

Law Society Survey on 21st Century Access to Justice

February 2024



Background

In October 2023, the Law Society published a Green Paper which outlined a set of proposals aiming to increase access to justice for small businesses and those on low incomes.

In January 2024, the Law Society invited members of its Insights Community to take part in a short survey with the aim of providing feedback on some of the ideas set out in the Green Paper.

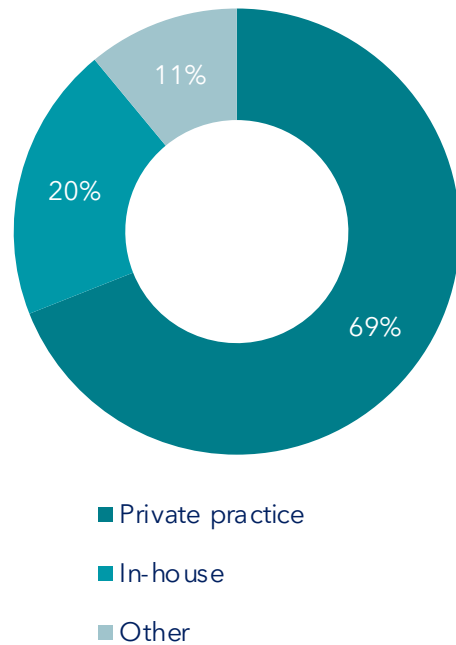
Survey aims

The aims of the survey were to consult members of the Insights Community on the following:

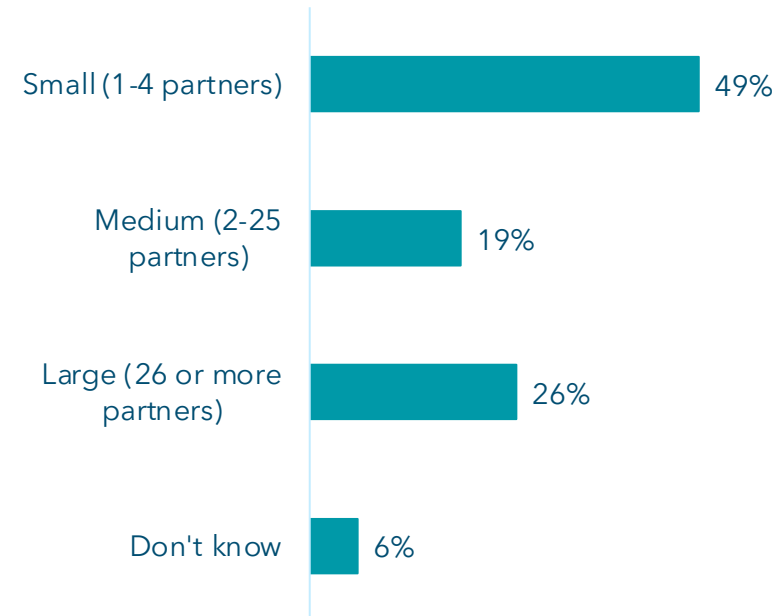
- To identify perceived barriers to access to justice for those on low incomes.
- To understand specific types of support and assurance that will enable solicitors to feel more confident in offering unbundled services.
- To find out how clients are made aware of the potential availability of Before the Event Legal Expenses Insurance (LEI).
- To identify perceived barriers to better use of Before the Event LEI.

Profile of survey respondents

Firm / Organization type



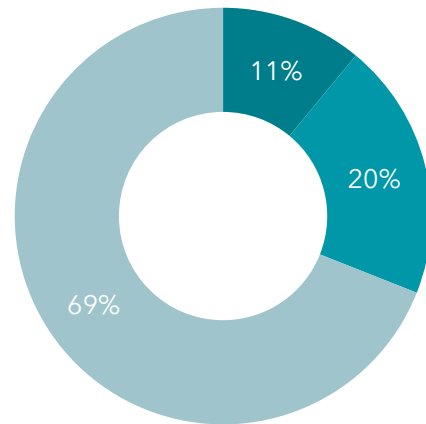
Firm size



Base: All respondents (145)

