

# What Clients Want From Their Lawyers

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*I went to [this solicitor] because of her reputation and expertise – she is a part-time registrar and has a big reputation as a specialist in this area – but she just doesn't listen. She listens for part of what I have to say, and then interrupts, saying something like: 'OK, I've got the picture, what we'll do is ...' and she hasn't really got the picture, she's only got half the picture. I think it's partly because she so busy and also because she's simply not used to giving clients a voice. ... [W]hat's more she has actually made me frightened of expressing my views. I am about to change to another solicitor.<sup>2</sup>*

In 1997-98 the Law Society of England and Wales commissioned a study of solicitors and clients regarding their perspectives on quality service. As part of this research project Hilary Sommerlad, a senior lecturer in law at Leeds Metropolitan University, interviewed 44 clients of 21 different solicitors in the north of England.<sup>3</sup> 50% said that they had previously used a solicitor whom they did not like.<sup>4</sup> Some, like the client quoted above, were also dissatisfied with their current solicitor.

It has become increasingly common to read in bar journals reports that “communication problems” are an important source of client dissatisfaction,<sup>5</sup> but the examples given

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<sup>1</sup> This essay draws upon a number of prior publications: see *Legal Education After Law School: Lessons from Scotland & England*, 33 FORDHAM URBAN LAW JOURNAL 193 (2005) (special symposium issue on Professional Challenges in Large Firm Practice); *Speciality Certification as an Incentive for Increased Professionalism: Lessons from Other Disciplines and Countries*, 54 SOUTH CAROLINA LAW REVIEW 987- 1009 (2003) (co-authored with Adrian Evans); and *Evaluating Effective Lawyer-Client Communication: an International Project Moving From Research to Reform*, 67 FORDHAM LAW REVIEW 1959-86 (1999). See also, *Do We Value What Clients Think About Their Lawyers? If So, Why Don't We Measure It?* (preliminary draft) (co-authored with Karen Barton, Gregory Todd Jones & Paul Maharg), to appear in the CLINICAL LAW REVIEW (Fall 2006) and available at <http://law.gsu.edu/Communication/>.

<sup>2</sup> Hilary Sommerlad, *English Perspectives on Quality: The Client-Led Model of Quality – A Third Way?*, 33 UNIVERSITY OF BRITISH COLUMBIA LAW REVIEW 491, 509-10 (2000)

<sup>3</sup> *Id.* at 494; Hilary Sommerlad & David Wall, LEGALLY AIDED CLIENTS AND THEIR SOLICITORS: QUALITATIVE PERSPECTIVES ON QUALITY AND LEGAL AID 2-6 (Research Study No. 34 The Law Society 2000) (hereafter “Law Society”).

<sup>4</sup> Question 16 in the structured interview conducted in person with each client was: “Have you ever used a solicitor whom you did not like? Was there any particular reason why you did not them?” Law Society at 21.

<sup>5</sup> See, eg., Charles Sandison, *Communication: The #1 Risk Management Tool?*, 51 JOURNAL OF THE LAW SOCIETY OF SCOTLAND No. 4 (April 2006) at pp 36-37.

tend to assume that “bad communication” is just a matter of careless or sloppy practice: not putting initial instructions in writing, unreturned phone calls, not keeping clients up to date on their cases, and lack of clarity about fees. In contrast, the communication problems identified in the opening quote above do not arise from carelessness (although the lawyer is described as “busy”) but instead seem to be related to a fundamental way the lawyer interacts with clients. This specialist with a “big reputation” interrupts the client precisely because she assumes from her expertise that she has heard enough to “get the picture” and decide what needs to be done. This behavior prevents the solicitor from learning what the client considers important information – not only because she cuts off the client at an important moment in the interview but because her attitude makes the client “frightened” of expressing her views throughout the representation.

Other clients in the Law Society Study study also emphasized that a solicitor needs to be a good listener in order to learn necessary information:

“One client explained that she had sacked her former solicitor because she wouldn’t listen: ‘that is absolutely fundamental; this was our case, only we knew the full circumstances.’<sup>6</sup>

“They must be able to give you time. If solicitors haven’t got enough time, they can’t get enough out of you. You have to have time to be able to tell your story.”<sup>7</sup>

“It’s very important to be able to have trust and friendship with your solicitor because then you can talk about your case and you remember things.”<sup>8</sup>

“Regular communication is key ... the quality of being able to talk things through is very important. No one knows their problem as well as the plaintiff. ... It’s crucial that they enable you to talk it through. That listening and communication is crucial. So they have to be prepared to give you time, so that you can establish a personal relationship with them.”<sup>9</sup>

The clients wanted not only to be heard but also to understand what the solicitor said to them:

“If they communicate clearly you feel on the same wavelength with each other. It has got to be a mutual rather than a one-way relationship.”<sup>10</sup>

“At my first meeting with [my current solicitor] ... I was impressed by his natural ability to talk about technical things with knowledge, but on a level that I could understand. ... we

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<sup>6</sup> Id at 509: Law Society at 12.

