

To pay or not to pay – is that the question? The impact of funding on the perception of legal services - Findings from a Germany client study -

Dr. Matthias Kilian*

Senior Lecturer, Faculty of Law, University of Cologne
Director, Soldan Institute for Law Practice Management, Essen

A. INTRODUCTION

The problem of funding legal services as an important cornerstone of access to justice policies has received a lot of attention in the past two decades. Most studies carried out in that context have focused on the analysis of legal needs and financial means of those in need of funding legal services. A lot of thought has also been given to access to alternative service providers and ways to make competing and/or complementing providers of legal services more readily available and more easily accessible. Relatively little research has focused, however, on the question what impact funding mechanisms have on the perception of a legal service. Are expectations, experiences and satisfaction with a legal service different depending on how the service was funded? Do clients view service providers more critical if they have to fund them out of their own purse, are they less demanding if someone else is paying for the service they receive?

A recent study into legal problems of Germans has allowed analyzing this issue in some detail. The German Soldan Institute For Law Practice Management (henceforth: Soldan Institute), a non-profit research institute, has carried out empirical research into potential and actual users of legal services¹. This paper is based on an analysis of the data with the funding mechanism being the independent variable. While some of the aspects researched are unique and typical for the German legal services market, most of the results can be put into the broader context of *judicare* models.

* The study about which the speaker is reporting in this paper was conducted by him together with Prof. Dr. Christoph Hommerich, his co-director at the Soldan Institute For Law Practice Management. Credit is also due to the additional members of the project team, Dr. Thomas Ebers M.A., Julia Heinen M.A. and Thomas Wolf M.A.

¹ *Hommerich/Kilian*, Mandanten und ihre Anwälte: Ergebnisse einer Bevölkerungsumfrage zur Inanspruchnahme und Bewertung von Rechtsdienstleistungen [Clients and lawyers: Findings of a survey how legal services are used and rated by the population], 2007 (ISBN 978-3-8240-5404-6).

This article will first give an overview of the design and methodology of the whole study and describe the main areas of the research. It will then describe funding mechanisms available in Germany and assess the relative importance of funding mechanisms for private clients. The main part of this paper will then look at the impact of funding mechanisms on priorities of citizens faced with a legal problem and on how the services of a legal professional are perceived. The paper will concentrate on those aspects of the study that can be put into an international perspective as they are not intertwined with national particularities.

B. THE GERMAN CLIENT STUDY

§ 1 Design

Optimizing legal services requires knowledge about the expectations and experiences of clients. The empirical study was designed to provide evidence-based information on those expectations and experiences, based on a well-established scholarly research into the quality of services in general. As the quality of a professional service is to a great extent defined by the interaction between provider and customer of the service, the study puts emphasis on the interaction between the most important type of legal service provider, the lawyer, and his client. The design follows the typical development of a legal problem - that may or may not be solved, with or without the help of a legal professional²:

The first focus of the study is on the incidence of justiciable problems in Germany³. It analyzes how often Germans faced a justiciable problem between 2002 and 2006. The study examines in some detail what type of legal problem occurred and what areas of life were concerned. This data on the incidence of justiciable problems also allows distinguishing between one-shot and repeat players on the demand side of the market.

Citizens with a justiciable problem are faced with the fundamental difficulty of how to address this problem. They can leave the problem untouched, based on their own assessment of how important and relevant problem-solving is, they can try to solve it on their own, they can look for help from other laymen or from semi-professionals – or they can try to find help from legal professionals. Those with a legal problem are therefore faced with the dilemma that they need to identify their own needs by defining what type of problem they are subjected to and who can be asked to assist in its solution. This identification is complicated by the fact that a lay person may be unaware of the variety of professional help available and what risk different options involve. Against this background, the study analyzes what the problem solving strategies of

² In detail, see *Hommerich/Kilian*, op. cit. (fn. 1), pp. 11-14.

³ *Hommerich/Kilian*, op. cit. (fn. 1), pp. 37-58.

citizens with a legal problem are⁴. In some greater detail the strategies of those are analyzed who decide not to seek the advice of a professional and turn to other advisers instead, e.g. friends, colleagues, relatives, advice centers etc.

