



Unbundling legal services

Thursday 24 September 2015

Introduction

In August 2015 the Legal Services Consumer Panel published qualitative research exploring experiences and perceptions of unbundled legal services. The research by Ipsos MORI, jointly commissioned with the Legal Services Board, used interviews with consumers, providers, and members of the judiciary to provide a qualitative review of how unbundled legal services are used and provided.

The research highlighted a number of issues that warranted further exploration including:

- Is there fragmentation in the growth of unbundled services, and is that an advantage or disadvantage given the disparate groups of consumers that seek out legal services?
- How can the legal sector or sectors ensure that providers are adequately supported and, in particular, able to assess the consumer's capability in unbundled services?
- Unbundling suits some groups of consumers: how can providers ensure that those who are not able to or are unlikely to access it, are not disadvantaged in accessing new services?

In order to consider these issues the Consumer Panel convened a workshop seeking to bring together regulators, researchers, representatives and advice-giving bodies. This was an opportunity to provide an information exchange, and to share learning around different aspects of unbundled legal services. This note highlights the key themes explored during the course of the workshop. A full list of attendees can be found at Annex A.

Key themes

A number of themes emerged from discussion:

1. *Assessing client capability*

Assessing the client's capability arose at several points in discussion for different reasons and raised questions around the provider skills needed to accurately make this assessment; whether clients in turn had the skills and confidence; and the impact of the understandable absence of emotional objectivity on the part of clients and their ability to 'carry out' their part of unbundling.

The requirement to assess a client's capability, which isn't currently a formalised process, was seen as a barrier to advertising unbundled legal services more widely – something the third sector bodies felt would be a positive thing as many clients are put off by the perceived costs, unaware of the potential unbundling option.

An additional factor was raised around those firms who feared discrimination challenges when explicitly letting clients know that they weren't suited to unbundled legal services, for example if their ability to speak English wasn't strong enough. Interestingly, this was to some degree mirrored by public access barristers, whom it was acknowledged do not always advertise the fact that they operate as direct access, but who are already familiar with assessing who may or may not be suited to that particular delivery method. The Cab Rank rule does not apply to direct access barristers, but their work must always be in the best interests of the consumer.

2. *Consumer protection*

A large part of this discussion drew on the risks identified by the consumer sample in the research around the clarity of the division in responsibilities. There is the age old problem of whether or not consumers read client care letters – and the mismatch between clients and providers recollections of what was put into writing. What was clear here though from a regulatory perspective was the continued need for firms to maintain diligence in capturing the agreement in writing, not least for them and their client's benefit, but for evidentiary matters should a complaint ever end up with the Legal Ombudsman.

3. *The risk factor*

Something which was echoed from the research was that of the 'fear factor', or the impact of the perceived risks in delivering unbundling legal services.

Questions around PII implications, how complaints would be handled, and the potential for breaching professional standards were all raised with valid concerns.

Of the practitioner firms interviewed there were mixed attitudes towards risk, and some tended to acknowledge the potential risk in terms of negligence. But providers indicated that the extent to which they would unbundle depended on the extent to which they felt they could manage the risks.

Another area of concern was the handling of complaints, as there was no clear precedent or guidance on how the Legal Ombudsman might deal with matters where

unbundling was involved. There needs to be assurance that consumers would still have access to redress, but a balance struck to ensure that providers weren't disproportionately held to account over activities that had been unbundled appropriately. Ensuring that consumers knew what service they could expect in these scenarios, and at the least recording what services were being provided, is regarded as critically important.

4. Unbundling in the third sector

Attendees representing the third sector were quick to acknowledge that they had been providing unbundled services for some time due to the funding constraints and limits on services. Consumers have been using these services because the perceived cost of using a lawyer is too high. What they did recognise in terms of services offered was that the advice sector was much better prepared for providing the emotional support that many litigants in person needed, a need which increases as litigation continues.

5. Partnerships

Finally, one of the themes which ran through the workshop was that of the importance of partnership. There seemed to be several points in service provision where it was suggested that partnership could benefit all parties – advice providers, clients, lawyers – in ensuring a holistic, viable, and affordable service could be provided.

For example, as mentioned above it was recognised that many consumers immediately approach advice agencies due to perceptions around the cost of hiring a lawyer. Yet, though advice agencies can provide the administrative and social support a consumer may need, they are not always equipped to provide the legal services. So to enable the transfer of cases it would be beneficial for them to be able to point towards either a direct access barrister or a solicitor that provides unbundled services.

The Litigants in Person Support Strategy includes future work which involves setting up four new Personal Support Units and ten new LawWorks clinics. These can all work to signpost consumers to lawyers that may provide unbundled legal services, and can go some way to providing that capability assessment and expectation management.

Law for Life also hosts an online resource on its website AdviceNow. This has recently been redeveloped and holds practical information and guides to legal issues and court issues, designed for people who have access to online support.

There was also reference to RCJ developments around AdviceNav, a program designed to pre-populate court forms. This is a tool that could easily be used by solicitors to speed up the process or even to simply signpost clients to. Further, solicitors could make links with public access barristers, going part-way to ensuring that they receive an acceptable brief following unbundled services.

What all of these points recognised was the gradual demise of full casework engagement, leading to segmented parcels of service provision. Different sectors

and bodies will now need to pull together to create an effective net of consumer legal advice and support provision.

What would the Panel like to see next?

- A review or case studies from the Legal Ombudsman on unbundling, perhaps touching on client capability, with a view to informing clearer guidance for providers.
- Support for unbundling from representative bodies, in consideration of client capability, and further advice on dealing with the risks identified (such as PII matters)
- Regrouping in 6-9 months' time to see where we are and to further understand the changing landscape. (Consideration will be given to potentially focussing on one area, such as the pro bono/ mixed with fee-charging fixed fee work, and consumer capability).

It is clear that there are a number of different initiatives taking place across the sector that directly support unbundling or are related to developing clearer understanding. These include:

- CILEx Regulation has committed to hosting a couple of round tables with consumers to further explore the use of unbundling.
- The Law Society is incorporating a question on the provision of unbundling into its professional survey, and its joint research project with the LSB and the Legal Education Foundation into legal needs will also serve to provide more data.
- The Litigants in Person Support Strategy includes future reviews of unbundled work, and there is a series of developments across the not for profit and pro bono programs.

November 2015

ANNEX A

Attendees

Diane Astin, University of Westminster

Sarah-Jane Bennett, Bar Council

Julie Bishop, Law Centres Network

Steve Brooker, Legal Services Board

Sue Chandler, CILEx Regulation

Simon Cliff, Law Society

Warren Davis, Solicitors Regulation Authority

Will Dawes, Ipsos MORI

Amanda Fox, Solicitors Regulation Authority

Nick Gallagher, Personal Support Unit

Lee Hansen, LawWorks

Ewan Macleod, Bar Standards Board

Alex Moore, Legal Ombudsman

Lindsey Poole, Advice Services Alliance

Harriet Radley, Litigants in Person Support Strategy

Philip Robertson, Bar Council

Mark Sefton, Independent Researcher

Nathalie Sinyard, Council for Licensed Conveyancers

Stephen Ward, Council for Licensed Conveyancers

Helen Whiteman, CILEx Regulation

Lisa Wintersteiger, Law For Life

Legal Services Consumer Panel

Elisabeth Davies, Chair

Cathy Gallagher, Member

Marlene Winfield, Member

Frances Harrison, Member

Lola Bello, Consumer Panel Manager

Stephanie Chapman, Consumer Panel Associate