

Quality in legal services: a literature review

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November 2011

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Introduction

1. The Legal Services Board (LSB) was set up to reform and modernise the legal services market in the interest of consumers.
2. Consumers of legal services are often infrequent purchasers and struggle to assess quality, using lawyers at critical moments, often when they feel vulnerable. High quality legal advice is essential; the advice consumers receive can have major financial and personal consequences. For this reason the LSB is particularly concerned about the quality of legal services provided.
3. The LSB asked the Legal Services Consumer Panel to investigate consumers' perceptions and understanding of quality. This research found that consumers wrongly assume that legal services are risk-free (Consumer Panel, 2010); placing high levels of trust in legal services providers, regarding them as professionals (SRA, 2010). With consumers reliant on regulators to ensure quality; it is essential that we ensure standards are high and measure whether regulators are ensuring quality.
4. The Consumer Panel advised us in their research that the quality of legal advice needs to be better understood and monitored, including an analysis of academic research highlighting good practice.

Types of quality

5. Quality in legal services has many aspects. The three most common dimensions of quality are:
 - technical competence
 - service competence
 - utility of advice – a service of quality “often overlooked” - do lawyers provide good, well-serviced legal advice that is useful to the consumer? (Mayson, 2010).
6. This literature review focuses on these types of quality, discussing the extent to which they can be quantified and the current level of quality of each. However, we must take note that currently there is no identified or accepted benchmark for quality, in terms of what a high quality legal services product should look like.

Technical quality

7. Incidence of poor advice among dissatisfied consumers has been found to have a far lower incidence than service attributes such as time taken and lack of communication, with just 12% of the general public attributing this as the cause of their dissatisfaction (SRA, 2009).
8. Legal services are generally regarded as a “very technical and somewhat complex area, involving terminology, knowledge and jargon” (SRA, 2011; 9). Many clients do not have an awareness of their rights (Meager et al, 2002) meaning that “the quality aspect comes from the advisors’ explanation of the law” to them (DCA, 2005; 28). “It was not that technical knowledge was not important to consumers”; consumers generally assumed that all lawyers have an acceptable level of legal knowledge and have passed sufficient qualifications, and therefore place trust in them. There is also a common belief that the law is relatively black and white, with consumers assuming that the quality of advice will not vary significantly across firms. There is an assumption that quality levels across the sector vary less than they do for instance with builders or restaurants (Vanilla Research, 2010). Research found that the idea of receiving poor quality advice was found to be an unfamiliar one (SRA, 2010). All of these factors result in consumers being not well-informed or knowledgeable about legal services.
9. While consumers may lack knowledge on how to measure technical quality, they are clear that lawyers should possess good technical skills. When clients were asked what qualities they considered important in providers, the majority felt that the most important quality was that the advisor has the relevant knowledge to help the consumer (DCA, 2005), though consumers find it hard to differentiate between providers based on qualifications and experience, making it difficult for them to shop between services (SRA, 2010).
10. Interviews with 40 consumers who had either recently purchased, or intended to purchase, legal services was carried out to identify their initial approach to choosing providers, factors considered important, the role of advertising and presentation and consumer knowledge of regulation. Consumers were found to place importance on providers being established and experienced, with a good reputation for providing similar services. However, participants felt unable to tell, or find out easily, whether a provider was established or experienced, and instead relied on a recommendation from someone they trusted (SRA, 2011).
11. The LSB explored the treatment of dissatisfied clients of legal services in an online consumer survey in 2011. The research surveyed 1,275 people who had expressed dissatisfaction with the legal service they had received in the previous three years. While the most common cause of dissatisfaction was delays (43%), 15% attributed a perception of poor advice as the cause of their dissatisfaction (LSB, 2011). Mistakes made by the lawyer were cited by 38% of the sample, with the qualitative data providing examples such as a misspelt name on a will (LSB, 2011). Similar results were found in a previous survey of consumers who had used legal services in the last three years, where mistakes made were found to be the second highest cause of complaints (MoJ, 2010).
12. Prior to the requirement that all legal services complaints must be made direct to the provider, consumers went to the regulatory bodies to highlight their dissatisfaction. Data published by the SRA enables us to measure the precise incidence of complaints due to