The study then narrows its scope and turns to *clients*, i.e. those citizens who had a justiciable problem over a five-year period and who decided to solve the problem with the help of a professional⁵. Because of comprehensive monopoly rights enjoyed by German lawyers, clients in this context means clients of lawyers. The starting point of an in-depth analysis of clients – in contrast to citizens with a legal problem – is empirical data on how clients select advisers, particularly what factors are of greater importance than others to (future) clients when selecting a specific service provider⁶.

The next aspect analyzed in the study is the beginning of the relationship between client and legal professional⁷, i.e. instructing the professional and entering into a contractual relationship with him. Important issues at this stage are, for example, if costs are discussed, how clients finance legal services, whether they shop around for prices or negotiate them.

The study finally turns to experiences clients have made with their advisers. In the context of the German study, this means experiences with lawyers⁸. It analyzes how the problem-solving process, i.e. how the lawyer handles the case, is experienced by the client. The study concludes with an analysis of data on how satisfied clients are after they have received the professional service and are aware of its outcome.

§ 2 Methodology

The quantitative study was based on a couple of thousand telephone interviews conducted in December 2006 and January 2007. The study took a three-tiered approach⁹. Initially, 1.000 Germans were asked in a multi-themed omnibus poll, among other questions, what their most likely first point of call in case of a legal problem was¹⁰. At the following stage, 6.400 Germans were asked whether they had used the services of a lawyer between 2002 and 2006. From among those who had, 1.000 were randomly chosen for a structured, in-depth telephone interview.

⁴ Hommerich/Kilian, op. cit. (fn. 1), pp. 59-106.

⁵ Hommerich/Kilian, op. cit. (fn. 1), pp. 107-196.

⁶ Hommerich/Kilian, op. cit. (fn. 1), pp. 107-132.

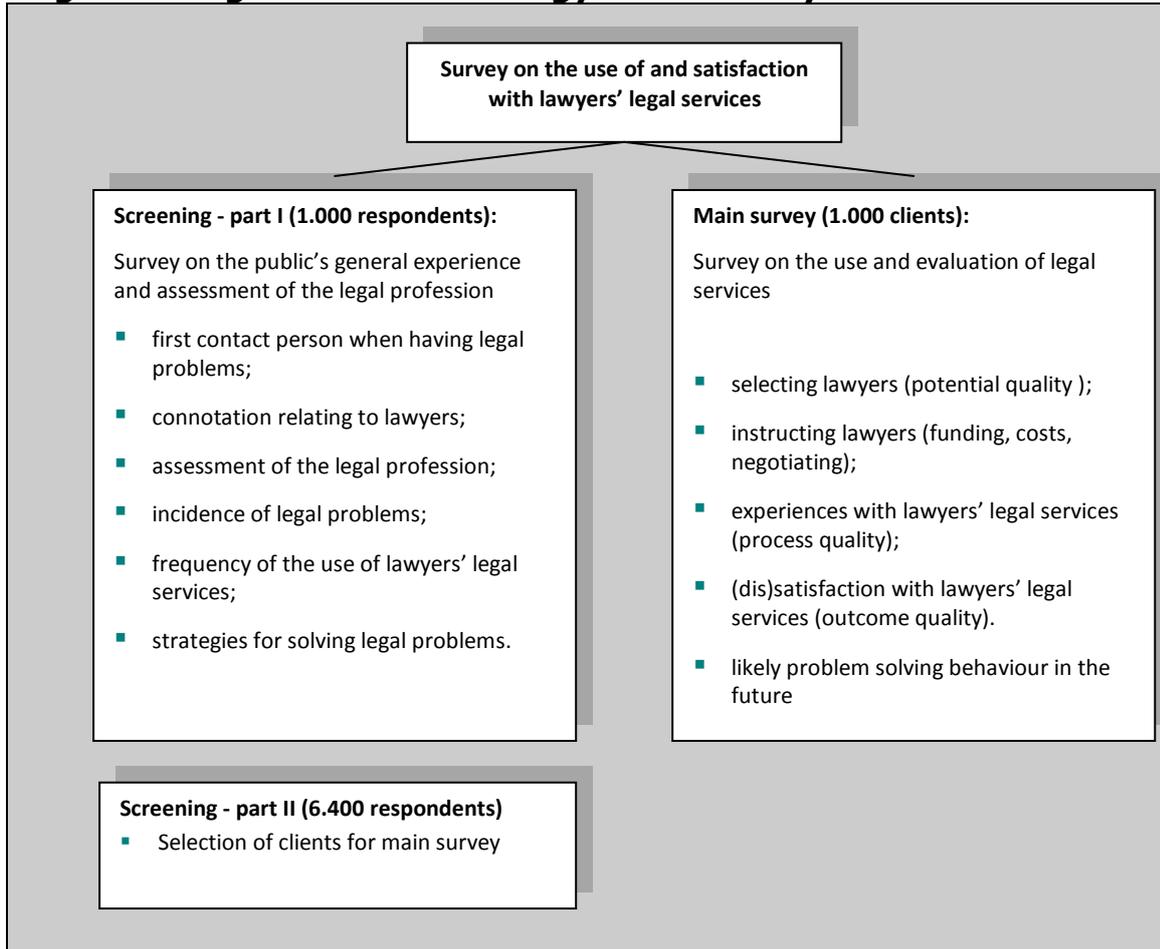
⁷ Hommerich/Kilian, op. cit. (fn. 1), pp. 135-154.

