

**LEGAL SERVICES BOARD**  
**Legal Advice for Small Businesses**  
**Qualitative Research**

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Prepared for:

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## Foreword from the LSB

The LSB is committed to ensuring that we have a comprehensive understanding of the views and experiences of all with an interest in the legal services market. Specifically, we must understand and take into account the input of consumers, ensuring the regulatory system works in their interests. We believe that all consumers should understand their rights and responsibilities and have effective and affordable access to justice.

Small businesses are an important consumer group that are often overlooked, treated either as undistinguishable in their needs from retail consumers or able to look after themselves like much larger companies. We commissioned this research as we wanted to explore whether there are a distinct set of problems facing small businesses that need quite different treatment within our work. We committed in our plans to follow up this research with a quantitative study to measure the extent of any problems they face if issues were identified in this study.

The research illustrates clearly that small businesses are facing a variety of legal challenges as part of their daily lives. Whether these are commonly seen issues such as complying with tax returns or health and safety regulation, or unusual problems such as employment tribunals.

As for many retail customers, many businesses found it difficult to identify when they face a legal issue and if they do when they need advice, whether formal or informal. For many, the cost of legal advice proves a barrier to seeking formal legal advice – whether this high cost is real or perceived. Where legal services are offered in innovative ways to businesses this has proved popular delivering the types of legal solutions that they want to see at prices they can afford.

The LSB is leading work to open up legal services to more innovation and a greater variety of services tailored to the needs of all customers. We must ensure that innovation is not at the expense of access, but as this research demonstrates we cannot assume that all have access today.

This research has highlighted that legal needs of small businesses are often unique and require further study to explore the types of regulatory solutions that could help. Exactly how big is the problem they face? What types of services work best? How can we help small businesses understand better their needs? These questions and more need further analysis and we hope to be able to explore them in more detail later in 2010.

Alex Roy  
Research Manager

## 1. EXECUTIVE SUMMARY

### *What legal issues do firms face?*

Small firms face a series of legal issues, many of the problems they face are similar to those faced by individual consumers but often the problems are more complex and frequent due to the commercial nature of a business. Like individual consumers, often businesses do not recognise the fact that they are facing legal problems – either not recognising that the problem is legal or perhaps more concerning, not recognising that they have a problem at all.

There are significant differences between the range of legal issues faced by sole traders and other micro-businesses (defined here as businesses with 10 or fewer employees) and the way in which both groups deal with the issues they face. Most common issues for all small firms (both sole-traders and micro businesses) include business set up, contracts and tax and regulation. Once firms take on employees and grow their business they are faced with additional problems not least around the treatment of the employees themselves, but also health and safety, property and other trading issues.

A failure to deal with these issues effectively can have serious consequences for the business. Many sole traders are simply unwilling to expand their business and take on the additional challenges because of the perceived difficulties. For others, failure to deal with legal issues can lead to lost revenue, trading disputes or later costly legal action.

### *How do firms determine whether to get legal advice?*

Seeking formal legal advice is perceived by small businesses to mean:

- expensive;
- serious;
- a last resort.

Frequently businesses choose to muddle through rather than seek formal legal advice given these concerns. Sole traders are often content to take a risk with health and safety or use 'gentleman's agreements' rather than formal contracts. Micro-businesses are less willing to cut corners like this but still remain reluctant to resort to formal legal advice.

Once firms recognise that they have a legal issue their first port of call is generally to talk to friends and family (particularly if they are solicitors) for free legal help. Increasingly businesses are also using the internet to look for legal help, both alongside other informal help and also before approaching formal legal services.

Generally formal legal advice remains a fallback position used once a problem has become so serious as to leave the business no other choice. But, once firms have some experience of legal services and the variety of legal services available they are often more willing to seek legal advice again.

### *What are firms' experiences of legal services?*

Legal services when used are usually found through recommendation or use in a personal capacity. Many will rely on their accountant as a first port of call for all professional services who will either deal with the problem themselves or recommend a suitable solicitor.

For most small businesses their experiences of paid-for legal services are limited to traditional solicitors. It is these experiences, and for others second hand impressions of these experiences or prejudices, that form the views of the sector of legal services. Many with experience found solicitors to be knowledgeable experts who did get the job done, allowing the businesses to get on with their job. But others found the uncertain costs and lack of control made them wary of approaching solicitors.

Cost is a significant factor for small businesses, the need for cash flow dominated discussions, finding certainty of costs and ideally lower cost services was seen as a priority for firms. Some did find internet based advice services that met their needs and delivered an effective and affordable solution. Others used trade bodies or government sites to meet their legal needs though few found it easy to navigate the maze of potential suppliers to identify the most effective affordable solution to their problems.

### *What would small firms like to see from legal services?*

It was clear that small firms wanted to find affordable, fast legal support to help address their legal needs. A wider range of services demystifying legal advice could encourage more to address problems earlier and solve their business problems before they reached crisis point. The preference of many was for a combination of lower cost, greater clarity over pricing, more internet based services, a clearer government route to help businesses with legal issues and free legal helplines. Some of these services are already available (e.g. Federation of Small Businesses legal helpline), others are starting to emerge and would be expected to further develop with increased competition in the market.

Further work is also needed to help inform small businesses about the range of potential legal issues they face as well as opening the market to greater variety of

provision. Many firms simply did not realise they were facing a legal issue, and once they did, often ignored it until it was too late.

This study did not attempt to measure exactly the size of the problem, but it would seem that more problems being resolved faster would be good for business and good for the economy. The recession over the past year has if anything emphasised the problems facing small firms. Further research could help understand the extent to which the lack of variety of services available in the current legal market act as a barrier to businesses meeting their legal needs and how this impacts on firms.

## 2. INTRODUCTION

### 2.1 Overall purpose of research

The overall purpose of this research was to provide evidence on the challenges small businesses face in identifying and accessing the legal services they need. This initial exploratory study will help the LSB scope out the key issues facing this segment of the market, inform ongoing policy work and help identify further research requirements. The research was intended to highlight issues that could be explored in depth in future quantitative analysis.

### 2.2 Method and sample

An initial business survey was used to scope the research with the main research adopting a qualitative approach, involving 10 mid-sized groups (4-5 respondents) and 10 one-to-one depths 'matched' to the group sample.

#### ***Focus Group Samples - 10 Groups; 10 depths***

| <b>Midi-Focus Groups (4-5 respondents)</b>      | <b>Total</b> | <b>Little/no experience of legal services</b> | <b>Recently used some form of legal services</b> |
|---|--------------|---|--|
| Sole Traders, 'blue collar' industries          | 2            | 1   | 1  |
| Sole Traders, 'grey collar' industries          | 2            | 1   | 1  |
| Sole Traders, 'white collar' industries         | 2            | 1   | 1  |
| Micro-businesses, 'blue/grey' collar industries | 2            | 1   | 1  |
| Micro-businesses, 'white collar' industries     | 2            | 1   | 1  |
| <b>Total groups</b>                             | <b>10</b>    | <b>5</b>                                      | <b>5</b>   |

*This sample was weighted towards enterprises with no employees who make up the vast majority of enterprises with <10 employees.*

### **2.3 Context for study - current business challenges**

Across all industries the impact of the recession is widely acknowledged, among both more established and more recent start-ups. Where this is most keenly felt is in maintaining cash flow. It is widely claimed that delays in receiving payments from customers/clients have increased in the recent past and this could result in a “domino effect”; business owners subsequently face problems in paying invoices themselves, which entails a greater proportion of time is spent chasing up payments.

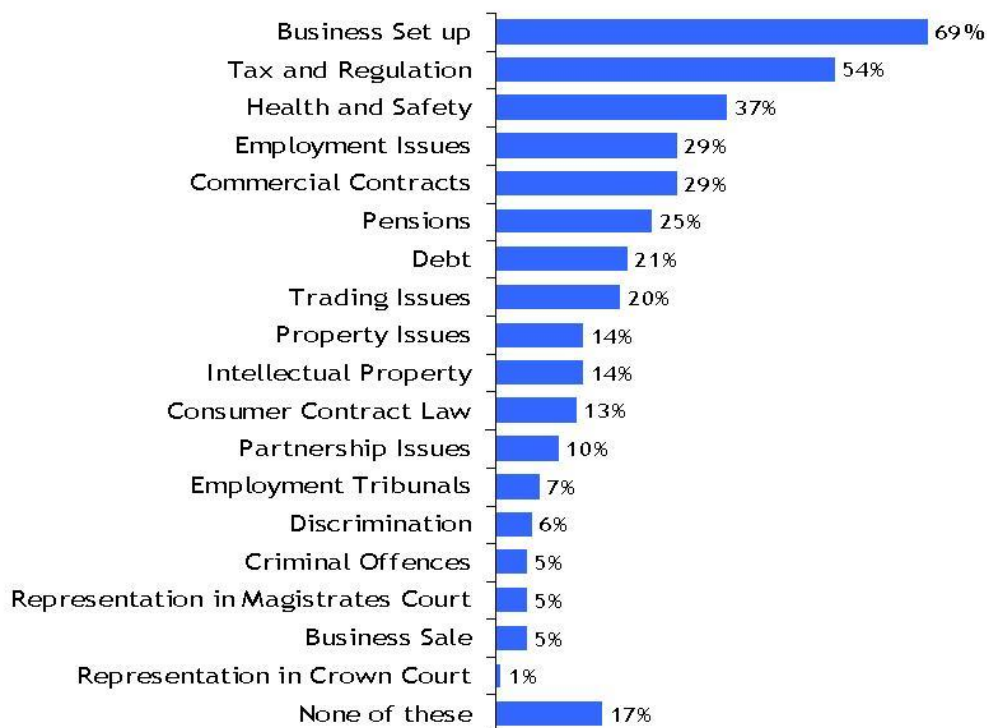
In terms of other key challenges, in some micro-businesses redundancies have been necessary in order to reduce costs. Naturally, this has also forced many employers to consider their redundancy procedure in the recent past.

