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Qualitative research exploring experiences and perceptions of unbundled legal services

Prepared for the Legal Services Board and Legal Services Consumer Panel

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1 Executive summary

A qualitative approach was adopted to allow in-depth exploration of the provision of unbundled services. Thirty five qualitative in-depth interviews were conducted with a range of consumers who used an unbundled legal service in regards to a civil, family or immigration matter. A further 14 interviews were completed with legal service providers across the same legal areas, and six interviews were completed with members of the judiciary.

For the purposes of this study, an 'unbundled' service separates a package of legal services into parts or tasks. The consumer and legal services provider agree which parts of the package the provider will provide, and which tasks the consumer will undertake.

1.1 Consumers

- The reduced cost of unbundling when compared to payment for a 'full service' is clearly a key reason why consumers choose to unbundle and tends to impact positively when considering their overall experience of unbundling. Legal services providers are described as 'very expensive'; and by taking on elements of the legal work that the provider would usually do themselves, consumers felt that they were able to save themselves considerable amounts of money. For some consumers, unbundling meant they could access legal advice when otherwise they would have been unable to.
- A further benefit described by consumers was the additional direct control that they felt by having a role in their own case work. Consumers typically described the issues on which they were engaging with legal service providers as being very high stakes, and as such, felt that by taking on some of the work themselves they were taking direct responsibility for an important issue. Furthermore, a number of consumers reported that they were able to speed up the process of their case by taking control of certain tasks, when a solicitor, they felt, would have taken more time to complete them. Some consumers felt that solicitors had large workloads and would often struggle to prioritise their cases, so by taking personal ownership and having a direct involvement they were able to speed up the process.

- Consumers typically chose a provider based on prior experience and expertise, rather than due to their willingness to offer unbundled legal service provision. Consumers chose to unbundle through one of three main scenarios:
 - an immediate response to a problem with a willingness to save costs;
 - a requirement for advice following escalation of a problem they had been dealing with themselves; or
 - where additional services were required which they could not afford, following the earlier use of ‘full’ legal service provision.
- The agreements reached were not in response to advertised or promoted offers for unbundled services. Consumers therefore had to access legal services themselves, without the opportunity to unbundle being clearly or obviously available.
- It appears that agreements made between consumers and providers are generally felt to be working well. While agreements are typically made informally, without tasks explicitly written out, working arrangements and the division of labour and costs are generally thought to be clear to consumers. While on the whole there was clarity in the agreements made, there were however a small number of instances where consumers felt that providers could have been clearer about the division of tasks and how they should be completed.
- Consumers, in the main, felt confident to take on tasks themselves, feeling they had transferable skills or some relevant knowledge which enabled them to complete tasks. This high sense of their own personal capability was reflected in the perceived effectiveness of the agreement to unbundle, which consumers often commented on positively.
- Using a legal service provider was felt by consumers to improve the outcomes compared to attempting to tackle the problem alone. Without the professional expertise of providers, consumers felt that they would not have had such positive outcomes. Few consumers experienced downsides outside of time and stress related to the case itself.

- In the main consumers did not feel that there needed to be additional safeguards for those engaging in the unbundling of legal service provision, reflecting their typically very positive experiences. A couple of consumers felt that there could be greater clarity in agreements, and that regulators should be wary of non-authorised providers offering unbundled services.
- It is important to make clear that the consumers we spoke to were on the whole satisfied with the outcome of their matter and that this is likely to be reflected in their assessment of their experience of using unbundled legal services.

1.2 Providers

- Providers typically unbundled through the use of fixed fee services or through a ‘pay as you go’ model.
- The provision of unbundled services was relatively recent. Most had started providing services within the past two years, in response to a greater demand for low-cost legal services following changes to legal aid eligibility, and a more competitive market for services. The latter was typically highlighted as a benefit of unbundling.
- Take up of services has been relatively recent due to the infancy of the market and the low levels of marketing activity that has taken place to date.
- Providers felt that unbundling could potentially offer clients some form of legal advice when previously they would have been unable to access any, and as such could secure better outcomes.
- Providers highlighted three main difficulties in providing unbundled services to clients:
 - 1** There was a perception that if clients could not cope with the work, then it would adversely affect the outcome of their matter
 - 2** Clients may not fully understand the limits of what the provider had agreed to do for them
 - 3** There is a risk of giving advice on the basis of poor initial information from clients. This chimed with a perception of lack of control, which was raised as a concern for providers (in contrast to consumers who see it as strength of the model).

- Some providers raised concerns over some clients' intellectual ability to take on particular aspects of the work, and in respect of family matters, emotional wellbeing. Providers mentioned that they would have to make substantial changes within their organisation in order to fully embed unbundling. For example, changing their terms and conditions, 'client care' letters, internal system and in terms of providing further supervision. They also acknowledged that costs would have to be kept to a minimum to ensure it is financially viable.

1.3 Judges

- All of the judges interviewed said that whilst there were exceptions, they commonly found that litigants in person had difficulties when dealing with court or tribunal proceedings.
- Those interviewed were aware of unbundling as a concept. There was variation in terms of the extent to which they felt they could tell when litigants in person had received help. However, there was a consensus that if full representation could not be obtained then – as a starting point, some legal advice and assistance ought to be beneficial.
- Early advice was perceived to be beneficial, particularly in respect of civil matters where points of law may dictate whether or not a case is viable.
- The judges were aware of potential difficulties with unbundling, and endorsed several of the points made by providers, such as client capability and the scope of engagement. A general point was felt to be the risks involved in advising and/or assisting in proceedings based on inadequate information, including incomplete knowledge of what had happened previously in the case.
- It was felt particularly important by judges that advice and assistance was given by regulated advisers. Some reported seeing a rise in litigants in person being assisted by advisers who appeared to be unqualified, which was felt to be a risk for the client's representation.

Acknowledgements

Many thanks to staff at the Legal Services Board and the Legal Services Consumer Panel involved in this research. Thanks are also due to the judges, the legal service providers and the consumers who gave up their time to be interviewed.

2 Introduction

2.1 Background

In its simplest terms, ‘unbundling’ separates a package of legal services into parts or tasks. The consumer and legal services provider agree which parts of the package the provider will provide, and which tasks the consumer will undertake. In more formal terms, unbundling has been described as the *‘provision of discrete acts of legal assistance under a limited retainer, rather than a traditional full retainer where a solicitor typically deals with all matters anticipated from initial instructions until the case is concluded’*.¹

Unbundled legal services may involve a variety of options, for example ‘Pay As You Go’, under which a consumer may buy a provider’s expertise as and when it is needed, or ‘a la carte’ menu pricing, with providers agreeing to assist with or deal with certain elements or stages of a matter under fixed fees. However, if clients retain overall responsibility for conduct of a matter, these services differ from situations in which providers do all they would do under a traditional full retainer, but for fixed fees rather than at hourly rates.

This report looked at consumer and provider experiences where service delivery has been formally organised and negotiated as constituting unbundled services. It does not include comment on other segmented case-type services that may have developed differently but without the label.

Particularly in respect of private family law matters,² it appears that providers have increasingly decided to offer unbundled legal services, in part at least as a response to legal aid no longer being available in respect of most such matters following implementation of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) in April 2013.

Since April 2013, there has been a rise in the numbers of cases in the family court in which one or more parties is a litigant in person, i.e. representing themselves in proceedings. There is currently much policy interest in the potential for unbundling to be of assistance to litigants in person in conducting their cases more effectively. There is also interest in the potential of unbundling in civil proceedings and in respect of immigration matters.³ Available literature suggests that these three areas

¹ The Law Society, practice note on Unbundling civil legal services, March 2015, which updates the Society’s earlier practice note on unbundling family legal services which was issued in May 2013.

² i.e. not public law matters such as care proceedings or other child protection cases.

³ Both also areas in respect of which legal aid is no longer available in most types of cases.

are potentially amenable to unbundling. However, a number of potential risks as well as potential benefits of unbundling have been identified, and the existing literature tends to be from overseas. There is currently a dearth of empirical research focused on unbundling in the jurisdiction of England and Wales.

2.1.1 Research aims and objectives

This study was commissioned by the Legal Services Board (LSB) and Legal Services Consumer Panel (LSCP), with the overall aims being:

- Raising consciousness among providers and policymakers about the potential of unbundling as part of the solution to improving access to justice – this included identifying limitations or caveats in respect of that potential;
- To understand the consumer experience of using unbundled services;
- To inform an appropriate regulatory framework which gives legal services providers the confidence to unbundle their services whilst meeting their professional obligations;
- To enable consumers to make sensible and informed decisions when deciding whether to use an unbundled service and to use these services effectively.

2.2 Methodology – engaging a consumer audience

A qualitative approach was adopted to allow in-depth exploration of the issues under consideration. Thirty five qualitative in-depth interviews were conducted with a range of consumers who used an unbundled legal service in regards to a civil, family or immigration matter.

2.2.1 Building the consumer sample

This research explores the motivations and perceptions of members of the public with experience of using an unbundled legal service. Qualitative sampling aims to reflect diversity rather than aspiring to be a representative sample of all who have used unbundled legal services. As such, the sample was designed to include a range of consumers over three areas of law. The number of interviews conducted across these areas is shown in Table 2.1 below.

Table 2.1 – Breakdown of consumer interviews completed

	Total Interviews	Interviews involving court or tribunal proceedings
Civil	15	5
Family	15	11
Immigration	5	0

Participants were recruited via a mixed-method approach consisting of:

- Screening Ipsos MORI’s online panel, which consists of c. 300,000 households across the UK; and
- Screening an additional sample of the general public using Ipsos MORI’s face-to-face nationally representative omnibus survey in which c. 2,000 members of the public are interviewed weekly.

Screener questions aimed to identify those who had experienced a civil, family or immigration matter for which they had used a fee charging legal service and agreed to make use of this by way of unbundling. These questions identified 259 leads across England and Wales from which the 35 interviews were arranged and conducted.

2.3 Methodology – engaging providers

Providers were recruited to the study via several routes. These included using advertising and a commercial mailing list, as well as web-based searching, and utilising contacts known to the research team in order to build up a sample of relevant legal service providers to approach. Fourteen different providers took part, producing a total of fifteen interviews. Most of the providers were solicitors firms; two were immigration advice providers regulated by the Office of the Immigration Services Commissioner (OISC). The majority of interviews were conducted with people who combined senior managerial and fee earning roles. Most covered one area of law, but two covered more than one area. Table 2.2 provides a breakdown of these interviews.

Table 2.2 Breakdown of provider interviews completed

	Total providers which covered each area of work	Total interviews which covered each area of work
Civil	4	4
Family	8	8
Immigration	4	5

2.4 Methodology – engaging judges

In order to obtain perspectives on unbundling from a third key group of participants, provision was made to include a small number of judges in the study. As is required for judicial participation in research, approval for this was granted by senior judiciary, via the Judicial Office. Recruitment was conducted in three regions of England and Wales with the assistance of local senior judiciary who circulated a request for participants to relevant judges in courts or tribunals for which they were responsible. This process led to six judges taking part. Five were full-time District Judges who sat in the County Court and Family Court, and one was a full-time salaried Immigration Judge of the First-tier Tribunal (Immigration and Asylum Chamber). Of the interviews with the District Judges, two focused on civil matters, two focused on family matters, and one covered both civil and family. Judges were asked to focus on small claims when talking about civil proceedings, private law children cases and finances on divorce when talking about family proceedings, and non-asylum cases when talking about immigration cases.

As with the consumers and providers, these interviews were qualitative in nature. Therefore, the same considerations apply; they were designed to be exploratory and to provide insights into judicial experiences and perceptions of unbundling. In interpreting the findings it should be borne in mind that it is not claimed that the judges who took part were necessarily representative of the wider judiciary, nor that their views would necessarily be prevalent among their judicial colleagues.