<sup>7</sup> Id. at 507.

<sup>8</sup> Id. at 506.

<sup>9</sup> Id. at 505 (probate client).

<sup>10</sup> Id. (housing case).

actually talked and he explained in clear language. ... Other people just had a job to do, but [he] took time to clearly explain technical things. ... He explained how the system works.”<sup>11</sup>

“She speaks of legal matters in a way that is knowledgeable and she explains it well.”<sup>12</sup>

“She communicates clearly. She puts things in layman’s terms.”<sup>13</sup>

Although the Law Society study focused on individual clients, it also appears that even the sophisticated business and institutional clients of major law firms also value the ability to translate legal issues into terms a lay person can understand. In its current rating of top Scottish law firms, Legal 500 makes a point of reporting the following client comments:

“He has the knack of being able to present very complex situations comprehensibly to commercial managers”<sup>14</sup>

“[Their entire legal team is able to] provide a clear explanation to the layperson on sometimes complex legal issues”<sup>15</sup>

The Law Society study showed that effective two-way communication – attentive and patient listening and clear explanations – was valued by clients not only because it improved the exchange of information but also was essential to the development of rapport, trust and mutual respect:

“Just coming here and have someone listen to you, treat you with respect, be on your side ... that’s marvellous.”<sup>16</sup>

“She talked to me as a person, with respect.”<sup>17</sup>

“ I wanted the law to be explained. ... The way the solicitor views the client is important. He has to be interested in our views.”<sup>18</sup>

“I felt I couldn’t talk to him. He’d fob you off ...didn’t really sit and explain to you. It was just the lack of communication to me.”

“ I never liked him [describing a former solicitor]. ... we couldn’t have had a solicitor like

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<sup>11</sup> Id. at 502.

<sup>12</sup> Id. at 505.

<sup>13</sup> Id. (child care case).

<sup>14</sup> Legal 500 at 467 (corporate and commercial practice).

<sup>15</sup> Id. at 480 (energy and natural resources).

<sup>16</sup> Sommerlad at 510.

<sup>17</sup> Id. at 503

<sup>18</sup> Law Society at 17.

him for this; I think he was perfectly competent, but there was no sympathy ...”<sup>19</sup>

“If you do not have communication you might as well go elsewhere. It was quite hard to get in touch with [my former solicitor] .. he was a bit ‘upppity’ ... But [my current solicitor] is excellent ... we communicate .. I trust her”<sup>20</sup>

“[I like my current solicitor because] I can have a chat with her, I trust her ... {she’s} much better than other solicitors I’ve had. ... The other solicitor — I was just a file for him, but for her I’m a real person and that comes across in court.”<sup>21</sup>

“[My current solicitor is] very easy to talk to — some solicitors can be intimidating.”<sup>22</sup>

It is not unusual to hear lawyers describe such communication practices as patient listening and translation of legal issues into terms the client can understand as “hand-holding” – something to be done to make the client feel good if you have the time and inclination but not really essential to effective legal representation. For example, one of the solicitors interviewed in the Law Society study said:

“Clients cannot assess the quality of the service. What they really need and respond to is reassurance. ... They want to feel you care.”<sup>23</sup>

Sommerlad, though, reports that “for many clients, their engagement with the law was not simply about achieving a result; their responses indicated that **the process itself was important** ... [From the clients’ perspective] the realization of their legal goals depended upon the establishment of an individualized relationship of trust with the practitioner. Thus clients tended to view the subjective aspects of quality, such as empathy and respect, **not as luxury items but as fundamental to the service so that their absence would limit the solicitor’s effectiveness even within the narrowest definition of his responsibilities as a legal adviser.**”<sup>24</sup> Sommerlad’s point is illustrated by the following pointed conclusion by one client about a former solicitor:

“She was efficient but a total waste of space ... I could not communicate with her.”<sup>25</sup>

Many lawyers equate client satisfaction with the outcome achieved, an assumption that might cause them to puzzle over a client’s conclusion that a lawyer was “efficient” but nonetheless “a total waste of space.” However, social science research over the past two decades has produced impressive evidence that clients evaluate their lawyers’

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<sup>19</sup> Id. at 21.