### 3. FINDINGS

#### 3.1 What legal issues do businesses face?

Both the business survey and subsequent focus groups and depth interviews revealed that the majority of businesses experience issues that could require legal assistance – however, as we will explore later businesses do not always pursue formal legal channels to resolve these issues. It is evident that there are some key differences both in the challenges faced by and resultant behaviours of sole traders and micro business owners, most obviously in the range of additional issues faced by firms employing staff.

#### Which of the following business issues have you had to deal with in the past?



While all small businesses focus their attention on the immediate and pressing priorities of generating revenue and maintaining cash-flow, businesses with 5-10 employees are more likely to have longer term views of the business (in terms of targets, expansion and development). In contrast, sole traders are forced to deal with short-term issues and unable to share workloads, and frequently claim to have little time to consider longer-term strategies for growth or expansion.

In addition, sole traders, with business responsibilities only to themselves, appear more willing than micro-businesses to take calculated risks in terms of adherence to legislation and regulations. Any risks they do take (e.g. Health and Safety) are positioned as only likely to affect them. They take a reactive approach to legislative obligations due to a lack of time to keep up with changes – they “*don’t know what they don’t know*”.

*“The way my workshop’s set up is a problem in some senses. I’ve basically got a big old barn, where none of my tools are PAT tested...if a Health & Safety guy came to my workshop he’d shut me down, that’s why I don’t employ people...I take the same risks when I go to their workshops.”*

(Sole Trader, Blue Collar, Oldham)

Micro-businesses in comparison are more conscious of the impact of their decisions on their employees, recognising they are responsible and liable for those that work for them. As a result, there is a greater adherence to “*doing things by the book*”.

*“When someone starts at the company, I even do a tyre pressure monitor and depth gauge because owing to Corporate Manslaughter Bill of 2004, if they have a crash and there’s something wrong the tyres on the company care, it’s my fault.”*

(Micro Business, White/Grey Collar, Oldham)

Experience also plays a key role in attitudes towards handling business issues; the more experienced claimed to know where calculated risks could be made and to have learnt from theirs and others’ mistakes. The benefit of experience entails that business owners generally have a larger network of contacts and have developed long standing relationships with trustworthy accountants and other advisors (e.g. friends working in the legal profession).

## **3.2 More widely experienced issues for small businesses**

### **3.2.1 Business Set-Up**

The process of setting up a business, particularly for the first time, is seen as a potential minefield and, unless they have previous experience of running their own business, potentially very time confusing. Many setting up for the first time are doing so on a very limited budget and feel they have to focus their energy on establishing a

cash-flow (i.e. getting some customers), rather than worrying about uncertainties/unknowns.

*"Right at the very beginning you're doing it on a shoestring, everything on the cheap; the office is in your back room and you're working at night... I've been there and done all that and so you can't afford to spend the money."*

(Micro Business, Blue/Grey Collar, Cardiff)

In particular, issues such as the requirement (or not) for company registration and learning about tax requirements, tax breaks and VAT obligations are key initial challenges, aside from 'non-legal' headaches such as technology set-up (email, website registration) and marketing.

*"I think, in general, all of us, when we first start out, you know that there's certain things that you have to cover but you don't necessarily know the details of those things and I think that's why you then go and look for advice, whether it's from friends or official organisations."*

(Sole Trader, Blue Collar, Cardiff)

### **3.2.2 Commercial Contracts**

For all small businesses, the biggest single issue was maintaining cash-flow where the existence or not of commercial contracts is key. Following up/chasing payment is a sensitive and carefully negotiated area. A more heavy handed, threatening approach to late/non-payment is often seen as unnecessary and inappropriate, with the potential to lose future business. Instead, action is more informal and at least initially they are likely to offer gentle reminders until they receive their payments. This can make firms reluctant to resort to legal advice.

*"I've had a few people who haven't paid, they're not written contracts but they're a gentleman's agreement and they won't send you the cheque, so I just go to their house and I say 'write me a cheque out please'. I've learnt from that...I make it clear that I'll be expecting a cheque to be waiting for me and I've found that's worked."*

(Sole Trader, Blue Collar, Cardiff)

Some small businesses find any requirement to get binding agreements from their domestic customers difficult and instead are more comfortable with ‘gentleman’s agreements’. Standard legal agreement documents from Trade Associations are seen by some as onerous and complicated. Traditionally, small businesses are happy trading using “gentleman’s agreements” as their guarantee until something goes wrong, be it dissatisfaction with the product or service or trying to change the terms of a verbal agreement.

*"I mean, a typical example is that \*\*\*\* [Trade Association] publishes a standard agreement document but the blunt truth is, for most domestic clients it's a huge turn-off because the first thing you do, after having a really nice friendly chat, is you lob this great big complicated legal agreement in front of them and people think 'what the hell is all this stuff for!?"*

(Sole Trader, White Collar, Egham)

Companies in the service industry appear to have been particularly prone to having experienced problems – with guarantees of service standards ensuring that the ‘goalposts’ are not moved by the customer, resulting in withholding payment after the event. A few businesses mentioned Trading Standards getting involved in disputes and that they had clarified the rules of engagement.

Small business approaches to transactions and problem resolution differ according to the customer as detailed below.

### Dealing with the Public

Those who deal more regularly with the general public suggest that arrangements tend to be more flexible/informal and are far less frequently bound by onerous Terms and Conditions. With such customers it is easier to build a personal relationship with the ‘customer’, which helps deal with any issues directly.

*"I hate working with firms. They're slow, hard work. At least you get to know your customers when it's the public. You can sort stuff out there and then. Get them to understand you and you to understand them. It's easier, I find."*

(Micro business, blue/grey collar, Nottingham)

However, many admitted that at times too much work with the general public relied too much on trust. When issues do arise (e.g. work not completed to satisfactory standard, delayed payments) arrangements could be regarded as too personal and issues harder to diffuse i.e. fault is directed at an *individual*.

But the small sums of money for domestic jobs reduced the incentive for the firm to spend too much time chasing payments. A few admitted having ‘given up’ on chasing smaller payments because it is not perceived to be worth the time and effort.

*"You can't afford customers that aren't going to pay because then you're paying double because you're paying to do the work, so you're paying to chase the work and while you're using that much energy you're not getting other work."*

(Sole Trader, White/Grey Collar, Nottingham)

In addition, where problems arise there is sometimes a lack of clarity about both supplier and consumer's rights, and whether they (as supplier) are in breach of any obligations to the customer (e.g. regarding levels of satisfaction with work completed, rules on declaring VAT additional charging, etc.).

### Dealing with Companies

In contrast, dealing with companies usually requires more formal/less flexible arrangements. The reward is, often, more significant pieces of work for greater monetary gain, but this necessitates more careful agreement of the ‘rules of engagement’. Small businesses tend to be reassured by the frequent requirement for the existence of service contracts which at least give peace of mind that they are ‘covered’ if problems arise.

*"The contract with my customers I do myself, because I've got a little bit of experience of doing that kind of thing. The contracts from my suppliers, I usually use a solicitor or any online advice that might be going."*

(Micro Business, Grey Collar, London)

However, sole traders and small businesses did indicate that dealings with companies could be more stressful on the whole, because:

- they feel less in control of setting the terms of the transaction (less personal, less flexible – some claim they can feel ‘bullied’ into accepting terms rather than risk losing a significant contract by haggling on conditions);
- more likely to delay payment for a set minimum period (potentially significant impact on cash flow);
- lack of accountability for any problems;
- concern about their own tax compliance being more visible; and

- requirement for temporary/contractor staff for larger jobs (and for sole traders, confusion as to their personal responsibility for these contractors' health/wellbeing).

### 3.2.3 Tax & Regulation

Overall, business owners are not very engaged in the details of the changes to regulation, but expect their accountants / advisors to keep them up-to-date on these issues.

*“As far as tax is concerned, my view is that you hand everything over to the experts and rely on them totally and pay them a huge amount of money and it’s not your problem really then, you know, because I wouldn’t have a clue where to start.”*

(Sole Trader, White Collar, Egham)

Those starting out in business for the first time are unclear about their tax obligations – in particular the regulations (and changes to regulation) in areas such as:

- VAT thresholds/returns;
- PAYE requirements (if have employees or even contractors); and
- tax returns/self-assessment.

*“I didn’t know anything about book-keeping and all the things you’ve got to do to run a business and I got quite a lot of advice from my accountant at the time and he was very helpful; I could phone him up and say about VAT and all those sort of things, ‘why is there no VAT on food? .. and is there VAT on the train ticket I’ve just bought?’”*

(Micro Business, White/Grey Collar, Somerset)

Although tax and regulation are key issues that small businesses need to be kept abreast of, many sole traders and micro businesses are entirely dependent on their accountants or financial advisors for guidance on legislative change and how this may impact on them.

Sole traders with more straightforward tax situations (e.g. under VAT thresholds, no employees, etc.) are more likely to manage their own books rather than pay for the outlay of hiring a regular accountant. In some instances partners and family will manage the books and VAT returns on their behalf. A few – typically those who see their accountant irregularly or do not have a regular one – use the HMRC website to explore pressing questions (e.g. PAYE obligations for temporary workers) and are largely impressed by its usability.

