



Solicitors  
**Regulation**  
Authority

# **A feasibility study to consider whether and how the Solicitors Regulation Authority could measure and monitor consumer vulnerability in the legal market**

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## List of abbreviations

AARP	American Association of Retired Persons
ACE	Adverse Childhood Experience
ADHD	Attention-deficit hyperactivity disorder
AI	Artificial Intelligence
ASRS	Adult Attention Deficit Hyperactivity Disorder Self-Report Scale
BSB	Bar Standards Board
CJS	Criminal Justice System
CPD	Continuing Professional Development
DMEHF	Debt and Mental Health Evidence Form
DOORS	Dynamic Object-Oriented Requirements System
DSM-IV	Diagnostic and Statistical Manual of Mental Disorders
DWP	Department for Work and Pensions
FCA	Financial Conduct Authority
FLS	Financial Lives Survey
FVI	Financial Vulnerability Index
GDPR	General Data Protection Regulation
GHQ	General Health Questionnaire
GP	General Practitioner
HSE	Health Survey of England
LSB	Legal Services Board
LSCP	Legal Services Consumer Panel
LSVI	Legal Services Vulnerability Index
FCA	Financial Conduct Authority

MINI	MINI International Neuropsychiatric Interview
NGO	Non-governmental organisation
NHS	National Health Service
ONS	Office for National Statistics
PGSI	Problem Gambling Severity Index
RAADS-R	Ritvo Autism Asperger Diagnostic Scale-Revised
REL	Registered European Lawyer
RFL	Registered Foreign Lawyer
RO	Regulatory objective
SCID-II	Structured Clinical Interview for DSM-IV Axis II borderline personality disorder scale
SHeS	Scottish Health Survey
SQE	Solicitors Qualifying Examination
SRA	Solicitors Regulation Authority
UK	United Kingdom
UKRN	United Kingdom Regulators' Network
UN	United Nations
USW	University of South Wales
VAF	Vulnerability Assessment Framework
WAIS-IV	Wechsler Adult Intelligence Scale-Fourth Edition
WIAT-II	Wechsler Individual Achievement Test-Second Edition
WISC-IV	Wechsler Intelligence Scale for Children-Fourth Edition
WPGS	Welsh Problem Gambling Survey

# 1. Executive summary

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## 1.1 Background

The report presents the results of a feasibility study on how the Solicitor's Regulation Authority (SRA) could measure and monitor consumer vulnerability in the legal services sector. The study examined around 300 varied evidence sources and collected primary data from 54 individuals (of 381 individuals invited to participate) representing a broad range of stakeholder groups including lived experts.

This study is rooted in the Regulatory Objectives (ROs) of the Legal Services Act 2007, specifically RO3 (Improving access to justice) and RO4 (Protecting and promoting the interests of consumers). The SRA's Code of Conduct for Solicitors, Registered European Lawyers (RELs), and Registered Foreign Lawyers (RFLs) (SRA, 2023c), along with the Code of Conduct for Firms (SRA, 2023b) and the SRA Enforcement Strategy (SRA, 2023e) also stress the importance of fair treatment and consideration of client attributes, needs, and circumstances.

The feasibility study had the following objectives:

- To provide an updated evidence review to understand where there are gaps in the existing research on consumer vulnerability, specific to legal services.
- To establish the availability of relevant datasets which can help understand consumer vulnerability, specific to legal services.
- To assess the feasibility and benefits of developing a measurement tool to assess the quantum and variations of legal services vulnerability: a Legal Services Vulnerability Index (LSVI).

We addressed these objectives across four phases of research, each building on the findings of the previous phase:

1. Evidence review
2. Two empirical phases (an online survey and a stakeholder event)
3. Analysis of the empirical data
4. Compilation of findings.

The research evolved iteratively, as the evidence review and survey revealed the substantial limitations of measuring vulnerability. Consequently, the stakeholder event was able to include some preliminary explorations of an alternative strategy. Our recommendations relate to the universal practice approach. While the detailed operationalisation of this approach was beyond the scope of the current research, we were able to suggest some initial implementation steps.

## 1.2 Methodology

### 1.2.1 Evidence review

As the initial phase of the study, the evidence review aimed to assess existing knowledge on consumer vulnerability and measurement tools, and identify the gaps. The evidence search strategy included a diverse range of sources: academic literature, legal sources (legislation, practice guidance and rules, and research reports), documents produced by regulatory and statutory bodies, and other grey literature, including government publications relevant to consumer vulnerability. In total, 300 sources and 12 data repositories were selected for an

exhaustive review conducted via three iterations following feedback. The review of these sources served as the foundation for the subsequent empirical part of the study.

### 1.2.2 Online survey

The first phase of the empirical research concerned an online survey with stakeholders. The survey was conducted through a number of open-ended questions to collect qualitative input from a sample of 47 stakeholders who agreed to participate from 381 individuals purposively selected and directly invited to participate in the study. The diverse sample of stakeholders included 12 academics and consultants, six consumer representatives, nine legal professionals, 15 lived experts, and five regulators.

To complement the knowledge gained from the evidence review, the open-ended questions focused on two key areas: the definition of consumer vulnerability and potential methods and tools for the SRA to measure and track vulnerability within the client population.

### 1.2.3 Stakeholder event

A one-day event with two distinct data collection components followed the survey phase. Nineteen stakeholders attended the event, including three academics and consultants, four consumer representatives, three legal professionals, eight lived experts, and one regulator.

Themes from the previous research stages (the evidence review and online survey) were presented, providing participants with an overview of the key insights and outcomes up to that point. Following the presentation, participants shared their initial views on (a) the accuracy of the findings and (b) the next steps for those findings. Four focus groups followed with each one dedicated to one of the following topics:

- Defining consumer vulnerability in the legal services sector.
- The usefulness of measuring consumer vulnerability in the legal services sector.
- Responding to the needs of consumers at risk of vulnerability in the legal services sector.
- Implementing a vulnerability measurement tool in the legal services sector.

Each focus group included four to five participants to ensure a diverse range of perspectives while allowing for detailed discussions within a 90-minute session.

### 1.2.4 Data analysis

A thematic approach was used to analyse the empirical data collected. Thematic analysis involved the systematic identification, coding, and categorisation of themes across the datasets using NVivo 20. The datasets were compared and contrasted with one another and the existing evidence to check for convergence, add breadth and detail and identify new insights.

## 1.3 Findings from the evidence review

The evidence review disclosed that consumer vulnerability is widely acknowledged as a complex, diverse, dynamic, and fluid concept. It is difficult to define and challenging to identify and measure. The review found that there is a predominant emphasis in the literature on defining vulnerability based on risk factors that may render individuals

susceptible to harm, loss, disadvantage, or poorer outcomes. This can be called the 'risk factor approach'.

These risk factors can be broadly classified into three primary categories:

1. Individual characteristics,
2. Individual situational circumstances, and
3. External factors, including actions taken by the market and service providers.

The combination of personal, situational, and external factors can render any consumer less capable of representing their interests in the market, making them more vulnerable to experiencing disadvantages for a short, medium, or long period of time.

Consumer vulnerability within the legal services sector has unique characteristics. Firstly, the necessity for legal services and engagement with the legal system inherently increases the risk of vulnerability. Secondly, navigating the complex landscape of legal services introduces specific risk factors, with an individual's experience and capacity further intensifying their vulnerability. Thirdly, vulnerability within the legal services sector often remains concealed. Lastly, consumers of legal services frequently present with multiple, often clustered, vulnerabilities. Interestingly, the literature does not appear to have explored the impact of vulnerability or the nature of this harm in depth.

In the context of legal services, vulnerability may render it more challenging to navigate legal processes or fully appreciate the cost and complaint mechanisms. Vulnerable consumers may also face exclusion, financial difficulties, emotional impacts, and lack of agency or control.

The precise extent and trajectory of consumer vulnerability in the legal services sector remain uncertain due to the absence of precise measurement tools and limited data availability. Nonetheless, various studies have shed light on specific prevalent characteristics, including learning disabilities, age, sex, mental health issues, literacy levels, homelessness, loss of income, threat of harm, poverty, domestic abuse, employment status, education, immigration status, and belonging to an ethnic minority group.

The evidence review also found that macro-level, external risk factors exert a significant influence on the extent and trajectory of consumer vulnerability within the legal services sector. These overarching factors encompass a diverse array of structural and systemic elements, including economic conditions, fiscal policy and legal aid, education, demographics, technological advancements, crisis events, and cultural and social norms. Regarding the identification of vulnerability, numerous regulatory bodies have produced guidance documents built around the risk factor approach to defining consumer vulnerability. These documents can be categorised into two primary types: structural and individual arrangements. The first type encompasses guidance designed to assist regulatory bodies and service providers in evaluating and improving their structural approaches to addressing vulnerability. This guidance focuses on training, more support, data sharing between service providers, consistency/standardisation, and the need to collect consumers' feedback.

The second type of guidance documents is tailored to aid practitioners within the sector in effectively recognising consumer vulnerability. However, precise operationalisation, weight and combination of these factors which would identify an individual as vulnerable is not clear. Moreover, these guidance documents primarily concentrate on verifying whether vulnerability is being addressed, rather than conducting a comprehensive examination of the legal services sector to consider how it could potentially give rise to and exacerbate vulnerability.

The evidence review also highlighted the diversity of tools currently employed across sectors to screen, assess, and measure vulnerability:

- In the criminal justice sector, the predominant tools are screening instruments used to identify vulnerability among witnesses, victims, and suspects.
- Within the financial sector, two key tools stand out: the Financial Lives Survey and the Genworth Index, which are used to measure consumer financial vulnerability.
- In the gambling sector, three primary tools are used to measure what the Gambling Commission defines as ‘problem gambling’ in the populations of England, Scotland, and Wales: the Problem Gambling Severity Index (PGSI), the Diagnostic and Statistical Manual of Mental Disorders (DSM-IV), and the short-form Problem Gambling Severity Index (PGSI mini-screen).

However, measurement tools in other sectors (i.e. criminal, financial, and gambling) have not been assessed for their fitness for purpose, specifically in terms of their effectiveness in measuring vulnerability in the legal services sector.

Moreover, there is a growing theme in the academic literature suggesting that the risk factor approach may not be appropriate, and the terminology of vulnerability may not be helpful. While ‘vulnerability’ is intended to identify individuals or groups in need of support and protection, it often falls short of capturing the full complexity of people’s circumstances and experiences, leading to a number of harmful consequences. For example, identifying individuals as vulnerable is stigmatising, impacting on how they perceive themselves and how they are perceived by others. There are also significant challenges in determining the definitional scope of vulnerability in terms of which factors should be included and how they should be operationalised into metrics. It is certain that the process of identification would be exclude certain groups and result in differential treatment of similar individuals.

Alternative approaches to attempts to define and identify vulnerability include the following.

- What we have termed the ‘universal changes approach’, where instead of attempting to identify vulnerable individuals or groups and make modifications to delivery accordingly, the emphasis should be on service providers to redesign their delivery to accommodate the needs of everyone. This approach is informed by the ‘universal vulnerability perspective’ which acknowledges that vulnerability is part of the human condition.
- The ‘resilience approach’ which aims to develop the ability to adapt and thrive in the face of adversity, challenges, and stress. Advocates of this approach emphasise the responsibility of the state to foster individual resilience and to facilitate access to resources that support personal development and well-being (Fairclough, 2023; Fineman, 2019).

The knowledge gathered through the evidence review was crucial in identifying the stakeholders to invite for the two empirical phases of the research. It also helped refine the questions and highlight areas for further exploration.

## 1.4 Empirical findings

The empirical results indicated that, as highlighted in the evidence review, consumer vulnerability is extremely challenging to define and conceptualise. Although research participants initially contended that the risk factor approach could be a beneficial method for defining consumer vulnerability in the legal services sector, they identified several issues with this approach. Notably, they suggested that vulnerability should be understood as a subjective and universal condition, implying that every consumer is inherently vulnerable. In this way, vulnerability is impossible to determine via the risk factor approach.

Moreover, over the course of the research, participants shifted their perspective on the usefulness of measuring consumer vulnerability. In the survey phase, most participants

agreed that measuring and monitoring consumer vulnerability in the legal sector would be beneficial. They cited potential improvements in consumer support and a deeper understanding of consumer vulnerability as key advantages. However, during the stakeholder event phase, most participants' perspectives changed. Similar to their views on the risk factor approach, they argued that consumer vulnerability should be understood as a universal issue, and pointed, therefore, to the futility of measuring it. Consequently, they believed that it would be better to implement a number of applications consistent with the universal changes approach. These are described in the conclusion below.

The participants who continued to see some value in measuring consumer vulnerability believed it could broaden understanding of consumer vulnerability for customising legal services to meet the general needs of consumers. They also suggested aiming to support individual consumers based on their specific needs at the time services or goods are provided.

Although our research findings discouraged the implementation of a measurement tool, participants in this study discussed various methodologies that the SRA could employ to collect data on consumer vulnerability if such a tool were to be implemented. They suggested primarily qualitative methodologies, including interviews and focus groups.

Participants, however, highlighted many challenges implementing such a tool.

- Consumers may be cautious about disclosing vulnerability, definitions of consumer vulnerability are inconsistent, and currently, law firms may lack the capacity and resources if they were required to manage or support the measurement process.
- Introducing a measurement tool based on scores of vulnerabilities could exacerbate the 'tick-boxing' dynamic within the provider-consumer relationship, strengthening the perception that legal service providers operate in a transactional manner.

Our concept of universal changes was initially developed as a response to universal vulnerability, based on our review of the evidence and participant feedback. However, during the data analysis and writing phases, we refined this idea further. 'Universal practice' emerged as a comprehensive response, focussing on both changes to address universal vulnerability and issues within the provider-consumer relationship identified by participants.

While we advocate for universal changes, the term 'universal practice' more accurately reflects the desired outcome, encompassing universal design, inclusive practice, and trauma-informed practice to foster a trusting and empathetic provider-consumer relationship.

## 1.5 Conclusion

Our brief was to assess the feasibility of developing a measurement tool to monitor the extent of consumer vulnerability in the legal services sector. The results of the data analysis presented in this report clearly establish that there is a lack of support for the risk factor approach underpinning the measurement of vulnerability in the legal services sector.

Additionally, our research participants ultimately did not view measuring consumer vulnerability as valuable and concluded that there would be substantial challenges in implementing such measurements. Their views are consistent with a growing theme in the academic literature suggesting that the risk-based approach may not be appropriate, and the terminology of vulnerability may be harmful. These critics advocate for the universal vulnerability perspective. Based on our findings, it is clear that a different approach, which understands vulnerability as universal, is preferable to a measurement tool.

The evidence collected provides a strong rationale for what we term the ‘universal practice approach’ and supports recommending the first steps toward adopting this approach. We argue that the universal practice approach emphasises designing products and services to be accessible and inclusive to everyone, operating under the premise that anyone can experience vulnerability. This universal practice approach also recognises that for products and services to be accessible and inclusive, they must be founded on a provider-consumer relationship based on trust and respect. It is crucial that consumers feel empowered to make decisions about their services, products, and advice, and that their decisions are heard and respected. Universal practice is based on research about needs of all.

The difference between universal practice and differential services or products/modifications in provision is that the former does not necessitate individualised modifications as it takes into account the plethora of needs at the point of design. The principle is that all consumers should be offered a full range of access and communication options from which they can opt-out rather than opt-in. An example of where this already happens is where a ramp or a lift is installed to make the physical environment accessible. In this situation, one is offered a range of options to enter or ascend the building and one can choose to opt out of using the stairs without having to be identified as belonging to a particular group. Offering flexibility and choice allows people to benefit from modifications without having to disclose vulnerability which is problematic for many established reasons, echoed by the participants in this study.

In contrast, accessible communication in a particular format might only currently be offered to consumers identified as vulnerable. Under universal practice, the wording of all legal letters would change to using intelligible language and with automated translation, rather than only those letters sent to particular consumers identified as vulnerable. All consumers routinely would have the opportunity to receive and respond to communication in their preferred format via, for instance, a screen reader and recording a voice memo. In line with universal practice, communications, products and all interactions should be built on a provider-consumer relationship based on trust and respect whereby consumers feel empowered to make decisions about their services, products, and advice, and that their decisions are heard and respected.

Some modifications are already legally required as ‘reasonable adjustments’, but they are not always offered to all consumers. It is recognised that, until such a time that universal practice is fully rolled out and there are gaps in accessible choices for all, the legal requirement of reasonable adjustments still needs to be met.

Participants indicated that the universal practice approach should be embraced and they discussed existing or proposed examples of ways to implement it. We have synthesised their suggestions into the following applications:

- Empowering interviews: Conducting interviews with consumers based on a series of questions that ground the provider-consumer relationship in trust and understanding, and to ascertain the consumer’s priorities.
- Involvement of independent third parties: Engaging third parties trained in offering support/guidance to aid practitioners in empowering individuals.
- Use of reviews and consumer feedback: Allowing consumers to express their needs at various stages of service provision, such as at the beginning, midway, and towards the end.
- Introduction of peer-led groups or community listeners: Using lived experts to engage with consumers throughout the provision of legal services.
- Improving training for legal professionals: Enhancing training to enable practitioners to engage with consumers more empathetically and with increased understanding. This includes incorporating input from lived experts into professional training. It is acknowledged that training sits outside of the SRA remit, but they do provide



resources for practitioners which could promote and explain this style of engagement.

It is recognised that implementing the universal practice approach would be a shift, requiring resources, and there is a risk some cost may be passed to consumers. That said, some applications of universal practice are already being delivered by providers, such as empowering interviews, demonstrating their viability on a small scale. Universal practice should also result in savings from dealing with fewer complaints and increased revenue from the retention of satisfied consumers and from increased new business from consumers where there are improvements in terms of accessibility and trust. There is a parallel with employers who have expressed concerns about making inclusivity adjustments because of costs or disruption. The Law Society, with the Disabled Solicitors Network, has published 'easy wins' documents to work towards disability inclusion (The Law Society, 2024). A similar strategy is recommended here to help providers start or improve the process of embedding universal practice.

Further justifications for why and how the SRA should implement a universal practice approach are provided in the report. The latter relate to updating guidance and resources, as well as commissioning independent research to refine and implement the universal practice approach. Universal practice would build on the existing knowledge about the needs of consumers and be refined on the basis of this further research.

## 2 Introduction

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The Solicitors Regulation Authority (SRA) of England and Wales commissioned Professor Harriet Pierpoint and her team at the University of South Wales (USW) to conduct a feasibility study to consider whether and how the SRA could measure and monitor consumer vulnerability in the legal market.

The report presents the results of this study, firstly the consolidation and examination of current evidence regarding consumer vulnerability within the legal and associated sectors. Secondly, it presents the synthesised findings from an online qualitative survey involving stakeholders (n=47) and insights gathered from a stakeholder event. This event featured the initial findings presentation, a flipchart feedback session, and four stakeholder focus groups (n=19).<sup>1</sup>

### 2.1 Rationale for the research

Consumer vulnerability is a complex and multifaceted concept that has garnered increasing attention. In the legal sector, this attention stems principally from the widespread acknowledgment that failure to fulfil a legal requirement or address a legal issue poses a fundamental challenge to the very bedrock of the rule of law, although the issue is causing concern in other sectors too (Financial Conduct Authority, 2014 & 2015). This concern is emphasised by statements from regulatory and statutory bodies in the sector:

‘Helping vulnerable people to understand their legal problems and effectively access justice is of huge benefit in terms of upholding the rule of law and protecting the public’ (Solicitors Regulation Authority, 2016a: 6).

‘Every time someone is not able to obtain legal advice because of cost or other barriers the rule of law is undermined.’ (Legal Services Consumer Panel, 2014: 6)

#### 2.1.1 Background to the Solicitors Regulation Authority

The SRA regulates solicitors and law firms in England and Wales to protect consumers and support the rule of law and the administration of justice. It does this by overseeing all education and training requirements necessary to practise as a solicitor, licensing individuals and firms to practise, setting the standards of the profession and regulating and enforcing compliance against these standards.

The rationale behind the feasibility study on measuring vulnerability is rooted in the Regulatory Objectives (ROs) outlined in the Legal Services Act 2007, particularly RO3 (Improving access to justice) and RO4 (Protecting and promoting the interests of

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<sup>1</sup> The analysis and report has been prepared by Dr Paolo Baffero and Professor Harriet Pierpoint, on the basis of literature searches conducted by Jose Lopez Blanco (USW) and fieldwork conducted by Professor Harriet Pierpoint, Dr Paolo Baffero, Professor Mike Maguire, Professor Kate Williams, Shannon Murray, and Shane Powell (USW). Lived experts were recruited and supported by EP:IC. The report has been peer reviewed by Professor Kate Williams (USW), and by All Able for digital accessibility. The draft report was also reviewed by members of the SRA research team and members of their Executive.

consumers). The SRA's Code of Conduct for Solicitors, Registered European Lawyers (REs) and Registered Foreign Lawyers (RFLs) (2023b), Code of Conduct for Firms, and SRA Enforcement Strategy (2019) also emphasise fair treatment and consideration of client attributes, needs, and circumstances. The SRA's Corporate Strategy (2023d) shows that it aims to build and expand on its awareness of new possibilities and challenges for the legal sector to ensure that solicitors and law firms provide the same high level of service to all consumers. It also aims to adopt technologies and innovations that can assist it better in meeting its regulatory objectives.

### **2.1.2 Solicitors Regulation Authority and the Legal Services Board research**

The SRA has been working on a programme of research to build its evidence base and inform its guidance and policy on vulnerability within the context of legal services. Its research includes:

- Research on the experiences of consumers who may be vulnerable in family law highlighted ways legal firms are responding to different needs of consumers to address additional needs and potential vulnerabilities (Ecorys, 2017).
- A thematic review on the quality of legal services in the personal injury sector, which explores the experience of the users and clarifies vulnerability risk in this sector (SRA, 2017).
- Research on reasonable adjustments in the provision of legal services, which explores reasonable adjustments law firms could offer for disabled people (YouGov, 2019)
- A thematic review on the quality of legal service provided to asylum seekers, which assesses the quality of legal advice available to asylum seekers (SRA, 2016a)

Most recently, the SRA's consumer segmentation report (Scopelliti et al., 2023a) highlighted that the service attributes valued by most consumers when deciding to use a legal service provider are communicating effectively, being approachable and offering regular updates. Barriers that reduce consumers' access to justice relate to consumers' lack of knowledge of and negative perceptions about the legal process and the time and energy it requires; the existence of 'legal deserts'; digital exclusion; cost-related concerns such as affordability, transparency, and value-for-money; and concerns about maintaining personal and client relationships. It found that low-SES (socio-economic status) consumers are particularly likely to have their legal needs unmet due to lower recognition of legal issues and feeling legally powerless. The report also found a sense of vulnerability across all consumers respondents after realising that they need legal services. Based on research conducted with 115 family legal firms, the SRA (2016c) revealed that these firms rarely offer services to individuals with personal characteristics that elevate their vulnerability risk. For instance, merely 17% of these firms indicate that they assist consumers with learning disabilities, while 21% provide support for mental health issues.

These findings underscore the value of effective communication and transparency from legal service providers, as required by the SRA transparency rules (SRA, 2018) and emphasised in the SRA guidelines on accepting instructions from vulnerable clients (SRA, 2022b) and providing services to them (SRA, 2016b).

Additionally, research on consumer vulnerability has been conducted by the Legal Services Board – the oversight regulator of legal services in England and Wales. This research also provides the basis for further exploration in this area. The Legal Service Board's rapid literature review (2021) and research report (2022) on consumer vulnerabilities in the legal services sector showed that people with a range of characteristics or in various

circumstances might find navigating the legal system particularly challenging. These included those in poverty or on a low income; with disabilities; with low literacy; who are digitally excluded; or who have suffered domestic abuse. In some instances, these circumstances/characteristics can intersect and co-occur.

The Legal Services Board (2022) has also identified a prevailing tendency on reactive measures rather than proactive approaches in addressing consumer vulnerability. This evaluation underscores an existing gap in the current body of literature. Existing guidance documents produced by regulators tend to focus primarily on extraordinary situations characterised by well-defined client needs, rather than providing comprehensive approaches that can be applied effectively to a broader spectrum of clients. Similarly, in the financial field, the Financial Conduct Authority (2015) notes that services, products, and systems often 'streamline' consumers and are not designed to meet the non-standard needs of those who do not fit into a set mould. For this reason, the Legal Services Board (2022) highlights that the system should move towards an inclusive design approach, one that begins with an understanding of the requirements of clients at risk of vulnerability. This approach should ensure that whenever someone uses legal services they:

- Feel heard and understood.
- Can understand the legal implications of their issues, the language and terms used, and what is happening with their case.
- Can feel in control of how their legal issue is managed.

Hence, the decision to commission the research stems from the desire to build on this research to gaining deeper insights into vulnerability and assess the feasibility of the proactive strategy of developing a tool to quantify the number and types of vulnerable consumers. The SRA's research and guidance (e.g. SRA, 2016a) has included a number of risk factors associated with vulnerability and the SRA wanted to assess the feasibility of monitoring and tracking such factors.

## 2.2 Aims and objectives of the feasibility study

This feasibility study aimed to:

- Synthesise the existing research on this important topic, as well as providing an update.
- Explore the technical, ethical, and operational feasibility of developing a screening tool to identify vulnerability specific to the legal services context. This tool should enable regulators and others to estimate the scale, type and trajectory of vulnerability in this context.

Its objectives were to:

- Provide an updated evidence review to understand where there are gaps in the existing research on consumer vulnerability, specific to legal services.
- Establish the availability of relevant datasets which can help understand consumer vulnerability, specific to legal services.
- Assess the feasibility and benefits of developing a measurement tool to assess the quantum and variations of legal services vulnerability: a Legal Services Vulnerability Index (LSVI). This should include an assessment or roadmap of the relevant actions required to develop, test and deploy the LSVI.

## 2.3 Note on terms used in the report

In so far as possible, when referring to vulnerability factors, we have tried to use the precise term used in the source being discussed. Where we vary from this, we have tried to include a note to indicate this. We acknowledge that some terms are used differently depending on context and that some terms draw criticism. Based on our research findings, we argue throughout the report that there should be a shift away from the language of vulnerability, with these claims substantiated in Chapter 6.

## 2.4 Scope of the research

As explained above, the purpose of the study was to help the SRA decide whether it would be possible and useful to create a tool for measuring and tracking consumer vulnerability in the legal services field at an industry level (rather than individual law firms measuring consumer vulnerability using their own tools). Here the legal services field refers to lawyers and their services. The focus was on what the SRA can do within their remit/powers, rather than other aspects of the legal sector like legal aid policy. This tool could help regulators and others understand and respond to trends in this area.

The original research questions (set out by the SRA at the initial stage for the study, available in sub-section 7.1.6) evolved during the research process as the evidence review and survey revealed the limitations of measuring vulnerability:

1. Is the 'risk factor approach' to define consumer vulnerability in the legal services sector appropriate/useful?
  - a. Can the definition of consumer vulnerability as provided by the SRA be considered comprehensive and exhaustive?
  - b. Is the term 'vulnerability' deemed suitable and appropriate for use in this context?
2. Would it be useful to measure and monitor/track the extent of consumer vulnerability?
  - a. What is currently known about the type/nature of consumer vulnerability within the legal services sector?
  - b. What is currently known about the scale and trajectory of consumer vulnerability within the legal services sector?
3. Would it be practically feasible to measure consumer vulnerability in the legal services sector?
  - a. How is vulnerability currently screened/assessed/measured in related sectors (e.g., criminal, financial, gambling)?
  - b. How could consumer vulnerability be measured in the legal services sector?
  - c. What would problems and challenges (e.g. technical, ethical, and operational) with measuring consumer vulnerability in the legal services sector be?
4. Are there any other approaches which could be more appropriate than the 'risk factor approach'?
  - a. Is it possible to pursue more than one approach?
5. What are the needs of consumers at risk of vulnerability?
  - a. Do regulators and other statutory bodies have any guidance to identify consumer vulnerability in the legal services field?
  - b. Do regulators and other statutory bodies have any guidance to respond to consumer vulnerability once this is identified in the legal services field?

In order to answer these research questions, the team employed the following methods for the stated purposes:

- Evidence review (September 2023 to February 2024). Purposes:

- Consolidation: to identify and analyse existing evidence on defining, and the measurement, nature, scale, trajectory and responses to consumer vulnerability in the legal (and related) services sectors.
- Development: to inform research materials for a stakeholder event and sampling for an online survey.
- Online qualitative survey (January and February 2024). Purposes:
  - Complementary: to identify overlapping and different facets to supplement evidence review.
  - Development: to inform research materials and recruit participants for a stakeholder event.
- Stakeholder event with focus groups (March 2024). Purposes:
  - Convergence: to validate evidence review and survey results.
  - Expansion: to add breadth/detail to the evidence review and survey results.

As the feasibility and benefits of developing a measurement tool to monitor/track the extent of consumer vulnerability in the legal service sector had not yet been evaluated, it was essential to collect new (primary) data. This was done using an online survey and a stakeholder event, comprising of a plenary session and breakout focus groups. A wide range of stakeholders participated in the research phases. These included:

- Academic experts and consultants identified from the evidence review.
- Legal professionals identified by the SRA and/or online directories.
- Consumer representatives identified from various sources including records of the Association of Consumer Support Organisations and SRA databases.
- Regulators from sectors with relevant experiences e.g. gambling and financial services, identified from the evidence review.
- People with lived experience of being vulnerable clients in relation to a range of law/legal services (e.g. crime, employment law, family law, personal injury). The lived experts were identified by EP:IC, an organisation specialising in the recruitment and support of participants with lived experience.

Further details of the methodology are provided in the Appendices. The structure of the report and approach to presenting the findings from these methods is explained below.

## 2.5 Structure of report

- Chapter 3 of the report sets out the findings from the evidence review. It begins by examining the definition of consumer vulnerability, using academic literature, legal sources, and publications from various regulatory and statutory bodies. This includes an assessment of the SRA's definition of vulnerability, and the alternative concept of universal vulnerability. This section delves into how consumer vulnerability is measured across different sectors, focussing on, but not limited to, criminal justice, finance, and gambling. It discusses the specific characteristics of consumer vulnerability within the legal sector. Finally, the chapter examines the scale and trajectory of consumer vulnerability in the legal sector.

- Chapter 4 presents the findings from the empirical research thematically. These include findings from the online, qualitative survey with stakeholders (n=47), and from a stakeholder event (n=19). This chapter presents the stakeholders' views on:
  - defining vulnerability including on the risk factor approach and the alternative concept of universal vulnerability
  - the usefulness of measuring consumer vulnerability across the legal services sector
  - alternative responses to the needs of consumers at risk of vulnerability in the legal services sector.
- Chapter 5 is a summary that sets out answers to the research questions from a synthesis of findings from the evidence review and empirical research.
- Chapter 6 summarises the implications of these findings and proposes next steps.
- Appendices include the details of the evidence search strategy and the methodology for the empirical research, as well as a description of various types of tools, organised into different sub-sections according to the field in which they are currently used.

## 3 Evidence Review

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This review identifies and analyses existing research, grey literature, and data on consumer vulnerability in the legal services sector. The search and selection strategies for the evidence is described in section 7.1. Serving as the initial phase, this review aims to provide an examination of existing knowledge on consumer vulnerability, with a view to starting to ascertain the feasibility of measuring and monitoring consumer vulnerability in the legal services sector by the SRA on the basis on existing knowledge.

In the context of the feasibility study, this evidence review also served the purpose of providing knowledge to guide the subsequent empirical research phase. In this reviewing of the evidence, it is possible to pinpoint areas for examination in the next and empirical stage of the study. The review of the evidence was hence used to inform the development of the online questionnaire and stakeholder event research materials.

### 3.1 Understanding consumer vulnerability

Many scholars argue that there is no settled definition of what constitutes consumer vulnerability (Brennan et al., 2017; Enang et al., 2019). Consumer vulnerability is widely acknowledged as a complex, diverse, dynamic, and fluid concept, difficult to define and challenging to identify and measure (British Standards Institution, 2022; Citizens Advice, 2014; George, Graham, Lennard, & Scribbins, 2015; Legal Services Board, 2021; Legal Services Consumer Panel, 2014; Financial Conduct Authority, 2015; National Audit Office, 2017; Office for Water Services, 2016; The Law Society, 2022).

There is broad recognition that everyone has the potential to be vulnerable (Baker, Gentry & Rittenburg, 2005; British Standards Institution, 2022; Financial Conduct Authority, 2014; Fineman, 2014; Harrison & Chalmers, 2013; Pavia & Mason, 2014; Shultz & Holbrook, 2009). Recent European research, based on stakeholders' focus groups and consumer surveys in all EU member states, highlight that almost 75% of consumers will at one time or another exhibit at least one dimension of vulnerability (European Commission, 2016). Nevertheless, various efforts have been made in the literature to define vulnerability and consumer vulnerability. For example, Burton (2018: 196) outlines vulnerability as a combination of 'physical, mental, or social attributes' that hinder individuals in their ability to handle everyday responsibilities, making it more challenging for them to navigate difficulties when they arise. Citizens Advice (2014: 5) defines vulnerability as 'a transient state that affects people at different points in time, or it can have long-term effects. It may be triggered by events such as loss of a job, the onset of disability, or becoming a carer.' The SRA (2016b: 3) stressed that: 'A person with vulnerability is usually described as someone who is at a higher risk of harm than others.' These and other definitions focus in part on the impact of vulnerability, such as disadvantage and/or the greater risk of harm.

It is important to note that the concept of vulnerability has been delineated concerning consumers in scenarios involving payment for services or goods. Additionally, the concept has found prominence in social policy (including housing and healthcare) and criminal justice, particularly in contexts where individuals receive services or undergo specific processes. For instance:

- Vulnerable people are legally entitled to 'priority need' in English social housing allocations (Carr & Hunter, 2008).



- Vulnerable victims of crime are seen as requiring special measures in the criminal justice system (CJS) in England and Wales (see Roulstone, Thomas, & Balderson, 2011; Walklate, 2011).
- ‘Vulnerable adults’ have designated ‘protections’ under British law (Clough, 2014; Dunn, Clare, & Holland, 2008).
- Vulnerable migrants and refugees are increasingly prioritised within international immigration processes (Peroni & Timmer, 2013).

Of note is while legal services are transactional, many feed into these social policy and criminal justice processes.

## 3.2 The risk factor approach

Consumer vulnerability is thus broadly defined based on various risk factors that can predispose individuals to harm or adverse outcomes. These risk factors encompass a wide range of characteristics and circumstances which this section will highlight.

This section will present the risk-based approach employed in the academic, legal, and statutory/regulatory sectors for defining consumer vulnerability. Then, it will use this information to assess and suggest refinements to the SRA's definition of consumer vulnerability.

Risk factors can be broadly classified into four primary categories:

- Individual characteristics, which refer to the distinctive and unique qualities, traits, attributes, or features that define a person as an individual (e.g. disability).
- Individual situational circumstances that indicate the unique and specific conditions, factors, or context that surround and apply to a particular person or individual at a given moment or in a particular situation (e.g. bereavement).
- Market actions, which refer to the way the modern market, service sectors, and organisations work, which may cause or contribute to consumer vulnerability, such as implicit power imbalances (Financial Conduct Authority, 2014; LSB, 2022).
- Other external factors. Example of external factors are natural disasters and pandemics (British Standards Institution, 2022).

The combination of personal, situational, and market and external factors can render any consumer less capable of representing their interests in the market and more vulnerable to experiencing disadvantages, either for a short, medium, or long period of time (Burton, 2018; Citizens Advice, 2014; Data & Marketing Association, 2012; National Audit Office, 2017; Office for Gas and Electricity Market, 2019).

Mackenzie et al. (2014) developed a taxonomy of vulnerability, which delineates three primary sources, namely inherent, situational, and pathogenic, alongside two distinct states of vulnerability, dispositional and occurrent. Such a classification system not only acknowledges the intrinsic vulnerability embedded in the human experience but also facilitates the identification of vulnerability specific to particular contexts or situations. The sources of vulnerability are outlined as follows:

- **Inherent vulnerability.** This pertains to vulnerabilities that are inherent to the human condition, stemming from factors such as our physical nature, inherent neediness, reliance on others, and our emotional and social characteristics. This idea relates to

the fact that anyone can be vulnerable (Baker, Gentry & Rittenburg, 2005) and to the concept of universal vulnerability (see discussion in section 3.3).

- **Situational vulnerability.** This form of vulnerability depends on specific contexts and may be influenced or exacerbated by personal, social, political, economic, or environmental circumstances. Situational vulnerability can manifest as short-term, intermittent, or enduring.
- **Pathogenic vulnerability.** Pathogenic vulnerabilities emerge when attempts to mitigate vulnerability inadvertently worsen existing vulnerabilities or create new ones.

Inherent and situational vulnerability can manifest as either dispositional or occurrent states (Mackenzie et al., 2014). For example, individuals with a low level of digital literacy (inherent vulnerability) may be dispositionally vulnerable to online fraud, meaning they have an underlying susceptibility. However, their actual vulnerability (occurrent state) depends on factors such as the security of their internet access, their awareness of current scams, and the support systems available to them. Responses to occurrent vulnerability involve immediate actions, such as providing assistance to someone who has fallen victim to an online scam, or offering ongoing support, such as digital literacy training programmes. This distinction helps clarify how inherent characteristics and contextual factors interplay with both dispositional and occurrent states of vulnerability.

### 3.2.1 Risk factors in the literature

This literature review has investigated three primary domains to gather essential insights into defining consumer vulnerability and identifying the risk factors that may underpin it:

- The academic sphere.
- Legal sources.
- The literature produced by statutory and regulatory bodies.

This section represents a more general discussion of the risk factor approach to defining vulnerability. The specific nature of consumer vulnerability is discussed later in the report in section 3.5.

### 3.2.2 The academic sphere

In the academic context, the emphasis typically lies in the identification of factors associated with vulnerability relating to individual characteristics, and, occasionally, the external factor of market practices. These factors are illustrated in Table 1 below, using the terminology employed by the scholars. These risk factors are linked to vulnerability through empirical research or arguments indicating that these factors make individuals more susceptible to adverse outcomes. For instance, to illustrate the establishment of such factors through empirical research, Espinoza et al. (2015) conducted a study involving 320 Euro-American individuals summoned for jury duty at a Southern California courthouse. Their research revealed that factors like ethnicity, socioeconomic status, and immigration status can render defendants more vulnerable within the US criminal justice system, due to biases in juror decisions.

In a similar vein, Burton (2018) carried out 40 research interviews with lawyers/advisers and consumers in the United Kingdom (UK) in matters of legal advice in housing law. Her findings show that personal (mental health issues, homelessness, language, capability issues, low income/debt) and situational (running away) characteristics make individuals more susceptible to the potential disadvantages of telephone-only advice. However, it is

worth noting that in relation to some sources, the evidence on which the risk factor is based is unclear.

Table 1 - Risk factors for consumer vulnerability in the academic literature

Risk factors identified	Academic article	Scope of journal <sup>1</sup>
Age <sup>2</sup>	Farrington and Pryor (2022); Mergaerts (2022)	Family law; criminal law
Capability issues	Burton (2018)	Social welfare law, family law
Caring responsibilities	Branson & Gomersall (2023); Kane & Minson (2023)	Family law; criminal law
Child protection history	Helm (2017); Radke & Douglas (2020)	Criminal law; children's law
Domestic circumstances and homelessness	Burton (2018); Davis (2022); Kulig & Butler (2019)	Social welfare law; family law; criminal law
Employment status	Helm (2017)	Criminal law
Ethnic minority <sup>3</sup>	Beger & Hein (2001); Birckhead (2016); Dery (1997); Espinoza et al. (2015); Kulig & Butler (2019); Radke & Douglas (2020); Sinclair & Plessis (2006)	Criminal law; family law; children's law
Immigration status	Beger & Hein (2001); Espinoza et al. (2015); Liebmann (2012); Yu (2023)	Criminal law; family law; immigration law
Language <sup>4</sup>	Beger & Hein (2001); Burton (2018); Dery (1997); Espinoza et al. (2015); Liebmann (2012); Wright & Bertrand (2017); O'Mahony (2012); Sinclair & Plessis (2006)	Criminal law; social welfare law; family law
Learning disability	Branson & Gomersall (2023); Brown et al. (2022); Farrington & Pryor (2022); McEwan (2013); O'Mahony (2012)	Family law; criminal law
Low income and/or debt	Kulig & Butler (2019); Helm (2017)	Criminal law
Low resilience	Fairclough (2023); Fineman (2014)	Criminal law; civil rights law
Mental health issues	Brown, et al. (2022); Burton (2018); Farrington & Pryor (2022); Howard (2021); Kulig & Butler (2019); Mergaerts (2022); McEwan (2013); O'Mahony (2012)	Criminal law; social welfare law; family law
Socioeconomic status	Birckhead (2016); Burton (2018); Dery (1997); Sinclair & Plessis (2006)	Children law, social welfare law; family law; criminal law
Substance use and addiction	Helm (2017); Kulig & Butler (2019)	Criminal law

Suicidal thoughts <sup>5</sup>	Brown et al. (2022); Kulig & Butler (2019)	Criminal law
Running away <sup>6</sup>	Kulig & Butler (2019)	Criminal law
Market practices (e.g. companies' policies and behaviour)	Cartwright (2007); George et al. (2015); Hill & Kozup, 2007; Pavia & Mason (2014)	Financial services law; regulatory law

## Notes

1 The scope of the journal has been included in the table as it gives some insight into the area of law where the factor has been deemed to be relevant.

2 There does not appear to be any consensus over which precise age groups are deemed at risk of being vulnerable.

3 Alternative phrases used for 'ethnic minority' in the literature are ethnicity and ethnic origin.

4 In the literature, language is acknowledged as a potential risk factor for vulnerability, particularly among consumers for whom English is not their first language, experience general language difficulties and/or have lower literacy skills, or encounter complex legal terminology.

5 Alternative phrase used is 'suicidal ideation'

6 This phrase is not explained as to whether it relates to children or adults or both.

### 3.2.3 Legal sources

Within the legal sector, vulnerability is defined through legal sources (legislation, practice guidance and rules, and research reports), particularly within the realm of criminal law, employment law and disability law. These definitions are often based on individual characteristics, as shown in Table 2 below. These sources do not tend to explain the rationales for including the factors. These factors are presented having placed their legal sources in chronological order.

Table 2 - Risk factors for consumer vulnerability in the legislation and other legal sources

Legislation/legal procedural rules/report, year of publication, section (paragraph)	Group protected	Risk factors identified
Police and Criminal Evidence Act 1984 Code of Practice C, 1984, s 1.13	'Vulnerable persons'	Mental health issues; difficulty in understanding or communicating effectively
Youth Justice and Criminal Evidence Act 1999, s 33	'Non-defendant witnesses'	Age; mental health; a significant impairment of intelligence and social functioning; physical disability or suffering from a physical disorder; social, cultural, and ethnical background; domestic and employment circumstances; religious and political belief
The Police Act 1997 (Enhanced Criminal Record Certificates) (Protection of Vulnerable Adults) Regulations, 2002, s 446 (2)	'Vulnerable adults'	Accommodation, being in care, learning or physical disability, a physical or mental illness, addiction to alcohol or drugs, reduction in physical or mental capacity
Mental Capacity Act, 2005, s 2	'People who lack capacity'	A person lacks capacity because of an 'impairment of, or a disturbance in the

		functioning of, the mind or brain.’; if ‘he is unable: to understand the information relevant to the decision, to retain that information, to use or weigh that information as part of the process of making the decision, or to communicate his decision (whether by talking, using sign language or any other means).’
Police and Justice Act, 2006, s 47	‘Certain accused persons’	Age; intellectual ability; social functioning; mental health
Safeguarding Vulnerable Groups Act, 2006, s 59	‘Children and vulnerable adults’	‘A person is a vulnerable adult if he has attained the age of 18 and – (a) he is in residential accommodation, (b) he is in sheltered housing, (c) he receives domiciliary care, (d) he receives any form of health care, (e) he is detained in lawful custody, (f) he is by virtue of an order of a court under supervision by a person exercising functions for the purposes of Part 1 of the Criminal Justice and Court Services Act 2000 (c. 43), (g) he receives a welfare service of a prescribed description, (h) he receives any service or participates in any activity provided specifically for persons who fall within subsection (9) (see below), (i) payments are made to him (or to another on his behalf) in pursuance of arrangements under section 57 of the Health and Social Care Act 2001 (c. 15), or (j) he requires assistance in the conduct of his own affairs.’  Subsection 9: age, disability, mental or physical problem, expectant or nursing mother
Coroners and Justice Act, 2010, s 104 (prospective)	‘Certain accused persons’	Age; intellectual ability; social functioning; mental health
Equality Act, 2010		Socio-economic inequalities; protected characteristics: age, disability, gender, marriage and civil partnership, race, religion or belief, sex, sexual orientation
Family Procedure Rules, 2010, rule 3A.7	‘Vulnerable witnesses’	Intimidation; mental health; intellectual ability; social functioning; physical disability; medical treatment; abuse; ethnic origins; domestic circumstances; religious belief

Homelessness code of guidance for local authorities, 2018	'Applicant who have a priority need for accommodation if they become homeless'	<ul style="list-style-type: none"> <li>• Old age.</li> <li>• Mental illness or learning disability or physical disability.</li> <li>• Having been looked after, accommodated or fostered and is aged 21 or more.</li> <li>• Having been a member of His Majesty's regular naval, military or air forces.</li> <li>• Having been in custody.</li> <li>• Ceasing to occupy accommodation because of violence from another person or threats of violence from another person which are likely to be carried out; or,</li> <li>• Any other special reason</li> </ul> <p>Regarding the 'other special reason' category, the use of this concept is complex, and a significant amount of case law has been created around this (Meers &amp; Taylor, 2018).</p>
Practice direction 1A, 2022, s 4	Vulnerability 'in a party or witness'	<ul style="list-style-type: none"> <li>• Age, immaturity or lack of understanding.</li> <li>• Communication or language difficulties (including literacy).</li> <li>• Physical disability or impairment, or health condition.</li> <li>• Mental health condition or significant impairment of any aspect of their intelligence or social functioning (including learning difficulties).</li> <li>• The impact on them of the subject matter of, or facts relevant to, the case (an example being having witnessed a traumatic event relating to the case).</li> <li>• Their relationship with a party or witness (examples being sexual assault, domestic abuse or intimidation (actual or perceived)).</li> <li>• Social, domestic or cultural circumstances.</li> </ul>
Equal Treatment Benchbook, 2023 (pp. 49-51, 203, 225)	'Vulnerable witnesses and parties generally who may appear in any kind of civil or criminal	Age, disability, learning disability, abuse, victims of modern slavery, refugees or people seeking asylum, immigration status, language, race, religion, sexual orientation, capability, mental health, trauma, drug or alcohol abuse, self-harm, loss and neglect, financial status, Covid-19 pandemic.

court or tribunal hearing.’

### 3.2.4 Statutory and regulatory bodies

Statutory and regulatory bodies’ publications offer comprehensive definitions of consumer vulnerability in relation to individual characteristics, situational circumstances, and market and external factors, as shown in Table 3 below. Like with the legal sources, these sources do not tend to explain the rationales for including the factors. These factors are arranged in order based on the chronological order of the year of their report.

Table 3 - Risk factors for consumer vulnerability in the regulatory and statutory bodies’ literature

Regulatory/statutory body, year of publication	Definition of vulnerability
British Standard on Inclusive Service Provision, 2010	‘The condition in which a consumer is at greater risk of mis-selling, exploitation, or being put at a disadvantage in terms of accessing or using a service, or in seeking redress.’
Office for Gas and Electricity Market (Ofgem), 2013	‘Vulnerability is when a consumer’s personal circumstances and characteristics combine with aspects of the market to create situations where he or she is: Significantly less able than a typical consumer to protect or represent his or her interests in the energy market; and/or Significantly more likely than a typical consumer to suffer detriment, or that detriment is likely to be more substantial.’
Citizens Advice, 2014	‘Vulnerability can be a transient state that affects people at different points in time, or it can have long-term effects. It may be triggered by events such as loss of a job, the onset of disability, or becoming a carer.’
Office for Water Services (Ofwat), 2016	‘A customer who due to personal characteristics, their overall life situation or due to broader market and economic factors, is not having reasonable opportunity to access and receive an inclusive service which may have a detrimental impact on their health, wellbeing or finances.’
SRA, 2016b	‘A person with vulnerability is usually described as someone who is at a higher risk of harm than others.’
Scottish Legal Complaints Commission Consumer Panel, 2017	‘Vulnerability is not solely based on individual traits, or ‘personal characteristics’, but can be multi-dimensional; Vulnerability is not always a static position but can be dynamic and transient; Vulnerability is about the situation in which people find themselves, and the problem they need addressed, rather than simply or solely about who the person is; and All of us have the potential to be vulnerable when placed in a situation where we feel we have little control, or where there is a real or perceived power imbalance.’