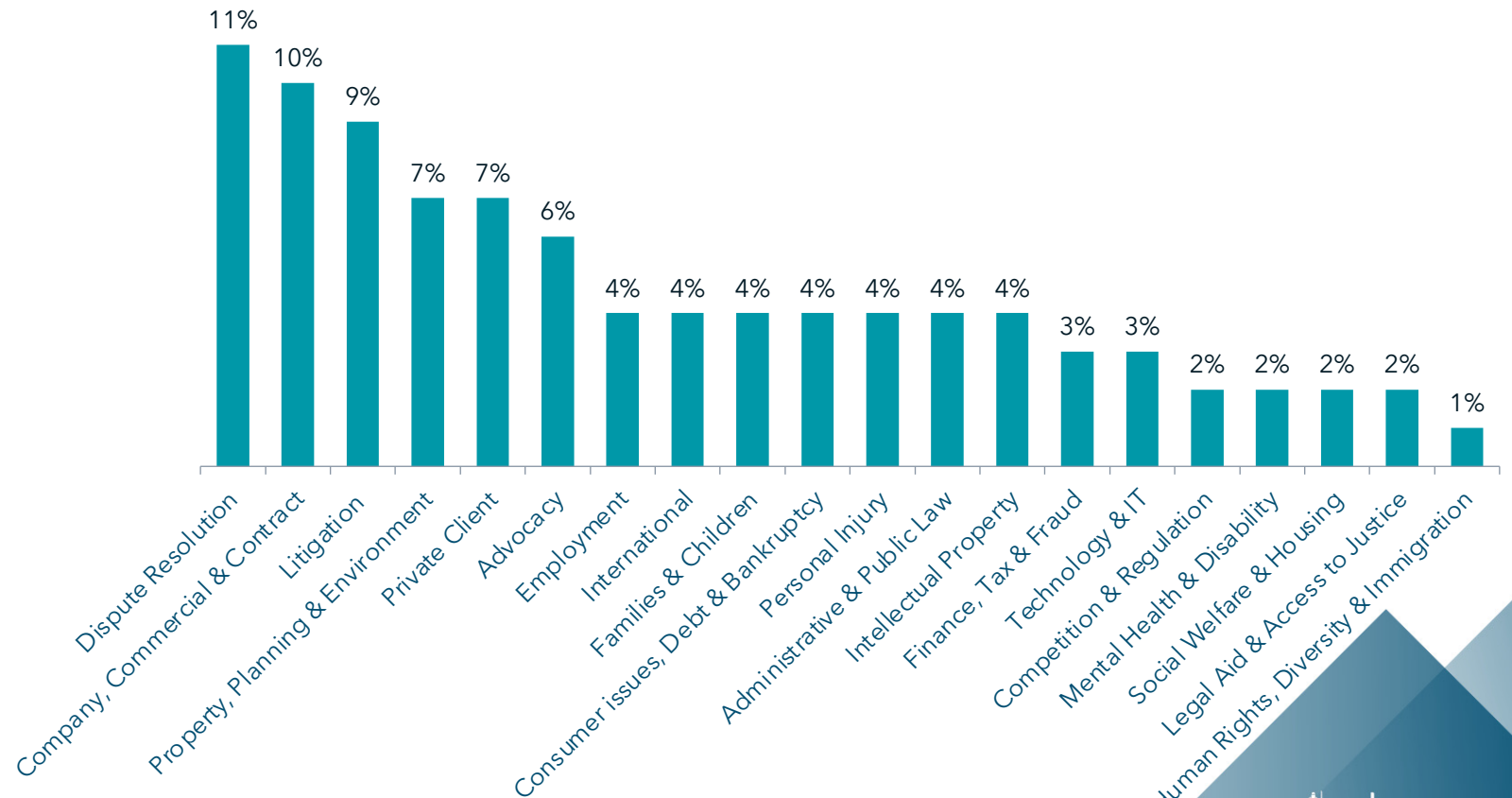
Profile of survey respondents

Post-qualified experience



- 0-5 years
- 6-15 years
- 16 years +

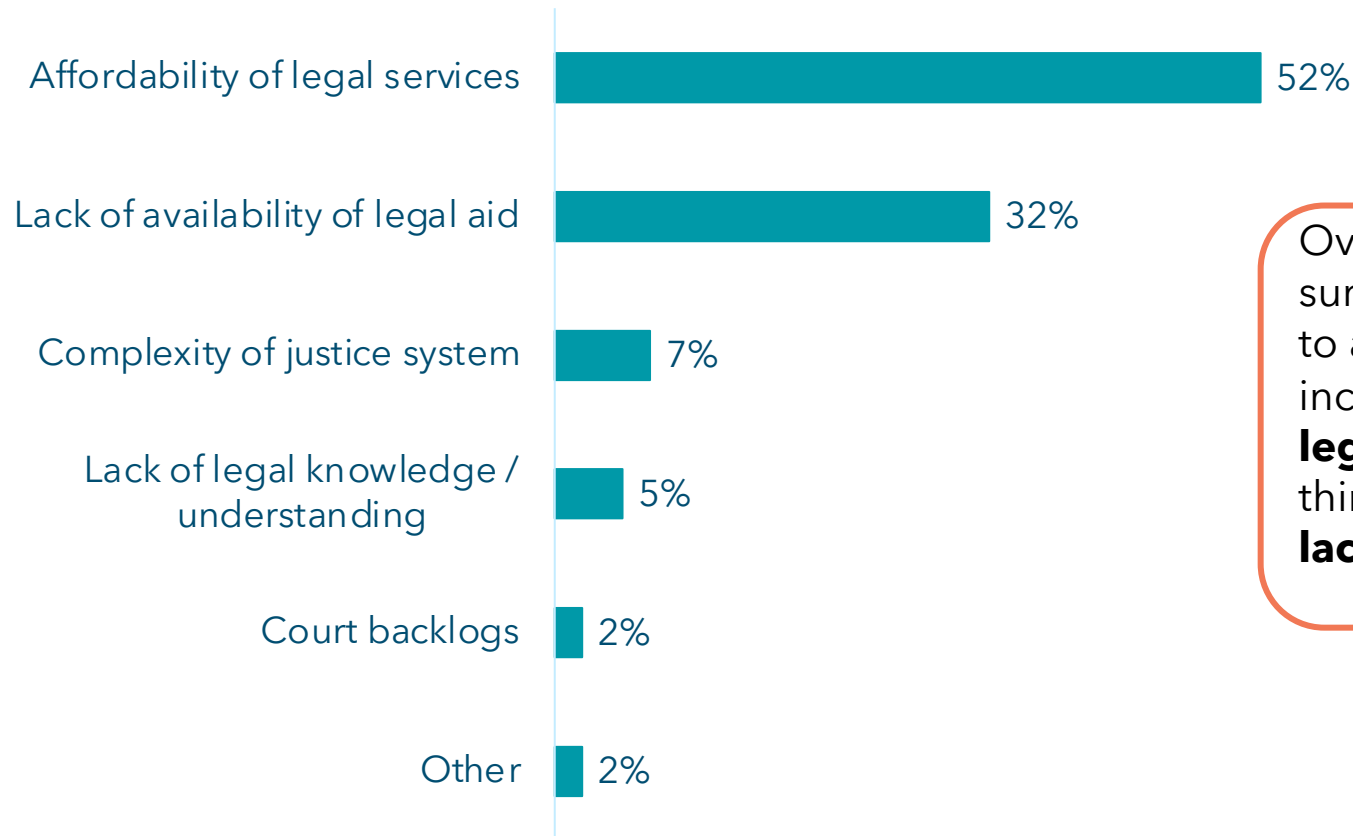
Practice area



Base: All respondents (145)

1 in 2 solicitors believe the main barrier to access to justice is the affordability of legal services