technical ability, showing that the SRA received 1,577 allegations about 'legal competence' between June 2009 and June 2010, around 13% of allegations received (SRA, June 2010). The other allegations received by the SRA were related to: efficiency, management and administrative competence; and financial competence. When the SRA was dealing with complaints they also had the ability to refer cases for disciplinary proceeding to the Solicitors Disciplinary Tribunal. In total 84¹ individuals were struck off by the SDT in the year ending 30 April 2010. Examples of conduct leading to a striking off were: individuals found dishonestly to have misappropriated clients' money, had a criminal conviction, charged success fees when it was improper to do so, grossly misled clients and failed to discharge their professional duties honestly and reliably (SDT Annual Report 2010).

13. Regulators and professional bodies have sought to maintain the quality of advice through a number of mechanisms outlined below:

- reservation
- specialisation
- quality marks
- quality assessments – Quality Assurance for Advocates and Peer Review

Reservation

14. The regulation of legal services is based on the concept of "reserved" and "non-reserved" legal services. Reservation restricts the practice of certain activities to those who are authorised by Approved Regulators. The six areas of legal activity that Parliament has determined must be reserved are:

- the exercise of rights of audience
- the conduct of litigation
- reserved instrument activities (dealing with the transfer of land or property)
- probate activities
- notarial activities
- the administration of oaths

15. There has been debate as to whether non-reserved legal services result in lower levels of quality, or whether such services are more accessible to consumers. Critics have raised concerns that as these services are unregulated they do not provide adequate protection for consumers.

16. Research from a pilot conducted by the LSC (Moorhead, 2001) explored differences in the quality of advice between lawyers and lay advisers – those being solicitors and not for profit agencies. The research used a range of quantitative and qualitative research methods consisting of:

- 'Brief Case' – a collection of information including client and organisation details, time spent on case, client problem and case end and result.

¹ Please note, these 84 individuals may not have been captured in the SRA 2010 report, due to time taken to come before the SDT

- peer review – conducted by six solicitors in debt, employment, housing, personal injury and welfare benefit cases.
- model clients – trained “model clients” were sent to 45 providers to pose as clients with model problems. The advice they were given was assessed by peer reviewers to judge technical quality, while the actors were able to provide judgements on service quality
- client surveys – a client satisfaction survey was posted to 3,052 clients, with a response rate of 28%.

17. This pilot found that the quality of advice from lay specialists had the potential to be better than that from lawyers in some instances. A peer review of case files found that solicitors and lay providers were just as likely to offer substandard advice. Lay advisers were more likely to have their files rated as excellent (13% compared to 3% solicitors) (Goriely, 2002). Factors influencing the outcome of peer reviews were:
- The presence of positive financial results, with the absence of such results increasing the likelihood of the file being assessed as below competence
 - An increase in the amount of time spent per case had a positive impact on the assessment of quality
 - Shorter cases, those taking under 99 days, were more likely to be positively assessed than those which took longer
18. Lay advisers were also found to offer better service quality, taking longer to talk to clients and look up the law, they therefore received high client satisfaction scores (Moorhead, 2001). Other research has supported the belief that lay individuals can provide above standard service quality. Clients of non-legally qualified advisors were found to be very satisfied with the advisor in the majority of cases and considered that they listened to the problem that the client faced (DCA, 2005). Aspects of service quality shall be discussed later.
19. Similarly, solicitors seem to have confidence in the ability of lay advisers, with 31% of solicitors, who signposted clients, referring them to the Citizens Advice Bureaux, though the level of trust placed in lay advisers may not be equal to that of other solicitors as 46% who signposted clients to other solicitors (Moorhead et al, 2002).
20. Research by the American Bar Association’s Commission on Nonlawyer Practice found no evidence that lay individuals delivered poor services (Kritzer, 2002). Quality of lay individuals compared to lawyers is circumstantial; “in certain circumstances, the typical lawyer was better. In other circumstances, the typical nonlawyer was better” (Kritzer,2002).
21. However, other studies have highlighted weaknesses in advice provided by lay individuals. Research found that lay individuals did not cover all the possible legal options with clients, with 40% of case files reviewed failing to do so (Forbes, 1990)