The Chartered Institute of Legal Executives (CILEX), 2018	<p>'Vulnerability is dynamic. It can be due to:</p> <ul style="list-style-type: none"> <li>The characteristics of the market.</li> <li>The particular circumstances of the consumer.</li> <li>Physical (geography, disability).</li> <li>Cultural (language).</li> <li>Service delivery (jargon).</li> <li>A combination of the above.</li> </ul> <p>Consumers who are particularly susceptible to loss or harm should also be thought of as vulnerable.'</p>
Financial Conduct Authority (FCA), 2021a	<p>'Customers who, due to their personal circumstances, are especially susceptible to harm, particularly when a firm is not acting with appropriate levels of care.'</p>
Ministry of Justice, 2022	<p>Characteristics identified: age, mental health, learning disability, physical disability.</p>
The Law Society, 2022	<p>'Risk factors that indicate a client may be vulnerable include:</p> <ul style="list-style-type: none"> <li>• advanced age</li> <li>• young age</li> <li>• physical disabilities</li> <li>• ill-health</li> <li>• cognitive impairment, such as dementia</li> <li>• mental health problems</li> <li>• learning disabilities</li> <li>• sensory impairment</li> <li>• acquired brain injury, caused for example by a stroke or head injury</li> <li>• behavioural disorder, such as attention deficit hyperactivity disorder</li> <li>• neurodiversity, such as autism spectrum disorder</li> <li>• psychological or emotional factors, such as stress</li> <li>• communication difficulties, including no or limited speech, English as a foreign language, limited ability to read or write, trouble with reading and writing accuracy and comprehension, and illiteracy</li> <li>• experience of domestic violence or sexual abuse</li> <li>• heavy reliance on others (family or friends) for care, support or accommodation</li> <li>• long-term alcohol or drug abuse</li> <li>• exposure to financial abuse</li> <li>• poor financial literacy</li> <li>• lack of a social network</li> <li>• living alone</li> <li>• living in poverty</li> <li>• adverse life events, such as bereavement</li> </ul>



- dependence on a care provider'

Tables 4-6 below combine insights from academic literature, legal sources, and regulatory/statutory bodies' literature to highlight the common traits used to identify consumer vulnerability. These risk factors have been identified through research conducted by scholars as well as statutory and regulatory organisations, and some were also incorporated in legislation.

Each risk factor is linked to the study where it was identified, and/or with the legislation in which it is contained. Some factors are present in all three domains (academic literature, legal sources, and grey literature), while some are found in two of these domains, and a few are exclusive to one of them. Tables 4 to 6 display these factors in alphabetical order, first listing those common to all three domains, then those shared by two of them, and finally, factors exclusive to just one.

It is also worth noting that the reviewed evidence did not mention Adverse Childhood Experiences (ACEs) and early trauma as a form of vulnerability. This omission is surprising given the extensive international research showing that those experiencing multiple negative events during childhood, such as abuse, neglect, or having parents who misuse drugs and alcohol, can have long-term effects on an individual's physical and mental health (Ashton, et al., 2016; Bellis, et al., 2018).

It has also been argued that regulators, in certain fields, have always tried to isolate vulnerability concerns from financial vulnerability (see Graham, 2023). From a regulatory perspective, structural issues are likely to be matters for government to tackle.

While the risk factor approach described in this sub-section identifies risks on an individual basis, there might be underlying causes within the social context where these individuals exist. Refer to the universal vulnerability approach explored below for a more comprehensive discussion on this (in section 3.3).

*Table 4 – Individual risk factors for consumer vulnerability as identified in the combined literature*

Individual characteristics	Academic literature	Regulatory and statutory literature	Legal sources
Age <sup>1</sup>	Farrington and Pryor (2022); Mergaerts (2022)	Chartered Legal Executive Lawyers (2018); Financial Conduct Authority (2014); Legal Services Board (2017); Legal Services Consumer Panel (2014); Office for Gas and Electricity Market (2019); Ministry of Justice (2022); Office for Water Services (2016); SRA (2016b); The Law Society (2022)	Youth Justice and Criminal Evidence Act 1999; Police and Justice Act 2006; Safeguarding Vulnerable Groups Act 2006; Coroners and Justice Act 2010; Equality Act 2010; Practice direction 1A (2022); Equal Treatment Benchbook (2023)
Domestic circumstances including living alone and homelessness	Burton (2018); Davis (2022); Kulig & Butler (2019)	Chartered Legal Executive Lawyers (2018); Legal Services Consumer Panel (2014);	Youth Justice and Criminal Evidence Act 1999; Family Procedure Rules

		SRA (2016b); The Law Society (2022)	(2010); The Police Act 1997 (Enhanced Criminal Record Certificates) (Protection of Vulnerable Adults) Regulations 2002; Safeguarding Vulnerable Groups Act 2006; Equality Act 2010
Employment status <sup>2</sup>	Helm (2017)	Financial Conduct Authority (2014); National Audit Office (2017)	Youth Justice and Criminal Evidence Act 1999
Lack of English language skills and/or literacy and/or language issues	Beger & Hein (2001); Burton (2018); Dery (1997); Espinoza et al. (2015); Liebmann (2012); Wright & Bertrand (2017); O'Mahony (2012); Sinclair & Plessis (2006)	Chartered Legal Executive Lawyers (2018); Financial Conduct Authority (2015); Legal Services Consumer Panel (2014); Office for Gas and Electricity Market (2019); Office for Water Services (2016); SRA (2016b); The Law Society (2022)	Equal Treatment Benchbook (2023)
Learning disability	Branson & Gomersall (2023); Brown et al. (2022); Farrington & Pryor (2022); McEwan (2013); O'Mahony (2012)	Chartered Legal Executive Lawyers (2018); Financial Conduct Authority (2021b); Legal Services Consumer Panel (2014); Ministry of Justice (2022); National Audit Office (2017); Office for Gas and Electricity Market (2019); SRA (2016b); The Law Society (2022)	The Police Act 1997 (Enhanced Criminal Record Certificates) (Protection of Vulnerable Adults) Regulations 2002; Equality Act 2010; Practice direction 1A (2022); Equal Treatment Benchbook (2023)
Low basic skills and lack of capacity/capability	Brown et al. (2022); Burton (2018); Helm (2017)	Financial Conduct Authority (2014, 2015 & 2021b); Office for Water Services (2016)	Police and Criminal Evidence Act 1984 Code of Practice C; Youth Justice and Criminal Evidence Act 1999; Mental Capacity Act 2005; Police and Justice Act 2006; Coroners and Justice Act 2010; Family Procedure Rules (2010); Practice direction 1A (2022);

			Equal Treatment Benchbook (2023)
Mental health issues	Brown, et al. (2022); Burton (2018); Farrington & Pryor (2022); Howard (2021); Kulig & Butler (2019); Mergaerts (2022); McEwan (2013); O'Mahony (2012)	Chartered Legal Executive Lawyers (2018); Financial Conduct Authority (2015); Legal Services Consumer Panel (2014); Ministry of Justice (2022); National Audit Office (2017); SRA (2016b); The Law Society (2022)	Police and Criminal Evidence Act 1984 Code of Practice C; Youth Justice and Criminal Evidence Act 1999; The Police Act 1997 (Enhanced Criminal Record Certificates) (Protection of Vulnerable Adults) Regulations 2002; Police and Justice Act 2006; Safeguarding Vulnerable Groups Act 2006; Coroners and Justice Act 2010; Family Procedure Rules (2010); Practice direction 1A (2022); Equal Treatment Benchbook (2023)
Substance use and addiction	Helm (2017); Kulig & Butler (2019)	Financial Conduct Authority (2021b); The Law Society (2022)	The Police Act 1997 (Enhanced Criminal Record Certificates) (Protection of Vulnerable Adults) Regulations 2002; Equal Treatment Benchbook (2023)
Caring responsibilities	Branson & Gomersall (2023); Kane & Minson (2023)	Financial Conduct Authority (2014 & 2015); Legal Services Board (2017); Legal Services Consumer Panel (2014); Office for Gas and Electricity Market (2019); SRA (2016b); The Law Society (2022)	
Cultural barriers/circumstances		Chartered Legal Executive Lawyers (2018); Legal Services Consumer Panel (2014); SRA (2016b)	Practice direction 1A (2022)
Ethnic minority <sup>3</sup>	Beger & Hein (2001); Birckhead (2016); Dery		Youth Justice and Criminal Evidence Act 1999; Family

	(1997); Espinoza et al. (2015); Kulig & Butler (2019); Sinclair & Plessis (2006)	Procedure Rules (2010)
Gender	Smith et al. (2013)	Equality Act 2010
Immigration status	Beger & Hein (2001); Espinoza et al. (2015); Liebmann (2012); Yu (2023)	Equal Treatment Benchbook (2023)
Low income and/or in debt	Kulig & Butler (2019); Helm (2017)	Chartered Legal Executive Lawyers (2018); Financial Conduct Authority (2015); Legal Services Consumer Panel (2014); National Audit Office (2017); Office for Gas and Electricity Market (2019); Office for Water Services (2016); SRA (2016b); The Law Society (2022)
Low resilience and inexperience	Fineman (2014)	Chartered Legal Executive Lawyers (2018); Financial Conduct Authority (2021b); Legal Services Board (2017); Legal Services Consumer Panel (2014); Solicitor Regulation Authority (2016)
Physical disability		Chartered Legal Executive Lawyers (2018); Data & Marketing Association (2012); Financial Conduct Authority (2015); Legal Services Board (2017); Legal Services Consumer Panel (2014); Ministry of Justice (2022); National Audit Office (2017); SRA (2016b); The Law Society (2022)
		Youth Justice and Criminal Evidence Act 1999; The Police Act 1997 (Enhanced Criminal Record Certificates) (Protection of Vulnerable Adults) Regulations 2002; Safeguarding Vulnerable Groups Act 2006; Family Procedure Rules (2010); Equality Act 2010; Practice direction 1A (2022);

		Equal Treatment Benchbook (2023)
Refugee or seeking asylum	Bar Standards Board (2018a & 2018b)	Equal Treatment Benchbook (2023)
Sex	Cross (2020)	Equality Act 2010; Equal Treatment Benchbook (2023)
Severe or long-term illness and medical treatment	Chartered Legal Executive Lawyers (2018); Financial Conduct Authority (2014 & 2015); Legal Services Board (2017); National Audit Office (2017); Office for Gas and Electricity Market (2019); SRA (2016b); The Law Society (2022)	Family Procedure Rules (2010); Practice direction 1A (2022)
Socioeconomic status	Birckhead (2016); Burton (2018); Dery (1997); Sinclair & Plessis (2006)	Youth Justice and Criminal Evidence Act 1999; Equality Act 2010; Practice direction 1A (2022); Equal Treatment Benchbook (2023)
Suicidal ideation and/or self-harm	Brown et al. (2022); Kulig & Butler (2019)	Equal Treatment Benchbook (2023)
Being under supervision		Safeguarding Vulnerable Groups Act 2006
Being a single parent	Chartered Legal Executive Lawyers (2018); Legal Services Consumer Panel (2014); Office for Gas and Electricity Market (2019); SRA (2016b)	
Detained in lawful custody		Safeguarding Vulnerable Groups Act 2006
Expectant or nursing mother		Safeguarding Vulnerable Groups Act 2006
Geographical location	Chartered Legal Executive Lawyers (2018); Legal Services Consumer Panel (2014); National Audit Office	

	(2017); Office for Gas and Electricity Market (2019); SRA (2016b)	
Lack of internet access	Chartered Legal Executive Lawyers (2018); Financial Conduct Authority (2015); Legal Services Consumer Panel (2014); SRA (2016b)	
Political belief		Youth Justice and Criminal Evidence Act 1999
Race		Equality Act 2010; Equal Treatment Benchbook (2023)
Receiving care		Safeguarding Vulnerable Groups Act 2006
Religious belief		Youth Justice and Criminal Evidence Act 1999; Equality Act 2010; Family Procedure Rules (2010); Practice direction 1A (2022)
Sexual orientation		Equality Act 2010; Equal Treatment Benchbook (2023)
Trauma		Practice direction 1A (2022); Equal Treatment Benchbook

## Notes

1 There does not appear to be any consensus over which precise age groups are deemed at risk of being vulnerable.

2. This refers to unemployment or precarious conditions.

3 Alternative phrases used for 'ethnic minority' in the literature are ethnicity and ethnic origin.

*Table 5 – Individual situational risk factors for consumer vulnerability as identified in the combined literature*

Individual situational circumstances	Academic literature	Regulatory and statutory literature	Legal sources
Abuse		Financial Conduct Authority (2021b); The Law Society (2022)	Family Procedure Rules (2010); Practice direction 1A (2022)
Accident, illness, and onset of disability		Citizens Advice (2014); Office for Water Services	The Police Act 1997 (Enhanced Criminal Record)

	(2016); SRA (2016b)	Certificates) (Protection of Vulnerable Adults) Regulations 2002
Bereavement	Chartered Legal Executive Lawyers (2018); Data & Marketing Association (2012); Financial Conduct Authority (2014); Legal Services Consumer Panel (2014); SRA (2016b); The Law Society (2022)	Equal Treatment Benchbook (2023)
Change in domestic situations, including relationships breakdown	Chartered Legal Executive Lawyers (2018); Financial Conduct Authority (2015 & 2021b); Legal Services Consumer Panel (2014); Office for Water Services (2016); SRA (2016b)	
Concern over access to children	SRA (2016b)	
Concern over child welfare <sup>1</sup>	SRA (2016b)	
Having recently left care	British Standards Board (2018); Chartered Legal Executive Lawyers (2018); Legal Services Consumer Panel (2014); SRA (2016b)	
Increase in caring responsibilities	Citizens Advice (2014); Office for Water Services (2016)	
Job and/or income loss	Chartered Legal Executive Lawyers (2018); Citizens Advice (2014); Financial Conduct Authority (2014); Legal	

	Services Consumer Panel (2014); Office for Water Services (2016); SRA (2016b)
Release from prison	Chartered Legal Executive Lawyers (2018); Legal Services Consumer Panel (2014)
Retirement	Financial Conduct Authority (2021b)
Running away	Burton (2018); Kulig & Butler (2019)
Threat of deportation	SRA (2016b)
Threat of harm	SRA (2016b)

## Notes

1 The precise nature of this risk is unclear from SRA (2016b) – whether, for example, it relates to the individual having a personal history of child protection involvement or concerns of the individual's child

*Table 6 - Market and external risk factors for consumer vulnerability as identified in the combined literature*

Market practices and external factors	Academic literature	Regulatory and statutory literature	Legal sources
Market practices	Cartwright (2007); George et al. (2015); Hill & Kozup (2007); Pavia & Mason (2014)	Financial Conduct Authority (2014 & 2015); Office for Gas and Electricity Market (2013)	
Natural disasters and pandemics		British Standards Institution (2022); Legal Services Board (2021); Financial Conduct Authority (2021a)	Equal Treatment Benchbook (2023)
Climate change		Office for Gas and Electricity Market (2019)	
Economic conditions		National Audit Office (2017); Office for Water Services (2016)	
Policy changes		Office for Water Services (2016)	



### 3.2.5 Development of the Solicitors Regulation Authority's definition of consumer vulnerability

In line with definitions of vulnerability discussed above, the SRA, in its 2016b publication, primarily defines vulnerability based on risk factors. Table 7 below shows the factors which it lists. The SRA identify risk factors based on suggestions from the Legal Services Consumer Panel (2014).

*Table 7 - Risk factors for consumer vulnerability identified by the SRA (SRA, 2016b: 4)*

<b>Individual risk factors</b>	<b>Individual situational risk factors</b>
Age	Bereavement
Being a carer	Concern of child welfare
Cultural barriers	Concern over access to children
English as a second language	Having recently left care
Health problems	Loss of employment
Inexperience	Loss of income
Lack of internet access	Relationship breakdown
Learning disabilities	Threat of deportation
Living alone or in poor living conditions	Threat of harm
Location	Victim of crime or accident
Lone parent	
Low income	
Low literacy	
Mental health issues	
Physical disabilities	

It is worth noting that the SRA's (2016b) classification of vulnerability, along with those of other regulators, was not intended to be an exhaustive list of risk factors that have been identified in the literature but rather a list of examples of risk factors. However, the commissioning body was still interested in an appraisal of this list as part of the current research. SRA's (2016b) list relies primarily on the definitions provided by other regulatory bodies, encompassing individual characteristics and situational circumstances, without taking into consideration academic and legal sources, both implicitly and explicitly (see Table 3 above).

The academic and legal sources on consumer vulnerability frequently underline the subjective nature of vulnerability, emphasising that an individual's experiences of vulnerability can vary widely based on their unique circumstances, backgrounds, and perspectives. These sources tend to explore vulnerability not only as a set of risk factors but as a dynamic concept also influenced by a wide range of intersectionalities, including ethnicity, gender, sexuality, religion, and immigration status (Beger & Hein, 2001; Birkhead, 2016; Cross, 2020; Dery, 1997; Espinoza et al., 2015; Family Procedure Rules, 2010; Fineman, 2014; Kulig & Butler, 2019; Liebmann, 2012; Radke & Douglas, 2020; Sinclair & Plessis, 2006; Smith et al., 2013; Youth Justice and Criminal Evidence Act 1999; Yu, 2023).

Moreover, the academic literature acknowledges that vulnerability is also shaped by individuals' resilience and coping mechanisms (Fairclough, 2023; Fineman, 2014). These factors are generally overlooked by the literature produced by regulatory and statutory bodies, including the SRA (2016b). This issue is further explored below when the universal vulnerability approach is discussed (in section 3.3).

Furthermore, the SRA's (2016b) categorisation of consumer vulnerability is weighted towards individual characteristics and situational circumstances rather than the impact of actions taken by service providers as a potential factor that could contribute to heightened vulnerability among consumers within the legal services sector. This is in contrast to the broader spectrum of market-related actions and omissions, as well as external factors (e.g. changing in legislation, economic conditions, or events like pandemics), highlighted as having a potential influence on consumer vulnerability in other sources (British Standards Institution, 2022; Cartwright, 2007; Financial Conduct Authority, 2014, 2015 & 2021b; George et al., 2015; Hill & Kozup, 2007; Legal Services Board, 2021; Office for Gas and Electricity Market (2019); Office for Water Services, 2016; Pavia & Mason, 2014). This consideration is particularly pertinent within the context of the legal services field, which is situationally sensitive due to the complexities and needs involved (this issue will be further examined in section 3.5).

Given these nuances and the multifaceted nature of vulnerability, there may be opportunities for regulatory bodies like the SRA to incorporate elements from the academic and legal literature into their publications. Doing so could encourage broader thinking around vulnerability among consumers in the legal services field. However, as explored below, even vastly extended, a list is never likely to be exhaustive. Hence, in this case, such a list should not be framed as a definition of vulnerability but rather as a list of examples.

However, it is important to note that there is a growing theme in academic literature suggesting that the risk-based approach may not be appropriate, and the terminology of vulnerability may not be helpful. An alternative perspective posits that instead of attempting to identify vulnerable individuals, the emphasis should be on implementing 'universal changes' to accommodate the needs of everyone (see section 3.3).

### 3.2.6 Appropriateness of the language of vulnerability

There is a widespread consensus in the literature that terms such as 'vulnerable consumers' should be replaced by others including 'consumer vulnerability'. For instance, the Office for Water Services (2016) conducted research with 51 stakeholders and found that customers do not want to be termed as vulnerable. In addition, it found that using the 'label' could lead to consumers feeling vulnerable and not seeking assistance. So, when referring to vulnerability, the terminology 'customers whose circumstances make them vulnerable' or 'customer vulnerability' is preferred (Office for Water Services, 2016: 20).

Accordingly, academics and regulators consider the use of the term 'consumer vulnerability' to be more sensible and advantageous. This is due to several reasons:

- **Dignity and respect:** Using 'consumer vulnerability' rather than 'vulnerable consumer' respects the individual's dignity by not defining them solely by their vulnerability. It acknowledges that vulnerability can be a temporary or situational state and not a fixed characteristic of a person (George et al., 2015).
- **Focus on the condition:** The term 'consumer vulnerability' shifts the focus from 'consumer' to 'vulnerability', that is from the individuals to the factors contributing to their vulnerability. It encourages a deeper examination of the circumstances, such as financial hardship, health issues, or life events, that may lead to vulnerability. This

shift comes from the acknowledgement that everyone can be vulnerable: 'vulnerability is understood to be an inherent and inevitable aspect of what it means to be human' (Fineman, 2014: 104). Refer to the universal vulnerability approach explored below for a more comprehensive discussion on this (section 3.3).

- **Holistic approach:** The term 'consumer vulnerability' invites a more comprehensive approach to addressing vulnerability. It encourages regulators, policymakers, and consumer protection agencies to consider the broader context and systemic factors that contribute to consumer vulnerability, rather than viewing it solely as an individual's problem. As Fairclough (2023) and Fineman (2014) note, the duty is on the state to provide 'assets' that enhance resilience among individuals at risk of vulnerability.
- **Empowerment and agency:** Shifting the emphasis to 'consumer vulnerability' empowers individuals by recognising that vulnerability can be situational and changeable. It suggests that people can overcome or manage their vulnerabilities with appropriate support and resources (Baker, Gentry & Rittenburg, 2005; British Standards Institution, 2022).
- **Policy and regulation:** This shift in terminology encourages the development of policies that focus on preventing and mitigating consumer vulnerability, rather than merely categorising certain groups as 'vulnerable consumers'. It reinforces the idea that regulators and organisations have a responsibility to identify and respond to consumer vulnerability as part of their ethical and social responsibilities (Legal Services Board, 2022).

### 3.2.7 Issues with the risk factor approach

In addition to the problematic nature of the terminology relating to vulnerability, there are a variety of challenges embedded in the risk factor approach. These include:

- **Language used to describe certain risk factors:** For example, framing ethnicity as a risk factor may perpetuate harmful stereotypes and reinforce inequalities rather than problematising their underlying social determinants (see Harrison and Sanders, 2006). Similarly, terms like 'disabled' may carry negative connotations, diverting focus from the structural forces that disadvantage individuals. For this reason, risk factors for vulnerability are sometimes seen as promoting paternalism, oppression, and patronisation (Brown, 2011 & 2017; Fineman, 2014).
- **Interpretation of risk factors:** Factors cited in the literature like employment status and running away lack precision and clarity in their interpretation. For instance, a person may hold a job but still struggle to meet their basic needs due to low wages or a lack of access to social support systems. Likewise, the reasons behind someone leaving their home or experiencing homelessness can vary widely, from family conflict to economic hardship to fleeing abuse. Moreover, the nature of the association between an individual's vulnerability and concerns about child welfare is unspecified. It remains unclear whether this relates to the individual's own history of child protection involvement or concerns regarding their children. One could argue that loosely defined factors offer regulators and service providers broad pointers to consider, but they are not measurable.
- **Metrics of vulnerability.** An additional notable issue lies in the ambiguity and lack of precision in identifying and operationalising identified risk factors, which cannot easily be distilled into singular metrics or categories. For instance, age is identified as a risk

factor, but there does not appear to be any consensus over which precise age groups (beyond childhood and youth) are deemed at risk of being vulnerable.

- **Oversight of additional critical factors.** As discussed in sub-section 3.2.1, factors such as Adverse Childhood Experiences (ACEs) are ignored in the literature on consumer vulnerability. Ignoring these elements reduces the comprehensiveness of vulnerability assessments and undermines efforts to develop interventions that address the diverse dimensions of vulnerability effectively.
- **Lack of evidence base:** Many factors referred to by a range of regulators and other bodies lack empirical quality research to support their inclusion as risk factors (see Table 4, Table 5, Table 6). This absence of evidence-based validation further undermines the reliability and validity of vulnerability measurements.
- **Oversight of the complexities of intersectionality.** Risk factors are often treated in isolation, failing to account for how multiple factors intersect to exacerbate vulnerability. For example, a risk factor approach might identify low income as a vulnerability factor without considering how intersecting identities such as gender can compound that vulnerability. In fact, intersectionality emphasises the unique experiences of individuals at the intersections of multiple identities, yet traditional risk factor approaches often treat identities and factors as separate and additive. This linear approach fails to capture the complexity of intersectional experiences and may oversimplify the identification, monitoring, and measurement of consumer vulnerability.
- **Appropriateness of focusing solely on individual risk factors.** While such an approach may highlight specific vulnerabilities, it fails to account for the systemic and structural factors that underpin vulnerability within society (see discussion in the next section). For instance, although likely to be considered beyond the remit of regulators, there are concerns about the neglect of broader social inequalities and injustices that contribute to vulnerability (Graham, 2023).

The challenges identified above bring into focus the argument to transition from a risk factor approach to a more holistic perspective, such as the universal vulnerability approach. Unlike the narrow focus of the risk factor approach, the universal vulnerability approach delves deeper into the social contexts within which individuals exist. It acknowledges that vulnerability is universal; that it is not a product of individual characteristics but is often exacerbated by how society, institutions, and their services are defined and structured. This calls for a system that inherently accommodates the diverse needs of all consumers without requiring individualised adaptations. Section 3.3 below provides a discussion of this approach.

### 3.3 The universal vulnerability perspective and the universal changes approach

A growing body of literature, primarily rooted in critical legal studies (as exemplified by Fineman, 2008 and Wallbank & Herring, 2014), advocates for a more 'radical' perspective on vulnerability. This perspective is often referred to as 'universal vulnerability' (Turner, 2006), or the 'vulnerability thesis' (Fineman, 2008). This perspective posits that all human beings share a fundamental vulnerability. However, the extent of this vulnerability varies throughout life and is influenced by broader relational processes, including political and social interactions (Brown, Ecclestone, & Emmel, 2017). These authors contend that classifying individuals as 'vulnerable' is ineffective, as anyone can potentially experience vulnerability, and problematic, potentially leading to harmful and unintended consequences.

The main concerns associated with the use of individuals or groups categorised as vulnerable are listed below.

- **Definitional inconsistencies:** Fairclough (2023) highlights that vulnerability categorisations and references to it often lack clarity and consistency. This is evident from the diverse risk factors for vulnerability identified differently across various bodies of literature (see Table 4, Table 5, Table 6 above).
- **Over-inclusiveness and under-inclusiveness:** Fineman (2008) points out that vulnerability categories may exclude individuals who should be considered vulnerable (under-inclusive) while including individuals who should not be (over-inclusive). For example, the Youth Justice and Criminal Evidence Act 1999 excludes the accused from the definition of ‘vulnerable,’ despite research indicating higher rates of mental health problems and learning difficulties among defendants. (Hagell, 2002), (Bradley, 2009), (Bryan, Freer, & Furlong, 2007). On the other hand, over-inclusiveness can result in the imposition of vulnerability in a paternalistic or stereotypical manner.
- **Link to ‘deservingness’:** Vulnerability is sometimes linked with whether someone deserves help (Brown et al., 2017). For instance, legal professionals may be less likely to recognise defendants as vulnerable, partly due to the criminal accusations against them (Fairclough, 2017).
- **Deficit-oriented concept:** Vulnerability is often criticised for being deficit-oriented. That is, it tends to denote negative conditions, disabling qualities, and diminished capacities, as expressed by Brown (2011). It can also be associated with notions of weakness (Gilson, 2016) and victimhood (Cowan & Hewer, 2020).
- **Reductiveness:** The concept of vulnerability is criticised for being reductive and dichotomous. It risks categorising people as either vulnerable or not vulnerable and assumes a homogeneity within vulnerability categorisations that does not reflect the complexity of reality (Gilson, 2014).
- **Paternalism and oppression:** Vulnerability can promote paternalism, oppression, and patronisation (Brown, 2011 & 2017; Fineman, 2014). For instance, Wishart (2003) argues that the label ‘vulnerability’ supports a ‘tragic quality’ to the presentation of those with learning difficulties as inevitably at risk of sexual abuse because of their impairment, which, in effect, amounts to ‘victim blaming’ (2003: 20). Wishart (2003) perceives vulnerability as a concept that redirects attention to the individual, diverting focus from the structural forces that disadvantage disabled individuals. Additionally, Furedi (2003, in Brown, 2011) draws a link between vulnerability and the culture of fear, where apprehensions about risk-taking have become central to everyday experiences, fostering the ever-expanding reach of the state into various aspects of our lives (see point below).
- **Widening social control:** Classifying individuals as ‘vulnerable’ can serve as a mechanism for increasing social control. It may justify state intervention into the lives of citizens based on the assumption that they require protection, as argued by Dunn, Clare, & Holland (2008). This can lead to increased state or institutional control over perceived vulnerable groups, with the paradoxical outcome of increasing lived vulnerabilities (Brown, 2017).
- **Pathogenic vulnerability:** Vulnerability can lead to what Mackenzie et al. (2014: 9) term ‘pathogenic vulnerability’. It can create a sense of powerlessness and dependence on external systems, subjecting individuals to increased state surveillance and regulation.

- **Exclusion and stigmatisation:** Labelling individuals or groups as ‘vulnerable’ can result in their exclusion and stigmatisation. When behaviours are labelled as ‘vulnerable’ in the policy agenda, it frequently leads to entrenched inequalities (Harrison and Sanders, 2006), the concept of vulnerability is closely tied to notions of difference.
- **Exacerbating inequalities:** The policy and regulatory use of vulnerability can exacerbate lived vulnerability and reinforce structural and social inequalities. This may be gendered, raced, and classed, as highlighted by Brown (2017).

These insights highlight the multifaceted and often problematic nature of the concept of vulnerability. While ‘vulnerability’ is intended to identify individuals or groups in need of support and protection, it falls short of capturing the full complexity of people’s circumstances and experiences, can lead to harmful consequences. In fact, it can lead to discrimination, exclusion, and perpetuate stereotypes, potentially worsening the situation it seeks to address. It tends to pathologise the individual, identifying them as the ‘problem’, rather than acknowledging that systems set up by the state or by service providers may constitute the difficulty as these systems are usually designed around a small class of ‘perfect’ or ideal customers.

### 3.3.1 The resilience approach

Some scholars have built on notion of universal vulnerability introducing what we term in this report the ‘resilience approach’. This perspective prioritises the assessment of individuals’ resilience and identification of the necessary resources to strengthen it. Advocates of this approach stress the responsibility of the state to foster individual resilience and to facilitate access to resources that support personal development and well-being (for example, a government programme providing skills training):

‘vulnerability theory places the burden on the State to be responsive to the needs of its inherently vulnerable legal subjects. The duty is thus on the State to provide ‘assets’ to build resilience among vulnerable subjects.’ (Fairclough, 2023: 5; Fineman, 2019).

Different types of assets that organisations can provide include physical, human, social, environmental and existential (Fineman, 2016: 146).

### 3.3.2 Proposed alternative approach: universal changes approach

An alternative strategy for addressing vulnerability involves moving away from attempts to precisely define and identify vulnerable groups. Instead, we propose the term ‘universal changes’, contrasting with the ‘reasonable adjustments’ required by Equality Act 2010 in respect of disabilities and recommended by the SRA (2023a). The universal changes aim to create a system inherently inclusive and accommodating to the needs of all consumers without necessitating individualised adjustments.

There are parallels here between ‘universal changes’ and the approaches of ‘inclusive practice’ and ‘universal design’. Inclusive practice is any approach used in the field of education whereby all learners have equality of access and participation in learning opportunities and activities. Whilst specific adjustments might be needed to support the meeting of individual students’ needs, it is recognised that implementing ‘inclusive practice’ can remove a number of unintended or incidental barriers learning for students. ‘Universal design’ is an approach that aims to create environments, products, and services that are accessible to everyone, regardless of age, disability, or other factors. The idea

developed in the field of architecture but has been expanded to apply in other domains such as education, healthcare, transport and technology.

Lastly, it was noted above that reviewed evidence did not mention ACEs and early trauma. There is an increasing emphasis in trauma-informed practice in the areas of healthcare and criminal and social policy (e.g. housing) which is grounded in the understanding that trauma exposure can impact an individual's neurological, biological, psychological, and social development (Ashton, et al., 2016; Bellis, et al., 2018) and it is surprisingly absent in the broader legal sector. The 'universal changes' approach in the legal sector could adopt this practice, enhancing the legal sector's responsiveness to all consumers' needs.

### **3.3.3 Relationship between the risk factor approach and universal changes approach**

One could claim that the risk factor approach and the universal changes approach are theoretically opposed and, therefore, mutually exclusive. The risk factor approach is underpinned by a system of identifying vulnerable groups, whereas the universal changes approach considers the needs of all.

Alternatively, one could argue that, in universal changes, there is a role for understanding what renders individuals at risk of or susceptible to vulnerability, or rather harm or poor outcomes and their needs, and what would mitigate against these harms. There is also arguably a role for these individuals in solution design processes, implementing their feedback into the system. Maintaining an ongoing feedback loop ensures that systems remain adaptable and responsive to the diverse needs of all individuals. Therefore, here we are not associating the risk factor approach with measuring and monitoring vulnerability but rather as a mechanism for starting to understand the universal changes which are required from the voices of those experiencing situational vulnerability.

## **3.4 Measuring consumer vulnerability**

This section will explore the current approaches to measuring and monitoring consumer vulnerability across different sectors. A description of various types of tools, organised into different sub-sections according to the field in which they are currently used can be found in the Appendices. What follows here is a discussion of the applicability of and an appraisal of these tools.

It is worth noting that the discussion in this sub-section is based on the premise that the tools employed identify individuals and 'their' vulnerabilities. While this approach is certainly pragmatic in addressing and mitigating issues on a case by case basis, it is important to reiterate that responsibility for generating vulnerability might be more appropriately attributed to the service providers and the broader sociocultural context in which these operate. In such a context, service providers have designed their systems around a small class of 'perfect' or ideal customers. Over time, providers may need to reconsider the design of their service frameworks, taking into account the perspective of 'universal vulnerability' (Cross, 2017; Fineman, 2014). This reassessment process may entail the development of services that are more inclusive and adaptable.

### 3.4.1 Distinguishing between screening, assessment, and measurement tools

There are differences in the tools that are used to identify consumer vulnerability in the literature. Three main types of tools may be used: screening tools, assessment tools, and measurement tools.

- Screening tools are used to identify individuals who may be at risk of consumer vulnerability. Their primary purpose is the identification of individual cases. For example, screening tools are used to identify mental and neurodevelopmental disorders and unfitness to plead in the criminal justice field (see below Brown et al., 2022; Lowenstein, 2000).
- Once individuals have been screened and identified as being at risk of vulnerability, assessment tools are designed to gain a deeper understanding of consumer vulnerability, providing an in-depth evaluation of various factors contributing to vulnerability. For instance, in the financial field, questionnaires might be used to identify consumers with financial vulnerabilities based on factors like income levels (see Financial Conduct Authority, 2014).
- Measurement tools are designed to quantify specific aspects related to consumer vulnerability, allowing for the assignment of numerical values or scores to measure the extent within a population. See, for instance, the Genworth Index of consumer financial vulnerability (see below Genworth, 2013).

### 3.4.2 The applicability of current tools in related sectors to measuring consumer vulnerability in the legal sector

This sub-section considers the potential applicability of the previously described tools in measuring consumer vulnerability within the legal sector. It begins by summarising the key features of the tools and their administration in Tables 9 to 11 below.

*Table 8 - Tools for screening, assessing, and/or measuring vulnerability in the criminal justice sector*

Tool/index	Type of tool	Method of data collection	Sampling method	Has the tool been used to determine prevalence and/or monitor trends?	Is the tool applicable to measuring consumer vulnerability in the legal sector?
Adult Attention Deficit Hyperactivity Disorder Self-Report Scale screen	Screening tool	Self-completion questionnaire	Purposive or non-random	Unknown	Partially – Screening for specific vulnerabilities is not viable, however the method of data collection might be worthy of consideration (discussed below)



Ammons Quick Test	Screening tool	The test is administered by a trained psychologist or healthcare professional. It involves structured tasks and questions designed to evaluate various aspects of cognitive function	Purposive or non-random	Unknown	Partially – Screening for specific vulnerabilities is not viable, however the method of data collection might be worthy of consideration (discussed below)
Brief Jail Mental Health Screen	Screening tool	Self-completion questionnaire	Purposive or non-random	Unknown	Partially - Screening for specific vulnerabilities is not viable, however the method of data collection might be worthy of consideration (discussed below)
Brief Psychiatric Rating Scale (BPRS) and FTPA (Frequency, Intensity, and Burden of Side Effects Rating Scale)	Screening tool	The BPRS and FTPA are administered by trained clinicians through structured or semi-structured interviews	Purposive or non-random	Unknown	Partially - Screening for specific vulnerabilities is not viable, however the method of data collection might be worthy of consideration (discussed below)
Eysenck Personality Questionnaire	Screening tool	Self-completion questionnaire completed by respondents	Purposive or non-random	Unknown	Partially – Screening for specific vulnerabilities is not viable, however the method of data collection might be worthy of consideration (discussed below)

Learning Disability Screening Questionnaire	Screening tool	The questionnaire can be completed by the individual themselves (self-completion) or administered through face-to-face interviews	Purposive or non-random	Unknown	Partially – Screening for specific vulnerabilities is not viable, however the method of data collection might be worthy of consideration (discussed below)
MINI International Neuropsychiatric Interview (MINI)	Screening tool	The MINI is administered by trained clinicians though face-to-face, structured interviews	Purposive or non-random	Unknown	Partially - Screening for specific vulnerabilities is not viable, however the method of data collection might be worthy of consideration (discussed below)
Prison Screening Questionnaire	Screening tool	The questionnaire can be completed by the individual themselves (self-completion) or administered through paper, electronic forms, or face-to-face interviews	Purposive or non-random	Unknown	Partially – Screening for specific vulnerabilities is not viable, however the method of data collection might be worthy of consideration (discussed below)
Ritvo Autism Asperger Diagnostic Scale-Revised (RAADS-R)	Screening tool	Self-completion, structured questionnaire	Purposive or non-random	Unknown	Partially - Screening for specific vulnerabilities is not viable, however the method of data collection might be worthy of consideration (discussed below)

Structured Clinical Interview for DSM-IV Axis II borderline personality disorder scale (SCID-II)	Screening tool	The SCID-II is administered by trained clinicians through face-to-face, structured interviews	Purposive or non-random	Unknown	Partially - Screening for specific vulnerabilities is not viable, however the method of data collection might be worthy of consideration (discussed below)
The Lowenstein Objective/Projective Thematic Technique	Screening tool	Free-form responses from participants	Non-probability	Unknown	Partially - Screening for specific vulnerabilities is not viable, however the method of data collection might be worthy of consideration (discussed below)
The Rorschach Test	Screening tool	Self-completion questionnaire completed by respondents	Purposive or non-random	Unknown	Partially – Screening for specific vulnerabilities is not viable, however the method of data collection might be worthy of consideration (discussed below)
Vulnerability Assessment Framework (VAF)	Screening tool	Observation: police officers and staff engage in interactions with individuals and record information relating to individuals' vulnerability	Purposive or non-random	Unknown	Partially – legal professionals could engage in interactions with individuals and record information relating to individuals' vulnerability
Wechsler Adult Intelligence Scale-	Screening tool	A trained psychologist administers the test,	Purposive or non-random	Unknown	Partially – Screening for specific vulnerabilities is

Fourth Edition (WAIS-IV)		which involves structured tasks and questions that evaluate various cognitive domains			not viable, however the method of data collection might be worthy of consideration (discussed below)
Wechsler Individual Achievement Test-Second Edition (WIAT-II)	Screening tool	A trained psychologist administers the test, which involves structured tasks and questions that evaluate an individual's performance in academic subjects	Purposive or non-random	Unknown	Partially - Screening for specific vulnerabilities is not viable, however the method of data collection might be worthy of consideration (discussed below)

Table 9 - Tools for screening, assessing, and/or measuring vulnerability in the financial sector

Tool/index	Type of tool	Method of data collection	Sampling method	Has the tool been used to determine prevalence and/or monitor trends?	Is the tool applicable to measuring consumer vulnerability in the legal sector?
Debt and Mental Health Evidence Form (DMHEF)	Assessment tool	Semi-structured interviews carried out via telephone and in-person	Purposive or non-random	Unknown	Partially – a legal sector tool could draw on some questions from this tool and on the methods of data collection and sampling (discussed below)
Financial Lives Survey	Measurement tool	Survey based on a structured questionnaire completed through phone, online, or in-person interviews	Stratified random probability	Yes	Partially – a legal sector tool could draw on some questions from this tool and on the

					methods of data collection and sampling (discussed below)
Financial Vulnerability Index (FVI)	Measurement tool	Secondary data from Lowell, the Financial Lives Survey, and the Office for National Statistics	N/A	Yes	Partially – the Index provides relative financial vulnerability levels that can be used for comparison across geography and time. A legal sector tool could draw on some questions from this tool and on the methods of data collection and sampling (discussed below)
Genworth Index of consumer financial vulnerability	Measurement tool	Survey based on a self-completion questionnaire	Stratified random probability	Unknown	Partially – a legal sector tool could draw on some questions from this tool and on the methods of data collection and sampling (discussed below)

Table 10 - Tools for screening, assessing, and/or measuring vulnerability in the gambling sector

Tool/index	Type of tool	Method of data collection	Sampling method	Has the tool been used to determine prevalence and/or monitor trends?	Is the tool applicable to measuring consumer vulnerability in the legal sector?
Diagnostic and Statistical Manual of Mental	Measurement tool	Based on measures coming from the combined HSE, SHeS, and WPGS.	Stratified random probability	Yes	Partially – a legal sector tool could draw on some questions from this tool and on the methods of data

Disorders (DSM-IV)		The HSE and SHeS are nationally representative surveys conducted by phone, online, and face-to-face interviews. The WPGS uses face-to-face interviews in the homes of respondents.			collection and sampling (discussed below)
Problem Gambling Severity Index (PGSI)	Measurement tool	Based on measures coming from the combined HSE, SHeS, and WPGS. The HSE and SHeS are nationally representative surveys conducted by phone, online, and face-to-face interviews. The WPGS uses face-to-face interviews in the homes of respondents.	Stratified random probability	Yes	Partially – a legal sector tool could draw on some questions from this tool and on the methods of data collection and sampling (discussed below)
The short-form Problem Gambling Severity Index (PGSI mini-screen)	Measurement tool	Based on measures coming from the combined HSE, SHeS, and WPGS. The HSE and SHeS are nationally representative surveys conducted by phone, online, and face-to-face interviews. The WPGS uses face-to-face	Stratified random probability	Yes	Partially – a legal sector tool could draw on some questions from this tool and on the methods of data collection and sampling (discussed below)

interviews in  
the homes of  
respondents.

The information presented in this sub-section, and summarised in Table 8 to Table 10 above, provides a basis for evaluating the applicability of the analysed tools in measuring consumer vulnerability within the legal services sector. Several key considerations arise from this analysis:

- The majority of tools employed in criminal justice are screening tools tailored for assessing competence to plead guilty in criminal court, making the tools per se not directly applicable to the current study. However, it is interesting to note in Table 9 the methods by which they were administered to individuals:
  - The main methods used self-completion questionnaires and structured or semi-structured interviews administered by professionals to individuals. All these merit consideration in the design of a measurement tool in the legal sector. In particular, self-completion questionnaires offer individuals an alternative means of providing information about their vulnerability, as opposed to verbal communication given the often complex needs, which may involve communication challenges, associated with vulnerability (Burton, 2018; Chartered Legal Executive Lawyers, 2018; Espinoza et al., 2015; Financial Conduct Authority, 2015; Wright & Bertrand, 2017; O'Mahony, 2012, The Law Society, 2022).
  - On the other hand, the Vulnerability Assessment Framework (VAF) holds more significance for this study's purposes. This tool is specifically designed to identify indicators of vulnerability in individuals who engage with police officers and staff. One distinctive aspect of the Vulnerability Assessment Framework (VAF) is its reliance on questions posed by the police to themselves. This places a significant weight on the judgment and capability of individual police officers to autonomously evaluate the vulnerability of the individuals they encounter. The absence of direct questions does risk institutional and cultural presumptions impacting on assessments of vulnerability. However, it could also be seen as a strategy to prevent unintentional trauma for those being interviewed.
  - It is not clear where answers to those questions are logged, and how they are used. As a result, it is unclear whether and how this tool contributes to generating a measurement of vulnerability within the population in question. Nonetheless, this framework could be relevant to the measurement of consumer vulnerability within the legal sector. In fact, it highlights a structured approach for identifying signs of vulnerability among individuals and risk factors for vulnerability. Moreover, the SRA's current interest is in the development of a tool to measure and track vulnerability within the consumer population. However, the implementation of a tool may also present the opportunity for individual legal professionals to identify vulnerability in their client at an early stage and meet their regulatory duties to tailor their services accordingly.
- The majority of tools employed in the financial sector are measurement tools but are varied in their sampling and data collection approaches.
  - The Debt and Mental Health Evidence Form (DMHEF) is employed to recognise and evaluate the influence of mental health conditions on a person's capacity to handle debt. While it is not a direct measurement tool for

vulnerability, the DMHEF offers relevance to the measurement of consumer vulnerability within the legal sector. This pertinence arises from its shared characteristics with the VAF, as it presents a structured method for identifying indications of vulnerability among individuals, including their treatment needs and potential crises. Similarly, the Financial Conduct Authority (2021a) and the Office for Water Services (2016) have identified common triggers that could help practitioners to identify a state of vulnerability. While these are not direct measures of consumer vulnerability, they serve as valuable indicators that can help identify vulnerability also among consumers of legal services.

- The Genworth Index of consumer financial vulnerability offers a structured framework, data collection methods, and metrics to comprehend and measure financial vulnerability. By applying similar data collection and measurement approaches to the legal services sector, there is potential to quantify the vulnerability of individuals confronting legal challenges. It is important to note, however, that the Genworth Index relies on a relatively modest sample size of 1,000 individuals, which may not capture the precise extent of financial vulnerability in the assessed country. Nevertheless, if the SRA were to adopt a similar measure, it would offer insights into representative samples of individuals experiencing vulnerability and understanding the prevalence of vulnerability of those individuals.
- The Financial Lives Survey is conducted by the FCA, which, like the SRA, serves as the regulatory authority in the respective sector. The Financial Lives Survey measures the prevalence of risk factors (e.g. age, employment, disability) associated with financial vulnerability and serves as a tool for monitoring trends in financial vulnerability over time. The survey uses a questionnaire, applied to a stratified random sample, to gather relevant information about individuals' financial situations and challenges. A similar method of data collection and sampling could be applied to measure legal vulnerability.
- The majority of tools employed in the financial sector are measurement tools, but are again varied in their sampling and data collection approaches.
  - The Problem Gambling Severity Index (PGSI), the Diagnostic and Statistical Manual of Mental Disorders (DSM-IV), and the short-form Problem Gambling Severity Index (PGSI mini-screen) are constructed using data from the combined health surveys of England (HSE), Scotland (SHeS), and the Welsh Problem Gambling Survey in Wales (WPGS). In this process, the Gambling Commission commissions the NHS in England and Scotland to measure 'problem gambling' in their respective populations, while it directly collects these measures in Wales. This approach offers an interesting model for the SRA to consider. In addition, much like the Financial Lives Survey, the three surveys mentioned above employ 'phone, online, and face-to-face interviews to gather pertinent information about individuals' gambling habits and challenges. This experience can serve as a blueprint for developing appropriate data collection tools for assessing legal vulnerability. Furthermore, it is worth noting that the PGSI has been used to monitor the prevalence of problem gambling and track trends over time, demonstrating its potential for assessing and responding to evolving legal vulnerability concerns.



### 3.4.3 Problems and challenges with measuring vulnerability

This review has reported on various indexes and measurement methods for assessing consumer vulnerability. However, measuring consumer vulnerability presents several challenges and complexities, including technical, ethical, and operational issues. Some of the key problems and challenges associated with measuring consumer vulnerability include:

- **Defining vulnerability:** defining and operationalising vulnerability can be challenging (Brennan et al., 2017; Enang et al., 2019). Vulnerability can encompass various dimensions, such as economic, social, and health-related factors, making it difficult to create a standardised definition that fits all contexts and to develop universally applicable metrics.
- **Intersecting factors:** vulnerability is influenced by various factors, such as income, education, health, and social support (see Legal Services Board, 2022). There is a broad agreement that factors associated with vulnerability usually present in a cluster (see sub-section 3.5.3). Isolating the impact of one factor from others can be complex.
- **Dynamic nature:** vulnerability is not static; it can change over time (British Standards Institution, 2022; George, Graham, Lennard, & Scribbins, 2015). Measuring vulnerability at a single point in time may not capture its dynamic nature.
- **Cultural and contextual differences:** vulnerability is influenced by cultural and contextual factors (Chartered Legal Executive Lawyers, 2018; Legal Services Consumer Panel, 2014; Solicitors Regulation Authority, 2016a). What is considered vulnerable in one cultural context may not apply in another, making cross-cultural comparisons challenging.
- **Measurement bias:** there can be measurement bias in self-reported data, where individuals may underreport or overreport their vulnerability due to social desirability or other biases. A survey conducted with 5,001 adults by the Money Advice Trust (2022) explored consumers' experiences of disclosure. It revealed that only a minority of people with mental health problems and financial difficulties disclose their vulnerability. This is because 28% believe that disclosure will make no difference, 18% are embarrassed to disclose, and 12% think that firms will not believe their disclosure. Research shows that in legal services vulnerability is often hidden for numerous reasons (see sub-section 3.5.4).
- **Self-perception and stigmatisation:** labelling individuals as 'vulnerable' may affect their self-perception and identity. They may internalise the label and perceive themselves as less capable or empowered, potentially undermining their self-esteem and confidence, eventually increasing vulnerability. The label 'vulnerable' can carry a stigma in society. It may lead to stereotyping, discrimination, or social exclusion, as others may perceive individuals labelled as such as weak, dependent, or incapable (see sub-section 3.2.6).

