



Legal expenses insurance A force for social good

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Executive Summary

Legal expenses insurance (LEI) has been available in the UK for almost 50 years. While adoption was initially slow, its popularity has grown enormously over that time.

Today, tens of millions of people and hundreds of thousands of businesses are insured against the potentially crippling costs of asserting even basic legal rights. Every week, LEI claims enable the pursuit and defence of thousands of cases that might otherwise have been abandoned as unaffordable.

Critics of LEI sometimes claim that policy coverage is too narrow or that the terms and conditions can be too restrictive, but legal protection products have been refined over five decades to deliver the widest and most useful array of cover to most people and businesses, all at an affordable premium. Restrictions in the terms of policies often reflect the court rules that govern the pursuit of a claim.

Successive and significant cuts to Ministry of Justice budgets over recent years, coupled with rising court costs and the challenges facing other sources of legal advice and support, mean that LEI is one of the most important means of providing citizens with access to justice in the UK.

The widening justice gap

In a perfect world, access to the justice system would be available to all, both in terms of cost and ease to use. Unfortunately, this does not reflect reality, with cost and understanding of the system both restricting access to the consumer.

Between the start of the period of austerity following the financial crisis in 2008 and the onset of the pandemic in 2020, legislation and severely reduced budgets have made it increasingly difficult for normal citizens to assert their legal rights and, if necessary, fund legal action.

While legal aid survives for a very small minority, the 2012 Legal Aid, Sentencing and Punishment of Offenders Act (LASPO), subsequent cuts to budgets and frozen legal aid fees have severely reduced the number of firms and solicitors available to take on this type of work.

A review published by the Law Society in 2021 showed that the number of civil legal aid providers starting work had almost halved over the previous decade, with the number of new matters started dropping from close to a million in 2009 to just over 100,000.¹

At the same time, the national network of law centres and other not-for-profit services, through which people can get legal advice on almost any issue, halved between 2013/14 and 2019/2020, as budgets were slashed by more than 40 per cent, forcing many to close.²

It is no coincidence that the UK has slipped down the rankings in the global Rule of Law Index published by the World Justice Project.³ The category in which the UK scores lowest, and by some margin, is the 'Accessibility and Affordability of Civil Justice'.

Countries Scored By Civil Justice



¹ <https://www.lawsociety.org.uk/topics/research/civil-sustainability-review>

² <https://www.theguardian.com/law/2019/jul/15/legal-advice-centres-in-england-and-wales-halved-since-2013-14>

³ <https://worldjusticeproject.org/rule-of-law-index/global/2022/United%20Kingdom/Civil%20Justice/historical>

LEI cross-examined - breadth of cover

One criticism occasionally levelled at legal protection policies is that they do not provide representation for every legal problem that an individual might encounter. Immigration, family law and housing welfare are some of the issues for which insurance has yet to find a solution.

While they may not be insured against the costs of representation, LEI policyholders do typically have access to a 24/7 legal advice helpline and online legal document services on most legal matters under UK law. This provides the policyholder with the benefit of professional support and direction in dealing with legal issues even if, ultimately, the policy won't provide representation in a court process.

It seems harsh to disregard the huge benefit that policies do provide because they don't offer a solution to every legal scenario, many of which were once covered by legal aid. Extending the breadth of cover into areas once covered by legal aid brings challenges around maintaining a price point for the product which is attractive for most UK households.

The highly competitive market for ancillary insurance products like LEI means they are being continually refined to offer the widest, most relevant protection at a price that remains attractive enough to ensure widespread take-up.

The insurance model for providing access to justice

While LEI operates in the same imperfect world as other mechanisms that provide people and small businesses with affordable access to justice, unlike most others, its use is increasing.

However, the insurance model does have its limitations, the most obvious of which is that families and small to medium-sized enterprises (SMEs) must purchase a policy to benefit from protection. The UK legal expenses market is slightly unusual in that most policies are purchased as an 'add-on' to a personal policy (such as a car or home insurance policy) or in a commercial 'package' or combined policy designed for SMEs.

This add-on model does have limitations, notably that those with limited resources or who do not have occasion to buy a household policy are less likely to have access to the benefits of LEI. This is another reason that cover for housing welfare and immigration claims is not included in these policies.

In the past, many of the issues faced by people who are less likely to purchase LEI might have been eligible for legal aid, but the withdrawal and failure of the legal aid system is an argument in favour of LEI, not against it.

