

# Quality in Legal Services

November 2010

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# 1 Summary

## The Panel's findings

- 1.1. Quality issues go to the very purpose of why legal services are regulated in the public interest. Consumers use lawyers at critical life moments and when they feel at their most vulnerable; the advice they receive in these situations can have major financial and personal consequences.
- 1.2. Quality in legal services means combining up-to-date legal knowledge and skills with good client care to deliver advice in a way that is useful. Whilst some aspects of good service are visible, consumers lack the expertise to judge technical matters and so focus on client care. They assume that legal advisors are competent and that someone is making sure standards are being maintained.
- 1.3. These assumptions do not always match the reality. The reach of regulation is not as universal as consumers think. Consumers expect lawyers' work to be subject to more active ongoing monitoring than is the case and show a preference for tougher measures such as 'regular MOTs' for lawyers than exist. In reality, regulators mostly react to allegations of poor quality advice, rather than test this for themselves. Indeed, there is scant evidence on the technical quality of legal advice, although research casts doubts over whether quality standards are as good as is assumed.

- 1.4. It is therefore no surprise that consumers do not use or want quality marks in legal services, despite the proliferation of logos making claims of quality. Nevertheless, some quality marks benefit consumers indirectly, as they are used by bulk purchasers and intermediaries who filter the market on their behalf.

## An agenda for quality

- 1.5. The Panel's research suggests that quality factors are not strongly influencing consumers' choice of lawyer and that consumers wrongly assume that legal services are risk-free. This presents two major policy challenges for policy makers:
  - Finding new ways to engage consumers so that they take a more active role in demanding quality standards that are appropriate for their needs and use lawyers aware of the possible risks.
  - Employing regulation to ensure that legal advisors are properly trained and deliver competent legal advice.
- 1.6. The Panel has identified five areas for action:
  - *Transparency* – Regulators should provide complaints and other data which signify quality and improve the accessibility of available information. They should help inform choice, for example by encouraging the

development of credible comparison websites.

- *Credible quality assurance mechanisms* – Regulators should identify and spread good practice in scheme design. Where necessary, they should proactively ensure the credibility of schemes, for instance by encouraging scheme operators to seek approval from recognised bodies, and explore their own accreditation role. Consumer bodies have a role to identify weak schemes.
- *Unregulated legal services* – Regulators should work towards a simpler regulatory landscape to meet consumer expectations. The feasibility of a single regulatory badge should be explored to help consumers distinguish between regulated and unregulated providers. Messages should be carefully designed to alert consumers that using lawyers is not risk-free, but without deterring people from seeking legal advice.
- *Ensuring ongoing competence* – Regulators should check the technical quality of advice, not just processes. CPD systems need to be strengthened. The entry requirements for lawyers do not provide a lifetime guarantee of quality, as has been accepted in other professions. There is a strong case for introducing more stringent mechanisms, including periodic reaccreditation in some practice areas.
- *Meaningful specialisation* - The benefits and risks of specialisation need to be better understood. Minimum requirements as a condition of practice should be introduced where it is necessary to demonstrate particular knowledge, skill or experience to provide competent advice – this is already happening in parts of the profession.

## Recommendations

The Panel's advice to the LSB is as follows:

- The quality of legal advice needs to be better understood and actively monitored. This should involve academic research and build on existing good practice techniques such as file review and peer review.
- Approved Regulators should harness consumer power to exert reputational pressure on lawyers to maintain quality standards. They should publish, in an accessible form, appropriate information about the quality of legal advice.
- Quality schemes must be robust and deliver what they promise. The LSB should ask the Legal Services Consumer Panel to identify the characteristics of robust quality schemes and measure existing schemes against these criteria.
- Consumers need to be able to distinguish between regulated and unregulated lawyers. The LSB should examine how best to achieve this as part of its work on reserved legal activities including the feasibility of a single regulatory badge.
- Continuing professional development requirements need strengthening – the LSB should review these arrangements across the sector as soon as possible.
- The LSB should lead a debate on more far reaching ways of ensuring competence across the sector, including licensing by activity and periodic reaccreditation. This should take lessons from other sectors that have faced similar issues.

# 2 Introduction

## The role of quality in legal services

- 2.1. The Panel's vision for legal services includes consumers having access to high quality legal services delivered by a competent workforce. Consumers use legal services rarely, but at times of great importance in their personal and working lives – such as buying a home, dealing with bereavement, fighting unfair dismissal or defending allegations of criminal behaviour. Often these are occasions when even the most confident of us are at our most vulnerable. High quality legal advice is crucial to achieving positive outcomes in these circumstances, whilst poor quality legal advice can cause substantial consumer detriment.
- 2.2. Quality in legal services is multi-faceted. The Legal Services Institute has identified three dimensions of quality, which we consider appropriate:
  - Technical competence;
  - Good client care; and
  - Utility – legal advice, wrapped in good service, in a way that is useful. It must relate usefully to a client's personal circumstances, and help them to make a decision and move forward<sup>1</sup>.
- 2.3. It is likely that consumers and legal professionals emphasise different aspects of quality: consumers focus more on service delivery than technical aspects of

the advice, whilst professionals emphasise technical ability over client care. However, both dimensions are core to the 'consumer interest'.

## Is there a quality problem to fix?

- 2.4. Some stakeholders have questioned the need for this project, on the grounds of lack of evidence of quality problems. It is important to address this issue.
- 2.5. It is true that complaint volumes are low compared to the volume of transactions and that legal services generally perform well in consumer satisfaction surveys. However, consumers can only judge what they know. They lack the expertise to assess the technical quality of advice. So even if consumers appear satisfied with their legal advisor, this does not necessarily mean the legal advice is correct. Moreover, although eventual outcomes are often visible, this may be misleading – a conveyance may be quick because the lawyer did not look carefully enough to spot a planning issue.
- 2.6. What is striking is the extent to which the technical quality of advice is unknown. Front-line regulatory bodies do little active monitoring of quality, relying mainly on allegations of poor quality before intervening. Some information that would identify quality shortcomings is withheld – for example, insurers do not disclose details of negligence payouts.