2.5 Designing discussion materials

Interviews with consumers were guided by a discussion guide which served to ensure a consistent approach to covering the core research aims outlined below:

- How confident consumers felt about using these services before they started and whether their experience was easier or more difficult than they had anticipated
- The reasons why people choose to use an unbundled service and alternatives considered
- Whether consumers were clear about what services they would and would not receive at the outset and throughout the life of the case
- How consumers chose their provider and how they went about agreeing how the various elements of the work would be divided between them and the law firm
- What the benefits and downsides of unbundling were in practice
- The perceived savings made by dealing with some of the case alone
- The perceived impact, if any, that unbundling had on the outcome of the matter
- What protections consumers expect or want to see in place
- What sorts of information were or would have been useful to consumers in making decisions about whether and how to use unbundled services

Interviews with judges and providers were guided by a discussion guide that covered similar topics to the consumers, with a particular emphasis on:

- Personal experiences of unbundling
- Perceived benefits and costs of unbundling for both consumers and providers
- Consumer protection
- Provider risk and responsibility
- Regulatory issues going forward
- The future of unbundling

In addition to an exploration of the experiences of those unbundling with legal services providers, the interviews explored the rationale for the decision to embark on an agreement to share the workload with their provider. In order to ensure a comprehensive understanding of key influencers on the behaviour of consumers in this aspect, a behavioural research approach was adopted. This approach was taken both when developing the interview materials and conducting fieldwork, and in the analysis of the resulting data. This approach drew on the 'COM-B model' of

behaviour change (Michie, Stralen and West, 2011)⁴ and the Theoretical Domain Framework (TDF).⁵ This approach was taken to ensure a comprehensive approach to data collection around behavioural influences. In this 'behaviour system', motivation, capability and opportunity interact to generate behaviour that in turn influences these components:

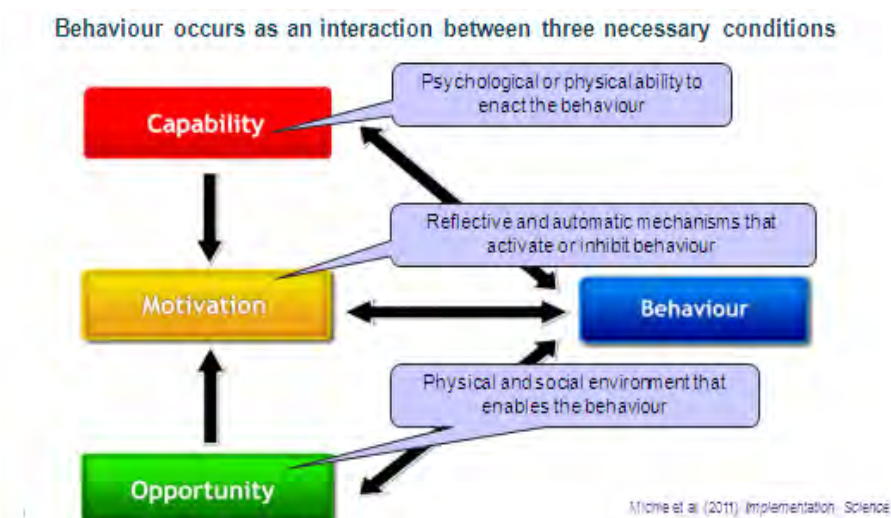
- **Motivation** is defined as all those brain processes that energise and direct behaviour, not just goals and conscious decision-making. It includes habitual processes, emotional responding, as well as analytical decision-making;
- **Capability** is defined as the individual's psychological and physical capacity to engage in the activity concerned. It includes having the necessary knowledge and skills;
- **Opportunity** is defined as all the factors that lie outside the individual that make the behaviour possible or prompt it.

The COM-B System is depicted in Figure 2.1 and shows how the factors interact to influence behaviour. The arrows represent potential influence between components in the system: for example, opportunity can influence motivation as can capability; enacting a behaviour can alter capability, motivation, and opportunity. These behavioural domains were used within the discussion with participants in order to address the research questions.

⁴The original paper is accessible at: <http://www.implementationscience.com/content/6/1/42>

⁵James Cane, Denise O'Connor and Susan Michie. Validation of the theoretical domains framework for use in behaviour change and implementation research, Implementation Science, 2012, <http://www.implementationscience.com/content/7/1/37>

Figure 2.1 – The COM-B System



2.6 Presentation of findings

Qualitative research is designed to be exploratory and provides insight into the perceptions, feelings and behaviours of people. Findings are not statistically representative of the views of all consumers and providers of unbundled legal services, nor members of the judiciary. Although this report includes some indications of how typical views or experiences were across the sample or within subgroups, indicated through the use of words such as ‘most’, ‘many’ and ‘few’, this should be considered indicative among those interviewed. It does not give a measure of the prevalence of different views among the population of consumers and providers. The perceptions of participants make up a considerable proportion of the evidence in this study, and although such perceptions may not always be factually accurate, they represent the truth to those who relate them.

Anonymised verbatim comments have been used to help illustrate key findings. For each quote, details are provided for consumers about their case type and gender. For providers, quotations are followed by their provision; family, civil or immigration.

2.7 Scope of study and definitions

The study covers civil, private family law, and immigration (non-asylum) matters, from the perspectives of consumers, legal services providers, and members of the judiciary.

‘Consumers’ were limited to those acting in an individual capacity, i.e. not on behalf of a business or other organisation, and not acting in respect of matters arising from the carrying on of a business, including self-employment.

The study was limited to perceptions and experiences of fee-charging services. By definition therefore, the consumers who took part would either have had the financial means to pay at least something for legal services, or at least the ability to access funds to do so (e.g. by borrowing). There are other models of unbundled legal services, provided free by not for profit agencies, and findings from this study may not be applicable to such services.

3 Experiences and Perceptions of Unbundling: Consumers

3.1 Choice of Legal Services Provider and Why Consumers Unbundle

This section outlines the process of reaching an agreement to unbundle, including how consumers choose their provider and why they decide to unbundle.

Section Summary

Consumers typically chose a provider based on the provider's experience and expertise, rather than due to their willingness to offer unbundled legal services.

Consumers chose to unbundle for three main reasons: as an immediate response to a problem with a desire to save costs; a requirement for assistance following escalation of a problem they had been dealing with themselves; or where otherwise additional services were required which they could not afford, following the earlier use of a legal services provider.

A key reason why consumers chose to unbundle was because the matter was of such importance to them that they felt they needed the input of professional legal expertise. In parallel, many also felt that it was important to retain a sense of control over the issue.

Legal services were described as costly, and as such, unbundling provided access to legal advice and assistance where otherwise it may have been too expensive.

3.1.1 Choosing a legal services provider

Consumers tended not to approach a legal services provider with the express intention of entering into an agreement to unbundle. They typically chose to approach a provider by deciding who they wanted to get advice from or to potentially represent them, as opposed to whether the provider was willing to offer an unbundled service. Indeed, none of the consumers we spoke to were aware that the provider would offer unbundled services before approaching them.

The choice of provider was often based on prior experience of using the same solicitor for a separate matter (or in the same matter where an agreement to unbundle had yet to be reached). Consumers sometimes spoke about using their 'family solicitor', who they had confidence in using due to familiarity, along with a sense of personalised service.

Other providers were sourced via friends and other contacts, such as work colleagues, neighbours or extended family members. Consumers typically relied on these social contacts for recommendations for providers when dealing with an issue where their contact had experienced a similar situation, such as a divorce or an employment issue. The use of social contacts to approach providers helped build confidence in the quality of advice that would be provided.

Consumers who had not previously accessed legal advice, and did not know others who had been in similar situations typically found their provider by searching for specialists in their local area. This was often the case with immigration matters, or more specialist civil matters. These consumers used the internet to search for the specialist advice they were looking for, or in some cases would find out about sources of advice through an organisation such as the Citizens Advice Bureau.

3.1.2 Reaching an agreement to unbundle with a provider

There were three main routes by which consumers reached an agreement to unbundle with a legal services provider.

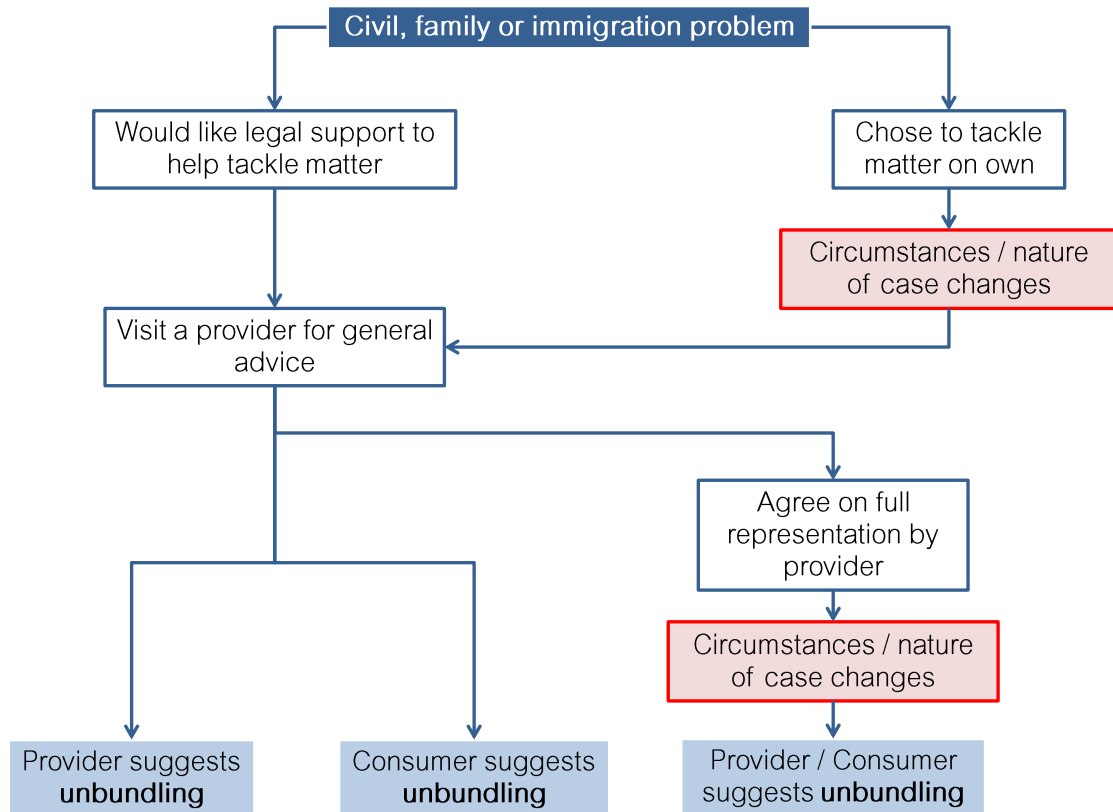
- 1 The first key pathway was where the consumer recognised that they had a problem they wanted legal advice and support with. Typically they approached a provider for some initial advice without having any prior knowledge that they might be able to unbundle. During these initial meetings providers would outline the various steps that would need to be taken to deal with the matter. The provider would outline the costs involved, and a discussion took place around how the consumer would pay for their services. If the provider was aware that full representation would be *unaffordable* for the consumer they suggested unbundling as an option. During this initial conversation some consumers felt that they would be able to take on some of the tasks themselves, so openly suggested to the provider that they could do some of the work. These consumers were driven by a desire to their keep financial outlay to a minimum.

- 2** The second major route into an arrangement to unbundle was where consumers had initially chosen to do the work involved in dealing with a matter themselves and then later went to a provider. The task was initially perceived to be relatively straightforward by consumers who typically described themselves as quite savvy and skilful. They felt capable and confident in their ability to deal with the matter. They went on to instruct a provider because the circumstances around their case had subsequently changed. This tended to be because the nature of it had escalated, or on occasions because they had failed in their attempts to resolve a matter on their own or wanted additional advice as a safety net. They usually approached a provider with a view to getting legal advice and support, whilst also wishing to continue to play an active role in dealing with the issue.

- 3** Finally, some consumers had been fully represented by a provider before subsequently deciding to enter into an arrangement to unbundle. These consumers tended to unbundle because the nature of the problem they were engaged in tackling had changed or evolved and they had insufficient financial resources to fund the continuing provision of full services, such as representation in proceedings.

The three key pathways taken by consumers are shown in Figure 3.1.

Figure 3.1 – Key pathways to the use of an unbundled legal service



Case Study: Pathway 1

Following a relationship breakdown, the consumer was seeking to make a formal, legal agreement with his ex-partner for regular contact with their daughter. The breakdown of his relationship caused him to be signed off work which meant he had few resources in order to afford full legal representation. Using a legal services provider was essential for him because he wanted something legally binding for himself, his ex-partner and their daughter. He approached a local solicitor specialising in family cases for an initial free session for advice. At this point he found out that he would not be eligible for legal aid despite being on various benefits. He could not afford a full service but wanted representation at court hearings. He was not aware of unbundling but asked his solicitor what he could do to reduce the costs.

“I went for my free one hour legal consultation and he at that point told me that legal aid doesn’t cover family matters anymore, especially in regards to children, so I said ‘alright, in order for me to proceed with this, is there anything I can do myself to reduce the costs?’ and that’s when he gave me the advice as what I could do.”

He went ahead with an agreement to take on some tasks himself, communicating with his ex-partner’s solicitor and various administration tasks. The solicitor offered advice throughout and represented him at court hearings, with an agreement to pay on an hourly rate.

Case Study: Pathway 2

The consumer employed a builder to build an extension on her Grade II listed property. The plans were very strict because of the listing and required the use of specialist building materials. The builder did not follow the plans and did not use the materials correctly resulting in numerous problems with the building work once complete. The consumer wanted to recover the cost of the initial building work and compensation in order to pay for the work to be rectified. She went to a Citizens Advice Bureau where staff recommended a further building survey. This revealed further structural problems increasing the potential claim and she started civil court proceedings (a small claim) herself. She wanted representation in court and approached a barrister directly. They represented her at a court hearing and she won the case.