*“The HMRC website is far more useful than it used to be. I can work my round it, get what I need. Government websites are definitely getting better.”*

(Micro Business, Blue Collar, London)

A small number of businesses had missed tax payments on imports and been confronted by letters from HMRC.

### **3.3 Business issues selectively experienced**

There were other issues that can impact regularly on businesses, but dependent on factors such as on number of employees or sector.

#### **3.3.1 Employee Issues**

*Impact felt on micro-businesses*

The impact of ‘employee issues’ on micro-businesses tend to fall into two categories, either:

- > more serious but very infrequent (i.e. grievance procedure, discrimination, tribunals); or
- > more everyday (staff welfare, health and safety, contracts).

Employee redundancies has been a major issue for a small number of employers lately and is regarded as both a costly and emotionally draining process for businesses to go through.

*“We’ve just been through a spate of redundancies, and it’s very time consuming and you don’t want to get it wrong. It’s the sort of thing that you don’t realise how much time it takes, and how exhausted and bad you feel about it all.”*

(Micro Business, Grey Collar, London)

An area of confusion for both micro-businesses and sole traders is hiring temporary subcontractors and casual part-time staff (e.g. bar/shop/construction work). It was clear that some business owners did not provide part-time contracts and had little understanding of what would happen in the event of a) being taken to a tribunal, or b) an employee was injured on the premises. It was also apparent that business owners are not sure about their rights when dealing with subcontractors.

Taking on employees and becoming a limited company is often a major learning curve for micro-businesses, particularly those who have expanded from a sole trader where they are previously used to looking out only for their own welfare. The

potential for misunderstanding their responsibilities or feeling exploited by employees is acknowledged and on rare occasions has resulted in litigious incidents. This appears to deter some sole traders from expanding (or can encourage them to down-size from a limited company).

*“Employment issues for me are a big fear and it's probably something I've avoided doing by using contractors.”*

(Sole Trader, Blue Collar, Oldham)

Although informal networks and the internet can help employers' basic understanding of employee and employer rights, in many cases, employers are quick to seek specialist help with any disputes with employees, both in the areas of HR and employment law. This is often the default choice, being unaware about other options available to them.

### **3.3.2 Health & Safety**

*A more significant issue for blue/grey collar industries*

Employers display somewhat paradoxical thinking on the issue; they assume that much of this legislation is unnecessary “red tape” that can be overridden by common sense, but also admit that if an accident were to occur, they would be liable.

*“Accidents happen and every time you switch on the telly you've got a woman tripping over a big of plastic (or whatever!) and it's not your fault that it's on the floor but you can guarantee it will be your fault.”*

(Micro Business, Grey Collar, Nottingham)

Although Health and Safety measures are intended to be preventative, action is mostly reactive, either to:

- > an accident/incident (especially if there is a potentially litigious consequence); or
- > an inspection occurring.

Very few claim to proactively seek out updates on health and safety legislation. The more experienced were willing to meet what they understood to be their basic obligations, then wait to be inspected and told what needs to be up-dated/sorted out. Business owners are reluctant to contact the HSE, either online or over the phone, through fear it would prompt an investigation.

*“Contacting the HSE is a bit like opening a can of worms...oh we’ll come and do an inspection for you...”*

(Sole Trader, Blue Collar, Somerset)

### **3.3.3 Property Issues**

Occasionally, business owners commented that issues relating to property and company premises could be a challenge. In the first instance, it could be problematic to source premises that adhered to the correct Health and Safety legislations. This was a consideration particularly pertinent in regard to blue/grey collar business owners. For example, before a hairdresser was able to open, it was necessary that her premises offered a certain number of sinks.

It was also sometimes necessary to have a second opinion on property leases and contracts, in order to ensure that everything was “above board”. This advice was typically obtained informally, “as a favour” from knowledgeable friends and family members. A solicitor was not typically consulted in this instance unless they were a personal contact and their advice could be sought for free.

*“I originally entered a 19 year lease, after that 19 years it was renewed at 3 yearly intervals and obviously I had to consult a solicitor who happened to be a friend of mine. He went through the document to see it didn't contain any nasty clauses.”*

(Sole Trader, Blue Collar, Cardiff)

Other minor issues included lack of clarity surrounding the terms of the property lease. It was occasionally unclear how business owners could extract themselves from a lease and whether or not the property could be legally sublet.

### **3.3.4 Trading Issues**

Issues concerning foreign trade tended to relate to cash flow problems. The decline of the pound entails that foreign trade is considerably more costly. As a result, some businesses had transferred to trading in Euros in order to curtail as much as possible, the negative impact of the recession.

*“The one that always affects me is the exchange rates and over the years I’ve moved all of my customers on to Euros because if you’re buying Euros and selling in pounds then you can become seriously unstuck.”*

(Sole Trader, Blue Collar, Cardiff)

Those businesses involved in foreign trade often found that they had to be careful to abide by EU (and occasionally international) legislation by ensuring that the trade of certain goods was legal in different countries.

### 3.4 Issues rarely/if ever dealt with

Issues that rarely get raised, but can impact heavily on small businesses at particular moments in time include:

- > *Partnership issues* – breaking of business partnerships generally involves both parties seeking legal advice. That said, there are exceptions; for example, a partner in a restoration firm was able to amicably persuade his co-partner to become an employee given the disparity in the amount of time/effort put into the business.

*“I was dreading approaching the issue, but when I did he didn’t seem to mind. He understood he wasn’t put the time in, and made the whole thing straightforward. It could have been lawyers, the lot. But we didn’t need to.”*

(Micro business, Blue collar, Nottingham)

- > *Intellectual property* – very little awareness or knowledge across the sample, a few have received quasi-legal advice by chance e.g. friend was a solicitor who suggested getting a trade mark. Lack of awareness and protection can result in negative consequences such as the driving instructor with a direct competitor sharing his company name (see Case Studies).
- > *Court appearances* – usually a simple decision to get legal representation e.g. employment tribunals, debt recovery.

### 3.5 How do firms determine if they need legal advice?

#### 3.5.1 What is a legal need?

Business owners' perceptions of a business need that might require legal advice and services are seen as 'exceptional'. Although they may have more regular requirements for information and advice on business issues/needs (many of which could carry a legal obligation), most business owners do not position these issues as 'legal needs'. Rather, these are seen simply as general business advice and services.

In the first instance business owners source quasi-legal advice very informally – for example, guidance on health and safety obligations, tax and regulation, commercial contracts, employee issues – but do not widely recognise that these are issues that carry a legal obligation. Familiar avenues such as the internet or word of mouth via peers/colleagues/associates (including those with specialist knowledge such as accountants/IFAs) are the core source of free, to-hand 'quasi-legal advice'.

Later, if a problem/issue requires escalation and is more resource dependent (i.e. in terms of time and/or expense) businesses may seek more formal legal advice. Therefore 'legal advice' is perceived as fairly formal and associated heavily with accessing a 'paid for' service. In the majority of cases, this means instinctively calling on a solicitor, particularly because awareness of alternative options is limited. More broadly, the term 'legal' itself has fairly negative associations for this audience, and frequently implies:

- > expensive;
- > serious; and
- > a last/necessary resort - no other informal and/or free avenues are available.

*“Surely, when one think of 'legal services', the mind automatically think 'solicitors'.”*

(Sole Trader, Blue Collar, Cardiff)

That said, there is variation in the readiness with which issues will be escalated to 'paid for' legal advice/services. Those who are better connected to an informal network of advisors (financial or legal) were more able to hold off using formal routes where possible.

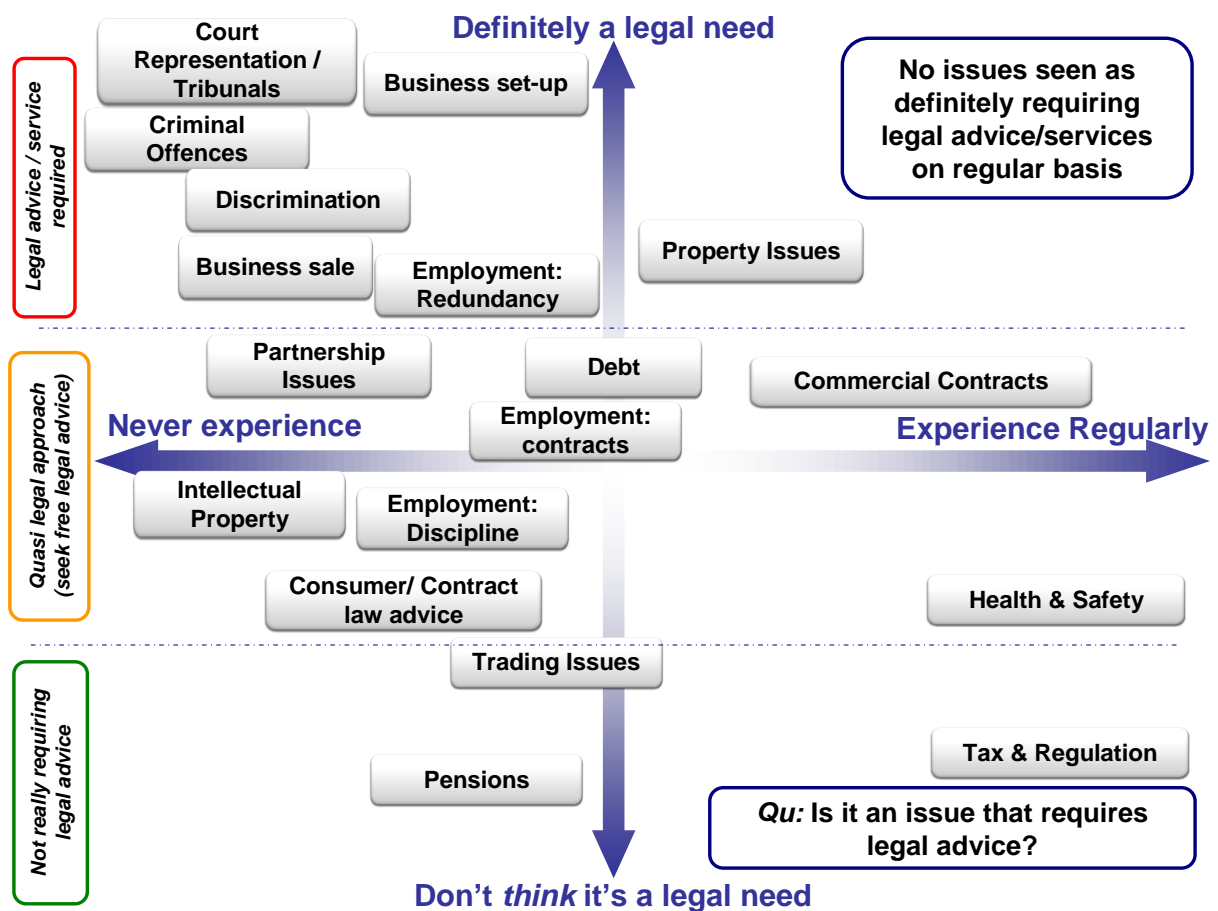
*“My attitude is that I try and do as much as I possibly can to save costs, and then when I become stuck, or I don't know how to proceed any further then I call in the experts.”*