Perceived main barrier to access to justice

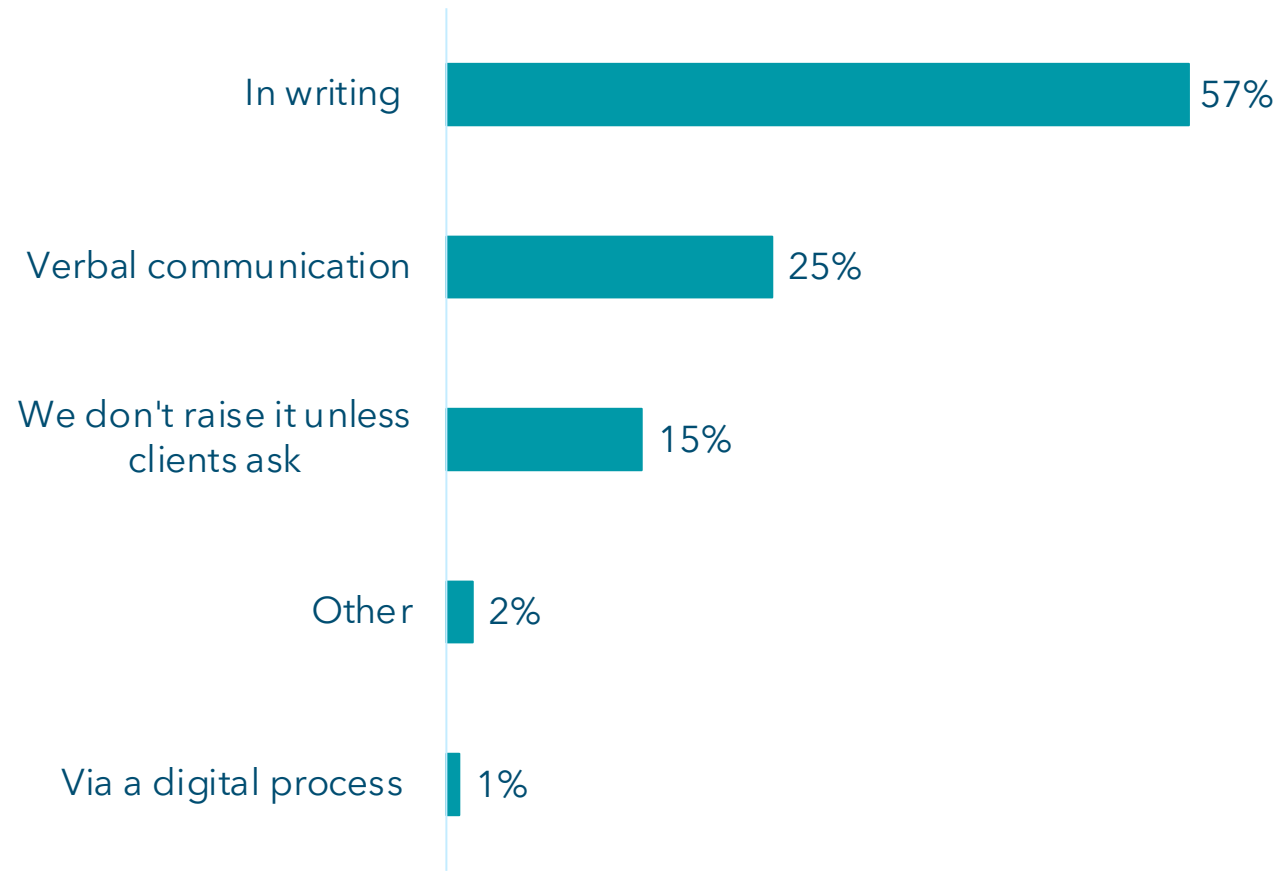


Over half (52%) of the solicitors surveyed believe the main barrier to access to justice for those on low incomes is the **affordability of legal services** and around one-third (32%) believe this to be the **lack of availability of legal aid**.

1. What do you think the main barrier to access to justice is for those on low incomes? Select one option.

3 in 5 solicitors communicate the potential availability of LEI to clients through writing