- 2.7. When quality has been examined by researchers, some serious problems were discovered. This has been mainly in publicly funded work, such as a pilot study for a quality assurance scheme for criminal advocates and a study comparing specialists and non-specialists<sup>2</sup>. Data published by the Solicitors Regulation Authority (SRA) revealed it received 1,577 allegations about ‘legal competence’ between October 2009 and September 2010<sup>3</sup>. Reservations have also been expressed about the whether the training of lawyers is suitable preparation for the modern legal services market<sup>4</sup>.
- 2.8. The ability of lawyers to maintain quality will come under pressure as greater competition exerts downward pressure on prices in the private sector, while cuts in legal aid will have a similar impact on publicly funded work. In this context, the role of regulatory bodies to maintain appropriate quality standards is more important than ever. They must be satisfied that the training of lawyers and systems to ensure ongoing competence are fit for purpose and that the quality of advice is not compromised by commercial pressures.

### The quality assurance landscape

- 2.9. The problems that consumers face in assessing quality are recognised by both lawyers and their regulators. The quality assurance landscape is portrayed in the Annex.
- 2.10. In legal services, where consumers are infrequent purchasers and struggle to assess quality, sometimes even after the service has been delivered, good lawyers have an interest in indicating to consumers how they differ from poor quality lawyers. Developing a reputation for good quality enables lawyers to attract clients despite charging higher prices than rivals with lower prices but poorer quality service. This explains the emergence of self-regulatory quality schemes in areas such as personal injury and conveyancing.
- 2.11. Whilst efforts on the part of lawyers to build a reputation for good quality are welcome, market solutions may be insufficient and can have harmful effects. There are trust issues to overcome and coverage of the market may be limited. Furthermore, lawyers may ‘gold-plate’ standards, with consumers using higher quality services, and paying higher prices, than necessary.
- 2.12. Regulators are the ultimate guarantors of standards. They seek to assure quality in a variety of ways, from setting entry criteria to striking off individuals. In between these extremes, the regulators may develop *quality assurance mechanisms*. Some of these may be visible to consumers and influence their choice of lawyer, whilst others are invisible ‘guarantees of quality’. In addition, regulators may give *information* about the quality of lawyers to consumers derived from regulatory activity, such as by publishing disciplinary action.
- 2.13. The challenge for regulators is to deploy the right combination of measures to ensure that competent advice is delivered in ways that secure positive outcomes for clients in each area of law. This includes defining minimum standards in recognition that consumers cannot assess quality for themselves and by implementing systems to ensure such standards are maintained. However, regulators should not set standards higher than are necessary, as



this could increase prices or narrow choice by creating barriers to entry. Above this quality floor, regulators should facilitate competition so that providers have an incentive to deliver high quality service at value for money prices. This should ensure consumers are protected from poor quality advice, whilst being able to choose a level of service appropriate for their needs.

### About this project

2.14. The Legal Services Board (LSB) requested the Consumer Panel's advice on consumer perspectives on quality in legal services, including:

- the way consumers perceive and judge the quality of legal services, both before and after the event;
- consumer perspectives of the validity and utility of existing or potential quality marks; and
- how consumers think quality assurance should relate to regulation.

2.15. To examine these questions, the Panel has drawn on:

- new qualitative consumer research undertaken by Vanilla Research, which involved 10 focus groups with consumers across England and Wales (this independent report is published separately on our website – a summary of the findings is on pages 8-9);
- discussions with professional bodies, regulators and membership bodies which run accreditation schemes for legal services providers; and
- a review of literature, consumer research and surveys.

### Structure of report

2.16. The report is in two parts:

- Chapter 3 examines consumers' perceptions of quality and their use of quality signals in selecting lawyers, and draws out the policy implications;
- Chapter 4 takes this analysis forward to set out an agenda for future work.



# 3 Ensuring quality in legal services

## Quality and consumer choice

*“We put ourselves in their hands and because they’re qualified...and they’re professionals, we just hope and presume that they’re going to give us the right information and do the job for us”*

ABC1, 35-54

- 3.1. A striking finding of the Panel’s research is the sheer range of assumptions that consumers make about the quality of legal services. Consumers assume that all lawyers are competent, they fail to investigate claims of specialisation and they have inflated expectations about the amount and nature of checking performed by regulators. Asked what they wanted from a lawyer, consumers’ overriding focus was on good service, rather than the technical quality of the advice.
- 3.2. This suggests that the search for quality is not strongly influencing consumers’ choice of lawyer. This is bad for competition as it means that good quality firms are not differentiating themselves from poorer quality rivals. This could lead to an excessive focus on reducing price to a level where quality is compromised or produce higher prices as lawyers provide higher standards of quality than are needed to deliver positive outcomes for clients.
- 3.3. Other research has shown that few consumers shop around for legal services. In one survey, 77% of adults who used lawyers in the last 5 years said they did not shop around – either because they did not want or need to. Instead, the most common way of finding a lawyer is via recommendation from friends, family and colleagues or businesses, such as banks, estate agents and insurers<sup>5</sup>.
- 3.4. Partly, this is because the law was seen as absolute, or black and white, so the scope for one lawyer being better than another was small, unlike other parts of the economy such as the building trades. Legal services were seen as standard products where quality and price do not vary much between providers. A feeling of powerlessness is likely to be another contributory factor. In 2009, 68% of consumers said they had little or no knowledge of what lawyers do<sup>6</sup> and over 80% agreed with the statement *‘most people wouldn’t know how to tell a good provider of legal services from a bad one’*<sup>7</sup>.
- 3.5. Brand, which acts as a proxy for quality in other markets, is not a strong feature in legal services. Research shows that more

## Summary of consumer research

Vanilla Research conducted ten group discussions across England and Wales with people who had personal experience of using legal services within the past two years or who were likely to use them in the next twelve months.

### Consumers felt unable to judge the quality of legal services for themselves

Consumers felt largely unable to judge quality, because: using a solicitor is a relatively rare event; they feel the legal world is above their heads; the nature of legal services is that their value is often in the long-term rather than short-term; there is minimal public or regulatory information; and consumers are relatively inactive in comparing different firms' offers.

In light of these difficulties in making informed choices, consumers invariably preferred to fall back on personal recommendations or, failing these, third party recommendations. Yet the value of recommendations was limited in two ways: they were less readily available for younger consumers; and the recommendations themselves were often based on limited personal experience or information. As a result, even personal recommendations often resulted in poor quality experiences.

