last problem" / If n>1 "Were any of these last problems"] caused or made worse by the United Kingdom's exit from the European Union (or preparations for exit)?

1. Yes
 2. No
98. Don't know

SECTION C2. PROBLEM FOLLOW-UP LOOP

[Randomly selected problem category (from categories where 1+ problems identified)]

- C28. Which of the following best describes the [If n>1 "second most recent"] [CATEGORY] problem that your business faced?
[SINGLE]
[USE CATEGORY LIST ITEMS FOR WHICH POSITIVE RESPONSES PROVIDED]

For the following questions please think only of this particular problem concerning [PROBLEM TYPE]

- C29. Thinking of this problem, the problem ongoing or done with? By "done with" I mean that the problem either has been resolved or that it persists, but you and everybody else have given up all efforts to resolve it further?
[SINGLE]

1. Ongoing
 2. Too early to say
 3. Done with - Problem persists but all have given up trying to resolve it further
 4. Done with – Problem resolved
98. Don't know

- C32. Which, if any, of these descriptions best indicates the character of the problem? Please select all that apply:
[RANDOMISE]
[MULTIPLE]

1. Bad luck
 2. Moral
 3. Private business matter (i.e. not something to involve others with)
 4. Criminal
 5. Legal
 6. Bureaucratic
 7. Social
98. Don't know
99. None of these

C33. Looking at this scale – where the top of the bar represents the most serious type of problem your business could possibly face, and the bottom of the bar represents the least serious – please mark on the scale where you would place this problem:
[NUMBER (1-10)]

[TEXT MARKERS ON BAR: (NEAR BOTTOM) "A problem that had only a small impact on the company (e.g. A non-critical late delivery by a supplier)" / (NEAR TOP) "A problem that threatened the existence of the company (e.g. a strike by employees)"]

C33b. [IF problem identification question 'd' = 1] Was this problem directly or indirectly caused or made worse by the COVID-19 pandemic or associated public health regulations?

1. Yes – Caused
2. Yes – Exacerbated
3. No

98. Don't know

C33c. [IF problem identification question 'e' = 1] Was this problem directly or indirectly caused or made worse by the United Kingdom's exit from the European Union (or preparations for exit)?

1. Yes – Caused
2. Yes – Exacerbated
3. No

98. Don't know

C35. Which of these descriptions indicate how your business went about sorting out the problem? Please indicate all that apply.
[MULTIPLE]

1. No action
2. Entirely on its own
3. With help from outside business friends/colleagues
4. With help from an independent adviser/representative/support service
5. With help from family members
6. Outside business friends/colleagues sorted out the problem (or are sorting it out)
7. An independent adviser/representative/support service sorted out the problem (or are sorting it out)
8. Family members sorted out the problem (or are sorting it out)

98. Don't know

99. None of these

C35b. [If C35 = 3,5,6,8] You said that you had help from business friends/colleagues or help from family members, how would you describe their level of legal / professional knowledge in relation to the issue you faced?
[SINGLE]

[2 ITEM GRID – (3,6) = ‘Business friends/colleagues’ / (5,8) = ‘Independent adviser/representative/support service’]

1. Excellent knowledge
2. Good knowledge
3. Adequate knowledge
4. A little knowledge
5. No knowledge at all

98. Don't know

C36m. [If C35 = 4,7 OR (C35=3,5,6,8 AND any C35b = 1,2,3)] You said that you had help from [If C35=4,7 “an independent provider”][If C35=3,6 and corresponding C35b=1,2,3 “(and) knowledgeable business friends/colleagues”][If C35=5,8 and corresponding C35b=1,2,3 “(and) knowledgeable family members”]. Was the help that you got from any of the following?

Please exclude any source of help from which you only obtained information or documents, without any communication or tailored advice.

[MULTIPLE]

1. Accountant
2. Tax or financial adviser
3. Independent not-for-profit advice organisation (e.g. Chamber of Commerce, Citizens Advice Bureau)
4. Solicitors' firm
5. Barrister
6. Patent/trademark attorney (excluding patent/trademark filing agent or invention promotion company)
7. Other legal service (e.g. licensed conveyancer, costs lawyer, notary, insurance company legal helpline)

98. Don't know

99. None of these

C36p. [If C36m(3) = Yes] What was the name of the advice agency/charity?