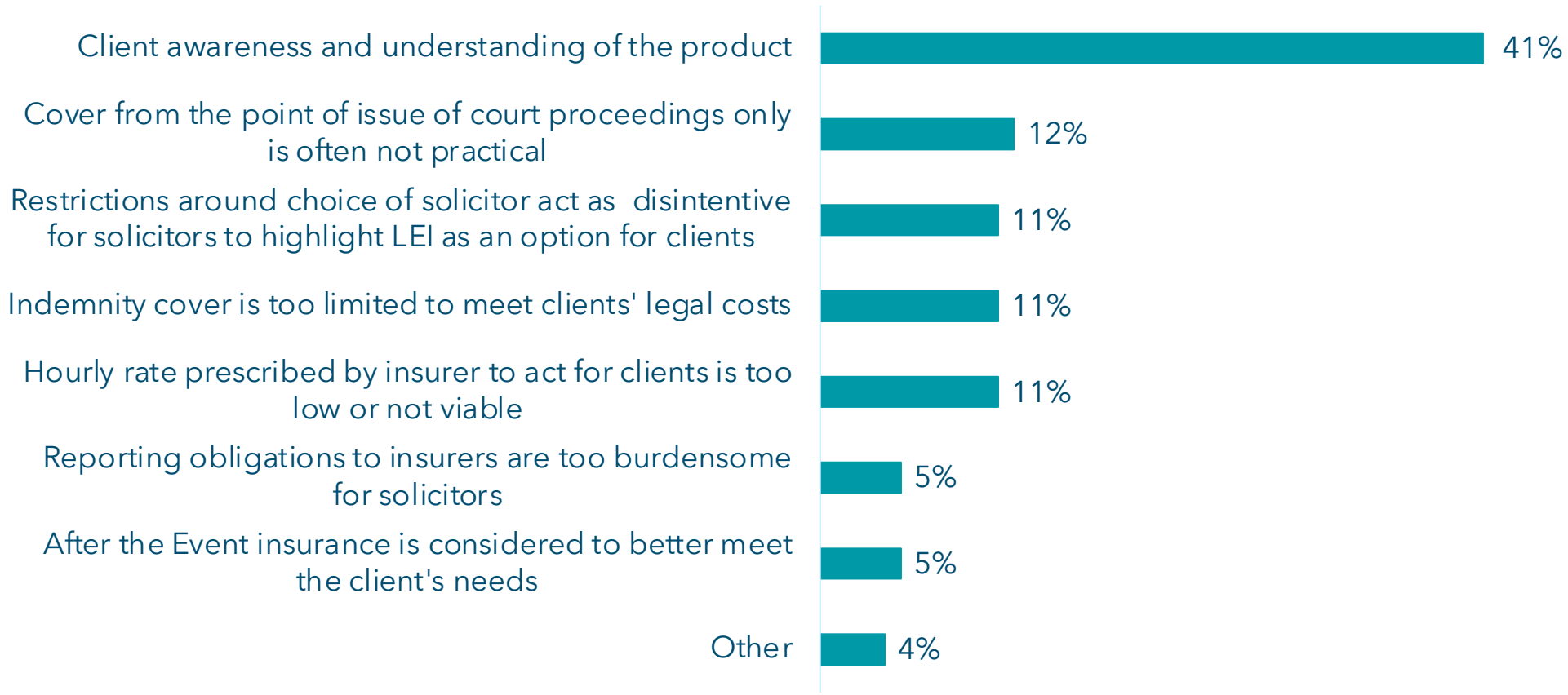
How solicitors communicate potential availability of LEI to clients



2. How do you alert clients or discuss with them the potential availability of before the event LEI to fund their legal action? Select one option.

2 in 5 solicitors believe the main barrier to better use of before the event LEI is client awareness and understanding of the product

Main barrier to better use of before the event LEI



3. What, if any, do you feel the main barrier is to better use of before the event LEI to meet legal need? Select one option.

1 in 3 solicitors need to feel more confident in offering unbundled services

General views on unbundling*

When asked about what assurance is needed to feel confident in offering unbundled services, some solicitors took the opportunity to give their views on unbundling generally:

- 1 in 3 (**36%**) expressed some level of reservation about offering these services to clients.
- Concerns were rooted in perceived risks that unbundled services could pose for both solicitors and their clients.
- Lack of client understanding of the process and legal experience generally is believed to jeopardise the outcome of cases.
- 3 in 10 (**30%**) expressed concerns about negligence claims being made against them in event their client didn't get the desired outcome.

"I'm cautious about unbundling because I think solicitors will be blamed if things go wrong. It represents an acceptable regulatory risk for many."

*Unbundling was defined in the question as follows: *Unbundling allows solicitors and client to agree that some tasks traditionally undertaken by a solicitor, such as drafting letters or attending court hearings, will be completed by the client themselves, thereby reducing the overall cost of the service but enabling access to expert advice at critical stages.*

4. Question: What support and assurance do solicitors need to feel confident offering unbundled services? Write your response in the box below.

Suggestions on improving solicitor confidence in offering unbundled services

Raise client awareness about the unbundling process

40% of feedback provided related to concerns around a perceived lack of client awareness of the process, legal experience and competency to perform tasks required. Suggestions were:

- More needs to be done to **educate** the general public about specific stages involved in the unbundling process.
- **Greater clarity** is needed on the **roles and responsibilities** of clients versus solicitors during the process to avoid any confusion.
- **Manage client expectations** about the **scope** and level of **involvement** of solicitors when offering unbundled services.

