

Legal Services Board

Quality Indicators in the legal services market: discussion paper

A response by the Association of Personal Injury Lawyers

April 2021



Introduction

APIL welcomes the opportunity to respond to the Legal Services Board's (LSB) discussion paper regarding quality indicators in the legal services market. It is crucial that consumers are able to define quality in legal services and be able to compare different firms to make an informed choice. However, comparing different legal services is challenging and more complex than simply assessing price and success rates. Expertise and skill are critical in ensuring that a case is run properly.

Accreditation is an excellent indicator of technical quality. APIL prides itself on aiming for all eligible members to be APIL accredited to ensure that those seeking legal services in relation to personal injury or clinical negligence cases are receiving a knowledgeable and specialist service. APIL's accreditation scheme gives consumers a definable kite mark of quality to look for when seeking advice on a personal injury or clinical negligence claim. Between 2014 and 2017, APIL was the most recognised and widely known accreditation scheme amongst those surveyed by YouGov¹. Accreditation should form part of the technical quality which the LSB consider because this is something that consumers recognise and respect.

APIL's responses to the LSB's questions are with reference to personal injury and clinical negligence cases. These cases present specific challenges. Those seeking to pursue a personal injury or clinical negligence claim are injured and/or vulnerable so it is crucial for them to understand the importance of acquiring a quality service within the sector. Many elements of these cases are different to, for example, conveyancing because they are not straightforward in nature and require specific expertise. APIL argues that taking a broad-brush approach and implementing one set of quality indicators throughout the whole legal services market will be ineffective in achieving the LSB's aims because quality can be assessed differently depending on the area of law. One set of quality indicators to assess all areas of law could lead to a misrepresentation of good technical and service quality in personal injury and clinical negligence cases.

Q1. We are proposing to think about quality in terms of these dimensions: technical quality, customer service and outcomes. What do you think about these elements and are there others we should consider?

In addition to what is determined to be 'technical quality' within the paper, competency and expertise should be included in the way the LSB consider quality. Competent and expert practitioners are fundamental for areas of law such as personal injury and clinical negligence. It is essential that such practitioners maintain their expertise through their work

¹ YouGovReports Personal Injury 2017 – participants made up of a nationally representative sample of 2,021 UK adults aged 18 and over in addition to 548 adults who had been involved in a personal injury/clinical negligence claim p 33, 34, 49, 50

practices and learning. Continual Professional Development hours are also crucial in ensuring on-going competency in the legal profession and should therefore be considered within the technical quality indicator. Accreditations should be considered as a way of assessing technical quality by the LSB. For example, APIL encourages all of its eligible members to become accredited, which includes completing 16 hours of APIL accredited personal injury CPD training per year, some of which may be specialist learning, depending on the field(s) of work in personal injury. These both demonstrate on-going competence, expertise and up-to-date knowledge in a specific area of law. Industry recognitions are also good indicators of quality which show reputable expertise not only for individual practitioners but also the firm or department as a whole.

Customer service is a crucial quality indicator, especially for clients in the personal injury and clinical negligence sector. Managing expectations is at the heart of legal services and ensuring excellent client care and efficient communication will provide a good quality customer service. Ensuring a good quality customer service makes their experience a positive one despite the outcome. This is what clients appreciate, especially when they feel vulnerable as many personal injury and clinical negligence clients do.

APIL is concerned that outcomes and/or success rates are not always reflective of technical and service quality. It is not possible to consistently measure and compare outcomes in personal injury and clinical negligence cases because all cases are different and therefore no two results are the same. In addition, some firms may take on extremely difficult and complex cases which may not always result in damages but the client may still feel that they have been advised well as they knew the risks involved from the outset. Abuse claims are an example of this. Putting abuse claims into success rates could be difficult. Measuring the outcome in terms of a successful outcome would be difficult and the result taken out of context could reflect badly on the legal services provider.

Q2. We are proposing to encourage use of these types of information: objective data, consumer feedback and general information about providers. What do you think about these types of information and are there others we should consider?