[OPEN]

C36q. [If C36m(6) = Yes] What type of ‘other’ legal service was it that your business made use of?

[MULTIPLE]

1. Licensed conveyancer
2. Costs lawyer ([ADD IN HOVER DEFINITION FOR TEXT TO RIGHT OVER ‘COSTS LAWYER’]
Costs Lawyers can help with any legal matter that has legal costs associated with it such as general advice on costs, bills of costs, points of disputes, costs management and costs budgeting)
3. Notary
4. Legal executive
5. Insurance company legal helpline

- 6. Other legal helpline (please specify) [OPEN TEXT]
- 7. Other (please specify) [OPEN TEXT]

- 98. Don't know

C36m2. [If C35 = 4,7 OR (C35=3,5,6,8 AND any C35b = 1,2,3)] And was the help you got from any of the following?

Again, please exclude any service from which you only obtained information or documents, without any communication or tailored advice.
[MULTIPLE]

- 1. Membership or trade body (e.g. Federation of Small Businesses)
- 2. Government advice service
- 3. Debt collection/recovery service
- 4. HR/Employment service (including outsourcing)
- 5. ACAS (Advice, Conciliation and Arbitration Service)
- 6. An insurance service (other than for to obtain cover or make a claim)
- 7. Patent/trademark filing agent or invention promotion company
- 8. A business consultant / consultancy service
- 9. A business adviser in your bank
- 10. Other (please specify) [OPEN TEXT]

- 98. Don't know
- 99. None of these

C36. [If >1 positive responses at C36m/C36m2 (combined)] Please order the providers of help in the order that your business contacted them. With the first in the first slot and so on.
[GRID, C36m/C36m2 positive items only, including C36q items separately]

C50. [If >1 positive responses at C36m/C36m2 (combined)] And which of the providers that you contacted was your MAIN provider?
[SINGLE]
[GRID, C36m/C36m2 positive items only, including C36q items separately]

C36b. [If >1 positive responses at C36m and C36m2 (combined) "Excluding sources of help you have just mentioned"] Did your business obtain any information or documents to help it better understand or resolve the problem from any of the following?
[MULTIPLE]

- 1. A government website (e.g. gov.uk, Companies House, Information Commissioners Office, Small Business Commissioner)
- 2. An online document provider
- 3. Another website or 'app'
- 4. Any other source [OPEN TEXT]

C49. [For MAIN provider] Now some questions about your MAIN provider (a [MAIN PROVIDER TYPE]).

What were the most important factors in making your choice of MAIN provider? Please select up to three.

[RANDOM, but item 10 always last]

[MULTIPLE, MAX=3]

1. Prior use
2. Recommendation by friends, family or colleagues
3. Recommendation by an accountant
4. Recommendation by a trade body
5. Specialism/expertise
6. Cost
7. Reputation
8. Convenience
9. Quality mark
10. Other [SPECIFY]

98. Don't know

C51. [For MAIN provider] Did you/your business shop around for the MAIN provider you chose? (By shopping around we mean comparing services or prices from a number of different providers before selecting the provider you used.)

[SINGLE]

1. Yes
2. No, I didn't
3. No, I wanted to shop around, but didn't know how to.

98. Don't know

C51a. [If C51=1] When shopping around, did you/your business make use of a price comparison or customer review website or app? Please indicate all that apply

[MULTIPLE]

1. Yes, price comparison website or app
2. Yes, customer review website or app
3. No, neither a price comparison nor customer review website or app

98. Don't know

C52a. [If C51=2] Please indicate which of the following, if any, were reasons for not shopping around.

[MULTIPLE]

Shopping around was ...

1. Unnecessary, as I/we knew which provider was wanted

2. Unnecessary, as there is no apparent difference between providers
3. Difficult, as relevant information is hard to find
4. Difficult, as there is no directory or index of providers
5. Time-consuming
6. Impossible, as no choice was allowed by funder

98. Don't know

C52b. [If C51=1] Thinking about the service as a whole, how easy or difficult was it to make comparisons between different providers?

[MULTIPLE]

[RANDOMISE]

1. Very easy
2. Easy
3. Neither easy nor difficult
4. Difficult
5. Very difficult

98. Don't know

C53. [For MAIN provider] How easy or difficult was it to find information you wanted about your MAIN provider? Please think about each of the following types of information.