Furthermore, there are a number of issues that need to be considered when interpreting the results produced by the tools and indexes for measuring consumer vulnerability, such as the problem gambling estimates produced by both the PGSI and the DMV-IV. First, the prevalence rates fail to capture a number of important dimensions of harm, including those experienced by others than gamblers themselves, meaning they are potentially underestimating the scale of the problem.

Additionally, terms like 'problem gambler' and 'at-risk' represent an individualising concept, while there needs to be broader recognition of the need for a more holistic approach to addressing the issue of gambling-related harm. For this, the Gambling Commission (2021)

recommends a shift to terminology such as ‘those harmed by gambling’. This change in language would reduce the stigma associated with gambling-related problems, and that the consequences of gambling extend beyond the individual who gambles. A similar issue arises with terminologies like ‘vulnerable consumer’ (as discussed above).

Likewise, the Financial Vulnerability Index (Braga, et al., 2021) faces similar challenges. Although it consolidates data from various sources, all these sources predominantly rely on quantitative data which may result in the omission of critical dimensions of financial vulnerability. For instance, the index does not account for factors such as the emotional and psychological impact of financial stress, which can be significant in assessing vulnerability. In addition, by labelling communities as more financially vulnerable, the index potentially exacerbates the challenges those communities face. This labelling may inadvertently reinforce stereotypes, stigmatise individuals within such communities, or even lead to the allocation of resources that may not fully address their unique circumstances. Thus, there is a delicate balance between raising awareness about vulnerability and avoiding unintended consequences that may further marginalise vulnerable groups.

### **Mitigating the problems with tools and indexes**

There is a dearth of evidence regarding how the problems and challenges with measuring vulnerability identified in the sub-section immediately above are addressed by regulatory and statutory bodies. However, in an effort to mitigate the potential stigmatisation associated with the term ‘vulnerable’, regulatory and statutory bodies, particularly within the legal services sector, have recognised the importance of adopting a more person-centred and strengths-based approach (British Standards Institution, 2022; Citizens Advice, 2014; Legal Services Board, 2021; Legal Services Consumer Panel, 2014; Financial Conduct Authority, 2015; National Audit Office, 2017; Office for Water Services, 2016; The Law Society, 2022).

Rather than categorising individuals themselves as ‘vulnerable’, this approach places a strong emphasis on comprehending the unique needs, circumstances, and challenges of each individual. It acknowledges that vulnerability can be a situational and dynamic condition that evolves over time. Consequently, the approach underscores the significance of tailoring support and interventions to align with the specific and evolving situations of individuals. This issue will be further analysed below where regulatory bodies’ guidance on identifying and responding to consumer vulnerability in the legal sector is analysed.

It is worth noting that the existing tools for screening, assessing, and measuring vulnerability often overlook the fundamental issue: vulnerability might arise from the way service providers have structured their systems around a narrow ideal of ‘perfect’ or ‘ideal’ customers. As previously mentioned, there is a perspective known as ‘universal vulnerability’, which views the concept of vulnerability as a broader characterisation that inherently encompasses and perpetuates discrimination, social control, as well as structural and social inequalities (as discussed by Brown, 2011 & 2017, and Fineman, 2014 & 2018).

This perspective acknowledges that vulnerabilities are an inherent part of the human experience, and everyone, regardless of their background or circumstances, may encounter vulnerabilities at various points in their lives. Consequently, these authors shift the responsibility, asserting that it is the duty of the state or service provider to ensure that their offerings are fit for purpose, accessible, and beneficial for everyone, regardless of their situation or ‘vulnerability’ or ‘need’.

Contrastingly, the tools in use focus on identifying individuals and their specific vulnerabilities. While this approach might be pragmatic in promptly identifying and mitigating issues, it is crucial to emphasise that the responsibility for generating vulnerability may be more aptly attributed to the service providers and the broader socio-cultural context in which

they operate. This means that significant factors may remain unexplored and, consequently, excluded from the definition and evaluation of vulnerability.

While this section has provided insight into the current tools used in the criminal justice, financial, and gambling sectors for screening, assessment, and measurement of vulnerability, it will now move on to explore the unique nature of consumer vulnerability in the legal sector, focusing on its specific characteristics.

### 3.5 The nature of consumer vulnerability in the legal services sector

Consumer vulnerability within the legal services field shares certain characteristics with vulnerability in other sectors, but it also retains distinctive features. The mere necessity for legal services and engagement with the legal system inherently elevates the risk of vulnerability (Scottish Legal Complaints Commission Consumer Panel, 2017; SRA, 2016a).

Moreover, there are specific risk factors that are particularly relevant to individuals with legal needs. Navigating the intricate landscape of legal services can be a formidable challenge, and an individual's level of experience and capacity within this context can further exacerbate their vulnerability. There is also a growing body of evidence highlighting that vulnerability in the legal services field is often hidden (Bradley, 2009; Branson & Gomersall, 2023; Cross, 2020; Epstein, 2016; Howard, 2021; Jacobson, 2008; Jacobson & Talbot, 2009; Sanders et al., 1997; Wigzell, Kirby, & Jacobson, 2015), and that clients regularly present with multiple vulnerabilities, often referred to as clusters (Bar Standards Board, 2018a; Scottish Legal Complaints Commission Consumer Panel, 2017; Smith et al., 2013). This section will examine each of these aspects in detail.

#### 3.5.1 Situational vulnerability in the legal services sector

It is widely recognised that the need for legal services and involvement in the legal system are risk factors for vulnerability, making the legal services context particularly susceptible to the creation and exacerbation of vulnerability: 'The very fact that a client needs legal advice puts them in a position of vulnerability' (Scottish Legal Complaints Commission Consumer Panel, 2017: 14). Based on research conducted with 115 family legal firms, the Solicitors Regulation Authority (2016c) revealed that many of those firms believe that a substantial portion of their clients are vulnerable precisely because they require legal assistance due to situational vulnerability.

In general terms, the lack of knowledge of the legal process and of legal service providers contributes to vulnerability (Scopelliti et al., 2023b). This risk can be further amplified by the legal process and its outcomes. In fact, vulnerability impacts on individuals' ability to instruct/engage and participate effectively in all stages of legal processes, like the criminal process as demonstrated by Pierpoint and colleagues (Iredale, Parow, & Pierpoint, 2011; Iredale, Pierpoint, & Parow, 2010; Pierpoint et al., 2019; Pierpoint, 2020). Additionally, the structure and dynamics of the legal services market contribute to this vulnerability.

Research conducted by the Legal Services Board (2022) identifies three key factors that can significantly influence consumer vulnerability:

- Facing the uncertainties associated with legal proceedings.
- Apprehensions regarding potential judgments from legal professionals.
- The implicit power imbalance that exists between professionals and consumers.

Indeed, the Legal Services Consumer Panel (2014) reports that 44% of dissatisfied consumers of legal services choose not to take any action. In comparison, this percentage is higher than the 27% observed in the broader services industry. This hesitance to act is often attributed to consumers finding the legal process confusing and intimidating, with a prevailing perception that the system may be biased against them, or that the legal firm will be unresponsive to their concerns. Additionally, individuals may be concerned that lodging a complaint could work to their disadvantage by causing delays in resolving their legal matters. There is also a general uncertainty about challenging a lawyer through a formal or official complaint process, which is perceived as akin to attempting to outmanoeuvre legal professionals in their own domain. These findings are consistent with the research conducted by the Solicitors Regulation Authority in the realm of family law (2016c).

Furthermore, findings from a study conducted by the Legal Services Board (2017), focusing on individuals with dementia and their caregivers, emphasise that engaging in legal services can heighten vulnerability.

There is also widespread acknowledgment that the CJS inherently amplifies consumers' vulnerability for various reasons:

- The CJS often lacks sensitivity to consumers' needs, resulting in an environment that is neither safe nor user-friendly (Howard, Phipps, Clarbou, & Rayner, 2015). As stressed by Sinclair and Plessis (n.d.), particularly in cases of domestic abuse, courts frequently struggle to comprehend the complexity of the issues involved, leading to a secondary form of victimisation.
- The CJS tends to depersonalise legal matters, potentially making individuals feel disconnected from the process (Wright & Bertrand, 2017).
- Numerous inherent aspects of the court process can add to an individual's vulnerability and hinder their ability to participate further (Jacobson, 2020).
- Before and upon conviction, the CJS can curtail an individual's liberty or their access to resources necessary to their well-being, further affecting their vulnerability (Helm, 2017).
- Extensive research has established a connection between social class and crime, revealing that individuals from lower socioeconomic backgrounds are more likely to face arrest, conviction, and incarceration for criminal offences (Miller, 2015). Scholars widely assert that the demographic profile of the 'typical' defendant significantly overlaps with that of the most vulnerable groups in society (see Helm, 2017; McEwan, 2013; Peay & Player, 2018).
- Numerous scholars emphasise that various factors, including ethnicity (Black, Asian and minority ethnic), language (non-English speakers), and immigrant status (undocumented), can heighten the vulnerability of litigants when navigating the CJS (Beger and Hein, 2001; Espinoza et al., 2015; Liebmann, 2012).

### **3.5.2 Additional risk factors in the legal services sector**

While it is arguable that anyone experiencing a legal need has an increased vulnerability 'risk profile', there are undoubtedly those who have further added risk factors. The literature reviewed suggests that poverty/low income, poor mental health, disabilities, low literacy, digital exclusion, and domestic abuse increase risk of vulnerability in legal services (Legal Services Board, 2022).

The Legal Services Board (2022) identifies 'drivers' or 'risk factors' for vulnerability that are particularly relevant to people with a legal need. These encompass:

- Significant or adverse life events, including sudden changes in circumstances.
- Lack of experience or familiarity with legal processes.
- Limited capability and confidence, especially when dealing with intricate and unfamiliar issues and systems.
- The complexity of the legal services market, making it challenging to navigate.
- Power imbalances between service providers and consumers (as also highlighted by the Bar Standards Board, 2018a).
- The potential impact on mental health, including the stress associated with life events, the process of navigating the legal system, and managing the costs of using legal services.

There are further risk factors specifically affecting people with legal needs. For instance, the Bar Standards Board (2018a & 2018b) developed a guidance document with an immigration focus and identified a range of individual vulnerability risk factors including:

- Being a victim of modern day slavery/trafficking (both those who have escaped and those who are currently being trafficked).
- Being an offender or ex-offender.
- Being in immigration detention.
- Fear of children being taken out of school.
- Fear of sudden deportation.
- Gender-based persecution/gender identity-based persecution.
- Persecution on the grounds of sexuality.
- The underlying reasons for seeking asylum.
- Being a victim of domestic abuse.

The Law Society (2022) produced a guide for solicitors to identify and meet the needs of clients who may have difficulty using legal services. It identified additional risk factors including:

- Acquired brain injury, caused for example by a stroke or head injury.
- Behavioural disorder, such as attention deficit hyperactivity disorder.
- Psychological or emotional factors, such as stress.
- Experience of domestic violence or sexual abuse.
- Communication difficulties, including no or limited speech, English as a foreign language, limited ability to read or write, trouble with reading and writing accuracy and comprehension, and illiteracy.
- Lack of a social network.

- Poor financial literacy.
- Sensory impairment.

Additional risk factors identified in the literature for consumer vulnerability in the legal services field are:

- Running away from situations of violence/abuse (Burton, 2018; Kulig & Butler, 2019).
- Release from prison (Chartered Legal Executive Lawyers, 2018; Legal Services Consumer Panel (2014).
- Threat of harm (SRA, 2016b).
- Threat of deportation (SRA, 2016b).

Examining these risk factors related to legal consumer vulnerability is of interest for two reasons. Firstly, although the authors of the guides cited in this section did not intend for their lists of risk factors to be exhaustive, comparing their selection with the comprehensive overview of risk factors in the broader literature on consumer vulnerability, as shown in Table 4 to Table 6, is particularly noteworthy. The risk factors identified as being as relevant in the legal services sector are weighted towards individual characteristics and situational circumstances rather structural factors such as financial vulnerability (see Graham, 2023), as well as external factors (e.g. changing in legislation, economic conditions, or events like pandemics), highlighted has having a potential influence on consumer vulnerability in other sources (British Standards Institution, 2022; Cartwright, 2007; Financial Conduct Authority, 2014, 2015 & 2021b; George et al., 2015; Hill & Kozup, 2007; Legal Services Board, 2021; Office for Gas and Electricity Market (2019); Office for Water Services, 2016; Pavia & Mason, 2014).

Secondly, an examination of the risk factors identified as being as relevant in the legal services sector further demonstrates the limitations of the risk factor approach in terms of its subjective nature and the potential for under-identifying vulnerability/For instance, while there is mention of the 'fear of children being taken out of school', there is no mention of the fear of children being taken into care. Additionally, language issues are not thoroughly discussed. Moreover, while 'English as a second language' and a lack of familiarity with legal language are mentioned, other forms of language inaccessibility, such as speech and language difficulties and illiteracy, are not included.

### **3.5.3 The clustering of risk characteristics in the legal services sector**

Another trait of consumer vulnerability in the legal services field is that risk factors have a tendency to co-occur or cluster together (Bar Standards Board, 2018a; Scottish Legal Complaints Commission Consumer Panel, 2017; Smith et al., 2013). For example, individuals seeking refugee status may be more likely to have language and interpretation problems (Scottish Legal Complaints Commission Consumer Panel, 2017). Lee and Backes (2018) report that victims of domestic violence have the highest rates of reporting civil legal issues related to health care, municipal services, employment, and housing. Also, based on research conducted with 94 low-income participants who had welfare rights legal problems, Sigafoos and Organ (2021) found that 55% of these identified as disabled. In addition, Hepner, Woodward & Stewart (2014) report that people with learning disabilities are over-represented in the CJS (see also JUSTICE, 2017), while Ellison (2015) that adults with pre-existing psycho-social disability are disproportionately at risk of victimisation. Radke & Douglas (2020) report that children with child protection history are disproportionately

represented in the criminal justice system, especially if they are from minority groups.

### 3.5.4 Hidden vulnerability in the legal services sector

There is broad agreement in the literature that consumer vulnerability in the legal services field is usually hidden or not recognised by legal providers. Hiding vulnerability can be a deliberate choice made by individuals and their families (Cross, 2020; Howard, 2021; McEwan, 2013). Nonetheless, Fairclough (2016) and Brown et al. (2022) found that the identification of vulnerable individuals within the CJS by those working within it is deficient, partly owing to a lack of systematic screening and training. This supports evidence gathered by Branson & Gomersall (2023), Epstein (2016), Jacobson (2008), Jacobson & Talbot (2009), Lord Bradley (2009), Sanders et al. (1997), and Wigzell, Kirby, & Jacobson (2015). McEwan (2013) claims that Youth Offender Teams lack mechanisms to assess the needs of young people appearing in court for the first time and, according to inspectors, in consequence many vulnerable defendants in youth courts are not identified at all or, at best, only once the trial has begun. Mergaerts (2022: 11) found that, in the case of defence lawyers in Belgium, vulnerability in the criminal proceeding is not identified through a screening process but by their 'gut feeling' and intuition, as they are not sufficiently trained to recognise suspects' vulnerability.

In addition, research has demonstrated that even when vulnerability is identified, it is not always adequately acted upon and dealt with (Fatemi-Dehaghani, 2021; Farrugia & Gabbert, 2020; Pierpoint, 2020). For this, the SRA (2016c) found that survivors of domestic abuse are often the least confident when seeking legal advice, as they do not trust the legal professional to understand how abusive and controlling relationships can affect all aspects of a relationship dynamic and may have an impact on their case as it progressed. Furthermore, research commissioned by the SRA (YouGov, 2019: 8) found that 'people with less visible impairments, such as mental health and learning or social disabilities face a different and more challenging experience in accessing information and services to those with more visible impairments.' A recommendation was that firms could consider 'proactively ask all customers, at initial contact and appropriate intervals, if they need any reasonable adjustments.' (YouGov, 2019: 12)

### 3.5.5 The impact of vulnerability on consumers of legal services

The negative consequences consumer vulnerability are profound, not only in the legal services sector. Various regulators have identified these adverse outcomes, noting several common themes. For instance, the National Audit Office (2017) report on consumer vulnerability across four regulated industries (water, energy, telecommunications, and financial services) highlights that vulnerability can manifest in three broad ways:

- **Exclusion:** Vulnerable individuals, such as those with disabilities, the elderly, or those with low incomes, may face difficulties accessing or using essential services like energy or banking.
- **Financial difficulty:** Consumers at risk of vulnerability often end up paying significantly more for services compared with other users due to their exclusion from or inability to access the best deals. Those with low incomes or unmanageable debt may struggle to afford essential services.
- **Poor user experience:** Services may often fail to meet the complex needs of consumers in vulnerable circumstances. For example, some consumers are particularly susceptible to poor debt collection practices.

As per the research conducted by the Legal Services Board (2022) involving 30 individuals with legal needs, consumer vulnerability, whether individual, situational, or market-related, has various discernible impacts, including:

- **Emotional impacts:** Vulnerable individuals often experience heightened levels of stress, anxiety, and difficulties in making decisions when dealing with their legal issues.
- **Lack of agency or control:** They may also face challenges in asserting agency or control over their legal matters, potentially feeling powerless or unable to effectively address their concerns.
- **Exclusion from the market:** Some individuals find themselves excluded from the legal services market due to an inability to afford legal fees necessary to assert their rights. Additionally, negative experiences with legal professionals may deter them from seeking legal assistance for future issues.
- **Financial impacts:** Consumers at risk of vulnerability may encounter financial burdens, such as having to take out loans to cover legal fees or receiving lower settlements in divorce or injury cases, which can have long-lasting financial consequences.

While there are commonalities in the impacts of neglecting consumer vulnerability across sectors, the nuances differ based on the nature of the services provided and the specific challenges faced by vulnerable individuals in each sector. Based on the evidence above:

- In all sectors, exclusion is a common theme where vulnerable individuals face barriers to accessing services.
- Financial difficulties are prevalent, whether it is paying more for services or encountering financial burdens associated with legal issues.
- Emotional impacts are more specific to the legal sector, highlighting the unique stress and anxiety that legal problems can induce.
- Lack of agency or control is also more pronounced in the legal sector, reflecting challenges in navigating complex legal matters.

While the impacts of neglecting consumer vulnerability share common themes across sectors, the legal sector presents unique challenges, such as the significant emotional toll and the complexity of navigating legal matters (see National Audit Office, 2017; Legal Services Board, 2022). A vulnerable consumer could conceivably also be at greater risk of an inadequate defence or representation in legal matters or more susceptible to exploitation by unethical legal practitioners.

Acknowledging the unique challenges and characteristics of consumer vulnerability within the legal services sector is crucial in the development of a measurement tool designed to measure consumer vulnerability in this specific context.

Based on these distinctive features of consumer vulnerability in the legal sector, the following section will delve into the scale and trajectory of consumer vulnerability within this domain.



### 3.6 The scale and trajectory of consumer vulnerability in the legal services sector

Precise statistics regarding the extent and trajectory of consumer vulnerability within the legal sector are currently unavailable. Nonetheless, various studies have shed light on specific prevalent characteristics. It is possible that other equally prevalent characteristics exist but have not been quantified or measured. The findings from the relevant studies are summarised in Table 11 below.

Table 11 - The scale and trajectory of consumer vulnerability in the legal sector

Characteristic	Area of law	Study	Prevalence/general statistic	Data publicly available	Frequency of publication
Learning disability	Criminal law	Brown et al. (2022)	The 2014 Adult Psychiatric Morbidity Survey (APMS) found a national 43.4% lifetime prevalence and 15.7% point prevalence of anxiety and depression. In addition, on average, 100 individuals are found unfit to plead in England and Wales each year, although this number is probably an underestimate due to the absence of measurement methods.	<a href="https://digital.nhs.uk/data-and-information/publications/statistical/adult-psychiatric-morbidity-survey">https://digital.nhs.uk/data-and-information/publications/statistical/adult-psychiatric-morbidity-survey</a>	Infrequent
Learning disability	General	Legal Services Consumer Panel (2014)	People with learning disabilities are statistically more likely to come into contact with lawyers than the general population because they are more likely to suffer harassment or	The study does not reference the data	N/A

			bullying or be victims of crime.		
Age Sex	General	Legal Services Board (2012)	4,017 individuals with legal needs were surveyed. It was found that those who claim to have had a legal need were more likely to be younger (18-34 years) and male.	<a href="https://legalservicesboard.org.uk/research/lsb-survey-data">https://legalservicesboard.org.uk/research/lsb-survey-data</a>	N/A
Learning disability; Mental health issue; Low literacy; Homelessness ; Loss of income; Threat of harm	General	SRA (2016c)	On the basis of 115 survey responses from family legal firms, the SRA found that the characteristics or factors most commonly identified by legal firms as likely to make someone vulnerable in the context of family law are: <ul style="list-style-type: none"> <li>• Learning disabilities (92%)</li> <li>• Mental health issues (89%)</li> <li>• Low literacy (88%)</li> <li>• Homelessness (80%)</li> <li>• Loss of income (78%)</li> <li>• Threat of harm (74%)</li> </ul>	See referenced report	N/A
Disability	General	Scottish Legal Complaints Commission	21% of those bringing complaints to The Scottish Legal	See referenced report	N/A

		Consumer Panel (2017)	Complaints Commission Consumer Panel have disabilities. <sup>1</sup>		
		Practical Law Business Crime and Investigations (2023)	Together with attention deficit hyperactivity disorder (ADHD), specific language difficulties may affect 15% of the population. These conditions represent the most common disability to be encountered in the criminal justice system.	Data available in the report but not referenced	N/A
Poverty; Homelessness ; Domestic abuse	General	Legal Services Board (2022)	Poverty plays a pivotal role in generating a significant portion of legal needs, particularly in areas such as housing, eligibility for benefits, debt, and employment-related matters. Additionally, homelessness and domestic abuse were identified as other primary catalysts for legal needs across various domains, encompassing housing, welfare, crime, debt, and child custody proceedings.	See referenced report	Infrequent

Age; Employment status; Education	General	Financial Conduct Authority (2021b)	Those over the age of 75 years, the unemployed, those who rent and those with no qualifications are the most likely to find themselves in the vulnerable category.	<a href="https://www.fca.org.uk/lives">https://www.fca.org.uk/lives</a>	N/A
Mental health issue	Criminal and civil law	Bradley Report (Bradley, 2009)	The combined number of adult and juvenile defendants with a serious mental illness being tried in court is estimated to be around 9,143 annually.	See referenced report	N/A
General – see The Police Act 1997 (Enhanced Criminal Record Certificates) (Protection of Vulnerable Adults) Regulations 2002	Criminal and civil law	Ministry of Justice (2022)	In 2022, a total of 8,125 requests for Registered Intermediaries were made by vulnerable people in England and Wales. This represents a 1.8% year-on- year increase from the corresponding period in 2021. Of all requests, 95.4% were successfully matched.	See referenced report	Annual
Immigration status Mental health issue Family issue Disability Ethnicity	General	Ministry of Justice (2023)	In 2017-2018, there were 109,179 legal help cases started in the areas of immigration, mental health, and family in England and Wales. Across	See referenced report	Annual

those areas,  
13% of clients  
were disabled,  
25% from ethnic  
minorities, and  
35% under the  
age of 18.

## Notes

1 There are arguments put forward about 'having/with disabilities' being disempowering. Many prefer 'disabled people' to recognise that people are affected by an ableist society (Disability Rights UK, n.d.)

Furthermore, while statistics specifically quantifying the proportion of consumers of legal services with risk factors for vulnerability are currently unavailable, data concerning specific risk factors for vulnerability can be found within the broader population and in related fields:

Table 12 - Vulnerability in the general population and related sectors

Characteristic	Study	Prevalence/general statistic	Data publicly available	Frequency of publication
General vulnerability	Financial Conduct Authority (2021b)	In the UK, 27.7 million adults (53% of all adults) have at least one characteristic of vulnerability.	<a href="https://www.fca.org.uk/financial-lives">https://www.fca.org.uk/financial-lives</a>	N/A
	Financial Conduct Authority (2021b)	The pandemic has increased the number of consumers at risk of vulnerability in the UK. There was an increase of more than three million people from the period before the pandemic of people displaying at least one characteristic of vulnerability.		
General vulnerability	Financial Conduct Authority (2021b)	Just under one in two (46%) UK adults display one or more characteristics associated with vulnerability.	<a href="https://www.fca.org.uk/financial-lives">https://www.fca.org.uk/financial-lives</a>	N/A
Mental health issue	Legal Services Consumer Panel (2014)	It is estimated that around one in four people in the UK will experience a mental health issue in the course of a year.	Data available in the report but not referenced	N/A
Disability	Office for National	Disability, both physical and cognitive, affects 13.9	See referenced report	N/A

	Statistics (2021)	million people (20.9%) in the UK.		
Learning disability Mental health issue	Financial Conduct Authority (2015)	In the UK, one and a half million people have some form of learning disability, one in four will experience at least one mental health disorder.	<a href="https://www.learningdisabilities.org.uk/learning-disabilities/help-information/learning-disability-statistics-">https://www.learningdisabilities.org.uk/learning-disabilities/help-information/learning-disability-statistics-</a>	N/A
Low income and in debt	National Audit Office (2017)	An estimated eight million people in the UK are over-indebted, meaning that their debt levels are so high relative to their income that they struggle to meet repayment obligations and cover basic living expenses.	See referenced report	N/A
Age	Centre for Aging Better (2023)	Over 10 million people in the UK are over the age of 65.	See referenced report	Yearly
General	National Audit Office (2017)	750,000 consumers seek help from Citizens Advice for issues with energy, water, telecommunications, or financial services each year.	See referenced report	N/A
Mental health issue	Hagell, (2002)	Offenders are three times more likely to have a mental health problem than their peers	See reference	N/A
Learning disability or difficulty	Bradley (2009)	20 to 30% of offenders are likely to have learning disabilities or difficulties	See reference	N/A
Communication difficulties	Bryan, Freer & Furlong (2007)	60% of offenders have communication difficulties	See reference	N/A

### 3.6.1 Macro-level and external risk factors

From a macro-level and external perspective, there are risk factors that influence the scope and direction of consumer vulnerability in the legal services sector. These overarching factors encompass a wide range of structural and systemic elements that can significantly shape the extent and development of consumer vulnerability within various sectors, including legal services. Some of these macro-level, external determinants include:

- **Economic conditions:** the overall economic environment, including factors like unemployment rates, inflation, and income inequality, can significantly impact consumer vulnerability. Economic downturns can lead to increased financial stress and legal issues, making individuals more vulnerable. Research conducted by the Legal Services Board (2022) found that poverty is a key driver of much legal need, especially around housing, benefits eligibility, debt, and employment issues.
- **Fiscal policy and legal aid:** government policies, including fiscal changes and legal aid budgets, influence consumers' affordability of legal services and affect the supply of such services. Fiscal policy adjustments like tax changes and benefit modifications impact disposable income, affecting the ability to afford legal services. Legal aid budgets influence the availability of legal aid providers for low-income individuals (Frontier Economics, 2023).
- **Legal system and legislation:** the structure of the legal system and its regulations can affect vulnerability. For instance, in England and Wales, there is a lack of symmetry in terms of access to special measures in the CJS between vulnerable defendants and vulnerable non-defendants (Fairclough, 2016; McEwan, 2013). This is despite research that shows offenders are three times more likely to have a mental health problem than their peers (Hagell, 2002), that 20 to 30% are likely to have learning disabilities or difficulties (Bradley, 2009) and that 60% have communication difficulties (Bryan, Freer & Furlong, 2007).
- **Education and awareness:** levels of legal literacy and awareness within a population can impact vulnerability. Adequate legal education and access to information about legal rights and resources can help individuals recognise legal matters and navigate legal challenges more effectively (Bryan, Freer, & Furlong, 2007; SRA, 2023a).
- **Demographics:** factors like age, race, gender, and disability can influence vulnerability. Certain demographic groups may face systemic disadvantages or unique legal challenges, leading to varying levels of vulnerability (Beger & Hein, 2001; Birkhead, 2016; Cross, 2020; Dery, 1997; Espinoza et al., 2015; Kulig & Butler, 2019).
- **Technological advancements:** the integration of technology into legal services can both reduce and exacerbate vulnerability. Access to online legal resources can empower individuals, while issues like digital exclusion can create barriers (Frontier Economics, 2023; Legal Services Board, 2022; Sako & Parnham, 2021).
- **Crisis events:** natural disasters, public health crises, and other emergencies can rapidly increase vulnerability by causing legal issues related to housing, healthcare, employment, and more (British Standards Institute, 2022).
- **Cultural and social norms:** societal attitudes and cultural norms can influence how individuals perceive and address legal issues. Stigmatisation or reluctance to seek legal help can contribute to vulnerability (McEwan, 2013).

It is for these reasons that Fairclough (2023) and Fineman (2018) have argued for the duty of the state to provide ‘assets’ to build resilience among vulnerable subjects. Those factors often interact in complex ways, and their influence on consumer vulnerability can evolve over time. Understanding these macro-level factors is essential for policymakers, legal professionals, and organisations aiming to address and reduce vulnerability in the legal services field.

### 3.6.2 Consumers’ needs

Based on the evidence reviewed, the needs of consumers at risk of vulnerability in the legal services sector can be categorised into several key areas. These needs are influenced by risk factors for vulnerability (see Table 4, Table 5, Table 6). Moreover, research conducted by the SRA (2023a) found that most consumers, not just those identified as being at risk of vulnerability, highly value providers who are approachable and communicate effectively throughout the process.

- **Communication:** effective communication is crucial, particularly for people with disabilities, language barriers, and those in immigration detention. Additionally, the research indicated that everyone is most concerned about the cost and effort involved in obtaining legal help. Legal service providers should have the ability to communicate clearly both verbally and in writing and accommodate diverse communication needs (BSB, 2018a; SRA, 2022a; The Law Society, 2022). Effective communication should ensure:
  - **Access to clear information:** consumers at risk of vulnerability require clear and easily accessible information about their legal rights and options. This is particularly important for individuals facing sudden deportation, fear of children being taken out of school, and those seeking asylum (BSB, 2018a). Clarity in information can help reduce vulnerability (Scottish Legal Complaints Commission Consumer Panel, 2017).
  - **Written information:** providing written information before and after face-to-face consultations can be beneficial, especially for individuals with cognitive impairments, such as people with dementia. To be of benefit the written communication needs to be tailored to the needs and vulnerabilities of the client. Clear, written documentation can help ensure that consumers at risk of vulnerability understand the legal process and their rights, and it can also help to remind them of their situation between meetings (Legal Services Board, 2017).
  - **Cost transparency:** consumers at risk of vulnerability may have limited financial resources. They need transparency regarding the cost of legal services to make informed decisions about seeking legal assistance. Cost transparency is also vital for those who have concerns about the cost of accessing legal advice (Bar Standards Board, 2018a, SRA, 2023a).
  - **Language accessibility:** For consumers with limited proficiency in the local language, communication difficulties, illiteracy, and learning difficulties, language accessibility is crucial. Legal service providers should be able to assess whether consumers have any needs or preferences for communicating, and to provide services in multiple languages or offer translation services to ensure effective communication (Legal Services Board, 2022; The Law Society, 2022). Language can also be a problem across cultural boundaries with various phrases/words having distinctive meanings in different cultural/ethnic contexts within the same country/city.



- **Trust and empathy:** vulnerable individuals often need legal service providers who are trustworthy, respectful, and empathetic. Building trust is essential, especially for those who have experienced trauma, such as victims of domestic abuse or modern-day slavery/trafficking (Scottish Legal Complaints Commission Consumer Panel, 2017).
- **Power imbalance mitigation:** vulnerable clients often experience a power imbalance when interacting with legal service providers (Bar Standards Board, 2018a; Scottish Legal Complaints Commission Consumer Panel, 2017). Efforts should be made to address and mitigate this imbalance to ensure that all clients are treated fairly and respectfully.
- **Geographical and situational accessibility:** geography and environmental factors can pose challenges for consumers at risk of vulnerability. Overcoming these barriers necessitates making legal services available in diverse locations, including remote areas, and offering various access methods. This approach is crucial for addressing issues related to accessibility (Bar Standards Board, 2018b; The Law Society, 2022).

These identified needs are essential for ensuring that consumers at risk of vulnerability receive fair and equitable access to legal services, regardless of their individual circumstances or risk factors. Regulatory bodies in related fields, such as the Financial Conduct Authority (2021b) and the Office for Water Services (2016), have developed guidance to respond to these needs. The issue requires further thinking but identifying and responding to consumer needs could be a first step towards establishing a universal changes approach (refer to the discussion in section 3.3). The following section will show that similar approaches exist in the legal services field to address the specific needs of consumers at risk of vulnerability effectively.

### 3.7 Identifying and responding to the needs of consumers at risk of vulnerability in the legal services sector

Legal service providers often interact with consumers during some of the most challenging periods in their lives, such as divorce, injury, or bereavement. Given the nature of their work, professionals in the legal sector should be especially sensitive to the needs of these individuals. Smith (2020) argues that a crucial step in this process is to accurately pinpoint and recognise the unique needs of consumers.

A recent literature review conducted for the United Kingdom Regulators' Network (BritainThinks, 2020) shows that two strategies can be employed to identify vulnerability: self-disclosure and proactive identification. Historically, companies have predominantly relied on self-disclosure strategies, typically implemented through self-completion questionnaires filled in by consumers. However, these strategies often fall short by excluding individuals who do not perceive themselves as vulnerable and failing to capture the multifaceted and evolving nature of vulnerability (refer to pages 16-17 for more details).

According to the UKRN (BritainThinks, 2020), in response to these limitations, companies have increasingly explored various approaches to enhance traditional self-disclosure methods. These initiatives encompass providing training to frontline staff to facilitate more open-ended and flexible conversations with consumers and offering direct application support to individuals when completing self-disclosure forms. Additionally, they involve more comprehensive analysis of existing data and the integration of diverse datasets, sourced both from within the company and, in some instances, from other external companies or organisations.

The present evidence review finds that both regulatory and statutory bodies in the legal sector concur that certain vulnerabilities can be challenging to detect, and some of these vulnerabilities might remain concealed intentionally or inadvertently by the consumers themselves (Bar Standards Board, 2018b). While this review did not yield results from existing datasets specific to the legal sector, numerous regulatory and statutory bodies have issued guidance documents with a dual purpose: to facilitate the identification of consumer vulnerability within the legal sector through a proactive approach as outlined by UKRN (BritainThinks, 2020), and to address the needs of consumers at risk of vulnerability.

Guidance documents produced to identify vulnerability can be broadly classified into two primary categories: structural and individual arrangements. This section will first overview both types of guidance documents. Then, it will delve into the specific guidance produced by statutory and regulatory organisations to meet the needs of vulnerable consumers in the legal sector.

### **3.7.1 Structural arrangements for identifying vulnerability**

The first type includes guidance issued with the aim of helping regulatory bodies and service providers assess and enhance their structural approach to addressing vulnerability. For instance, the LSCP (2014: 29-35) has produced a guide for legal services regulators setting out the individual risk factors for vulnerable people when accessing and using legal services. This guidance extends to offer insights on how to identify the needs of consumers at risk of vulnerability and to discern whether there is a process in place to deal with vulnerability when it is discovered. It suggests that regulators ask the following questions during policy development:

- Are consumers at risk due to their individual characteristics?
- Have the consumer principles been applied?
- Has the impact of proposals on vulnerable consumers been considered, including through formal impact assessment where appropriate?
- Have policies been considered to ensure they do not create new vulnerabilities?
- Is there a framework in place to ensure these questions are addressed systematically when policy is being developed?
- When a decision is made, regulators should ask the question ‘What implications does that decision have for our vulnerable consumers?’
- Do regulators monitor and evaluate their strategy for recognising and responding to consumer vulnerability?
- Do rules and codes of conduct make clear how to recognise and treat vulnerable consumers?
- Are there incentives to treat vulnerable consumers fairly (for example by setting higher penalties where a vulnerable person is involved in cases of poor conduct)?
- Are staff within the regulator aware of how to recognise vulnerability so they are able to monitor effectively?
- Is recognising and dealing with vulnerability highlighted at the education and training stage?

- Is recognising and dealing with vulnerability incorporated into aspects like authorisation and supervision?
- Is supporting guidance and/or training on good practices available?
- Is there a process which regulators use to check that consumer vulnerability has been addressed by lawyers or law firms?
- Have staff been trained to recognise and respond to the needs of vulnerable consumers?
- Have staff been trained to recognise and respond when carers want to deal with a problem in place of the vulnerable individual?
- Are staff aware of legal requirements such as the Data Protection Act 1998 when processing and recording information about individuals, and are they able to comply with those requirements?
- Are websites and other consumer facing communications accessible?
- Are standard communications sent to consumers appropriate?
- Are feedback mechanisms in place to check whether the needs of vulnerable consumers are being met?
- Is there a process for assessing how effectively the needs of vulnerable consumers are addressed when providing services to the public?

Furthermore, the LSCP (2014) reiterates that practitioners may not be aware of consumer vulnerability or may not know how to address it. In addition to highlighting the importance of raising awareness through education and training, the LSCP recommends that practitioners have opportunities to encounter and work with different groups of people. Also, it stresses the importance of regulatory bodies offering a risk assessment tool to enable individuals or firms to address consumer vulnerability effectively.

Similarly, the Scottish Legal Complaints Commission Consumer Panel (2017: 21) provides a number of questions as checklists for those involved in the provision and regulation of legal services in Scotland. These include:

- Do you actively engage with vulnerable legal service users?
- What research have you carried out in relation to vulnerable clients?
- What training is available to your members in recognising, and adapting to the needs of, vulnerable clients?
- Is equality and diversity awareness embedded in your firm's culture?
- Do you offer a range of communication methods for your clients?

In this context, Chartered Legal Executive Lawyers (2018) emphasise the importance of legal firms considering the requirements of vulnerable clients. They claim that it is the responsibility of lawyers to ensure that their firms enable consumers at risk of vulnerability to access and use legal services effectively. To achieve this, they recommend implementing several measures, including:

- Rules that make it clear how to recognise and treat vulnerable consumers.
- Training staff to recognise and respond to the needs of vulnerable consumers.

- Standard communications sent to consumers need to be appropriate and altered to take account of various vulnerabilities.

This sub-section examined the guidance intended to assist regulatory bodies and service providers in evaluating and improving their structural approaches to identifying vulnerability. The next sub-section will shift its focus to guidance tailored specifically for law firms and practitioners, providing insights into the identification of consumer vulnerability within this context.

### 3.7.2 Identifying individual vulnerability

The second type of guidance documents are designed to assist practitioners in the sector to effectively identify consumer vulnerability. For instance, the Bar Standards Board (2018b) offers guidance on identifying the potential needs of vulnerable clients. This guidance includes highlighting signs to watch for, suggesting pertinent questions to ask, and recommending factors to consider when assessing consumers' requirements.

As a first step, it advises barristers to always ask solicitors if a previous assessment of vulnerability has already been conducted. It is important to note that risk factors are not necessarily indicative of vulnerability, as the presence of a disability, for instance, may not impact an individual's ability to make informed choices and fully participate (Bar Standards Board, 2018b: 4). Therefore, barristers are encouraged to evaluate whether these risk factors indeed lead to consumer vulnerability and to promote self-disclosure. Table 13 below reports a list of signs provided by the Bar Standards Board (2018b) that may indicate vulnerability:

*Table 13 - List of signs that may indicate vulnerability (Bar Standards Board, 2018b: 3)*

<b>Behavioural characteristics</b>	<b>Circumstantial factors</b>
Finds it difficult to communicate without assistance/interpretation	Receiving disability benefits
Has no speech/limited speech, difficult to understand	Resident at a group home or institution
Has difficulty in understanding questions/what is being said	Employed in sheltered workplace
Uses gestures or signs to communicate	Receiving support from a carer, social worker, community psychiatric nurse etc.
Responds inappropriately or inconsistently	Is elderly
Cannot read or write	Is/has been excluded from school
Has difficulty with memory and recalling facts and events	Has a statement of Special Educational Needs (SEN)
Appears eager to please	Is/was under local authority care
Repeats what is said to them	Is/was an asylum seeker
Appears confused by what is said/ happening	In possession of prescribed medication
Is physically withdrawn	Is an alleged victim of modern slavery/

	torture/rape/religious/hate crime/sexual exploitation
Has difficulty in telling the time	Is an alleged victim of honour-based violence/forced marriage
Appears over-excited or exuberant	Is an alleged victim of domestic or sexual violence
Appears uninterested or lethargic	Is a carer
Is violent	Has witnessed a traumatic incident
Expresses strange ideas or makes a decision that is out of character	Is an alleged victim of financial exploitation
Unusual appearance of the eye	Is recently bereaved
Hesitant in movement/reluctant to move	Has lost their home/is homeless
Uncontrollable muscular movements	
Does not understand common everyday expressions	
Failing to search visually for people	
Appears restless, hyperactive, impulsive, inattentive etc.	
Appears intoxicated during meetings	
Has a history of self-harming	

In addition, the Bar Standards Board (2018b) provides a checklist featuring examples of questions that barristers can use to conduct a comprehensive assessment of client vulnerability:

- Have I encouraged self-disclosure and reassured the client of the confidentiality of information they provide?
- Have I spoken to relevant third parties to identify additional needs and vulnerabilities?
- Are there any health considerations that are contributing to making the client vulnerable?
- Do I need to provide information in large print/braille/audio/easy to read format? Do I need to provide written text on a coloured background for someone who may have dyslexia/a visual impairment?
- Do I need to provide a sign-language interpreter/lip-speaker/deaf-blind communicator?
- Is extra time needed for conferences because my client takes longer to understand what I am explaining, due to a speech impediment/learning disability or because an interpreter is needed?
- Does an interpreter/carers/intermediary need to be present during client conferences? If so, does this require a bigger conference room or alternate meeting location?

- Are there any gender, cultural, dialectal, sexuality or other considerations e.g., when hiring an interpreter or expert witness?
- Am I able to provide a reader for clients with visual impairments? Do I need to provide a digital recorder/dictaphone/electronic note-taker?
- Are there sufficient checks in place to ensure that clients understand information provided?
- Has the client had sufficient opportunity to ask me any questions/inform me of concerns?
- Do I need to arrange for a clinical or psychological assessment?
- Should I consider offering the client flexible pricing structures or financing options?
- Should I arrange for remote access e.g., via Skype?
- Should I allow alternative ways of making complaints or other requests, rather than in writing?
- Have I provided my client with the details of organisations that can support them with any other issues/needs they have?

In addition to the guidance above, the Bar Standards Board (2018b: 6) offers a tool known as 'IDEA' (Impact, Duration, Experiences, Assistance). This tool is designed to complement the efforts of barristers by helping them gather a full and clear picture of their clients' situations. It asks barristers to consider:

- **Impact** – What happens and how bad is it? What does the vulnerability stop the client from doing, or make it harder for them to do? This will provide you with insight into the severity of the vulnerability and its consequences.
- **Duration** – How long has it been going on? The duration of different situations and conditions will vary significantly. This information can inform decisions about the time a client might need to consider certain options or make decisions.
- **Experiences** – Has it happened before? Could it happen again? This will help determine whether this is a fluctuating situation or not, and will inform how you provide your services, how and when you may want to communicate with your client etc.
- **Assistance** – Is your client getting any help? Consider whether the client has been able to get any help, support or treatment. This can lead to discussions about obtaining any relevant medical evidence or other information.

By using this tool in conjunction with the guidance, barristers should, it is argued, be able to assess and address client vulnerability more effectively.

The Law Society (2022) has created a guide for solicitors to aid in the identification and response to consumer vulnerability. However, when it comes to identifying vulnerability, the guidance primarily outlines risk factors without detailing specific methods for assessing whether those risk factors render a client vulnerable. According to this guidance, once solicitors are informed about these risk factors, they should identify clients' needs by seeking additional information to determine whether the client:

- Has any needs or preferences for communicating.

- Needs any help to access the services – for example, to overcome mobility problems or hearing or sight difficulties.
- Has any needs for how services are provided – such as documents written in clear and simple language or information given verbally.
- Understands and can act on the information and advice provided, or whether they need support to do this – for example, from an advocacy service or interpreter.

The Advocate's Gateway (2017: 10) has produced a number of toolkits to provide advocates with general 'good practice guidance' when preparing for trial in cases involving a witness or a defendant. For instance, in cases involving witnesses, they request advocates to conduct early assessments of vulnerability, by asking questions including:

- Are you in receipt of Disability Living Allowance or Personal Independence Payments?
- Do you have a social worker, or is there anyone who helps you with daily living, such as helping to pay your bills?
- Do you use/have you used mental health services?
- Do you use/have you used learning disability services?
- Do you/did you get any extra help at school?
- Do you need any help with reading or writing?
- Do you need help managing money?
- Do you need help with getting about or going to appointments?
- Do you need help with reading?
- Do you need help to fill in forms?
- Can you tell the time using a clock? (Note: many people with a learning disability find it hard to read an analogue clock but can read the time using a digital clock.)
- Do you need help to stay calm?
- Are you taking any medication?
- And, if the advocate knows the person is taking medication: Do you need any help taking your medicine? How does your medicine affect you?

In addition to the previously discussed resources, the SRA (2016b) also offers some general guidance to assist solicitors in identifying consumer vulnerability. It highlights the importance of assessing the mental capacity of consumers in accordance with the Mental Capacity Act (2005) and the corresponding Code of Practice (Department of Constitutional Affairs, 2007). The guidance emphasises that solicitors, when uncertain about a client's mental capacity, should seek an expert opinion to assess it. This practice aligns with the legal framework and ethical considerations to ensure that clients are treated fairly and responsibly in the legal services field.

According to the LSCP (2014), after identifying the needs of consumers facing potential vulnerability, the next crucial step is to take action to ensure they can access legal services like any other individuals. To facilitate this process, various regulatory bodies have issued

broad guidance on how to meet effectively consumers' needs once they have been recognised.

### **3.7.3 Guidance for meeting the needs of consumers at risk of vulnerability in the legal sector**

The SRA (2022a: 5-6) offers a Statement of Solicitor Competence outlining the criteria for delivering a high standard of service to individuals who may be vulnerable. The relevant sections are:

- C1. Communicate clearly and effectively, orally and in writing, including: (b) Responding to and addressing individual characteristics effectively and sensitively, (c) Using the most appropriate method and style of communication for the situation and the recipient, and (g) Imparting any difficult or unwelcome news clearly and sensitively.
- C2. Establish and maintain effective and professional relations with clients, including: (b) Providing information in a way that clients can understand, taking into account their personal circumstances and any particular vulnerability, and (d) Identifying and taking reasonable steps to meet the particular service needs of all clients including those in vulnerable circumstances.

Similarly, the Scottish Legal Complaints Commission Consumer Panel (2017) highlights four service standards for solicitors in cases involving consumer vulnerability:

- Respect: this should categorise any relationships with consumers.
- Communication: the practitioner should communicate clearly with their client.
- Diligence: the practitioner needs to have the capacity to delivering on promises and tailoring services to the needs of individual clients.
- Competence: being honest and upfront about ability to serve the customer.

Likewise, the Bar Standards Board (2018a) provides guidance to respond to consumer vulnerability. It claims that law firms and practitioners should:

- Consider where information about services will have the most impact and is likely to be most beneficial. Some groups might in fact be unable to access information, e.g.: websites.
- Building links with voluntary organisations in the community to ensure legal services are visible and accessible.
- Increase transparency around costs, services, and redress.
- Enabling access to services by providing clear and flexible communication.
- Tailor the legal service to respond to consumers' needs.
- Follow up by explaining the outcome of the case and ensuring clients understand routes of redress and the use of complaints information.

Furthermore, the Bar Standards Board (2018b) provides a list of questions that barristers can ask to best adapt their services to meet individual needs:



- Do you have any particular requirements, such as needing help moving around or communicating?
- How and when would you prefer I communicate with you?
- Could you tell me a bit more about your background?
- Do you take any medication? [If so] How does this affect you?
- Do you have any help to manage your money or bills?

In addition to the guidance and tools provided above, The Law Society (2022) has developed guidance for solicitors to aid them in responding to consumer vulnerability. Specifically, it recommends that solicitors enhance clients' access to their legal services by:

- Broad and flexible promotion of their services.
- Websites easy to navigate and understand.
- Accessibility to and around premises for clients with disabilities.
- Provide training for staff who may have contact with clients with risk factors.
- Flexible appointments, including at clients' homes.
- Communicate clearly both verbally and in writing, making tailored reasonable adjustments for people with disabilities.
- Hearings should be accessible to anyone.
- Use specialist support e.g., with clients with learning disabilities.
- Feedback from clients to improve services.

