LEGAL SERVICES CONSUMER PANEL

A discussion paper on quality indicators in legal services

Introduction

There is now widespread consensus across most regulated sectors that developing and publishing quality indicators is essential for raising standards, improving consumer choice and voice, holding providers and regulators accountable, and providing intermediaries with data for mutual benefits. That said, there is also an acceptance that collating and presenting this type of information is difficult and it demands intelligent attempts at simplicity.

In legal services, there is currently no clear definition of quality. Previous research by the Legal Services Consumer Panel[1] (the Panel) settled on a definition that combines technical quality of advice (knowledge and skills) and service level advice (client care). A key finding of that research showed that while consumers can often judge whether legal service providers offer good service, they are less likely to be able to judge technical quality. Moreover, the research showed that consumers generally assume that all providers have an acceptable level of legal knowledge, and all will have attained sufficient qualifications. Consumers also tend to believe that regulators are actively supervising providers by reassessing their competence.

The Panel's research findings led it to make the following key recommendations:

1. Approved Regulators (regulators) should harness consumer power to exert reputational pressure on lawyers to maintain quality standards. They should publish, in an accessible format, appropriate information about the quality of legal advice.
2. 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.
3. The Legal Services Board (LSB) should lead a debate on more far reaching ways of ensuring competence across the sector including licensing by activity and periodic accreditation. This should take lessons from other sectors that have faced similar issues.

The legal services sector has made some progress since we carried out our first research. Indeed, the debate is no longer about whether or not quality indicators should be made available. Instead, the challenge is around determining the indicators that should be gathered, the resource implications of gathering the indicators, and the best way to present such information so that it is useful for its intended purposes.

This short paper does not purport to delve into the different types of quality indicators or how they should be gathered and presented. The legal services regulators must first consider these issues carefully and collectively, agree a common approach. Then the regulators should take into consideration what would work best within their individual regulated communities and what would deliver good outcomes for the intended audience. What this paper hopes to do is nudge regulators towards a common approach to assess

[1] Quality in Legal Services, Legal Services Consumer Panel, 2010.

quality. This discussion paper highlights examples from other sectors, so that legal services regulators can draw inspiration and avoid common pitfalls.

Common purposes for gathering and publishing quality indicators

Our expectation is that regulators would begin by considering the reasons for gathering quality indicators. Although the Panel has historically been focused on quality indicators that help consumers to make informed decisions, shop around and as a consequence improve the effectiveness of competition, we recognise that there are multiple reasons for collating quality indicators. In some sectors e.g. health, we have seen quality indicators collated solely for improving standards, but not for public information or access. The varying reasons for collating and/or publishing quality indicators have a direct influence on how the data ought to be gathered, used and developed. Therefore, our strong advice to regulators is for them to start with articulating the purposes of the quality indicators they wish to gather and/or publish.

We have outlined some common purposes below to stimulate such a discussion.

- Consumer choice and voice**:** to support consumer choice by providing information that allows them to make informed decisions and argue more effectively for improvements to be made.
- Sectoral improvement: to raise sectoral standards.
- Accountability and performance management: to provide data for accountability to another organisation, e.g. the LSB, which may then use the information in carrying out its performance management duties.
- Market development/research: to provide data for third party research or organisations, for example intermediaries like comparison websites, think tanks and others.

Where we are with quality indicators for consumers' usage

It is still the case that in the legal services sector the technical quality of advice is unknown or difficult for consumers to gauge. Regulators do little active monitoring of quality, or do not publish assessments made.

We also suspect that quality factors are still not strongly influencing consumers' choice of service provider because the information is simply not available. In 2010, focus group research found that:

> *Firstly, consumers generally assumed that all lawyers have an acceptable level of legal knowledge and have all passed sufficient qualifications. Secondly, 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 offered will not vary significantly across firms*[2]*.*

We would like to emphasise that we are quoting from our own research carried out nearly 10 years ago. Given changes in a decade to the way consumers purchase goods and services, there is a very clear need for regulators to invest in new research around consumer behavior and quality indicators as a key part of understanding how consumers view quality in legal services and developing useful indicators.

In 2016, the Competition and Markets Authority (CMA) assessed the legal services market and found that competition was not working well because of information deficiencies around

[2] Ibid

price and quality indicators, amongst other things. Since the publication of the CMA's final report, most regulators have responded positively and intervened with robust rules on price transparency. The Panel believes that the promising work on price transparency now puts regulators in a better position to progress with quality indicators.