Case Study: Pathway 3

The consumer was a mother who was looking to obtain a residence order in respect of her children. She had initially instructed a solicitor to deal fully with the matter and had a good relationship with her. She thought highly of the work the solicitor had done representing her in terms of making court submissions and writing correspondence. The process had been very expensive for her, costing around £30,000 due to the process lasting several years, and she was not able to afford to put in much more money. The solicitors recommended that for the next stage of the court proceedings a barrister was used. The consumer met the barrister and outlined her financial situation. The barrister explained that she could save money by doing the court preparation herself, which included providing evidence and putting together a court bundle for the hearing. She decided that was a good option for her so instructed the barrister directly. She reflected that it was a successful agreement, as it had saved approximately £3,000 and she had felt able to do the preparation.

3.1.3 Why consumers chose to use unbundled legal services

Consumers' decisions to use unbundled services were ultimately a function of their desire to get the best outcome possible in respect of their family, civil or immigration matter, and the associated benefits that unbundling was perceived to offer. Principally consumers recognised that their pathway to reaching the best resolution was greatly enhanced by having *some* rather than *no legal advice and assistance*. Consumers often spoke about the "clout" a legal service provider offered in terms of their expertise, reputation and leverage to bring about a successful outcome; the provider's involvement was seen as *critical* rather than *peripheral* to outcomes.

3.1.4 High stakes, control and empowerment

Consumers typically described their matters as involving very 'high stakes', where the outcome would impact greatly on their futures and those of others involved. For example, issues around arrangements for children would impact greatly on family life, matters to do with immigration status would have major implications for rights to study, work or reside in the UK, as well as potentially the future whereabouts of family members. As such the matter was often of great personal importance to those participating in the research.

Consumers, therefore, viewed not obtaining legal advice as risking a poor outcome. In other circumstances, such as where the consumer was appealing a decision, or where they were arguing a point of law, the provider's involvement was seen to be critical to being able to resolve the issue. Consumers were therefore keen to ensure that they had high quality advice and assistance or representation to put their case forward.

“I felt I definitely needed legal support. I’m fairly sure that if I hadn’t have used a lawyer, I’d probably have been poorly representing myself”

Male, financial settlement on divorce

“(Divorce) needs to be done properly with legal documents and hence why you need a solicitor or get them involved in some aspects of it. I think it’s different than say writing a will, although you can get a solicitor and they’ll do it properly, you could buy a pack from WH Smith. But I think in regards to divorce it’s something you need to get a solicitor involved with, be it a minor part or a major part.”

Male, child contact following divorce

Unbundling was also widely attractive to the consumers interviewed as it offered them some control over the pace and direction of dealing with matters. For example, they tended to feel more in control of how fast forms could be filled in and how quickly they could correspond with other parties involved. By having control of some of the paperwork, consumers also felt that they would be able to influence the style of the documentation, within the parameters of having legal advice and assistance as a safety net to help them avoid making errors.

Consumers who felt a particular personal affinity with a matter, for example in family cases involving arrangements for children, also felt that they would be empowered by taking on some of the work themselves. These consumers felt a particularly emotional attachment to the issue, and so wanted to do what they could themselves. This feeling was also widely acknowledged by consumers who had already taken on some work before consulting the provider, for example either research or beginning proceedings. These consumers felt some duty to deal with the problem themselves, and therefore wanted to retain some involvement until the problem was resolved.

“It made me feel a bit more useful, like I was really doing something useful for my kids. So like when I started going through paperwork from social services and other departments, how did they get from A to B, who started it all off. It gave me more insight than I would have had...it gave me more of the information than the solicitor had told me”

Female, child contact

3.1.5 Cost, value for money and time

Many consumers interviewed had used legal services providers in the past, with some also engaging providers in respect of the subject matter of the interview, before reaching a decision to unbundle. There was a widespread belief that legal services providers were expensive to use and resulted in high costs. This reflected the views of consumers covering a wide spectrum of socio-economic status. Before engaging a provider, there was therefore a perception that using them would be costly, and potentially unaffordable.

“In regards to divorce, people would tend to say that the only winners are the solicitors”

Male, child contact following divorce

For some consumers, the option to divide the work between themselves and a professional would make accessing crucial legal support affordable. These consumers mentioned that had they not been able to unbundle, they would have been unable to afford the legal support they felt they needed. The cost saving generated by unbundling therefore opened the door for these consumers.

“I could not have afforded to pay for the solicitor for all his time. I felt I could save costs there, because the other things are going to cost me, like a doctor’s letter was going to cost £10 and information in the hospital isn’t freely available and to access other things incurs costs”

Male, child contact following relationship breakdown

These consumers typically unbundled to obtain the minimum support required in order to progress their case, knowing that legal advice had fed into their decision-making. For example, they were looking for advice on what to write in forms or correspondence, or to check documentation before it was submitted to court or the relevant authority.

Consumers who had or could obtain the financial resources to afford a traditional full service of legal representation were very conscious of the cost savings they would be able to make by unbundling. For these consumers, it meant that by

unbundling they would not have to excessively stretch their financial resources by having to use their savings, get into debt, or spend more money than they would hope to.

The latter group of consumers were not only cost conscious, they were also aware of getting **value for money** from their provider. Many saw great benefits in the provider passing on their expertise or using the reputation of the firm in their correspondence, but felt that some of the work required to resolve matters did not necessarily need the input of a legally qualified professional. Consumers were therefore reluctant to pay for services which did not offer anything beyond their own capacity; they wanted providers to offer added value to resolve their matter. As such, consumers often used providers for input where they were not capable of effectively doing something themselves or to enhance or validate work that they had already prepared.

“I’m the sort of person that if I can do something I will do it, I won’t farm off what is within my ability to someone else. It’s a waste of money, it’s a waste of time, if I can do it I will. If you feel you can do it and save a bit of money then great. There’s always a reason for you to do it in that instance. I’d rather pay a solicitor to do something that warrants their time and is productive for them”.

Male, child contact following divorce

Conversely, for a small number of consumers the desire to limit costs was not a motivator for unbundling, they were purely focussed on the most effective way to reach a desired outcome. However, whilst costs were not a primary consideration in their decision-making, these consumers felt that they could become a deciding factor at some point.

“Costs didn’t really have any relevance to be honest. (Though) I guess there’s a point at which you would say ‘that’s way too expensive’”

Male, employment case

3.1.6 Reaching agreements with providers

Consumers' routes to reaching agreements to unbundle with providers varied substantially. This was due to a variety of factors such as the knowledge consumers gained through pre-existing research, their active willingness to take on some work themselves, or by the solicitor prompting the consumer that unbundling was an option.

Agreements tended to be based on hourly rates charged by the provider. While consumers discussed with providers what tasks would be covered and how much they might cost, agreements around who would cover specific aspects did not tend to be set out formally in advance, and then the provider outlined future foreseeable cost splits as the case progressed. This was because the pathway to resolving the matter was not always visible to either party from the outset.

In many circumstances consumers had made a significant start to dealing with their matter by doing research, starting correspondence, or putting their case files and documentation in order before consulting the providers. These consumers appeared to be particularly engaged with the processes, often having researched the steps they would need to take to resolve problems some way in advance. To some extent this may have been a factor behind their willingness to take on some of the work with the legal services provider. These consumers considered themselves to be well-informed, savvy and with a clear idea of what they wanted from engaging with their legal services provider.

“I’d shopped around. Some solicitors put their rates online. I did a bit of research, and the solicitor that I’d already used for (the previous matter) was coming in at the same price as everyone else. I don’t think price would have made my decision. It wasn’t really about money. The end game was obviously”

Male, finances on divorce

Consumers often went about dealing with a matter following an initial time-limited free consultation with a solicitor. During that meeting either the solicitor or consumer proposed that the consumer took on some of the work. When consumers suggested that they took on some of the work they often felt they had a very strong grasp of the steps that needed to take place in order to deal with a matter, and had a strong idea of what they required from the provider. For example, some mentioned that they wanted the provider to purely check what they were writing or to just represent them at a court hearing.

Consumers reported that providers often offered to unbundle the work after they had asked about the financial circumstances of the consumer. In these situations the provider proposed to the consumer that they could maximise cost efficiency if they did the majority of the administrative work required themselves. These providers were reported to be conscious of the consumer's position, as well as their legal needs, and so tailored their service to make it affordable for them.

“I said I wouldn't have felt confident enough to represent myself in court, so I could pay for you to be there, so I said is there anything I can do to lessen the cost, is there anything I can actually do for myself. He was very good actually, I couldn't fault him”

Male, child contact following divorce

On some occasions consumers went to providers knowing exactly what they wanted from them. As such they outlined specifically what they wanted the provider to do, along with what they wanted to do themselves. These consumers often mentioned that they were quite capable of conducting certain tasks and had done much of the preparation before meeting the provider.

In other instances consumers had been dealing with the legal process on their own for some time, as they had felt capable of dealing with the matter, however unexpected changes in circumstances meant that they wanted to seek legal support. As they had been dealing with the matter on their own, they recognised that they had some ownership over its outcome, and so were therefore happy to work alongside a legal services provider.

3.2 Agreements to unbundle, division of labour and clarity of agreements

This section examines how consumers went about agreeing how the various elements of the work would be divided between them and the provider. It also explores whether consumers were clear about what services they would and would not receive from the provider throughout, and what work they would have to do themselves.

Section Summary

While consumers typically said that agreements were made in relatively informal ways, without tasks explicitly written out, the arrangements and division of labour were generally thought to be clear.

Arrangements typically took one of the following three forms:

1. Where the provider acted as a legal 'safety net' in case anything was wrong. They provided some advice and support, though the consumers did most of the work and required small amounts of provider input.
2. Where the provider was used to add value. Here the consumer performed administrative tasks solely, but used the provider to impart their legal expertise throughout.
3. Where the provider acted as an advocate for the consumer at court hearings. The consumer typically helped with some of the preparatory work.

Many of the agreements to unbundle services were felt by consumers to be relatively informal in nature. For example, they reported that it was often agreed verbally that they would share specific tasks, or would divide tasks on an ad-hoc basis as required. The agreements were commonly made within a first free consultation session, where both parties outlined the general approach to unbundling and identified which tasks the consumer was able to take on. Arrangements were partly dependent on the evolving nature of cases. For example, it would not necessarily be known in advance how many letters would need to be written, how much verbal advice would be required or indeed whether a case might proceed to a court or tribunal.

“(The provider) had a fairly standard sort of service. It was a fixed price thing. She told us who would do what. She basically said ‘you should fill in the forms and I will tell you whether you’ve filled them in correctly, and I will keep you advised of what other requirements you have to comply with, and when you should apply to get the documentation for that compliance”

Male, application for spousal visa

Consumers reported that sometimes agreements were written but the language was felt to be relatively loose in nature, and it was not outlined step-by-step or task-by-task who would be taking on exactly which specific aspects of the matter.

However there were some consumers who said that agreements were outlined in a great deal of detail and very explicitly. In these instances consumers said that the provider checked the agreement with great care, in part because it appeared to be an agreement that the provider did not normally put in place. In these cases the provider and the consumer had an existing relationship.

3.2.1 Clarity of agreement

Consumers in the main felt that the agreements that had been put in place were clear to them. Few consumers participating in the research reported ambiguity in the arrangements. Although agreements were often reported to be expressed verbally, consumers said that the division of tasks was still clear from the outset, despite not always being formally documented.

“She asked if I was happy to do some of the work. It was clear what was what expected of me. She gave me a list, so there was no ambiguity”

Female, injunction following divorce

Consumers highlighted that providers appeared to be very diligent when agreeing what tasks the consumer would undertake. Consumers often felt that providers assessed whether they were capable, confident and comfortable at undertaking work, while also actively checking that they were happy to take on the tasks outlined, as well as more generally proceeding with the arrangement to unbundle.

“She recommended things for me to do on the basis of whether I could do them or not”

Female, divorce

Consumers tended to place quite a high level of trust in the agreements that providers suggested. On occasions this derived from the establishment of a good relationship, or through high levels of recommendation from friends and colleagues. Trust was also sometimes established via the seniority and perceived reputation of the provider.

3.2.2 The division of unbundling tasks

The agreements to unbundle were task-based in the main. These tended to involve fairly straightforward divisions of labour whereby the consumers would undertake certain tasks and the provider would take on other specific tasks. Typically the role of the consumer was a 'researcher' or 'drafter', and the provider as an advisor or quality assurer. This separation of roles meant that many consumers were able to put their personal efforts into tasks they felt capable of completing as a non-specialist, but felt the comfort of having the tasks they undertook guided and checked by a professional.