The SRA's research into 'reasonable adjustments' for disabled people in England and Wales recommended similar adjustments (YouGov, 2019):

- Having an easy to navigate and accessible website.
- Providing clear information that is easy to read.
- Being able to speak to staff if needed.
- Having a nominated/dedicated person or part of the website to get information specific to disabled people.
- Greater empathy and understanding from staff.
- Have more expertise in helping disabled people.
- Take their personal circumstances into account.
- Make adaptations for them.

In summary, various regulatory bodies have created guidance for the identification and management of consumer vulnerability in the legal services sector. While limited research is available on the practical application of this guidance by practitioners, the next sub-sections will highlight some instances of what have been indicated as 'positive' and 'negative' practices (Association of Consumers Support Organisations, 2021: 12). Additionally, recommendations provided by stakeholders in the literature will be explored.

Before delving into this analysis, it should be noted that the aforementioned guidance appears to largely neglect the ‘universal vulnerability’ perspective discussed earlier (as detailed in section 3.3). In practical terms, these guidance documents primarily concentrate on verifying whether vulnerability is being assessed and addressed, rather than conducting a comprehensive examination of and addressing the fundamental sector-related factors that could potentially give rise to and exacerbate vulnerability. Nevertheless, there are some exceptions. For example, asking whether someone takes any medication would be an example of identifying a vulnerability risk, whereas ensuring that hearings are accessible to anyone would be an example of moving towards a universal changes approach. Certain documents, like the SRA’s ‘reasonable adjustments’ (YouGov, 2019; Solicitors Regulation Authority, 2023a) could also be seen as being consistent with an advance towards a universal approach to change (refer to the discussion in section 3.3).

### 3.7.4 Instances of responses to consumer vulnerability in accordance with guidance

Table 14 below presents examples of where some of the broad principles above have been operationalised in the practices of regulators and of legal firms. In some cases, this has been positively evaluated as also indicated in Table 14.

*Table 14 - Examples of where guidance on recognising and addressing consumer vulnerability in the legal sector has been incorporated into practice*

Regulatory/legal service body	Guidance incorporated	Practice
SRA	Identification and response to consumers’ needs (Legal Services Consumer Panel, 2014; Scottish Legal Complaints Commission Consumer Panel, 2017)	In 2022, the SRA updated the competence statement which sets out what the baseline for being a competent solicitor is. This includes a reference to identifying and taking reasonable steps to meet the particular service needs of consumers in vulnerable circumstances. This includes using clear, succinct and accurate language, avoiding unnecessary technical terms. Additionally, the SRA accessibility statement (2023a) outlines the accessibility features of the SRA website, including the ability to: <ul style="list-style-type: none"> <li>• Navigate the website using a keyboard</li> <li>• Use the site with a screen reader</li> <li>• Zoom in to 500% without text going off the screen</li> </ul>
The Legal Ombudsman	Identification and response to consumers’ needs (Legal Services Consumer Panel, 2014; Scottish Legal	The Legal Ombudsman has developed an accessible website with multi-language complaints leaflet available. They provide a Minicom service and offer

	Complaints Commission Consumer Panel, 2017)	information in various formats, including Easy Read and Braille. Additionally, they support Browse Aloud on their website, enabling consumers to listen to website content being read aloud.
Legal firms in the family law context	Identification and response to consumers' needs (Legal Services Consumer Panel, 2014)	Research from the SRA (2016c) found that legal firms in the field of family law are implementing what they define as being good practice in relation to initial and main engagement with consumers, to identify and respond to consumers' needs, as set out in their Statement of Competence (SRA, 2022a: 5-6). This was found particularly around 'understanding and responding effectively to clients' particular needs', 'identifying and taking reasonable steps to meet the particular service needs of all clients including those in vulnerable circumstances', and 'respond to and address individual characteristics effectively and sensitively'.
Legal firms and individual practitioners	Identification and response to consumers' needs (Legal Services Board, 2022)	Research from the Legal Services Board (2017) found that the legal needs of people with dementia and their carers are being met.
Legal firms and individual practitioners	Identification and response to consumers' needs (Legal Services Consumer Panel, 2014)	The SRA (2016c) found that over two thirds (69 %) of the 115 legal firms surveyed frequently give information using a variety of means or media, such as formal written communications as well as more accessible or visual information. 60 % of them also frequently provide additional explanations on complex processes.

### 3.7.5 Instances of responses to consumer vulnerability outside of guidance

Table 15 below presents examples of where some of the broad principles above have not been operationalised in the practices of regulators and of legal firms. Table 15 shows the consequences of this as highlighted in the literature.

Table 15 - Examples of where guidance on recognising and addressing consumer vulnerability in the legal sector has not been addressed.

Regulatory/legal service body	Guidance not addressed	Consequence
Legal firms	Identification and response to consumers' needs (Bar Standards Board, 2018b; Legal Services Consumer Panel, 2014; The Law Society, 2022)	<p>The Legal Services Board (2022) conducted 10 interviews with people working in support and advice organisations, and 30 interviews with people who had used the services of a legal professional in the previous eighteen months. It found that some legal firms exacerbate consumers' vulnerability, by:</p> <ul style="list-style-type: none"> <li>• Cold, clinical or chaotic manner and/or office space, which reinforced a sense of power imbalance or lack of agency.</li> <li>• Failure to set and manage expectations about roles, process, timeframes, and costs.</li> <li>• Using technical legal terms and jargon; not explaining legal principles, terms, paperwork or processes; making assumptions about what the participant understood.</li> <li>• Failing to identify, understand or meet participants' needs (especially where these related to poverty/ low income, disabilities, or domestic abuse), or making assumptions about the participants' circumstances or character.</li> <li>• Lack of empathy and compassion, particularly where participants had experienced difficult and traumatic issues, such as relationship breakdowns, employment issues, accidents, injury or domestic abuse.</li> <li>• Communication and client care: being hard to get hold of, not meeting deadlines, not keeping participants informed.</li> <li>• Lack of clarity about costs, both from the start and through participants' cases.</li> </ul>

Legal firms	Identification and response to consumers' needs (Bar Standards Board, 2018b; Legal Services Consumer Panel, 2014; The Law Society, 2022)	The SRA (YouGov, 2019) found that: <ul style="list-style-type: none"> <li>• Almost three quarters of disabled people were rarely or never proactively asked if they needed adjustments when accessing professional services.</li> <li>• One of the most common barriers to services being accessible were unhelpful staff.</li> <li>• Those with less visible impairments, such as mental health and learning or social disabilities, face a different and more challenging experience in accessing information and services to those with more visible impairments.</li> </ul>
Legal firms in the family law context	Identification and response to consumers' needs (Legal Services Consumer Panel, 2014)	Research conducted by the Solicitors Regulation Authority (2016c) indicates that family legal firms generally do not actively promote their services to individuals who may be vulnerable.
Legal firms in the family law context	Identification and response to consumers' needs (Bar Standards Board, 2018b; Legal Services Consumer Panel, 2014; The Law Society, 2022)	Research conducted by the Solicitors Regulation Authority into family law (2016c), found that firms' responses to consumers' legal needs are not structured, largely discretionary, and with little formal training for solicitors.

### 3.7.6 Stakeholders' recommendations for responses to consumer vulnerability

In light of some ineffective practices, and even counterproductive measures observed among service providers, various organisations have put forth a series of recommendations to respond to consumer vulnerability. These are specific recommendations relating to some of the broad principles identified in the guidance documents above. A summary of these recommendations is presented in Table 16 below.

*Table 16 - Stakeholders' recommendations to respond effectively to consumer vulnerability*

Organisation	Recommendation
Solicitors Regulation Authority (2016c)	<ul style="list-style-type: none"> <li>• Formal training of solicitors to provide structured and consistent responses to consumers' needs</li> </ul>
JUSTICE (2017)	<ul style="list-style-type: none"> <li>• Placing qualified medical professionals to work with the police and courts to conduct proper</li> </ul>

Association of Consumer Support Organisations (2021)

assessments to recognise mental health and learning disabilities at any stage of the criminal process.

- More support should be available to those identified as being vulnerable, including mandatory legal representation, intermediaries, greater provision of trained support assistants during the police and trial stages.
- Simplify access to justice for consumers at risk of vulnerability, by improving:
  - Collaboration between legal services through data sharing.
  - Training for legal services professionals on identifying and meeting the needs of consumers
  - Access to legal services should be prioritised.

Legal Services Board (2022)

- Greater consistency and standardisation in practice across the profession.
- Ensure more people recognise when they have a legal need (through training of legal services personnel and intermediary organisations, and co-location of services in community-based organisations).
- Facilitate individuals' access to legal assistance (by simplifying the process of searching for, comparing, and selecting legal professionals; exploring alternative service delivery models to enhance accessibility and affordability; and establishing legal professionals in community-based organisations).
- During initial consultations and throughout their interactions with legal professionals, provide consumers with standardised guides outlining what they can anticipate when engaging with a legal expert.
- Conduct routine assessment of consumers' needs in first meetings.
- Provide routine briefing of what to expect (roles, key terms, timescales, communication, costs).
- Provide training to legal professionals to understand and accommodate clients' needs, provide high standards of client care, use of layperson's language and explaining terms, and ensuring clients understand costs and pricing plans.

Legal Services Consumer Panel (2014)	<ul style="list-style-type: none"> <li>• In closing cases, make sure customer feedback is routinely collected, and results are used to identify and address quality issues.</li> <li>• In closing cases, legal professionals should routinely explain possible consequences and options for addressing these if needed.</li> </ul> <p>Law firms and lawyers should make adjustments, including:</p> <ul style="list-style-type: none"> <li>• Speaking clearly and using written, simplified notes.</li> <li>• Using hearing loops in meeting rooms or leaving extra time for a meeting.</li> </ul>
Competition & Markets Authority (2019)	<p>Regulators should facilitate data-sharing across regulated markets to streamline the process for vulnerable customers in accessing the services they require. A pilot vulnerability data-sharing programme conducted in the North-West of England by Ofwat and Ofgem, in collaboration with the UK Regulators' Network (UKRN), has been recognised by the Competition &amp; Markets Authority (2019) as a possible benchmark. This initiative is designed to maximise the use of customer data from water and energy companies to identify individuals in vulnerable situations, ultimately leading to the creation of a unified priority services register. This approach eliminates the need for vulnerable customers to repeatedly register with various suppliers. Despite encountering practical challenges, a 2018 update report from UKRN demonstrated significant advancements in cross-sector data sharing, and the project is currently being extended throughout the country.</p>

In conclusion, it is important to stress that the guidance documents produced to identify vulnerability and meet the needs of consumers appear to neglect the 'universal vulnerability' perspective discussed earlier (as detailed in section 3.3). In practical terms, these guidance documents primarily concentrate on verifying whether vulnerability is being assessed and addressed, rather than conducting a comprehensive examination of the sector to consider how it could potentially give rise to and exacerbate vulnerability.

### 3.8 Chapter summary

Chapter 3 has revealed that consumer vulnerability is widely acknowledged as a complex, diverse, dynamic, and fluid concept, difficult to define and challenging to identify and measure (British Standards Institution, 2022; Citizens Advice, 2014; George, Graham, Lennard, & Scribbins, 2015; Legal Services Board, 2021; Legal Services Consumer Panel, 2014; Financial Conduct Authority, 2015; National Audit Office, 2017; Office for Water Services, 2016; The Law Society, 2022).

This evidence review investigated three primary domains to gather essential insights into defining consumer vulnerability: the academic sphere, legal sources (legislation, practice guidance and rules, and research reports), and grey literature produced by statutory and

regulatory bodies. It found that given its complex nature, there is a predominant emphasis in the literature on defining vulnerability and consumer vulnerability on the basis of risk factors that may render individuals susceptible to harm, loss, disadvantage, or poorer outcomes.

The risk factors identified from these sources can be broadly classified into three primary categories: individual characteristics; individual situational circumstances; and external factors including actions taken by the market and service providers. The combination of personal, situational, and market and external factors can render any consumers less capable of representing their interests in the market and more vulnerable to experiencing disadvantages, either for a short, medium, or long period of time (Burton, 2018; Citizens Advice, 2014; Data & Marketing Association, 2012; National Audit Office, 2017; Office for Gas and Electricity Market, 2019).

The SRA, in its 2016b (p. 4) publication, primarily defines vulnerability based on risk factors. While the SRA's list of risk factors is not intended to be exhaustive, they were interested in its appraisal. This evidence review found that the list predominantly draws from the definitions provided by other regulatory and statutory bodies, overlooking elements from the academic literature and legal sources. Indeed, a limitation of the risk factor approach is that it may overlook critical factors. Moreover, for most risk factors of consumer vulnerability, the evidence base is unclear.

There is a growing theme in the academic literature suggesting that the risk-based approach may not be appropriate, and the terminology of vulnerability may not be helpful. While 'vulnerability' is intended to identify individuals or groups in need of support and protection, it often falls short of capturing the full complexity of people's circumstances and experiences, leading to harmful consequences. In fact, 'vulnerability' tends to pathologise the individual, identifying them as the 'problem', rather than acknowledging that systems set up by the state or by service providers may constitute the difficulty as these systems are designed around a small class of 'perfect' or ideal customers (Brown, 2017; Fineman, 2014). Alternative approaches to seeking to define and identify vulnerability are, as we propose, the 'universal changes' to accommodate all consumers' needs, and the 'resilience approach', to facilitate access to resources that support personal development and well-being (Fairclough, 2023; Fineman, 2014).

Consumer vulnerability within the legal sector, while sharing some commonalities with vulnerability in other domains, retains its unique features. Four aspects specifically characterise the nature of vulnerability within the legal sector:

- One such notable aspect is the widely recognised fact that the mere necessity for legal services and engagement with the legal system inherently increases the risk of vulnerability (Scottish Legal Complaints Commission Consumer Panel, 2017).
- Secondly, the legal services field introduces specific risk factors that hold particular relevance for individuals with legal needs. Navigating the intricate landscape of legal services can pose a daunting challenge, and an individual's level of experience and capacity within this context can further intensify their vulnerability.
- Thirdly, an accumulating body of evidence underscores that vulnerability within the legal services sector often remains concealed (as indicated by references such as Bradley, 2009; Branson & Gomersall, 2023; Cross, 2020; Epstein, 2016; Howard, 2021; Jacobson, 2008; Jacobson & Talbot, 2009; Sanders et al., 1997; Wigzell, Kirby, & Jacobson, 2015).
- Fourthly, consumers of legal services frequently present with multiple vulnerabilities, often referred to as clusters (as observed in reports from the Bar Standards Board in 2018a, the Scottish Legal Complaints Commission Consumer Panel in 2017, and Smith et al., 2013).



This review of evidence shows that while there are shared consequences of neglecting consumer vulnerability across various sectors, the nuances diverge depending on the nature of the services offered and the unique challenges confronted by consumers in each sector. Notably, the distinctive emotional impact and the struggle to assert agency or control over services make the legal sector different from others, including water, energy, telecommunications, and financial services sectors (see National Audit Office, 2017; Legal Services Board, 2022).

The precise extent and trajectory of consumer vulnerability in the legal services sector remain uncertain due to the absence of precise measurement tools and limited data availability. Nonetheless, various studies have shed light on specific prevalent characteristics. It is possible that other equally prevalent characteristics exist but have not been quantified or measured. The former include: learning disabilities, age, sex, mental health issues, literacy levels, homelessness, loss of income, threat of harm, poverty, domestic abuse, employment status, education, immigration status, and belonging to an ethnic minority group (see Table 11).

This evidence review has also found that there are macro level, external risk factors that exert influence on the extent and trajectory of consumer vulnerability within the legal services sector. These overarching factors encompass a diverse array of structural and systemic elements that have the capacity to profoundly mould the scope and progression of consumer vulnerability, including: economic conditions, fiscal policy and legal aid, education, demographics, technological advancements, crisis events, and cultural and social norms (LSB, 2022; Frontier Economics, 2023).

Furthermore, the evidence review demonstrates that the needs of consumers at risk of vulnerability in the legal services sector include: effective communication, trustworthy and empathetic service providers, as well as geographical and situational accessibility. A redevelopment of services in these ways to be more accessible could form part of the 'universal changes' approach.

Regarding the identification of vulnerability, guidance documents can be categorised into two primary types: structural and individual arrangements. The first type encompasses guidance designed to assist regulatory bodies and service providers in evaluating and improving their structural approaches to addressing vulnerability. The second type of guidance documents is tailored to aid practitioners within the sector in effectively recognising consumer vulnerability.

Several regulatory bodies have issued comprehensive guidance on effectively meeting consumers' needs once these have been identified. For example, the SRA (2022a) updated the Statement of Solicitor Competence that outlines the criteria for delivering high-quality services to individuals who may be vulnerable.

There are instances where the principles outlined in the aforementioned guidance documents have been put into practice by regulators and legal firms. In contrast, there are cases where these principles have not been implemented. Overall, it is important to highlight that there is insufficient evidence to conclude whether legal firms are implementing the principles outlined in guidance documents.

In light of these issues, various organisations have put forth recommendations to respond effectively to consumer vulnerability. These are specific recommendations relating to some of the broad principles identified in the guidance documents above. They include: training of solicitors, more support to consumers at risk of vulnerability, data sharing between service providers, improved access to services, consistency and standardisation of practices, routine assessments of consumers' needs, collect consumers' feedback.

The guidance documents produced to identify vulnerability and meet the needs of consumers appear to neglect the 'universal vulnerability' perspective. In practical terms,

these guidance documents primarily concentrate on verifying whether vulnerability is being assessed and addressed, rather than conducting a comprehensive examination of the sector to consider how it could potentially give rise to and exacerbate vulnerability.

This chapter has highlighted the diversity of tools currently employed in the criminal justice, financial, and gambling sectors to screen, assess, and measure vulnerability. These tools serve distinct purposes and exhibit varying methodologies. Screening tools are primarily used to identify individual cases of vulnerability, while assessment tools provide a deeper understanding of consumer vulnerability, delving into various contributing factors. Measurement tools, on the other hand, are designed to quantify specific aspects of consumer vulnerability, assigning numerical values or scores to measure its extent within a population.

In the criminal justice sector, the predominant tools are screening instruments. They are employed to identify vulnerability among witnesses, victims, and suspects. Vulnerability is assessed through psychological and psychiatric evaluations, involving self-completion questionnaires and structured or semi-structured interviews administered by professionals. Additionally, the Metropolitan Police uses the Vulnerability Assessment Framework (VAF), which relies on self-assessment by the police. While these methods primarily serve as screens of vulnerability, they may hold relevance for the design of measurement tools in the legal sector.

Within the financial sector, two key tools stand out: the Financial Lives Survey and the Genworth Index. These tools are used to measure consumer financial vulnerability and hold relevance for the present study. Adapting similar data collection and measurement approaches to the legal services sector has the potential to quantify the vulnerability of individuals facing legal challenges and monitor trends over time.

In the gambling sector, three primary tools are used to measure what the Gambling Commission defines as 'problem gambling' in the populations of England, Scotland, and Wales: the Problem Gambling Severity Index (PGSI), the Diagnostic and Statistical Manual of Mental Disorders (DSM-IV), and the short-form Problem Gambling Severity Index (PGSI mini-screen). Much like the Financial Lives Survey, these tools are based on phone, online, and face-to-face interviews, collecting valuable data on individuals' gambling habits and challenges. This experience can inform the development of appropriate data collection tools for assessing legal vulnerability. Furthermore, the Gambling Commission commissions the NHS in England and Scotland to measure what they defines as 'problem gambling' in their respective populations while directly collecting these measures in Wales. This approach could offer an interesting model for the SRA to consider.

However, there are many of the barriers associated with these tools as explored in this chapter. Defining and operationalising vulnerability can be a complex task, challenging the creation of a standardised definition applicable across all contexts. Intersecting factors complicate measuring the impact of one factor over others, and cultural and contextual differences pose challenges for comparisons. Measurement biases and concerns related to the concept of 'vulnerability' potentially stigmatising individuals and increasing vulnerability need to be taken into account. Additionally, the tools used in sectors related to the legal sector primarily offer quantitative measures of prevalence rates, potentially underestimating the full extent of harm, including harm experienced by other individuals.

Finally, measurement tools in other sectors (i.e. gambling, financial) have not been assessed for their fitness for purpose, specifically in terms of their effectiveness in measuring vulnerability. Hence, while other sectors offer some options for consideration by the legal services sector, the barriers would be substantial, and, additionally, they are based on a risk factor approach of which there are many criticisms. These issues were further explored in

the empirical research phase of the study for which the findings are presented in the next chapter.

## 4 Empirical research findings

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The review of evidence in chapter 3 determined the scope of existing knowledge of consumer vulnerability with the legal services sector and identified the gaps in this knowledge. This served as the foundation for the subsequent empirical part of the study. This chapter presents the findings derived from the empirical data collection phase.

As outlined in the Appendices data collection encompassed both an online survey and a stakeholder event. The online questionnaire was distributed to the initial group of participants on 27 September, 2023, and it concluded with the final group of participants on 19 February, 2024. The stakeholder event took place on 19 March 2024, unfolding in two distinct phases. The initial plenary session, or flipchart feedback session, allowed participants to provide feedback on the evidence review and online survey, recorded on flipcharts, and was followed by breakout focus groups. Four focus groups were conducted in separate rooms, with participants assigned to a group based on the research team's assessment of their expertise and to ensure diverse representation. Each focus group concentrated on facilitating in-depth discussions on one of four specific topics (refer to the Appendices for the topic guides). This means that while this chapter will specify the number of individuals in the focus groups who provided specific views or discussed certain topics, it is important to note that none of the groups addressed every issue. As a result, focus group participants have not considered or expressed their thoughts on every topic. In total, 54 participants took part in the study, with 47 responding to the online questionnaire and 19 participating in the stakeholder event. Of these, 12 took part both in the online survey and the stakeholder event (refer to Table 31).

This chapter presents thematically the results obtained from the three empirical research phases, with each subsequent section dedicated to a specific aspect of the findings. Research participants were presented with up to four options relating to remaining anonymous or being identified in the report, as outlined in Table 33. Subsequently, individual codes were assigned to each participant to guarantee their anonymity if they opted to have it preserved. Table 34 lists quote identifier codes with an explanation of the meaning of the code. As a general description, codes starting with AC refer to academics and consultants, those starting with CR refer to consumer representatives, LP indicate legal professionals, LE lived experts, and RG regulators.

### 4.1 Defining consumer vulnerability in the legal services sector

Four out of 47 survey participants and one participant in the focus groups argued that vulnerability is hard to define and conceptualise. For instance:

'It's a term that has... in the field of law, I can think of probably four or five different ways in which it's used under different statutory frameworks, it has different distinct meanings and I think this links to a point I've made already which is focusing on what exactly is it in practice? I feel we use it as shorthand to describe certain characteristics. What are those characteristics that you could maybe distil from these things and then, right, how can we identify those in a more general sense outside of specific characteristics?' (ACSE13)

In the online questionnaire, participants were asked for their views on the risk factor approach and the list of risk factors used by the SRA to define consumer vulnerability. Thirty-two out of 47 of them emphasised that the risk factor approach, and the list of risk factors provided by the SRA (2016b), is a beneficial method for defining consumer vulnerability in the legal services sector. Table 17 below shows the range of benefits that were identified.

Specifically, 16 survey participants recognised the value of this approach, while eight highlighted the comprehensiveness of the list provided by the SRA (2016b). For instance, survey participants stressed:

- 'The risk factor approach is valuable and reflects the experiences that I have seen in my research.' (ACS6)
- 'I think that there is merit in this approach.' (ACS8)
- 'This is a good list and approach.' (The Motor Ombudsman)
- 'I think this is a comprehensive list' (CRS5)
- 'The factors seem comprehensive' (ICAEW)

*Table 17 – Benefits of the risk factor approach to measuring consumer vulnerability suggested by survey participants<sup>1</sup>*

<b>Benefit</b>	<b>Frequency</b>	<b>Percentage (out of question's respondents, n=32)</b>	<b>Percentage (out of total survey participants, n=47)</b>
It is valuable	16	50	34.1
It is comprehensive	8	25	17
It helps identifying consumer vulnerability	4	12.5	8.5
It helps supporting consumer vulnerability	2	6.3	4.3
It is useful	2	6.3	4.3
It is flexible	1	3.1	2.1
It is systematic	1	3.1	2.1
Total	32 <sup>2</sup>	100	68.1
Total benefits	7		

**Notes**

1. Results derived from responses to survey question 4: 'What do you think of this risk factor approach to defining consumer vulnerability in relation to legal services?'

2. In total, 32 participants mentioned benefits with the risk factor approach. Some individual participants mentioned more than one benefit.

During the flipchart feedback session and in the focus groups (the question was posed in one of the groups), there were no discussions regarding the general benefits of the risk factor approach, or the specific benefits of the list provided by the SRA (2016b). The only

remark made about the SRA list was by a single participant who emphasised the importance of considering both individual and situational circumstances when identifying vulnerability:

- 'I think it's good to see that they're [the SRA] moving beyond characteristics alone, to also focus on situations' (The Society of Will Writers and Estate Planning Practitioners, words in squared brackets added by authors)

#### 4.1.1 Additional risk factors to be considered by the Solicitors Regulation Authority

Twenty out of 47 survey participants highlighted the need to enhance the list of risk factors used by the SRA (2016b) to define consumer vulnerability (please see Table 7 above) by incorporating additional elements. Table 18 below illustrates the range of factors identified by these participants.

Table 18 - Supplementary risk factors suggested by survey participants<sup>1</sup>

Risk factor	Frequency	Percentage (out of this question's respondents, n=10)	Percentage (out of total survey participants, n=47)
Lack of internet and/or technology	4	20	8.5
Substance use and addiction	4	20	8.5
History of detention	3	15	6.4
Domestic circumstances (e.g. homelessness)	3	15	6.4
Immigration issues/ threat of removal from the UK	3	15	6.4
Treatment from the authority and professionals	3	15	6.4
Abuse	2	10	4.3
Characteristics of service provider	2	10	4.3
Lack of language skills	2	10	4.3

Transport issues	2	10	4.3
Low or no income	2	10	4.3
Socially deprived background	2	10	4.3
Being accused of a crime	1	5	2.1
Being in care	1	5	2.1
Education	1	5	2.1
Geographical isolation	1	5	2.1
History of hospitalisation	1	5	2.1
Intimidation	1	5	2.1
Lack of maturity (rather than age)	1	5	2.1
Low basic/numeracy skills	1	5	2.1
Neurodivergences/sensory issues	1	5	2.1
Reputational damage	1	5	2.1
Self-harm	1	5	2.1
Structural risk factors	1	5	2.1
The criminal label	1	5	2.1
Total	10 <sup>2</sup>	100	42.6
Total additional risk factors	25		

## Notes

1. Results derived from responses to survey question 4: 'What do you think of this risk factor approach to defining consumer vulnerability in relation to legal services?'
2. In total, 10 participants mentioned supplementary risk factors. Some individual participants mentioned more than one.

During the flipchart feedback session, no additional factors were discussed. However, in the focus groups, one participant mentioned socioeconomic class as a supplementary factor to low or no income:

- 'socioeconomic class, obviously it could perhaps fall under low income, but your income can change whereas some people would suggest that your class is less changeable' (The Society of Will Writers and Estate Planning Practitioners)

#### 4.1.2 Problems with the risk factor approach

Participants in the survey were more supportive of the risk factor approach than at the time of the focus groups. However, 26 of the 47 survey respondents still identified problems with the risk factor approach. Table 19 below shows the range of issues that they identified. The most frequently identified problems related difficulties in defining and conceptualising vulnerability. The most commonly cited problems related to the subjective and universal nature of vulnerability, which may render the identification of vulnerability through the risk factor approach misleading. In other words, survey participants stressed that relying on risk factors fails to acknowledge that everyone is vulnerable. They also contended that risk factors tend to provide a simplistic quantitative overview of vulnerability without considering individual circumstances. Of note here is that, in all the focus groups, there was unanimous agreement that these two issues were problems with the risk factor approach.

*Table 19 – Issues with the risk factor approach to measuring consumer vulnerability identified by survey participants<sup>1</sup>*

<b>Issue identified</b>	<b>Frequency</b>	<b>Percentage (out of this question's respondents, n=26)</b>	<b>Percentage (out of total survey participants, n=47)</b>
Vulnerability is subjective	10	38.5	21.3
Vulnerability is universal	7	26.9	14.9
Vulnerability is inherent in the legal services sector	7	26.9	14.9
Vulnerability is dynamic	6	23.1	12.8
Vulnerability is a systemic condition in society	5	19.2	10.6
The risk factor approach lacks detail and is inexhaustive	4	15.4	8.5



Vulnerability language is labelling and/or stigmatising	2	7.7	4.3
It may lead to exclusion and/or differential treatment	1	3.8	2.1
Total	26 <sup>2</sup>	100	36.2
Total issues	8		

#### Notes

1. Results derived from responses to survey question 4: 'What do you think of this risk factor approach to defining consumer vulnerability in relation to legal services?'
2. In total, 26 survey participants mentioned issues with the risk factor approach. Some individual participants mentioned more than one issue.

The following sub-sections delve into each of the issues outlined in Table 19.

### Vulnerability is subjective

As Table 19 shows, 10 of the 47 survey participants noted that vulnerability is subjective. Some explained that this means that individuals may experience similar characteristics and/or situational circumstances differently. Thus, using a risk factor approach that groups individuals into predetermined categories ignores their unique circumstances and individuality. An individual's complex circumstances cannot be fully captured by category or factors. As explained by survey participants:

- 'It is important that a particular vulnerability is not considered in one dimension. For example, with physical disability, there are a range and other factors to consider, such as when a person became disabled – from birth or later in life – because this is likely to impact on their ability to cope or work with/around their disability and the abilities they have within the disability.' (RGS2)
- 'It is too highly a subjective matter to be defined by lists. The lists provided above [the SRA's lists of risk factors included in the questionnaire] appear to be definitive as opposed to indicative and non-exhaustive. Consumers may well easily fall between the gaps inadvertently created.' (Mental Health Lawyers Association, words in squared bracket added by researchers).

All participants in the focus groups unanimously agreed with this perspective. Two participants specifically stated:

- 'If I tick the box that I'm dyslexic, my dyslexia might be very different from yours or someone else's. Our needs are going to be really different.' (LESE8)
- 'two people might come from the same kind of community, same background, have the same kind of issues, but one might need more assistance or more recognising than the other.' (Marc Conway, lived expert)

### Vulnerability is universal

As Table 19 shows, seven out of the 47 survey participants stressed that everyone is potentially vulnerable. Hence, employing a risk factor approach to identify consumer vulnerability may prove inadequate. According to one participant, 'There is, in fact, nobody alive who is not "susceptible to harm, loss, or disadvantage"'(ACSO). This viewpoint was validated during the flipchart feedback session at the stakeholder event.

Furthermore, of note is that all participants in the focus groups concurred with the perspective that vulnerability is universal. Two participants specifically stated:

- 'This is the idea of course, we're all vulnerable because we have bodies. The human body is quite fragile, and unfortunately, it is a reality that if you get hit by a car or whatever it is, anything can happen that severely impacts your life, because bodies are fragile, no matter what you have.' (ACSE13)
- 'Well, the opposite of vulnerable is invulnerable and I don't know anybody that's invulnerable, so everybody by definition is vulnerable to something.' (LESE7)

The idea that vulnerability is universal has become of relevance in this research as it underpins an alternative to the risk factor approach to defining and identifying consumer vulnerability. This will be explored in section 4.1.3 below.

### **Vulnerability is inherent in the legal services sector**

As shown in Table 19, another issue highlighted by seven out of the 47 survey participants regarding the risk factor approach is the inherent vulnerability within the legal services sector. They suggested that everyone requiring legal assistance is inherently vulnerable, not merely as a consequence of the human condition, but specifically because of their legal needs or the power dynamics between providers and consumers:

- 'if someone needs legal services, the reason is often something that may trigger vulnerability (life transitions or traumatic events).' (Terri Rittenburg, academic)
- 'I believe it is also important to note that consumers are inherently vulnerable due to the power dynamics and hierarchy at play as they enter into the lawyer-client relationship.' (ACS6)

This perspective was reinforced during the flipchart feedback session. Particularly, one group emphasised that the complexity of legal language exacerbates the power imbalance between practitioners and consumers, consequently amplifying the inherent nature of vulnerability in the legal services sector. Moreover, the majority of participants in two focus groups concurred with this observation. For example, two explicitly stated:

- 'everybody coming to a solicitor or a lawyer is in a vulnerable state straight away from the get-go.' (LESE1)
- 'if you approach a solicitor then by its very nature, you need help with some vulnerable aspect within your life, whatever that might be.' (CRSE8)

### **Vulnerability is dynamic**

Table 19 highlights that six of the 47 survey participants stressed that vulnerability is by its very nature 'a dynamic concept' (ACS7). This means that, according to some participants in this study, individuals may drift in and out of states of vulnerability, and that these changes cannot be encapsulated by the static nature of risk factors which only provides a snapshot of predefined types of vulnerability at one point in time. One survey participant said:

- 'As we note, consumers can come in and out of vulnerability – this raises questions about how it can therefore be measured and captured.' (Bar Standards Board)

This view was also emphasised in one of the focus groups, where all participants agreed that vulnerability is dynamic as it can fluctuate based on individual experiences: 'it's all about going through life experiences that could change.' (LESE1)

### **Vulnerability is a structural condition in society**

Five out of the 47 survey participants emphasised that risk factors fail to consider broader structural issues, such as poverty and discrimination, which inherently render individuals vulnerable (see Table 19). For instance, one participant said:

- 'I feel very anxious that racism plays a role in my treatment, even when I am innocent or in need of help, I think the system judges you as being in the wrong even before it starts'. (Eyebs, lived expert)

Two participants in the focus groups expressed views which aligned with this perspective. One of them also stressed that a key issue with the risk factor approach is that it places the focus on the individual rather than addressing the systemic issues within the legal services sector itself.

- 'There are underlying structures that can reduce the base level in society so that people are at a more comfortable position before they come in regardless of their personal circumstances.' (ACSE13)
- 'Makes it seem like the person is the problem rather than the service.' (Dr James Organ, academic)

### **Vulnerability language is labelling and/or stigmatising**

Two out of 47 participants in the survey argued that the language used as part of the risk factor approach is labelling and/or stigmatising (see Table 19):

- 'the word vulnerable suggests weak or in need of assistance and this may not be the case. It could make people feel second class or beneath someone.' (Marc Conway, lived expert)
- 'I appreciate the use of the term "consumer vulnerability" ... any consumer can experience vulnerability under the "right" (or wrong) conditions. I believe labelling people as vulnerable only exacerbates the problem.' (Terri Rittenburg, academic)

This view was substantiated by three participants across two different focus groups. For instance, LESE8 emphasised the inefficacy of the risk factor approach, noting that it categorises individuals without subsequently addressing their needs. LESE1 expressed concerns about the inherent class divide associated with labelling people as vulnerable.

Additionally, participants discussed the appropriateness of the term 'consumer' to describe individuals purchasing legal services. Lived expert Marc Conway asserted that 'consumer' should exclusively apply to individuals with a choice in purchasing goods or services, prompting further reflection on the implications of terminology within this context. In particular, obtaining legal representation is often a necessity rather than a choice, as individuals may require legal services to navigate complex legal systems or to protect their rights. This emphasises that individuals seeking legal assistance may not have the luxury of

choice typically associated with the term ‘consumer’, highlighting the need for a more nuanced understanding of their position.

### **The risk factor approach lacks detail and is inexhaustive**

As well as identifying problems with defining and conceptualising vulnerability, participants provided further insights into the problems with the risk factor approach. One issue identified by four out of 47 survey participants was that the risk factor approach, and particularly the list of risk factors identified by the SRA (2016b), provides vague and inexhaustive information (see Table 19). According to ACSO: ‘this is so broad and vague as to be effectively meaningless.’ The Scottish Legal Complaints Commission stressed:

- ‘The list is not exhaustive and should probably cover all of the instances in which a person might need legal services where there is no genuine choice in the matter.’

### **The risk factor approach may lead to exclusion and/or differential treatment**

Linked to the problem of the inexhaustive nature of the risk factor approach is the issue that the approach could result in the exclusion of individuals with specific needs but not identified as vulnerable and hence unequal access to or treatment in legal services provision. One participant in the survey expressed concern that the risk factor approach could result in differential treatment, potentially resulting in the exclusion of certain individuals (see Table 19). They argued that identifying individuals as vulnerable based on certain recognised characteristics and subsequently treating them in a specific manner might inadvertently exclude others who share the same vulnerability but have not been acknowledged as such:

- ‘Drawing too tight on a definition of vulnerability is likely to lead to legal services focusing on how to treat that group of consumers differently, rather than considering how to make all services more suitable for those who may be vulnerable, even if they do not present as such and are not recognised as such by the practitioner.’ (Scottish Legal Complaints Commission)

This view was also discussed in one of the focus groups:

- ‘This is the complication of placing people into groups and then you’re going to miss out on certain people and you’re going to get it wrong.’ (LESE1)
- ‘If two people are in the exact same living conditions, one of them can get protection because they’re part of a group, one of them cannot. I don’t think that sits well with lots of people.’ (ACSE13)

However, it was also recognised in the focus groups that unequal access/treatment can be necessary to result in equitable outcomes:

- ‘I suppose it does speak to ... equitable treatment, because obviously you have to treat people differently sometimes in order to treat them fairly. So, then at its heart ... vulnerability is a barrier to fair and equitable outcomes?’ (ACSE13)

### **Tick box culture**

Most participants at the stakeholder event contended that measuring and scoring individual vulnerabilities could be dangerous as this approach risks reducing individual narratives and circumstances to mere numbers. Particularly, the concern arose from the perception that legal service providers operate in a transactional manner, treating individuals as numbers rather than as persons with unique needs. Introducing a measurement tool based on scores

of vulnerabilities could exacerbate the ‘tick-boxing’ dynamic within the provider-consumer relationship. For instance, one of participants in the focus groups stressed:

- ‘The issue that I think we see across the legal sector is that a lot of legal services are very transactional and are very singular transactional. You’ll engage a solicitor, or you’ll engage with a legal service provider for a product or a service and then you won’t really have much ... It’s very much get them through the door, do the job for them and get them out the door.’ (The Society of Will Writers and Estate Planning Practitioners)

### 4.1.3 Universal vulnerability and the universal changes approach

As discussed above, while seven out of the 47 survey participants stressed that everyone is potentially vulnerable, stakeholder event participants unanimously discussed the notion that vulnerability is inherent to everyone, stressing its universality (see section 4.1.3 below). This notion has significant practical implications. For example, one survey respondent and one focus group participant suggested that, given the universal nature of vulnerability, service providers should focus their resources on adapting their services to meet the needs and potential challenges of all individuals:

- ‘A parallel could be drawn here with accessibility - there are certain adjustments you might need to make to a service so someone can access it, but it’s still best practice to make the service as accessible as possible for everyone so that people don’t have to label themselves or be identified as needing an adjustment before it’s made available.’ (Scottish Legal Complaints Commission)
- ‘we already recognise that people are vulnerable, so let’s just respond to the vulnerability with some practical solutions’ (CRSE9)

This approach is termed the ‘universal changes approach’ in our research. The universal changes approach directs attention to the practical aspect of legal service provision, emphasising how services should be designed to be inclusive to everyone, operating under the premise that anyone can experience vulnerability.

#### The value of the universal changes approach

After acknowledging the universal changes approach during the plenary session phase at the stakeholder event, participants in all the focus groups agreed that a universal changes approach may be useful in providing better legal services to consumers, responding properly to all consumers’ needs. For example:

- ‘This idea of maybe moving away from the term vulnerability given the baggage that it carried, I think could potentially be a valuable approach.’ (ACSE13)
- ‘So, my view is that actually, what we have to do is instead of focusing on trying to identify a particular vulnerability that might be useful, but actually, if we work from the premise that every single client is vulnerable ... For example, we all should be communicating in a very simple language to our clients. Our communication should be in plain English. You don’t need to say to someone, do you need to have things in plain English, it should just be a given.’ (Caroline Bielanska, law consultant).

#### The challenges of the universal changes approach

Yet, the universal changes approach raised two concerns in the focus groups. Firstly, one participant contended that it might be less tangible for practitioners, potentially increasing their burden, and raising concerns about the adequacy of performing their duties properly:

- 'I think it's less tangible as well, isn't it, and the practitioner might be more willing to have a risk-based approach because it gives them a clear list of things, and then if something slips through the net, they can almost say, "we've done our due diligence, you weren't on this list and therefore it wasn't our fault." If you have a universal approach, maybe there's more of an onus then on the practitioner to identify.' (ACSE13)

Secondly, all participants in two focus groups contended that while vulnerability is universal, some individuals may be more vulnerable than others at any given time. This issue is presented in more detail below.

### **Diversifying vulnerability: problems and solutions**

All participants in two focus groups concurred that not all vulnerabilities need measurement or solicitor attention, as certain vulnerabilities may not be relevant to the provider-consumer relationship. This seems to be linked to the idea that participants recognise vulnerability to be subjective (see section 4.1.2 above).

The two focus groups participants argued that within the provider-consumer dynamic, certain vulnerabilities hold greater significance than others, implying that some individuals are more vulnerable than others. For instance:

- 'We all have vulnerabilities, but we don't all start from the same basis' (CRSE8)
- 'I agree with everybody, there's contextual sliding scales' (LESE7)

For example, CRSE9 emphasised the importance of prioritising literacy skills, specifically reading and writing, on a hierarchical scale of consumer vulnerabilities. Law consultant Caroline Bielanska said that age should not always be considered a vulnerability. This view was agreed upon by a survey participant:

- 'People also struggle sometimes to see themselves as vulnerable or be labelled as such. I.e. age - if that's a risk factor, some 80 year olds are very vulnerable and others aren't' (ACS12)

Therefore, the concern raised by all participants in two focus groups was that while acknowledging everyone's vulnerability, specific attention should be directed towards those who are more vulnerable, particularly within the provider-consumer relationship. One participant in the focus groups proposed a solution to this concern, suggesting that inquiries about consumers' needs should be prioritised. This approach would enable service providers to address the needs and challenges of consumers of legal services without explicitly mentioning vulnerability:

- 'But I do think if time gets taken out just to have that conversation with someone, just to explain, this is what is available and what would work best for you, rather than just waiting for these vulnerabilities to just pop up, because like we said ... you might not need help as much as the next person. So, starting off on a level playing ground, maybe... does it stop it from being missed, if everyone has been getting the help that they need.' (Marc Conway, lived expert)

This solution was embraced by other participants in the focus groups, who underscored the importance of shifting from the language of vulnerability to focusing on the identification of

consumers' needs. This research finding is discussed in more details in sub-section 4.3.6 below.

#### 4.1.4 Resilience approach

Although resilience as an alternative to the risk factor approach (see sub-section 3.3.1 for an explanation of this approach) was not discussed by survey participants or during the flipchart feedback sessions, it did come up in two focus groups. In one of these, the discussion was brief, with a single participant suggesting that the resilience and risk factor approaches could be combined whereby risk factors can indicate lack of resilience:

- 'I think there are ways those two approaches can be brought together. We recognise that perhaps everybody has the potential to be vulnerable if they don't have resilience. These [the SRA list of risk factors] are indicators of when they may not have resilience...' (ACSE13, words in squared brackets added by authors)

In the other focus group, however, all participants agreed that resilience is not a viable substitute for the risk factor approach. For instance, according to lived expert Marc Conway, categorising individuals as resilient or not may lead to overlooking their needs under the assumption that they can handle challenges on their own. CRSE7 argued that this perspective parallels the risk factor approach, where practitioners might opt to label individuals as 'non-resilient' instead of 'vulnerable'. CRSE7 also claimed that this approach would still define the issue from an individual rather than more structural/social perspective.

## 4.2 The usefulness of measuring consumer vulnerability across the legal services sector

The usefulness of measuring and monitoring/tracking the extent of consumer vulnerability in the legal sector in England and Wales was explored in the empirical phase of the research. Despite the survey results indicating widespread support for measuring consumer vulnerability (see Table 20 below), the overarching idea that measuring and monitoring/tracking consumer vulnerability within the legal services sector could be useful was not substantiated in either the flipchart feedback session or the focus groups. Participants in the focus groups appeared to have shifted their perspective. These mixed and changing views are explored in the next sub-section.

### 4.2.1 Shifting views on the usefulness of measuring consumer vulnerability across the legal services sector

Forty-five out of 47 survey participants agreed that measuring and monitoring/tracking the extent of consumer vulnerability in the legal sector in England and Wales would be useful. Table 20 below displays a breakdown of responses by participant group.

*Table 20 - The usefulness of measuring consumer vulnerability across the legal services sector according to survey participants<sup>1</sup>*

Participant group	Frequency (yes)	Percentage of responses in participant group (yes)	Frequency (no)	Percentage of responses in participant group (no)

Academics and consultants	12	100	0	0
Consumer representative/re solution bodies and other participants	5	83.3	1	16.7
Legal professionals	8	88.9	1	11.1
Lived experts	15	100	0	0
Regulators	5	100	0	0
Total	45	95.7	2	4.3

## Notes

1. Results derived from responses to survey question 6: 'Would it be useful to measure and monitor/track the extent of consumer vulnerability in the legal sector in England and Wales, to understand how many consumers are vulnerable and whether it is increasing or decreasing?'

Table 21 below illustrates the factors identified by survey participants as useful for measuring and tracking/monitoring consumer vulnerability. The predominant factors highlighted include the potential for improved support for consumers through acknowledgment of these measures (18 out of 45), as well as the opportunity for a deeper understanding of consumer vulnerability (14 out of 45). For instance, two survey participants said:

- 'Without this information, it may be that opportunities to provide extra support are being missed. In turn, this means that consumers of legal services miss out on more equitable access to these legal services' (ACS9)
- 'Engaging with and monitoring consumers will allow regulatory bodies to identify areas of legal services that may need improving/ a chance to see how well their current procedures are working' (CRS4)

*Table 21 - Reasons given by survey participants for the utility of measuring consumer vulnerability across the legal services sector<sup>1</sup>*

Reason	Frequency	Percentage (out of this question's respondents, n=11)	Percentage (out of total survey participants, n=47)
Improving support for consumers	18	40	38.3



Increase understanding of vulnerability	14	31.1	29.8
Improving tracking and monitoring	7	15.6	14.9
Better service	3	6.7	6.4
Improving equal access to services	3	6.7	6.4
Supporting applications for legal aid and mitigation	2	4.4	4.3
Giving vulnerable consumers a voice	2	4.4	4.3
Improving training for practitioners	2	4.4	4.3
Increasing and decreasing is not useful to know	1	2.2	2.1
Increasing policy initiatives	1	2.2	2.1
Mainstreaming the importance of vulnerability	1	2.2	2.1
Total reasons	11		

#### Notes

1. Results derived from responses to survey question 6: 'Would it be useful to measure and monitor/track the extent of consumer vulnerability in the legal sector in England and Wales, to understand how many consumers are vulnerable and whether it is increasing or decreasing?'

Despite the survey results indicating widespread support for measuring consumer vulnerability (see Table 21 above), the overarching idea that measuring and monitoring/tracking consumer vulnerability within the legal services sector could be useful was not substantiated in neither the flipchart feedback session nor the focus groups. Participants in the focus groups appeared to have shifted their perspective. Some participants expressed a willingness to provide different responses if surveyed after the event. The participants raised the concerns around measurement and the risk factor approach underpinning it in sub section 4.2.1. While one of the two survey participants who argued that measuring consumer vulnerability would not be useful cited the need for a shared definition, this viewpoint was also echoed by another survey participant. Participants

were not expressly asked about this concept in the online questionnaire, but were introduced to it during the plenary session at the stakeholder event. The explanation of the approach may have initiated the change in perspective, but does not diminish the value of the participants' preference for the universal changes approach.

For instance, LESE8 stressed that as everyone could be vulnerable at any point in time there is no point in measuring consumer vulnerability and that rather, resources should be used to meet the needs of people who use legal services:

- 'I agree with the fact that everybody is at some point, vulnerable or in a vulnerable situation. So, what good use would it do to keep collecting that information instead of just allowing everyone to be vulnerable, or be in a vulnerable situation at some point, and then have everything in place to support people from the get go, rather than taking time to collect this information, to then find out what I think is quite inevitable, that they're going to see, well everyone that's came in ticks one of these boxes sometime.' (LESE8)

Most participants in the focus groups agreed with this view. Another participant added;

- 'Once you've assessed that they are vulnerable, there's no point then putting them into categories of vulnerability. You should be offering them all the same service and not excluding' (LESE7)

Nonetheless, most participants in two focus groups contended that measuring vulnerability could still have some benefits. They recognised the value in measuring vulnerability, albeit not for the sake of measurement, but rather to offer support to consumers. This is discussed in the sub-section below.