[GRID]

[RANDOMISE ROWS]

[Columns: Very easy, quite easy, quite difficult, very difficult, I/we did not look for this type of information]

Information about ...

1. Cost of service
2. Quality of services
3. Regulation of services
4. Professional indemnity insurance (Insurance that regulated lawyers must take out to compensate clients for damages or loss caused by any work-related mistakes)
5. Expertise or experience for the problem/issue
6. How quickly services could be accessed
7. How long it would take

98. Don't know

99. Did not require information

C54. [For MAIN provider] Did you/ your business check whether your MAIN provider was regulated?

By "regulated" we mean providers that are authorised and must comply with requirements set out by a specific regulating body, including requirements concerning complaints handling (e.g. solicitors are regulated by the Solicitors Regulation Authority).

1. Yes
2. No

98. Don't know
99. None of these

C55. [If C54=2] Why did you/ your business not check whether your MAIN provider was regulated?
Please select all that apply.
[MULTIPLE]

1. Just assumed they would be regulated
2. Did not know how to find the information
3. Did not think regulation was important
4. Did not think about regulation at all

98. Don't know

C56. [For MAIN provider] For the services you received from your MAIN provider, did you have to directly pay for all or part of the help you received?
[SINGLE]

1. Yes, paid for all of it
2. Yes, paid for part of it
3. No win no fee agreement
4. No, it was free
5. No, it was covered by insurance
6. No, it was covered by a legal services subscription
7. No, it was covered by a business subscription

98. Don't know
99. None of these

C56b. [If C56=1,2] How easy or hard was it for your business to afford the service received from your MAIN provider?

1. Very easy
2. Quite easy
3. Quite hard
4. Very hard

98. Don't know

C58. [If C56=1,2] How did you/your organisation fund the payment for the service?
[MULTIPLE]
[RANDOMISE]

1. From personal savings
2. From business savings/reserves
3. From the business turnover
4. Other [OPEN TEXT]

98. Don't know
99. None of these

C59. [For MAIN provider] Below are a series of statements about how the payment terms were presented by your MAIN provider. Please indicate all that apply to your experience.
[MULTIPLE]

Before engaging the MAIN provider, my business was ...

1. Quoted a fixed price for the work
2. Quoted a price range for the work
3. Given an hourly rate and an estimate of how many hours would be required
4. Given an hourly rate but not given an estimate of the hours required
5. Given a breakdown of costs (including disbursements and VAT)
6. Not told what the price would be

98. Don't know
99. None of these

C37. [For MAIN provider] How was the service provided by your MAIN provider mainly delivered?
[SINGLE]

1. In-person meetings
2. Telephone conversations
3. Video calls (e.g. Skype, Zoom, etc.)
4. Email
5. Post
6. Other [OPEN TEXT]

98. Don't know

C60b. [For MAIN provider] Thinking about your MAIN provider and the experience of using the service overall, how likely would you be to recommend them to another business facing a similar problem?

1. Very likely
2. Fairly likely
3. Neither likely nor unlikely
4. Fairly unlikely
5. Very unlikely

98. Don't know

C60. [For MAIN provider] Thinking about your MAIN provider and the experience of using the service overall, how satisfied or dissatisfied, if at all, where are you/your business with the service?

1. Very satisfied
2. Fairly satisfied
3. Neither satisfied or dissatisfied
4. Fairly satisfied
5. Very unsatisfied

98. Don't know

C61. [If C60=4,5] What were the reasons for your dissatisfaction with the service you received?
[MULTIPLE]
[RANDOMISE]

1. Delay/took too long
2. Mistakes were made (e.g. advice was wrong)
3. Not kept up-to-date on progress
4. Final bill higher than expected
5. Behaviour of staff was rude/unprofessional
6. Staff were under-qualified/under-experienced
7. Poor value for money
8. Instructions were not followed
9. General quality of service provided was poor
10. Other [OPEN TEXT]

98. Don't know

C62. [If C60=4,5] Following your dissatisfaction with the service you experienced, did you take any action?
[SINGLE]

1. Yes
2. No

98. Don't know

99. None of these

C62b. [If C62=1] What action did you take?
[SINGLE]