What policies do provide is extensive cover on issues that are fundamental to the average UK household. This has been highlighted during the pandemic, when LEI providers saw increases in employment law enquiries, landlord and tenant issues, property and contract disputes. LEI policies also generally provide cover for the whole family, providing additional peace of mind.

While the insurance model will never serve all of the legal needs of all of the people, it provides much more affordable access to justice to a much wider portion of the population than any other mechanism, both here in the UK and in many other countries.



LEI cross-examined - prospects of success

Almost all LEI policies include a 'prospects of success' clause that requires a case to maintain reasonable prospects of succeeding in court for the costs to be indemnified under the policy.

This can sometimes be contentious, with policyholders occasionally suggesting that insurers use the clause to avoid paying claims. But most providers call upon an independent law firm to assess the prospects as well as having a rigorous appeal process, allowing for a second legal opinion on claims that are declined.

The prospects of success clause is fundamental to LEI for two reasons: First, it is wholly in line with Civil Justice Rules that the courts should be reserved

for actions with merit and not to entertain frivolous, vexatious or hopeless litigation. The prospects of success clause merely reflects the requirement for any legal action to be reasonable, proportionate and have realistic prospects of success.

Second, by saving costs for cases with realistic chances of success, the prospects clause keeps premiums at an affordable level. Without it, premiums would be several times higher and legal protection would no longer be a widely adopted route to accessing justice.

It is good management of the LEI policyholder to assess at the outset the risks of pursuing legal action and the likelihood of success.

The widest and most regulated route into the civil justice system

It is widely acknowledged that legal consumers face significant hurdles in finding legal advice and representation. Common challenges include: failing to understand whether an issue is even a legal problem; knowing where to go for legal advice; and understanding the quality of the service they are purchasing.

The advice and representation offered by an LEI product provides clarity and overcomes these hurdles.

Legal advice helplines are highly efficient systems, not only for identifying and explaining a legal need, but also for directing consumers towards more appropriate sources of help and support where their need is not a legal one.

Legal protection providers also fulfil a valuable function in ensuring that consumers receive a high quality of service.

Thorough vetting processes coupled with strict service level

agreements ensure that the specialist law firms used by LEI providers satisfy the regulatory requirements of the Solicitors Regulation Authority (SRA) and understand the Financial Conduct Authority (FCA)'s value measures of the product. They will usually require them to demonstrate a customer-focused service that can be delivered across multiple channels and is accessible to all consumers, including the most vulnerable.

The due diligence undertaken on law firms by LEI providers will typically encompass financial, compliance, environmental, security, personnel, service and complaint data. Law firms are subject to regular audit, sometimes on a quarterly basis, and how they are managed by LEI providers is subject to industry requirements.

LEI gives consumers confidence in accessing the civil justice system, directing them to the appropriate sources of support and, where necessary, providing the services of a thoroughly vetted, strongly regulated and customer-focused solicitor.



LEI cross-examined - panel law firms

Another issue that is often misunderstood and occasionally misrepresented is the choice of legal services suppliers used by LEI providers.

Policyholders, it is sometimes argued, should have the freedom to choose the lawyer appointed to handle their claim. But using panel firms enables providers to exercise careful control over both quality and costs and is little different, in principle, to the way in which legal aid still works.

An LEI policyholder's right to choose a solicitor to represent them does apply in certain circumstances that have been established in law, but the relative costs of such claims show that premiums would have

to be many times higher and legal protection would no longer be affordable and widely taken-up.

Few consumers have the knowledge or experience to find and assess the qualities of a firm suited to the specific needs of their case. LEI providers use firms with experience in the areas of law covered by the policy. They continually audit files and monitor performance to ensure that quality of service is maintained.

Panel law firms also work on carefully agreed terms, maintaining the affordability of legal expenses products and ensuring that larger claims are much less likely to reach a policy's limit of indemnity.

The Financial Ombudsman Service

In addition to regulation by the FCA and their supplier firms being themselves regulated by the SRA, LEI providers are subject to the Financial Ombudsman Service (FOS) complaint process.

As well as providing another level of assurance and potential means of redress for consumers, FOS complaint data offers a further insight into overall customer satisfaction with LEI policies.