(Micro Business, Grey Collar, London)

This poses two key additional questions about the needs of this audience:

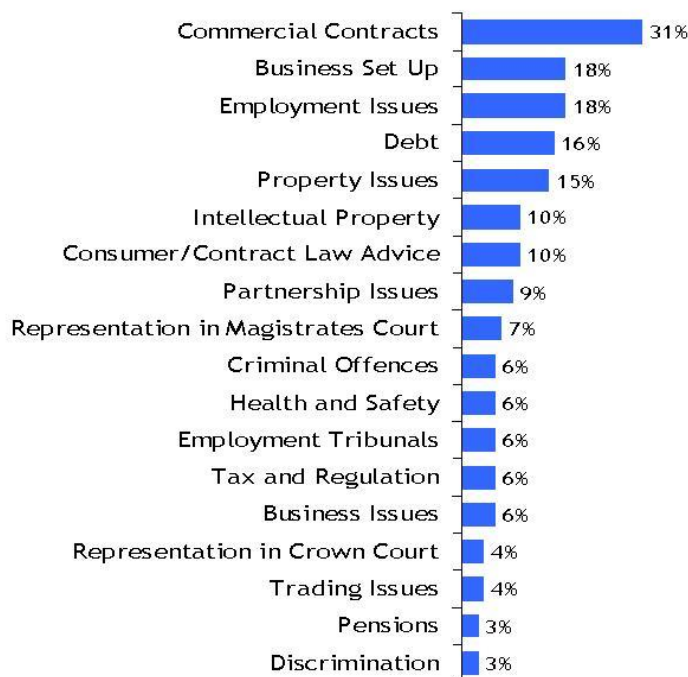
- > When does general business advice become legal advice?
- > When do businesses need legal advice from a lawyer?

### 3.5.2 Perceptions about what issues might require 'legal' advice



This pattern tallies with the results from the omnibus survey (below) which indicate that commercial contracts, business set-up, employment issues and debt are key issues that small businesses may seek legal advice on.

**On which of the following issues did you seek legal advice or services?**



*More likely to be legal issues*

As demonstrated in the diagram, most issues regarded as potentially requiring legal advice or legal services are largely seen as infrequent or one-offs. Very few issues are positioned as requiring regular legal advice/services.

Issues seen as definitely requiring 'legal advice' are either:

- > related to a particular moment in time such as business set-up/purchase or sale or court representation; or
- > specific and largely straightforward services such as deed checking for property leases/purchase.

*"If somebody's threatening lawyers or threatening solicitors then really you need to jump up out of your chair and get down to a solicitor or a lawyer."*

(Sole Trader, White Collar, Egham)

*"I would seek legal advice if I wasn't sleeping at night...but also if the issue concerned presented a risk to business that was too big."*

(Micro Business, White/Grey Collar, Oldham)

On the whole, sole traders appear less inclined to seek formal legal advice. In part, this is due to a less frequent need (no employer contracts, tribunals, etc.) but also because such legal services are perceived to be prohibitively expensive (and alternative options are not known).

*“It’s the cost, my solicitor charges £150 an hour (and I’m told for Cardiff that’s quite reasonable!), so you only need to involve him for 2 or 3 hours and you’ve run up £500 worth including the VAT!”*

(Sole Trader, Blue Collar, Cardiff)

Often more formal legal services are only sought on a more reactive and ‘needs must’ basis, frequently after the event has occurred.

*“It’s just very disjointed and I think what we do is very reactive; you’ve got an issue that crops up, you’ve got to think ‘right, internet, a little bit of research .. how do I deal with it?’ .. you speak to somebody else that you think might be able to help.”*

(Micro Business, White/Grey Collar, Somerset)

Some more established businesses however, do recognise the value of using legal services to deal with some of their more routine needs such as checking leases, rent review, chasing debt, etc in that it frees them up to deal with the day to day challenges of the businesses. In the long run, they believe that formal legal advice would probably save themselves time, money and hassle/stress by ensuring that the issues were handled correctly straight away. Others will seek legal advice simply because they do not know what else to do and do not have the time to deal with it or resolve it themselves.

### Quasi-legal issues

As demonstrated above, many issues are approached from a quasi-legal position – seeking advice and information from trusted sources without paying much/anything for it. On the whole, those more experienced in business are more confident in taking and trusting quasi-legal advice from a wider array of trusted contacts with specialist knowledge (be it financial or legal specialists, or just friends/peers/colleagues or the Internet). There are also areas where micro-businesses – particularly newer start-ups – are unaware of some of their legal obligations, such as pension provision to employees.

*“The services I do pay for are an accountant; for my tax, insurance, etc., but I have a friend and he’s very good and I will occasionally ask him pseudo legal questions.”*

(Sole Trader, White Collar, Egham)

Another broad rule of thumb that emerges is the more regularly business owners deal with issues in a particular area (e.g. health and safety), the more confident they are in resolving issues without need for ‘paid for’ legal advice.

*“Experience goes a long way. I think once you’re broadly okay with your responsibilities, you know like you’ve had a health and safety inspection, you don’t worry about it. It’s not something you worry about.”*

(Micro business, blue collar, London)

Appendix 2 gives a few examples from the qualitative research highlighting the action or inaction that can result from particular incidents that have impacted on small businesses. In particular, these incidents emphasise how reactive small businesses are to problems and how clearer legal (and non-legal) ‘advice’ at the outset may have had a more positive impact on outcomes.

### **3.5.3 Barriers to Seeking Legal Advice and Services**

Currently there are 3 key barriers to seeking legal advice and services which are identified as:

- > *The (perceived) high and unpredictable cost of legal advice* is probably the key prevailing barrier to engaging legal services. This is mainly because most associate legal advice with traditional face to face solicitors who are seen as or known to be ‘expensive’. The unpredictability of how much advice might cost (e.g. charged by the hour) is also seen as a barrier.

*“If I wanted more specific guidance, knowing that a solicitor fee is going to be two hundred, three hundred quid an hour, whatever you know, I’ll try to solve it myself, if I can.”*

(Micro Business, Blue Collar, London)

- > *Time*: most small businesses owners are focused on the day to day running of their business and making money. Hence the time / effort involved in pursuing some of these potential legal issues can be off-putting and lead to inaction.

*“If you’ve got the time and you think you can do it and handle it yourself you’d try, but if you’re out of your depth and you consider the time it’s going to take you, then you’ve got to look to someone who can do it for you. But they take up your time too. It’s really not as straightforward as giving the issue to them and that’s the end of it.”*

(Micro Business, White/Grey Collar, Somerset)

- > *Lack of awareness of alternative options:* as discussed awareness of the full range of different legal service options is at best patchy and can lead to ‘inappropriate’ / unnecessary use of some legal services or inaction.

Beyond these key barriers there is also a tension between wanting to build / maintain relationships with clients and customers and the process of issuing contracts and if necessary instigating debt collection. Many, but especially new start-ups, are loath to disrupt relationships or lose potential business and this can in turn lead to inaction in these key areas.

