

# Consumer vulnerability in the legal market

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A feasibility study to consider whether and how we could measure and monitor consumer vulnerability in the legal market.

## Background

Those who need legal advice should be able to access it without barriers. However, various forms of vulnerability can make it challenging for some people to access legal services when they need it. We wanted to understand better the scale and type of these vulnerabilities, so commissioned independent research by Professor Harriet Pierpoint and Dr Paolo Baffero at the University of South Wales (USW). The research explored the feasibility of developing a tool to measure and monitor how many, and which types of, vulnerabilities are faced by consumers when they have a legal need.

This research aligns with our strategic aim of [enhancing confidence in legal services as well as our regulatory objectives in the Legal Services Act 2007](#) [<https://www.legislation.gov.uk/ukpga/2007/29/section/1>] of improving access to justice and protecting consumer interests.

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## The research

The research consisted of three phases:

- Phase 1: An evidence review to understand the existing knowledge on consumer vulnerability and identify knowledge gaps to inform the primary research. This review looked at 300 sources including academic literature, legal sources, regulatory and statutory bodies' literature such as the [Legal Services Board's work on consumer vulnerabilities in legal services](#) [<https://legalservicesboard.org.uk/wp-content/uploads/2022/06/Consumer-vulnerability-in-legal-services-rapid-literature-review-FINAL-27.10.21-1.pdf>], the UK Regulators' Network research on identifying vulnerable consumers and The Association of Consumer Support Organisations research on simplifying access to justice for vulnerable consumers.
- Phase 2: A survey to explore experts' views on defining consumer vulnerability and potential methods for us to measure and track this. The participants included those with lived experience, consumer representatives, academics, legal professionals and regulators.
- Phase 3: A stakeholder event to further explore perceptions on defining consumer vulnerability and the practicality and usefulness



of implementing a measurement tool.

Overall, 54 participants were involved in the study, with 47 taking part in the survey and 19 participating in the stakeholder event.

## **Key findings**

### **Understanding consumer vulnerability**

Vulnerability is complex, constantly changing and not always apparent. The term 'vulnerability' was found to be problematic as it can impact people's self-perceptions, be stigmatising and lack consistency.

Our previous research has shown that consumers needing legal services are often at increased risk of vulnerability and can face multiple vulnerabilities. This research also found that vulnerabilities can be heightened when engaging with the legal system.

### **Challenges and practical considerations in measuring vulnerability**

The research identified some sizeable challenges in developing a tool to measure vulnerability.

One of the main challenges is that it would probably need to be grounded in the use of so-called risk factors. These can be categorised as individual characteristics, situational circumstances and external factors. However, the research found that using this risk-based approach can oversimplify the identification of vulnerability and mean that the measurements are biased. This is because:

- The term 'vulnerability' is considered by many as harmful or stigmatising. This can make consumers cautious in self-disclosing their vulnerabilities.
- There are currently different definitions of vulnerability, and the risk factors used across and within different sectors.
- Many organisations have limited resources to identify consumers with these risk factors.
- Factors can be invisible or overlooked.

Another challenge is that there is limited evidence that existing tools for identifying consumer vulnerability in sectors like criminal justice, finance and gambling fully address all the complexities of measuring vulnerability. This makes it difficult to assess whether they could be appropriately adapted for use in the legal sector.

We, and others, have previously provided guidance for practitioners to mitigate and respond to vulnerability risks. The research found limited evidence on how guidance suitably addresses questions around the



complexity associated with vulnerability. Academic literature has started to suggest that a risk-based approach may not be the most suitable way to address vulnerability.

While participants saw some value in measuring consumer vulnerability, particularly for targeting resources to meet consumers' needs, they questioned its practicality and usefulness to address consumer vulnerability. This led the researchers to explore an alternative approach.

## **The alternative approach**

A growing body of literature suggests that vulnerability should be seen as universal, potentially affecting all consumers to some extent and/or at some times. This study proposed that a 'universal practice' approach could be more effective in meeting consumers' need and therefore meeting regulatory objectives. The focus of this approach is on designing services that are accessible and inclusive for everyone. Importantly, that they are founded on provider-consumer relationships based on trust and respect, rather than focusing on identifying individuals as vulnerable and making adjustments accordingly.

The universal practice approach can complement the legal requirement to provide reasonable adjustments, by considering the following when designing and providing legal services:

- Shifting away from labelling individuals as 'vulnerable'.
- Moving from using risk factors solely to identify resources needed for certain individuals, toward asking people routinely to provide a range of feedback that will steadily support firms to create more inclusive services for all.
- Offering a full range of access and communication options to everyone to empower consumers to make decisions about their services.
- Increasing consumers' trust by asking empathetic questions to understand all consumers' specific circumstances and needs.

The report proposes that this approach is likely to improve accessibility, build trust, reduce complaints and increase revenue through customer retention and new business.

Although this alternative approach is not fully developed in this research, as it was not part of the original scope of the research, the report outlines suggestions for how regulators could support service providers to adapt. These steps include:

- updating guidance to support legal professionals to understand better consumers' individual circumstances, which could include examples of consumer's lived experiences
- promoting that communication with consumers should more commonly include interviews or meetings that build trust, identify



consumers' priorities and increase opportunities for consumers to provide feedback to firms and solicitors

- producing or signposting to resources on universal practice to support providers to understand the benefits of universal practice
- commissioning independent research to further refine the universal practice approach.

## **Next steps**

We will take on board these findings when identifying areas for improvement to support consumers and those that we engage with. This will include:

- Liaising with other stakeholders to identify the feasibility of, and responsibilities for, taking forward the universal practice approach in the legal sector. To begin this, we plan to bring together some of the experts in this field to reflect on and share views on the research, as we recognise that these findings are part of a growing body of literature about vulnerability.
- Taking the findings into consideration [when we review our Transparency Rules](https://higher-rights.sra.org.uk/solicitors/standards-regulations/transparency-rules/1) to explore how we can further encourage firms to provide clear communication, understand consumers' needs and build trust.
- Taking the findings into consideration when we review our own approaches to support people who engage with us.

[Read the full report \(PDF 226 pages, 4MB\)](https://higher-rights.sra.org.uk/globalassets/documents/sra/research/consumer-vulnerability-in-the-legal-market.pdf#/1)