The Panel has always said that price transparency and quality indicators go hand in hand, and that quality indicators are essential for making price transparency meaningful. It remains our view that price transparency, devoid of quality information, may result in consumers fixating on price to the detriment of other important considerations. Although the CMA have asked regulators to consider how they might encourage intermediaries such as price comparison websites into the market, we want to see these intermediaries use more than pricing information when determining the options to present to consumers.

A significant development since 2010: In July 2019, the Solicitors Regulation Authority (SRA) published for the first time aggregated data on first-tier complaints handling, an important quality indicator that could eventually be of benefit to individual consumers and their representatives.

What do consumers want?

Regulators often ask the Panel for advice on the types of quality indicators that should be collated or published. We are also often asked for evidence of consumers actually using these indicators in other sectors. Perhaps these questions stem from our forthrightness in asserting that quality indicators are desperately needed in the legal services market. However, the Panel has always emphasised that regulators must ask consumers these questions directly, through carefully designed research. This is the approach that has been adopted in other sectors and it is the approach encouraged by the CMA in its wider work. While we are happy to support and collaborate on consumer research, it would be misleading of us to claim to know what consumers want or how they may prefer information to be presented without the backing of up-to-date research.

Asking consumers what they want, and presenting them with options using traditional market research and behavioural economics, is a fundamental part of developing effective indicators for consumers.

That said, regulators must also draw on learnings which have shown that consumers may initially show little appetite for assessing quality, but then use the information provided effectively, and to their advantage. For example, although the Food Standards Agency (FSA) found that while there might not have been an initial appetite for hygiene ratings, their subsequent introduction was well received by consumers and remains a powerful tool for consumer choice.[3]

The challenges are not insurmountable – work together

The Panel acknowledges that there are challenges for regulators. There is a general challenge with attempting to articulate, measure, gather, and present information on quality in a meaningful way, not just for consumers, but also as a good practice tool that would improve standards in the sector. We have previously said that the oversight regulator (the LSB) has a role to play in offering guidance on how they might meet their obligation to gather and publish quality indicators. We still see a role for the LSB to play in this regard. Ultimately, it is the duty of each regulator to do what is feasible within their community, to

[3] The Food Standards Agency noted this point in its publication of hygiene rating.

carry out research where necessary, and to collaborate with others or use existing data creatively. Otherwise, regulators would be remiss in their duties and obligations under the Legal Services Act 2007 to promote competition, protect and promote consumers interests, and more broadly, improve access to justice.

To ease the path, we believe regulators should be encouraged to collaborate in articulating the generic requirements of a good quality service, before customising quality indicators to their particular requirements. The Panel has carefully considered the need for standardisation on one hand, and the necessity to tailor specific requirements. Our strong view is that there is a need for a common approach, leading to a combination of generic categories of indicators as core, enhanced by regulator specific indicators where appropriate. We believe this approach would make the task more manageable for all regulators, including smaller ones with limited resources. And it would avoid the pitfalls of fragmentation and information overload.

To show how this collaborative approach can work, we draw on the experience of other regulators below, including the Care Quality Commission (CQC) which is the health and social care regulator that inspects and regulates the quality of different care services in different ways. The CQC has standardised questions for assessing quality across all its operations (i.e. is the care safe, effective, responsive, well led and caring). This approach has acted as a framework for all of the monitoring, inspection and rating activity that CQC does, and it is consistent across all of its health and social care work, from the largest specialist hospitals to small care homes. We draw parallels with the legal services environment where there are substantial numbers of mixed sized firms offering different types of services.

Quality indicators in other sectors

The Panel accepts that it is not possible to directly compare the legal services market to other markets. That said, we also note that it shares similar characteristics with other sectors like health and social care services as noted above. We have therefore cited some learnings below. The examples also show that on occasions the CMA have felt compelled to dictate what quality indicators should be collated and published in a sector. The examples highlight quality indicators relating to both service and quality of advice.

Recent developments in financial services

In August 2016, the CMA published its final report following its investigation into the retail banking market. The CMA found that older and larger banks do not have to work hard enough to win and retain customers, which makes it difficult for new and smaller banks to grow. To improve competition, the CMA proposed remedies which included changes to help consumers and microbusinesses find a better deal. A key element of these remedies was requiring banks to publish trustworthy and objective information on quality of service on their websites and in branches, so that customers can see how their own bank shapes up.

> From 15 August 2018 banks must publish information on how likely people would be to recommend their bank – including its online and mobile banking, branch and overdraft services – to friends, relatives or other businesses.

The results will come from an independent survey of thousands of personal and small business customers, and must be prominently displayed in banks' branches, as well as on their websites and apps. It is argued that this will make it easier for people to find out if another bank has a better offer, and it has been introduced to drive up competition between banks, leading to a better overall quality of service for those who use them.