Specialisation

22. Practitioners may voluntarily accredit specialism in some areas of law. This is not to say that non-specialists are prevented from practising in an area of law, but the motivation for becoming a specialist is said to be a claim to offer higher quality than non-specialists (Moorhead, 2008). Accreditation schemes are based on minimal standards of competence, meaning that practitioners who wish to gain accreditation are likely to do so.
23. A similar scheme is found in the provision of legal aid, where all providers must have a supervisor who possesses SQMs, meaning that they are quality assured by the LSC and meet specialist quality standards in at least one type of law. They are seen as designated specialists in this area of law. Legal aid providers are not confined to practising the work in which they specialise and are allowed to do a limited amount of work outside their recognised speciality (Moorhead, 2008).
24. One argument for the need for specialists is that it widens the choice for consumers. A number of consumers have been found to prefer a specialist when instructing a lawyer, especially in cases of divorce or separation, where 33% of consumers chose a solicitor because they specialised in the type of advice they were looking for (Unbiased.co.uk). However, while some consumers may prefer to use specialists for certain areas of law their judgement of specialism is not concrete. Most consumers focus on the law firms' marketing materials (Consumer Panel, Vanilla Research 2010). This may result in consumers being over-confident in the ability of providers.
25. A study to test the behaviour, and in some circumstances advice provided, of Specialist Quality Mark holders when approached by mystery shoppers needing advice in an area in which the adviser did not specialise, found that the level of client satisfaction with advice given was relatively high. Around 74% of model clients felt that they had been given clear advice on how to proceed with their problem. However, peer reviewers' assessment of the advice given proved otherwise. Peer reviewers (practitioners with significant levels of experience in the work categories studied) were asked to review the advice provided on the following:
 - how aware the adviser is of all legal issues raised – a possible evaluation as the circumstances were created by the research
 - how aware the adviser is of practical steps that can be taken now or in the future
 - specific questions on the comprehensiveness and accuracy of advice on the case
 - assessing the plan of action given to the client
 - how justified the adviser's decision to advice rather than signpost was (Moorhead, 2002)
26. The reviewers found that in 66% of cases where the adviser had advised instead of signposting the client to a specialist, this action was 'unjustified'. Of those who were offered advice, 40% of advice was judged to be damaging to the interests of the clients (Moorhead et al, 2002). These results highlight the need for advisers to provide advice in their specialism, or signpost.

27. Results from the mystery shopping study further support the notion that while consumer surveys and complaints data may reassure the profession that technical quality is less of a concern than service quality, the problem may be greater than consumers can identify.
28. A concern about specialism is the potential for it to push up price (Moorhead, 2008). High price has the potential to be seen as an indication of quality, particularly at the higher end of the professional market as consumers have difficulties evaluating quality (Hadfield, 1999). This could suggest that specialisation could unnecessarily raise prices unless it delivers the promised additional quality and even where the quality is raised, it is unclear that the additional quality is necessary. Research has shown that consumers believe if something is excessively cheap then the service is likely to be of poor quality (SRA, 2010). There is not necessarily a positive correlation with price and quality, as a provider may, for example, invest in technology enabling them to offer a high quality service at a lower price.

Quality Marks

29. Quality marks aim to help consumers identify good lawyers. The scheme was originally devised by the Legal Services Commission in order to quality assure standards for legal services providers. There are four quality marks:
- Specialist Quality Mark (SQM)
A quality assurance standard for legal services providers that supply complex legal help and offer a full range of legal services, including representation in court by formally trained professionals
 - Family Mediation Quality Mark (MQM)
A quality assurance standard for organisations providing family mediation services to members of the public. Organisations that provide mediations services under legal aid are required to hold this standard
 - General Quality Mark (GQM)
GQM holders provide generalist advice to members of the public
 - Quality Mark for the Bar (QMB)
A quality standard for Chambers providing advocacy services (LSC website)
30. The importance of quality marks has been questioned with research identifying that consumers often do not know what quality marks signify (European Commission Directorate-General for Health and Consumer Protection, 2005, DCA, 2005). A recent survey conducted by the Legal Services Consumer Panel of 1,277 general public respondents on the attitudes towards various professions and knowledge of the legal profession found that respondents were least likely to use quality marks to help them choose lawyers (5%). The general public were most likely to use quality marks for goods, such as toys and electrical equipment (26% and 31% respectively) (Consumer Panel, 2011). Consumers have been found, instead to look to see if solicitors had letters after their name to ensure lawyers possess the necessary qualifications (SRA, 2010).