Consumers did not report any direct time-based agreements, whereby the provider would agree to work for a specific number of hours on their matter. There were instances where there was an agreement that the provider would inform the consumer when the overall bill was reaching certain levels, or the provider would remind them of the hourly rate for their time when taking on specific tasks.

Consumers were conscious of the rates that providers charged for their time, and would bear in mind what they would receive from providers compared to the cost. For example, one consumer in an employment dispute who was using a solicitor for advice would deal with a series of emails to the other party before getting advice from the solicitor on what to write in his next batch, as opposed to getting advice following each email.

3.2.3 Tasks handled by consumers

Tasks taken on by consumers typically fell into three categories:

- 1** Agreements which involved light-touch input from the provider. These were where the matter was mainly dealt with by the consumer, and where the provider acted as an advisor. In these kinds of arrangements consumers felt comfortable completing the tasks required, but wanted the use of a provider as either a safety net, to ensure that there was not anything wrong with their paperwork, or to enhance the work that they were doing. The consumer would typically draft all the documentation and the provider would check what the consumer had prepared.

- 2** Agreements where the consumer worked on all the administration and communication with other parties, but the provider would do the drafting or have a greater degree of input into the drafting process, and/or represent them at court hearings. Typically these consumers felt well equipped to deal with certain tasks themselves, but wanted to utilise the provider's specialist skills, knowledge and experience. For example, to advise on specific legal points, how they should convey the legal message they wanted to give and how it should be presented, and any additional evidence that should be submitted. The provider would, in these instances guide and shape drafting, rather than leave clients to draft documents in the first instance and then offer corrections or advice.
- 3** Providers were sometimes used to enhance correspondence through the use of the solicitor's letterhead. Some consumers perceived that letters from solicitors held significantly greater weight and were much more likely to result in actions they wanted from the recipient, than if they were sent without the letterhead. Some consumers would seek to do this in respect of very specific elements of the case, such as making specific demands of the other party.
- 4** There were also some cases where the task-split largely involved representation at court hearings. These consumers would typically prepare much of the case documentation and produce court bundles, and would use the provider to put forward their case at court. In contrast, some consumers represented themselves, but used providers to advise them on how to approach their court appearance, including how they should present themselves and what they should say. The provider sometimes also met the consumer in advance of the court appearance in order to talk through what would happen at the court hearing.

3.3 Consumer Confidence and Unbundling

This section explores how confident consumers felt prior to starting work on their tasks about using an unbundled legal service. It goes on to evaluate their experience of unbundling in practice and the impact their involvement had, or would have, on the outcomes of their case.

Section Summary

- Consumers felt confident in their ability to take on tasks themselves because they felt they had transferable skills or some knowledge which would assist them in completing tasks.
- Unbundling was often described as a smooth and effective process, and consumers reflected on the process positively.
- Using a legal services provider was seen to improve outcomes. Consumers typically felt that without the assistance of providers they would not have had such positive outcomes. The involvement of a legal services provider was not seen to harm outcomes.
- It is important to make clear that the consumers we spoke to were on the whole satisfied with the outcome of their matter and that this is likely to be reflected in their assessment of their experience of using unbundled legal services.

3.3.1 Confidence using unbundled legal services

On the whole, consumers felt confident in the tasks they took on as part of the agreement with their provider. Confidence tended to stem from three key attributes: their belief in their capabilities, their skills and their knowledge.

Many consumers had some existing knowledge of the tasks they were taking on because they had been involved with the process of dealing with providers previously, either in general terms or on similar types of matters. Having some understanding of the processes built their wider confidence. Consumers did not always have knowledge of the legal aspects of the tasks but felt they had sufficient transferable skills from other areas of their lives such as their workplace which led them to believe they were capable of performing the tasks they took on.

“I thought I was very well equipped, I’m used to paperwork and dealing with people. I’ve had a good education, so it didn’t faze me that I would have to draft a letter or anything, or speak to other people in order to get all the information that I needed together. So I felt confident in the tasks that I was going to take on myself”

Male, child contact following divorce

“Yes, it was quite (a) daunting exercise, but I don’t think that was down to the forms themselves. It was more the seriousness of the forms. It was well within my capability, what I could do myself I did. ... Really it’s the ease of filling in the forms, yes it saves you money and a bit of time, but really it was something I could do so I did. The information was provided for you so there was no reason why I couldn’t do it.”

Male, child contact following divorce

Gaps in knowledge, however, caused confidence to wane in some cases, often where there was a lack of knowledge of legal terminology, especially when filling in forms. In these instances consumers would consult their provider for clarification or seek general information online through legal searches; knowing that the provider was there as a port of call put the consumers at ease when they were unsure. Even among those who were confident in their abilities, having a provider behind them made them feel that they were taking an appropriate course of action and that there was a level of protection they would not have had if taking on the work alone.

“There (are) a lot of words in the consent order that I didn’t understand. There’s a lot of legal jargon in there that yes, I probably could have looked it up. I probably could have looked it all up online and done it myself. But I think... it’s best to get a legal pair of eyes to look at it.”

Male, finances on divorce

“It wasn’t onerous. ... (I felt) quite laid back, I’ve filled in enough forms in my lifetime... but I can only read what’s there and if this requirement involved an awful lot of reading between the lines I can’t do that. ... whenever I got to the stage where I thought ‘I don’t understand that’ or it was ambiguous, I would send off an email to our adviser and she would explain to me what it actually meant’

Male, visa application

3.3.2 Experiences of unbundling

Overall, the consumer experience of unbundling was reported to be positive. Consumers tended to describe it as a smooth, effective approach to resolving matters, and one that provided value for money. They also felt supported by their providers, reflected in statements about their experience. It is important to make clear that the consumers we spoke to were on the whole satisfied with the outcome of their matter and that this is likely to be reflected in their assessment of their experience of using unbundled legal services.

“It wasn’t too bad, it was a little bit easier than I thought, I thought I might hit a few stumbling blocks ... but it all went quite smoothly.”

Male, child contact following relationship breakdown

“Completely effective. Everything that I expected to happen, happened.”

Male, financial settlement on divorce

“...very effective, I can’t think of any way in which it could have been more so really, without (the provider) taking over and doing more herself. Which she didn’t indicate that she was either able or willing to do.”

Male, application for spousal visa

“The solicitor did it brilliantly. I don’t know whether I was strong enough to do it, but I was warned by her what to expect.”

Female, child contact and financial settlement on divorce

Whilst the experience of making an agreement to split tasks was seen as a positive one, one consumer had a final bill that was higher than they had originally expected because the solicitor had incurred some further costs that had not been anticipated. The consumer had not been aware that additional fees would be incurred as part of a fixed fee arrangement but was happy to pay an additional £50, because of the positive outcome. Consumers also found the work they took on stressful and time consuming in terms of their personal time, but overall felt positive about the experience because of the money they saved by doing work themselves. This stress was often connected to the situation they found themselves in because they were going through family cases involving a divorce and/or because money or contact with their children was at risk.

“I was stressed (by my situation) it was horrible. ... I had to take a lot of time off work to go to court.”

Female, injunction following divorce

3.3.3 Perception of the impact of unbundling on outcomes

Consumers identified a range of reasons why they felt the use of unbundled legal services impacted on the outcome of their case. Ultimately, it was what was at stake that prompted consumers to instruct a provider to assist them, rather than fully represent themselves. Consumers who used an unbundled legal service felt there was too much at risk to go it alone. They had a heightened awareness that they might not have achieved the outcome they wanted had they taken on all of the matter themselves, rather than instructing a provider for some or all of the case. The advice they received from providers in these cases was felt essential to getting the outcomes they were looking for.

“I’m fairly sure if I hadn’t used a lawyer, I’d have probably been poorly representing myself. I didn’t feel at any stage ‘yes, I can do this myself’. That would have been risky. And whilst I’m not risk-averse, I’m not stupid. So I think you need to represent yourself at certain points in your life with appropriate legal services. I just felt reassured by the fact that I could go to solicitor, show her what needed to be shown, make sure that was all in place, make sure that was all in order.”

Male, financial settlement on divorce

Consumers with family cases, especially those involving arrangements about contact with children, saw the use of unbundled legal services as having a greater, positive impact on the outcome because as parents they were seen to be actively doing something in order to be able to see their children.

Consumers dealing with immigration cases felt their applications for visas were likely to be rejected if they had completed the forms alone and without the advice of a specialist in immigration. These cases were seen as ‘high stakes’ because failure to obtain a visa would result in having to return to countries of origin, losing employment or being separated from spouses and wider family.

The legal advice which was supplied by providers was typically felt invaluable to enlighten consumers about processes. This meant that consumers were able to have their cases dealt with in a more timely manner, because forms and documents were completed correctly, and with less stress.

“It was very important with hindsight, because I know that we would have fallen in to some of the bear traps (when completing the visa application form)”

Male, application for spousal visa

Consumers also felt that the involvement of providers impacted on their ability to be taken more seriously than if they had not instructed a professional, particularly when letters could be checked or sent by the providers. This was particularly the case in civil matters, when dealing with other individuals or with businesses, or in the case of an immigration matter, with government. Consumers who took on tasks which involved communicating themselves were concerned that because information and instruction was coming directly from them rather than a recognised provider it would not be taken seriously, or the other party or their representatives would not cooperate on the same level as if they were dealing with a legal firm directly.

“I thought her (ex-partner’s) solicitor might not play ball or want to communicate with me”

Male, child contact following relationship breakdown

“The fact that maybe after I submitted if the council decided not to engage with me and they decide that they will only engage with the solicitors⁶ then the negative outcome would have been that I would have had to pass the whole thing to the solicitors.”

Male, housing

Few consumers were able to identify a situation in which the role of a provider handling certain tasks had a negative impact on the case outcome. Most felt that providers were bringing something positive to their cases that they would have otherwise missed.

⁶ The respondent perceived that the council were more receptive to dealing with appeals because a solicitor was involved.

3.4 Benefits and Costs of Unbundling

This section assesses the perceived benefits and downsides of using unbundled legal services in practice as seen by the consumers. As a key element of the benefits the perceived financial savings made by consumers are also discussed.

Section Summary

- Consumers felt they were able to make savings in the financial cost of instructing a legal services provider by unbundling.
- The savings that unbundling offered allowed some consumers to access legal services; without this agreement these consumers would not have been able to do so, and would have had to deal with their case without assistance and/or represent themselves in court proceedings. This was especially the case for those who it appeared may previously have been eligible for legal aid. For some the savings were an added bonus but they would have been able to find money in order to pay for a full service if necessary.
- Unbundling offers consumers involvement in their case they would not have under a full retainer but with the ongoing support of providers. The experience was often empowering.
- Few consumers experienced downsides outside of time and stress of the case.

3.4.1 Perceived benefits of unbundling

Perhaps unsurprisingly, given it was one of the key reasons to unbundle, a key benefit of consumers taking on some work themselves was perceived to be savings on the financial cost of using legal services. For some consumers who had constrained budgets, the ability to unbundle meant they were able to access legal advice and support throughout their case. For these consumers the only other option would have been to work on their case alone without any professional legal assistance because they were not able to access legal aid or alternative methods of funding, despite a feeling that it was essential for them to have this advice and support. These were predominantly family cases, and often involved contact with children following relationship breakdown.

“The solicitor offered to unbundle as she knew I didn’t have the money to pay for everything myself. I wasn’t aware of it before”

Female, injunction following divorce

For others, saving money was a benefit, but had they not saved this money they felt they would have still been able to afford full representation. These consumers were looking to save money if they could but the cost of legal assistance did not prevent them having access to it.

Alongside the financial cost of using a legal services provider, consumers often cited that in addition to making a saving they were getting better value for money when using an unbundled legal service. By consumers taking on some tasks themselves they felt that they were utilising a provider’s skills and knowledge about the legal system, rather than spending time on other less specialist tasks. This was often discussed by consumers who felt that it was essential for the handling of their case that they had the assistance of a provider.

On the whole, consumers felt they made a considerable financial saving by using an unbundled legal service compared to funding full representation. Reports varied but consumers felt they had commonly reduced their costs by approximately a third, half or even two-thirds of what they would have been if they had not done any of the work themselves. When thinking about the savings they had made, some consumers considered the amount of time they had spent on tasks and what this would have cost them had their provider spent this much time on the case. When reflecting on the costs they felt they had received good value for money.

Another key benefit identified by a range of consumers across civil, family and immigration matters, was that taking an active role in the case meant that they felt more in control, and more involved. They also reported feeling empowered because they were actively contributing to the resolution of matters or problems, especially in high stakes cases such as those relating to child contact. Consumers who had used a provider in the past made comparisons between the case they unbundled for and previous cases, and were able to see that by the virtue of being involved themselves in the day-to-day workings of the case they were more informed about how the case was progressing. Those who had not previously used a legal services provider also commented that they felt informed about the process.