1. Raised my concerns with the service provider, but did not make a formal complaint
2. Made a formal complaint to the service provider
3. Complained to someone else (please specify) [OPEN TEXT]
4. Posted a negative review or comment on social media, a review website, etc.
5. Other (please specify) [OPEN TEXT]

- 98. Don't know
- 99. None of these

C38m. Did your Business try to get help from any of the following but was unable to do so?
[MULTIPLE]

- 1. Accountant
 - 2. Tax or financial adviser
 - 3. Independent not-for-profit advice organisation (e.g. Chamber of Commerce, Citizens Advice Bureau)
 - 4. Solicitors' firm
 - 5. Barrister
 - 6. Patent/trademark attorney (excluding patent/trademark filing agent or invention promotion company)
 - 7. Other legal service (e.g. licensed conveyancer, costs lawyer, notary, insurance company legal helpline) (please specify) [OPEN TEXT]
- 98. Don't know
 - 99. None of these

C38m2. And did your business try to get help from any of the following but was unable to do so?
[MULTIPLE]

- 1. Membership or trade body (e.g. Federation of Small Businesses)
 - 2. Government advice service
 - 3. Debt collection/recovery service
 - 4. HR/Employment service (including outsourcing)
 - 5. ACAS (Advice, Conciliation and Arbitration Service)
 - 6. An insurance service (other than for to obtain cover or make a claim)
 - 7. Patent/trademark filing agent or invention promotion company
 - 8. A business consultant / consultancy service
 - 9. A business adviser in your bank
 - 10. Other (please specify) [OPEN TEXT]
- 98. Don't know
 - 99. None of these

C38m3. Did the COVID-19 public health restrictions make it harder for you to obtain independent advice?

- 1. Yes
 - 2. No
- 98. Don't know

C38m4. [If any positive responses at C36m/C36m2 (combined)] Did the public health restrictions during the COVID-19 pandemic impact on the way you obtained help or the type or extent of help you obtained?

[MULTIPLE]

1. The way help was obtained
2. The type of help obtained
3. The extent of help obtained

98. Don't know

99. None of these

C40. Did any of the following things happen as part of the problem or sorting the problem out?

[MULTIPLE]

1. Your business was contacted by a lawyer/formal agent (e.g. debt collection agency) of the other side
2. Conciliation, mediation or arbitration took place
3. The Small Business Commissioner became involved
4. A regulator or ombudsman became involved
5. The police became involved
6. Legal proceedings commenced/a court or tribunal became involved
7. A public appeals service became involved
8. A commercial resolution service became involved

98. Don't know

99. None of these

C40b. [If C40=5] Who initiated court/tribunal proceedings?

[SINGLE]

1. Your/your business
2. The other side
3. Other [OPEN TEXT]

98. Don't know

C42. [If C29=3,4] You said earlier that the problem is done with. Which of these descriptions best describes how the problem concluded?

[MULTIPLE]

1. Decision of a court/tribunal
2. Decision or action by another public body (e.g. a regulator, Ombudsman, Small Business Commissioner)
3. Decision of a commercial resolution service (e.g. Ebay or similar)
4. Conciliation, mediation or arbitration (hosted by an independent person/organisation)
5. Agreement reached through somebody acting for your business (e.g. solicitor)
6. Agreement reached directly between your business and the other side

7. The other side acted independently to sort out problem
 8. Your business acted independently of the other side to sort out problem
 9. The problem sorted itself out without your business or the other side doing anything
 10. Your business is putting up with the problem/moved away from the problem (e.g. moved business premises)
98. Don't know
99. None of these

C43. [If C29=1,2] And, to what extent would you say the disagreement concluded in your business's favour?

[SINGLE]

1. Completely in your favour
2. Mostly in your favour
3. Mostly not in your favour
4. Not at all in your favour

98. Don't know

C44. Did your business experience any of the following as a result of this problem?

[MULTIPLE]

[RANDOMISE]

1. Loss of customer/contract
2. Loss of income
3. Additional costs (e.g. increased insurance costs)
4. Inability to take on new work
5. Inability to complete scheduled work
6. Damage to property
7. Damage to reputation
8. Damage to relationship with another business
9. Loss of employees (other than through dismissal/redundancy)
10. Had to cease trading
11. Change in ownership/structure of the business

98. Don't know

99. None of these

C66. To what extent do you agree or disagree with the following statements about the problem?