Quality Assurance Scheme for Advocates

31. Following Lord Carter's review of legal aid procurement in 2006, the Legal Services Commission (LSC) developed a quality assurance scheme for legal aid advocates in response to concerns raised that there were quality assurance mechanisms in place for legal advice, assistance and litigation, but little quality assurance of advocacy, other than reactive mechanisms and professional training and entry regimes (Moorhead et al, 2009). This is entitled Quality Assurance Scheme for Advocates. The impetus for the development of this scheme was the opinion based on anecdotal evidence that advocacy standards are declining (LSC, Feb 2010).
32. A pilot study of the Quality Assurance Scheme for Advocates was undertaken to research, analyse and report on quality assessment options, identifying the most effective and suitable assessment method. Candidates were divided according to levels of skill². Assessment methods undertaken varied according to level of skill, but were simulated (used in a controlled situation including interviews and multiple choice tests), derived from real cases (portfolio and written advocacy) and judicial evaluation. Candidates were assessed on areas of analysis, organisation, interaction and presentation, those who were classed as Levels 3 and 4 were also tested on leading a complex case. Results found that while Level 1 failure rates were low, failure rates at Level 2 were particularly high with 49% of practitioners failing the cross examination assessment, 41% failing the examination in chief assessment and 49% failing the multiple choice test. The main reason for failing cross examination at Level 2 was failing to address the theory of the prosecution or defence case. Those failing did not demonstrate a level of sophistication in their cross examination and failed to probe. Pass rates for Levels 3 and 4 were also analysed, and found to be higher than pass rates at Level 2, but the sample sizes meant these were not as statistically significant (Moorhead et al, 2009).
33. Since when, the scheme has moved into the development phase, overseen by the Joint Advocacy Group (JAG), which comprises of the Bar Standards Board, the Solicitors Regulation and ILEX Professional Standards. This assessment scheme will measure advocates' competencies to work at one of four levels of advocacy, currently being developed by the JAG. The levels are connected, through guidance developed by the JAG, to levels of cases. The process could either approve an advocate's competence at a particular level or assess the level at which the advocate is competent. Advocates will not undertake work at a level higher than that at which they are certified, but there will be circumstances in which the parties will agree that the level of advocate required for a case does not need to accord with the level of the case (JAG, consultation, 2011). While some critics have questioned the need for such a scheme, believing that there is no evidence that advocates are falling below the necessary standards that would justify such a scheme (Legal Futures, 7 June 2011), research has highlighted concerns in the existing quality of advocates.

² Level 1 – Magistrates Court, Appeals to the Crown Court and Committals

Level 2 – straightforward Crown Court – e.g. theft, dishonest, ABH, straightforward drug offences, non fatal road traffic accidents

Level 3 – complex Crown Court – e.g. more serious cases of fraud, violent disorder, serious assaults

Level 4 – most complex Crown Court and High Court – very serious and complex cases, murder trials, terrorism (as defined by Moorhead et al, 2009)