Empowerment was a salient benefit for those in child contact and residence cases where they felt actively involved in working towards a positive outcome. In these cases consumers reported that their active role in the case would be a positive reflection of them in a court setting because it showed that they were willing to work in order to secure contact with their child or have their child live with them.

“It made me feel a bit more useful, like I was really doing something for my kids. So like when I started going through paperwork from social services and other departments, how did they get from A to B ... it gave me more insight than I otherwise would have because the first time round I didn’t have this... it gave me more information than what the solicitor had told me”

Female, child contact

3.4.2 Perceived costs of unbundling

Nearly all consumers interviewed had a positive experience of unbundling and often did not offer any negatives of unbundling in practice. There was mention of the stressful nature of taking on some of the work and that their involvement in the case took up a lot of their own personal time. The stress and time was, however, offset by the benefits of financial savings, greater involvement and achieving or at least working towards a desired income.

However, one consumer felt that their provider was dragging out a process in order to charge more for the services. They felt that the solicitor wanted to negotiate further with the other party, thereby building up correspondence time, rather than making a direct threat in order to bring the case to a head.

Only one consumer had an overwhelmingly negative experience of using an unbundled legal service. She felt that she lacked confidence in the tasks because she did not know how to complete them and felt she could have had more instruction from her provider. Important information about the timescales which tasks required and when she should receive responses from other parties was not made clear to her, which made her tasks more difficult. Unlike the other consumers, she did not feel supported by her provider. She received support from family members who made attempts to assist her but ultimately the case was handed over to the provider to deal with.

Case Study: Negative Experience

The consumer had a civil claim in respect of a vehicle against a business which did not admit liability. The consumer consulted a solicitors firm she had used in the past. She wanted to use a solicitor because she did not want to represent herself in court and felt she needed help with the 'legalities'. She was keen to keep the cost to a minimum and a relative suggested unbundling in order to save money and speed up the case. When she requested to do some work herself the solicitor was hesitant but reviewed the case and decided that because it was almost certain that the court would rule in favour then they could proceed with a division of labour. The consumer was to do the paperwork and fill in court forms, with the solicitor representing her at court. The consumer experienced difficulty completing these tasks because she felt they were poorly explained and she was led to believe that they were easier and more simple than they turned out to be. The lack of clear timescales and deadlines also added to her confusion. Her relative also tried to help her but their lack of understanding of the legal system resulted in the consumer handing the case over to the solicitor for the remainder of the work. Ultimately, the case was settled outside of court with the defendant admitting liability.

3.5 Reflections on Unbundled Legal Services

This section explores what reflections consumers had on the unbundling process. It touches on the information that would have been useful to consumers when making decisions about whether and how to use unbundled services. It also explores what protections consumers expected or wanted to see in place.

Section Summary

- Whilst on the whole there was clarity in the agreements made, there were a small number of instances where consumers felt that providers could have been slightly clearer about the division of tasks and how they should be completed.
- In general consumers did not feel that there needed to be additional safeguards for consumers entering into unbundling agreements, reflecting the very positive experience most consumers had.
- A couple of consumers did suggest that regulators should be wary of non-authorised providers offering unbundled services.

3.5.1 Knowledge gaps amongst consumers

As previously discussed, consumers typically had a good understanding about what tasks they were required to complete and knew how to tackle them, either via the provider or through pre-existing knowledge.

However there were some consumers who felt that the agreement lacked detailed information as to the tasks involved and how to complete them. While some consumers were equipped to tackle specific elements completely independently or were given the required advice, some felt that they wanted more guidance on what they needed to do. Such consumers felt it was important to be in regular contact with their provider.

Consumers sometimes believed that ultimately they would have preferred for the solicitor to have taken on all the work, as their own knowledge of the law was limited and they thought the provider would have done a better job. Furthermore, they felt providers were often better positioned to navigate legal processes due to their experience. Some felt that had the solicitor taken on all the work the outcome would have been better for them. These consumers, however, acknowledge the overriding

value for money of unbundling, and would not have altered their decision to unbundle.

3.5.2 Consumer protection and guidelines

There was a broad consensus amongst consumers that the legal services providers they had used had acted properly and professionally, and they felt that they had behaved within their knowledge of the regulatory framework. This was typically based on consumers' positive experiences of unbundling themselves, although some recognised areas which would benefit other consumers.

The capability of the consumer to conduct tasks was clearly an important factor in whether unbundling was felt suitable. There was widespread acknowledgement amongst those interviewed that while unbundling was suitable for them, the tasks they completed would not be suitable for all. Consumers often felt that some of their friends or family would not have been equipped to complete the tasks they did. There was therefore a sense that providers should carefully judge which tasks a consumer could complete as part of an agreement to unbundle.

“I can think of people who I wouldn't stick one of those forms in front of and say 'do this' because they wouldn't, because they wouldn't understand the instructions. I'm sure that our advisor has had her fair share of people she'd quite like to throttle because they're not doing what's asked.”

Male, child contact following relationship breakdown

The visibility of lower costs was an important aspect of consumers' decision to unbundle. While most recounted that there was a clear framework and agreement for costs, a few felt that providers could be slightly more transparent. For example, one consumer mentioned that they were charged an unexpected extra £50 once the matter had concluded.

Some consumers reflected that unbundling agreements should still guarantee a minimum quality standard so the provider ensures the tasks completed by the consumer have been completed to a good standard and is accountable for the full work that has been completed. For example, they suggested that documentation completed by the consumer should be checked by the provider as part of an agreement to ensure it has been done correctly. One consumer suggested that there is a risk that a solicitor could blame their client for an error if something went wrong from their side of the agreement.

One consumer with an immigration matter mentioned that people need to be wary of immigration providers who they felt could try to 'rip off' consumers. He was aware of some offshore immigration-focussed legal providers finding him and trying to persuade him to go with them. Although he would personally reject any organisation that was "hungry enough to do that", he felt that there should be consumer protection against these more 'forward' organisations.

4 Experiences and Perceptions of Unbundling: Providers

This section outlines provider perceptions and experiences of unbundling, including what kinds of unbundling they currently conduct, the perceived benefits and costs to consumers and providers, along with thoughts on how they see unbundling services working in the future.

Provider summary

- Providers typically unbundled through the use of fixed fee services or through a ‘pay as you go’ model.
- The provision of unbundled services was relatively recent. Most had started providing services within the past two years, in response to a greater demand for low-cost legal services following changes to legal aid eligibility, and a more competitive market for services. The latter is typically highlighted as a benefit of unbundling.
- Take up of services has been fairly recent due to the relative infancy of the market and the relatively low levels of marketing activity that has taken place to date.
- Providers felt that unbundling could potentially offer clients some form of legal advice when previously they would have been unable to access any, and as such could secure better outcomes.
- Providers highlighted three main difficulties in providing unbundled services to clients: 1) there was a perception that if clients could not cope with the work, then it would adversely affect the outcome of their matter; 2) clients may not fully understand the limits of what the provider had agreed to do for them; 3) a risk of giving advice on the basis of poor initial information from clients. This chimed with a perception of lack of control, which was raised as a concern for providers.

- Some providers raised concerns over some clients' intellectual ability to take on particular aspects of the work, and in respect of family matters, their emotional wellbeing.
- Providers mentioned that they would have to make substantial changes within their organisation in order to fully embed unbundling. For example, changing their terms and conditions, 'client care' letters, internal systems and providing further supervision. They also acknowledged that costs would have to be kept to a minimum to ensure it is financially viable.

4.1 Broad range of providers interviewed

Within the provider sample, there was variation in location and geographical coverage, size, length of time established, areas of law covered, whether undertaking legal aid as well as privately paying work, and types of clients served. Providers were also selected with a view to achieving variation in approaches to and perspectives on unbundling and the extent, if any, to which they were committed to unbundling and had integrated it into their business models in the areas of law under consideration.

Interviews in respect of civil law matters focused primarily on small claims or potential small claims, i.e. those with a value of up to £10,000. This was because it appeared that where firms advertised unbundled services for private individuals in civil matters, it was more commonly in respect of these types of cases, although one interview covered employment matters. Interviews in respect of family matters focused on private law children cases (arrangements for whom children should have contact with and/or live with), divorce, and financial arrangements on divorce. Interviews in respect of immigration matters focused on non-asylum cases.

Almost all the providers offered and/or advertised some form of unbundling to private individuals, although several only did so to a limited extent; this included two who did not initially associate some of what they did with unbundling but later recognised this package they were offering. One provider did not currently unbundle for private individuals, but was open to the concept and would consider doing so in the future.

4.2 Attitudes to risk

All those interviewed indicated that they and their firms were very conscious of the risks involved in the provision of legal services generally. However, there was some variation in attitudes towards risk, with some being very risk adverse, while others acknowledged that they are less risk fearing than others in the profession.

“I’m very risk-averse. People who are even more risk-averse say they wouldn’t touch unbundled services with a barge pole. I think that’s a little bit over the top and probably not fully understanding what unbundled legal services are.”

Family provider

“I am less risk-averse than many lawyers.”

Family provider

Attitudes to risk appeared to be an important factor that influenced approaches to unbundling generally, the development of different models, and assessments as to when unbundling may or may not be suitable for particular types of cases, clients, or circumstances. These themes were relevant to providers whether or not they unbundled, and findings based on all the provider interviews are therefore reported on together.

4.2.1 Approaches to and models of unbundled services

Providers who did offer unbundled services appeared to have approached this type of work in one of three main ways.

- 1** Some had committed to unbundling as a core element of their business model, and had developed one or more specific products, designed to cover a range of situations. These providers promoted such products quite heavily.
- 2** Others had also developed specific products, which were again advertised, but for a narrower range of matters, and covering a relatively small proportion of overall workloads.
- 3** A third, more low key approach, was to offer unbundling as an extra level of service, but on an ad hoc basis; here its availability was not always advertised.

Two main models for unbundled services were offered. One was fixed fees packages for advising and assisting with certain defined types, stages, or elements

of matters. There was quite a range of such packages on offer. The other main model was to offer 'Pay As You Go' services, whereby clients could buy advice and assistance as and when required, and where fees were based on hourly rates. These might be standard hourly rates, or be discounted, sometimes quite heavily. Alternatively, some providers who unbundled on an ad hoc basis might offer a bespoke fixed fee for a particular piece of work.

Providers also typically offered an initial consultation or assessment. The nature of these varied. Some were advertised as being for 30 minutes to an hour or an hour and a half, for a fixed fee; some were shorter and/or offered for free; and some providers did not specify a fixed duration or price.

Such initial consultations were typically designed primarily to explore clients' circumstances and to advise on options available to them, but they sometimes involved more in-depth assessments and advice on next steps. In some instances, the initial consultation took the form of a first meeting under Pay As You Go. Following initial consultations or assessments, clients might deal with a matter themselves, proceed on an unbundled basis if the provider and client agreed, or instruct the provider to represent them under a full retainer.

In family matters, fixed fee packages might be on offer to cover undefended divorce, or defined stages in children or finance cases, such as negotiations pre-proceedings and/or referrals to mediation, the early stages of court proceedings from issuing an application up to representation at a first hearing, interim stages including representation at interim hearings, or representation at final hearings. Clients would typically have the option of instructing providers for one or more such stages. Fixed fees might also be advertised in respect of help with specific documents which parties to proceedings would be required to produce, for example a petition for divorce, or in finance cases, 'Form E' (a form which parties are required to complete in order to disclose their financial position in detail).

In civil matters, similar types of packages appeared to be on offer for cases involving potential small claims, although these tended to involve fewer stages (small claims typically involve only one court hearing). In both civil and family matters there was some further variation in fixed fees packages in terms of the levels of assistance available. For example, options might include advice on how clients could draft documents themselves, or the drafting of documents on their behalf. In immigration matters, fixed fee options which involved unbundling were focused on initial assessments and advice, and offers to check applications which clients would be completing themselves; there were no examples of assisting with tribunal proceedings on an unbundled basis.

Therefore, among this small sample of providers, there was quite a wide range of options for unbundling on offer, including in some instances options for ‘Pay As You Go’ advice and assistance potentially available at any stage. There were several examples of unbundling which involved it being agreed at the outset that clients would start and conduct proceedings themselves, with perhaps regular or frequent assistance in the background throughout. However, it appeared that more common scenarios might involve providers being consulted either prior to proceedings, or when clients had already started proceedings and sought assistance at some later stage.

“We do get clients who start at the beginning of the process but we more often than not get clients part-way through the process, after proceedings have been issued and they’ve (come) unstuck.”

Family provider

4.2.2 Reasons for providing unbundled services

Providers interviewed had mostly started to consider offering unbundling in respect of private law family and immigration matters at or around the time when it became clear that work would be removed from the scope of legal aid as from April 2013. A small number indicated that they had been prepared to provide unbundled services for some time prior to this. Several specifically decided to develop services which they hoped would be accessible to their traditional client base, which included those who would have been eligible for legal aid on financial grounds. Unbundling fitted in here for these providers, on the assumption that such clients would not be able to afford to pay privately for full representation.