### Consumers focused on service standards not the standard of advice

When asked to define good quality, participants emphasised customer service, rather than the technical quality of the advice. They identified six characteristics of 'good quality' service (which varied little across demographic characteristics or experience):

- Empathy – treating the consumers as individuals, not just another file, understanding their situation and relating to it
- Efficient processes – ensuring things progress smoothly and on time
- Achieving outcomes – completing a property conveyance on time, delivering a will or achieving the desired outcome in a divorce
- Clarity and de-mystification – unravelling the legal world with clear explanations (no jargon), signposting of what should happen and when, and guidance on charges
- Proactive use of legal knowledge – explicitly suggesting alternative options, tailoring advice to individual circumstances or challenging a client's assumptions
- Professional presentation – both personally in terms of dress and appearance, but also the physical office environment

Technical knowledge, while one of the six key issues, was mentioned less frequently than the others, and was less top of mind when consumers thought about what defined good quality legal services. Even when it was mentioned, it was often in the context of how solicitors leveraged it (in terms of asking clients questions or offering options) rather than the extent of legal knowledge in the first place.

## Summary of consumer research cont...

### All solicitors were assumed to be technically competent

Consumers generally assumed that all lawyers have an acceptable level of legal knowledge, and have all passed sufficient qualifications. There is a common belief that the law is relatively black and white (at least in terms of wills and conveyancing, though less so with divorce/separation), and that, since all lawyers work from the same legal framework, the quality of advice will not vary significantly across firms.

There is an assumption that almost all solicitors are basically competent, and that quality levels across the sector vary less than they do for instance with builders or restaurants. The belief is that since all solicitors have to pass exams to practice, this goes hand-in-hand with basic competence in giving legal advice.

This view shaped attitudes to non legally-qualified people such as divorce advisors or will-writing services. The underlying opinion was that using such advisors was acceptable in simple circumstances (such as an amicable divorce with no assets or children), but that any possible complexity or acrimony would require a solicitor, in order to offer the reassurance that the advice was watertight.

At the other end of the quality scale, it was apparent that while a number of consumers looked for specialist solicitors (especially in terms of divorce or separation), the definition of specialist was arguably weak, and was ascertained simply by asking solicitors, looking at firms' marketing materials, or going on the basis of a friend, relative or colleague's experience. As a result it was apparent that specialism was often defined more by whether firms *offered* a service than whether they truly *specialised* in it.

### Regulators were expected to ensure technical quality standards

Awareness of a legal services regulator was minimal – though most did 'assume' there was someone. Similarly, there was minimal, if any, knowledge of any quality marks for solicitors. The idea of a quality mark was initially seen to have appeal, but on reflection most consumers admitted that they would continue to put greater emphasis on personal recommendations or previous experience. In essence consumers were doing little themselves to try to judge technical quality, mainly because they did not feel they were able to. What they wanted was reassurance that their assumption (that all solicitors are technically competent) is correct.

Other quality assurance mechanisms that aimed to do this were seen to offer greater reassurance. Options such as regular competence checks (or MOTs), compulsory Continuous Professional Development, publication of regulatory information such as complaints data, or an ongoing exam structure for solicitors were all felt to have merit in ensuring quality standards – and it was commented that many were already common practice elsewhere. Of less clear-cut interest were consumer review websites or a Scores on the Doors approach (with consumers feeling a sliding scale of 5 stars might be too confusing than a binary 'competent or not'). Two approaches discussed were seen to be of limited, if any, interest – peer review suffered from a perception that it would work in solicitors' interests rather than consumers', and price comparison websites were felt to be less suited to helping quality assessments.

than 60% of the public cannot name a law firm<sup>8</sup>. This may change should well-known retail brands become ABS firms, while developments such as the Quality Solicitors network represent an attempt by traditional law firms to combine forces in an effort to build a trusted brand.

### Role of quality marks

- 3.6. Quality marks aim to help consumers to identify good lawyers, but there is minimal awareness of them and consumers neither use nor want them. This is not surprising: if people assume all lawyers are competent, why would they look for quality marks?
- 3.7. Experience in the wider economy provides insight into the challenges for legal services. Few quality marks have high consumer recognition; exceptions include the BSI Kitemark which is recognised by around 80% of adults<sup>9</sup>, the ABTA logo (69%)<sup>10</sup>, the Red Tractor logo (55%) and the Fairtrade mark (50%)<sup>11</sup>. Research shows that consumers often do not know what quality marks signify and that they mean very little as they are awarded by the producers, making them marketing tools, rather than genuine symbols of guarantee<sup>12</sup>.
- 3.8. A key lesson is that consumer concerns with quality schemes elsewhere in the economy impact on consumer reactions to quality marks in legal services. In the Panel's research, participants suggested that schemes could be 'manipulated' – resulting in poor quality firms still passing the test. Such concerns might be well founded. The Panel has not attempted to audit the robustness of legal quality assurance schemes, but there is wide variation in standards – for example in the

number of CPD hours, levels of checking, reaccreditation periods and sanctions.

- 3.9. If regulators wish to help consumers identify good quality lawyers, they must ensure that the quality signals are reliable. Quality schemes must be designed to benefit consumers, rather than to protect professionals from competition or to restrict entry into parts of the profession. This is challenging for voluntary schemes that depend on participation for their viability; they must balance setting entry standards that protect consumers with making the scheme attractive to prospective members. Similarly, expulsion of errant businesses could have implications for the financial health of the scheme operator.
- 3.10. A starting point would be to capture and disseminate good practice in the design of quality assurance schemes. Consumer bodies can help by shining a spotlight on their robustness. If necessary, regulators should take a proactive role to ensure the credibility of quality schemes. For example, they could encourage scheme operators to seek approval from recognised bodies such as standards organisations or the Office of Fair Trading (OFT) Consumer Codes Approval Scheme<sup>13</sup>. Another option is to establish a dedicated mechanism to accredit quality schemes that meets the specific needs of the legal services market.

### Consumers and risk

- 3.11. A worrying implication of the assumption that all lawyers are competent is that consumers think legal services are relatively risk-free. Regulation can never provide an absolute guarantee of quality. However, if consumers do not appreciate what can go wrong, they will not take

appropriate precautions, such as to ask basic questions of lawyers about their experience or regulatory protections.