Consumer feedback is a good way for consumers to get a feel for a firm by recognising the experience of others. This is particularly important for personal injury and clinical negligence firms because customer service is critical to ensure that a client is as comfortable as possible about how their case will be pursued and their expectations are managed appropriately on a case-by-case basis. These clients appreciate honesty at the outset and often the financial outcome to them is not as important as the way they feel about getting answers. Consumers place a lot of value on DCTs such as Trust Pilot and use them to collect their data to make an informed decision.

In addition, general information on a law firm found on their website and through their marketing is a good indicator of experience, expertise and specialism. This could include whether the firm as a whole or how many of its employees are accredited in specific fields. General information, accompanied by genuine consumer feedback and reliable objective data can help consumers make an informed decision of which legal services provider to use.

Reliable, objective data should be made more widely accessible to consumers who may not know where to find such information because it provides a useful benchmark. This would give direct comparisons enabling consumers to draw conclusions and make an informed choice. However, APIL is concerned that objective data in itself can sometimes be misleading. Complaints data for example, although useful in assessing whether clients feel

satisfied with the service they receive, taken on its own could be misleading. This is because there is a lack of reference to the size of a firm, number of cases they take on and the complexity of those cases, to enable accurate comparisons to be made. The complaint may also be very technical in nature and there may be a lack of understanding of what the complaint entailed and why a particular course of action was taken. A large national firm may receive more complaints overall than a small high street firm; however, a large national firm will be running far more cases. Therefore, per fee earner or per case they have on their books, the numbers may not be as significant. Additionally, many cases, due to their complexity, will take much longer to progress and some of the more specialist firms will therefore have less cases per fee earner than one pursuing lower value claims. Context is important.

Q3. Which groups of consumers and/or types of provider should action in this area focus on?

Quality indicators in the legal services market should focus on consumers who may be injured and/or vulnerable and are likely one-time users of the system. These indicators should apply equally to all those permitted to work in the legal services market to ensure consistency in competency and quality. Regulation should also be consistent across the legal services market so that all of those conducting work in legal services are held to the same standards. This will ultimately benefit the vulnerable/injured one-time user of the system because they will more likely than not receive a competent and quality service.

Q4. Should there be a base level of transparency on quality across the market and enhanced transparency in priority service areas? What should a base level of transparency on quality consist of?

A base level of transparency is required across the market. However, where vulnerable clients are involved, in cases such as abuse, personal injury and clinical negligence claims, an enhanced level of transparency should be required. An enhanced level of transparency could include information on professional membership which demonstrates a commitment and interest in a specific area of law, along with a commitment to abide by an enhanced professional code of conduct and consumer charter. This could also include information on accreditations and what accreditations demonstrate in order to educate the consumer. This will inform a potentially vulnerable client that the firm or practitioner has up-to-date knowledge and expertise in that area of law to ensure they receive the best advice possible in relation to their case.

We also believe that there should be a level playing field in terms of transparency on quality for all those permitted to offer legal services, whichever regulatory scheme they may fall under.

Q5. How useful could consumer feedback, objective data and general information about providers be in informing consumer choice? What are the benefits and drawbacks of these types of information?

APIL agrees with the benefits and drawbacks outlined within the discussion paper. Also as mentioned in the discussion paper, members of the public seem to gain real benefit from

consumer feedback to make a decision on which legal services provider to use for their legal matters.

However, we reiterate the point highlighted earlier – objective data is a useful benchmark as long as it is not misleading. Some objective data makes it challenging to draw accurate comparisons due to the lack of reference to the size of a firm and the number and complexity of cases it takes on. This can be misrepresentative and misleading with regard to technical quality. This may therefore inform consumer choice but in an inaccurate way.

Q6. What role, if any, should success rates and complaints data have in informing consumer choice? Is there other quantitative data that would be helpful to inform consumer choice?