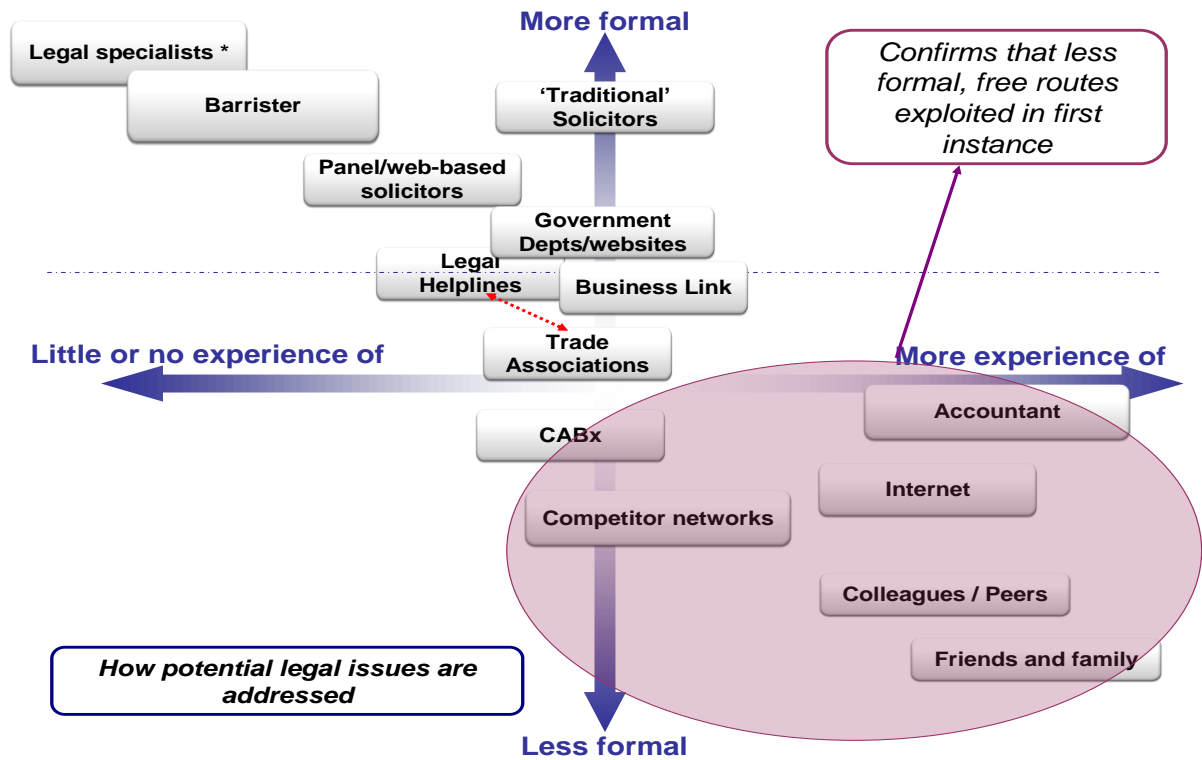
*“I think part of you doesn’t want to ruin the chance of a second job. You think ‘can I get them to pay without making things difficult.’ That’s the thing, if you get a solicitor letter off to them, yeah you might get paid for that job, but you’re unlikely to hear from them again. I need the business.”*

(Sole Trader, Blue Collar, Oldham)

Finally there are indications that many regard their *various insurances (liability, indemnity, etc.)* as a proxy for seeking legal advice and in some respects are relatively complacent about some issues such as the possibility of being sued.

### 3.6 What are their experiences of legal services?

#### 3.6.1 Awareness of and Attitudes towards the range of Legal Service Providers



Typically, no/low cost solutions are sought in the first instance and at this point some might not consider that they are in fact seeking legal advice or services; they are simply trying to resolve a business issue. Unless they obviously had an immediate need for legal advice (being sued, serious employment issue, etc.) many also do not know whether they will go on to need to procure *legal services*. The results from the omnibus survey back up this perception, with solicitors (72%) being the first port of call for most seeking formal advice.

### What type of legal advice have you sought in the past?



### 3.6.2 Attitudes to More Formal Legal Service Providers

#### 'Traditional' Solicitors/Lawyers

Where possible, many businesses will first seek out *free* legal advice from solicitors who are also friends or families rather than pay out for it. Formal (paid for) usage of local solicitors seems to fall into two main categories:

- > Routine use of solicitors for 'box ticking exercises' such as checking over leases, legal documents, rent reviews, etc. In these cases solicitors are seen as a necessary, cost effective solution to ensure no (costly) mistakes are made.
- > More reactive /'emergency' use (being sued, criminal offences, tribunals etc.). In these cases most believed that using a solicitor was the only or inevitable course of action.

*"I'd only use a solicitor unless I really had to. If I was getting sued, then obviously you've no choice, I mean you'd be stupid not to."*

(Sole Traders, White/Grey Collar, Nottingham)

Some (usually more established businesses owners) have found that solicitors can be the quickest, most painless route to resolution and in that sense were worth paying out for.

*“It’s the quickest route, it may not be the cheapest route but it’s certainly the quickest route and sometimes in business you’ve just got to go for speed, you just want to get it wrapped up, get it out the way, so you can get on with things, you don’t want things hanging around.”*

(Micro business, Blue/Grey Collar, Cardiff)

For many, however, and especially those who had had no cause to use legal advice (recently), solicitors are often seen as the last port of call and one they would only turn to if absolutely necessary. Even amongst those more used to and comfortable with using solicitors, there are indications they try to keep usage to a minimum.

The key barrier to using solicitors (more) is the perceived cost involved (especially in recent times) but other barriers include:

- > negative experiences for either business or domestic reasons which can influence current perceptions;
- > a lack of confidence of knowing who / where to go to and what questions to ask up-front in order to reassure fears/concerns re potential costs, etc.

There are also indications that the internet has clearly changed and / or reduced the way other legal services (and specifically solicitors) are accessed, because it allows people to at least do some preliminary research and / or fact finding first.

*“I was getting fed up with somebody who owed us a lot of money, so I thought ‘what can I do here?’, so I went on the internet and found out I could do this; you could write this letter rather than paying for somebody to do it for you, you can just do it and it’s a lot cheaper. I didn’t quite do it but at least I know. So I think it has empowered people to be able to do things like that without having to go through a solicitor.”*

(Micro business, White/Grey Collar, Somerset)

To summarise:

|   |   |
|---|---|
| Positive perceptions and experiences of solicitors: | <ul style="list-style-type: none"> <li>&gt; knowledgeable, experts in their field</li> <li>&gt; able to get the job done quickly and efficiently</li> <li>&gt; provide definitive advice / reassurance and peace of mind</li> <li>&gt; relieves pressure so able to get on with the ‘day job’.</li> </ul> |
|---|---|

|  |  |
|--|--|
| <p>Negative perceptions and experiences of solicitors:</p> | <ul style="list-style-type: none"> <li>&gt; perceived high cost / inability to judge VFM</li> <li>&gt; not knowing who / where to go to</li> <li>&gt; lack of control over time spent / cost of advice</li> <li>&gt; delays in getting advice / resolution</li> <li>&gt; associated with very negative incidents / issues</li> </ul> |
|--|--|

Panel / Specialist (online) Solicitors

A minority in the sample had come across and were using online specialist solicitors such as *Thomas Higgins* (debt collection) and *Lawgistics* (solutions for the motor trade). Among users of these services, attitudes towards them are generally very positive. Crucially they are seen to provide **low cost** definitive solutions with minimal fuss that addressed some of their key and frequent business issues (non-payment of bills). However, it was clear that awareness of these services is only patchy and often via word of mouth.

*“Thomas Higgins are great. It’s straightforward, you don’t need to do anything and having used them, I think they’re wonderful.”*

(Micro Business, White/Grey Collar, Somerset)

Barristers

Most have heard of barristers although only a minority had needed to use them for business needs. Widely acknowledged as expensive but necessary if they ever needed representation in court. Most hope that they will never be in a position to require one.

*“Fingers crossed I will never need a barrister. That’s when you know you’re got problems.”*

(Sole Trader, Blue Collar, Oldham)

Other Legal Professionals

Awareness and usage of other legal professionals ranges from patchy to non-existent. As a result, many find it very hard to comment on them:

- > *Patent law and trade mark attorney* – minority had used trade mark attorneys for either themselves or their clients. Considered specialist and expensive but necessary if you have one of these issues to deal with.
- > *Conveyancer* – mainly associated with house purchases rather than business issues.

- > *Paralegal, Notary, Legal Executive, Law cost dratsman* – some limited awareness of some of these terms (paralegal / notary) but almost no awareness of what they did or could do in terms of providing legal services.

*“What’s the difference between a notary and a solicitor? And a paralegal, or a low cost draftsman, I mean I would put all of them under the heading of ‘solicitor’.”*

(Sole Trader, Blue Collar, Oldham)

### **3.6.3 Attitudes towards Less ‘Formal’ Legal Services Providers**

#### *Friends, Family, Peers and Colleagues*

Most businesses claim that in the first instance they would consult with their informal network of friends, family, peers and colleagues before turning to any ‘paid for’ advice options. White collar professionals in particular are often well connected and tend to have a range of ‘professional’ friends that they can turn to for advice, including legal advice. Longer established businesses also tend to have built up networks of informal advisors and have a ‘go to’ person for different issues. The research also found evidence of informal ‘competitor networks’ being used to explore and solve problems/issues that are specific to their line of business (sometimes via online forums).

*“I’m very fortunate, I’ve got quite a network of friends who I seem to be able to bounce off, most of my information comes from friends who’ve been there, done that, got the t-shirt.”*

(Micro Business, Grey Collar, Nottingham)

Positively these routes to advice are free and trustworthy and can help to point them in the right direction. Often these initial forays also help to establish whether they do in fact have a need for further legal advice and services. However, most *also* recognise that whilst these routes may be an appropriate first port of call, they do not necessarily always resolve issues definitively.