#### **4.2.2 The value of measuring consumer vulnerability across the legal services sector**

As mentioned in above, most participants in the focus groups felt that legal services are transactional and questioned the usefulness of measuring consumer vulnerability given its universal nature. Although participants at the stakeholder event did not generally consider measuring consumer vulnerability to be a useful exercise (see sub-section 4.2.1), some (most participants in two focus groups and in one flipchart feedback session) recognised that there could nonetheless be value in measuring consumer vulnerability. This perspective was substantiated for two reasons. Firstly, they emphasised that measuring vulnerability could prove useful in better understanding it and providing support to consumers. The two participants in the focus groups stated:

- 'Personally, I think it is valid to measure it because I think if you can try and understand who that group of people are and then hopefully have some additional form of segmenting that information, you can tailor the service a bit more.' (CRSSE2)
- 'collecting information so that some... so, things can be put into place as support' (LESE8)

Secondly, participants in the two focus groups agreed that measuring consumer vulnerability could be beneficial in providing a rationale to increase financial support for initiatives aimed at addressing consumer vulnerability. One participant stressed:

- 'Another reason the statistical information is helpful is from... to get financial support in terms of a budgetary point of view.' (CRSSE2)

Hence, while the overarching finding from both the flipchart feedback session and the focus groups was that participants did not find measuring consumer vulnerability to be a useful exercise, some focus group participants did see value in it. They had two primary motivations: to gain a broader understanding of consumer vulnerability for customising legal services and meeting the generally identified needs of consumers, and to identify and support individual consumers with their individual needs at the time that the service or goods are provided. This perspective was consistent with the sentiments expressed in the survey responses, where the most frequently cited rationale for the usefulness of measurement was to provide support to consumers of legal services (see Table 21 above). That said, they also identified many potential challenges in progressing this measurement.

### 4.2.3 Challenges with measuring consumer vulnerability across the legal services sector

As discussed in section 4.1, four out of 47 survey participants and one participant in the focus groups argued that vulnerability is hard to define and conceptualise. Nonetheless, 32 out of 47 survey participants emphasised the effectiveness of the risk factor approach and the list of risk factors provided by the SRA (2016b) in defining consumer vulnerability within the legal services sector. Despite this, 20 out of 47 survey participants highlighted the necessity to enhance the list of risk factors used by the SRA (2016b) to define consumer vulnerability by incorporating additional elements. Furthermore, 26 of the 47 survey respondents identified issues with the risk factor approach, with the most commonly mentioned problems relating to the subjective and universal nature of vulnerability. It is noteworthy that all focus group participants agreed that these two issues were problematic aspects of the risk factor approach. These problems are considered first below.

This is followed by a consideration of a discussion of more technical issues specific to the measurement/tracking of consumer vulnerability. Thirty-eight out of 47 survey participants also pointed out potential issues specific to the measurement/tracking of consumer vulnerability, some of which were also identified by participants in the focus groups. The most frequently mentioned issue by survey participants (n=16) was that consumers might be cautious about disclosing their vulnerability for various reasons, such as embarrassment or fear of discrimination. Additionally, 10 survey participants noted that vulnerability is defined inconsistently among different regulators, making it challenging to measure without first establishing a commonly accepted definition. All the issues mentioned by survey participants are listed in Table 22 below and discussed in the following sub-sections.

*Table 22 - Challenges with measuring/tracking methods proposed by survey participants*

<b>Challenge/problem</b>	<b>Frequency</b>	<b>Percentage (out of this question's respondents, n=38)</b>	<b>Percentage (out of total survey participants, n=47)</b>
Consumers can be cautious about disclosing vulnerability	16	42.1	34
Definitions of consumer vulnerability are inconsistent	10	26.3	21.3
Issues around self-disclosure	9	23.7	19.1

Capacity and resources of law firms	7	18.4	14.9
Inconsistent measurement across providers	6	15.8	12.8
Issues around who should carry out measurement	6	15.8	12.8
Concerns relating to the GDPR	5	13.2	10.6
Vulnerability is labelling and exclusive	5	13.2	10.6
Consumers may not trust practitioners	4	10.5	8.5
It is hard to reach consumers with vulnerabilities	3	7.9	6.4
Other	8	21.1	17
Total	38 <sup>2</sup>	100	80.9
Total number of problems	20		

#### Notes

1. Results derived from responses to survey question 8: 'What might the problems and challenges be with measuring consumer vulnerability in relation to legal services in England and Wales?'
2. In total, 38 survey participants mentioned issues with the risk factor approach. Some individual participants mentioned more than one issue.

### Definitions of consumer vulnerability are inconsistent

As discussed in section 4.1, four out of 47 survey participants and one in the focus groups argued that vulnerability is hard to define and conceptualise. Furthermore, although this issue was not discussed during the flipchart feedback session or in the focus groups, 10 survey participants emphasised that the absence of a universally accepted definition may pose challenges in measuring consumer vulnerability. Two survey participants said:

- 'I think the biggest issue will be agreeing a working definition of vulnerability.' (ACS8)
- 'there is no useful definition of what this means therefore it cannot be measured meaningfully.' (ACSO)

### Vulnerability is labelling and exclusive

Five out of 47 survey respondents emphasised that measuring consumer vulnerability may pose the challenge of labelling people as vulnerable. Two survey participants stated:

- 'Identifying an appropriate sample may be possible but may further "label" people as "vulnerable consumers"' (Terri Rittenburg, academic)
- 'Run the risk of putting clients into pre-determined "boxes" - and failing to listen.' (LPSSE2)

As mentioned above, two participants emphasised in the focus groups that the fear of being labelled as vulnerable and subsequently stigmatised can deter consumers from sharing vulnerability. One focus group participant said:

- 'I don't think there's necessarily a need to measure, to put it out there to start measuring, or coming up with tools. The only tool you'll use is tick-boxing. That's what you will do, you'll label everyone with a tick and then put everyone in a box.' (Kevin OBrien, lived expert)

This concern was also raised by participants in a flipchart feedback session, who pointed out that one possible drawback of measuring vulnerability is the risk of labelling individuals as vulnerable, potentially creating categories that might overlook those who truly require support while including others who do not fit the vulnerable category. This view was reinforced by one participant in the focus groups, who argued:

- 'I think some people might end up being excluded, because ... legal practices are private businesses, and they could choose to serve... these consumers, we've RAG-rated them, they're red. We don't want to market ourselves to them, and then they could be underserved by the legal sector.' (CRSE8)

### Consumers can be cautious about disclosing vulnerability

Sixteen out of 47 survey participants mentioned that consumers may not disclose vulnerability when asked, which could be attributed to several factors. These reasons are listed in Table 23 below.

*Table 23 – Reasons which may prevent consumers from disclosing their vulnerability according to survey participants*

Reason	Frequency	Percentage (out of this question's respondents, n=16)	Percentage (out of total survey participants, n=47)
Consumers may not be aware of their vulnerability	7	43.8	14.9
Consumers may feel embarrassed	4	25	8.5
Consumers may feel ashamed	3	18.8	6.4

Consumers may feel uncomfortable disclosing vulnerability	2	12.5	4.3
Consumers may fear disclosure	2	12.5	4.3
Consumers may be too proud to disclose vulnerability	2	12.5	4.3
Cultural barriers may prevent disclosure	1	6.3	2.1
Consumers may not want to be identified as vulnerable	1	6.3	2.1
Total	16 <sup>2</sup>	100	42.1
Total reasons	8		

## Notes

1. Results derived from responses to survey question 8: 'What might the problems and challenges be with measuring consumer vulnerability in relation to legal services in England and Wales?'

2. In total, 16 survey participants mentioned that consumers may not disclose vulnerability when asked. Some individual participants mentioned more than one reason.

For instance, survey participants stated:

- 'People don't always know they are encountering a disadvantage or ... vulnerability so are unable to volunteer that information.' (Pheleba Johnson, lived expert)
- 'I hate telling people about my dyslexia cos its embarrassing if I do I hope I will get help for it and be treated respectfully' (Eyebs, lived expert)
- 'There is a culture issue where people asking for assistance or cooperating with authorities are seen as grasses.' (Matthew James Seaton, lived expert)
- 'Some people might not disclose everything because they are afraid of the information being used against them.' (LES2)

This view was also substantiated by four participants in the focus groups. For example, LESE7 argued that many consumers of legal services would not disclose their vulnerabilities to solicitors as they do not feel comfortable about sharing; they feel they could be labelled and stigmatised. Law consultant Caroline Bielanska agreed that stigma might prevent people from sharing vulnerabilities. In addition, one participant stated:

- 'I'm very reluctant to highlight weakness, because of the fear that weakness can be used against me.' (LESE1)

### Issues around self-disclosure

Nine out of 47 survey participants contended that consumers may not be able to self-disclose vulnerability because their own vulnerability may prevent them from doing so. Two survey participants stressed:

- 'some of the most vulnerable of consumers are illiterate or English is their second language. It may be challenging to ensure that any surveys/consultations are accessible. Often language used in relation to legal services can be technical and complex.' (CRS4)
- 'We also have to think about when someone is vulnerable, depending on what that vulnerability may be, is do they even have the means to provide the information that would be sought? Is someone who is under duress, or physically/mentally incapable going to log onto a survey, or other reporting mechanism?' (The Society of Will Writers)

This view was not discussed by any participants in the flipchart feedback session or in the focus groups.

### Capacity and resources of law firms

Seven out of 47 survey participants expressed another problem with measuring consumer vulnerability across the legal services sector which related to the capacity and resources of firms, which could present a substantial obstacle in measuring consumer vulnerability. Specifically, respondents pointed out that measuring vulnerability would impose a burden on law firms, given its time-consuming and costly nature. They highlighted the lack of sufficient time and resources available for dealing with this issue. For instance, two survey respondents emphasised:

- 'This is yet a further administrative burden which is presumably unfunded. For those undertaking Legal Aid work there is an awful lot of bureaucracy already, when the rates paid are unrealistically low. Any monitoring would need not to be time-consuming and require lots of information to avoid this risk, but that would also impact the utility of the data collected. There needs to be a careful balancing exercise of what is required and the burden imposed on advice providers in order to make it workable.' (LPS4)
- 'The concept of adding to these burdens a need to measure the vulnerability of our consumers (clients) is unwelcome.' (Curzon Green/Employment Lawyers' Association)

This perspective found agreement among participants in two focus groups. One participant even suggested a solution, which would involve the SRA reducing solicitors' fees to the SRA, thereby freeing up more resources for them:

- 'If you were thinking of costs from the point of view of what are the costs to the profession of implementing this, what could the SRA do? They administer the fees, they could look at maybe producing those to say, we want you to do this, this is important, put consumer vulnerability at the top of this scale. We appreciate this might cause you more administration, more costs, therefore we will reduce your annual fees by 5%, 10%, whatever.' (CRSSE2)

### Inconsistent measurement across providers

An additional concern raised by six out of 47 survey respondents was the potential inconsistency in measurement across different service providers, which could pose a significant challenge in measuring consumer vulnerability. For instance, two survey participants emphasised:

- 'I think we need for greater consistency and standardisation in practice across the profession' (LPS7)
- 'Every firm must decide for themselves whether an individual is deemed 'vulnerable' which could lead to someone being automatically deemed vulnerable because, say, they are 75 years old at one firm, but another firm talking to them and deciding they are not vulnerable at all because they have retained their mental acuity. This will mean that the consumer would not be provided with a consistent level of care across the two providers.' (Jane Robson, CEO, NALP)

This aspect was not specifically addressed by any participants in the flipchart feedback session or in the focus groups.

### **Issues around who should carry out measurement**

Six out of 47 survey respondents contended that measuring consumer vulnerability could pose challenges due to issues surrounding who is responsible for conducting the measurement. For instance, ICAEW argued that law firms may not have staff with adequate skills to identify vulnerability. In addition, one survey respondent said:

- 'Being prejudged by someone who feels they've "seen your type before" without fully understanding the complexities. Capturing these nuances can be a problem when measuring something on a linear scale.' (LES5)

This issue was a primary concern also in all the focus groups. Specifically, participants across the focus groups generally concurred that the identification of consumer vulnerability would benefit from the involvement of an independent third party. Further discussion on this topic will be provided in detail in section 4.3.

### **Concerns relating to General Data Protection Regulation**

An additional concern raised by five out of 47 survey participants related to issues concerning the General Data Protection Regulation (GDPR), which could pose a significant challenge in measuring consumer vulnerability. For instance, two survey respondents emphasised:

- 'An example would be that if they're struggling with mental distress, they may be afraid to tell their lawyers because they may be afraid of being sectioned.' (The Motor Ombudsman)
- 'If firms are required to collect or share data, they may have ethical concerns or concerns about GDPR and protecting confidentiality or consider it an onerous regulatory burden.' (ICAEW)

Although the GDPR was not directly discussed in the focus groups or during the flipchart feedback session, most participants in the focus groups concurred that adopting a collaborative approach to address consumer vulnerability would be beneficial. Such an approach would involve data sharing among service providers which would also necessitate



the consideration of the GDPR. This topic will be explored in detail in sub-section 4.3.5 below.

### **Consumers may not trust practitioners**

Four out of 47 survey respondents argued that measuring consumer vulnerability could be challenging because consumers may lack trust in practitioners. Establishing trust in order to inquire about vulnerability could therefore prove to be problematic. For instance, one survey respondent said:

- 'The honesty and trust between client and practitioner can be a problem as they both have personal interests and often competing agendas at play.' (LES5)

This concern was further highlighted during a flipchart feedback session. Furthermore, while participants in the focus groups did not explicitly raise concerns about the lack of trust from consumers, they emphasised the critical importance of building trust between consumers and practitioners to ensure that support tailored to their needs is received effectively. This emerges as a key finding of the research and will be extensively discussed in sub-section 4.3.3.

### **It is hard to reach consumers with vulnerabilities**

An additional concern raised by three out of 47 survey participants related to the difficulty in reaching out to certain consumers with heightened levels of vulnerability, as they may be marginalised or excluded from society. Consequently, achieving a representative measure of consumer vulnerability on a national scale could be challenging. Notably, this perspective was not discussed in either the flipchart feedback session or the focus groups. Two survey respondents emphasised:

- 'The most vulnerable of consumers often go under the radar. For instance, consumers who are alienated by the digitalisation of the sector and may not have access to online surveys or consumers who have access but are unaware of how to navigate the web. I believe that measuring the vulnerability of these consumers would be particularly challenging.' (CRS4)
- 'Some of the most vulnerable in society are unlikely to be contactable through standard research recruitment methods, and more bespoke research with key vulnerable groups is often needed' (RGS1)

In response to this concern, CRSE8, a focus group participant, contended to engage with individuals from minority groups, such as migrant or homeless communities, who previously used legal services or are currently doing so. Through conducting research, CRSE8 suggested that empirical insights into their specific needs could be gained. Therefore, guidance could be shared with solicitors on the most effective ways to engage with and support individuals facing these vulnerabilities.

### **Other challenges with measuring consumer vulnerability across the legal services sector**

Eight out of 47 survey participants also mentioned other issues with measuring consumer vulnerability in the legal services sector. Each of these views were mentioned by individual

participants and were not discussed in either the flipchart feedback session or the focus groups. These are:

- **Consumers may take advantage of their vulnerability.** One survey participant stressed: 'It doesn't effect the legal service unless there is some kind of positive outcome for being a vulnerable person interacting with the legal service as then you may have being lying or over exaggerating there problems or situation.' (Pheleba Johnson, lived expert)
- **Vulnerable people may not afford access to regulated services.** Jane Robson, CEO, NALP said: 'the most vulnerable in society are also often those who will not be able to afford to employ regulated services and so any monitoring that looks solely at details from such firms is unlikely to show the full picture. If we are wanting to truly monitor consumer vulnerability, we must look at all aspects of the legal landscape, both regulated and non-regulated and encompass the courts and the police as well. Otherwise we are only looking at vulnerable individuals who have the resources afford access to justice via the regulated services.' (Jane Robson, CEO, NALP)
- **It would be hard to keep data up to date.** One survey respondent stressed: 'I think the [issue is] data capture and keeping it up to date.' (ACS12, words in squared brackets added by authors)
- **Lack of firms understanding of vulnerability.** ICAEW contended: '[The issue is] whether firms understand their client base and risk factors for vulnerability' (ICAEW, words in squared brackets added by authors)
- **Lack of incentives for firms.** ICAEW stated: 'are firms incentivised to monitor this data? Will they feel it is relevant to them if they consider their clients tend to be sophisticated users/companies.' (ICAEW)
- **Might not be feasible.** One survey participant said that: '[The issue is] whether collating data on specific characteristics to understand the scale of need is feasible in such a large and diverse market.' (ICAEW, words in squared brackets added by authors)
- **Project hard to manage.** ACS8 stated: 'the biggest problems and challenges will be similar to those that large complex research projects face - ethical approval, access to participants, data collection' (ACS8).
- **Project is too broad.** One survey participant contended: 'I wonder if an overarching study is too ambitious as a starting point. The situational and other risk factors that are identified might lead themselves to a smaller case study approach that examines more specific areas - for example consumers at risk of losing their home.' (ACS8)
- **Questioning about vulnerability is traumatising.** Terri Rittenburg argued: 'vulnerability can be traumatising, and asking questions about it can be further traumatising' (Terri Rittenburg, academic).
- **Vulnerability is dynamic.** One survey respondent stressed: 'People can move in and out of vulnerable situations as well so it is hard to convey the fluidity of the issue by using standalone survey data.' (RGS1)

#### 4.2.4 Overcoming challenges to measuring consumer vulnerability across the legal services sector

The previous sub-section demonstrates that overall participants considered that the measurement of consumer vulnerability across the legal services sector would be problematic and challenging. Most survey respondents (38 out of 47) and some focus groups participants identified potential issues with measuring consumer vulnerability across the legal services sector. The most frequently identified issues in the survey were that consumers can be cautious about disclosing vulnerability (identified by 16 survey participants) and that definitions of consumer vulnerability are inconsistent (identified by 10 survey participants as shown in Table 22).

That said, 32 out of 47 survey respondents also discussed possible solutions to some of the issues identified above. These solutions were:

- **Improve the relationship between legal service providers and consumers.** Nine survey participants emphasised that by achieving this, trust can be established, and consumers may feel at ease to disclose their needs and vulnerabilities. This is a key theme that will be discussed in more depth in sub-section 4.3.3 below. One survey respondent said: 'Creating a better relationship with the client - a 'trusted advisor' relationship.' (LPSSE2)
- **Introducing new professional figures.** Five survey participants stressed for the need to introduce new professional figures which could help solicitors to better understand consumers' needs. One survey participant said: 'The SRA could ensure that in addition to the Compliance Officer for Legal Services and Compliance Officer for Finance, law firms could also have a Compliance Officer for Vulnerability. The Vulnerable Compliance officer could also be an COLF/COLP.' (The Motor Ombudsman)
- **Experienced and trained research team.** Interlinked with the point above, two survey respondents mentioned that to collect reliable data on consumer vulnerability, there needs to be trained professionals to achieve this. One survey participant said: 'The appointment of an experienced research team with appropriate resources will be crucial to tackling these issues.' (ACS8)
- **Making measurement mandatory.** Four survey respondents and two participants in the focus groups argued that if the SRA intended for law firms to measure and monitor consumer vulnerability, it should mandate this exercise. For instance, one survey participant said: 'I think it would need to be mandated. If it's voluntary, they won't do it. A lot of the things that are mandatory now, they don't do until we get to enforcement stage and threatening to shut down their firms and doing the interventions and so on.' (CRSSE2)
- **Improve collaboration among practitioners.** Two survey participants mentioned that a better collaboration between various regulators, legal service providers and other institutions could improve the measurement of consumer vulnerability. One of them said: 'establishing partnerships with legal professionals, regulatory bodies, charities, advice bodies and government agencies to facilitate data sharing and enhance the overall effectiveness of vulnerability measurement' (ICAEW).
- **Other solutions.** Individual survey participants mentioned other possible solutions to the issues with measuring consumer vulnerability identified above. These included simplifying language and communication, developing an agreed definition of vulnerability, and generally increasing understanding of vulnerability among the public and service providers.

### 4.3 Responding to the needs of consumers in the legal services sector

As highlighted in sub-section 4.1.2, there was an overall acknowledgment among study participants that the mere need for legal services inherently renders individuals vulnerable. Hence, participants stressed that consumers of legal services possess distinct and intricate needs:

- 'consumers of legal services have incredibly complex needs, which can be challenging to attend to' (ACS9)

Building upon this shared understanding, all participants in one focus group emphasised that resources should be allocated towards responding to consumers' needs rather than solely focusing on measuring vulnerability. For instance, one focus group participant said:

- 'Can't we just have a generalised assumption that ... everyone is vulnerable, and we just think of strategies from the SRA, like guidance strategies, principles, ways of working that start from that generalised assumption' (CRSE9)
- 'The idea of counting it seems like an additional workload when actually, we're working from the assumption of vulnerability' (CRSE9)

During the stakeholder event, all participants engaged in discussions regarding various general areas for improvement, as well alternative uses of resources instead of focusing on measuring vulnerability. These included:

- Accessibility to legal services
- Accessibility of legal language
- Transparency about consumer redress
- Provider-consumer relationship in terms of trust and understanding
- University and CPD training for legal service providers, with input from lived experts and with a focus on vulnerability
- Data sharing
- Shifting the purpose of measuring consumer vulnerability to addressing the individual needs of consumers in the provider-consumer relationship including through the use of independent, third parties and reviews on individual needs

#### 4.3.1 Improving accessibility to legal services

One area identified for improvement was accessibility to legal services. Accessibility encompasses various aspects, including communication and financial accessibility. The subsections below provide some examples

'If ... poor people have little access to legal services, this is the first challenge. Their vulnerability may be more a matter of access to the service rather than the nature of the service experience.' (Terri Rittenburg, academic)

### 4.3.2 Communication/Transparency

It was considered that improvements were required in terms of accessibility of language and transparency.

#### Improving accessibility of language

As highlighted in section 4.1, the complexity of legal language can exacerbate the challenges within the relationship between service providers and consumers. Specifically, seven out of 47 survey participants emphasised that service providers' use of legal language is overly complex. This issue corresponds with a significant need identified by these participants, which is to facilitate consumer understanding of legal terminology and procedures, as well as what service providers communicate to them. For instance:

- 'I had real issues with reading and understanding information and based on that it was difficult to make my own decisions within these matters' (Marc Conway, lived expert)
- 'The wording used is very formal and can be quite intimidating. It would be helpful if the solicitors were able to explain the forms in more detail, without being patronised or belittled. Some forms being adapted so that the language represents today.' (LES12)

Overall, participants in one focus group reached a consensus that communication, language barriers, and lack of transparency represent the most prominent issues within legal services, potentially resulting in consumer vulnerability. Similarly, participants in a separate focus group concurred that the language employed by solicitors is often difficult to comprehend, acting as a barrier for consumers of legal services. One focus group participant said:

- 'even if the solicitor is generally doing the right thing for you, I'm not suggesting they're not, but you can feel isolated. Just from the language.' (CRSE8)

This perspective was also shared by participants in one flipchart feedback group. Consequently, there was a general consensus among research participants that consumers would benefit from support in understanding legal language.

#### Increasing awareness of consumer redress

Participants in three of the focus groups stressed that there is little awareness of services where consumers can go to complain about legal assistance. This issue was not discussed in the flipchart feedback session nor in survey. For instance, two participants in the focus groups said:

- 'Not a lot of people know what the Ombudsman is.' (Kevin OBrien, lived expert)
- 'I didn't even know that was one of our rights, that we can.' (LESE8)
- 'One other thing that really stands out to me is I didn't know about this. I didn't know there was somewhere I could go and complain about solicitors. I don't think it's common knowledge. It took me to work on the advice line at Prison Reform Trust to realise there was an Ombudsman.' (Kelly Gleeson, lived expert)

However, participants did not clarify whether further work should be done to improve this by the legal service providers and/or the Legal Ombudsman. A focus group participant did argue that the SRA should work to increase that awareness:

- 'I'm hoping that's an outcome of this initiative for SRA'. (CRSSE2)

### 4.3.3 Improving provider-consumer relationship

As outlined in sub-section 4.2.1, most participants in the focus groups acknowledged a significant deficiency in current legal services: their transactional nature often overlooks the human dimension of the provider-consumer relationship. Consequently, they emphasised that fostering a positive and dialogical relationship with consumers is crucial for effectively comprehending and addressing consumer vulnerability. This sentiment was also echoed by nine participants in the survey.

To address this issue, focus group participants generally concurred that resources should be allocated to enhance the relationship between practitioners and consumers. They argued that through meaningful conversations, practitioners can gain insight into the individual circumstances of consumers, thereby establishing trust, recognising vulnerability, and delivering a more tailored service to meet individual needs. We refer to this approach to dealing with consumer as the 'empowering interview'. For instance, focus group participants said:

- 'I think it's best personally to have an informal conversation with a client first ... Because in an informal conversation, you can pick up a lot of social cues. You can pick up a few things, just by speaking to somebody and letting them talk about their life' (LESE1)
- 'I feel like if that person is given the time to... that they will share things with you if they can build that trust with you, they'll share things with you.' (Kelly Gleeson, lived expert)
- 'I know my solicitor, my criminal law one, we've been very good friends as well as having that professional relationship, although we met through a professional relationship, because he just took that time to listen and let me have my rant, offload, get everything off my chest and then I can just sit back and know he's going to act in my best interest.' (Kelly Gleeson, lived expert)

One focus group participant stated that developing a positive relationship with consumers is crucial for gaining insight into their vulnerability. To do so, they suggested to not ask direct questions about vulnerability, but questions about how best to support consumers' needs:

- 'So, it's not asking them specifically about their vulnerabilities such that they're made to feel awkward or self-conscious, it's literally, "tell me what I can do to make your life better? Explain to me where you are, I can see you're anxious, you've got your arms folded, you look really uncomfortable like that, can I get you a cup of tea?" It's just about getting to know the client and you can train on it.' (LPSSE2)
- 'So, the idea is that you get to know your client and you build that relationship with them such that they trust you and they trust you with that personal information because they know it's going to be used properly, sensibly ... the first meeting if you're a family law client, don't talk law, literally, have the client in for a meeting, face to face usually works best, have a coffee. Literally have a coffee and have a chat and that's it, that's the first hour, just get to know them as a person, how they talk, their language, their fears, their concerns, their anxieties'. (LPSSE2)

One focus group participant also argued that legal professionals should take a more therapeutic approach when communicating with their consumers:

- 'I think some type of narrative, as you said before, in a therapeutic nature, and then be complementing of it, do you understand what we've gone through?' (Kevin OBrien, lived expert)

Lived expert Kevin OBrien also argued that solicitors need better training to be able to improve their relationship with consumers. This is another key finding of this research which is discussed in the sub-section that follows.

#### 4.3.4 Improving training for legal service providers

Another method proposed by the research participants to effectively use resources, rather than focusing on measuring vulnerability, is closely intertwined with the imperative to enhance the provider-consumer relationship: training. This was identified by six survey respondents and the vast majority of participants in the focus groups as well as in the flipchart feedback session. Research participants understood training as a crucial avenue for equipping practitioners with the necessary skills and knowledge to engage with consumers in a more empathetic and understanding manner. By investing in training initiatives, participants argued that practitioners can enhance their ability to recognise and respond to consumer vulnerability effectively, thereby improving the overall quality of service delivery. For example:

- 'The number one aim should be, if you're working with someone who is quite vulnerable, not to make them more vulnerable, to aid. So, I think having a real understanding of the levels of vulnerability, I think that's quite a good way forward.' (Kevin OBrien, lived expert)

More specifically, participants in the focus groups proposed tailored training programmes for solicitors. Various aspects of training were discussed. Firstly, it was suggested that training should be integrated into university degrees as well as offered by the SRA as part of ongoing career development. For instance:

- 'I think the best way to put that training in would be in the rotational... where solicitors through university have a training contact and then they rotate through. At that point, I think they should have something about people-centred approaches and how to deal with difficult clients, how to deal... or whatever, how to deal with people and how to assess the needs of vulnerabilities' (CRSE8)
- 'I'd like to see better education, so I like the idea of there being some sort of module within the LPC, that's another thing and training basically given to lawyers to identify these issues alongside the law.' (LPSSE2)
- 'It could be CPD-type modules as part of ongoing career developing. Could we bring this understanding into solicitor's offices through that so it's accredited CPD?' (LPSSE2)

Secondly, two participants with lived experience argued that this training should be shaped by input from lived experts, incorporating their feedback. This perspective was supported by the other participants in both focus groups where these views were expressed:

- 'No policy is worth the paper it's written on unless it has the voices of the people who are going to be governed by that policy running through it, and I know we're not talking about policy and that, but it's exactly the same thing.' (Marc Conway, lived expert)
- 'People with lived experience talking to them [solicitors], explaining things to look out for.' (Kelly Gleeson, lived expert, words in squared brackets added by authors)

Thirdly, participants stated that extra training is needed to equip solicitors with the skills to identify vulnerability and address consumer needs through meaningful dialogue and engagement with clients. However, participants did not specify which are those skills or the method for identifying someone as vulnerable. Participants said:

- 'I just think that we should focus on trying to improve lawyers/solicitors understanding of what may make someone vulnerable' (Caroline Bielanska, law consultant)
- 'If it's done properly, you'll find a whole new sector of solicitors 20 years down the line who have had really good training on how to identify vulnerability and they'll know a better way of asking the question.' (Marc Conway, lived expert)

#### 4.3.5 Data sharing

Another critical intervention that the majority of participants in two focus groups advocated for in addressing consumer needs was data sharing. This topic was not discussed in the flipchart feedback session, but five out of 47 survey participants stressed the importance of data sharing. Specifically, these participants delved into the significance of embracing a collaborative approach to addressing consumer vulnerability. One focus group participant stressed:

- 'I suppose one thing we discussed and I think relates to this point is this idea of integrated approaches. You might have someone who has been recognised as a vulnerable, let's say by social services, but they come to a solicitor to address a problem that's completely unrelated to all their interactions with social services, and the recognition of vulnerability there, the solicitor might not know about it unless the client divulges it, and I suppose that's a bit of a maze that would be difficult to navigate because obviously how could they share that with a solicitors company? For example, there's a private company that is separate from the state or the public body that has that information.' (The Society of Will Writers and Estate Planning Practitioners)

The central argument put forth by these participants was that information regarding individuals' vulnerabilities is collected by various institutions through different means. Participants cited examples such as GP practices, the NHS, and local councils. However, due to data protection regulations, this information remains private and confidential. Consequently, when individuals seek legal services, legal providers do not always have access to this information. LESE7 argued that there should be a mechanism in place to allow consumers to give permission to share information relating to their vulnerabilities to the legal services they use. Another focus group participant said:

- 'I think there's that much data, every single job, there's that much data collected and it doesn't seem to go anywhere. It's more often than not viewed by me again and again. So, if there was some way of sharing that, it would be good.' (LESE4)

On a similar note, Caroline Bielanska, law consultant, highlighted an underlying issue with SRA regulations and confidentiality. Her perception was that legal practitioners are constrained from disclosing confidential information even when they perceive consumers may be at serious risk of harm. In such instances, they may face a dilemma: either breach the Code of Conduct and risk losing their job or prioritise safeguarding their consumers. CRSE9 argued that a solution to this issue would be to have a safeguarding authority who would take care of the issue.



### 4.3.6 Shifting the purpose of measuring consumer vulnerability to addressing the individual needs of consumers in the provider-consumer relationship

As highlighted in section 4.2, most participants in the focus groups concurred that legal services are transactional in nature and questioned the utility of measuring consumer vulnerability, considering its universal aspect. However, most participants in two focus groups, along with one flipchart feedback group, acknowledged the potential usefulness of measuring consumer vulnerability for two key purposes. Firstly, they emphasised that measuring vulnerability could facilitate a deeper understanding of it, thereby enabling better support provision to consumers. Secondly, they agreed that measuring consumer vulnerability could serve as a justification for increasing financial support for initiatives aimed at addressing consumer vulnerability.

Therefore, the participants in the focus groups who recognised the value of measuring consumer vulnerability did not advocate for measurement for the sake of gathering data, but rather to provide tangible support for individual consumers. This perspective is consistent with the sentiments expressed in the survey responses, where the most frequently cited rationale for the usefulness of measurement was to provide support to individual consumers of legal services (see Table 21 above). For instance, one focus group participant said:

- ‘The measuring, if the measuring happens, then ideally, it’s useful for that client at that moment if possible’ (Dr James Organ, academic)

Some participants in one of the focus groups took their perspective a step further, concurring that the primary aim of measuring consumer vulnerability should be to address the root causes of vulnerability – the underlying factors that contribute to it – instead of solely concentrating on vulnerability itself. For instance:

- ‘Should our attention actually be focused on what causes someone to become vulnerable in the first place, as to how we either might train or plan or provide for that type of scenario arising or what we could potentially do to stop that scenario from arising in the first place.’ (The Society of Will Writers and Estate Planning Practitioners)
- ‘There are underlying structures that can reduce the base level in society so that people are at a more comfortable position before they come in regardless of their personal circumstances.’ (ACSE13)
- ‘[This would create an] Asset based rather than deficit-based approach.’ (CRSE8, words in squared brackets added by authors)
- ‘I suppose you start off from the point, we’re all vulnerable and then from that point, you build the assets within a person’s characteristics that might help them to, rather than starting from the other way around’ (CRSE8)

#### Use of independent, third parties

Another crucial intervention that the majority of participants in the focus groups advocated for in addressing consumer needs was the involvement of independent, third parties. This topic was also mentioned by one survey respondent but was not brought up in the flipchart feedback session.

During the discussions in the focus groups, it was suggested that expecting solicitors to accurately assess the severity or significance of vulnerability within a case might exceed the scope of their profession. To address this, solicitors could benefit from involving a third party.

Through training aimed at enhancing their understanding of vulnerability, solicitors could then refer consumers to this third party for a more specialised assessment. Following the assessment, the third party would provide guidance to solicitors on how best to address the needs of consumers based on their vulnerabilities. For example:

- 'if they've had a level of training to at least be able to say look, I'm not a mental health professional, I'm not medically trained but I did this module at university and I suspect that he may have some underlying issues and my opinion of that should have some...' (LESE7)
- 'if you get a vulnerable client in and you're speaking to them and you see red flags and you think to yourself, actually, this is beyond my comfort, I'm out of my comfort zone, this client, I can't assist because I'm not adequately trained. I now need to refer you on to an expert, so I think that's really helpful. They've got to be able to identify, to know...' (LPSSE2)
- 'you could have a specific role that is trained on a specific course or training for that... just to... your job could be to basically recognise the needs of people and being able to organise them into what you think... you can then suggest to the solicitors what this person's support needs would be. You could continue on throughout their journey with the solicitor, but you wouldn't need to be legally trained. You wouldn't need to have solicitorial background, you just need to be trained in that area.' (LESE8)
- 'I wonder if there's a way... you know, if there was a third party, someone who is more trained in mental health or vulnerability or something that you wouldn't see again, necessarily, unless you wanted to, if that was the person to relay that to, whether that would help.' (RGSE1)

### Reviews on individual needs

Participants in two of the focus groups discussed the use of reviews and consumer feedback. This approach was regarded as valuable both for identifying consumer vulnerability and for practitioners to comprehend the needs of consumers throughout the service provision. This topic was not discussed by participants in the surveys or in the flipchart feedback session.

Specifically, focus group participants referred to the use of reviews to indicate:

- Annual feedback that could be collated from service users about their experiences with the service provider.
- A more step-by-step feedback type of interaction between service provider and consumer where the needs of consumers could be constantly checked. This would also allow service providers to have updates on the development of individual consumer vulnerability.

For example, focus group participants said:

- 'I reckon they [solicitors] should definitely take an agile approach to the situation, as in get started as soon as possible and just improve the situation, have a review, improve, review, improve and constantly evolve that way'. (LESSE10, words in squared brackets added by authors).
- 'I think it would work... it would be easier to factor that in rather than sending out surveys and questionnaires to the client as well.' (Siân Riley, Access Legal)

LESSE10 said that these reviews could be done through WhatsApp. This means that there could be a pre-interview form where the solicitor would ask questions to the consumers including some relating to vulnerabilities and the consumer would either type in or record their responses. Then the same could be done half-way and at the end of the service provided:

- 'What I was trying to suggest, when you go for a theory test and you can click on the question and it reads the question out to you, so you can reply... you know on WhatsApp, you send a voice note and then that way, you're cutting down the solicitor's time as well. It could speed up the conversation as well, because you can always press fast forward, and go back to a conversation.' (LESSE10)

One focus group participant also mentioned that it would be good to have public reviews of solicitors:

- 'Maybe it's after the case finishes. Does he have five minutes of a questionnaire to go, I could have done better, or looked into this or... I don't think there would be because... maybe if it's anonymous then some feedback might be generated after a year or two.' (Kevin OBrien, lived expert)

Focus group participants also stressed that these reviews could be carried out by the independent third parties discussed above in in this section.

- 'I think for that to work, you would need an independent person within the firm to be reviewing that, because if the lawyer who was handling the case, they could just dismiss it.' (Siân Riley, Access Legal)
- 'Obviously, they would appoint someone within the firm to be the go-to person, to monitor it.' (LESSE10)
- 'It's really important that the customer has the opportunity to flag it. But if they're flagging those concerns about the sole practitioner to themselves, they're not really going to do anything about it.' (CRSSE2)
- 'I think it goes back to who is writing them questionnaires? Who is reading them, who is assessing them? Because if it's the solicitor's firm themselves, then that could be problematic.' (Marc Conway, lived expert)

### **Other methodologies to gather information about individuals' needs**

In addition to the reviews mentioned in the preceding sub-section, participants in one focus group discussed an alternative methodology to gather information about consumers' needs. They said that this could be done through an automated online tool or mobile application. This tool would be designed for consumers of legal services to sign up and provide information about their needs. It would include initial questions about vulnerability to be answered prior to the first appointment with a legal firm, essentially functioning as a triage system. One participant said:

- 'what if there was a tool that was online or something, an app or something that before you came in it said, can you read, write, and actually people would just fill it in thinking that this is just part of making an appointment, a bit like when you make an appointment with the GP and they're doing a review on whatever' (Caroline Bielanska, law consultant)
- 'So, if I were to do it, if I were to create an app and this was sent to someone before they made their appointment so I could make sure, have they got access, can they

easily get access or do they need a home visit, or do they need a hearing loop, do they have any eyesight problems?’ (Caroline Bielanska, law consultant)

#### 4.4 Implementing a vulnerability measurement tool in the legal services sector

This section will present the perspectives shared by research participants regarding the possible implementation of a measurement tool of consumer vulnerability. Before presenting those views, this section will begin by summarising participants’ understanding of current measurement and screening/monitoring tools used in other sectors applicable to legal services. This information was considered important as it could provide insights from existing practices on how vulnerability can be measured and tracked in the legal services sector. Additionally, the section will identify relevant datasets that might contain pertinent information on consumer vulnerability as highlighted by research participants.

##### 4.4.1 Existing measurement and monitoring/tracking tools

In total, 20 out of the 47 survey participants confirmed that they were aware of how vulnerability is measured and monitored/tracked in sectors other than or related to the legal sector. Table 24 below shows the frequency of responses per participant group.

*Table 24 – Awareness of existing measurement and monitoring/tracking tools on consumer vulnerability as suggested by survey participant group*

Participant group	Frequency (yes)	Percentage of responses in participant group (yes)	Frequency (no)	Percentage of responses in participant group (no)
Academics and consultants	6	50	6	50
Consumer representative/resolution bodies and other participants	1	16.7	5	83.3
Legal professionals	4	44.4	5	55.6
Lived experts	5	33.3	10	66.7
Regulators	4	80	20	57.4
Total	20	42.6	27	57.4

Notes

1. Results derived from responses to survey question 5: 'Do you know how vulnerability is measured and monitored/tracked in sectors other than or related to the legal sector?'

Of those 20 individuals, 12 respondents also mentioned specific tools that are used to measure and monitor/track vulnerability in sectors other than or related to the legal services sector. Table 25 below shows the range of tools mentioned by survey participants.

*Table 25 - Existing measurement/tracking tools for consumer vulnerability mentioned by survey participants<sup>1</sup>*

<b>Measurement/tracking tool</b>	<b>Frequency</b>	<b>Percentage (out of this question's respondents, n=12)</b>	<b>Percentage (out of total survey participants, n=47)</b>
Financial Conduct Authority survey	3	25	6.4
Citizens Advice Bureau research consultancy	1	8.3	2.1
Compliance based questions in therapy	1	8.3	2.1
Depth interviews	1	8.3	2.1
DOORS tool	1	8.3	2.1
Gambling Commission's survey	1	8.3	2.1
Quantitative studies conducted by AARP	1	8.3	2.1
Reports based on annual audits	1	8.3	2.1
Risk assessments for victims of domestic abuse	1	8.3	2.1
Risk assessments for victims of human trafficking	1	8.3	2.1
Risk assessments in police custody	1	8.3	2.1

Screens in children's care homes	1	8.3	2.1
Screens in hospitals	1	8.3	2.1
Total	12 <sup>2</sup>	100	25.5
Total measurement/tracking tools	13		

## Notes

1. Results derived from responses to survey question 5.a: 'How is vulnerability measured and monitored/tracked in sectors other than or related to the legal sector?'

2. In total, 12 survey participants mentioned other measurement/tracking tools. One individual participants mentioned more than one.

No other views on this subject matter were shared during the flipchart feedback session. However, three participants in the focus groups mentioned three measurements and monitoring/tracking tools for consumer vulnerability:

- **Legal Service Consumer Panel Annual Tracker Survey.** CRSSE2 mentioned that the LSCP conducts an annual tracker survey 'where they speak to members of the public that have interacted with services'.
- **NHS and GP screening practices.** Law consultant Caroline Bielanska mentioned that the NHS collects centralised information about patients from GP practices, and that for the very nature of the medical service every patient is vulnerable.
- **Gambling Commission's PGSI.** One participant mentioned the Gambling Commission's PGSI, which is a tool that measures what they call 'problem gambling' in the population. The main issue that was identified with the tool is that, as a measure, it fails to consider individual circumstances that could make certain individuals more or less vulnerable to harm than others (e.g. family support). Hence, the Commission is currently considering other ways of managing gambling harm.

#### 4.4.2 Existing datasets on consumer vulnerability

In the online survey, seven out of 47 respondents confirmed that they were aware of datasets which contain relevant variables or information about consumer vulnerability. The range of these responses is presented in Table 26 below, organised per participant group.

*Table 26 - Awareness of existing datasets on consumer vulnerability in the legal services sector by survey participant group*

Participant group	Frequency (yes)	Percentage of responses in participant group (yes)	Frequency (no)	Percentage of responses in participant group (no)
Academics and consultants	1	8.3	11	91.7

Consumer representative/resolution bodies and other participants	1	16.7	5	83.3
Legal professionals	0	0	9	100
Lived experts	2	13.3	13	86.7
Regulators	3	60	2	40
Total	7	14.9	40	85.1

## Notes

1. Results derived from responses to survey question 9: 'Do you know of any relevant datasets which could help us understand consumer vulnerability specific to legal services? These may not be datasets specifically about consumer vulnerability in the legal sector, but we are interested in any datasets which contain relevant variables or information.'

As displayed in Table 27 below, of the seven participants who are aware of datasets which contain relevant variables or information about consumer vulnerability, four provided details about what those datasets are.

*Table 27 - Datasets which could help understand consumer vulnerability specific to legal services identified by survey participants*

<b>Dataset</b>	<b>Frequency</b>	<b>Percentage</b>
Adult Psychiatric Morbidity Survey	1	2.1
DWB	1	2.1
Family Resources Survey	1	2.1
Health Survey for England	1	2.1
Health Survey for Scotland	1	2.1
National Survey for Wales	1	2.1
ONS	1	2.1
UK Biobank Understanding Society	1	2.1

Vulnerability person dataset from Police Scotland	1	2.1
Wealth and Assets Survey	1	2.1
Total	4 <sup>2</sup>	8.5
Total datasets	10	

## Notes

1. Results derived from responses to survey question 9.a: 'What are these datasets? Please include all the datasets of which you are aware, and web links if you can.'

2. In total, 4 survey participants mentioned relevant datasets. Some individual participants mentioned more than one.

No other relevant databases were named during the flipchart feedback session. However, four participants in the focus groups mentioned four relevant datasets which could help understand consumer vulnerability specific to legal services:

- **Local authority data.** LESE7 argued that city councils should 'hold some information on people based on whether they are in receipt of certain benefits', e.g. they are living in assisted housing (LESE7).
- **Department for Work and Pension.** Law consultant Caroline Bielanska claimed that the DWP holds data about people's disabilities, and specifically 'about whether someone is in receipt of personal independence payments, carer's allowance, attendance allowance, so they're also industrial benefits as well, that would indicate disabilities essentially.' (Caroline Bielanska, law consultant)
- **Charities.** LPSSE2 added that charities that support consumers of legal services, including Women's Aid and Cafcass, must hold information on their vulnerabilities.
- **National Audit Office.** CRSE9 mentioned that the National Audit Office collects data about the prison population and their vulnerabilities.

#### 4.4.3 Preliminary work: Shared and consistent definition of vulnerability

Research participants argued that preliminary work is necessary before implementing a measurement tool. Specifically, regarding the definition of vulnerability needs. For instance:

- 'Ensuring consistency of approach by creating, adapting or using an agreed shared definition of vulnerability, for example, the British Standard on Inclusive Service Provision (BS18477) as advocated by the Citizens Advice Bureau and adopted by the LSCP.' (ICAEW)
- 'Furthermore, we would also note that it is important for regulators to work together to bring consistency to the issue of consumer vulnerability, both in defining vulnerability and setting out strategic aims with regards to support.' (Bar Standards Board)

While this view was not directly discussed during the flipchart feedback session or in the focus groups, one focus group participant stressed that 'getting an agreeable definition is so important.'



In addition, two survey participants emphasised the importance of understanding how vulnerability should be identified in the measurement process before proceeding with any assessments:

- The main suggestion I would make is that, if no measuring is being done now, it would make sense to conduct some preliminary research using open-ended questions to identify what needs to be asked and the most effective ways of asking it. (Terri Rittenburg, academic)
- 'Carrying out a period of research to understand risk factors. This stage would include engaging with experts such as the LSCP and other organisations/bodies who have experience collecting or monitoring this data to gain further insights around vulnerabilities and risks to inform a framework of criteria to measure from.' (ICAEW)

#### 4.4.4 Possible methodologies for measuring consumer vulnerability across the legal services sector

As sub-section 4.2.3 showed, most participants in the focus groups contended that measuring and scoring individual vulnerabilities would not be useful and could even be dangerous as this approach risks reducing individual narratives and circumstances to mere numbers. Therefore, although the question was posed, participants in the focus groups did not discuss the methodologies for measuring consumer vulnerability. This is because they did not perceive measuring consumer vulnerability as useful and instead opted to use the research time to discuss the universal changes approach and potential methods to identify and support consumers' needs (see section 4.3).

In the earlier research phase, however, 32 out of 47 survey participants discussed various methodologies that could be employed to collect data on consumer vulnerability. Table 28 below illustrates the spectrum of possibilities mentioned.

*Table 28 – Measuring and monitoring/tracking methodologies proposed by survey participants*

Method	Frequency	Percentage (out of this question's respondents, n=32)	Percentage (out of total survey participants, n=47)
Ask consumers through conversations	9	28.1	19.1
Surveys	9	28.1	19.1
Questionnaires	6	18.8	12.8
Screening	5	15.6	10.6
Interviews	4	12.5	8.5
Diarised catch up sessions	2	6.3	4.3

Mixed method approach	2	6.3	4.3
Community listeners/peer-led run groups	2	6.3	4.3
Creating measurable vulnerability indicators/developing a scoring system	2	6.3	4.3
Focus groups	1	3.1	2.1
Total	32 <sup>2</sup>	100	68.1
Total methodologies	10		

#### Notes

1. Results derived from responses to survey question 7: 'How would you go about measuring and monitoring/tracking consumer vulnerability in relation to legal services in England and Wales?'

2. In total, 32 survey participants mentioned measuring and monitoring/tracking methodologies. Some individual participants mentioned more than one.

In line with the focus group participants' views on the need to improve dialogical conversations between practitioners and consumers of legal services to enhance their relationship (see sub-section 4.3.3), nine survey participants suggested that having conversations with consumers could be beneficial. They proposed asking them about their vulnerabilities and/or needs as a possible methodology to assess consumer vulnerability. For instance:

- 'Ask clients about new vulnerabilities that may come to light in how someone's life is being affected as the engagement process unfolds through open conversation and empathetic reasoning.' (Frederick Barker, lived expert)

Furthermore, six survey respondents mentioned that a way to have those conversations could be while administering questionnaires. Four mentioned one-to-one interviews. Two suggested diarised catch-up sessions to update on individual situations. Additionally, two respondents proposed the introduction of peer-led groups or community listeners, understood as lived experts who could engage in conversations with consumers to understand their needs and/or vulnerability:

- 'I think by listening to the people interacting with the legal system we will find out a lot about them including the disadvantages they are facing whether personally or situational.' (Pheleba Johnson, lived expert)
- 'I would have people with lived experience of the issues being discussed to ask these questions as there may be sensitive material being discussed and a personal understanding would be best in representing what the consumer is saying.' (Marc Conway, lived expert)

While two survey participants proposed mixed methodologies without providing details about them, seven survey participants mentioned more quantitative methodologies. These include screening assessments for vulnerabilities through creating measurable vulnerability indicators and developing a scoring system. For example:

- 'This would need identifying what makes client's vulnerable into clearly identifiable groups and for volunteers to participate in recording the categories of vulnerability.' (Caroline Bielanska, law consultant)
- 'Creating measurable vulnerability indicators (or risk factors) that could reflect the criteria in the British Standard with metrics covering areas of potential legal need. For example, digital access to legal information.' (ICAEW)
- 'Developing a scoring system or RAG rating to weight each factor or indicator according to impact and/or frequency to design a vulnerability scale. This score could help to establish potential threats, high risk areas and a spectrum of decreasing or increasing need over time.' (ICAEW)

## 4.5 Chapter summary

Chapter 4 reported the findings from our research into consumer vulnerability in the legal service sector in England and Wales. It began with a discussion on the definition of consumer vulnerability in this context. Four out of 47 survey respondents and one focus group participant noted that vulnerability is difficult to define and conceptualise. In addition, 32 out of 47 survey participants emphasised that the risk factor approach, and the list of risk factors provided by the SRA (2016b), is a beneficial method for defining consumer vulnerability in the legal services sector.