3.12. A related misplaced assumption is that all legal services are regulated. Forthcoming research by the SRA finds that consumers expect all legal service providers to be appropriately skilled, qualified and regulated. So instead of qualification, distinctions between providers are made on such things as customer service and the quality of relationships<sup>14</sup>. The Panel's investigation into will writing is confronting a similar picture; research has found that a large majority of consumers think that anyone who charges to prepare a will must have qualifications and be regulated<sup>15</sup>.

3.13. The Panel's research suggests that consumers look for specialisation as a sign of quality, in that they expect an 'expert' or 'specialist' to be better, but they do not interrogate such claims. Consumers may ask 'do you do this?' but not 'can you demonstrate to me you can do this?' Specialisation implies expertise, experience and focus on a specific area of law. However, there is no rule around using the term 'specialist' – specialisms listed on websites or professional body 'find a lawyer' services are self-declared and not verified by regulators. Whilst there are voluntary schemes to which lawyers can belong to demonstrate their expertise, there is nothing to prevent others from claiming to be specialists. The reality of this risk is shown in the participation rates in accreditation schemes (see Annex). Consumers may be misled by claims of specialisation and pay inflated prices, or, worse, receive poor advice from

practitioners who only 'dabble' in an area of law or are inexperienced.

3.14. This has implications for the LSB's work on defining the boundaries of reserved activities. Few areas of legal advice are reserved to the traditional branches of the legal profession with the professional titles that consumers recognise as guaranteeing quality. This is confusing for consumers where legal advice can be offered by either regulated or unregulated firms, as is the case with will writing.

3.15. This suggests that consumers may benefit from a simpler regulatory landscape. In the interim, the Panel welcomes all legal activities conducted by regulated entities falling within regulatory scope, whether or not these are reserved activities (for example, all legal advice provided by solicitors is regulated by the SRA).

3.16. However, a simpler regulatory landscape would not remove the need for regulators to alert consumers to the risks and encourage them to shop around and ask some basic questions. The challenge lies in educating consumers that not all legal services are regulated and that advice contains the potential for error, but without undermining confidence in professional standards to the extent that it deters consumers from seeking legal help.

3.17. Part of the solution is improving awareness that things can go wrong. Signposting complaints arrangements, and publication of complaints and disciplinary data, can help alert consumers.

3.18. A more radical option is to develop a single overarching regulatory badge. This would indicate that a firm's legal services are subject to regulation, in the same way that



all solicitor firms need to state they are regulated by the SRA. Whilst being regulated offers no absolute guarantee of quality, it does provide redress if quality is deficient. A number of challenges would face such an initiative, including the lack of consumer usage of quality marks generally. However, one badge arguably has more likelihood of gaining consumer recognition than multiple badges.

### Engaging consumers in new ways

- 3.19. The limited role that consumers perform in driving quality standards does not mean that legal regulators should give up on consumers using their purchasing power for this purpose. Instead, regulators must find new ways to engage consumers so that they can take a more active role.
- 3.20. If regulators want to harness consumer power to ensure quality, they should provide the necessary tools. Information about the quality of legal advice, whether complaints data, customer reviews or success rates would help inform choice, challenge assumptions about competence, and warn consumers that legal services are not risk-free. In the Panel's research, there was an appetite for information from regulators, with strong support for complaints and other regulatory data.
- 3.21. In healthcare, consumer behaviour changed in response to information about the quality of care. Publications such as Dr Foster<sup>16</sup>, hospital ratings from the former Healthcare Commission<sup>17</sup> and consumer feedback through NHS Choices, all empowered consumers to ask questions about the quality of medical advice.

3.22. Publishing complaints data could be effective because it recognises both the economic importance to lawyers of having a good reputation and the role of peer pressure in acting as a self-disciplining restraint. The Legal Ombudsman is consulting on how it should publish complaints data<sup>18</sup>. The Panel will strongly encourage publication in a way that is fair and meaningful, and in a form that can be used by consumers and intermediaries.

3.23. Such information must be easily accessible otherwise its effectiveness will be diluted. Whilst the approved regulators publish details of their enforcement action, it is much easier to find this information on some websites than others.

3.24. In addition to publishing information, regulators should facilitate other quality signals, such as customer reviews on price comparison websites. However, such legal sites are yet to take off and have faced criticisms in other sectors for lack of coverage and bias. The Panel supports the development of credible comparison sites and will return to this in 2011-12.

### Harnessing the use of quality signals by other purchasers of legal services

3.25. Other types of users, such as bulk purchasers and consumer intermediaries, and corporate clients, such as banks and insurers, do use quality schemes. This is important because they account for large volumes of transactions and thus their behaviour indirectly benefits individual clients by filtering the market. The use of such schemes by large corporate clients is illustrated in the Law Society's recent decision to establish a conveyancing panel to *'ensure that firms of all sizes and types*

*will be able to demonstrate the quality of the work they do to lenders [and] insurers*<sup>19</sup>.

- 3.26. Government can contribute to the quality of legal services through its own purchasing. For example, legal aid providers must obtain the LSC quality accreditation or another ‘recognised’ accreditation, such as Lexcel practice management or Law Society panel membership. Similarly, when courts appoint solicitors for children, they use accreditation schemes to identify specialists.

### The role of regulators

- 3.27. Harnessing consumer power to maintain quality can only go so far. Complaints data will not inform consumers about the technical quality of advice. Consumer assumptions about lawyers’ competence are deeply rooted. This, combined with consumers’ inability to assess quality and the serious detriment that poor quality work can produce, places the primary responsibility on regulators to set minimum standards and ensure these are maintained over the lawyer’s career.
- 3.28. Implicit in consumer assumptions of competence is the notion that a body exists to monitor or regulate lawyers even though people do not know who it is, or what it does. The assumption that someone else is responsible for checking quality is shared across the professions. A significant proportion of consumers expect responsibility for quality assurance to lie with government and public institutions, rather than with themselves<sup>20</sup>.
- 3.29. Regulatory activity focuses on entry requirements and disciplinary processes.