“It was to try and bridge the gap...we used to represent lots of clients on divorce, basic children matters such as contact, residence, finances on divorce or separation for married couples, and...we were still being contacted by those prospective new clients, but they certainly couldn’t afford to meet our usual hourly rates”.

Family provider

Some providers also wanted to make their services more accessible to privately-paying middle-income clients, or clients whom they described as of moderate means, as they recognised that many people found it hard to afford to pay for legal services.

“Even the middle income clients – who actually has the cash nowadays sat in their bank account, a few thousand pounds to be able to afford to finance a case going through the courts in the course of divorce, at a time in your life when you are financially stretched anyway?”

Family provider

Also in April 2013, the normal limit for civil claims to be designated as small claim (if defended) was increased from £5,000 to £10,000. A successful party in a small claim may only recover very limited legal costs, which means that instructing lawyers is uneconomic in most such cases, unless the legal fees can be kept proportionate. The raising of the normal limit therefore presented an incentive for some providers to develop options for unbundling for small claims, particularly those valued at between £5,000 and £10,000 in respect of which it was anticipated that parties who might previously have instructed lawyers to represent them, were now much less likely to do so.

“So, a lot of work disappeared, which meant that people had to be innovative and create some sort of fixed fee services, so that those clients...still have access to justice, at affordable rates.”

Civil provider

Other motivations included a desire to be competitive in what were believed to be difficult market conditions, particularly but not only for family law providers, and in some instances a belief that unbundling provided a better business model for providers and clients more generally. Linked to this, some of those interviewed felt that consumer demands, and developments in the marketplace, would mean that those who did not adapt their ways of working could be left at a disadvantage.

“My view is it’s probably the way legal services are going and if you sit there like a dinosaur and say ‘no, full retainer, nothing but’ you’re going to lose out really. And that’s probably unreasonable, because you can see all the financial pressures on people.”

Family provider

“That’s what the consumer wants, that is the world at the moment, consumers want to dip in and dip out. In my view – and this is my view, it’s more of a retail approach now.”

Civil provider

4.2.3 Take up of unbundled services

A small number of providers reported good levels of take up of their unbundled services.

“We find that this service is an affordable service that people are attracted to. It’s something that has been a success really.”

Civil provider

“The model is very successful.”

Family provider

However, most said that take up and the volume of this type of work undertaken had so far been quite low, and in some instances had been lower than had been anticipated. A number of factors appeared to be at play here. These included the relatively recent adoption of unbundling – although there were several exceptions, most providers which took part in the study had only been offering such services for up to around two years, and some of the services offered were still being developed. The extent to which unbundling was promoted also appeared relevant; as noted earlier, not all providers advertised it, and those who unbundled on an ad hoc basis indicated that it was more likely to be in response to requests from clients, rather than something they suggested. Size of providers taking part also appeared to be a factor; a majority had few fee earners working in the areas of law covered, and for some, case volumes therefore appeared likely to be relatively low almost by definition.

Another factor, particularly in respect of some provision for family matters, appeared to be low take-up by clients on low incomes. In respect of family matters, there were some suggestions that benefits of paid for unbundled services were more likely to be enjoyed by those who were better off.

“You can only reduce your price to a certain level. Whatever you reduce it to there’s always going to be that demographic that actually can’t afford to pay anything.”

Family provider

“They were sophisticated clients who, if they had to afford to instruct me privately probably could manage to, but decided that they wanted to take charge of things and save as much money as possible, and have me do discrete pieces of work.”

Family provider

On the civil side, the unbundled services covered were in respect of claims which had a monetary value. These were reported to be price-sensitive, and it was suggested that take up here would be limited to matters involving higher-value small claims: *“If it’s worth £2,000 they’re not going to do it”*.

Affordability appeared to be a factor in respect of immigration matters; providers who were aware that clients could access a certain amount of free advice locally reported that there was little take up for paid-for assistance to make applications themselves, and that clients who wanted to have their applications checked over were likely to utilise free advice. However, immigration providers also reported that clients who wanted help with applications following an initial consultation or assessment and were able to pay, tended to opt for the more expensive option of a full service which would involve completing and submitting their application for them. Providers suggested that a reason for this was that clients tended to lack confidence in dealing directly with the Home Office.

“I think it’s more of a fear thing, because most applications, they’re either... at risk from the Home Office of getting removed, or they’ve got leave (to remain in the UK) and they wish to extend but they’ve had previous dealings with the Home Office which haven’t been pleasant.”

Immigration provider

4.2.4 Benefits of providing unbundled services

i) For clients

Providers felt that when it worked well, the main benefits of unbundling for clients were that it could make access to at least some level of legal services affordable for those unable to pay for full representation. Notwithstanding the points made earlier regarding take up, this also applied where clients had very limited means but were able to access services with financial assistance, e.g. from their families. In such circumstances, providers felt that clients could secure better outcomes than if they had no legal assistance at all.

“I have people who...I don’t think any good outcome would have happened, I think they would have given up.”

Family provider

As discussed later on, providers reported that those clients who could have afforded to pay for representation could also potentially make substantial costs savings, particularly in respect of contested family proceedings; this was one of the most commonly identified benefits. Cost-effectiveness was also identified as a potentially significant benefit, in that if they were capable of unbundling, clients could pay only for what they needed most by way of expert legal input.

“The greatest thing about unbundling is, if you are able to and if you want to, what you can buy is my knowledge and my experience and my judgement, and that’s all you have to buy. Because you can go away and do what I would also do, which is my admin and my paperwork...that, you can do yourself if you’re able to.”

Family provider

“You may be able to afford better legal advice, more experienced and more skilled legal advice (than if paying for full representation)...you may say ‘this is the crucial bit, this is the bit I really need the advice on’...and that’s a good investment to make.”

Family provider

Other potential benefits for clients identified by some providers included, in family cases, being able to exert more control over how matters were dealt with than clients might perceive they would have if they were represented, and being less dependent on the availability of their lawyer to deal with things. It was also said that some clients dealing with separation and divorce might feel that having advice in the background, without solicitors’ letters, would mean that negotiations with their ex-partner could be conducted in a better atmosphere.

ii) For providers

Perceived benefits of unbundling for providers tended to mirror the main factors which had motivated them to provide such services; the ability to continue to serve certain client groups, and to maintain competitiveness. Some civil providers also said that in addition to attracting new clients, a secondary benefit to offering unbundling for small claims might be that if a matter turned out to be of greater value or complexity than clients had thought, they might be instructed to represent

the client in dealing with the matter in proceedings in which legal costs could be recovered.

Some providers also felt that there were benefits in terms of cash flow; almost all of those interviewed said that for unbundled services involving fixed fees or 'Pay As You Go', as well as initial or one-off consultations, they would take payment in full either at the time of the relevant consultation, or on being instructed to do work on a fixed fee basis. This also avoided difficulties with non-payment of fees.

4.2.5 Challenges of providing unbundled services

i) For clients

Providers tended to identify three main potential challenges of unbundling for clients – although in practice, most had not experienced them very often. This may have been due to a combination of providers exercising caution about the types of situations in which they would unbundle, and the relatively low volumes of unbundling to date.

One potential challenge was the risk of things going wrong due to clients taking on more than they could cope with efficiently or indeed more than they could cope with at all. At best, providers thought this might result in stress for clients which could have been avoided, and a negation of potential costs savings. At worst, it could lead to poor outcomes.

“I do find myself thinking, ‘God, if you would just let me do it, I could do this for less stress and less money’, because I spend as much time hand holding as I would actually just getting on and doing it.”

Family provider

“Either they will get a dreadful result, because they made such a mess, and no one’s got the time to sort it out, or they will just simply fall apart and take a settlement because they don’t know what to do.”

Family provider

The second main potential challenge was clients not fully understanding and/or accepting the limits of what the provider had agreed to do for them. Most of the providers interviewed identified the need for mutual understanding on this as a key issue in unbundling; achieving this is discussed further below.

A third potential challenge, which appeared to consistently be at the forefront of providers' minds, was the risk of giving advice based on inadequate information from clients. Providers tended to articulate this primarily in terms of the risks to them of facing professional negligence claims and/or complaints. However, underlying such concerns was that if clients acted on advice which was based on inadequate information, it would likely be to the clients' detriment.

“There’s the risk element in terms of negligence. If you’re just taking snapshots of a piece of litigation, then there is a danger that your advice isn’t what it would have been had you known the whole picture.”

Family provider

ii) For providers

Providers' appetites for unbundling varied, but most of those interviewed were cautious or very cautious, and felt that it had to be approached with the potential risks in mind. This meant that the extent to which they would unbundle depended on whether they felt able to manage the risks involved in particular scenarios; even the most enthusiastic said that they had *'begun to feel its outer limits'*.

Save for initial consultations, providers therefore tended to limit the types of matters they were prepared to deal with on an unbundled basis. For example, several family providers indicated that they either would not unbundle in finance cases, or were less likely to do so in finance cases than in children cases. This was due to perceptions that finance cases inherently involved greater risks.

“I think it’s very easy to make an error, be negligent with regards to a case involving money, property, or whatever, whereas with regards to Children Act cases if you make a mistake you tend to be able to rectify it, and therefore the risk is a lot lower, the risk of being negligent and not being able to rectify it.”

Family provider

A key concern here was the danger of advising or taking other steps based on inadequate knowledge and understanding of incomes and assets, and of what issues might be relevant, but concerns about basing advice on inadequate information were also expressed by civil and immigration providers.

Some providers also pointed to challenges in striking the right balance between being prepared to limit their involvement in what clients wanted them to do, and fulfilling what they understood their professional obligations to be; in some instances they would have to refuse to assist.

“Some clients...want you to be a hired gun. ‘I just want a letter on solicitor’s paper saying this.’ No, I’m not going to do that. I’m not just a hired gun, a letter writer. I’m not going to write a letter unless it’s the right thing to do in the context. I need more background information.”

Family provider

Concerns were also expressed by some civil and family providers about unbundling by way of coming to cases at a late stage, just to deal with final hearings. This was because they would have had no control over how cases had been prepared, and how that might impact on their ability to represent the client effectively at the hearing. Although some were willing to provide or arrange representation at final hearings if they had enough notice and time to prepare, some others were not.

“Our policy is that if we’ve not dealt with the case, properly, we won’t do the advocacy. You’re on a hiding to nothing because the case will never be – if you’ve got a litigant in person that suddenly gets cold feet and wants you to do the hearing...it won’t have been prepared properly.”

Civil provider

4.2.6 Assessing the capability of clients to manage elements of matters themselves

Most providers felt that if clients were to unbundle successfully, they needed to have reasonable levels of intellectual abilities and literacy skills, as well as organisational skills – unless perhaps they had competent additional support, whether from friends, family or other agencies.

“If they’re not going to be able to understand the process with us just doing a bit of it, then...the instructions or the information we get to enable us to do our unbundled bit are going to be poor, and they won’t really understand what they’re supposed to be doing with it once they’ve got it.”

Civil provider

However, several providers felt that higher levels of educational attainment, or perhaps being in professional or senior roles in their working lives, did not necessarily mean that clients would be able to unbundle successfully; whether they could be sufficiently objective about matters was also relevant.

“They may be very well organised people...and used to dealing with quite a lot of information and data and gathering it and marshalling it...(but) it’s quite difficult to sift what’s important if you’re not able to be particularly objective about it, and it’s that objectivity that I think is sometimes lacking when an individual is perhaps doing their own stuff.”

Civil and immigration provider

Whether clients had sufficient time to attend to matters which they would be responsible for was also identified as a potential practical barrier to unbundling.

“If they are too time-poor it won’t work. Time poverty is fatal.”

Family provider

In respect of family matters, some providers also cited that domestic violence, and clients’ states of emotional health were important in the context of unbundling. Although cases involving domestic violence are still within the scope of legal aid there are strict qualifying criteria, which clients may not be able to meet, even if they would be eligible for legal aid on financial grounds. One provider felt that if handled sensitively, and with appropriate support, unbundling could work in such cases. More generally, one provider felt that unbundling would not work if clients had high, or even medium, levels of anxiety about their case, and so needed emotional support at a higher level or of a different type, than that which was available under the terms of unbundled arrangements. Another felt that clients who were still experiencing initial shock at divorce or separation could find it difficult to grasp what providers could and could not do for them.

“I think it’s much easier to provide unbundled services to clients who are a little bit further down the line.”

Family provider

Some providers also felt that if dealing with finances on divorce, levels of numeracy and financial literacy were also relevant; this was one factor in some feeling that unbundling was more likely to be suitable for children cases than finance cases.

“A client can speak perhaps more eloquently about their children and how they feel than they can about their finances.”

Family provider

Confidence levels were cited by several providers. This was both in terms of clients feeling confident that they could handle matters with some advice and assistance or, particularly in respect of immigration matters, lacking the confidence to proceed on an unbundled basis and so preferring to be represented.