*“I’ve got a friend who actually works in HR, so she can help me with staffing issues and she’s been doing it since the year dot and she’s got all of her qualifications, so she can take it as far as she can take it but when it becomes serious obviously that’s when we would go to a solicitor.”*

(Sole Trader, Blue Collar, Cardiff)

### Accountants and other Business Advisors

Most businesses have used an *accountant* at some time or another. For some, generally the larger businesses, the contact tends to be more frequent and regular. In contrast, sole traders might only make use of their account once or twice a year for their tax return. Using an accountant allows business owners to feel that they can get on with the day job reassured by the fact the accountant would ensure that everything was done 'by the books'. A minority who felt able to handle the tax returns themselves had recently given up their accountants to save money.

*"I have used an accountant at the beginning to tell me what she expects from me at the end of the year– so I did get advice. But the more that I do, the less she has to do and the less I have to pay her and I'm learning."*

(Micro Business, White Collar, Egham)

Regardless of frequency of contact, accountants are considered a key source of business advice, monetary or otherwise. For longer established businesses there are indications that over time their accountant can become a key confidant and business ally. As such, there is strong evidence that many will turn to their accountants for quasi legal advice and, if they cannot help, word of mouth recommendation to someone who can.

*"He does a regular bulletin that he sends out to all his clients with any changes that might be relevant. He tells me if there are any changes in tax law or company law or whatever, just really to keep people advised as to what's going on."*

(Micro Business, Blue Collar, Nottingham)

Other *business advisors* also emerge as potential sources of advice and guidance for a range of issues. These include:

- > advisors who helped with business start-up (e.g. business link) and who continue to provide support and advice in the early days;
- > trading standards – (used by retailers can help with some issues);
- > Health and Safety representatives (although cautious not to encourage unnecessary inspections); and
- > HM Revenue and Customs.

## Internet

There are strong indications that the internet is becoming an increasingly important tool with regard to sourcing a wide range of businesses advice and services. Many businesses admitted that, alongside consulting with their informal network, they are very likely to use the internet to conduct preliminary research and filter information. Office based professionals found it easier to find time to access the internet when they needed to answer queries. Often these initial searches can help them decide whether or not they require further assistance or advice.

*“The internet is the go-to thing. Nowadays I’m more likely to look there before I even talk to mates or colleagues about an issue. It’s just the place with the most comprehensive information and you can take your time, try to get your head round something in your time.”*

(Micro Business, Blue Collar, London)

Typical usage of the internet includes:

- > *‘Googling’ of issues* – leads to more detailed drill down of specific sites, etc.
- > *Specific advice related websites* including Direct Gov, H&S, HMRC, Trade Associations, Business Link, etc.
- > *Sourcing template documents* – for contracts, debt recovery letters, grievance procedures, etc.
- > *Online forums* – some minority use of small business forums and competitor networks to problem solve issues.

*“I found a website that a load of beauty professionals would all go on and talk about different issues, it’s called ‘salon geek’, but, you know, I’ve asked for advice on there about different things.”*

(Sole Trader, Blue Collar, Cardiff)

*“I was getting fed up with somebody who owed us a lot of money, so I thought ‘what can I do here?’, so I went on the internet and found out I could do this; you could write this letter rather than paying for somebody to do it for you, you can just do it and it’s a lot cheaper. I didn’t quite do it but at least I know. So I think it has empowered people to be able to do things like that without having to go through a solicitor.”*

(Micro Business, Blue Collar, London)

Only a minority have discovered more specialist legal services on the internet such as the online claims service and specialist solicitors such as Thomas Higgins (debt

recovery) and Lawgistics (advice for motor trade). Generally these services attract very positive comment among existing users because they are easy to use, low cost and resolve problems quickly.

To summarise:

|   |  |
|---|--|
| Key positive aspects of using the internet to obtain legal advice / services  | <ul style="list-style-type: none"> <li>&gt; free advice and information</li> <li>&gt; able to learn about other people's experiences outside their own network (forum)</li> <li>&gt; easy to access (24-7)</li> <li>&gt; quickly signposts to relevant websites / services.</li> </ul>   |
| Less positive aspects of using the internet to obtain legal advice / services | <ul style="list-style-type: none"> <li>&gt; those less familiar with the internet can find it a bit daunting and hard to navigate</li> <li>&gt; some simply do not have time / energy to invest and would rather pass the issue on</li> <li>&gt; it can be difficult to establish what is or is not credible / definitive information advice</li> <li>&gt; there are related concerns about getting conflicting or misleading advice.</li> </ul> |

### Trade Associations

Awareness of and interaction with Trade or Professional Associations varied widely and according to profession. Clearly for some businesses it is considered more important to be a member than for others; e.g. architect vs. window cleaner. Among members of such associations and the FSB, there is some awareness of the benefits associated with membership and access to legal advice can be highlighted as one of the key perks of subscription.

*"A number of trade associations, as part of their subscription provide a legal hotline through a third party and you can have access to that up to a certain time. That been used it's been useful, because the trade association knows your industry and your sector. Often the trade association can help without having to go to the third party helpline."*

(Micro Business, Grey Collar, London)

For advocates of Trade Associations there is a belief that the advice is tailored to their industry and sector and they can often solve issues without having to refer to third parties.

In contrast, for non-members, trade associations are not necessarily considered a first port of call for advice (legal or otherwise) mainly because they are unaware of

the services on offer. Among non-users there are concerns that any (free) advice given by a Trade Association would be too generic and not tailored to their specific needs.

### Legal Helplines

Awareness of legal helplines is fairly patchy. The most well known are legal helplines associated with the FSB and other dedicated trade associations. Knowledge about legal helplines attached to business banking packages is much more limited and to some extent are viewed with a healthy degree of scepticism. Among users, there is some evidence to suggest that experiences vary quite widely and some had been disappointed by the generic advice they had received. Others were extremely happy with the advice they received.

*“I’d probably use a helpline if I knew one that was available. That said, I’m not sure how much they’d know about my industry.”*

(Sole Trader, White/Grey Collar, Nottingham)

Among those who are not aware of (free) legal helplines at all, there is some scepticism / concern that free advice would be too generic and not solve their problem. They are also wary about incurring costs beyond the initial free period.

### Government Departments

Generally businesses felt that unlike tax and health and safety there is no ‘go to’ Government department specifically for advice or guidance on legal issues. Initially many businesses struggled to identify where they might go. Whilst some steer clear of too much direct involvement with Government departments for fear of investigation, others note that Government Departments have in general got better in recent years in that they are more approachable and can be helpful sources of advice

*“I’d actually talk to the Revenue and the VAT people in detail because what I’ve actually found over the years is that actually, if you’re prepared to talk to the tax office and the VAT, they’re actually very helpful ... most people don’t know that.”*

(Sole Trader, Blue Collar, Oldham)

There was also fairly extensive evidence that *Direct Gov* is being used increasingly for both domestic and business issues (employment, planning, etc). Generally

positioned as a helpful one-stop shop for general advice and signposting to more specific services; a trusted source of reliable information.

*“Direct Gov seems to point you in the right direction as to phone numbers of other websites, and obviously it covers a wide range of activities and services, but I think it's quite good to be able to provide you with some help.”*

(Sole Trader, White/Grey Collar, Nottingham)

### Citizen’s Advice Bureau (CABx)

In the main, CABx are more commonly associated with consumer issues rather than business needs. However, sole traders and less experienced business owners might turn to them for legal advice in absence of knowing where else to go and time pressures. Some felt that they would be more appropriate and inviting for those who are also less confident with computers and / or written information.

*“I think it’s the name, you just don’t think business advice.”*

(Micro Business, White Collar, Nottingham)

*“Something like Citizens Advice is more personal, apart from that fact that it takes up so much of your time to get through to them. ... Most of the time you’re dealing with people who are generalists anyway, you know.”*

(Sole Trader, Blue Collar, London)

To summarise:

|                                     |  |
|-------------------------------------|--|
| Positively, CABx is seen as         | <ul style="list-style-type: none"> <li>&gt; free source of knowledgeable advice</li> <li>&gt; well known, reliable and trusted</li> <li>&gt; approachable, non-threatening.</li> </ul>   |
| Less positively, some concerns that | <ul style="list-style-type: none"> <li>&gt; they are generalists and therefore only able to deal with fairly basic queries, not complex legal issues</li> <li>&gt; waiting times, etc. for an appointment would be unacceptably long</li> <li>&gt; they were not very accessible (a few were unsure where their nearest branch once).</li> </ul> |

### 3.6.4 Summary of Drivers of Satisfaction and Dissatisfaction with Legal Services Providers

| <b>Drivers of Satisfaction</b>  | <b>Drivers of Dissatisfaction</b>              |
|---|--|
| Quick resolution  | Lengthy process / unnecessary delays           |
| Definitive advice / resolution  | Generic, non-specific advice                   |
| Reassurance and peace of mind that issue is understood and being resolved |  |
| Advance warning of likely cost / fees                                     | No advance warning of likely costs and fees    |
| Value for money   | Poor value for money / escalating fees         |
| Treated with respect / as priority  | Not treated with respect / as low priority     |
| Kept informed throughout process  | Not being kept informed or updated on progress |
| No nasty surprises  |  |
| Tailored, relevant advice   | Sub-standard representation                    |

### 3.7 What would small firms like to see from legal services?

#### 3.7.1 Improving small businesses' access to and usage of legal services

There are particular barriers to accessing legal services associated with perceived cost, a lack of time and lack of awareness of alternative (and cost-effective) options. In this respect, empowering small businesses in these areas should address many outstanding issues (see Appendix 4 for a list of common areas of knowledge gaps). Many businesses *think* they know their options, but in reality they are **unfamiliar with the full range of services available**.

Therefore, in their day-to-day business lives a lot of small businesses are not chasing debt, because they see this as too time consuming, too costly and they do not know their options. The widely held perception is that they have to engage a solicitor resulting in a lot of small businesses writing off debt as not worth chasing.