“The assurance that their client actually has the information, education and knowledge to competently undertake these tasks themselves.”

4. What support and assurance do solicitors need to feel confident offering unbundled services? Write your response in the box below.

Suggestions on improving solicitor confidence in offering unbundled services

Support and guidance for solicitors

15% of feedback provided called for practical guidance on how to provide unbundled services effectively to clients. Recommendations were:

- Very clear, **practical advice** and **guidance** needs to be issued **to solicitors** on how to offer unbundled services to clients.
- Provide **guidance and clarity** about solicitor **duties and obligations** during the unbundling process to **mitigate potential risks** of negligence claims.

“The support of the profession and SRA with clear and concise guidance as to how unbundled services can be delivered to limit liability for subsequent issues.”

4. What support and assurance do solicitors need to feel confident offering unbundled services? Write your response in the box below.

Suggestions on improving solicitor confidence in offering unbundled services

Access to PII for solicitors offering unbundled services

14% of solicitor comments related to professional indemnity insurance (PII). Concerns were high about the perceived 'risk' of negligence claims being made against them by clients and solicitors want to feel like they have adequate protection. Below are some of the suggestions made:

- Adequate **access** to PII that covers firms and solicitors offering unbundled services is critical.
- **Clarity and guidance** on how solicitors offering unbundled services will be protected by PII policies.
- Provide **sufficient information** on **affordable coverage** for solicitors offering this services.

"...a good degree more confidence is required about the ways in which unbundled services interact with our professional indemnity arrangements."

4. What support and assurance do solicitors need to feel confident offering unbundled services? Write your response in the box below.



Free text responses to our consultation question:

What support and assurance do solicitors need to feel confident offering unbundled services?

Insurance cover

“Insurance available to cover slips made by unqualified client”

“Solicitors need to be assured that their indemnity still covers them in the event the client sends a letter in a matter, or other correspondence, which is detrimental to the outcome.”

“Adequate insurance cover.”

“[The assurance] that their insurance allows for this. That the courts will not penalise the solicitor.”

“Most PII insurers ask specifically about unbundled services and often apply a premium where they are offered. That's is a significant barrier to firms offering these sorts of services.”

“The assurance that unbundling will not lead to liability or claim for negligence down the road as they have not had overall responsibility throughout the legal process.”

Support from the courts

“This approach is not supported by Court decisions where judges are keen to put all responsibility on the solicitors despite there being a clear demarcation of responsibilities in the retainer. Until the Courts take a more pragmatic view then unbundling will not be a realistic option for solicitors.”

“[We would need] guidance approved by senior judges on how this can be done without risking liability to the client for failure to advise.”

“[We would need] support from courts and the judiciary”

“There is no clear legal and regulatory protection for law firms to offer unbundled services.”

“I generally feel confident offering unbundled services. It does, though need the understanding of the judiciary who deal with professional negligence claims so that there is not a creep of responsibilities that solicitors take on, which would make this more unattractive for solicitors and which would increase the risk of negligence claims.”

Assurances from the regulator

“Reassurance that the solicitor will be protected from negligence claims/complaints to the Law Society, SRA etc if the client later decides that they weren't able to fulfil the agreed unbundled services themselves and seeks redress when they don't get the desired outcome!”

“We require some authority or authoritative guidance that providing so-called 'unbundled' services and limited retainers are compatible with our professional responsibilities (and how this compatibility works).”

“Assurance from a regulatory perspective.”

“The SRA should support [firms offering unbundled services] by not allowing complaints or claims where the solicitor has carried out what was required by the agreement with the client. Suggested wording should be agreed by SRA, Courts and Legal Ombudsman so it is clear to everyone what is covered.”

Better guidance

“Well-defined regulations and ethical guidance from governing bodies like the SRA.”

“Guidance on the appropriate approach to unbundling so as to maximise benefit to client and reduce risk that the solicitor is thought to be negligent.”

“[The assurance] that our regulatory body will provide unequivocal guidance to limit solicitors’ liability.”

“The support of the profession and SRA with clear and concise guidance as to how unbundled services can be delivered to limit liability for subsequent issues.”

“Support with practice guidance on how to effectively offer unbundled services.”