Sixteen survey participants out of 47 recognised valued in the list of risk factors provided by the SRA (2016b), while eight highlighted the comprehensiveness of those factors. Nonetheless, 20 out of 47 survey participants highlighted the need to enhance the list of risk factors used by the SRA (2016b) to define consumer vulnerability by incorporating additional elements. Furthermore, four out of 47 survey participants stressed that the risk factor approach, and particularly the list of risk factors identified by the SRA (2016b), provides vague and inexhaustive information. During the flipchart feedback session and in the focus groups, the only remark made about the SRA list was by a single participant who emphasised the importance of considering both individual and situational circumstances when identifying vulnerability.

Although 32 out of 47 survey participants found benefits with the risk factor approach, two out of 47 participants in the survey argued that the language used as part of the risk factor approach is labelling and/or stigmatising. This view was substantiated by three participants across two different focus groups. Furthermore, 26 of the 47 survey respondents still identified problems with the risk factor approach, problems that were also discussed by most participants in two focus groups. In particular, survey respondents argued that vulnerability should be understood as a subjective (10 out of 47) and universal condition (seven out of 47), and thus that every consumer is vulnerable, a position which starkly contrast with the risk factor approach. This view was also shared by all participants during the stakeholder event.

Research participants mentioned other characteristics that define consumer vulnerability in the legal services sector. Six of the 47 survey participants stressed that vulnerability is by its very nature a dynamic concept. This view was also emphasised in one of the focus groups. Five out of the 47 survey participants emphasised that broader structural issues, such as poverty and discrimination, inherently render individuals vulnerable. Two participants in the focus groups expressed views which aligned with this perspective.

While seven out of the 47 survey participants emphasised that everyone is potentially vulnerable, participants in the stakeholder's event unanimously discussed the notion that vulnerability is inherent to everyone, emphasising its universality. This concept, termed the

'universal changes approach' in our research, carries significant implications for practical considerations. For instance, one survey respondent and one focus group participant suggested that, given the universal nature of vulnerability, service providers should allocate their resources to adapt their services to meet the needs and potential challenges of all individuals. Participants in all the focus groups agreed that a universal changes approach may be useful in providing better legal services to consumers by adequately responding to their needs.

While not specifically addressed in the survey or the flipchart feedback session, all participants in two focus groups concurred that, although everyone's vulnerability should be acknowledged, not all vulnerabilities require measurement or attention from solicitors. They noted that certain vulnerabilities may not be relevant to the provider-consumer relationship. This finding seems to be linked to the idea that participants recognise vulnerability to be subjective.

Although resilience as an alternative to the risk factor approach was not discussed by survey participants or during flipchart feedback sessions, all participants in one of the focus groups, when prompted on this topic, debated that the concept of resilience is not a viable substitute for the risk factor approach. They argued that categorising individuals as resilient or not may lead to overlooking their needs under the assumption that they can handle challenges on their own. They also contended that the resilience perspective parallels the risk factor approach, where practitioners might opt to label individuals as 'non-resilient' instead of 'vulnerable'.

Out of 47 survey participants, 45 agreed that measuring and monitoring/tracking the extent of consumer vulnerability in the legal sector in England and Wales would be useful. The predominant factors highlighted include the potential for improved support for consumers through acknowledgment of these measures (18 out of 45), as well as the opportunity for a deeper understanding of consumer vulnerability (14 out of 45). Most participants in two focus groups contended that measuring vulnerability could have some benefits. They recognised the value in measuring vulnerability, albeit not for the sake of measurement but rather for two primary motivations: to gain a broader understanding of consumer vulnerability for customising legal services and meeting the generally identified needs of consumers, and to identify and support individual consumers with their individual needs at the time that the service or goods are provided.

However, overall participants in the focus groups indicated that measuring consumer vulnerability would not be a useful exercise. Some participants even expressed a willingness to provide different responses if surveyed after the event. The discussions led in fact participants to adopt a perspective on consumer vulnerability that aligns more closely with the universal changes approach, which was not referenced in the survey. It is important to note that, unlike the risk factor approach, the universal changes approach was only introduced to participants during the plenary session at the stakeholder event.

In total, 20 out of the 47 survey participants confirmed that they were aware of how vulnerability is measured and monitored/tracked in sectors other than or related to the legal sector. Of those 20 individuals, 12 respondents also mentioned specific tools that are used to measure and monitor/track vulnerability in sectors other than or related to the legal services sector. These are: the FCA survey, Citizens Advice Bureau research consultancy, compliance based questions in therapy, the DOORS tool, the Gambling Commission's survey, quantitative studies conducted by AARP, reports based on annual audits, risk assessments for victims of domestic abuse, risk assessments for victims of human trafficking, risk assessments in police custody, screens in children's care homes, screens in hospitals. No other views on this subject matter were shared during the flipchart feedback session, although three participants in the focus groups mentioned other measurements and

monitoring/tracking tools for consumer vulnerability: the Legal Service Consumer Panel Annual Tracker Survey, NHS and GP screening practices.

In the online survey, four out of 47 respondents provided details about datasets which contain relevant variables or information about consumer vulnerability. Furthermore, four participants in the focus groups mentioned other relevant datasets which could help understand consumer vulnerability specific to legal services, while none were named during the flipchart feedback session. In summary, these were the datasets mentioned during fieldwork: the Adult Psychiatric Morbidity Survey, Department for Work and Pension, Family Resources Survey, Health Survey for England, Health Survey for Scotland, National Survey for Wales, ONS, UK Biobank Understanding Society, Vulnerability person dataset from Police Scotland, the Wealth and Assets Survey, local authority data, charities, and data from the National Audit Office.

In addition to discussing tools and datasets relevant to measuring consumer vulnerability in the legal service sector, research participants highlighted the need for preliminary work before implementing a measurement tool. Specifically, three out of 47 survey participants emphasised the necessity of developing a shared and consistent definition of vulnerability. This issue was not directly addressed during the flipchart feedback session or in the focus groups. Furthermore, two survey participants underscored the importance of understanding how to identify vulnerability in the measurement process before proceeding with any assessments.

Thirty-two out of 47 survey participants discussed various methodologies that could be employed to collect data on consumer vulnerability. Importantly, although the question was posed, participants in the focus groups did not discuss the methodologies presented in this section. This was because they did not see measuring consumer vulnerability as valuable and chose to use the research time for discussing the universal changes approach and exploring potential methods to identify and support consumers' needs. The methodologies mentioned by survey participants were:

- Ask consumers through conversations
- Surveys
- Questionnaires
- Screening
- Interviews
- Diarised catch up sessions
- Mixed method approach
- Community listeners/peer-led run groups
- Creating measurable vulnerability indicators/developing a scoring system
- Focus groups

Moreover, 38 out of 47 survey participants also pointed out 20 potential issues specific to the measurement/tracking of consumer vulnerability, some of which were also identified by participants in the focus groups. These are:

- Consumers can be cautious about disclosing vulnerability
- Definitions of consumer vulnerability are inconsistent

- Issues around self-disclosure
- Capacity and resources of law firms
- Inconsistent measurement across providers
- Issues around who should carry out measurement
- Concerns relating to the GDPR
- Vulnerability is labelling and exclusive
- Consumers may not trust practitioners
- It is hard to reach consumers with vulnerabilities

Nonetheless, 32 out of 47 survey respondents also discussed possible solutions to some of the issues identified above. These solutions are:

- Improve the relationship between legal service providers and consumers
- Introducing new professional figures
- Experienced and trained research team
- Making the measurement of vulnerability mandatory for legal service providers
- Improve collaboration among practitioners

Building upon the shared understanding that all consumers of legal services are vulnerable, all participants in one focus group emphasised that resources should be allocated towards responding to consumers' needs rather than solely focusing on measuring vulnerability. More specifically, participants identified:

- Accessibility to legal services, particularly financial barriers
- Accessibility of legal language transparency
- Awareness of consumer redress
- Improving provider-consumer relationship in terms of trust and understanding
- Improving university and CPD training for legal service providers, with input from lived experts and with a focus on vulnerability
- Data sharing
- Shifting the purpose of measuring consumer vulnerability to addressing the individual needs of consumers in the provider-consumer relationship including through the use of independent, third parties and reviews on individual needs

## 5 Summary

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Consumer vulnerability is a multifaceted issue of growing importance, underpinned by the recognition that failing to meet legal requirements or address legal issues challenges the principles of the rule of law (Legal Services Consumer Panel, 2014; SRA, 2016a).

The Legal Services Board (2022) identified a prevailing focus on reactive rather than proactive measures for addressing consumer vulnerability and advocated for an inclusive design approach that prioritises understanding the needs of vulnerable clients. This approach aims to ensure that legal services are accessible, comprehensible, and empowering for all individuals.

In this context, the SRA commissioned Professor Harriet Pierpoint and her team at USW to conduct a feasibility study to assess the possibility of measuring and tracking consumer vulnerability within the legal services sector in England and Wales. Below is a summary of:

- how evidence and data were collected, analysed and synthesised
- headline findings from the evidence review and empirical research set out to address the research questions.

This chapter is followed by a final chapter discussing of the implications of these findings and suggested next steps.

### 5.1 Data collection and analysis

This study has used a rigorous multi-method research design for the purposes of cross validation and for a greater breadth of data. The range of evidence sources considered was diverse (academic literature, legal sources (legislation, practice guidance and rules, and research reports), documents produced by regulatory and statutory bodies, and any other grey literature including government publications relevant to consumer vulnerability). From a preliminary review of around 7,000 evidence sources, around 300 were examined.

The literature review was supplemented by rich data from both an online survey and stakeholder event. The recruitment stage for the empirical research phase involved inviting 381 individuals to participate in the study. The 54 individuals who participated represented a broad range of stakeholder groups (including academic experts and consultants, legal professionals, consumer representative/resolution bodies, regulators from sectors with relevant experiences and lived experts).

The stakeholder event comprised of a plenary presentation and feedback session and four focus groups. Each focus group was dedicated to facilitating in-depth discussions on one the following specific topics (with the possibility of incorporating others if there was time and interest; refer to sub-section 7.1.7 for more details):

- Defining consumer vulnerability in the legal services sector.
- The usefulness of measuring consumer vulnerability in the legal services sector.
- Responding to the needs of consumers at risk of vulnerability in the legal services sector.
- Implementing a vulnerability measurement tool in the legal services sector.

The primary data were analysed thematically, and datasets compared and contrasted with one another and the existing evidence to check for convergence, add breadth and detail and identify new insights.

## 5.2 Answering the research questions

### 5.2.1 Research question 1: Is the ‘risk factor approach’ appropriate/useful?

- Risk factors are widely discussed, but the approach has significant shortcomings, including its subjective nature and the potential for misidentification of vulnerability.
- Academic literature, legal sources (including legislation, practice guidance, rules, and research reports), and grey literature predominantly define vulnerability based on the risk factor approach.
- Those risk factors can be broadly classified into three primary categories: individual characteristics, individual situational circumstances, and actions taken by the market alongside external factors.
- The combination of personal, situational, and market and external factors may decrease consumers’ ability to represent their interests in the market. This renders them more vulnerable to experiencing disadvantages, whether for a short, medium, or long duration (Burton, 2018; Citizens Advice, 2014; Data & Marketing Association, 2012; National Audit Office, 2017; Office for Gas and Electricity Market, 2019).
- The reviewed evidence did not address Adverse Childhood Experiences (ACEs) and early trauma as a form of vulnerability. There is extensive international research demonstrating that individuals who experience multiple negative events during childhood, such as abuse, neglect, or having parents who misuse drugs and alcohol, may suffer long-term effects on their physical and mental health (Ashton et al., 2016; Bellis, et al., 2018).
- Thirty-two out of 47 survey participants emphasised that the risk factor approach, and the list of risk factors provided by the SRA (2016b), is a beneficial method for defining consumer vulnerability in the legal services sector. However, 26 of the 47 survey respondents still identified problems with the risk factor approach. The most frequently identified problems related to the subjective and universal nature of vulnerability, which may render the identification of vulnerability through the risk factor approach misleading. In all the focus groups, there was unanimous agreement that these two issues were problematic for the risk factor approach, and this led to a lack of support for the risk factor approach. The universal nature of vulnerability was also highlighted in the evidence review.
- Overall, there was a lack of support for the risk factor approach among participants. And the proponents of the universal vulnerability approach in the evidence review have also criticised the risk factor approach.

### 5.2.2 Research question 1.a: Can the definition of vulnerability as used by the SRA be considered comprehensive and exhaustive?

The definition of vulnerability used in the SRA’s reports on vulnerability (2016) could benefit from being updated by incorporating academic and legal definitions to



enhance its sensitivity and comprehensiveness. The current list of risk factors was found to be incomplete by some survey participants, and also vague by a few.

- The SRA's definition of consumer vulnerability is limited to risks identified in the grey literature. It does not include some of those provided in academic and legal definitions which could enhance the comprehensiveness and sensitivity of the SRA's approaches to identifying and addressing vulnerability among consumers in the legal services sector.
- Twenty out of 47 survey participants highlighted the need to enhance the list of risk factors used by the SRA (2016b) to define consumer vulnerability by incorporating additional elements.
- Four out of 47 survey participants argued that the risk factor approach, and particularly the list of risk factors identified by the SRA (2016ab) provides vague information.
- During the flipchart feedback session and in the focus groups, only one participant remarked on the SRA's list of risk factors. The participant emphasised the importance of considering both individual and situational circumstances when identifying vulnerability.
- That said, the notion of defining people as vulnerable was considered to be problematic and definitions based on risk factors inherently inexhaustive.

### **5.2.3 Research question 1.b: Is the term 'vulnerability' deemed suitable and appropriate for use in this context?**

- The term 'vulnerability' is problematic. This study highlighted several concerns regarding the use of the term 'vulnerable' in this context.
- Impact on individuals' identity.
  - The evidence review highlighted that labelling individuals as 'vulnerable' can have problematic, far-reaching implications. It may impact their self-perception and identity, potentially leading them to internalise the label and perceive themselves as less capable or empowered. This can ultimately undermine their self-esteem and confidence, which can, in turn, increase vulnerability (Brown, 2011; Fairclough, 2023; Fineman, 2014).
  - Participants across two focus groups argued that the language used as part of the risk factor approach is labelling and/or stigmatising. According to Harrison and Sanders (2006), the concept of vulnerability is closely tied to notions of difference. When behaviours are labelled as 'vulnerable' in the policy agenda, it frequently leads to segregation, deeper exclusion, and the perpetuation of entrenched inequalities.
- Potential to stigmatise people.
  - The label 'vulnerable' can also carry societal stigma, potentially resulting in stereotyping, discrimination, or social exclusion, as others may perceive labelled individuals as weak, dependent, or incapable. This effect may be exacerbated when individuals have legal needs, which are often seen as an inherent form of vulnerability (Iredale, Parow, & Pierpoint, 2011; Iredale, Pierpoint, & Barow, 2010; Pierpoint et al., 2019; Pierpoint, 2020).

- Definitional issues.
  - Vulnerability categorisations and references to it often lack clarity, consistency, and are inexhaustive. This is evident from the diverse risk factors for vulnerability identified differently across various bodies of literature and the lack of standardised and consistent definitions across the board.
  - There is the potential to over-include and under-include people. Participants in one focus group discussed that identifying individuals as vulnerable based on certain recognised characteristics and subsequently treating them in a specific manner might inadvertently exclude others who share the same vulnerability but have not been acknowledged as such. This finding was substantiated in the evidence review (Fineman, 2008).

#### **5.2.4 Research question 2: Would it be useful to measure consumer vulnerability in the legal services sector?**

- There is mixed support for measuring consumer vulnerability in the legal services sector. While survey participants initially agreed on its usefulness, focus group discussions revealed a shift in perspective, with many participants no longer seeing its value. However, some still recognise potential benefits, such as improved support for consumers and a better understanding of their individual needs.
- Overall, our research highlighted a change in perspective among participants. It is not uncommon for participants' views to change during the course of research. This can happen owing to, for example, new information encountered during the study or further reflection prompted by the research process. Interactions with researchers or other participants can also impact views. In the current research, this shift became especially apparent when delving into complex questions, such as the contrast between a risk factor approach and a universal vulnerability perspective. As participants engaged with these nuanced issues, their views evolved to accommodate the complexities of vulnerability. Initially, they found the risk factor approach useful for defining consumer vulnerability, but over the course of the research, they shifted towards a universal vulnerability perspective. Consistent with this changing viewpoint, most survey participants initially agreed that measuring and monitoring consumer vulnerability in the legal services sector in England and Wales would be beneficial. However, during the focus groups, their views evolved. In these discussions, they increasingly questioned the value of measuring consumer vulnerability, ultimately embracing the idea that vulnerability is a universal condition affecting everyone. This shift was likely partly motivated by the fact that the universal changes approach was only introduced to participants during the plenary session. However, this does not diminish the relevance of their preference. Proponents of the universal vulnerability approach in the evidence review have also criticised the risk factor approach. Some participants also indicated they would provide different responses if surveyed after the event, as a result of their discussions and deliberations. In sum, the participants preferred the concept of universal changes.
- Nonetheless, most participants in two focus groups contended that measuring vulnerability could have some benefits. They recognised the value in measuring vulnerability, albeit not for the sake of measurement but rather to offer support to individual consumers. This reflected a shift in these participants' thinking about the purpose of the measurement from tracking/monitoring to potentially providing a better understanding of the consumer's individual needs by the provider. This is discussed further in relation to Research question 6. The predominant benefits of measurement

given by survey participants included the potential for improved support for consumers through acknowledgment of these measures (18 out of 45), as well as the opportunity for a deeper understanding of consumer vulnerability (14 out of 45).

### **5.2.5 Research question 2.a: What is currently known about the type/nature of consumer vulnerability within the legal sector?**

Consumer vulnerability in the legal services sector shares characteristics with other sectors but also has unique features. Vulnerability in legal services is often inherent due to the nature of having a legal issue. It is also frequently concealed, subjective, and can be exacerbated by structural issues such as poverty and discrimination. Ten out of 47 survey respondents argued that vulnerability is subjective. Six of the 47 survey participants stressed that vulnerability is by its very nature a dynamic concept. This view was also emphasised in one of the focus groups. Five out of the 47 survey participants emphasised that broader structural issues, such as poverty and discrimination, inherently render individuals vulnerable. Two participants in the focus groups expressed views which aligned with this perspective.

- Consumer vulnerability within the legal services field shares certain characteristics with vulnerability in other sectors, but it also retains distinctive features. One such notable aspect is the widely recognised fact that the mere necessity for legal services and engagement with the legal system inherently increases the risk of vulnerability (Scottish Legal Complaints Commission Consumer Panel, 2017). Seven out of the 47 survey respondents and the majority of participants in two focus groups and in one flipchart feedback group argued that vulnerability is inherent within the legal services sector.
- There are specific risk factors that hold particular relevance for individuals with legal needs. Navigating the intricate landscape of legal services can pose a daunting challenge, and an individual's level of experience and capability within this context can further intensify their vulnerability (BSB, 2018a & 2018b; LSB, 2022).
- An accumulating body of evidence underscores that vulnerability within the legal services sector often remains concealed (as indicated by references such as Bradley, 2009; Branson & Gomersall, 2023; Cross, 2020; Epstein, 2016; Howard, 2021; Jacobson, 2008; Jacobson & Talbot, 2009; Sanders et al., 1997; Wigzell, Kirby, & Jacobson, 2015; SRA, 2019). Sixteen out of 47 survey participants mentioned that consumers may not disclose vulnerability when asked, for a number of reasons including that they are not aware of their vulnerability or they choose not to disclose it.
- Consumers of legal services frequently present with multiple vulnerabilities, often referred to as clusters (as observed in reports from the Bar Standards Board in 2018a, the Scottish Legal Complaints Commission Consumer Panel in 2017, and Smith et al., 2013).

### **5.2.6 Research question 2.b: What is currently known about the scale and trajectory of consumer vulnerability within the legal sector?**

- Consumer vulnerability in the legal services sector is influenced by a variety of prevalent characteristics and macro-level external factors. However, there is a significant lack of comprehensive data to fully understand the scale, trajectory, and specific legal needs of vulnerable consumers. This gap in data hinders the ability to

quantify and address consumer vulnerability effectively. This was a driver in commissioning this study to assess the feasibility of doing so.

- Various studies have shed light on prevalent characteristics for consumer vulnerability in the legal services sector including: learning disabilities, age, sex, mental health issues, literacy levels, homelessness, loss of income, threat of harm, poverty, domestic abuse, employment status, education, immigration status, and belonging to an ethnic minority group.
- This evidence review also found that there are macro level, external risk factors that influence the extent and trajectory of consumer vulnerability within the legal services sector. These overarching factors encompass a diverse array of structural and systemic elements that have the capacity to profoundly mould the scope and progression of consumer vulnerability, including:
  - economic conditions
  - fiscal policy and legal aid
  - education
  - demographics
  - technological advancements
  - crisis events; and
  - cultural and social norms.
- There is a significant lack of comprehensive statistics regarding the scale and trajectory of vulnerability within the legal services sector (Brown et al., 2022; Fairclough, 2017; Howard et al., 2015; Johnston et al., 2016). Currently, there is limited data concerning the number of consumers who are potentially vulnerable and those who experience legal needs arising from their vulnerability. The proportion of individuals using legal services annually who fall under the SRA's (2016a) categorisation of vulnerability, remains unknown and currently undeterminable.
- There exists limited information concerning the most prevalent types of legal issues and needs encountered by consumers at risk of vulnerability. Furthermore, the question of what can be deduced or gathered from existing datasets regarding consumer vulnerability in the legal services field remains unresolved, primarily due to the scarcity of relevant datasets.

### **5.2.7 Research question 3: How could consumer vulnerability be measured within the legal services sector?**

- Developing a consistent definition of vulnerability and understanding how to identify it would be needed before measuring consumer vulnerability in the legal services sector. However, many participants felt it was better to focus on a universal changes approach to support consumer needs.
- Research participants highlighted the need for preliminary work before implementing a measurement tool. Specifically, three out of 47 survey participants emphasised the necessity of developing a shared and consistent definition of vulnerability. This issue was not directly addressed during the flipchart feedback session or in the focus groups. Furthermore, two survey participants underscored the importance of

understanding how to identify vulnerability in the measurement process before proceeding with any assessments.

- Thirty-two out of 47 survey participants discussed various methodologies that could be employed to collect data on consumer vulnerability. These are:
  - ask consumers through conversations
  - surveys
  - questionnaires
  - screening
  - interviews
  - diarised catch up sessions
  - mixed method approach
  - community listeners/peer-led run groups
  - creating measurable vulnerability indicators/developing a scoring system
  - focus groups.
- Importantly, although the question was posed, participants in the focus groups did not discuss the methodologies to measure consumer vulnerability. This was because they did not see measuring consumer vulnerability as valuable (see section 5.2.4) and chose to discuss the universal changes approach and explore potential methods to identify and support consumers' needs. They did, however, highlight initiatives which could be used to primarily support consumers, but which could also collect headline data if required, as discussed below in 5.2.9.

### **5.2.8 Research question 3.a: How is vulnerability currently screened/assessed/measured in related sectors (e.g., criminal, financial, gambling?)**

- Various sectors, such as criminal justice, financial, and gambling, use different tools and methods to assess vulnerability. These tools and methods can be a reference for developing measurement tools for the legal services sector. However, no evaluation was found regarding the suitability of these various tools and methods for measuring consumer vulnerability in the legal sector.
- In the criminal justice sector, a variety of screening tools are employed to identify vulnerability among witnesses, victims, and suspects (see Brown et al., 2022; Johnston et al., 2016; Lowenstein, 2000; McKenzie et al., 2012). These tools employ psychological and psychiatric assessments, carried out through self-completion questionnaires and structured or semi-structured interviews. These tools specifically target a distinct type of vulnerability in distinct situations, so their use in the legal sector would not provide understanding of how widespread broader categories of vulnerability are within the sector.
- However, notably, the Metropolitan Police's Vulnerability Assessment Framework (VAF) does provide a model to identify vulnerability (Metropolitan Police, 2023). This framework involves police officers completing a questionnaire themselves following interactions with individuals who may exhibit signs of vulnerability. Although these

methods usually screen for vulnerability, they could inform the design of a measurement tool within the legal sector. That is, legal professionals or their support staff could be asked to undertake a similar exercise.

- The financial sector, on the other hand, mainly relies on the Financial Lives Survey (Financial Conduct Authority, 2023) and the Genworth Index (Genworth, 2013) to measure consumer financial vulnerability across the whole population. These measurement tools are based on stratified random probability samples of UK consumers. Their data collection methods involve respondents' self-completion questionnaires and structured questionnaires completed through 'phone, online, or in-person interviews. By adapting similar data collection and measurement techniques to the legal services sector, it could be possible to quantify the vulnerability of individuals facing legal challenges. Additionally, these tools could offer a means to monitor trends in legal vulnerability over time.
- In the gambling sector, a range of tools, including the Problem Gambling Severity Index (PGSI), the Diagnostic and Statistical Manual of Mental Disorders (DSM-IV), and the PGSI mini-screen, are employed to measure what the Gambling Commission defines therein as 'problem gambling' within populations (Conolly et al., 2018). These tools gather data on individuals' gambling habits and challenges through various interview methods: 'phone, online, and face-to-face interviews. The experiences and methodologies applied in these related sectors can serve as a foundation for developing a specialised data collection tool to measure legal vulnerability effectively. Furthermore, the Gambling Commission, the regulatory authority in the gambling sector, commissions the NHS in England and Scotland to measure 'problem gambling' in their respective populations while directly collecting these measures in Wales.
- Nonetheless, there is a broad lack of evaluation on measurement tools used in related sectors, with regard to their suitability for measuring consumer vulnerability. These tools have not undergone assessment to ascertain whether they could potentially serve a valuable purpose in different contexts, such as the legal services sector.
- Around a third of survey participants mentioned specific tools that are used to measure and monitor/track vulnerability in sectors other than or related to the legal services sector. These were: the FCA's survey, Citizens Advice's research consultancy, compliance based questions in therapy, the DOORS tool, the Gambling Commission's survey, quantitative studies conducted by AARP, reports based on annual audits, risk assessments for victims of domestic abuse, risk assessments for victims of human trafficking, risk assessments in police custody, screens in children's care homes, and screens in hospitals. No other views on this subject matter were shared during the flipchart feedback session, although three participants in the focus groups mentioned other three measurements and monitoring/tracking tools for consumer vulnerability: the Legal Services Consumer Panel's annual tracker survey, and NHS and GP screening practices.
- Four survey participants and four participants in the focus groups mentioned datasets which contain relevant variables or information about consumer vulnerability. These were: the Adult Psychiatric Morbidity Survey, Family Resources Survey, Health Survey for England, Health Survey for Scotland, National Survey for Wales, ONS, UK Biobank Understanding Society, Vulnerability person dataset from Police Scotland, and Wealth and Assets Survey, local authority data, and data collected by the Department for Work and Pension, charities, and the National Audit Office.

### 5.2.9 Research question 3.b: Are there any problems and challenges with measuring vulnerability?

- The evidence review demonstrated that defining and operationalising vulnerability can be a complex task, challenging the creation of a standardised definition of consumer vulnerability applicable across all contexts (Brennan et al., 2017; Enang et al., 2019). Intersecting factors complicate measuring the impact of one factor over others, in particular in the legal sector, where vulnerability often presents in a cluster (Bar Standards Board, 2018a; Scottish Legal Complaints Commission Consumer Panel, 2017; Smith et al., 2013). It should also be noted that vulnerability is not static, but can change over time (British Standards Institution, 2022; George, Graham, Lennard, & Scribbins, 2015). Participants in this study also commented that determining a definition would be challenging.
- Cultural and contextual factors also significantly affect vulnerability (Chartered Legal Executive Lawyers, 2018; Legal Services Consumer Panel, 2014; SRA, 2016a). What is deemed as vulnerability in one cultural context may not necessarily apply in another, rendering cross-cultural comparisons problematic. Another complexity emerges from potential measurement biases, especially in self-reported data, where individuals may either underreport or overreport their vulnerability due to social desirability or other biases. This is further complicated in the legal sector, where this evidence review has shown that vulnerability is often hidden (Cross, 2020; Howard, 2021; McEwan, 2013).
- Finally, these tools are predominantly quantitative measures of prevalence rates. Such measures, however, fail to capture important dimensions of vulnerability and harm, which extend beyond the individuals directly involved. This means that those tools are potentially underestimating the scale of the problem.
- There is a significant shortage of evidence also pertaining to how regulatory and statutory bodies address the challenges associated with these tools.
- Thirty-eight out of 47 survey participants also pointed out 20 potential issues specific to the measurement/tracking of consumer vulnerability, some of which were also identified by participants in the focus groups. These include:
  - Consumers can be cautious about disclosing vulnerability
  - Definitions of consumer vulnerability are inconsistent
  - Issues around self-disclosure
  - Inconsistent measurement across providers
  - Issues around who should carry out measurement, including problems relating to capacity and resources of law firms
  - Concerns relating to the GDPR
  - Vulnerability is labelling and exclusive
  - Consumers may not trust practitioners
  - It is hard to reach consumers with vulnerabilities
- Nonetheless, 32 out of 47 survey respondents also discussed possible solutions to some of the issues identified above. These solutions are:
  - Improving the relationship between legal service providers and consumers.

- Introducing new professional figures for independent assessment.
- Employing an experienced and trained research team.
- Making the measurement of vulnerability a mandatory requirement for legal service providers.
- Improving data sharing between service providers.

#### **5.2.10 Research question 4: Are there any other approaches which could be more appropriate than the 'risk factor approach'?**

- Participants generally supported the concept of universal vulnerability in the legal sector, which suggests that everyone can be vulnerable, and therefore that legal services should be tailored to meet the needs of all individuals. Some participants discussed what we have termed in the report a 'resilience approach'. This perspective goes beyond recognition and support of individual needs by prioritising the assessment of individuals' resilience and identifying the necessary resources to strengthen it. In the academic literature, advocates of this approach stress the responsibility of the state to foster individual resilience and to facilitate access to resources that support personal development and well-being (Fairclough, 2023; Fineman, 2019). This emphasises assessing and strengthening individual resilience. However, there are concerns that this approach might overlook the need to address vulnerability or simply replace the vulnerability label with a non-resilience label.
- Participants in the stakeholders' event unanimously agreed with the notion that vulnerability is inherent to everyone, emphasising its universality. In our research we have termed the practical application of the universal vulnerability perspective as the 'universal changes approach'. Likewise, one survey respondent and one focus group participant suggested that, given the universal nature of vulnerability, service providers should allocate their resources to adapt their services to meet the needs and potential challenges of all individuals. Participants in all the focus groups agreed that a universal changes approach may be useful in providing better legal services to consumers by adequately responding to their needs.
- The resilience approach was not discussed by survey participants or participants in flipchart feedback sessions. However, all participants in one of the focus groups debated that the concept of resilience is not a viable substitute for the risk factor approach. They argued that categorising individuals as resilient or not may lead to overlooking their needs under the assumption that they can handle challenges on their own. They also contended that the resilience perspective parallels the risk factor approach, where practitioners might opt to label individuals as 'non-resilient' instead of 'vulnerable'.

#### **5.2.11 Research question 4.a: Is it possible to pursue more than one approach?**

- One could claim that the risk factor approach and the universal changes approach are theoretically diametrically opposed and, therefore, mutually exclusive. In other words, the identification of vulnerable individuals via risk factors, followed by appropriate adjustments, does not embrace the redesign of systems and delivery to accommodate the needs of everyone. A redesign of the system accessible and



responsive to the needs of everyone would negate the need for adjustments for those identified as vulnerable and their differential processing and management.

- However, one could argue that, in universal changes, there is a role for understanding what renders individuals at risk or susceptible to vulnerability, or rather harm or poor outcomes and their needs, and what would mitigate against these harms. There is also arguably a role for these individuals in solution design processes, implementing their feedback into the system. Maintaining an ongoing feedback loop ensures that systems remain adaptable and responsive to the diverse needs of all individuals. Therefore, here we are not associating the risk factor approach with measuring and monitoring vulnerability but rather as a mechanism for starting to understand the universal changes which are required from the voices of those experiencing situational vulnerability. It is recognised that achieving universal changes may be challenging, but, as discussed in the final section, it does build on existing knowledge.
- All participants in two focus groups concurred that, although everyone's vulnerability should be acknowledged, not all vulnerabilities require measurement or attention from solicitors. They noted that certain vulnerabilities may not be relevant to the provider-consumer relationship. This finding indicates potential in combining the risk factor approach with the universal changes approach. In fact, participants acknowledged that vulnerability is a universal condition but believed that some vulnerabilities have more significance in the provider-consumer relationship and therefore that vulnerability needs to be weighted specifically. However, this approach arguably suffers from the same problems as defining vulnerability such as selecting, determining the precise parameters of, and measuring these 'more significant' vulnerabilities. This issue is discussed in more details in section 6.2.
- Conversely, one focus group participant contended that the risk factor and the resilience/assets approaches can be combined whereby risk factors can indicate lack of resilience. This perspective suggests that understanding and identifying risk factors can highlight areas where resilience is deficient, thereby allowing for a more comprehensive assessment of consumer vulnerability.

#### **5.2.12 Research question 6: What are the needs of consumers at risk of consumer vulnerability?**

- Consumers at risk of vulnerability in the legal services sector have a wide range of needs, including:
  - access to clear information
  - communication
  - written information
  - trust and empathy
  - cost transparency
  - power imbalance mitigation
  - language accessibility

- geographical and situational accessibility (Bar Standards Board, 2018a; Legal Services Board, 2022; Scottish Legal Complaints Commission Consumer Panel, 2017; The Law Society, 2022).

The SRA's (2023a) consumer segmentation research broadly recognises the need to provide for these aspects for all consumers, emphasising the notion that vulnerability is a universal condition.

- Regulatory and statutory bodies have produced guidance both for identifying and responding to consumers' needs in the legal services field (Bar Standards Board, 2018a; Chartered Legal Executive Lawyers, 2018; Legal Services Consumer Panel, 2014; Scottish Legal Complaints Commission Consumer Panel, 2017; SRA, 2016a). In the case of regulators, the guidance flows from overarching regulatory duties. In relation to the SRA, this is a firm/individual duty to always consider each client's needs, attributes and circumstances (SRA, 2023b & SRA, 2023c)
- There are instances where guidance on recognising and addressing consumer vulnerability in the legal sector has been incorporated into practice (see Table 14 in sub-section 3.7.4). However, there are also cases where this guidance has not been addressed (see Table 15 in sub-section 3.7.5). Overall, it is important to note that there is insufficient evidence to determine whether legal firms are consistently applying the principles outlined in guidance documents.
- In relation to the broad principles identified in the guidance documents above, various organisations have put forth recommendations to respond effectively to consumer vulnerability. They include:
  - training solicitors
  - more support to the vulnerable
  - data sharing between service providers
  - improved access to services
  - consistency and standardisation of practices
  - routine assessments of consumers' needs
  - collect consumers' feedback.

These recommendations align with some of the empirical findings from this research.

- The existing guidance was developed based on the understanding of vulnerability at the time by the SRA and other bodies. It primarily focuses on evaluating and mitigating individual vulnerability rather than conducting a comprehensive analysis of the sector's underlying issues that might contribute to or exacerbate vulnerability. The universal vulnerability perspective, which has recently gained more interest in academic research, is not yet included in current guidance documents.
- This alternative perspective – the 'universal changes' approach - posits that instead of attempting to identify vulnerable individuals and make adjustments accordingly, the emphasis should be on service providers to redesign their delivery to accommodate the needs of everyone.
- Building upon the shared understanding that all consumers of legal services are vulnerable, all participants in one focus group emphasised that resources should be allocated towards responding to consumers' needs rather than solely focusing on

measuring vulnerability. More specifically, participants discussed that the following could be useful:

- Improving accessibility to legal services, especially from a financial perspective
- improving accessibility of legal language transparency
- increasing awareness of consumer redress
- improving provider-consumer relationship in terms of trust and understanding
- improving university and CPD training for legal service providers, with input from lived experts and with a focus on vulnerability
- increasing data sharing
- shifting the purpose of measuring consumer vulnerability to addressing the individual needs of consumers in the provider-consumer relationship including through the use of independent, third parties and reviews on individual needs.

## 6 Discussion and suggested next steps

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### 6.1 Background

The results of the analysis of the considerable body of data presented in this report have broadly established that there is a lack of support for the risk factor approach underpinning the measurement of vulnerability in the legal services sector. Moreover, many stakeholders did not see measuring consumer vulnerability as valuable, and concluded that there would be substantial challenges in doing so.

Additionally, measurement tools have serious limitations, including their inability to consider contextual issues. Stakeholders' views are consistent with a body of evidence reviewed which advocates for the universal vulnerability perspective. Once one accepts that all consumers are potentially vulnerable in this context, it necessitates what we have referred to thus far as universal changes to accommodate everyone's needs. Participants clearly indicated that this approach should be embraced.

The stakeholders also suggested the alternative use of resources into a range of initiatives consistent with the universal changes approach. Some of these initiatives would be new to the legal services sector or at least are not currently widely used so could be implemented more broadly. However, in some cases the stakeholders described initiatives already being used successfully indicating their viability and willingness to embrace the principles of universal changes/practice. The resource implications of this are, however, acknowledged below.

Our concept of universal changes was initially developed as a response to universal vulnerability, based on our review of the evidence and participant feedback. However, during the data analysis and writing phases, we refined this idea further. Universal practice emerged as a comprehensive response, addressing both universal vulnerability and issues within the provider-consumer relationship identified by participants.

While we advocate for universal changes, the term 'universal practice' more accurately reflects the desired outcome, encompassing universal design, inclusive practice, and trauma-informed practice to foster a trusting and empathetic provider-consumer relationship.

Our brief was to consider the feasibility of developing a measurement tool to monitor/track the extent of consumer vulnerability in the legal service sector (see initial research questions in sub-section 7.1.6), rather than the operationalisation and feasibility of the universal practice approach. However, on the basis of the evidence and data, it is clear that the measurement of vulnerability should not be pursued and that the universal practice approach is preferable. Therefore, what we are able to do at this stage is to:

- Describe our initial ideas about the universal practice approach
- Provide a strong rationale for the SRA adopting the universal practice approach
- Recommend the first steps towards implementing this approach.

The detailed operationalisation of the universal practice approach is beyond the scope of the current research. Hence, these first steps include a research programme to refine the concept of universal practice and its application.

### 6.2 What is the universal practice approach?

The universal practice approach is an alternative strategy to, and in direct contrast with, attempting to precisely define and measure the prevalence of vulnerable groups. We argue

that, firstly, this approach emphasises how products and services should be designed to be accessible and inclusive to everyone, operating under the premise that anyone can experience vulnerability, reflecting the perspective of universal vulnerability (as suggested by Cross, 2017; and Fineman, 2014). Secondly, the universal practice approach is founded on a trusting and empathetic provider-consumer relationship. In order to explain our ideas around the universal practice approach, this section will describe the differences between it and the risk factor approach, identify the existing concepts on which it draws and highlight some examples of applications of universal practice.

### 6.2.1 Differences between the risk factor and universal practice approaches

The universal practice approach is diametrically opposed to the risk factor approach which is underpinned by a system of identifying vulnerable groups and providing differential services or products for those groups or identifying vulnerable individuals and modifying services or products for them. The risk factor approach necessitates modifications in provision where specific types of vulnerability are identified. The difference between universal practice and differential services or products/modifications in provision is that the former does not necessitate individualised modifications as it takes into account the plethora of needs at the point of design.

*Table 29 - Differences between the risk factor and universal practice approaches*

	<b>Risk factor approach</b>	<b>Universal practice</b>
<b>Focus</b>	<p><b>Specificity</b></p> <p>This approach identifies specific factors that increase the likelihood of harm, loss, disadvantage, or poorer outcomes and then measures their prevalence in the population of interest. These factors have to be selected and weighted.</p>	<p><b>Generality</b></p> <p>This is a broader approach acknowledging that vulnerability is a fundamental aspect of existence.</p>
<b>Purpose</b>	<p><b>Modifications to provision</b></p> <p>This approach enables the modification of services and products to meet the specific needs of individuals or groups. Modifications can be made proactively (anticipatory) or reactively (in response to emerging needs).</p>	<p><b>Provision accessible and respectful to all</b></p> <p>This approach ensures that services and products are universally accessible. It allows consumers to access provision based on their preferences/choices. It promotes respect for differences.</p>
<b>Relationship with consumers</b>	<b>Management/Transactional</b>	<b>Collaborative/Empowering</b>

	This approach is often characterised by a more bureaucratic or task-oriented way of delivering services, where interactions are seen as transactions to be completed efficiently. In fields like the legal service, client management can lead to impersonal interactions and a focus on ticking boxes rather than truly focusing on needs.	An approach that emphasises collaboration, participation, and empowerment. It allows consumers to access provision based on their preferences/choices. It involves working closely with individuals, allowing them to have a say in the decisions affecting them, thereby fostering ownership, agency, and sustainable outcomes. .
<b>Research</b>	<b>Quantitative</b>  To measure prevalence of vulnerable groups.	<b>Qualitative</b>  To understand the support needs of all.

In the risk factor approach, factors deemed to be important have to be selected. Fineman (2008) points out that vulnerability categories may exclude individuals who should be considered vulnerable (under-inclusive), and this was also recognised by the stakeholders (see sub-section 4.2.3). However, participants also acknowledged certain vulnerabilities hold more significance or render individuals more susceptible to harm or disadvantage in the provider-consumer relationship. Therefore, they argued that these vulnerabilities need to be weighted specifically. However, this approach arguably suffers from the same problems as defining vulnerability such as selecting, determining the precise parameters of, and measuring these 'more significant' vulnerabilities. Hence, we argue that the universal practice approach should, instead, aim to negate the need for anyone to identify or be identified as vulnerable by offering equal access and empowering treatment for all.

It is of note that sometimes modifications in provision, where factors associated with vulnerability are identified, is a legal requirement. Some of the legal authorities are shown in Table 2 on page 28. By way of example, under the Equality Act 2010, service providers (and employers) are required to make reasonable adjustments to ensure that disabled individuals are not at a substantial disadvantage compared to non-disabled people. These adjustments can include changes to physical features, adjustments to policies and procedures and the provision of auxiliary aids, such as equipment or support services. The duty to make reasonable adjustments is anticipatory, meaning organisations must consider and plan for the needs of disabled people in advance. The adjustments must be practical and proportionate, taking into account the size and resources of the organisation.

In essence, universal practice can be viewed as the ultimate and potentially perpetual outcome of a modifications in provision approach. This paradigm shift implies a fundamental alteration in perspective and a refocussing of the sector, rejecting the language of vulnerability and its use as a mechanism in the processing and management of certain individuals and groups. This means that, instead of targeting specific groups of individuals for different services or products or modifying provision for particular groups or individuals, once universal practice is implemented, the service becomes accessible and accommodating for all consumers.

In Figure 1 below, which shows the existing concepts which feed into the idea of universal practices, the arrow feeding in from reasonable adjustments into universal practice is not solid like the arrows feeding in from other concepts. This is to illustrate that the relationship between reasonable adjustments and universal practice is more complex than the relationships with other concepts which inform universal practice. Universal practice builds on existing knowledge about making services and products accessible, but it is not limited to offer choices about accessibility to particular groups or individuals. Rather universal practice offers accessible choices and respectful interactions to all.

For example, physical changes to an environment to make it accessible, such as installing ramps or a lift, would already normally be available to all once installed. One can choose to opt out of using the stairs without having to be identified as belonging to a particular group. In contrast, accessible communication in a particular format might only currently be offered to consumers identified as vulnerable. Under universal practice, the wording of all legal letters would change to using intelligible language and with automated translation, rather than only those letters sent to particular consumers identified as vulnerable. All consumers routinely would have the opportunity to receive and respond to communication in their preferred format via, for instance, a screen reader and recording a voice memo. In their report for the SRA, YouGov (2019) did recommend making sure all communications are as accessible as possible in terms of language, presentation, and format.

Offering flexibility and choice allows people to benefit from adjustments without having to disclose vulnerability which is problematic as demonstrated in the evidence review (see, for example, Gilson, 2016 on its associations with weakness) and as explained by the stakeholders in this research (see sub-section 4.2.3). It is recognised that, until such a time that universal practice is fully rolled out and there are gaps in accessible choices for all, the legal requirement of reasonable adjustments still needs to be met.

We advocate prioritising creating a system inherently inclusive and accommodating to the needs of all consumers without necessitating individualised adjustments. This system necessitates that service providers may need to re-evaluate the design of their products and service frameworks so that they are accessible to all consumers, although at other times there may be small changes to be made and 'easy wins'. The principle would be that all consumers are offered a full range of access and communication options from which they can opt-out rather than opt-in.

The universal practice approach also differs from the risk factor approach in terms of the research and data on which it is based. Measuring the prevalence of vulnerable groups would rely on quantitative data, whereas building an understanding of the support needs of all is likely to be founded on qualitative research. Interestingly, stakeholders in this research advocated that the purpose of measuring consumer vulnerability should be shifted to addressing the needs of consumers in the provider-consumer relationship and most of the methodologies cited by survey participants were qualitative including conversations with consumers, interviews, diarised catch up sessions, community listeners/peer-led run groups and focus groups. They also emphasised the importance of feedback reviews as discussed below.

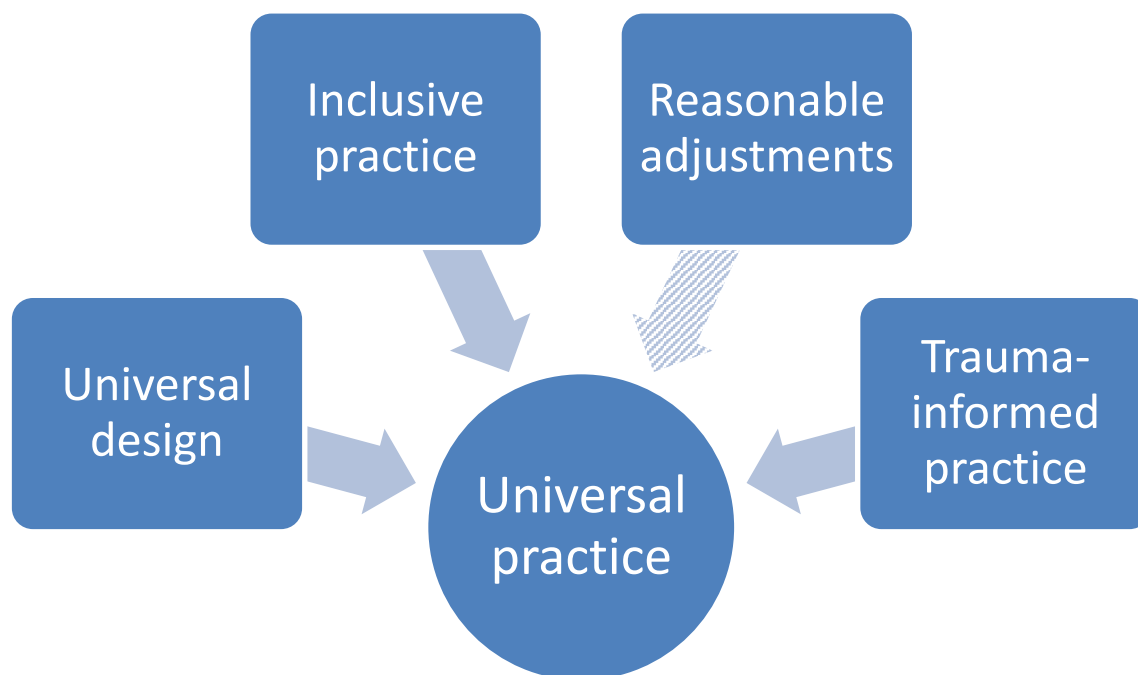
Moving beyond universal changes, the universal practice approach also encompasses a trusting and empathetic provider-consumer relationship. This universal practice approach also recognises that for products and services to be accessible and inclusive, they must be founded on a provider-consumer relationship based on trust and respect. It is crucial that consumers feel empowered to make decisions about their services, products, and advice, and that their decisions are heard and respected. In terms of practical application, we provide examples in the next section, although this was not the primary goal of this study and report. Therefore, this issue requires further consideration and research. It is also

recognised that implementing the universal practice approach would be a substantial shift, requiring resources, so its viability is considered below.