In comparison with other forms of insurance, the number of complaints received by the FOS in relation to the number of policies is very low and the percentage upheld by the FOS falls well below the average for insurance products.⁴

More than just insurance - the wider benefits of LEI

For what is typically a very small premium, legal expenses policies offer a wide range of additional benefits that would present exceptional value even without the insurance against legal costs:

- **Legal and tax advice helplines** - the legal advice helplines originally provided as an additional perk to policyholders have become a central benefit of legal protection that could easily justify the cost of the policy alone.

Every year, legal helplines answer hundreds of thousands of calls, providing advice on any legal issue facing a policyholder. Helplines often offer advice on tax matters too, giving users a reliable and valuable source of support that might otherwise cost them hundreds of pounds.

- **Digital legal services** - legal expenses providers were early adopters of online legal tools, and have been well ahead of both law firms and government in sharing the benefits of digital legal services.

Today, thousands of policyholders draft legal letters, create complex wills and solve a wide array of straightforward legal problems with the increasingly sophisticated tools to which their legal expenses policies provide access.

Digital legal services also serve a preventative benefit, keeping matters out of the courts. Tools can help policyholders to avoid legal problems by encouraging them to make a will, draft employment policies, pursue debts and even create powers of attorney using an online document drafting service.

- **Signposting to other resources** - legal advice helplines serve a highly beneficial function in directing policyholders to appropriate sources of legal support or to trade organisations or watchdogs that may be able to help them resolve their issue.

It may be that the costs of a legal claim that are not covered by the policy could be eligible for legal aid or suited to after-the-event insurance. There may be other resources available or avenues of specialist support or advice.

- **Counselling services** - among the various telephone advice services that LEI providers offer, a confidential counselling helpline is one of the most common. It enables policyholders to talk to a professional counsellor about anything from stress at work and family problems to addiction or bereavement.

Every year, thousands of callers get access to counselling and, sometimes, referral on to specialist support organisations because their employer or homeowner took out a legal protection policy.

- **Filtering unwarranted legal cases** - sometimes, a policyholder simply does not have a valid or realistic claim under UK law. In such cases, legal expenses providers fulfil a very valuable function in explaining this to potential claimants, and the reasons why.

It is better for all parties, and for the justice system as a whole, that would-be litigants have their legal options explained by a trusted authority as early in any legal process as possible.

⁴ <https://www.financial-ombudsman.org.uk/data-insight/annual-complaints-data/annual-complaints-data-insight-2021-22>

Conclusions

LEI was not designed to provide universal access to civil justice for everyone in society and is never likely to achieve this.

In a far from perfect justice system, however, LEI provides a large proportion of the population with extensive protection from the costs of asserting the legal rights they are most likely to find themselves needing to enforce.

The value that it offers extends well beyond simple indemnity against the costs of common legal disputes and far outstrips the very modest premiums that consumers choose to pay. Access to digital legal tools or a single legal advice call might easily cost more than the annual premium.

Operating in a commercial environment that is both highly regulated and fiercely competitive ensures that LEI providers maintain high levels of service while continually developing products to offer wider cover and broader benefits at premiums that will appeal to more and more customers.

While the insurance model that has enabled widespread proliferation may limit its ability to reach everyone in society, especially those from whom other sources of legal

support have been withdrawn, it makes legal protection a highly affordable means to access justice where real alternatives rarely exist.

On a wider level, LEI benefits the justice system and society as a whole.

By managing consumer expectations of their legal options, directing them to alternative resources where no legal remedy may exist and providing them with advice and representation as soon as a legal need may arise, LEI providers help preserve precious judicial resources for where they are needed most.

The very widespread take-up of LEI also helps democratise legal services and keep power in check. Larger companies are less likely to ignore their contractual obligations and unscrupulous employers are less likely to abuse workers' rights, knowing that many will have access to legal advice and support.

LEI provides more people with affordable access to justice than any other mechanism in our society.

About ACSO

The Association of Consumer Support Organisations (www.acso.org.uk) was established as a not-for-profit membership body in 2019 to represent the interests of consumers in the UK's civil justice systems.

ACSO consists of around 90 member organisations with a combined turnover of more than £1.1bn. They are all highly reputable and trusted organisations who are united in providing excellent standards of service and include legal expenses insurance providers and distributors, law firms, barristers' chambers, rehabilitation and medical reporting specialists, charities and other trade and membership bodies.

ACSO's mission is to engage positively with policymakers, regulators, the wider legal services and insurance sector and the trade and national media to ensure there is a properly functioning, competitive and sustainable civil justice system. By doing this it helps ensure there is a greater balance in the public policy debate and therefore better consumer outcomes.