As explained, complaints data is objective and can be useful but can also be misleading and misrepresentative with no reference to the size and workloads of the legal services providers. Success rates are extremely challenging in isolation. If a law firm's specialism is historical abuse claims, these cases are challenging to assess at the outset and throughout whether they will be successful and are therefore risky to a law firm. However, these are important cases to take on. If a consumer looked at the success rate of the firm, it may imply that the firm has a low technical quality, which isn't necessarily the case. Both complaints data and success rates should not be solely relied on because they may be misleading to a consumer and may paint an unreliable picture of a provider in a personal injury and clinical negligence setting.

An education piece should be developed to inform consumers what success rates mean for different types of claim, in particular in respect of rehabilitation and restoring lives as much as possible. Success in personal injury and clinical negligence cases may not mean receiving damages or even pursuing a case on behalf of a client. A success in personal injury and clinical negligence claims could mean much more. We have highlighted above that for those looking for advice in this area, it often means looking for answers or the hope they can prevent a similar incident happening to someone else. Taking a broad-brush approach to success across the legal services market will be unhelpful due to different areas of law considering success in different ways.

Q7. Which of these different channels – law firms' websites, DCTs, a single digital register – do you think could be most effective in providing access to information on quality? Are there other channels we should consider?

In order to assess which firm would be best for them, a consumer should be able to shop around and use different websites, including DCTs and law firms' websites to get a feel of the different firms, the services they provide and what they would expect. Even if a consumer looks through consumer feedback on Trust Pilot, they may still want to go onto the law firm's website to get a further understanding of the expertise of the firm prior to making contact. A single digital register may be beneficial to have some law firm information in one place, however it won't be as in-depth as the information provided on the firm's own website or the website of a professional organisation displaying accredited members, levels of accreditation and profiles.

In addition, it is difficult to have a thorough comparison of legal services providers without considering price, however this is a challenging comparison to make. Pricing can be misleading where a less specialist firm may charge less for their services compared to an

accredited firm. Price does not determine competence and it is crucial that the focus should be on competence in addition to quality.

Q8. Do you have evidence on current usage of DCTs not mentioned in the paper? How could we best encourage engagement by consumers and law firms with DCTs? What are your views on the specific potential solutions, such as requiring law firms to signpost to DCTs, embed ratings, or prompt consumers to leave a review?

APIL has no additional comments.

Q9. What, if any, steps should regulatory bodies take to help consumers and legal services providers engage with DCTs safely?

APIL has no additional comments.

Q10. What range of quality information, if any, would it be appropriate to hold on a single digital register?

Although objective data and general information is available for consumers to use in order to compare legal services providers and make an informed choice, it would be useful for this information to be in one place. This would give consumers a starting point to their research. APIL reiterates that *reliable* objective data is important so that it does not mislead the consumer.

Q11. What are your views on the relative merits of a market-led approach compared with standardised regulator-led approach?

A market-led approach will be more appropriate due to the differences between firms and the type of work they undertake. This approach should co-exist with a single digital register giving consumers a starting point to commence their research into different legal services providers. There should however continue to be an emphasis on the quality indicators discussed within this response, including the importance of accreditation and on-going competence.

Q12. Do you have any further comments on our analysis and approach to determining suitable quality indicators?

It is crucial that with reference to personal injury and clinical negligence cases, getting the maximum damages is not the be-all and end-all. It is about getting the right result for the individual client on a case-by-case basis in line with the client's objectives. As explained, taking a broad-brush approach to quality indicators will not work for all types of legal services. Success can be determined in different ways depending on the type of law. It is important that consumers are able to consider the legal services market holistically to be able to make an informed decision which is right for them.

About APIL

The Association of Personal Injury Lawyers (APIL) is a not-for-profit organisation which has worked for 30 years to help injured people gain the access to justice they need, and to which they are entitled. We have more than 3,000 members who are committed to supporting the association's aims, and all are signed up to APIL's code of conduct and consumer charter. Membership comprises mostly solicitors, along with barristers, legal executives, paralegals and some academics.

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