“We get a lot of clients who, I’ve actually said ‘you are more than competent (to do) this application yourself’...And they still opt to instruct us. I don’t think it’s necessarily an ability thing. I think it’s more of a fear thing”

Immigration provider

Providers tended to consider whether individual clients possessed the attributes which would enable them to unbundle in the round, along with case type and complexity, and potential risks involved in particular situations. Most felt that these matters could be gauged via either filtering of initial enquiries (with referral to a more senior lawyer if need be) and/or during the initial consultation or assessment.

“Fixed fee meetings usually last about an hour, to assess what documentation they’ve got, their ability to explain, and for them to understand what we are saying about the strengths and weaknesses of their case. And then we take a view from there.”

Civil provider

However, one provider suggested that if initial consultations were short, judging clients’ abilities to unbundle could be difficult.

“It’s difficult isn’t it really, because you can only judge, especially if you’re only seeing a person for a very short period of time, or if they say ‘I’ve got a friend who can do it’ – I mean you’ve got no idea really what the capability of that person is.”

Immigration provider

Some providers also pointed to client choice as a relevant factor when assessing abilities, and it seemed that this might be considered an overriding factor if the alternative was that the client would have no assistance, and the risks involved were seen as low. The following was in the context of undefended divorce, which tended to be perceived as a low-risk family matter.

“You get a feel as to whether somebody’s going to be able to manage it. And if I felt perhaps they weren’t going to be able to keep on of top what (was) needed, I would explain to them perhaps in more detail the requirements of doing it, so that they really did know what they were taking on, because I think that’s important. But equally, I don’t think someone should be prevented from doing something if that’s all they can afford to do.”

Family provider

4.2.7 Whether providers' regulatory responsibilities are clear

Providers indicated that they have general familiarity with the SRA code of conduct. In particular, they indicated that they are conscious of the potential for complaints if they do not get the delivery of unbundled services right. Furthermore they were also conscious of the potential for professional negligence claims.

“I think it’s the regulatory aspect that would make me worried. Quite rightly we’re heavily regulated as solicitors but I think it would be very difficult to draw the line potentially about where one ought to have advised and didn’t, because perhaps the solicitor wasn’t asked directly by the client. Are you still expected to cover absolutely every possible risk... when you’re not actually doing the work?”

Civil provider

A further point mentioned was around the remit of advice that should be offered, and that issues are rarely solved in isolation. These providers were unclear whether the advice should be provided for issues which have not been directly asked about, or in the direct remit of the matter, but was still of relevance to the client. Providers were very conscious about the scope of the retainer they were working towards, and what they should and should not be doing as part of it.

“You don’t just settle a defence in isolation. There are all sorts of issues that go along with that, including advice as to strengths and weaknesses of the case...If you just say to the client ‘Ok we’ll settle your defence for you, but I’m not going to advise you about anything else at all’...it’s very difficult to settle a defence knowing that there are things you should be telling the client, but which fall outside of that strict retainer (...) we just simply make it very clear that it’s a small claims matter and we will be preparing your defence, and that is it. And I suppose the reality is that often we do provide a bit more than that, in terms of advice about whether the defence is going to be one that they can genuinely expect to hold up at a final trial, or whether it’s one that’s being filed but with the caveat that they really do need to get this settled.”

Civil provider

4.2.8 Whether providers find the regulatory framework permissive or restrictive

Most providers could not think of any barriers to unbundling caused specifically by the regulatory framework; they tended to feel that compliance issues were similar whether unbundling or acting under a full retainer.

“I’ve looked at it (the Solicitors Regulation Authority code of conduct) carefully and I don’t think that what the SRA says cannot go hand in hand with offering unbundled legal services.”

Family provider

“As officers of the court, we are very attuned to our obligations, and we generally approach small claims cases in the same way as we approach anything else really...”

Civil provider

However, a small number felt that complying with the regulatory framework was potentially more problematic if unbundling. Their concern here was the extent to which it was possible to achieve all the outcomes required under their code of conduct,⁷ if they did not have conduct of a matter in its entirety.

“I think it’s very difficult for solicitors in this framework of outcomes-focused regulation, to steer the straight and narrow path, particularly as we’re being asked to, expected to unbundle. I think we have to think about it quite seriously and carefully on a case by case basis, to make sure we don’t do anything wrong. I suppose what I’m saying is it makes me defensive. I think clearer guidance might be helpful, as to what is expected and what isn’t expected of us. And some kind of protection from the client who goes nasty on us. If we’re expected to do this we can’t be expected to carry the can if we give the right advice, the client doesn’t absorb it, goes and does something else and then comes back and says ‘This is all your fault, you didn’t explain it to me properly’ or something like that.”

Family provider

⁷ The SRA Code of Conduct 2011 involves an outcomes-based approach to regulation. It describes what firms and individuals are expected to achieve in order to comply with the principles governing their professional conduct in various contexts, for example in the context of client care, and in the context of court proceedings.

“You’d almost have to have a different outcomes based scenario for unbundled work. Because if you take the outcomes-focused requirements and duties of a solicitor to a client that are currently in the SRA handbook, they are all premised on the fact that you have this client, you deal with this work from start to finish, and you have full responsibility for making sure it happens...I don’t have any issues with those. But I think they are wholly – well they are inappropriate in their current format if what you’re now asking solicitors to be prepared to do, and for clients to be prepared to take, is snapshots of pieces of work without knowing what the full story is.”

Civil provider

The providers quoted above both suggested that the SRA Code of Conduct ought to include specific guidance on what was expected of them if unbundling – their feeling being, that their obligations under the current framework were perhaps disproportionate to the level of their input if unbundling.

4.2.9 How providers have adapted their services to meet regulatory requirements

The main activity which providers have mentioned is in spending time getting their terms and conditions of business and ‘client care’ letters right, and in drafting retainer letters which they hope make it clear to clients what services are to be provided and the limits of those services. Several said they have made use of and/or adapted model documentation produced by The Law Society which accompanied the Society’s 2013 practice note on unbundling. Verbal explanation was considered to be necessary to supplement written materials here.

There was also some recognition that transparency of the costs involved for the client is very important. Providers felt that they needed to pass on the best information possible on the likely costs involved to the client, including a sense on what a pay as you go approach would cost if each step was taken on by the provider. However, compared to traditional forms of service provision, there was also a sense that unbundling could help the market in terms of providing transparent and specific costs to clients.

4.2.10 Experiences of dealing with professional indemnity insurers

Some providers mentioned that there could be effects on indemnity insurance cover and premiums if unbundling tended to be at the forefront of their minds, although not all of those interviewed were either directly involved in, or completely familiar with their firm's dealings with insurers. Those who were, reported a variety of experiences in terms of the importance which insurers appeared to attach to unbundling, but nobody reported a difficult or negative experience.

“We had to talk it through with them and present information about what we were proposing to do...It wasn't difficult actually, they were incredibly understanding.”

Family provider

“They don't seem to be that fussed if it's just the odd bit of work, for clients who would be in the small claims court.”

Civil provider

Nor did any providers report any adverse impacts on either the terms of their indemnity insurance cover, or premiums, arising from the fact that they offered unbundled services.

It appeared that this was due to insurers being satisfied with the levels of risk involved, and how providers managed risk, when unbundling in the particular situations under consideration and in the context of the providers' work as a whole. Some providers indicated that if situations changed or if there were adverse effects on cover or premiums, indemnity insurers' attitudes would likely have more influence on decisions to offer unbundled services.

“I have no doubt at all that were there to come a situation where we would be offering unbundled services in other departments and in scenarios where we were looking at more complex claims...or where costs consequences would be applicable, that we would need to sit down with our PII people and work out exactly how that would be covered.”

Civil provider

“There was no loading of premiums. If there was, then if it was a substantial amount then we wouldn't have done it.”

Family provider

4.2.11 Impact of unbundling on finances

Most providers felt that the process of unbundling was a way to open up their client reach further, by aiming to keep the price of legal support to a minimum. As such, they felt that they would have to keep their own costs down in order to make it profitable.

A key financial benefit of unbundling was seen to be the process of payment associated with it. Providers felt that unbundled agreements allowed them to charge clients immediately once an agreed amount of professional time or element of service was agreed. It was felt that this allows providers to keep a greater grip of credit controls and reduces the risk of non-payment (compared to full service agreements where payments may be made further into the legal process). Some mentioned that this was essential, as they could not afford to provide unbundled services while also exposing themselves to other cost risks like client defaults.

Most providers have been charging for unbundled legal services at hourly rates, and where they do so it appears to be considered potentially as profitable as any other work done at hourly rates. This is potentially subject to any situations in which providers 'take pity' on clients and either give a discount, or spend extra time on a matter which they do not charge for.

Some unbundled services involved fixed fees, and where this is so the financial impact was considered to be mixed, with some instances being profitable, while others being less profitable, as with all fixed fee work. However, several providers were only prepared to offer fixed fees for matters which they can be quite certain will only take so much time or involve so much work (e.g. undefended divorce with no complicating factors, and any children or finance matters to deal with).

“If we are going to offer these discounted services, and we’re stretching ourselves to the absolute limit here by doing so...we then can’t be having to meet further costs down the line, of credit control and all of that, which are costs that are factored in and part and parcel of your time and rate services.”

Family provider

“I think unbundled services allow you to be a lot more relaxed about how much time you’re spending on a case, because it’s your client’s risk, not yours. You shift the burden of risk. With a fixed fee you have the burden of risk. On unbundled services your client still has the burden of risk; you’re just making it slightly less grim for them.”

Family provider

4.2.12 Estimated costs savings for clients

The interviews with providers indicated that costs savings for clients could potentially be substantial compared to the costs of representation, but this would depend on the circumstances and the amount of work that the provider would ordinarily be inputting into the matter.

Of the areas of work covered, the greatest potential for savings appeared to be in respect of family matters, particularly if court proceedings were involved which clients conducted with input as required from providers. In such cases it was felt that clients could save substantial amounts of time and money on meetings, correspondence and negotiations, as the client could potentially end up doing a substantial amount of the work.

Savings were seen to also be made for clients in money claims matters, however it was felt that it would only be relevant for high value claims, which would normally involve solicitor involvement. Immigration providers also felt that claims could be made when the matter is quite complex and involved.

It was believed that that the largest potential savings would be if proceedings went all the way to a final hearing on an unbundled basis, and providers reported very few cases which had done that. Providers also highlighted the financial savviness of their clients, in particular how conscious they were about getting value for money from their provider.

“We have a very sophisticated consumer now who knows the value of work being done but who also...is very conscious of getting into financial difficulty...and they’re looking for ways to solve the problems as economically as they can”

Family provider

4.2.13 Perceived future of unbundling

Overall there was a sense that unbundling was something that is here to stay. Some mentioned that recent changes to the landscape of legal aid and service expectations more generally meant that there is future demand for unbundling of legal services.

There was a wide range of ways in which providers were working within this landscape. Some mentioned that they advertise directly and have developed information resources, while others still offer unbundled services on an ad-hoc basis, when a client comes to them directly or when they think it would be useful for their client.

There was a general feeling that unbundling will be a common service feature in the future, however it was acknowledged that the market is currently very new (having really formed within the last two years) and that there was a long way to go before it reached any kind of maturity.

“This is currently a very small part of what we do”

Family provider

Providers felt that this journey to maturity would be slow as they would have to make changes and build on existing models within their firm to allow unbundling to take place on a more frequent basis. This included making amendments to their terms and conditions, amendments to client care statements, the development of new systems and processes, and the training and supervision of staff. The requirement to make these changes was largely seen to depend on the size of firm, with larger organisations needing to make more fundamental systems and procedural changes.

5 Experiences and Perceptions of Unbundling: Judges

This section of the report looks at the experiences and perceptions of the six judges who participated in interviews.

Judges Summary

- All of the judges interviewed said that whilst there were exceptions, they commonly found that litigants in person struggled in dealing with court or tribunal proceedings.
- All those judges interviewed were aware of unbundling as a concept. There was variation in terms of the extent to which they felt they could tell when litigants in person had received assistance. However, there was a consensus that if full representation could not be obtained then, as a starting point, some legal advice and assistance ought to be beneficial.
- Early advice was seen to be beneficial, particularly in respect of civil matters where points of law may dictate whether or not a case is viable.
- The judges were aware of potential difficulties with unbundling, and endorsed several of the points made by providers. A general point was felt to be the risks involved in advising and/or assisting in proceedings based on inadequate information, including incomplete knowledge of what had happened previously in the case.
- It was particularly important that advice and assistance was given by regulated advisers. Some reported seeing a rise in litigants in person being assisted by advisers who appeared to be unqualified and/or unregulated.