Ultimately, all would welcome a low(er) cost option that can deliver the same result as more formal legal services. The small minority who have used the more bespoke services such as Thomas Higgins were pleased to have such other options open to them. However, the range and extent of legal services available to small businesses needs to be better communicated to them than it is currently.

A lot of small businesses are seeking a 'one-stop' option that will then signpost them to the right information depending on the particular issue. Ideas for this centred on a Directgov (internet) or CABx (face-to-face/phone) style service aimed specifically at small businesses. Key characteristics of an 'improved' service would be:

- > upfront/transparent (no 'nasty surprises'; clear costs, updating)
- > treated with respect (not as 'less important' than larger businesses/cases)
- > increased accessibility (online/24 hours access, especially for those spending much of the working day out and about/out of contact)

Going forward, addressing the **cost** of services is a key barrier to using more formal legal advice. This would include more transparency on 'expected' solicitor fees, including offering a better understanding of how fees are charged, ball-park costs for dealing with leases, going to court, etc.

Perceived **lack of time** increases the likelihood of inaction on any particular dispute/issue. Therefore greater awareness of timesaving options (e.g. online small claims) would be greatly welcomed.

### 3.7.2 Addressing Gaps in Knowledge

Small businesses acknowledge that they are a very hard to reach audience with regards communications (particularly those with less ‘internet time’, in blue and grey collar industries) and are therefore far more likely to be reactive to issues as they arise, rather than proactive. As a result, business owners admit to taking risks in some areas (e.g. gentleman’s agreements with regard consumer contracts) and show signs of not knowing they have legal obligations in other areas (e.g. pension provision, H&S, employment issues contracts, etc.). They “don’t know what they don’t know”. In addition, complacency can set in due to having insurance and thinking they are covered for all (likely) eventualities.

Even if business owners recognise that they have a legal need, it is not always clear how much they should be expected to pay for formal legal advice. On a small number of occasions, business owners paid solicitors to conduct fairly routine, “tick boxing” exercises, but later learned that they had been considerably overcharged.

This research indicates that more could be done to engage with and signpost small businesses to cover some of these issues/knowledge gaps, including:

- > at key points in time:
  - when starting-up – e.g. via Business Link, seminars, Trade Associations, Government websites, etc.
  - via insurance documents – all are purchasing insurance to cover themselves, so targeted information could be made available with that.
  - VAT quarterly returns/self-assessment (via HMRC)
- > using key touchpoints:
  - via pertinent internet sites (e.g. advertising on online forum, such as Salon Geek for Beauticians, etc.)
  - via Business Link (better promotion of this service)
  - via small business events (more targeted events).

## Appendix 1:

### Background to study

#### Background and Purpose

##### **Background on the Legal Services Board**

In the interests of consumers, the Legal Services Board (LSB) has been set up to reform and modernise the legal services market, enhancing quality, ensuring value for money and improving access to justice across England and Wales.

The LSB will achieve this by pursuing their regulatory objectives and providing regulatory oversight for the eight approved frontline regulators.

##### **Context for Research**

The LSB is aiming to develop a robust evidence base to support all its regulatory activities. There is little evidence currently on the problems facing small businesses in accessing legal services but it is suspected that they may face many of the same problems faced by individual household consumers. While the majority of research to date on access to justice focuses on individuals, cost-effective access to legal services is as important for businesses.

The LSB has responsibility for ensuring there are no barriers to fair access to justice for all consumers of legal services, therefore it is essential that they understand the challenges facing all sectors of the market. This research project is the first step in their efforts to improve their understanding of the provision of legal services to small businesses.

#### Research Objectives

The primary aim of this research was to explore, with the individuals responsible for making legal decisions within small businesses, understanding, attitudes towards, and experiences of legal services, including any possible experiences of making complaints about legal services.

The following detailed objectives were extrapolated from the brief.

*Among small businesses:*

1. To explore and understand the nature and extent of legal needs experienced by small businesses, for example, employment, property, contractual issues, etc.

2. To explore and understand the extent to which small businesses are aware of and understand their (potential) need for legal services
3. To establish the range and nature of strategies that small businesses use to resolve their legal needs (including inaction as well as action)
4. To explore the nature and range of legal services providers from which small businesses currently seek advice and help
5. To explore motivations for and barriers against meeting all of small businesses' legal needs via current legal services providers
6. To find out what currently drives small businesses satisfaction and dissatisfaction with regard to the provision of legal services
7. With regard to areas where dissatisfaction is evident, to explore what might help to improve small businesses' satisfaction level
8. To obtain information about what might help small businesses with regard (potential) legal needs and how they would like this information to be delivered

## **Sampling**

### **Face to Face Depth Interviews**

10 depth interviews exactly matching those outlined for the groups.

### **Other Criteria for Groups and Depths**

**key decision maker:** all participants were defined as the/a key decision maker with regard seeking/accessing legal services.

**number of employees:** the research focused on small businesses with fewer than 10 employees; the majority of these are sole traders. We therefore ensured the balance of the sample was in favour of sole traders.

**industry sector:** The revised 2007 SIC codes cover a wide range of businesses and comprises 21 overarching categories. In order that a range of wide industry sectors can be covered within the research, we collapsed these codes into a manageable number of over-arching groups. In this respect we suggested the following 3 broad categories on the basis that they were likely to experience a similar range of business and legal needs:

- *'White Collar' industry sectors* (education, public administration and defence, real estate, business activities and services [finance, consultancy, etc.]

- *'Blue Collar' industry sectors* (manufacturing, construction, motor vehicle repairs, heating and ventilation, agri-business, etc.)
- *'Grey Collar' industry sectors* (retail, wholesale, hotels, restaurants, catering, transportation, storage, security, health and aged care)

***nature and extent of potential need(s) for legal advice:*** all participants identified a clear potential need for legal advice. However, we also recognised that small businesses may not always be aware of the full nature and range of the issues on which they could / should seek legal advice. In this respect we included within the screening questionnaire a wide range of number of potential scenarios for which legal services could be sought, for example company structure, franchising, leasing business premises, licences, finances, contracts with customers and suppliers, health and safety, tax advice, employment law, disagreements, copyright, promotion of goods and services, insurance needs, small claims and insolvency, etc.

***experience with regard accessing legal services:*** In order to answer fully the objectives it was necessary to incorporate a range of experience with regard accessing legal services. We segmented the sample between those who have accessed legal services of some description within the last 3 years and those who have little or no experience of accessing legal services.

A range was achieved with regard length of time in business (new start-ups are more likely to have sought advice in recent past on topics such as company set-up, etc.). Care was taken to exclude those with atypical views (e.g. solicitors, IFAs).

There were more stipulated exclusions to types of White Collar employers than Blue and Grey Collar, due to the nature of their work which may have provided atypical knowledge of the issues (e.g. chartered surveyors, accountants, solicitors and IFAs were not to be included in the sample).

## **Context & Background Observations**

### **Context: survey, desk research**

Prior to the main qualitative study, AIA conducted both a general omnibus survey among small businesses and background desk research to ascertain both patterns of legal service use and to collate any data already available pertinent to small businesses use of legal services.

In the omnibus survey we canvassed the views of 211 small business owners/founders; 130 sole traders, and 81 employed between 1-9 employees. We have referred to our omnibus findings where relevant throughout this report.

The key findings from the desk research are located in the appendix to this research.

## **Background to qualitative research participants achieved in the sample**

Across the sample there was a good cross section of experience of running small businesses. Business ownership ranged from longer established (over 20 years) through to more recent start ups with just a couple of years experience.

**White Collar** professions represented in the final sample included business consultants, product development managers, architects, graphic designers, bookkeepers, pharmaceutical suppliers, practice management consultants, and IT programmers.

Professions from within **Grey Collar** industries included representatives from the retail industry (pet shop, coffee and gift shop, sports merchandise company) and also a nursery owner, bathroom wholesaler, driving instructor, used car salesman, PC repairman and a public entertainer.

Within the sample, **Blue Collar** professions included a number of self-employed builders and manufacturers, a window cleaner, tattooist, gardener, owner of a construction company, and the owner of a narrow boat business.