## 6.2.2 Existing concepts informing the idea of universal practice

This section examines the existing concepts in the broader literature and a range of initiatives/applications suggested by guidance and/or participants on which the universal practice approach draws, and, through this, suggests its key principles.

*Figure 1 - Relationship of existing concepts to the idea of universal practice*



There are parallels between the ‘universal practice’ approach and the approaches of ‘inclusive practice’ and ‘universal design’. Inclusive practice is any approach used in the field of education whereby all learners have equity in access and participation in learning opportunities and activities. Whilst specific adjustments might need to be introduced to support the meeting of individual students’ needs, it is recognised that implementing inclusive practice can remove some unintended or incidental barriers to learning for students. Universal design is an approach that aims to create environments, products, and services that are accessible to everyone, regardless of age, disability, or other factors. The idea developed in the field of architecture but has been expanded to apply in other domains such as education, healthcare, transport, and technology.

The initiatives described in the reviewed guidance documents in section 3.7 of this report share numerous similarities with those discussed by participants during the empirical phase of this study, alongside additional ones identified by the participants. They are combined in Table 30 below. Many of these suggestions are consistent with some of the principles of inclusive practice and universal design, whereby there is an attempt to create services and products which are accessible to everyone.

As shown in Table 30 below, these initiatives are also consistent with trauma-informed practice in the areas of healthcare and criminal and social policy (e.g. housing) (Ashton, et al., 2016; Bellis, et al., 2018). Principles of trustworthiness, collaboration, and empowerment,



borrowed from trauma informed practice, could enhance provider-consumer relationship further.

Therefore, to adopt the universal practice approach, we propose integrating some key principles from universal design, inclusive practice, and trauma informed practice into legal service delivery processes and products. The principles, outlined in Table 30, are:

- equal access
- empowerment
- trustworthiness
- collaboration.

*Table 30 – Proposed principles for universal practice for the legal services sector*

<b>Approach</b>	<b>Principle</b>	<b>Examples of practices</b>	<b>Examples of applications</b>
Universal design/Inclusive practice	Equal access	<ul style="list-style-type: none"> <li>• Geographical and situational accessibility</li> <li>• Accessible communication               <ul style="list-style-type: none"> <li>○ Access to clear information to explain advice and processes</li> <li>○ Written information</li> <li>○ Cost transparency</li> <li>○ Language accessibility</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Use of independent, third parties to empower individuals and signpost them to other services</li> <li>• Use of feedback reviews to allow consumers to independently share information about themselves</li> <li>• Improving training for legal service</li> <li>• Improving university and CPD training for legal service providers, with input from lived experts providers</li> <li>• Inclusion of lived experts in legal services provision</li> </ul>
Trauma-informed practice	Empowerment	<ul style="list-style-type: none"> <li>• Listening to what person wants and/or needs</li> </ul>	<ul style="list-style-type: none"> <li>• Improving university and CPD training for legal service</li> </ul>

	<ul style="list-style-type: none"> <li>• To mitigate power imbalance</li> <li>• To improve provider-consumer relationship in terms of trust and understanding</li> </ul>	<ul style="list-style-type: none"> <li>• Making person feel heard and understood</li> <li>• Treating people respectfully</li> </ul>	<p>providers, with input from lived experts providers</p> <ul style="list-style-type: none"> <li>• Use of independent, third parties to empower individuals and signpost them to other services</li> <li>• Use of feedback reviews to allow consumers to independently share information about themselves</li> <li>• Use of the empowering interview</li> <li>• Inclusion of lived experts in legal services provision</li> </ul>
Trauma-informed practice	Trustworthiness	<ul style="list-style-type: none"> <li>• Being transparent</li> </ul>	<ul style="list-style-type: none"> <li>• Increase awareness of consumer redress</li> <li>• Inclusion of lived experts in legal services provision</li> </ul>
Trauma-informed practice	Collaboration	<ul style="list-style-type: none"> <li>• Including lived experts in devising and in the provision of legal services</li> </ul>	<ul style="list-style-type: none"> <li>• Use of independent, third parties to identify individual needs</li> <li>• Inclusion of lived experts in legal services provision</li> <li>• Improving university and CPD training for legal service providers, with input from lived experts providers</li> </ul>

### 6.2.3 Examples of applications of universal practice

Some further details of applications of universal practice are provided here. However, their detailed operationalisation is beyond the scope of the current research, and a further programme of research, to clarify and develop these applications, is suggested below.

- **Use of empowering interviews.** Some participants described an initial informal interview with consumers based on a series of questions to ground the provider-consumer relationship in trust and understanding and ascertain the consumer's priorities. We have referred to this as the 'empowering interview'. It shares features of 'motivational interviewing' which is often integrated with trauma-informed practices (California Institute for Behavioural Health Solutions, n.d.; Levenson, 2017). This approach acknowledges the impact of trauma on individuals and leverages motivational interviewing's empathetic, non-judgmental style to foster trust. This includes creating a safe and supportive environment, emphasising the importance of the client-practitioner relationship, and recognising how trauma can influence a person's readiness and ability to 'change'. Practitioners use strategies such as active listening, open-ended questions, and affirmations to encourage clients to express their thoughts and feelings, promoting self-efficacy and empowerment (California Institute for Behavioural Health Solutions, n.d.; Levenson, 2017). It is suggested that these strategies can be used with all clients regardless of their past experiences, as it can benefit all provider-consumer relationships. Key components of trauma-informed motivational interviewing include:
  - Safety and trust: Ensuring clients feel safe and building a trustworthy relationship are foundational. This involves being aware of potential triggers and responding in a trauma-sensitive manner.
  - Collaboration and autonomy: Emphasising collaboration and respecting the client's autonomy helps in mitigating power imbalances and empowers clients to take an active role in their healing process.
  - Empowerment and strengths-based approach: Focusing on clients' strengths and capabilities rather than their deficits encourages positive self-perception and motivation for change (this can be linked to CRSE8 quote on page 127).
- **Use of independent, third parties to empower individuals and signpost them to other services.** The majority of participants in the focus groups advocated for the involvement of independent, third parties to aid practitioners in identifying and possibly responding to consumer vulnerability. They stressed that this role could be fulfilled by a lived expert (see below) or another trained professional. These participants contended that expecting solicitors to ascertain the needs of consumers and the role that these play in the relationship with the legal service might exceed the scope of the solicitors' profession. Reconsidering this in the context of the universal practice approach, solicitors could benefit from involving a third party trained to apply the empowering interview discussed above. This third party could subsequently guide solicitors on how best to engage with consumers. This approach would allow every consumer to build trust with the service provider, feel secure in their relationship with the professional, learn about available opportunities, and be empowered to opt out of any options they deem unsuitable. Additionally, the independent third party could serve a support function by signposting individuals to other services to meet their needs. This would be an extension of the practice observed in the report for the SRA by Ecorys (2017), where family law firms signposted and/or referred individuals to third parties, such as mediation services or a General Practitioner.

- **Use of feedback reviews.** Participants in two of the focus groups discussed the use of reviews and consumer feedback. These tools could enable consumers to express their needs at various stages of service provision, such as at the beginning, midway, and towards the end. We propose that this information could complement empowering interviewing, providing consumers with the opportunity to independently share information about themselves that they might not feel comfortable to disclose otherwise, enhancing their empowerment and autonomy.
- **Inclusion of appropriate lived experts in training.** Improving training for legal professionals was one of the key recommendations of our participants, including six survey respondents and most of those who joined the focus groups. These participants contended that training is necessary to enable practitioners to engage with consumers in a more empathetic and understanding manner. One specific aspect discussed was the possibility of incorporating input from lived experts into professional training. This initiative could increase trust in legal services among lived experts, enhance collaboration between legal professionals and lived experts, and empower lived experts to help guide the direction of legal services. This would be an extension of the practice observed in the report for the SRA by Ecorys (2017, where family law firms received training from external providers such as a local disability centre, although overall the research found little evidence indicating that solicitors in family law accessed training to help develop personal skills for ensuring their services are accessible for clients with additional needs.
- **Inclusion of lived experts in provision of legal services to empower individuals.** Two lived experts in the focus groups proposed the introduction of peer-led groups or community listeners, understood as lived experts who could engage with consumers throughout the provision of legal services. Solicitors could benefit from involving a lived expert trained to apply the empowering interview discussed above. This intervention would enhance the impact of universal practice by incorporating input from those they aim to support, fostering a trustworthy and empathetic environment where collaboration and autonomy could thrive.

### 6.3 What benefits might come from adopting a universal practice approach in the legal services sector?

It was clear from the evidence review and the perspectives of stakeholders who took part in this study that the universal practice approach should be embraced, but further justifications are provided below.

- **Fulfilment of regulatory and strategic objectives.** The adoption of the universal practice approach would align with some of the regulatory objectives (RO) outlined in the Legal Services Act 2007, particularly RO3 (Improving access to justice) and RO4 (Protecting and promoting the interests of consumers). The implementation of the universal practice approach would also align with the aims specified in the SRA's corporate strategy (2023c) to adopt innovations to ensure that solicitors and law firms provide the same high level of service to all consumers.

The SRA's Code of Conduct for Solicitors, RELs and RFLs (2023c), Code of Conduct for Firms (2023b), and enforcement strategy (2023e) also emphasise fair treatment and consideration of client attributes, needs, and circumstances. Universal practice is a means of supporting the delivery of this requirement. We argue that the provision of products and services should be designed to be accessible and inclusive to everyone, taking account of all client's attributes, needs, and circumstances. The implementation of

universal practice would positively change experiences for all consumers of legal services.

- **Progressing accessibility agenda.** In their report for the SRA on reasonable adjustments, YouGov (2019) recommended making sure all communications are as accessible as possible in terms of language, presentation, and format. The universal practice approach builds on this principle of equal access, and also incorporates principles of empowerment, trustworthiness, and collaboration into the legal services sector.
- **Leading regulators and the legal sector.** It was apparent from the evidence review and from the regulators and statutory bodies that participated in this study that they, as a group, are grappling with how to deal with the complexities surrounding vulnerability. They are also reviewing their current approaches including the use of a vulnerability measurement tool to track risk factors across the consumer population. The universal practice approach represents an important opportunity for the SRA to be at the leading edge of these changes. It is also acknowledged that, in some cases, the legal service provider is just one component of an individual's legal journey. For example, if they use legal aid they will likely need to evidence vulnerability (UK Government, 2023) or, if their matter goes to court, they may find themselves being asked further questions about their vulnerabilities in relation to special measures in a criminal proceedings or participation directions in family proceedings. Hence, a whole system approach to universal practice is advocated, with commitment from all stakeholders.
- **Improving access to justice.** The universal practice approach would attract new and retain satisfied consumers in a changing legal services sector. It would positively change experiences for consumers and even attract new consumers previously apprehensive of seeking products/advice owing to limited accessibility, the power imbalance, and limited trust. There remain many individuals who do not seek legal services for these reasons, as well as concerns about resources. Of note, 3.6 million adults in England and Wales have an unmet legal need involving a dispute every year (Legal Services Board, 2020). While measuring vulnerability within the client base overlooks those excluded due to existing barriers, a universal practice could help remove these barriers, ultimately expanding the client base and driving long-term growth.

Encouraging legal service providers to implement universal practice would also help retain consumers who have been impacted negatively by these issues. Universal practice to establish trust and become a trusted advisor in a lasting relationship is key in a climate where the number of those shopping around for a lawyer is higher than it was pre-pandemic (LSCP, 2023) and could increase with the cost of living making consumers more price conscious. Moreover, the internet and AI (artificial intelligence) offer consumers increasing options for managing the cost of advice they receive, including free legal advice and products, and there is some evidence that some people may trust computers more than humans (Bogert, Schechter, & Watson, 2021). Hence, universal practice to create trust in a human advisor may become more important in work to secure fee-paying clients. Indeed, research jointly commissioned by the SRA and the LSB found that there is majority support amongst the public for the use of technology in legal services, although there is less support for its use, and a preference for human advice and decision making, in more complex, sensitive or higher stakes cases (Community Research, 2022).

While consumers generally report a high and an increasing level of satisfaction with legal services received, there are some areas of law which receive lower ratings such as housing, conveyancing, and employment (Statista, 2023). Moreover, complaints resolved by the Legal Ombudsman has been increasing by substantial numbers in the last year (Legal Ombudsman, 2023). Stakeholders also reflected on the frequency of complaints,

particularly around asylum law. Complaints often relate to poor communication so universal practice informed by accessible communication, empowerment and transparency could reduce the number of complaints and assist in areas of law where the satisfaction levels are not quite so high.

- Harnessing the opportunities of AI and technology.** The use of online legal services is becoming increasingly common, rising from 21% in 2011 to 33% in 2019 (LSCP, 2019) and there is an increase in the use of AI (SRA, 2023a). Views on AI are varied. However, there are a number of arguments against using AI to predict those at risk of vulnerability in the healthcare sector. AI systems can inherit biases from the data (including on risk factors) on which they are trained and that its decision-making processes are not transparent and are, therefore, sometimes not trusted (Hamzelou, 2023). It has also been argued that AI predictions are not always accurate and require access to large amount of personal data raising privacy concerns (AMA, 2024). If the training data is biased, the AI's predictions will also be biased, potentially leading to unfair treatment of certain groups. Likewise, false positives (incorrectly identifying someone as at risk) and false negatives (failing to identify someone who is at risk) can have serious consequences. More broadly, there are ethical concerns about AI paternalism, where AI decisions override human judgment and autonomy (Hamzelou, 2023). Conversely, if informed by a universal practice approach, AI and technology could be harnessed to improve access and transparency for consumers, such as automated translation and virtual familiarisation visits to legal settings.
- Building on and drawing together existing knowledge about the needs of consumers.** Research conducted by the SRA (2023a) found that most consumers, not just those identified as being at risk of vulnerability, highly value providers who are approachable and communicate effectively throughout the process. Universal practice builds on what is known about effective communication as well as geographical and situational accessibility (Bar Standards Board, 2018b; The Law Society, 2022), and trust and empathy and power imbalance mitigation (Bar Standards Board, 2018a; Scottish Legal Complaints Commission Consumer Panel, 2017).
- Building on existing good practice.** Changes are achievable as stakeholders described universal changes/initiatives which they report to have successfully implemented and are having positive effects. These included the applications described above such as the use of the empowering interview, the use of independent, third parties and feedback reviews.

## 6.4 Viability of the universal practice approach

It is recognised that implementing the universal practice approach would be a substantial shift, requiring further thinking and resources, and there is a risk some cost may be passed to consumers. Considering initiatives already being delivered by providers, such as empowering interviewing, their viability has been demonstrated on a small scale. However, it is acknowledged that to roll out universal practice on a wider scale would require more research and resources.

Participants expressed their preference for the universal changes approach over measuring and monitoring vulnerability and further justifications as to why the SRA should implement this approach have been provided above. Stakeholders in this research have reported that law firms would not have the resources to assess vulnerability. Those stakeholders have also argued that any resources allocated for a vulnerability measurement tool should be redistributed on initiatives consistent with the universal practice approach. There should be

savings to be made from dealing with fewer complaints and increased revenue from the retention of satisfied consumers. Additionally, revenue would grow with new business from consumers as accessibility and trust improve. In fact, while measuring vulnerability within the client base overlooks those excluded due to existing barriers, a universal practice could help remove these barriers, ultimately expanding the client base and driving long-term growth.

There is a parallel with employers who have worried about making adjustments because of costs or disruption. The Law Society, with the Disabled Solicitors Network, has published an ‘easy wins’ document to work towards disability inclusion (The Law Society, 2024). A similar strategy is recommended here to help providers start or improve the process of embedding universal practice (please see section 6.5.1).

That said, even with the necessary resources, it is reasonable to question whether it would be viable to require, for example, universal access. Some buildings cannot have certain physical access changes made. Moreover, the mechanism by which all consumers have a full range of access and communication options from which they can opt-out rather than opt-in, as well as the logistics of arranging for third parties to be available, would require further consideration. The operationalisation of universal practice would need further thinking and research as advocated below.

## 6.5 Recommendations for implementing the universal practice approach

To implement the universal practice approach, we recommend that the SRA considers policy changes, including developing its standards and guidance, and commissioning independent research and evaluation.

### 6.5.1 Policy considerations

- **Adopt the principles of universal practice in all its regulatory activities.** This might include citing universal practice in the SRA’s Statement of Solicitor Competence and developing new standards of universal practice.
- **Reject the language of vulnerability in its guidance.** Some stakeholders argued that the language of vulnerability is labelling and/or stigmatising. We concur and argue that the universal practice approach emphasises how products and services should be designed to be accessible and inclusive to everyone, as anyone can experience vulnerability, reflecting the perspective of universal vulnerability (as suggested by Cross, 2017 and Fineman, 2014). We, therefore, advocate a move away from the use of the language of vulnerability to empower consumers by:
  - **Fostering respect.** Avoiding this language respects the individual’s dignity by not defining them by their vulnerability.
  - **Widening focus/understanding.** For providers, it frees them from focussing on pre-defined categories into which a consumer may fit, and encourages a deeper examination of the circumstances, such as financial hardship, health issues, or life events. For regulators, policymakers, and consumer protection agencies, it encourages a consideration of the broader context and systemic factors that contribute to inequality.

It should be noted that the language of vulnerability has been used previously in this report as our brief was to implement a vulnerability measurement tool (see original research questions in sub-section 7.1.6).

- **Issue guidance on universal practice.** Providers will need to be supported by including the concepts/language of universal practice through guidance.
- **Provide resources on ‘easy wins’ on accessibility, empowerment, trustworthiness, and collaboration in the provider-consumer relationship.** Stakeholders suggested a range of initiatives to improve the provider-consumer relationship, including empowering interviews and feedback reviews. These initiatives, in theory, support the implementation of the universal practice approach and, in some cases, have been reported to be successful.
  - Use of independent, third parties to empower individuals/signpost individuals to other services.
  - Use of lived experts in legal casework support roles.
  - It is also thought that lived expert input into training would be useful, although this would sit outside of the SRA’s remit.

## 6.5.2 Research considerations

While this study has demonstrated the preference for the universal practice approach and proposed a set of underpinning principles, as well as identified initiatives for broader application, further thinking and research are necessary for its rollout. Consideration should be given to commissioning independent research to:

- **Refine and implement the universal practice approach:** The current study, based on data and related theoretical approaches, has shown that the universal approach is preferable. We have begun developing the associated principles and identifying initiatives that could be used in its rollout. However, further research is needed to review existing evidence of related approaches and consumer needs to refine the universal practice approach.
- **Establish the uptake and effectiveness of current accessibility initiatives:** The study has highlighted a gap in knowledge regarding the uptake and effectiveness of current guidance and initiatives on equal access. We recommend that the SRA commission research to audit and evaluate existing practical examples of the universal practice approach in the legal services sector, incorporating the following questions into its research program:
  - To what extent are the initiatives recommended in the guidance being used in the legal services sector?
  - What evidence exists that these initiatives are effective? Are there situations where they might be damaging?
  - How should the uptake of these initiatives be audited and their effectiveness evaluated?
  - How could AI and other technology enhance accessibility and transparency?
- **Explore promoting empowerment, trustworthiness, and collaboration in the provider-consumer relationship:** This study has identified practical applications of the universal practice approach - empowering interviews and the use of independent



third parties and lived experts. To fully explore the viability of the policy changes and these initiatives, further research is needed to gather detailed information on, evaluate, refine, and pilot the practical applications of these universal practice approach.

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## 7 Appendices

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### 7.1 Methodology

This section provides detail on the research methodology. This includes describing the evidence review search strategy and empirical data collection and analysis, ethics and data management, and research limitations.

To achieve the study's aim and objectives, a qualitative, innovative mixed method research strategy was used. Mixed methods research enabled data triangulation for cross validation and for a greater breadth of data. The research strategy involved: (1) a review of existing evidence (e.g., academic literature, legal sources, documents produced by regulatory and statutory bodies), and (2) empirical qualitative data collection with key stakeholders through both an online survey and a stakeholder event.

#### 7.1.1 Evidence review and search strategy

The evidence review searched for and analysed existing research and data on the nature of consumer vulnerability in the legal services sector. The evidence search strategy included a diverse range of sources, encompassing academic literature, legal sources (legislation, practice guidance and rules, and research reports), documents produced by regulatory and statutory bodies, and any other grey literature including government publications relevant to consumer vulnerability. Grey literature indicates materials and research produced by organisations outside of the traditional commercial or academic publishing and distribution channels.

Initially, the search yielded around 7,000 sources. From this vast pool, around 300 were selected for an exhaustive review. The manual sift was made by referring to the titles and abstracts and considering whether they complied with the selection criteria: sources related to access to justice and sources that mention vulnerability in customers (as opposed to that in lawyers or other staff). Some full-text review was also performed when the title and abstract did not provide enough information. The literature search was carried out via three iterations following feedback and review.

Furthermore, the evidence review also entailed a search for relevant datasets.

#### 7.1.2 Scope of evidence search

The scope of the search was decided upon from an early, preliminary review of the literature (performed at the bidding stage for the project) and with the agreement of the SRA. The scope of the project was as follows:

- Areas of law:
  - Criminal
  - Debt
  - Disability
  - Employment
  - Family

- Housing
- Immigration
- Mental health
- Personal injury
- Probate
- Social welfare/state benefit
- Sectors:
  - Legal
  - Financial
  - Gambling
  - Housing
  - Health
  - Mental Health
  - Social Welfare
- Dates: no date parameters were applied to the search.
- Publications: academic literature (books and articles), legal sources (legislation, practice guidance and rules, and research reports) and grey literature.
- Geographical: International
- Quality: the search was not limited to peer reviewed articles. Instead, it also explored grey literature. This approach allowed access to a broader range of resources, including documents from regulatory and statutory bodies, which are of particular relevance to this study.
- Exclusion criteria: None

### 7.1.3 Academic and legal sources

Academic literature was searched in the following databases: Scopus, Academic Search Complete, ASSIA, Criminal Justice Abstracts, PsychInfo, PyschArticles, ProQuest: Criminal Justice, Social Sciences and Sociology, Westlaw, Heinonline, Lexis+.

The following keywords were used to identify relevant articles:

“vulnerable Consumer” OR “vulnerable person” OR “vulnerable user” OR “vulnerable client” OR “vulnerable defendant” OR “susceptible Consumer” OR “susceptible person” OR “susceptible user” OR “susceptible client” OR “susceptible defendant” OR “susceptible plaintiff” OR “Client vulnerability” OR “consumer vulnerability” OR “vulnerable voice” OR “voice of vulnerability” OR “voice of the vulnerable” OR “vulnerable Consumers” OR “vulnerable persons” OR “vulnerable users” OR “vulnerable clients” OR “vulnerable defendants” OR “susceptible Consumers” OR “susceptible persons” OR “susceptible users” OR “susceptible clients” OR “susceptible defendants” OR “susceptible plaintiffs” OR “At-risk

consumers” OR “Financial vulnerability” OR “Socio-economic” OR Inclusion OR Accessibility OR Disadvantaged OR “capacity to consent” OR “digital exclusion” OR “consumer rights” OR disabled OR disability OR “low income” OR indigent OR impaired OR impairment OR vulnerable OR vulnerability OR susceptible OR susceptibility OR protection OR protected OR defenceless OR “sheltered accommodation” OR shelter OR “welfare support” OR “low income” OR refugee OR “asylum seeker” OR immigrant\* OR “low literacy” OR “English as a second language” OR bereaved OR carer\* OR poverty OR poor OR “lack of internet” OR “unfit to plead”

AND

court OR “legal services” OR “legal proceedings” OR court OR solicitor OR barrister OR “legal representation” OR “legal aid” OR “access to justice” OR “Legal Assistance” OR “Legal Support” OR “Legal Advice” OR “Legal Protections” OR “Legal Proceedings” OR “legal cases” OR “court cases” OR lawyer\* OR solicitor\* OR barrister\*

The following search commands were used: truncation, proximity searches (finding words within a specified distance) and phrase searching (finding words in an exact order).

#### 7.1.4 Regulatory and statutory bodies’ literature

Grey literature was searched using Advanced-Searching operators from Google:

- Site: for searching results within URL with a specific endings: gov; gov.uk (including cps.gov.uk; justice.gov.uk); gov.wales; who.int; org.uk; un.org
- Around (n) is a proximity-search operator to find results with words appearing within a specific distance of one another. For example, Assess\* around (2) vulnerable finds results that have assess or assessment and vulnerable only within two words of one another.
- Intitle: this searches for pages with these keywords only in the title: “access to justice”.

The SRA also supplied an Excel file containing 36 research reports and guidelines produced by regulatory, statutory, and third-sector organisations, including publications from the UK Government. This literature was all relevant and has been incorporated into the report.

#### 7.1.5 Datasets

The following repositories were searched: Mintel, Essex Open Data, Statista, Gartner, Fame, UK Data Service, Data.gov.uk, Office for National Statistics, Stats Wales, Ministry of Justice, Legal Aid Statistics, and Home Office statistics.

The following keywords were used: “vulnerable”, “vulnerability”, “access to justice”, “claimant characteristics”, “claimant demographics”, “defendant characteristics”, “defendant demographics”.

#### 7.1.6 Initial research questions

Research questions evolved throughout the research process. The initial research questions are listed here, whereas the final questions are shown in section 2.3.



1. What is consumer vulnerability?
  - 1.1 Can the definition of vulnerability as provided by the SRA be considered comprehensive and exhaustive?
  - 1.2 Is the term 'vulnerability' deemed suitable and appropriate for use in this context?
2. What is currently known about the type/nature of consumer vulnerability within the legal sector?
  - 2.1 What are the key features that define vulnerability in the legal sector?
  - 2.2 Does consumer vulnerability manifest differently within the legal context compared to other sectors?
3. What is currently known about the scale and trajectory of consumer vulnerability within the legal sector?
  - 3.1 Is there sufficient availability and quality of data about consumer vulnerability in the legal sector to determine its scale?
  - 3.2 How many consumers are vulnerable?
  - 3.3 What is the estimated proportion of individuals who use legal services annually and could be classified as vulnerable?
  - 3.4 On a macro level, which factors influence the scale and trajectory of consumer vulnerability within the legal sector?
4. What are the needs of consumers at risk of vulnerability in the legal services sector?
  - 4.1 Do regulators and other statutory bodies have any guidance to identify consumer vulnerability in the legal services field?
  - 4.2 Do regulators and other statutory bodies have any guidance to respond to consumer vulnerability once this is identified in the legal services field?
  - 4.3 What are regulators and other statutory bodies doing/doing wrong/should they be doing?
5. How is vulnerability currently screened/assessed/measured in related sectors (e.g., criminal, financial, gambling)?
  - 5.1 Which variables and tools are used to screen/assess/measure vulnerability?
  - 5.2 What are the limitations of these variables and tools?
  - 5.3 Are there any problems and challenges (e.g. technical, ethical, and operational) with measuring vulnerability?
  - 5.4 How are these problems mitigated in other sectors?
6. What is the current understanding of the gaps in existing research on consumer vulnerability?
  - 6.1 What are the implications for empirical research?

### 7.1.7 Empirical research

As the feasibility and benefits of developing a measurement tool to monitor/track the extent of consumer vulnerability in the legal service sector had not yet been evaluated, it was essential to collect new (primary) data. This was done using an online survey and a stakeholder event, comprising of a plenary presentation and feedback session and breakout focus groups.

#### Online survey of stakeholders

The online, web-based survey was conducted through a number of open-ended questions to collect qualitative input from a purposive sample of diverse stakeholders (n=47). To complement the knowledge gained from the evidence review, the open-ended questions focused on two key areas: the definition of consumer vulnerability and potential methods and tools for the SRA to measure and track vulnerability within the client population.

The objectives of the survey align with Greene et al. (1989) principles of multi-methods research and served the following purposes:

- **Complementary:** this approach sought to identify both shared and distinctive facets of the issue, supplementing the evidence review with additional insights.
- **Development:** the survey was instrumental in shaping the selection of topics and questions for the research materials intended for the stakeholder event. It also aided in the recruitment of participants for the forthcoming stakeholder event.

#### Stakeholder event

The stakeholder event was selected, in line with Greene et al. (1989) rationales for multi-methods research, for:

- **Convergence:** to validate evidence review and survey results.
- **Expansion:** to add breadth/detail to the evidence review and survey results.

This was a one day event that consisted of two distinct phases: a plenary session and breakout focus groups. During the plenary session, the themes from the previous research stages (the evidence review and online survey) were presented, providing participants with an overview of the key insights and outcomes. Following the presentation, participants were asked to sit at a table of their choice to take part in a flip chart feedback session. This session sought the initial views of participants on (a) the accuracy of findings and (b) the next steps for these findings. As a table, participants were asked to discuss these two issues and agree what to record on a flip chart sheet in the form of feedback. The researchers wrote the agreed feedback on the flip chart sheet.

The plenary session phase set the stage for the subsequent breakout focus groups. There were four focus groups running in four separate rooms, and participants were asked to attend one depending on the research team's assessment of the alignment of their expertise to the focus group topic and to ensure representation of the different participant groups (listed in the sub-section below) across the focus groups. Each focus group was dedicated to facilitating in-depth discussions on one the following specific topics (with the possibility of incorporating others if there was time and interest):

- Defining consumer vulnerability in the legal services sector.

- The usefulness of measuring consumer vulnerability in the legal services sector.
- Responding to the needs of consumers at risk of vulnerability in the legal services sector.
- Implementing a vulnerability measurement tool in the legal services sector.

Focus groups were structured with four to five participants each to ensure a diverse range of perspectives while also allowing for detailed discussions on the aforementioned topics within a ninety-minute session. While topic guides were prepared for each focus group in advance to ensure key issues were addressed, the methodology also allowed flexibility for participants to raise and elaborate on issues important to them. This approach enabled the collection of views from various participant groups in an inclusive manner, fostering critical analysis through the interaction of diverse perspectives.

## Sampling

A wide range of stakeholders participated in the research phases. These included:

- Academic experts and consultants identified from the evidence review.
- Legal professionals identified by the SRA (including a post on their LinkedIn page) and/or online directories, including: Law Society's Accreditation schemes; Law Society 'find solicitor' page; Law Society's Policy Advisory Committees.
- Consumer representative/resolution bodies and other participants identified from various sources including from the evidence review, records of the Association of Consumer Support Organisations and SRA databases.
- Regulators from sectors with relevant experiences e.g. gambling, financial services identified from evidence review.
- People with lived experience of being vulnerable clients in relation to a range of law/legal services (e.g. crime, employment law, family law, personal injury). The lived experts were identified by EP:IC, an organisation specialising in the recruitment and support of participants with lived experience

Once identified and/or introduced by the SRA, the research team extended direct invitations to individuals from the first four research groups above. Participants were encouraged to actively participate in the web-based survey and/or stakeholder event, initially by email followed up by telephone calls. Lived experts were identified by EP:IC's experienced engagement partners, who reached out to prospective participants via telephone calls or emails. If prospective participants, they were invited to a one-to-one recruitment meeting with EP:IC on MS Teams to confirm their eligibility and support needs.

Table 31 below shows the research sample. In total, 54 individuals took part in the study, with 47 responding to the survey, 19 attending the stakeholder event, and 12 taking part in both.

Table 31 - Research sample

Participant group	Outreach work – number of organisations, firms, individuals contacted	Study participant (individuals)	Participants who completed survey only	Participants who attended stakeholder event only	Participants in both survey and stakeholder event	Total participants who completed survey	Total participants who attended stakeholder event
Academics and consultants	102	14	11	2	1	12	3
Consumer representatives/ resolution bodies and other participants <sup>1</sup>	69	9	5	3	1	6	4
Legal professionals	149	10	7	1	2	9	3
Lived experts	16	15	7	0	8	15	8
Regulators <sup>2</sup>	45	6	5	1	0	5	1
TOTAL	381	54	35	7	12	47	19

## Notes

1 Two individuals from a consumer representative organisation took part in the study. Both participated in the stakeholder event, while only one completed the survey.

2 Two individuals from one regulator took part in the study. One completed the survey only, while the other one participated only in the stakeholder event

Table 32 below shows the sample characteristics of the 15 lived experts who took part in the study. Their involvement with the legal services sector spans a range of areas of law as identified in the Table.

*Table 32 - Lived experts' sample characteristics*

<b>Participant</b>	<b>Risk factor for vulnerability</b>	<b>Area of law</b>
1	Mental health, low income, dyslexia	Housing (eviction) debt
2	Low income, dyslexia, single parent	Injunction for domestic violence and family court proceedings
3	History of prison	Criminal law
4	Physical disability, registered disabled	Employment law and disability rights at work litigation, injunction for domestic violence and personal injury
5	Mental health issues, substance misuse, low income	Employment law housing rights and criminal legal aid
6	Mental health issues, substance misuse, low income	Family court proceedings, and taking landlord to court for repairs
7	Low income, single parent, dyslexia	Civil proceedings in divorce and family court for access to children
8	Low income, single parent	Civil proceedings in divorce and family court for access to children, personal injury
9	History of prison, low income, from ethnic minority, dyslexia, mental and physical health issues	Civil proceedings in divorce and family court for access to children, personal injury, criminal law, debt advice and debt recovery
10	Low income, single parent, mental health issues, from ethnic minority	House purchase and conveyancing

11	Low income, single parent, abuse	Civil injunction for non-molestation order
12	Low income, single parent, abuse	Civil injunction for no contact order with former partner, defendant in magistrates court for driving offences, using solicitor to force landlord to make repairs
13	Elder, dyslexic, physical health, from ethnic minority	Criminal, debt, housing, car offences and family court for divorce and probate
14	Single parent, low income	Family proceedings, proceeds of crime act and criminal proceedings, divorce
15	Mental health issues, active addiction	Housing, employment law, criminal law

### Data analysis

A thematic approach was used in the qualitative analysis. The management of this was supported using NVivo 20. This method allowed for 'identifying, analysing, and reporting patterns (themes) within data' (Braun and Clarke, 2006: 8), including an online survey, focus group transcriptions, and flipchart feedback sessions. The software allowed for the importation of PDF files containing the online survey and focus group transcriptions, and images of flipchart feedback sessions. By integrating these various data sets, a comprehensive understanding of the research themes was achieved, allowing for the identification of emergent themes and the generation of new insights.

Thematic analysis involved the systematic identification, coding, and categorisation of themes within the data. More specifically, NVivo 20 facilitated the creation of themes through a process of inductive reasoning, capturing and integrating recurring ideas or concepts across the data set. This integrative approach fostered a deeper understanding of the research phenomenon, revealing nuanced insights that may have been overlooked when considering each data source in isolation.

## 7.2 Research instruments

### 7.2.1 Online survey questionnaire



## A feasibility study to consider whether and how the Solicitors Regulation Authority could measure and monitor consumer vulnerability in the legal market: Online survey

### Page 1: About the survey

The [University of South Wales](#) has been commissioned by the [Solicitors Regulation Authority](#) of England and Wales to undertake research into **whether it should develop a tool to measure and monitor the extent of consumers at risk of being vulnerable in the legal services context.**

We invite you to take part in an **online survey**. You have been asked to participate as someone with relevant **expertise and experience** of consumer vulnerability in the legal services or related sectors and who can add to our understanding of consumer vulnerability.

If you would like to check the legitimacy of this research, please contact [SRAResearch@SRA.org.uk](mailto:SRAResearch@SRA.org.uk).

The questionnaire has **9 open-ended questions**, and it should take about **30 minutes** to complete. You can click **More info** for some ideas on how to answer on each question, but the key is to include what you find important and provide **as much detail as possible**. Depending on your expertise/experience, it may be that you have more information to share in respect of some questions than others, and you might not feel able to answer all questions. That is fine - we appreciate any insights that you can provide.

**You can decide whether your taking part in the study is kept confidential** or whether your responses can be attributed to you personally or the organisation/firm for which you work, as long as you have the authority to represent the view of that organisation/firm.

To help you decide whether to take part, please take time to read the study **participant information sheet** [here](#) carefully. This sheet sets out why the research is being done and what it would involve for you. Please contact the lead researcher [harriet.pierpoint@southwales.ac.uk](mailto:harriet.pierpoint@southwales.ac.uk) if anything is not clear or you would like more information.

If you would like to proceed to answering the questions:

- We will not receive your answers until you click 'Finish' at the end of the questionnaire.
- Before you click 'Finish', you may alter your answers - by clicking 'Previous' to take you to a previous question/answer.
- Before you click 'Finish', you may also change your mind about participating - just close your browser at anytime and your answers will not be submitted.

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- Once you click 'Finish' at the end of the questionnaire, your answers will be submitted and they cannot be altered or withdrawn.



## Page 2: Confidentiality

1. **I wish my responses to be reported anonymously** - We will not refer to your name. In any internal or published report or academic publication or presentation relating to this research including your responses, we will only refer to the group of participants from which you come e.g. academic expert, lived expert, legal profession, consumer support organisation. You will also have a code assigned to you, but only the research team will be able to link this code to you. While, in this way, it should not be possible to personally identify you, we recognise that the field is small, as is the sample size for the survey, and sometimes views are widely known and it may, therefore, be possible for some of the audience/readers to guess from whom certain answers originated.
2. **I wish my responses to be attributed to me personally** - In any internal or published report or academic publication or presentation relating to this research including your responses, we will refer to you personally. You will be asked to specify how you would like to be identified, that is how you wish your name to appear in reports, publications and presentations. Your organisation/network/firm will not be identified.
3. **I wish my responses to be attributed to my organisation/network/firm and I have the authority to represent the view of that organisation/network/firm** - In any internal or published report or academic publication or presentation relating to this research including your responses, we will refer to the organisation/network/firm which you have authority to represent. You will be asked to confirm how you wish your organisation/network/firm to be referred to in reports, publications and presentations. We will not identify you personally.
4. **I wish my responses to be attributed to me personally as well as my organisation/network/firm and I have the authority to include that organisation/network/firm** - In any internal or published report or academic publication or presentation relating to this research including your responses, we will refer to you personally and to the organisation/network/firm which you have authority to include. You will be asked to specify how you would like to be identified, that is how you wish your name and organisation/network/firm to appear in reports, publications and presentations.

Please indicate how you wish your responses to be reported.

1. I wish my responses to be reported anonymously
2. I wish my responses to be attributed to me personally
3. I wish my responses to be attributed to my organisation/network/firm and I have the authority to represent the view of that organisation/network/firm
4. I wish my responses to be attributed to me personally as well as my organisation/network/firm and I have the authority to include that organisation/network/firm

How do you wish your name and organisation/network/firm to appear in reports, publications and presentations?

How do you wish your organisation/network/firm to be referred to in reports, publications and presentations?

How do you wish your name to appear in reports, publications and presentations?

### Page 3: E-Consent

By agreeing to take part, you are confirming that:

- You have read and understand the [participant information sheet](#) dated 13/11/2023 (version 1) for the above study. You have had the opportunity to consider the information, ask questions and have had these answered satisfactorily.
- You understand that your participation is voluntary.
- You understand that you can withdraw without providing a reason by not clicking 'Finish' at the end of the questionnaire/closing your browser.
- It has been explained how this data will be stored, destroyed, anonymised if applicable, who will have access to it, and how long it will be kept.
- You give permission for your data to be stored and processed in accordance with the GDPR (2018).
- You are aware that the data and quotations collected in the survey will be used in internal and published reports and academic publications and presentations.


Do you agree to taking part in this study? \* *Required*

- Yes
- No

## Page 4: About you

Before we ask you questions about consumer vulnerability, please could you describe your role, experience and/or research in relation to consumer vulnerability, and anything else that you feel is relevant about you? You can click **More info** for some ideas on how to answer on each question.

[+ More info](#)



## Page 5: Defining vulnerability

The [SRA](#) defines vulnerability on the basis of risk factors that may render individuals susceptible to harm, loss, or disadvantage. These factors are listed here:

Individual characteristics:

- Age
- Low Income
- Inexperience
- Low literacy
- Learning disabilities
- Cultural barriers
- Physical disabilities
- Mental health issues
- English as a second language
- Health problems
- Location
- Being a carer
- Lack of internet access
- Lone parent
- Living alone or in poor living conditions

Situational factors:

- Threat of harm
- Victim of crime or accident
- Bereavement
- Loss of income
- Relationship breakdown
- Loss of employment
- Having recently left care
- Threat of deportation
- Concern over access to children
- Concern over child welfare

What do you think of this risk factor approach to defining consumer vulnerability in relation to legal services?

[More info](#)



## Page 6: Measuring consumer vulnerability

Do you know how vulnerability is measured and monitored/tracked in sectors other than or related to the legal sector?

[+ More info](#)

Yes

No

How is vulnerability measured and monitored/tracked in sectors other than or related to the legal sector?

[+ More info](#)

Are there any problems in using these methods and/or tools?

[+ More info](#)




Would it be useful to measure and monitor/track the extent of consumer vulnerability in the legal sector in England and Wales, to understand how many consumers are vulnerable and whether it is increasing or decreasing?

- Yes
- No

Please explain the reasons for your view.

[+ More info](#)



How would you go about measuring and monitoring/tracking consumer vulnerability in relation to legal services in England and Wales?

[+ More info](#)



What might the problems and challenges be with measuring consumer vulnerability in relation to legal services in England and Wales?



[+ More info](#)



How might these problems and challenges- with measuring consumer vulnerability in relation to legal services in England and Wales - be overcome?

[+ More info](#)



Do you know of any relevant datasets which could help us understand consumer vulnerability specific to legal services? These may not be datasets specifically about consumer vulnerability in the legal sector, but we are interested in any datasets which contain

relevant variables or information.

[+ More info](#)

- No
- Yes

What are these datasets? Please include all the datasets of which you are aware, and web links if you can.

[+ More info](#)

Page 7: Anything else you want to add

Is there anything else that you would like to tell us that has not been covered in the questionnaire?

A large, empty rectangular box with a thin black border, intended for the respondent to provide additional information or comments not covered in the questionnaire.

## Page 8: Final page

Thank you for submitting your responses.

If you feel distressed and are worried about your mental health, you may find the [Hub of Hope website](#) useful. The Hub of Hope is a UK mental health support database. It is provided by national mental health charity and brings local, national, peer, community, charity, private and NHS mental health support and services together in one place.

Before you click 'Finish', please remember that:

- you are giving your informed consent for the [University of South Wales](#) research team to collect and use your data for the study described in [participant information sheet](#).
- once you click 'Finish' at the end of the questionnaire, your answers are submitted and they cannot be altered or withdrawn.

## Page 9: Stakeholder event

We would like to find out about your interest in participating in a stakeholder event about this topic, which will take place on Tuesday 19 March 2024 at the [Hyatt Regency Birmingham](#) from 11:15am to 4:00pm. At this stage, you are only asked to indicate your (or a colleague's) interest/availability and there will be no obligation to attend. Also places are limited so we may not be able to accommodate all survey participants interested in attending at the stakeholder event. Please click on this [link](#) to take you to a separate survey on this entering password: SRA.

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## 7.2.2 Topic guides for the focus groups

**2:15-2:25pm (10 minutes)**

*Note to researcher: Please explain the following introductory information at the beginning of the focus group, displaying the Powerpoint slides provided where relevant, and lead participant introductions.*

### **Introduction of researcher and any personnel from EP:IC**

Please introduce yourself and any personnel from EP:IC attending with lived experts. You do not need to explain EP:IC's role.

Please explain that your role as a moderator is to: remind participants of the aims of the discussion, to explain the 'ground rules', facilitate discussions around an existing topic guide and to ensure that everyone gets a chance to speak and keep the conversations going, and to lead introductions.

### **Aims of the stakeholder event and focus groups**

Please explain that, overall, our discussions will help the Solicitors Regulation Authority (SRA) decide whether it would be possible and useful to create a tool for measuring and tracking consumer vulnerability in the legal services field at an industry level (rather than individual law firms measuring consumer vulnerability using their own individual tools, although one option is for law firms to administer an industry tool). This tool would help regulators and others understand and respond to trends in this area.

By the legal sector here, we mean the market where legal goods and lawyers' services related to any area law, such as legal advice, representation, and documentation, are bought and sold (rather than other aspects of the legal sector like legal aid policy). By consumer here, we mean someone who has attempted to use a lawyer's service, rather than earlier in the process when someone is looking to access a lawyer's service.

These breakout focus groups have been organised to facilitate in-depth discussions on specific topics to progress the feasibility study.

We would like to try to keep discussions focussed on what the SRA can do within their remit/powers, rather than other aspects of the legal sector like legal aid policy (*Note to researcher: show [SRA | What we do | Solicitors Regulation Authority](#) Powerpoint slide*)

### **Ground rules**

*(Note to researcher: show ground rules slide)*

- Confidentiality/anonymity
  - You will hear other participants' views, and other participants will hear your views. All participants are asked to respect that the stakeholder event will be held under the Chatham House Rule. This means that you and other participants are free to use the information received, but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed.

- At the beginning of the focus group, you will be asked to introduce yourself. This is to help the researcher guide the discussions, so that other participants can more easily add to or agree or disagree with your views and for the purpose of the transcription.
- The focus groups will be video-recorded and transcribed. This is so USW can analyse and report on the discussions accurately and fully.
- You have already selected, via the e-consent questions on the Eventbrite booking link, whether you wish your responses to be reported anonymously or attributed to yourself personally and/or, if applicable, your organisation if you have the authority to represent the views of your organisation. If you have indicated there that you wish to be reported anonymously, you will still be asked to introduce yourself for the reasons above, but will be assigned a code on the transcript/in any reports.
- Please listen and show respect for the opinion of others, all views have equal value (we've invited people here today from different groups and who are likely to have different view points and we are keen to hear from everyone)
- Only one conversation at a time – direct comments to the moderator, rather than between yourselves
- Phones off please
- As we have a lot to get through, if we begin to get bogged down in an issue, in the interests of time, we will 'park' the matter and can follow up, if required, at the end.
- If you wish to supplement your answers today with any written information (e.g. web link to existing tool for measuring consumer vulnerability), please email lead researcher Professor Harriet Pierpoint at [harriet.pierpoint@southwales.ac.uk](mailto:harriet.pierpoint@southwales.ac.uk).

### Running order of the focus group (including comfort break and refreshments)

The focus group will last one hour and 45 minutes with a 15 minute break where tea/coffee will be provided and you can take a comfort break. Researcher to point out the toilets. The tea/coffee break will take place as soon as there is a natural pause in the discussion after around 45 minutes, and discussions will resume promptly for a further 45 minutes after participants have been allowed time for a comfort break and collected their drinks and returned to the table.

*(Note to researcher: show running order slide)*

Time	Activity
2:15pm	Focus groups (on individual themes)
3pm	Break and tea/coffee will be provided
3:15pm	Focus groups (continued)
4pm	Close

### Topics

*Note to researcher: Please focus on the topics for the individual focus group to which you have been assigned (i.e. A, B, C or D). The overall task of the focus group and target timings noted to help you keep discussions on track. There are main questions labelled (a), (b), (c) etc with prompts labelled (i), (ii), (iii) etc. The purpose of the prompts is to elicit as much detail and clarity from the participants so that we can make clear and operationalisable recommendations rather than report on broad, sweeping statements. However, if once these discussions are concluded, there is time remaining, discussions could move on to topics assigned to other focus groups depending on the direction of the discussion and on the expertise of the focus group participants.*

A. Defining consumer vulnerability in the legal services sector

**The task of this focus group is to think about the best ways of defining vulnerability in the legal services sector if at all.**

1) Defining vulnerability **(2:25-2:45pm, 20 minutes)**

- a) How should consumer vulnerability be defined in the legal services sector?
- b) Is the risk factor approach an appropriate way to define consumer vulnerability in the legal services sector?

The risk factor approach means defining people as vulnerable on the basis that they possess individual factors or are in situations that make them more likely to experience harm, loss, or disadvantage. Examples of risk factors are a low level of literacy or a bereavement. An example one risk factor approach is shown on the slide ([SRA | Providing services to people who are vulnerable | Solicitors Regulation Authority](#))

*(Note to researcher: show slide*

2) Appropriateness of the SRA's risk factor approach **(2:45-3:00, 15 minutes)**

- a) Should the SRA be using the risk factor approach?
  - i) If so, which risk factors should be removed and/or added to the SRA's definition?
  - ii) Should transport issues and/or geographical isolation be added?
  - iii) How do these factors make consumers more at risk of vulnerability in the legal services sector?
- b) Should any of the risk factors identified by the survey participants definitely be included or excluded?



## SRA's examples of risk factors

Characteristics			Situation	
Age	Low income	Inexperience	Threat of harm	Victim of crime or accident
Low literacy	Learning disabilities	Cultural barriers	Bereavement	Loss of income
Physical disabilities	Mental health issues	English as a second language	Relationship breakdown	Loss of employment
Health problems	Location	Being a carer	Having recently left care	Threat of deportation
Lack of internet access	Lone parent	Living alone or in poor living conditions	Concern over access to children	Concern over child welfare

*(Note to researcher: show slide)*

- c) Should any other risk factors be added?
  - i) Should adverse childhood experience be added?