[GRID, with RESPONSE OPTIONS:

strongly agree, mainly agree, mainly disagree, strongly disagree]

The relevant person(s) in the business ...

1. [IF C29=3,4 "Understood" / IF C9=1,2 "Understands"] the business's legal rights and responsibilities.

2. [IF C29=3,4 "Knew" / IF C9=1,2 "Knows"] where to get good information and advice about resolving the problem.
3. [IF C29=3,4 "Was able" / IF C9=1,2 "Will be able"] to get all the expert help needed
4. [IF C29=3,4 "Was" / IF C9=1,2 "Is"] confident about achieving a fair outcome

C71. Regardless of the outcome of this problem, do you feel the process through which the outcome was reached was basically fair or unfair to everybody concerned?
[SINGLE]

1. Fair to everybody concerned
2. Not fair to everybody concerned

C47. And lastly on the subject of this problem, could you tell me when did the problem start?
Please give your best estimate
[YEAR, MONTH]

C48. [If C29=3,4] And when did it conclude [if c29=3 "or all parties give up acting to resolve the problem"]? Again, please give your best estimate
[YEAR, MONTH]

SECTION E. ADDITIONAL CHARACTERISTICS AND ATTITUDES

Now a few final questions about you and your business.

E51. [If A4=1] Is your business a family-owned business (i.e. majority owned by members of the same family)?
[SINGLE]

1. Yes
2. No

98. Don't know

E52. [If S4>1] How many people are there involved in running the business(e.g. the senior management team)?
[NUMBER]

E53. What do you expect your business's turnover to be in its current financial year? [If A5=0, "Please provide an estimate for your first twelve months of trading."]
[SINGLE]

1. Less than £50k
2. £50k to £99k
3. £100k to £249k
4. £250k to £499k

5. £500k to £999k
6. £1 million to £4.9 million
7. £5 million to £9.9 million
8. £10 million to £49.9 million
9. £50 million to £99.9 million
10. £100 million to £499.9 million
11. £500 million or more

98. Don't know

E54. Do you expect the business will make a profit in its current financial year?
[SINGLE]

1. Yes
2. No

98. Don't know

E55. Thinking about your business's clients, how would you describe them? Please select all that apply.
[MULTIPLE]

1. Individual members of the public
2. Other businesses
3. Government
4. Charities
5. Other [OPEN TEXT]

98. Don't know

E56. How many customers do you expect your business to have in the current financial year?
[NUMBER]

E57. How many suppliers do you expect your business to have in the current financial year?
[NUMBER]

E60a. [ALL] What is your ethnic group?
Choose one option that best describes your ethnic group or background
[SINGLE]

White

1. English/Welsh/Scottish/Northern Irish/British
2. Irish
3. Gypsy or Irish traveller
4. Any other white background

Mixed/multiple ethnic groups

5. White and Black Caribbean
6. White and Black African
7. White and Asian
8. Any other mixed/multiple ethnic background

Asian/Asian British

9. Indian
10. Pakistani
11. Bangladeshi
12. Chinese
13. Any other Asian background

Black/African/Caribbean/Black British

14. African
15. Caribbean
16. Any other Black/African/Caribbean background

Other ethnic group

17. Arab
18. Any other ethnic group

E60b. [If S4>1 AND (E52>1 OR (E52=1 AND S3 NOT 1,4,5))] Previously, you mentioned that there is/are [E52] person/people running the business (i.e. the senior management team). How many of these people are from a Black and Minority Ethnic (BAME) group?
[NUMBER]

E61a. [ALL] Do you have any long-standing physical or mental health conditions or illnesses? By long-standing we mean anything that has limited your ability to carry out normal day to day activities over a period of 12 months or more or that is likely to do so over a period of 12 months or more?
[SINGLE]

1. Yes, limited a lot
 2. Yes, limited a little
 3. No
98. Don't know

E61b. [If S4>1 AND (E52>1 OR (E52=1 AND S3 NOT 1,4,5))] Previously, you mentioned that there is/are [E52] person/people running the business (i.e. the senior management team). How many of these people have a long-standing physical or mental health condition or illness?
[NUMBER]

E61c. [ALL] What is your sex?