The information on service quality will be published every six months by all British banks and building societies with more than 150,000 personal current accounts (PCAs) or 20,000 business current accounts (BCAs), and all Northern Ireland banks and building societies with more than 20,000 PCAs or 15,000 BCAs.

The CMA also requested that the Financial Conduct Authority (FCA) should build on this by making banks release further information on their performance and services to drive up standards, and make it easier for people to judge whether they are with the best bank for them. As such, in addition to the survey described above, the banks will also have to provide on their website information about the number of major operational and security incidents they have experienced. And from February 2019, the FCA will require banks to publish figures on how long it takes to open current accounts and replace debit cards.

Quality of advice in financial services

In July 2015, the FCA published a thematic review into the Consumer Credit Market. Amongst other things, the review covered quality of advice: assessing whether debt advice was in the consumer's best interest and whether recommended debt solutions were appropriate and sustainable. The review also looked at transparency and disclosure, assessing whether customers received clear, fair and not misleading information to enable them to make informed decisions to help them deal with their debt.

The FCA found serious shortcomings in the market and responded by providing detailed feedback to firms. The FCA also requested for skilled persons under s166 of Financial Services and Markets Act 2000 to review the past businesses of five firms, and to suggest redress is provided to consumers if they had lost out. The FCA did not name and shame firms that had fallen short.

The Food Standards Agency's indicators

The FSA developed a star rating hygiene measure for eateries, as well as 'red, amber and green ingredient labelling for supermarket foods. Both schemes enable consumers to engage with previously 'hidden' information and make more informed decisions at the point of sale.

Quality Indicators in Health and Social Care Services

In the health sector there is a range of public websites which contain information about the quality of care in all general practices in England. These draw on a range of data sources including: the general practice Quality and Outcomes Framework; the general practice patient survey; friends and family test question for service users; and indicators and ratings from the CQC.

The CQC provides a rating for each general practice in England which is informed not only by a set of quantitative indicators, but also by information from inspections and other local qualitative information. The CQC also covers hospitals and social care establishments. We note with interest that teams of the CQC inspectors often include service users, an insightful way to include users.

The CQC uses a framework of five key questions to assess quality of care: is it effective, is it responsive, is it accessible, is it caring and is it well led. These five key questions are used to assess quality for all of the health and social care services that the CQC regulates. Each of these five key questions is broken down into a further set of questions, called key lines of enquiry. There is one set of key lines of enquiry for all health services, and another set for social care. Under the key lines of enquiry are prompts, which are tailored to different service types. The Commission also defined a set of 'ratings characteristics' for each key line of enquiry, which describe what outstanding, good, requiring improvement or inadequate care looks like. This approach was introduced in 2013 as the centre piece of a new strategy for the organisation, following significant consultation and engagement with the public, service users and stakeholders. The key questions are used to guide the CQC's monitoring and inspection activity, including the development of quality indicators.

Other sources of information

Other players also hold important quality indicators that regulators can access and package. We have previously said that the information held by the Legal Ombudsman (LeO) could be positioned and presented to help consumers, especially if that information is combined with basic regulatory and conduct data. LeO itself recognises this.

Moreover, regulators could do more to ensure that enforcement decisions are visible to consumers, by amalgamating enforcement information with basic regulatory data. Even if individual consumers do not use this information, it will be of value to consumer groups, representatives or intermediaries, who may use data to profile or bolster what they know around risk, for example.

There is scope for regulators such as the SRA and Bar Standards Board to commission mystery shopping research in one or two areas of high risk. There is also scope for others to be proactive, for example the Council of Licensed Conveyancers could publish quality information on licensed conveyancers' work. This could focus on speed, accuracy and registration timeliness of conveyancing transactions.

The Panel's recommendations for the LSB and the Approved Regulators

The Panel sees merit in the LSB, as the oversight regulator, and as part of its 'ongoing competence' project, convening the Approved Regulators to discuss and agree some core categories for quality indicators. Secondly, the LSB could further explore the feasibility of providing guidance to the smaller regulators on how they might gather and publish information on quality indicators.

Conclusion

The reality of multiple regulators in legal services requires Approved Regulators to carefully consider a common approach that would not leave consumers confused by information overload, especially when there can be multiple regulators in one service area. We therefore hope that the LSB can encourage the regulators to arrive at an appropriate mix of generic categories of indicators.

Our work in this area continues to highlight the need for consumer research to inform the development of quality indicators in this market. The regulators may want to explore the feasibility of pooling their resources in this regard.

The Panel remains committed to advancement in this area, and we will continue to support the regulators. Our next step is to host a roundtable event drawing on experience and expertise from wider sectors.