Research showing that those experiencing multiple negative events during childhood, such as abuse, neglect, or having parents who misuse drugs and alcohol, can have long-term effects on an individual's physical and mental health

*(Note to researcher: show slide and explain term)*

- ii) If so, how should they be added?
  - d) If no, what approach should the SRA be using?
- 3) Problems with the risk factor approach **(3:15-3:30pm, 15 minutes)**
- a) Is it appropriate to refer to people or consumers as vulnerable?
    - i) Some survey participants mentioned that some people or consumers do not like to be labelled as vulnerable. Is it possible to adopt a risk factor approach without labelling people?
  - b) Are there any problems with the risk factor approach?
    - i) Some survey participants mentioned that the same factor can represent a risk for some individuals but not for others (such as age). How can the problem of the generalisation of risks be avoided or overcome?
    - ii) Some survey participants mentioned that vulnerability can be dynamic, that is it can change over time and/or depending on context. How could a risk factor approach deal with this issue?
    - iii) Some survey participants noted information asymmetry/the power imbalance that technical language/legal jargon creates between the lawyer and client. How could a risk factor approach tackle this issue?
    - iv) Can vulnerabilities be hidden?
  - 4) How many factors have to be present to make someone vulnerable?
  - 5) Should any factors be given more weight than others?

- 6) Alternative ideas **(3:30-3:50pm, 20 minutes)**
- a) Are there any better ideas than focusing on risk factors?
  - b) Is the idea on focussing on building resilience and coping mechanisms a better one than focusing on risk factors?
  - c) If so, how precisely would you build consumers resilience in the legal services sector?

Resilience is the ability to withstand or adapt positively to difficult situations. Building resilience or assets involves enhancing capacity

The 'universal changes' approach suggests that, instead of attempting to identify vulnerable individuals by risk factors, service providers should redesign their services to meet everyone's needs.

*(Note to researcher: show slide and explain terms)*

- d) Is the idea of making 'universal changes' a better one than focusing on risk factors?
- e) Can the 'universal changes' approach resolve the issues discussed previously today (generalisation of risks, dynamic nature of risk factors and labelling, information asymmetry/power imbalance that technical language/legal jargon creates between the lawyer and client)?
- f) Is the 'universal changes' approach feasible in the legal services sector?
- g) Which precise 'changes' should be made to the legal services sector?
- h) Our evidence review suggested that changes should be made around accessible information/communication, accessible services, trust and empathy, cost transparency, and to remove power imbalances. Do you agree that these changes should be made?
  - i) Would these changes be sufficient for everyone or would some vulnerable groups be missed/not catered for?
  - ii) If so, which precise changes should be made to ensure accessible information/communication, accessible services, trust and empathy, cost transparency, and to remove power imbalances?

- 7) Moving forward **(3:50-3:55, 5 minutes)**
- a) Has your understanding of vulnerability or related issues changed as a result of attending this event?
    - i) If so, will you be taking any actions as a result of this change in understanding and/or attitude?
  - b) Will you be doing anything differently going forward as a result of this stakeholder event?

*Note to researcher: The focus should be on defining consumer vulnerability in the legal services sector. However, if, once these discussions are concluded, there is time remaining, discussions could move on to the following topics.*

- 8) Implementing a vulnerability measurement tool

- a) What would the barriers be in implementing a vulnerability measurement tool based on risk factors in the legal services sector?
  - i) How might these barriers be overcome?
  - ii) Can you suggest any practical strategies or examples of successful interventions?
  
- 9) Implementing a universal changes approach
  - a) What would the barriers be in implementing the aforementioned universal changes?
  - b) How might these barriers be overcome?
  - c) Can you suggest any practical strategies or examples of successful interventions?
  - d) Which is the group's preference of approach - (a) a vulnerability measurement tool based on risk factors in the legal services sector or (b) the aforementioned universal changes? Please raise your hand to indicate your preference
  
- 10) Combining approaches
  - a) Is it possible to pursue the risk factor approach and universal changes approaches at the same time?
    - i) If so, for which purpose would the risk factor approach be used alongside the universal changes approach?
      - (1) If so, please can you provide examples of scenarios where the risk factor approach and universal changes approach at the same time?
    - ii) If it is not possible, why not?
      - (1) If so, please can you provide examples of scenarios where the risk factor approach and universal changes approach were not successfully used at the same time?

B. The usefulness of measuring consumer vulnerability across the legal services sector

**The task of this focus group is to think about the best ways of responding to the needs of consumers at risk of vulnerability in the legal services sector. Is using a measurement tool to understand how many consumers are vulnerable and whether it is increasing or decreasing the best way or is there another better way?**

- 1) Usefulness of measuring vulnerability **(2:25-2:45pm, 20 minutes)**
  - a) Would it be useful to measure and monitor/track the extent of consumer vulnerability in the legal client population in England and Wales, to understand how many consumers are vulnerable and whether it is increasing or decreasing?
    - i) If yes, why would measuring and monitoring/tracking the extent of consumer vulnerability be useful?
      - (1) Some survey participants thought measuring the extent of vulnerability in the legal client population in England and Wales would be useful for the reasons on the slide. Which do you think are the most important reasons?

## The usefulness of measuring consumer vulnerability across the legal services sector - Themes from the online survey

45 of 47 respondents in the online survey considered it would be useful to measure and monitor/track the extent of consumer vulnerability in the legal sector in England and Wales to understand how many consumers are vulnerable and whether it is increasing or decreasing

Respondents considered it would be useful for the following reasons:

- demonstrating the need for training for practitioners
- improving training for practitioners
- giving consumers at risk of vulnerability a voice
- improving access to services
- improving policy
- improving service for consumers
- improving support for consumers
- Increasing understanding
- informing applications for legal aid and mitigation
- mainstreaming the importance of vulnerability

*(Note to researcher: show slide)*

- ii) If yes, which aspects would be most useful to measure and track?
  - iii) If yes, how might measuring and monitoring/tracking of consumer vulnerability be useful to regulatory bodies and policymakers?
  - iv) If yes, what advantages could practitioners, such as solicitors, gain from this measurement and monitoring?
  - v) If yes, how could consumers themselves benefit from the measurement and monitoring?
  - vi) How useful would it be for any other relevant party?
- 2) Potential problems of using a vulnerability measurement tool **(2:45-3:00pm, 15 minutes)**
    - a) Why would measuring and monitoring/tracking of consumer vulnerability not be useful/beneficial?
    - b) Who might measuring and monitoring/tracking of consumer vulnerability disadvantage?
  - 3) Alternative ideas **(3:15-3:50pm, 35 minutes)**
    - a) In terms of responding to consumer vulnerability in the legal services sector in England and Wales, are there better options for regulatory bodies, policymakers and practitioners than measuring and monitoring/tracking it?
    - b) How should the SRA respond to consumer vulnerability?
    - c) Is the idea on focussing on building resilience and coping mechanisms a better one than focusing on risk factors?

## Themes from the evidence review

### Risk factor approach

The risk factor approach defines people as vulnerable based on their individual factors or their situations that make it harder for them to represent their interests and more likely for them to experience disadvantages

The Solicitor Regulation Authority (SRA) follows this approach listing personal characteristics and situations that could make someone more vulnerable

The SRA's list of personal characteristics and situations that could make someone more vulnerable includes risk factors commonly cited in reports from regulatory and statutory bodies, but not all those referred to in the academic and legal literature

### Alternative approaches

The universal vulnerability approach means that all people are vulnerable. However, the nature and intensity of this vulnerability can vary across different stages of life

Resilience is the ability to withstand or adapt positively to difficult situations. Building resilience or assets involves enhancing capacity

## Consumer Duty

- A set of rules designed to enhance consumer protection across financial services focussed on:
  - Establishing higher and clearer standards for firms operating in the financial sector.
  - Requiring firms to
    - prioritise their customers' needs and safeguard their interests
    - provide clear and transparent information about products and services.
    - offer fair value.
    - provide adequate customer support when needed.

*(Note to researcher: show slides and explain terms)*

- d) Is the idea of making 'universal changes' a better one than focusing on risk factors?
  - e) Is the 'universal changes' approach feasible in the legal services sector?
  - f) Which precise 'changes' should be made to the legal services sector?
  - g) Which changes should be made to ensure accessible information/communication, accessible services, trust and empathy, cost transparency, and to remove power imbalances?
  - h) Would the Financial Conduct Authority Consumer Duty be applicable to the legal services sector?
- 4) Implementing a universal changes approach
    - a) What would the barriers be in implementing the aforementioned universal changes?

- b) How might these barriers be overcome?
- c) Is it possible to pursue the risk factor approach and universal changes approaches at the same time?
- d) If so, for which purpose would the risk factor approach be used?

5) Moving forward **(3:50-3:55pm, 5 minutes)**

- a) Has your understanding of vulnerability or related issues changed as a result of attending this event?
  - i) If so, will you be taking any actions as a result of this change in understanding and/or attitude?
- b) Will you be doing anything differently going forward as a result of this stakeholder event?

C. Responding to the needs of consumers at risk of vulnerability in the legal services sector

**The task of this focus group is to think about the best ways of responding to the needs of consumers at risk of vulnerability in the legal services sector. What are the needs and is using a measurement tool to understand how many consumers are vulnerable and whether it is increasing or decreasing the best way or is there another better way?**

1) Needs of consumers at risk of vulnerability **(2:25-2:45, 20 minutes)**

- a) How does vulnerability present itself in the legal sector? In other words, what is the impact of being vulnerable when consumers try to access legal services?
- b) What are the needs of consumers at risk of vulnerability in the legal services sector?

2) Responding to the needs of consumers at risk of vulnerability **(2:45-3:00pm, 15 minutes)**

- a) How does the SRA respond to these needs of consumers at risk of vulnerability in the legal services sector?
- b) How could the SRA respond to these needs of consumers at risk of vulnerability in the legal services sector?
- c) Could this inform how various stakeholders in the legal services sector can respond to consumers' needs?
- d) Some survey participants survey reported that information asymmetry and use of technical language and legal jargon increase vulnerability. What can be done about this?

3) Usefulness of measuring vulnerability **(3:15-3:30pm, 15 minutes)**

- a) Would it be useful to measure and monitor/track the extent of consumer vulnerability in the legal services sector in England and Wales, to understand how many consumers are vulnerable and whether it is increasing or decreasing, respond to these needs of consumers at risk of vulnerability in the legal services sector?
  - i) If yes, why would measuring and monitoring/tracking the extent of consumer vulnerability be useful?
    - (1) Some survey participants thought measuring the extent of vulnerability in the legal client population in England and Wales would be useful for the reasons on the slide. Which do you think are the most important reasons?

## The usefulness of measuring consumer vulnerability across the legal services sector - Themes from the online survey

45 of 47 respondents in the online survey considered it would be useful to measure and monitor/track the extent of consumer vulnerability in the legal sector in England and Wales to understand how many consumers are vulnerable and whether it is increasing or decreasing

Respondents considered it would be useful for the following reasons:

- demonstrating the need for training for practitioners
- improving training for practitioners
- giving consumers at risk of vulnerability a voice
- improving access to services
- improving policy
- improving service for consumers
- improving support for consumers
- Increasing understanding
- informing applications for legal aid and mitigation
- mainstreaming the importance of vulnerability

*(Note to researcher: show slide)*

- ii) If yes, which aspects would be most useful to measure and track?
- iii) If yes, for whom might measuring and monitoring/tracking of consumer vulnerability be useful?
- iv) If no, why would measuring and monitoring/tracking of consumer vulnerability not be useful/beneficial/ disadvantageous?
- v) Would measuring vulnerability help stakeholders better respond to consumers' needs?
- vi) If not, why not?

#### 4) Alternative ideas (3:30-3:50pm, 20 minutes)

- a) Is the idea on focussing on building resilience and coping mechanisms a better one than focusing on risk factors?
- b) Is the 'universal changes' approach more appropriate than the risk factor approach in the legal services sector for responding to the needs of consumers?
  - i) If yes, which precise 'changes' should be made to the legal services sector to respond to the needs of consumers?
    - (1) Which changes should be made to ensure accessible information/communication, accessible services, trust and empathy, cost transparency, and to remove power imbalances?
  - ii) What would the barriers be in implementing the aforementioned universal changes?
  - iii) How might these barriers be overcome?
- c) If the 'universal changes' approach is not more appropriate than the risk factor approach in the legal services sector for responding to the needs of consumers, why not?
  - i) Is it possible to pursue the risk factor approach and universal changes approaches at the same time?
    - (1) If so, for which purpose would the risk factor approach be used?

- 5) Moving forward **(3:50-3:55pm, 5 minutes)**
- a) Has your understanding of vulnerability or related issues changed as a result of attending this event?
    - i) If so, will you be taking any actions as a result of this change in understanding and/or attitude?
  - b) Will you be doing anything differently going forward as a result of this stakeholder event?
  - D. Implementing a vulnerability measurement tool in the legal services sector

**The task of this focus group is to consider the practicalities of measuring consumer vulnerability, using a tool at an industry level, including potential barriers and the solutions, and what can be learned from other sectors. While the tool would be implemented at industry level (rather than individual law firms measuring consumer vulnerability using their own individual tools), one option is to ask individual law firms to administer the tool (e.g. ask clients set questions and return the answers to the regulator).**

- 1) Existing resources **(2:25-2:35, 10 minutes)**
- a) Which existing datasets could help us understand consumer vulnerability in the legal services sector?
  - b) What are the existing measurement tools/indexes of consumer vulnerability in the legal and other sectors?
  - c) Would these tools/indexes be applicable to the legal services sector? If so, how?
  - d) Would any of or elements of these tools/indexes identified in our evidence review and survey be applicable for the legal services sector? If so, how?
    - i) Gambling Commission's vulnerability measurement/tracking tools
    - ii) Legal Service Board's quality indicators
    - iii) Vulnerability assessment framework in criminal justice
    - iv) Financial Lives Survey
    - v) Financial Vulnerability Index
    - vi) Police risk assessments
    - vii) Screens in hospitals
    - viii) Screens in children's care homes
    - ix) Individual law firms' feedback forms for clients
  - e) If so, please tell us more about these tools/indexes e.g. their titles, purpose and content.
  - f) Are there any problems with these existing measurement tools/indexes of consumer vulnerability how may these be overcome?
    - i) *Note to researcher: These issues were identified by survey participants and can be used as prompts at your discretion. However, no suggestions of how the problems could be overcome were made so please probe for these.*
      - (1) it is time consuming
      - (2) they do not consider changes in circumstances
      - (3) ensuring consistency
- 2) Designing a vulnerability measurement tool **(2:35-3:00, 25 minutes)**
- a) What preliminary work would need to be undertaken to develop a tool to measure and track consumer vulnerability in the legal services sector?
  - b) Some survey participants mentioned the need to agree a definition of vulnerability among regulators. How might this be achieved?



## Themes from online survey

Starting point is a shared definition of vulnerability



"I think the biggest issue will be agreeing a working definition of vulnerability." (Academic/consultant)



Furthermore, we would also note that it is important for regulators to work together to bring consistency to the issue of consumer vulnerability, both in defining vulnerability and setting out strategic aims with regards to support.' (Regulator)



'Creating measurable vulnerability indicators (or risk factors) that could reflect the criteria in the British Standard with metrics covering areas of potential legal need.' (Regulator)



'Developing a scoring system or RAG rating to weight each factor or indicator according to impact and/or frequency to design a vulnerability scale.' (Regulator)

Suggested approaches to capture information

Asking consumers	Mixed-methods
Community listeners	Qualitative data
Diarised catch up sessions	Quantitative data
External consultations	Questionnaires
Focus groups	Screening tools and software
Interviews	Surveys
Lived experts on regulatory boards	Using existing databases and sharing data (e.g. complaint data)

(Note to researcher: show slide)

- c) Survey participants suggested a variety of methods displayed on the slide. Which would be best and why?
  - d) Would the collection of quantitative (numbers), qualitative (text) or both be best and why?
  - e) How would you operationalise those risk factors/which questions would you ask?
  - f) How many factors have to be present to make someone vulnerable?
  - g) Would different factors be given different weightings?
  - h) In other words, should individuals be given a 'score' of vulnerability?
  - i) What kind of tool would you use to measure and track consumer vulnerability in the legal services sector?
  - j) What sampling approach would you use? Who would you ask? How would you select people?
  - k) Who would ask the questions?
    - a) When would they ask them?
    - b) Could an app be used?
    - c) Would sampling and data collection need to be varied depending on area of law?
- 3) Implementing a vulnerability measurement tool (3:15-3:35pm, 20 minutes)
- a) How do you perceive the readiness and willingness of legal service providers to adopt a vulnerability measurement tool?
  - b) What would be the barriers and how might these be overcome? *Note to researcher: If training is suggested, please ask for clarification of content, to whom it should be delivered and by whom.*
    - i) What would be the cultural/organisation barriers and how might these be overcome?
    - ii) What would be the operational barriers?
      - (1) Would achieving consistency in the administration of a tool be a barrier and, if so, how could this challenge be overcome?

- (2) Should law firms be mandated and/or incentivised to administer a vulnerability measurement tool?
- iii) What would be the logistical and technical barriers?
  - (1) Would lack of resources be a barrier and, if so, how could this challenge be overcome?
- iv) What would be the legal barriers and how might these be overcome?
- v) What would be the ethical considerations?
  - (1) Voluntary Participation: How would you ensure that consumers did not feel coerced or pressured to disclose their vulnerabilities?
  - (2) Informed Consent:
    - (a) How would you ensure that consumers were fully aware of the purpose, procedures, potential risks, and benefits of the vulnerability measurement tool before disclosing their vulnerabilities?
  - (3) Anonymity/Confidentiality: How would you ensure personal details were not revealed and consumers' information was protected, and GDPR respected?
  - (4) Potential for Harm: What harm, if any, could be caused? How could it be minimised?
- vi) What other barriers might there be and how might they be overcome?
  - (a) How would you encourage consumers' participation in completing a tool including sensitive questions, including those who are distrusting of legal practitioners?
- vii) Some survey participants suggested these solutions. Would they work? How could they be delivered in practice?
  - (1) Lived experts to collect data
  - (2) Trauma-informed research approach
  - (3) Use technology

*Note to researcher: Here are all the challenges and solutions suggested by survey participants. Please use these as prompts at your discretion, if focus group participants need prompting. However, please clarify the detail of their suggestion. For example, if focus group participants suggest that consumer mistrust of legal practitioners is a barrier, how precisely do they suggest overcoming this.*

## **Challenges**

- *Asking questions about vulnerability would be traumatising*
- *Capacity and resources of firms*
- *Consumers do not disclose vulnerability*
- *Consumers don't trust practitioners*
- *Consumers may take advantage of vulnerability*
- *Ethics and GDPR*
- *Issues around self-completing complex questionnaires*
- *It is hard to define and capture vulnerability*
- *It is hard to keep data up to date*
- *It is hard to reach consumers with vulnerabilities*
- *It is time consuming*
- *Lack of firms' understanding of vulnerability*
- *Lack of incentives for firms*
- *Measuring would be inconsistent across providers*
- *Vulnerability is temporary*
- *Vulnerability language is labelling and can cause prejudices*
- *Vulnerable consumers may not be able to afford regulated services*

- *Who would be collecting the data*

### **Solutions**

- *Appointing experienced research teams for data collection*
- *Ask consumers what their needs are*
- *Concise definition of vulnerability*
- *Doing outreach work in local communities*
- *Improve training (e.g. of legal firms)*
- *Lived experts on relevant forums*
- *Lived experts to collect data*
- *Make language in data collection tools accessible*
- *Make measuring vulnerability a mandatory requirement*
- *Methods should be quick and involve minimal unfunded resources*
- *Ongoing dialogue with consumers*
- *Public legal education campaign*
- *Questions should focus on consumers' needs*
- *Trauma-informed research approach*
- *Use technology*

- c) Have there been problems in implementing a vulnerability measurement tool in other or related sectors? How might these be overcome?

#### **4) Roadmap (3:35-3:50pm, 15 minutes)**

- What issues would need to be considered in a roadmap for developing and implementing a legal services vulnerability tool?
- What would the key milestones look like?
- What would the potential collaborations look like?
- What would be the anticipated timelines?
- What else would need to be considered?
- How could awareness and understanding among legal professionals about the benefits of a vulnerability measurement tool be promoted?
- Is there scope for capturing impact with a vulnerability measurement tool?
  - Which data/variables would you use to determine effective identification/support for consumers vulnerability?
  - How would you know that identification/support for consumers vulnerability was working well?

#### **5) Moving forward (3:50-3:55pm, 5 minutes)**

- Has your understanding of vulnerability or related issues changed as a result of attending this event?
  - If so, will you be taking any actions as a result of this change in understanding and/or attitude?
- Will you be doing anything differently going forward as a result of this stakeholder event?

#### **3:55-4:00pm, 5 minutes**

*Note to researcher: Please thank participants for their contribution when discussions close, and remind them:*

- The [SRA](#) plans to publish our report on our findings on their website in 2024. The stakeholder event data may also be used in academic presentations and publications.
- If, after the research is completed, you do feel distressed and are worried about your mental health, you may find the [Hub of Hope website](#) useful (to be displayed on screen, if not sheet).

## 7.3 Ethics and data management

Principles outlined in the British Society of Criminology's Statement of Ethics (2015) and in the USW Research Ethics policy (2019) were followed. Ethical approval for the online survey of stakeholders, including those with lived experience, was granted by the USW Faculty Ethics Committee in November 2023 and for the stakeholder event in December 2023. Ethical clearance serves multiple purposes, such as ensuring the respectful and dignified treatment of participants, safeguarding their anonymity and confidentiality, minimising the risk of physical, psychological, or emotional harm both to participants and researchers, and the commitment to upholding integrity and honesty throughout all phases of the research process.

### 7.3.1 Anonymity

Research participants were presented with up to four anonymity options relating to remaining anonymous or being identified in the report, as outlined in Table 34 below. Given the insights of the lived experts were sought regarding their experiences within the legal services sector, they were asked to select only from the first two options. Subsequently, individual codes were assigned to each participant to guarantee their anonymity if they opted to have it preserved.

*Table 33 - Anonymity options for participants*

Option	What will happen if I select this option?
1. <b>I wish my responses to be reported anonymously</b>	We will not refer to your name. In any internal or published report or academic publication or presentation relating to this research including your responses, we will only refer to the group of participants from which you come e.g. academic expert, lived expert, legal profession, consumer support organisation. You will also have a code assigned to you, but only the research team will be able to link this code to you. While, in this way, it should not be possible to personally identify you, we recognise that the field is small, as is the sample size for the stakeholder event, and sometimes views are widely known and it may, therefore, be possible for some of the

	audience/readers to guess from whom certain answers originated.
<b>2. I wish my responses to be attributed to me personally</b>	In any internal or published report or academic publication or presentation relating to this research including your responses, we will refer to you personally. You will be asked to specify how you would like to be identified, that is how you wish your name to appear in reports, publications and presentations. Your organisation/network/firm will not be identified.
<b>3. I wish my responses to be attributed my organisation/network/firm and I have the authority to represent the view of that organisation/network/firm</b>	In any internal or published report or academic publication or presentation relating to this research including your responses, we will refer to the organisation/network/firm which you have authority to represent. You will be asked to confirm how you wish your organisation/network/firm to be referred to in reports, publications and presentations. We will not identify you personally.
<b>4. I wish my responses to be attributed to me personally as well as my organisation/ network/firm and I have the authority to include that organisation/network/firm</b>	In any internal or published report or academic publication or presentation relating to this research including your responses, we will refer to you personally and to the organisation/network/firm which you have authority to include. You will be asked to specify how you would like to be identified, that is how you wish your name and organisation/network/firm to appear in reports, publications and presentations.

Table 35 below lists quote identifier codes with an explanation of the meaning of the code. Each code was then assigned a number to identify individual participants per research group.

Table 34 - Quote identifier codes

<b>Code</b>	<b>Meaning</b>
ACS	Academic and consultant (survey)
ACSE	Academic and consultant (stakeholder event)
ACSSE	Academic and consultant (survey and stakeholder event)
CRS	Consumer representative (survey)

CRSE	Consumer representative (stakeholder event)
CRSSE	Consumer representative (survey and stakeholder event)
LPS	Legal professional (survey)
LPSE	Legal professional (stakeholder event)
LPSSE	Legal professional (survey and stakeholder event)
LES	Lived expert (survey)
LESE	Lived expert (stakeholder event)
LESSE	Lived expert (survey and stakeholder event)
RGS	Regulator (survey)
RGSE	Regulator (stakeholder event)
RGSSE	Regulator (survey and stakeholder event)

### 7.3.2 Research limitations

Despite the robust methodology implemented there are limitations to the research, these include stakeholder engagement and resources.

Not all stakeholders who were interested in the research were able to engage, due to availability. For example, some academics and regulators expressed interest but were unable to attend the scheduled stakeholder event.

Furthermore, research indicates that both online and face-to-face methodologies can yield equally high-quality data, with face-to-face engagement offering distinct advantages (Bozkurt, 2018). However, in this study, the benefits of online methods, such as minimising time away from work for stakeholders, were deemed to outweigh potential advantages like using non-verbal communication and enhancing group dynamics. Consequently, 47 individuals participated in the survey, while only 19 attended the in-person event, reflecting this prioritisation of convenience and accessibility. Nevertheless, given additional resources, the project could have potentially benefited from more in-person engagement where data tends to be richer.

## 7.4 Existing measurement tools

What follows is a description of various types of tools, organised into different sub-sections according to the field in which they are currently used.

### 7.4.1 Current tools in criminal justice

In the field of criminal justice, the prevalence of people with vulnerabilities is currently unknown, because there is little routine screening of individuals before they enter the Criminal Justice System (CJS) or while they navigate it (Ali, Galloway, & Talbot, 2018).

Individuals with vulnerability are usually identified through screening tools to evaluate whether individuals are fit to plead in crown court. These have either been identified or put to use in research studies. Lowenstein (2000) identifies three personality tests that are used in the CJS to screen intellectual ability and emotional capacity towards competence to plead. These are:

- Eysenck Personality Questionnaire: Measuring neuroticism<sup>2</sup>, psychoticism<sup>3</sup>, introversion/extroversion, impulsiveness, criminality, addictive tendencies and a lie scale.
- The Rorschach Test (using the Harrower Method): A multiple-choice approach used to gain insight into a person's emotions, thoughts, and personality.
- The Lowenstein Objective/Projective Thematic Technique: To identify specific mental illnesses.

Furthermore, Lowenstein (2000) argues that a series of questions is typically used to evaluate an individual's capacity to understand the specific legal terminology in situations where there are concerns about their ability to enter a plea before a crown court of law. These questions are:

- Do you understand the procedure in court?
- What does the adversarial process mean?
- What does it mean to plead innocent or guilty?
- Do you know what is meant to happen when pleading guilty or innocent?
- What happens after pleading guilty and what are the advantages of doing so?
- What are the disadvantages of pleading guilty?
- What is the function of the Judge?
- What is the function of the jury?
- What is a trial?
- What do you understand by the term 'prosecution'?
- What do you understand by the term 'defence'?

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<sup>2</sup> A personality trait characterized by emotional instability, anxiety, moodiness, and a higher tendency to experience negative emotions like fear, sadness, and anger.

<sup>3</sup> A dimension of personality characterized by aggression, impulsivity, aloofness, and antisocial behaviour, indicating a susceptibility to psychosis and psychopathic disorders.

The remainder of this sub-section lists other tools identified in the evidence review summarises their use in research. In the UK, Johnston et al. (2016) screened the ability of 20 young defendants to stand trial through a number of standardised methods:

- Intelligence assessment: measuring IQ (Wechsler Intelligence Scale for Children-Fourth Edition (WISC-IV)/Wechsler Adult Intelligence Scale-Fourth Edition (WAIS-IV))
- Oral language assessment: The Wechsler Individual Achievement Test-Second Edition (WIAT-II focusing on two subtest:
  - Oral expression : measures the ability to use language to describe, categorise, and direct others.
  - Listening comprehension: measures the ability to listen for detail, assessing receptive and expressive vocabulary and sentence comprehension.
- Mental health and neurodevelopmental disorders using a combination of clinical interviews and standardised measures.

Brown et al. (2022) evaluated the fitness of 3,322 criminal defendants in London (England) to plead. They did so using several standardised methods:

- Prison Screening Questionnaire,
- Learning Disability Screening Questionnaire
- Adult Attention Deficit Hyperactivity Disorder Self-Report Scale screen (ASRS version 1.1.),
- a screener for unfitness to plead, derived from the Fitness-to-Plead Assessment scale.
- the Ammons Quick Test, to estimate IQ;
- MINI International Neuropsychiatric Interview (MINI) version 6.024 (including the attention-deficit hyperactivity disorder (ADHD) module for childhood and current ADHD);
- Structured Clinical Interview for DSM-IV Axis II borderline personality disorder scale;
- Ritvo Autism Asperger Diagnostic Scale-Revised;
- Brief Psychiatric Rating Scale and Frequency, Intensity, and Burden of Side Effects Rating Scale (FTPA).

In addition to tools to determine fitness to plead, McKenzie et al. (2012) conducted research with 94 individuals within forensic services in the UK which found that the Learning Disability Screening Questionnaire represents an accurate method of identifying intellectual disability. The screening tool measures disability on the basis of three criteria as defined by the British Psychological Society (2001): significant impairments in general intellectual functioning (i.e., an IQ of less than 70); significant impairments in adaptive functioning; onset before the age of 18 years.

The Brief Jail Mental Health Screen is a tool to screen incoming detainees in jails and detention centres for the need for further mental health assessment. Developed by Policy Research Associates, with funding from the National Institute of Justice, the tool was validated in a study that included 10,330 detainees from four jails, two in New York and two in Maryland, USA. The results indicated that the Brief Jail Mental Health Screen would refer



about 11% of incoming detainees for further mental health assessment (Steadman, Scott, Osher, Agnese, & Robbins, 2005). The tool is made of eight questions:

- Do you *currently* believe that someone can control your mind by putting thoughts into your head or taking thoughts out of your head?
- Do you *currently* feel that other people know your thoughts and can read your mind?
- Have you *currently* lost or gained as much as two pounds a week for several weeks without even trying?
- Have you or your family or your friends noticed that you are *currently* much more active than you usually are?
- Do you *currently* feel that you have to talk or move more slowly than you usually do?
- Have there *currently* been a few weeks when you felt like you were useless or sinful?
- Are you *currently* taking any medication prescribed for you by a physician for any emotional or mental health problem?
- Have you ever been in a hospital for emotional or mental health problems?

According to Mergaerts (2022), defence lawyers in Belgium pose a range of inquiries to suspects during interviews, as assessment tools to identify their vulnerability. These questions encompass aspects like:

- educational background ('where did you go to school?'),
- employment status ('where do you work?'), and
- personal relationships ('do you have a partner?').

Additionally, a minority of defence lawyers seek insights into the suspect's mental state by inquiring about substance use, recent medical consultations, or any history of hospitalisation, including psychiatric admissions.

Moreover, Mergaerts (2022) reports that the initiative is often placed on the suspect to provide pertinent information through questions like:

- 'is there anything I should know?' or
- 'is there something I should mention to the police?'

These queries can serve to identify potential vulnerabilities in the suspect's situation.

Furthermore, to gain a comprehensive understanding of the suspect's physical and mental well-being, more general questions like:

- 'is everything OK?' or
- 'are you feeling well?'

In the subsequent stages of the interview process, these defence lawyers observe how suspects respond to police questioning.

Screening tools are also used by the Metropolitan Police as the following sub-section shows.

### **Vulnerability Assessment Framework (VAF)**

When Metropolitan Police personnel interact with individuals from the public, whether they are victims, witnesses, or suspects, they are mandated to conduct the Vulnerability Assessment Framework (VAF) to identify any vulnerability (Metropolitan Police, 2023). Using the VAF at the earliest possible point enables the identification of potential vulnerabilities and offers the opportunity for early interventions that could potentially prevent victimisation. The framework involves gathering information related to five key factors: appearance, behaviour, communication capabilities, perceived danger, and environmental circumstances. This information is collected through a series of structured questions:

*Table 35 - Vulnerability Assessment Framework (Metropolitan Police, 2023)*

<b>Appearance</b>	<ul style="list-style-type: none"> <li>• Is there something about their appearance that is unusual or gives rise for concern?</li> <li>• Do they look ill, injured, unsettled, anxious?</li> <li>• What can be observed immediately about the person in distress?</li> <li>• What is the demeanour of the person?</li> <li>• Is there a physical problem e.g. bleeding, panic attack?</li> </ul>
<b>Behaviour</b>	<ul style="list-style-type: none"> <li>• Is there something about their behaviour that is unusual or gives rise for concern?</li> <li>• Are they excitable, irrational, manic, slow, furtive?</li> <li>• What are they doing and is it in keeping with the situation?</li> </ul>
<b>Communication/capacity</b>	<ul style="list-style-type: none"> <li>• Is there something about the way that they communicate that is unusual or gives rise for concern?</li> <li>• Is their speech slurred, slow, fast?</li> <li>• Are their eyes glazed, staring, dilated/ What is their body language and are they displaying any subtle signs of stress or fear?</li> <li>• Do they understand your questions?</li> </ul>
<b>Danger</b>	<ul style="list-style-type: none"> <li>• Is there a risk of danger / harm to themselves or another?</li> </ul>
<b>Environment/ circumstances</b>	<ul style="list-style-type: none"> <li>• Is there something about the environment that is unusual or gives rise for concern?</li> <li>• What is the time of day?</li> <li>• Where do they live? Can they get home?</li> <li>• Has the incident that they are involved in significantly affected their circumstances?</li> <li>• What are the circumstances? Are they unusual or out of the ordinary?</li> <li>• Does anything give rise to concern? (This could include a hunch or intuition).</li> <li>• Has there been a significant change in the person's circumstances?</li> </ul>

### 7.4.2 Current screens and assessments of consumer vulnerability in related sectors

In the financial services sector, the Financial Conduct Authority (2014) conducted research into the experiences of consumers at risk of vulnerability with financial services firms. This research employed a qualitative approach, encompassing a range of methods such as individual interviews with consumers, interviews with experts and frontline staff representing organisations focused on specific vulnerability groups, group discussions involving participants from vulnerability support groups, and the examination of case studies.

As a result of this investigation, the Financial Conduct Authority generated a set of signs and phrases for firms to guide interactions with customers for the purpose of evaluating their vulnerability (Financial Conduct Authority, 2021a: 21):

- Changes in payment behaviour:
  - Payments stopping suddenly
  - Late or missed payments
  - Regular unarranged overdrafts and charges
  - Unusual activity on an account
- Phrases:
  - I can't pay
  - I'm having trouble paying
  - Mention of breathing space/debt moratorium or contacting a debt advisor
  - I can't read my bill
  - I can't understand the letter you sent me
  - I can't hold on all day
  - I hate these press buttons
- Staff could also be on the lookout for:
  - Shortness of breath or signs of agitation
  - Asking for repetition (a sign that the customer is not retaining information)
  - Signs that the consumer has not understood or signs of confusion
  - Mention of medication

Similarly, the Office for Water Services (2016) identified common triggers that may indicate a situation of vulnerability, including:

- Triggers primarily relating to the customer's personal characteristics:
  - Is the consumer receiving income assistance?
  - Is the consumer over a certain age – for example, over the age of 60?

- Has the customer reported a health condition (especially one requiring them to use high volumes of water)?
- Has the customer reported a disability?
- Triggers relating to changes in life events:
  - Has the customer reported a change in employment status – for example, loss of a job?
  - Has the customer reported a change in domestic situation – for example, divorce/separation or moving from another country?
  - Have there been changes in economic conditions that may affect customers – for example, sudden increases in bills/interest rates, layoffs/closures across the country, or in the region served by the company, or other changes affecting access to credit for customers?
  - Have there been any policy changes that may affect customers whose circumstances make them vulnerable, or put customers at risk of difficulty – for example, changes to benefits entitlements?
  - Has the consumer been recently hospitalised?

### **Debt and Mental Health Evidence Form (DMHEF)**

The Money and Advice Trust (2022) developed the Debt and Mental Health Evidence Form (DMEHF), which helps identify and assess the impact of mental health issues on an individual's ability to manage debt. This form provides a structured way to assess and document an individual's mental health condition in relation to their financial situation.

A total of 34 semi-structured interviews were carried out via telephone and in-person. These interviews included participation from different groups: frontline staff (comprising 13 participants), leadership representatives from debt collection companies (involving seven participants), and individuals with personal experiences related to mental health issues, debt challenges, and debt collection (involving 14 participants).

Participants with lived experiences were identified through an advertisement distributed to selected members of the Money and Mental Health Policy Institute's Research Community. Frontline staff and leadership participants from debt collection firms were selected from a range of company sizes, including one large-sized firm, one medium-sized firm, and two small-sized firms.

Money and Mental Health commissioned Opinium in 2021 to ask 5,001 adults (aged 18-65) who had experienced mental health problems about their lives. The DMEHF, which is generally completed by a health or social-care professional, asks four questions:

- Does the person have a mental health problem?
- How does the mental health problem affect their ability to manage money?
- How is the person's ability to communicate affected by their mental health problem(s)?
- Is there anything else you can tell us that would help the person (severity/duration; relevant treatment; whether in crisis)?

### **Genworth Index of consumer financial vulnerability**

The Genworth Index of consumer financial vulnerability (Genworth, 2013) is a measurement tool which provides a snapshot of the overall level of relative financial security in a given country. The survey that underpins the Index results involves contacting a nationally representative sample of approximately 1,000 households in each of 14 European countries, five Latin American countries, and China. However, the report (Genworth, 2013) does not specify how representative households were selected. The Index questions are asked only of householders (an adult in whose name the accommodation is owned or rented, or his or her partner) aged 18 years or over in order to provide meaningful data from those with financial responsibilities. Results are weighted to be representative of the population within each country. The Index is derived from responses to the following two key questions:

- Thinking about the general financial position of your household, how often do you experience financial difficulties?
- Looking ahead over the next 12 months, do you think the financial position of your household will improve, stay the same or get worse?

Each question is then assessed on a four-point scale: often or always, sometimes, hardly ever, never. The response options to these two questions produces 12 possible combinations of answers. These 12 combinations are then collapsed into four distinct groups: financially secure, circumspect, strivers, financially vulnerable.

### **Financial Lives Survey**

The Financial Conduct Authority (FCA) conducts the Financial Lives Survey. This is a large-scale nationally representative tracking survey of UK adults' financial behaviour and their perceptions and experience of the UK financial services industry. It takes place approximately every two years and is designed to provide useful longer-term trend data, which examines the financial wellbeing and vulnerability of UK consumers. In 2022, the survey was conducted with 19,145 individuals, 18,889 one-hour in-depth interviews completed online and 256 completed over the telephone. While it does not provide a specific index, the survey includes questions related to risk factors for vulnerability including:

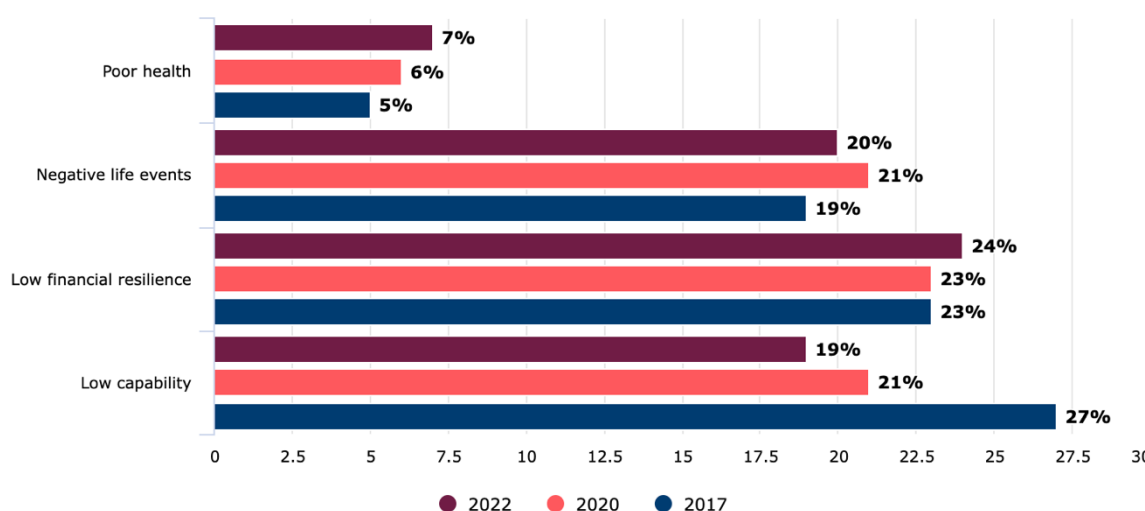
- age
- employment
- disability
- health condition
- mental health
- caring responsibilities
- ethnicity
- English language skills
- location
- internet access
- income

debt levels

- financial resilience
- access to affordable credit.

The 2022 Financial Lives Survey (FCA, 2023) reported that in 2017, 51% of UK adults (26.0m) showed one or more characteristics of vulnerability. By February 2020 this proportion had fallen to 48% (25.1m). By May 2022 it had fallen again slightly to 47% (24.9m), although this most recent change was not statistically significant. As Figure 2 below shows, the Financial Lives Survey measures consumer vulnerability on the basis of four drivers: poor health, negative life events, low financial resilience, and low capability, which combine the risk factors for vulnerability listed above.

Figure 2 - Proportion of adults who show characteristics of vulnerability by the four drivers (Financial Conduct Authority, 2023: 28)



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Base: All UK adults (2017: 12,865/ 2020: 16,190/ 2022: 19,145)

### The Financial Vulnerability Index (FVI)

The Financial Vulnerability Index (Braga, et al., 2021) is based on six components that capture a household's ability to manage daily finances and resilience to economic shocks:

- Carrying defaulted debt.
- Using alternative financial products.
- Claiming social benefits.
- Lacking emergency savings.
- Holding a high-cost loan
- Relying heavily on credit.

These components are measured using Lowell's research and operational data, the UK Financial Lives Survey (see above), and data from the UK's Department for Work and Pensions and Office for National Statistics. The index is created by standardising each

component, weighting each component using factor analysis, and normalising the index from zero to 100. The index score provides relative financial vulnerability levels that can be used for comparison across geography and time; it does not provide an absolute measure of financial vulnerability within a geographic area.

### **Problem Gambling Severity Index (PGSI)**

The Gambling Commission tracks 'problem gambling' in the population based on measures coming from the combined health surveys of England (HSE), Scotland (SHeS), and the Welsh Problem Gambling Survey in Wales (WPGS). The indexes used in these surveys are the Problem Gambling Severity Index (PGSI) and the Diagnostic and Statistical Manual of Mental Disorders (DSM-IV). This sub-section focuses on the PGSI, while the subsequent one provides an examination of the DSM-IV.

The HSE and SHeS are nationally representative surveys of people living in private households in England and Scotland (Conolly et al., 2018). People living in institutional settings such as residential care homes, offender institutions, prisons, in temporary housing (such as hostels or bed and breakfasts) or sleeping rough are outside the scope of the surveys. These surveys use a clustered, stratified multi-stage sample design.

For the SHeS, an initial sample of 64,523 addresses was drawn from the Postcode Address File (PAF) in 2021 on the basis of the survey being conducted by opt-in. Three phases were then accessed.

For Phase 1 of the survey, participants were asked to opt-in using an online portal, or by contacting the NatCen (research team) freephone. They were asked to leave a telephone number on which an interviewer would call them back. Addresses were only assigned to interviewers after the household had opted into the survey. Assignments comprised up to 10 addresses and a mix of all sample types. For Phase 2 of the survey, 3,839 addresses were grouped into 134 interviewer assignments. ScotCen Social Research enlisted the Office for National Statistics (ONS) to assist with the interviewing. During Phase three, interviews were conducted by telephone (Hinchliffe, Wilson, Macfarlane, Gounari, & Roberts, 2021).

Similarly, the 2021 HSE survey adopted a multi-stage stratified probability sampling design. At the first stage, a random sample of primary sampling units (PSUs), based on postcode sectors, was selected. The sampling frame was the user Postcode Address File (PAF). Advance letters were used to introduce the survey to participants. Each sampled address was sent an advance letter. All adults aged 16 years and over at each household were selected for the interview (up to a maximum of ten adults per household). Two phases were then accessed.

On the first phase of the survey, the opt-in recruitment period, participants could opt in online or by telephone. Then, the interviewer contacted each selected household for interview. The household interview included a questionnaire with questions on physical activity, gambling, and wellbeing. All interviews in 2021 were conducted via telephone or video. At the end of the interview, participants in eligible households were asked for their agreement to the second stage of the survey, a follow-up visit by a nurse. The nurse visit included interview questions, measurements, the collection of biological samples and a short self-completion questionnaire, including the General Health Questionnaire (GHQ), covering general health in the last few weeks. In 2021, a total of 5,880 adults (aged 16 and over) were interviewed for the HSE (NatCen Social Research & UCL, 2022).

The Welsh Problem Gambling Surveys uses face-to-face interviews in the homes of respondents, following the same procedures as those employed in the health surveys for England and Scotland (Gambling Commission, 2021). The PGSI is used in all three surveys

(the Health Survey for England, the Scottish Health Survey, and the Welsh Problem Gambling Surveys). It comprises nine questions and is administered to all survey participants who have engaged in gambling activities at least once within the past 12 months:

Thinking about the last 12 months...

- Have you bet more than you could really afford to lose?
- Have you needed to gamble with larger amounts of money to get the same feeling of excitement?
- When you gambled, did you go back another day to try to win back the money you lost?
- Have you borrowed money or sold anything to get money to gamble?
- Have you felt that you might have a problem with gambling?
- Has gambling caused you any health problems, including stress or anxiety?
- Have people criticised your betting or told you that you had a gambling problem, regardless of whether or not you thought it was true?
- Has your gambling caused any financial problems for you or your household?
- Have you felt guilty about the way you gamble or what happens when you gamble?

Each item is then assessed on a four-point scale: never, sometimes, most of the time, almost always. Responses to each item are given the following scores:

- never = zero
- sometimes = one
- most of the time = two
- almost always = three

When scores to each item are summed, a total PGSI score within the range of zero to 27 becomes possible. A PGSI score of eight or higher indicates an individual needs to be classified as a 'problem gambler'. Scores falling between three and seven categorise individuals as engaging in 'moderate risk' gambling (gamblers who experience a moderate level of problems leading to some negative consequences). A score of one or two on the PGSI indicates 'low risk' gambling, characterising individuals who experience minimal problems with few or no discernible adverse outcomes.

As previously noted, the PGSI is one of the tools employed by the Gambling Commission to assess 'problem gambling' within the population. Another important tool is the Diagnostic and Statistical Manual of Mental Disorders (DSM-IV), which is used by clinicians to diagnose pathological gambling. This will be discussed in the following sub-section.

### **Diagnostic and Statistical Manual of Mental Disorders (DSM-IV)**

Alongside the PGSI, the Gambling Commission uses the DSM-IV to track 'problem gambling' in the population. The index is used in the Health Survey for England, Scottish Health Survey, and the Welsh Problem gambling Survey. It consists of nine items, with each



item assessed on a four-point scale ranging from 'never' to 'very often'. Respondents are asked whether they:

- Are preoccupied with gambling (e.g., preoccupied with reliving past gambling experiences, handicapping or planning the next venture, or thinking of ways to get money with which to gamble).
- Need to gamble with increasing amounts of money in order to achieve the desired excitement.
- Have repeated unsuccessful efforts to control, cut back, or stop gambling.
- Are restless or irritable when attempting to cut down or stop gambling.
- Gamble as a way of escaping from problems or of relieving a dysphoric mood (e.g., feelings of helplessness, guilt, anxiety, depression).
- After losing money gambling, often return another day in order to get even ('chasing' one's losses).
- Lie to family members, therapist, or others to conceal the extent of involvement with gambling.
- Have committed illegal acts, such as forgery, fraud, theft, or embezzlement, in order to finance gambling.
- Have jeopardised or lost a significant relationship, job, or educational or career opportunity because of gambling.
- Rely on others to provide money to relieve a desperate financial situation caused by gambling.

Responses to each item are dichotomised (that is, given a score of zero or one) to show whether a person meets the criteria or not. A total DSM-IV score between zero and nine becomes possible. A threshold of meeting at least three of the DSM-IV criteria is used to define problem gambling. Clinicians currently use an additional threshold of a DSM-IV score of five or more to represent pathological gambling. The DSM-IV does not have recognised thresholds for low risk and moderate risk gambling.

### **The short-form Problem Gambling Severity Index (PGSI mini-screen)**

Volberg and Williams (2012) produced an additional tool for the Gambling Commission to track the prevalence of problem gambling in the general population through telephone and online surveys. This instrument is formed of three questions from the PGSI. It is asked to all participants of a survey who have gambled at least once in the last 12 months:

In the last 12 months...

- Have you bet more than you could really afford to lose?
- Have people criticised your betting or told you that you had a gambling problem, regardless of whether or not you thought it was true?
- Have you felt guilty about the way you gamble or what happens when you gamble?

Each item is then assessed on a four-point scale: never, sometimes, most of the time, almost always. Responses to each item are given the following scores:

- never = zero
- sometimes = one
- most of the time = two
- almost always = three

When scores to each item are summed, a total PGSI mini-screen score within the range of zero to nine becomes possible. A score of four or more represents a 'problem gambler'. Scores between two and three represent 'moderate risk' gambling and a score of one represents 'low risk' gambling.