Unless an issue arises, there are few proactive checks to ensure that professionals remain competent. Quality checking mechanisms, such as peer review and Chambers’ Monitoring, focus on process rather than the substance of advice. The SRA’s intention to develop mystery shopping is a welcome exception.

- 3.30. The nature of regulatory activity is out-of-step with what the public expects. Participants in the Panel’s research expected competence to be continually monitored. When given a list of options for ensuring quality, they strongly preferred ‘harder’ regulator-led mechanisms such as regular competence reviews or exams. Regulators have a range of tools and must use their expertise to choose what works in each situation. In order to maintain public confidence, these choices must reflect consumer expectations.

### Ensuring ongoing competence

- 3.31. The main mechanism to ensure ongoing competence is compulsory CPD. However, the existing CPD requirements need to be strengthened. Most CPD requirements are self-certified and not linked to external appraisal. They are very broad meaning that almost any area of law and any type of activity can be included, irrespective of whether it is related to areas of practice or where improvement is needed. Anecdotal reports suggest deficiencies, including little structured planning of CPD and it being rushed at the end of each year. Strengthening the requirements so they match practice areas would force professionals to demonstrate how CPD would benefit clients.



- 3.32. Some voluntary accreditation systems involve more stringent requirements. For example, the Association of Personal Injury Lawyers (APIL) requires its accredited members to undertake 16 hours of personal injury CPD, while Resolution requires 4 hours of family law, with accredited members needing to undertake 8 hours. However, such schemes are voluntary, so do not apply to everyone.
- 3.33. Beyond CPD, regulators can introduce 'harder' measures, such as peer review. Whilst participants in the Panel's research were sceptical about this, its use in publicly funded legal work has identified quality issues. Although resource intensive and difficult to get right, it could be applied outside publicly funded work.
- 3.34. The Panel is sceptical that a lawyer's initial education and training offer a career-long guarantee of competence. There can be substantive law changes and a person's skills can deteriorate. Indeed, research for the SRA suggests that more experienced solicitors are disproportionately more likely to face regulatory action<sup>21</sup>. Periodic revalidation – a review of permission to practice after a fixed time – is being introduced for doctors. In this sector, surveys showed the majority of people expected health professionals to be re-assessed on a regular basis to verify their competence, and wrongly believed this occurred<sup>22</sup>. This was a popular option in the Panel's research; participants expected lawyers to undergo 'a regular MOT'.
- 3.35. Reaccreditation could include regulatory checks such as file review or periodic exams. In theory this could apply to the whole practising certificate, but would have more value linked to specific practice areas

where the quality risks are highest. Such mechanisms already feature in some voluntary schemes while five-yearly reaccreditation is proposed for criminal advocates under the Quality Assurance for Advocates scheme.

### Making specialisation meaningful

- 3.36. Legal services are changing, with firms specialising in particular areas of law emerging alongside traditional law firms offering the full range of services.
- 3.37. The professional title of solicitor gives a general permission to practise in any area of law. The Panel considers there is a case for additional qualification requirements in practice areas where it is necessary to demonstrate knowledge, skill or experience as a pre-requisite to provide competent advice. This is already a feature in some areas; Quality Assurance for Advocates will be mandatory for anyone wishing to undertake criminal advocacy work and may expand into other areas. ILEX and the Council for Licensed Conveyancers operate a system of licensing by activity, whilst the SRA has floated the idea in its consultation on outcomes-focused regulation.
- 3.38. Research into publicly funded legal services found that advice provided by non-specialists was significantly worse than from those accredited in the area concerned<sup>23</sup>. However, specialists are not needed in all practice areas, especially in transactional work such as conveyancing where much of the process is carried out by paralegals (under supervision). Unnecessary requirements could act as barriers to entry and inhibit competition, increasing costs for consumers. Moreover,

too much specialisation might narrow the expertise of legal advisors, meaning they fail to recognise the full range of client issues and fail to provide holistic advice<sup>24</sup>.

3.39. Professor Richard Moorhead argues that specialisation is used as marketing rather than a regulatory tool. Regulators accept the general professional qualification as sufficient to guarantee competence across the range of legal services whilst seeking to accommodate the claims of specialists without granting them exclusive control of work. However, specialist accreditation is granted to anyone who demonstrates basic levels of experience, rather than higher levels of competence. Moorhead concludes the existing approach to specialist accreditation denies market protection to the competent, whilst simultaneously protecting the incompetent – a position that he regards as incoherent and contrary to the public interest<sup>25</sup>. The Panel agrees.

3.40. This is a difficult balance to get right. Regulators must ensure appropriate quality in each area of law and recognise that some degree of failure is inevitable, yet also be wary of granting monopolies or prescribing quality standards that are disproportionate to the risks. Regulatory interventions should proceed on a case-by-case rather than a blanket basis. Furthermore, as noted above, claims of specialism should be meaningful so they can properly inform choice.

3.41. Finally, the Panel recognises that these issues have implications for the education and training of lawyers. However, such issues are beyond the scope of the advice requested by the LSB.

# 4 A future agenda for quality assurance

## An agenda for quality

- 4.1. Good quality legal advice requires up-to-date legal knowledge and skills together with good client care delivered in a way that is useful. Ensuring that consumers receive advice of an appropriate standard should be one of the top priorities for the regulation of lawyers as it impacts on the personal and financial well-being of those who turn to lawyers when they are at their most vulnerable.
- 4.2. The preceding chapter summarised new research on how consumers choose good quality legal services and the challenges and implications this raises for regulators. In this chapter, the Panel distils that analysis to identify how such issues could be addressed.
- 4.3. Our analysis has identified two challenges for regulators:
  - Finding new ways to engage consumers so that they take a more active role in demanding quality standards appropriate for their needs and that they use lawyers aware of the potential risks;
  - Employing regulation to ensure that legal advisors are properly trained and deliver competent legal advice.
- 4.4. In order to meet these challenges, action needs to focus on five areas:
  - 1. Improving transparency**
    - 4.5. Quality is not strongly influencing consumer choice. Information about the performance of lawyers that could counterbalance consumers' inability to assess quality is withheld by regulators. This limits competition and reinforces assumptions about quality and regulation, blinding consumers to the risks.
    - 4.6. Regulators should provide complaints and other data which signify quality and improve the accessibility of available information. They should help inform choice, for example by encouraging the development of credible comparison websites.
  - 2. Credible quality mechanisms**
    - 4.7. There is a proliferation of quality marks but the standards behind them vary widely. Quality marks are little used by individual clients, although their use by large purchasers filters the market. Such

schemes must be demonstrably robust in order to overcome issues of distrust that have blunted their impact in the wider economy.