## Appendix 2: Example case studies of approaches to ‘dealing with’ issues

### **Case 1: Discrimination (‘quasi-legal’ approach)**

**Company:** Drugs company, White Collar, 9 employees

**Location:** Oldham

**Issue:** *A drugs company changed hands and new managing director was alerted to a problematic longstanding “misogynistic, sexist and racist” employee. His behaviour had caused two other employees to leave the business. Another employee was close to starting legal proceedings against him.*

**Who was involved?** *MD of the company, the Financial Controller (accused of discrimination) and three other employees. No formal legal advice was sought, although it was considered.*

**How dealt with:** *Initially, the MD spoke to the employees involved and tried to mediate between both sides. He offered support to both all involved but ensured that all conversations were followed up by a written acknowledgement via email.*

*However, the FD’s behaviour did not appear to change, so the MD referred to the Company Handbook and followed the set guidelines. The Financial Director first received a verbal warning and then a written warning. The MD did consider obtaining legal advice from a solicitor, but decided to try and handle the issue internally first, referring to Directgov for information on discrimination and redundancy policies. He also believed he had sufficient evidence to form a “cast iron” case against the Financial Director if necessary and the cost of employing a solicitor entailed that it was worth trying to deal with “in house”, at least initially. Eventually the Financial Director decided to leave the company of his own accord and the matter is seemingly resolved. However the MD of the company is still slightly anxious that anyone of the affected employees could take out a discrimination claim up to 6 years after leaving the company. If such an event were to occur, he indicated he would take immediate legal advice.*

### **Case 2: Intellectual Property (‘inaction’)**

**Company:** Driving Instructor, Blue Collar, Sole Trader

**Location:** Oldham

**Issue:** *On set up of his business 25 years ago, a driving instructor did not register a company name. Six years ago he discovered that for a competitor was using the same trade name. This competitor had a poor reputation and he is losing business as a result*

**Who was involved?** *n/a – no action was taken*

**How dealt with:** *He believes that he cannot take any legal action given that he did not register the company name. At the time of setting-up, he did not think this was necessary. He has not sought any legal advice, because of the cost of consulting a lawyer. Moreover, he has not attempted to source any information from quasi-legal sources since he does not believe his case would hold. His attitude has been to try to ignore the situation and carry on.*

### **Case 3: Debt Collection ('legal advice')**

**Company:** Restoration and Building Sector, Blue Collar, 7 employees

**Location:** Cardiff

**Issue:** *Customers are delaying payment; one client owed him £20,000.*

**Who was involved?** *Customers, small claims court, debt collection agencies*

**How dealt with:** *Lack of sufficient cash flow has been an increasing problem for this business owner throughout the economic climate. However, whilst he is keen to receive payment, he does not want to jeopardise contacts with frequent customers. Smaller sums of money are only likely to be chased up informally; after a year he is still awaiting payment of £400 because the cost and hassle of going to court outweighs the amount owed. Initially he will chase up larger invoices informally too, but will pursue the matter if it remains unpaid. Currently he is taking someone to court to reclaim £6,000 but he is sceptical whether he will win the case, since "they'll say anything and do anything to get out it". If all else fails, he admits that he may be tempted to reverting to sending in "the toothless tigers" for a cut of the reclaimed money.*

### **Case 4: Health and Safety ('legal advice')**

**Company:** Bathroom wholesaler, Grey Collar, 7 employees

**Location:** Somerset

**Issue:** *The wholesalers pay a company to deliver their products and rent a warehouse from them to service their contract. One of the employees at the delivery company is suing the wholesalers (not his employers) for £30,000 because he fell from racking in the warehouse trying to reach one of their products. He claims it was the wholesaler's responsibility to inspect the premises they were renting. The employee in question was positioned as having "a habit" of claiming compensation for accidents at work.*

**Who was involved?** *Business owner, employee from delivery firm, lawyers (and less formal sources of information)*

**How dealt with:** *The wholesalers are prepared to go to court to defend themselves although their costs will probably be more than £30,000 should they lose. He immediately sought legal advice, but supplemented his knowledge with advice from family and friends and searching the internet. He decided against settling the claim outside of court, because that would entail admitting liability. This could also leave the business open to future compensation claims. Nevertheless, the business owner is worried about the consequences of losing the case.*

**Case 5: Partnership Issues ('legal advice')**

**Company:** Coffee and Gift Shop, Grey Collar, 4 employees

**Location:** Cardiff

**Issue:** *When the company was established, the business was owned by a partnership. After four months, one partner wished to walk away with the same amount of money that she had originally invested.*

**Who was involved?** *Business partners and family solicitors*

**How dealt with:** *After informal discussion failed to reach agreement, a solicitor was brought in to manage the dissolution of the partnership. The solicitor however was a family member of one of the partners and so were able to offer free advice and help to manage the dispute informally. She would have been reluctant, even unable, to afford to use a solicitor in a professional capacity.*

## Appendix 3:

### Topline results from desk research

It appears that the legal services market for Small firms is divided as follows:

1. SMEs that work with small law firms – this seems to have been the ‘normal’ route for many years
  - See parallels in their business’ size and ownership
  - “Shop locally” (or at least regionally)
2. SMEs that now access phone-based advice from ‘panels’ of lawyers. This appears to offer access to some legal practices that they would otherwise not have been able engage.
  - <http://www.lawsociety.org.uk/choosingandusing/findasolicitor.law>
  - the Law soc recommends using those with Lexcel accreditation: <http://www.lawsociety.org.uk/choosingandusing/findasolicitor/vie w=lexceldetails.law> : Lexcel is the Law Society's Practice Management Standard
  - a good example of how firms (of all sizes, including SMEs) trace lawyers: [www.contactlaw.co.uk](http://www.contactlaw.co.uk) (the site is owned by Thomson Reuters)

**The legal sector seems to provide legal support for SMEs in two ways:**

1. *Before the event*
  - SMEs in the professions (architects, engineers etc) may use indemnity insurance to cover all cases of negligence
2. *After the event*
  - Legal defence (against claims of negligence or even fraud)

**Trade bodies seem to have an important function**

1. Some representative bodies either have a retained legal provider or a link to paid-for services, e.g. National Federation of Builders (NFB) [www.builders.org.uk/membership/benefits/advice.aspx](http://www.builders.org.uk/membership/benefits/advice.aspx)
2. The Federation of Small Businesses has a deal with Abbey Legal Protection to provide legal services to SME members: [www.fsb.org.uk/benefits/legal-benefits](http://www.fsb.org.uk/benefits/legal-benefits)

## Some law firms are building propositions directly for SMEs

1. For example: [www.Lawdonut.co.uk](http://www.Lawdonut.co.uk) which was launched in by web content provider BHP Information Solutions and Google with local firms based around the UK, for example, the designated law provider in the north east is called Andrew Jackson ( [www.andrewjackson.co.uk](http://www.andrewjackson.co.uk) ) and [www.bhpinfosolutions.co.uk](http://www.bhpinfosolutions.co.uk) . The service offers an extensive range of legal information across a range of topics in the form of audio and video broadcasts, legal templates, toolkits for businesses, FAQs, and articles and fact sheets on specific legal themes and issues.
2. Another example is [www.connect2law.co.uk/](http://www.connect2law.co.uk/) and [www.connect2law.co.uk/Hubs.aspx](http://www.connect2law.co.uk/Hubs.aspx) - a referral system between local law firms that seems to specialize in SMEs

## These firms stand out for offering legal services to SMEs:

1. <http://www.epoq.co.uk/ep/index.cfm> - this firm offers a platform that links big firms and major buyers of legal services with **small law firms** who can bid for chunks of work that they would otherwise not be able to access.
2. <http://www.touchstonels.com/sme.html> - a bit bog-standard, but they have optimised their site so that it's v clear and easily picked up by search engines when users search for legal services for SMEs

## Government activities tend not to be focussed on SMEs

1. **Community Legal Service** was aimed at being the first port of call for anyone seeking legal information and advice - a resource to advisers and the profession, and a reference for the public wanting to access information quickly. The idea was for people to find help easily and feel confident in the quality of service they get from legal service providers. Since renamed Community Legal Advice.
2. **Community Legal Advice** offers a basic list of legal services for consumers. [www.communitylegaladvice.org.uk](http://www.communitylegaladvice.org.uk)

Around 50% of smaller firms spend about £1.4bn<sup>1</sup> on external advice on how to follow regulation. With small businesses struggling through the recession, it is vital that business owners are making informed decisions, over issues like debt recovery and making employees redundant, to avoid the often costly problems of ending up in court. (First Assist Press Release, citing Business Link research, May 2009)

## Appendix 4:

### Common knowledge gaps

Generally however, the areas where knowledge gaps are related to the issues of:

- > business set-up
  - When setting up a business, what am I legally obliged to do? What is up to me?
  - How much do I have to earn before I am charged VAT?
  - How do I register my company name? How much does it cost?
  - What am I required to send to Companies House?
  - Should I involve a solicitor in my business set up?
  - Where can I obtain general advice about setting up a business?
  - Should I get a solicitor to check my property lease?
- > H&S obligations
  - How should I keep up to date with changes in Health and Safety Legislation?
  - How do I ensure that my business premises adhere to Health and Safety Legislation?
  - Do I need to inform anybody if someone has an accident on my premises?
  - Am I responsible for the Health and Safety of subcontractors?
  - An employee has injured himself off-site during work hours. Am I liable?
- > tax & regulation (particularly if they do not have regular accountants)
  - To what extent should I rely on my account for tax and regulation advice?
  - Can I manage my own books?
  - Why is there VAT on food but not on the train ticket I've just bought?
  - What happens at an Inland Revenue inspection? How/when will I be informed if I am going to be inspected?
- > employment issues
  - How do I organise PAYE for employees?
  - What can I do if a customer or client refuses to pay?
  - Am I legally obliged to provide employees with contracts?
  - How do I draw up employee contracts? Should a solicitor be involved?
  - Do I need to provide subcontractors with a contract?
  - Am I legally obliged to provide my employees with pensions?
  - My employee is pregnant, how much maternity leave do I legally need to provide?
  - An employee is taking me to court, where can I go to get advice?

- When employing people, what criteria do I need to consider to ensure I am not discriminatory?
  - Do I need to devise a disciplinary procedure in the event of problems with employees?
  - My employee is lazy and a detriment to the firm. How can I make them redundant?
- > Other issues:
- How do I declare business perks and benefits?
  - How do I go about forming a partnership?
  - My business partner wants to leave the company and extract the money she originally invested. Is she legally entitled to do so?
  - I'm thinking of selling my business, what legal obligations do I need to consider?
  - I want to move premises, is there a way to extract myself from the property lease?
  - How do I draw up a consumer contract?
  - How can I ensure that contracts are consumer-friendly contract?
  - What do I need to be insured for?
  - A competitor is trading under my name, what can I do?
  - I can't afford a solicitor, where else can I go