<sup>20</sup> Sommerlad at 505.

<sup>21</sup> Id. at 504.

<sup>22</sup> Id. at 505.

<sup>23</sup> Id. 496 n. 13.

<sup>24</sup> Law Society at 22 (emphasis added).

<sup>25</sup> Sommerlad at 507.

competence more in terms of the process experienced by them in the representation than the outcome. Indeed the leading researcher in this area has made the following bold statement:

“Clients care most about the process -- having their problems or disputes settled in a way that they view as fair, second most important is achieving a fair settlement, least important factor is the number of assets they end up winning.”<sup>26</sup>

Tyler’s research findings are consistent with two important studies conducted in Australia. Australia’s largest indemnity insurer for lawyers, LawCover,<sup>27</sup> commissioned a Risk Management Project to study a representative sample from over two thousand professional liability claims.<sup>28</sup> The researchers interviewed each lawyer in the sample against whom a claim had been filed; these interviews were extensive and confidential. The researchers in most cases also interviewed the lawyer retained by LawCover to defend the claim.

The results of this unusually in-depth study were “clearly disturbing,”<sup>29</sup> showing how easy it was for the average lawyer - even the lawyer other lawyers would choose and trust - to become entangled in the events that often lead inexorably to a claim. The lawyers did not seem to understand the dynamics of the claims. The researchers concluded that most lawyers need help to see the patterns and to understand how they should act differently in future to reduce their inherent exposure.<sup>30</sup> By far the most significant cause of professional negligence claims was *not* dissatisfaction with outcome but instead related to the handling of the client relationship; the most frequent problems were failure to listen to the client, ask appropriate questions and explain relevant aspects of the matter.<sup>31</sup>

A different empirical study in Australia, an evaluation of specialist accreditation that included client focus groups and surveys, found that practitioners and their clients were selecting divergent indicators of performance with which to assess satisfaction with

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<sup>26</sup> Tom Tyler, *Client Perceptions of Litigation – What Counts: Process or Result?*, TRIAL MAGAZINE (July 1988) p. 40.

<sup>27</sup> RONWYN NORTH & PETER NORTH, MANAGING CLIENT EXPECTATIONS AND PROFESSIONAL RISK: A UNIQUE INSIGHT INTO PROFESSIONAL NEGLIGENCE EXPOSURE IN THE AUSTRALIAN LEGAL PROFESSION IX (1994) (relevant excerpts are available at <http://law.gsu.edu/ccunningham/PR/North&North.htm>) The full name of LawCover is “the Solicitors Mutual Indemnity Fund Pty Ltd.” *Id.* (title page).

<sup>28</sup> *Id.* at xi.

<sup>29</sup> *Id.* at xii.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at 11, 21-26. LawCover was so impressed by these findings that it began to offer premium reductions to lawyers who participate in a series of workshops on lawyer-client communication. Robin Handley & Damien Considine, *Introducing a Client-Centred Focus into the Law School Curriculum*, 7 LEGAL EDUC. REV. (Australia) 193, 197-8 (1996).

service.”<sup>32</sup> Although there was widespread client satisfaction with the specialists’ legal knowledge and skills, the evaluators also found “consistent evidence of client dissatisfaction with the provision of services, and the quality of the service-delivery process.”<sup>33</sup> According to this study:

Practitioners are concentrating on developing their knowledge and skills to deliver better outcomes; but their clients, expecting both technical competence and results, are being disappointed by the process of getting there. Clients complained about the quality of their lawyers’ services in terms of inaccessibility, lack of communication, lack of empathy and understanding, and lack of respect . . . .<sup>34</sup>

The evaluators concluded that

consideration should be given by the profession to introducing additional training to redress identified performance deficits in the related areas of *inter-personal skills* and *client management techniques*. This training should be client focused, rather than transaction focused; it should train practitioners to recognise that client needs are not confined to attaining objective outcomes; and it should help lawyers to listen to clients more attentively, diagnose their various levels of needs and demonstrate empathy.<sup>35</sup>

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<sup>32</sup> Livingston Armytage, *Client Satisfaction with Specialists’ Services: Lessons for Legal Educators*, in 1 SKILLS DEVELOPMENT FOR TOMORROW’S LAWYERS: NEEDS AND STRATEGIES 355, 365 (1996).

<sup>33</sup> *Id.* at 357.

<sup>34</sup> *Id.* at 365.

<sup>35</sup> *Id.* at 366.