1. Female
2. Male

E61b. [If S4>1 AND (E52>1 OR (E52=1 AND S3 NOT 1,4,5))] Previously, you mentioned that there is/are [E52] person/people running the business (i.e. the senior management team). How many of these people are female?
[NUMBER]

E61c. [ALL] What is your age?
[NUMBER]

E63. In which of the following regions does your business have a base?
[MULTIPLE]

1. Wales
2. North West
3. North East
4. Yorkshire and Humber
5. West Midlands
6. East Midlands
7. South West
8. South East
9. London
10. Overseas

98. Don't know

E64. [If more than one positive response to E63] In which region is your business's head office?
[SINGLE]

1. Wales
2. North West
3. North East
4. Yorkshire and Humber
5. West Midlands
6. East Midlands
7. South West
8. South East
9. London

98. Don't know

E65. Overall, what has the impact of the Covid-19 pandemic been on your business?

1. Substantial negative impact
2. Some negative impact
3. No impact
4. Some positive impact
5. Substantial positive impact

E66. Overall, what has the impact of the UK's exit from the EU been on your business?

1. Substantial negative impact
2. Some negative impact
3. No impact
4. Some positive impact
5. Substantial positive impact

Lastly, a few general questions about how your business is able to deal with legal issues it faces and attitudes towards the legal system.

E70. If your business found itself facing a significant legal dispute – such as a dispute concerning a contract, invoice, your business premises, employees, taxation or regulation – how confident are you that your business could achieve an outcome that is fair and the business would be happy with in the following situations?

[GRID, with RESPONSE OPTIONS:

very confident; quite confident; not very confident; not confident at all]

1. Disagreement is substantial and tensions are running high.
2. The other side says it 'will not rest until justice is done'.
3. The other side refuses to communicate with your business except through their solicitor.
4. A notice from a court says your business must complete certain forms, including one setting out your case.
5. The problem goes to court, a barrister represents the other side, but your business represents itself.
6. The court makes a judgement against your business, which you see as unfair. Your business is told it has a right to appeal

E71. Now a question about your general impression and experience of the justice system.

We are not concerned with the 'criminal' justice system. We are concerned with the justice system that deals with disputes concerning such things as contracts, invoices, business premises, employees, taxation or regulation?

[GRID, with RESPONSE OPTIONS:

Strongly agree, mainly agree, mainly disagree, strongly disagree]

Thinking about issues like this, to what extent do you agree or disagree with the following statements

1. Issues like this are usually resolved promptly and efficiently.
2. Those with less money generally get a worse outcome.
3. For issues like these, law is like a game in which the skilful and resourceful are more likely to get what they want.
4. It is easy to take issues like these to court if needed.
5. For issues like these, legal services are too expensive for most small businesses to

- use.
6. The justice system provides good value for money.
 7. For issues like these, businesses like mine can afford legal services.
 8. Large business's lawyers are no better than small business's lawyers
 9. Taking a case to court is generally more trouble than it is worth.

E72. Did your business use the Internet to do any of the following things in the past 12 months? If not, would it easily be able to do so or require help?

[MULTIPLE]

[RANDOMISE]

[GRID items: 'Has used' // 'Easily able', 'Able with help', 'Not able, even with help']

1. Pay an invoice using online banking
2. Send an email
3. Communicate using Skype, Teams, Zoom or something similar
4. Find specific information (e.g. operating instructions for a printer or about eligibility for business rates relief)
5. Set up 2-step verification to access secure information using your computer and mobile phone
6. File a HMRC return or make use of an online accountancy/HR service
7. Create, edit or maintain a business website
8. Complete, save and print out an online form

E62. Please indicate the extent to which you agree or disagree with the following statements:

[GRID]

[COLUMNS: Agree strongly, Agree, Neither agree nor disagree, Disagree, Disagree strongly]

1. Law and regulation provide a fair environment for business to succeed.
2. Lawyers provide a cost-effective means to resolve legal issues.
3. When doing business, I generally trust the people that I come into contact with (e.g. suppliers, customers, employees).
4. I use a legal services provider to solve business problems as a last resort.
5. When I need one, I find it easy to find a suitable legal services provider that I can afford.
6. Not being able to find a suitable legal services provider when I need one has affected the growth of my business
7. I feel the need to take legal advice more often than I did two years ago (or when the business first started trading, if less than two years ago)
8. Legal services providers are transparent about their costs.