- 4.8. Regulators should identify and spread good practice in scheme design. Where necessary, they should proactively ensure the credibility of schemes, for instance by encouraging scheme operators to seek approval from recognised bodies, and explore their own accreditation role. Consumer bodies have a role to identify weak schemes.

### 3. Unregulated legal services

- 4.9. Assessing quality is made harder for consumers by their confusion over what is regulated and a regulatory landscape that fails to make clear what protections apply to different providers. Consumers look for specialists, but an absence of rules means that claims of specialisation are meaningless.
- 4.10. Regulators should work towards a simpler regulatory landscape to meet consumer expectations. The feasibility of a single regulatory badge should be explored to help consumers distinguish between regulated and unregulated providers. Messages should be carefully designed to alert consumers that using lawyers is not risk-free, but without deterring people from seeking legal advice.

### 4. Ensuring the ongoing competence of regulated providers

- 4.11. Little checking of the technical quality of work, and light-touch requirements for lawyers to demonstrate ongoing competence, suggest that regulators as well as consumers are making heroic

assumptions about quality. The CPD regime suffers from a range of deficiencies; in particular it is insufficiently linked to practice areas.

- 4.12. Regulators should check the technical quality of advice, not just processes. CPD systems need to be strengthened. The entry requirements for lawyers do not provide a lifetime guarantee of quality, as has been accepted in other professions. There is a strong case for introducing more stringent mechanisms, including periodic reaccreditation in some practice areas.

### 5. Meaningful specialisation

- 4.13. Specialisation is an increasing feature of legal services. Research indicates that specialists provide better quality advice than non-specialists. However, specialism is not necessary in all areas – introducing unnecessary requirements could harm competition and leave lawyers unable to provide holistic advice that clients want. These issues have implications for the education and training of lawyers.
- 4.14. The benefits and risks of specialisation need to be better understood. Minimum requirements as a condition of practice should be introduced where it is necessary to demonstrate particular knowledge, skill or experience to provide competent advice – this is already happening in parts of the profession.

## Recommendations

The Panel's advice to the LSB is as follows:

- The quality of legal advice needs to be better understood and actively monitored. This should involve academic research and build on existing good practice techniques such as file review and peer review.
- Approved Regulators should harness consumer power to exert reputational pressure on lawyers to maintain quality standards. They should publish, in an accessible form, appropriate information about the quality of legal advice.
- Quality schemes must be robust and deliver what they promise. The LSB should ask the Legal Services Consumer Panel to identify the characteristics of robust quality schemes and measure existing schemes against these criteria.
- Consumers need to be able to distinguish between regulated and unregulated lawyers. The LSB should examine how to best achieve this as part of its work on reserved legal activities including the feasibility of a single regulatory badge.
- Continuing professional development requirements need strengthening – the LSB should review these arrangements across the sector as soon as possible.
- The LSB should lead a debate on more far reaching ways of ensuring competence across the sector, including licensing by activity and periodic reaccreditation. This should take lessons from other sectors that have faced similar issues.

# Annex – The quality assurance landscape

Quality assurance generally refers to an ongoing process of evaluating (including assessing, monitoring, guaranteeing, maintaining and improving) the quality of a system, programme, or service provider.<sup>26</sup>

A brief review of quality assurance indicates two sources: regulatory and market-based processes. These have varying degrees of visibility, although many have some form of quality sign or mark.

Figure 1 maps the quality assurance mechanisms for legal services:

- the central circle outlines the main quality assurance elements of regulation. These only apply to regulated legal services providers and are invisible to consumers;
- the outer circle sets out a number of voluntary quality assurance schemes, some of which apply to both regulated and unregulated providers; and
- the middle circle provides examples of the visible quality signs and quality marks resulting from both the above processes.

## Regulatory Mechanisms

Within regulatory quality assurance, the left part of central circle sets out the three

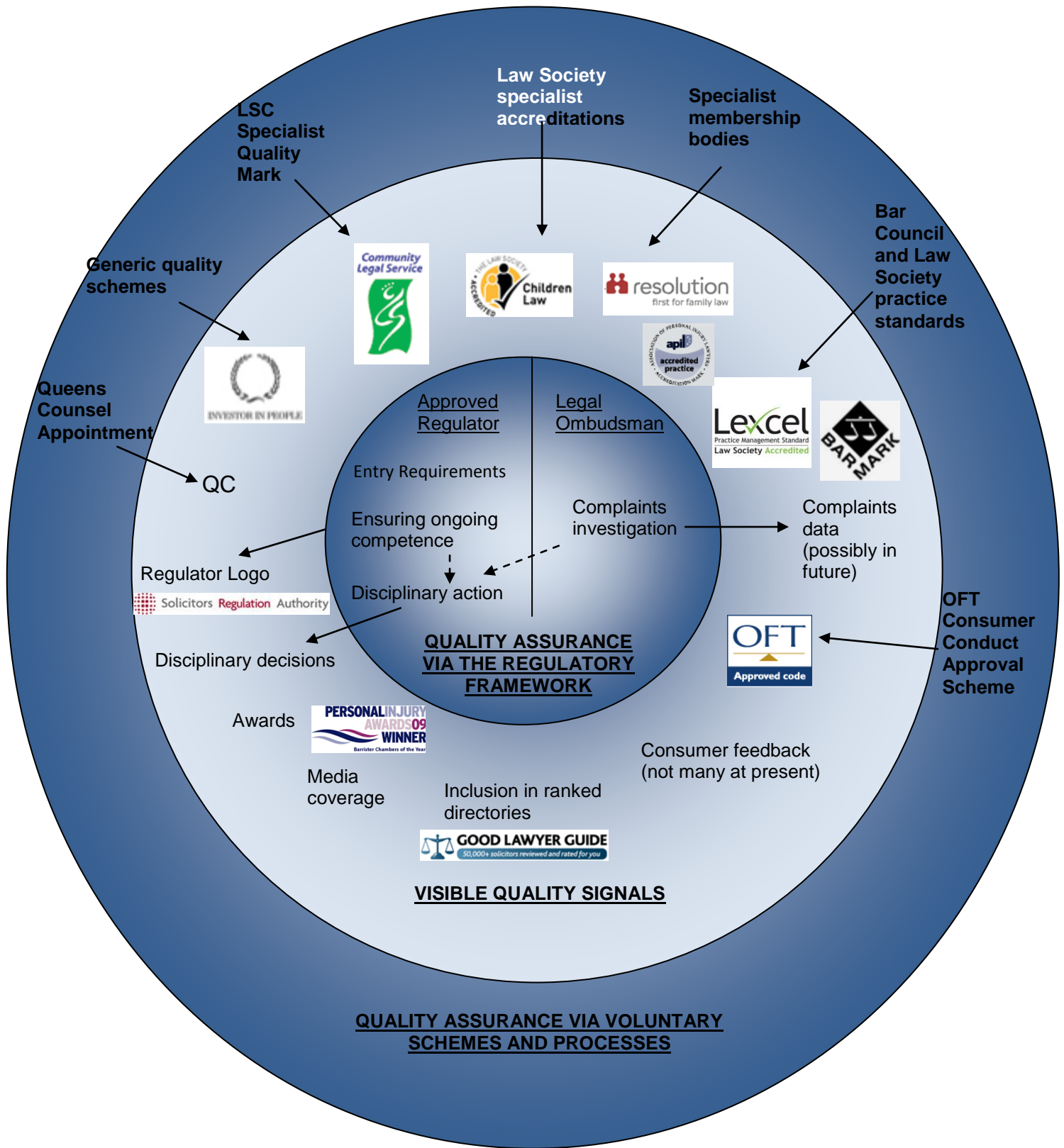
regulatory functions that should assure quality for consumers:

- Entry requirements – which can be based on qualifications, ‘fit and proper’ person checks, initial training and professional development.
- Ensuring ongoing competence - through-career monitoring which should ensure professionals remain competent. In practice, compulsory Continuing Professional Development (CPD) is the main mechanism.
- Disciplinary action - a reactive mechanism that tends to be triggered when things go wrong, such as when complaints are made or major issues result from individuals or firms failing to meet standards. At its most extreme, such action can result in an individual being removed from the profession.

On the right-side of the central circle, the complaints system is included because whilst it does not act directly as a quality assurance mechanism, it may act as a disincentive to provide poor service. The publication of complaints data in other sectors has provided quality information signals for consumers, and is being considered by the Legal Ombudsman.<sup>27</sup>



Figure 1 – Quality assurance in legal services





Not included in the diagram are the more generic regulatory requirements that law firms, just like any business, must comply with, such as advertising standards and general consumer law.

### Market mechanisms

Alongside regulatory mechanisms, the market can respond to consumer need through signals that differentiate good and bad firms, or show those with additional quality characteristics, such as trade association accreditation schemes, specialist quality schemes and branding.

The outer-circle of Figure 1 identifies voluntary quality schemes through which professionals demonstrate specialist expertise or firm quality. Schemes tend to have minimum requirements (such as case hours or management processes) that individuals or firms must meet, and some schemes require periodic re-accreditation, such as every 5 years.

Table 1 shows participation in these schemes for two major areas of practice. The figures show around 19% of personal injury practitioners and around 28% of family law practitioners are accredited (although the actual figure may be slightly lower as some practitioners could be members of both, and APIL and Resolution allow certain non-solicitors to gain accreditation).

Table 1: Participation in voluntary accreditation schemes

Total number of solicitors practising <sup>28</sup>	117, 225
Total number of solicitor firms <sup>29</sup>	11, 026
Total number of firms with Lexcel accreditation (approximate) <sup>30</sup>	860
Number of solicitors who practice PI <sup>31</sup>	13,094
Number of PI practitioners accredited by APIL (includes eligible non-solicitors) <sup>32</sup>	1292
Number of PI practitioners who are members for the Law Society PI panel (approximate) <sup>33</sup>	1218
Number of solicitors who practice Family Law <sup>34</sup>	13, 633
Number of Family practitioners accredited by Resolution (includes eligible non-solicitors) <sup>35</sup>	1424
Number of PI practitioners who are members for the Law Society Family law panels (approximate) <sup>36</sup>	2284 (including 590 on the Advanced Family Panel)