5.1.1 Dealing with litigants in person

Each of the judges interviewed said that they regularly encountered individuals as litigants in person in the types of civil, family and immigration cases which were the focus of the study. This was particularly so at small claims hearings and in private law children cases, but litigants in person were also reported to feature frequently in finance cases on divorce, and in immigration cases.

Characteristics and abilities of litigants in person were said to vary. For example in respect of family cases, one judge said:

“I don’t think there’s a common type of litigant in person. They’re just as varied as society is varied...”

However, all of the judges said that whilst there were exceptions, they commonly found that litigants in person struggled in dealing with court or tribunal proceedings. Those things that it was felt they tended not to handle well varied, depending on the types of cases involved, but several generic difficulties were reported. These were:

- Identifying, and focusing on, the factual and legal issues relevant to their case;
- Recognising the strengths and weaknesses of their case or position;
- Negotiating with other parties and/or considering settlement;
- Understanding and complying with procedural requirements;
- Organising evidence, including their own witness statements;
- Asking questions, whether in writing, or orally by way of cross-examination at hearings; and
- Generally in preparing for and presenting their case at hearings.

The extent to which the judges felt that difficulties such as these were likely to affect outcomes in particular types of cases depended on several factors. These included whether cases tended to involve complex factual or legal issues, and/or tended to involve many documents. The degree to which judges were able to adopt an inquisitorial approach was also important. An inquisitorial approach involves judges actively asking questions in order to clarify which issues are pertinent, and to draw out evidence which will help them to reach decisions. It was felt that such an approach could often mitigate the effects of deficiencies in how litigants in person prepared and presented their cases. However, there were limits to an inquisitorial approach, and judges could still only work with whatever material was made available to them. For example, in the context of civil cases it was said that:

“As judges we decide everything on the basis of evidence. So if you can’t produce the evidence, I’m afraid you don’t win.”

5.1.2 Potential for unbundling

All the judges interviewed were aware of unbundling as a concept. There was variation in terms of the extent to which they felt they could tell when litigants in person had received assistance. However, there was a consensus that if full representation could not be obtained then, as a starting point, some legal advice and assistance ought to be beneficial.

“It’s far better that (litigants in person) have some representation or some advice at some stage, rather than not at all.”

The judges were asked whether, bearing in mind the points outlined above, they could suggest any aspects of proceedings in respect of which, generally speaking, litigants in person might find it most beneficial to obtain some legal advice and assistance. It should be noted that within the sample, there was some variation in terms of the gains which judges felt were to be had from advice and assistance in certain situations, and that what follows can be indicative only. Whether obtaining paid-for legal services would in fact be prudent and cost-effective in any particular situation would depend on the circumstances of the individual case.

5.1.3 Early advice prior to/on starting proceedings

Advice at the outset was felt to be potentially valuable in all types of cases. Particularly for claimants or potential claimants in civil cases, this included advice to ascertain whether there was in fact a valid cause of action (i.e. a legal basis for a claim), and if so against whom.

“I think in civil, where a lot of litigants in person make mistakes is knowing whether they’ve got a cause of action and who to sue...they will spend quite a lot of time and effort putting together a small claim or it might be even bigger than a small claim and there isn’t really a cause of action in there.”

In respect of family cases, early advice on the principles and factors which would inform the court’s decisions was also felt to be of potential value, particularly in helping to manage expectations, and in identifying issues which would be of relevance in individual cases. Early advice in terms of referrals to mediation was also mentioned in the context of family cases.

Early advice was also felt to be of potential value in respect of immigration matters, in helping prospective appellants to the tribunal to understand the reasons for the Home Office decision they wished to appeal against.

“Sometimes it’s quite simple, and it depends on the level of education and how well they can speak English. But sometimes its legal issues, it’s based on the case law, and when you’ve got a case like that it’s awful for somebody who’s unrepresented, because they’re not able to grasp the reason for the refusal.”

5.1.4 Assistance with drafting/paperwork in early stages

In respect of civil matters, assistance with drafting a statement of case (i.e. particulars of a claim or defence) was considered by one judge to be of particular value, not only in shaping how a case would be dealt with by the court, but also in potentially influencing how the other party responded.

“Any claim is like a house in a sense, it needs solid foundations, so the particulars of your claim (are) very important.”

“A well pleaded claim at the outset, they may look at it and say, ‘I think we’re going to lose this, we need to settle it’”

However, another judge was sceptical regarding paid-for assistance with drafting in small claims. The reasons for this are discussed below.

Assistance with drafting applications was not identified as a potential priority in family cases, but in finance cases, a party would be required to produce certain documentation (and to consider the other party’s documentation), in readiness for a first hearing. This included a statement of issues, and a list of questions to be asked of the other party. Assistance in drafting these documents and in assessing the financial disclosure made by the other party was felt to be of potential value here.

5.1.5 Representation at early/interim hearings

The types of civil and immigration cases covered in the interviews tended to only involve a final hearing, therefore the question of representation at early or interim hearings was relevant primarily to family cases. Judges did not identify paid-for representation at first or interim hearings in children cases as a priority; this was because in such cases, CAFCASS (the Children and Family Court Advisory and Support Service) would be involved at an early stage, and would attempt to assist the parties in identifying relevant issues and in seeing if agreements could be brokered. However, it was suggested that if a fact finding hearing became necessary in order to determine disputed allegations of domestic violence or abuse, representation was important as cross-examination would be involved.

“That kind of case desperately cries out for representation.”

In finance cases, the standard pathway would include a first appointment, and a second Financial Dispute Resolution hearing (FDR), the purpose of which would be to see if the parties could negotiate a settlement. A first appointment may potentially be turned into an FDR hearing if the parties were ready. It was suggested that representation at an FDR hearing would be of potential value in attempting to reach

a settlement, but that might depend on both parties having representation at the time.

“It can be useful in terms of an FDR hearing, because lawyers negotiating are much better than husband and wife trying to negotiate between themselves. Again it’s difficult if it’s only one side that’s got legal representation because there’s still the emotion in it.”

5.1.6 Preparation of witness statements

Witness statements would routinely be required in civil and immigration cases. They would be less routine in family cases, but may be ordered in both children and finance cases if there were factual or other issues regarding which the court needed to have evidence, for example in children cases, if a party disagreed with recommendations made by CAFCASS or in a welfare report from another source such as a local authority. In all three types of proceedings, witness statements were important because at final hearings they would usually be taken as a party’s evidence in chief (i.e. their main evidence).

“A good witness statement tells a story. It tells the reader who the witness is...sets out their evidence, what they say was done, what they say was said, and if the witness statement is by a party to the proceedings...sets out what order that witness says the court should make and reasons why.”

There was a consensus among the judges that witness statements produced by litigants in person were often of poor quality, and that assistance here would be of potential benefit in ensuring that relevant matters were addressed in a coherent fashion. For example, one judge suggested that witness statements were “*often refreshingly honest when litigants write them themselves*” but, “*the only difficulty is, then not all the issues are addressed*”. However the benefits to be had here were dependent on the quality of any legal input – for example the same judge also suggested that on some occasions, with poor quality representatives, the facts may not be made clear in a witness statement.

Another judge, speaking in the context of children cases, felt that:

“If you’ve got two statements totally at odds (with) each other, however good those statements are, it’s going to be the impression that’s given at a final hearing which is going to be of assistance.”

5.1.7 Representation at final hearings

Whether representation at final hearings was felt to be a priority depended in large part on the extent to which judges were able to adopt an inquisitorial approach in order to elicit the evidence needed in order to reach decisions. Such an approach was adopted in respect of small claims, children matters, finance matters (to varying degrees) and immigration matters, and the judges therefore felt that generally speaking, representation at final hearings was not necessarily of value in terms of advocacy in the hearing itself. For example:

“For small claims you essentially become more inquisitorial, so grilling the parties yourself.”

Representation at final hearings was however felt to be of value if cross examination was required, particularly in children cases if a party did not accept recommendations contained in a CAFCASS or other welfare report, and cross examination of the author of the report was needed.

Several of the judges also pointed to the value of having an advocate attend a final hearing, or at least having advice on how to approach a final hearing, in terms of helping to keep litigants focused on relevant issues, and perhaps to negotiate a settlement before the hearing.

“Representation at final hearings would be helpful. An awful lot of cases settle when people are represented. Because A) there is someone there to tell a party ‘it’s not relevant’ or ‘you might want the court to order that but it’s simply not going to happen’. And B) their representative can negotiate on a low flame...And hopefully broker a settlement.”

5.1.8 Potential challenges with unbundling

The judges were aware of potential challenges with unbundling, and endorsed several of the points made by providers.

A generic challenge was felt to be the risks involved in advising and/or assisting in proceedings based on inadequate information, including incomplete knowledge of what had happened previously in the case.

“If it was me who was doing it, I’d say I need to have all the papers now, and I need to read all the papers before I can give you some help. And of course paying a solicitor to read all the papers isn’t something that clients want you to do usually.”

It was felt that in some situations, this issue could be adequately addressed by providers making it clear what the limitations were. For example, in the context of civil cases:

“I suppose a solicitor could say in their terms of business, ‘yes I’ll produce a witness statement from the information and the documents that you provide me with. I accept no responsibility for any inadequacies because of information or documents which you don’t provide’.”

However, in some situations it was felt that a lack of information could preclude the giving of advice. For example, the view of the immigration judge was that if advising on appeals, providers ought to ensure that they had the whole picture, if need be by obtaining files from any previous adviser and/or Home Office records, rather than relying on what clients were able (and perhaps willing) to tell them.

“If you don’t have a full picture you can’t advise people.”

The risk of unbundled advice and assistance being *“fragmented rather than holistic”* was also identified. This was in the context of whether providers should confine themselves strictly to addressing the matters which clients asked for help with, or should perhaps exercise their professional judgment in going a little further.

“If it’s not your case, if somebody’s coming to you for bits of advice, you can be kind of very blinkered about it. So, ‘you’re asking me about this, the answer is X, Y, and Z, go away and do A, B, and C’. As opposed to somebody being able to stand back and say to you, ‘Yeah, ok, the answer is A, B, and C, but my legal instinct tells me you need to be wary of this’.”

Coming into a case at a late stage for final hearings was also recognised as potentially problematic for providers, particularly in the context of financial cases on divorce.

“That’s not a panacea because the (advocate) who appears at the final hearing can only do the best on the information that is available.”

“You’re stuck with what you’ve got, so it’s warts and all, you can’t change it very much because it’s too late.”

Here, it was suggested that it would be important for parties to keep their proposed advocate informed prior to the hearing.

Particular doubts regarding unbundling in the context of small claims were raised by some judges. This was due to the price-sensitive nature of such claims. It was suggested that if providers were to be able to offer advice and assistance at a price which would be attractive to litigants it would likely have to be at the expense of quality, because the amount of work involved would mean it needed to be carried out by less experienced, junior staff. These concerns were expressed by one judge regarding the value of having assistance with drafting particulars of claim and/or witness statements, or tailored advice on disclosure, in small claims, and were endorsed more generally by another judge.

“I am concerned that if people go for some inexpensive unbundled legal services...it would be a very small advance on the particulars that you often get in small claims.”

“This kind of work is going to be done by lowest grade fee earner. You hope to God it’s going to be somebody who’s qualified. If it is they’re going to be newly qualified. And sometimes the newly qualified are not going to have the experience.”

For these reasons, judges suggested that for small claims, it was perhaps only in respect of higher value claims that litigants in person would find it cost-effective to obtain paid for advice and assistance.

5.1.9 Going on the court or tribunal record

A key issue across civil, family and immigration cases was the question of whether providers should go on the court or tribunal record as conducting proceedings on behalf of a party. This was important because going on the record would involve the provider having certain responsibilities in respect of ensuring that rules of procedure generally, and directions specific to the individual case, were complied with, and they risked being penalised in costs if they were not. It was also important because courts and tribunals would only correspond with either a party or their representative at any one time, not both. If providers were attending court to represent a client at a specific hearing, it was therefore important that it was clear whether the judge’s order should be sent to the provider or the party, and that it was clear whether the provider shared any responsibility for compliance.

“I think the most difficult thing from the court’s perspective, I’m not saying from the judge’s, is when it’s a bit of a muddle. Because from a practical point of view the court doesn’t always know who should be on the record, and who to communicate with. Because the litigant in person won’t think about that, and if they’ve had a solicitor helping them, who

should think about it but doesn't always because they're not filing notice of acting, it then becomes very confusing for the court staff to know who they should be writing to. And you can't communicate with both."

5.1.10 Protections for consumers

A concern raised by some of the judges was that in the context of unbundled services, it was particularly important that advice and assistance was given by regulated advisers. Some reported seeing a rise in litigants in person being assisted by advisers who appeared to be unqualified and/or unregulated. Care was needed in ensuring that if litigants were assisted by, for example, McKenzie Friends, that they did not go beyond the limits of their role – particularly in immigration cases, where the giving of advice when not regulated by the OISC would involve the commission of an offence.

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