Peer Review

34. This is, essentially, the assessment of the quality of work of one person by another person seen as capable of carrying out that assessment (ASA, 2003). Files are assessed using a standard criteria and ratings system, determining the quality of advice and legal work.
35. Peer review was argued by researchers to be the best option available to the Legal Services Commission to investigate the quality of advice and legal work provided by their suppliers; peer review is now used to assess the quality of advice and legal work of contracted suppliers (LSC, 2005).
36. Peer review was designed to allow objective, qualitative judgements to be made about case files and work. This is based on the assumption that a well-presented file does not necessarily mean that the quality of advice given was competent; and a badly presented file does not necessarily mean that the advice was poor quality (Moorhead et al, 2007).
37. In a qualitative study of legal aid practitioners, when questioned about the methods used to maintain standards of service, a total of 12 (out of 39) respondents said that file review was the main method, followed by 'peer review' (7). These two terms were used interchangeably when referring to the regular review of files by peers. However, this may not indicate the true incidence level of peer/file review as some practitioners in the study used these terms when referring to informal reviews carried out by peers regarding reading thorough and/or working on their files (Sommerlad et al, 1999).
38. One form of peer review is judicial evaluation of advocates. Some argue that this scheme is beneficial as judges work closely with advocates and are dependent on their quality, they are therefore best to judge quality of standards. However, others raise concerns about the administrative burden the task would bring, and the potential for biased reviews (Moorhead et al, 2009).
39. Consumer research has shown, however, that consumers are cynical of peer review, concerned that reviewers may be lenient on some and overly-zealous on competitor firms (Vanilla Research/Cons Panel, 2010).

Service quality

40. Quality of legal services is not just about technical quality. Service quality is defined as the experience that clients receive from lawyers, including accessibility to law firms, having offices open at times convenient to clients, talking in jargon-free language and offering alternative methods of communication (LSI, 2010).
41. While research has found that consumers value expertise and established providers more than they value good customer service and a reasonable price while choosing the provider (SRA, 2011), researchers believe that clients are unlikely to be able to judge the quality of the legal or non-legal advice they are actually provided. Consumers, are instead, believed to have feelings regarding whether the advisor listened to the client and their problems, and resolved them (DCA, 2005). When legally-aided clients were asked

to discuss their first impression of their solicitor, the majority (22) spoke about personal qualities, followed by professionalism (18) and, finally, technical skills (4) (Sommerlad et al, 1999).

42. Client satisfaction surveys found that satisfaction with the service provided was strong; 73% rated the service as very good or excellent, 16% fair and 12% poor or very poor. The categories with the strongest positives were providers listening to what the client had to say (86%), telling them what was happening (84%) and the providers knowing the right person to speak to (80%). Client satisfaction was influenced by the number of advisers handling the case, with 79% of clients who perceived only one adviser handling the case rating their cases as excellent or very good, compared to 54% of those who believed there was more than one adviser (Moorhead, 2001). Satisfaction reduced when the adviser failed to indicate the likely length of time of the case. Overall, the results from the consumer surveys suggest that “the most important factors influencing (consumer) satisfaction are management issues...such as giving advice on the likely length of the case and using the same adviser to handle the case throughout” (Moorhead, 2001; 136).
43. The client satisfaction surveys highlighted did not indicate differences in satisfaction according to the categories ‘having enough time’, being there when the client wanted them and paying attention to the client’s emotional concerns (Moorhead et al, 2001).
44. Other research on consumers who had used legal services within the past two years, or who were likely to use them within the next 12 months, found that when consumers were asked to identify good quality, they emphasized customer service rather than the technical quality of advice, identifying six characteristics of good service: empathy, efficient process, clarity, achieving outcomes, proactive use of legal knowledge and professional presentation (Consumer Panel, 2010). Similar results have been found in other research. When researchers asked a small group of legally aided clients what qualities they valued in their legal adviser, interpersonal qualities were cited in responses 121 times, while ‘technical/legal’ characteristics were cited 45 times (Sommerlad et al, 1999). Interestingly, when legal aid practitioners, in the same study were asked to define the main characteristics of a quality legal service ‘technical/legal’ characteristics were mentioned 70 times while personal factors were mentioned 97 times.
45. Consumers of legal services highlight good communication and customer service skills as very important when deciding on choice of provider. When meeting face to face, participants wanted a personable, approachable and friendly service. Good communication included being responsive and proactive (SRA, 2010). Research using model clients found that they were impressed with empathy, regarding advisers who expressed concern for their problem as very helpful (Moorhead et al, 2002).
46. While there is, currently, limited information on legal services complaints, the available data offers a good indication of the cause of dissatisfaction, enabling us to consider whether it is due to service or technical attributes.
47. The SRA carried out a survey of 1,553 adults in England and Wales to assess use and experience of legal services. Around 17% of the general public, who had used legal services, were dissatisfied with the service they received. The most common cause of dissatisfaction was the overall time taken (55% of dissatisfied general public) followed by lack of communication (SRA,2009). Similar findings were found in a recent survey of

dissatisfied consumers undertaken by the LSB, with the most common reason cited being delays to the amount of time taken, 43% of dissatisfied consumers (LSB, 2011) and the MoJ survey of users of legal services (36%) (MoJ, 2010).