# Notes

- <sup>1</sup> Mayson, S, *Civil legal aid: squaring the (vicious) circle*, Legal Services Institute, September 2010.
- <sup>2</sup> See, for example: Moorhead, R, *Lawyer Specialisation – Managing the Professional Paradox*, Cardiff Law School Research paper No. 5, 2008; Devereux A, Tucker J, Moorhead R and Cape E, *Legal Services Commission ‘Quality Assurance for Advocates’*, Centre for Professional Legal Studies, Cardiff Law School, 2008 [http://www.legalservices.gov.uk/docs/cls\\_main/Generic\\_Guide\\_published\\_6\\_Nov\\_09.pdf](http://www.legalservices.gov.uk/docs/cls_main/Generic_Guide_published_6_Nov_09.pdf); Independent Quality Assessment of Legal Services, *Improving your quality – the common issues identified through Peer Review – Generic Guide*, September 2009; and Independent Quality Assessment of Legal Services, *Improving your Quality Family – A guide to the common issues identified through Peer Review*, Second Edition, August 2008.
- <sup>3</sup> Solicitors Regulation Authority, *SRA Summary of Performance Measures and Statistics*, June 2010.
- <sup>4</sup> For example, Research from the Bar Standards Board found that 47% of barristers believe there are important skills gaps in the Bar Vocational Course and fewer than 50% of barristers consider that advocacy skills or legal knowledge are adequately covered in training (Bar Standards Board, *Perceptions of barristers – Research study conducted for the Bar Standards Board by Ipsos MORI, December 2006-August 2007*, November 2007). See also The Times, *What is the future for law training?*, 14 October 2010.
- <sup>5</sup> Legal Services Board, *Consumer Research*, December 2009: [http://www.legalservicesboard.org.uk/what\\_we\\_do/Research/Publications/consumer\\_research.htm](http://www.legalservicesboard.org.uk/what_we_do/Research/Publications/consumer_research.htm)
- <sup>6</sup> Ibid.
- <sup>7</sup> Ministry of Justice, *Baseline survey to assess the impact of legal services reform*, March 2010.
- <sup>8</sup> See <http://www.lawgazette.co.uk/news/public-unable-name-a-single-law-firm-research-shows>
- <sup>9</sup> See <http://www.bsigroup.com/en/About-BSI/News-Room/BSI-News-Content/General/Kitemark-survey/> and <http://www.trustcorgi.com/AboutCorgi/Pages/Home.aspx>
- <sup>10</sup> See <http://www.travelweekly.co.uk/Articles/2007/07/02/24627/abta-unveils-new-logo-2-jul-2007.html>
- <sup>11</sup> See [http://www.fairtrade.org.uk/press\\_office/press\\_releases\\_and\\_statements/archive\\_2005/june\\_2005\\_2/awareness\\_of\\_the\\_fairtrade\\_mark\\_rocketts\\_to\\_50.aspx](http://www.fairtrade.org.uk/press_office/press_releases_and_statements/archive_2005/june_2005_2/awareness_of_the_fairtrade_mark_rocketts_to_50.aspx) and <http://www.thegrocer.co.uk/articles.aspx?page=articles&ID=209851>
- <sup>12</sup> European Commission Directorate-General for Health and Consumer Protection, *The European consumers’ attitudes regarding product labelling – qualitative study in 28 European countries*, prepared by OPTEM, May 2005.
- <sup>13</sup> See <http://www.oft.gov.uk/OFTwork/consumer-protection/campaign10-11/consumercode/>
- <sup>14</sup> See <http://www.legalfutures.co.uk/latest-news/consumers-shocked-to-discover-not-all-legal-services-providers-are-regulated>
- <sup>15</sup> See <http://www.lawgazette.co.uk/news/consumers-think-all-will-writers-are-solicitors>
- <sup>16</sup> See <http://www.drfoosterintelligence.co.uk/>

<sup>17</sup> See

[http://webarchive.nationalarchives.gov.uk/20100611090857/http://www.cqc.org.uk/publications.cfm?widCall1=customDocManager.search\\_do\\_2&tcl\\_id=2&search\\_string=&top\\_parent=4513&tax\\_child=4514](http://webarchive.nationalarchives.gov.uk/20100611090857/http://www.cqc.org.uk/publications.cfm?widCall1=customDocManager.search_do_2&tcl_id=2&search_string=&top_parent=4513&tax_child=4514)

<sup>18</sup> Legal Ombudsman, *Publishing out decisions – Discussion Paper*, September 2010.

[http://www.legalombudsman.org.uk/downloads/documents/consultations/Publication-Discussion-Paper\\_Final.pdf](http://www.legalombudsman.org.uk/downloads/documents/consultations/Publication-Discussion-Paper_Final.pdf)

<sup>19</sup> See <http://www.lawgazette.co.uk/news/new-law-society-president-unveils-conveyancing-scheme>

<sup>20</sup> Food Standards Agency, *Public Attitudes Towards, and Use Of, General Food Labelling*, prepared for the Social Science Research Unit by Oxford Evidentia, Foods Standards Agency, Unit Report 4, January 2010; and European Commission Directorate-General for Health and Consumer Protection, *The European consumers' attitudes regarding product labelling – qualitative study in 28 European countries*, prepared by OPTEM, May 2005.

<sup>21</sup> Pearn Kandola, *Research into Issues of Disproportionality – Initial Interim Report*, December 2009.

<sup>22</sup> Department of Health (2005) *Attitudes to Medical Regulation and Revalidation of Doctors - Research among the General Public and GPs*, July 2005; and Department of Health (2005) *Attitudes to Regulation of Non-medical Healthcare Professionals - Research among the General Public*, September 2005.

<sup>23</sup> See Moorhead, R, *Lawyer Specialisation – Managing the Professional Paradox*, Cardiff law School Research Papers No. 5, 2008; and Moorhead and Harding, *Quality and Access: Specialist and tolerance work under civil contracts*, Stationery Office, Norwich, 2004.

<sup>24</sup> Moorhead, R, *Lawyer Specialisation – Managing the Professional Paradox*, Cardiff law School Research Papers No. 5, 2008.

<sup>25</sup> Ibid.

<sup>26</sup> UNESCO, *Quality Assurance and Accreditation: A Glossary of Basic Terms and Definitions*, compiled by Lazar Vlasceanu, Laura Grunberg and Dan Parlea, Bucharest 2007.

<sup>27</sup> Legal Ombudsman, *Publishing out decisions – Discussion Paper*, September 2010.

[http://www.legalombudsman.org.uk/downloads/documents/consultations/Publication-Discussion-Paper\\_Final.pdf](http://www.legalombudsman.org.uk/downloads/documents/consultations/Publication-Discussion-Paper_Final.pdf)

<sup>28</sup> Solicitors Regulation Authority, *SRA Summary of Performance Measures and Statistics*, June 2010.

<sup>29</sup> Ibid.

<sup>30</sup> Data provided by the Law Society, 12 August 2010.

<sup>31</sup> Law Society, *Categories of work undertaken by solicitors*, Fact sheet series,

<http://www.lawsociety.org.uk/secure/file/185304/e:/teamsite-deployed/documents/templatedata/Publications/Research%20fact%20sheet/Documents/catsowork10-v1.pdf>

<sup>32</sup> Data provided by APIL, correct as at 9 September 2010.

<sup>33</sup> Data provided by the Law Society, 7 September 2010.

<sup>34</sup> Law Society (2010) *Categories of work undertaken by solicitors*, Fact sheet series,

<http://www.lawsociety.org.uk/secure/file/185304/e:/teamsite-deployed/documents/templatedata/Publications/Research%20fact%20sheet/Documents/catsowork10-v1.pdf>

<sup>35</sup> Data provided by Resolution, correct as at 10 September 2010.

<sup>36</sup> Data provided by the Law Society, 7 September 2010.



**The Legal Services Consumer Panel was established under the Legal Services Act 2007 to provide independent advice to the Legal Services Board about the interests of consumers of legal services in England and Wales. We investigate issues that affect consumers and use this information to influence decisions about the regulation of legal services.**

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