48. Data released by the Legal Complaints Service (LCS) showed that between July 2004 and June 2008 the LCS received 78,083 complaints. The most common cause of complaints were service issues, accounting for 71% of these complaints, while conduct complaints accounted for 26% and remuneration certificate complaints accounting for 3% (LCS, 2009).

Utility of advice

49. "Too often, clients (or the legal aid fund) are being asked to pay for something which is not sufficiently useful...Legal advice has to relate usefully to a client's personal circumstances, and help them to make a decision and move forward" (Mayson, 2010; 4).
50. Good quality utility of advice is an essential element of legal services as "justiciable problems can bring about a range of social, economic and health problems" (LSC, 2010 (CSJS); 37). In a survey of people's experience of civil justice, 50% of problems were reported to have led to at least one adverse consequence (LSC, 2010 (CSJS)).
51. To measure utility of advice we can look at whether advice has had a positive impact on the client's wellbeing, situation and problem.
52. Generally, users of legal services are satisfied with the outcome of their matters, 72% were found to be very satisfied and 21% quite satisfied, while 3% were found to be not very satisfied and 4% not at all satisfied (MoJ, 2010).
53. If we make a comparison between those who obtained advice following a justiciable issue and those who did not obtain advice then we are able to judge the utility of advice. When problem resolution strategies were standardised for problem type and seriousness, those respondents who obtained advice were far more likely to see their problem resolved (whether it be by itself, through Court/tribunal, an agreement or other process) than those who did nothing in response of their problems or handled alone (around 70%, 40% and 60% respectively) (Pleasence, 2006).
54. Those respondents who obtained advice were far more successful in obtaining their objectives than those who tried, but failed to obtain advice, obtaining all of their objectives four times as often and failing to obtain any of their objectives only half as often. This provides "compelling evidence of the general utility of advice" (Pleasence 2006;144). Of those who obtained advice and reported whether their objectives had been met, 67% stated that some of their objectives had been met and 42% stated that all of them had been met. However, these statistics are not concrete as some respondents did not state whether their objectives had been met (Pleasence, 2006).
55. How respondents measure utility of advice may be skewed by whether they won their case. For example, legal representation at court was found to be praised by respondents when the desired verdict was achieved (LSRC, 2007) and those who won at a court or tribunal were more likely to regard the process as fair (92% compared to 18%) (Pleasence, 2006). This theory is further supported by consumer research which found

that those using services where the matter is contentious are least satisfied with the outcome, for example accident or injury claims (where 69% of users were satisfied) compared to Conveyancing (where 92% were satisfied) (Consumer Panel, 2011).

56. In the pilot study comparing lay and non-lay advisers, outcomes were found to differ according to provider. 46% of lay advisers' closed matters were completed compared to 39% of solicitors' closed matters. Clients of lay advisers were three to four times more likely to receive a lump sum payment (13%) than clients of solicitors (3%); more likely to gain new or extra regular payments (12%) than clients of solicitors (2%); more likely to obtain or retain a property (7% vs 1%); and twice as likely to prevent the actions of a third party (8% vs 4%) (Moorhead, 2001).
57. However, while solicitors were found to achieve less financial results than lay advisers, the level of solicitor was found to influence the outcome of the case when other factors were controlled for. In welfare benefits matters, if a case was handled by a qualified solicitor, or equivalent, the probability of a positive financial result increased by 30% (Moorhead, 2001).

Conclusion

58. This literature review has highlighted consumers' inability to judge the technical quality of advice, often judging advice as competent when it is in fact not. Consumers are more able to judge service quality, attributing good service to personable factors such as empathy, rather than technical ability to undertake the work. While quality assurance principles are designed to ensure technical quality for consumers, consumers are often unaware of their existence.

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