⁸ Hommerich/Kilian, op. cit. (fn. 1), pp. 155-196.

⁹ See in detail Hommerich/Kilian, op. cit. (fn. 1), pp. 14-15.

¹⁰ They were also asked about their perception of lawyers.

Fig. 1: Design and methodology of the study



The field work was conducted by FORSA, a leading German organization for opinion research, on behalf of the Soldan Institute. FORSA made the raw data available to the Soldan Institute whose staff carried out an in-depth analysis of the data during 2007. The main results were summarized in a 220 page research report that was published under the title "Mandanten und ihre Anwälte" in 2007 and in a series of 12 articles published in 2007/2008 in the monthly journal of the German Bar Association¹¹.

¹¹ The study was designed and conducted completely independent from government institutions and professional organizations. The study was funded by a non-profit foundation that allocates an annual research budget to the Soldan Institute, a multi-disciplinary non-profit research institute set up in 2002 to further empirical research into legal services and the legal profession.

C. FUNDING LEGAL SERVICES IN GERMANY

§ 1 FUNDING MECHANISMS

1. Overview

In most legal systems four main mechanisms for funding legal services are available: Self-funding, speculative funding, state funding and commercial funding. The risk of being forced for to pay for the solution of a legal problem is borne by someone different in each case: By the person with the legal problem (self-funding), a lawyer (speculative funding), the government (state funding) or an insurer / claims assessor (commercial funding). The relative importance of those different mechanisms in a national context, however, depends on the way they are regulated as regulation defines the attractiveness and usefulness of each concept for the individual. While all four mechanisms are available in Germany, the way they are regulated makes the German market unique for various reasons. To better understand the empirical findings reported later, it is helpful to get an insight into the various funding mechanisms available in Germany and into why one is more or less attractive than the other conceptually.

2. Self-Funding

In Germany, the mechanisms of self-funding of legal services are not entirely market-based. In order to guarantee access to justice, lawyers' fees have been regulated since the 19th century when, for the first time, laws on the territory of what today is the Federal Republic of Germany were unified. Ever since, in Germany fees for legal work relating to representation have been regulated in a way that low value cases result in lower lawyer fees than high value cases, regardless of the amount of time the lawyers has spent on the case¹². Although these fees only apply by default, i.e. in the absence of an individual fee agreement, they are widely used as lawyers find it difficult to negotiate fees individually. This concept of cross-subsidization, i.e. for the same investment (of time and effort) lawyers earn more money with a high value case than with a low value case, guarantees that low-value cases can be pursued by the public. The concept is based on the assumption that in general those better off have higher value cases than those who are poorer, so the concept works in favor of those from lower income brackets of the population at the expense of those better off who will, on average, pay more for the same legal service¹³. With such a concept, guaranteeing access to justice is, to some extent, also privatized as lawyers have to bear the financial

¹² This is achieved by linking the fees to the value of the matter and (degressively) increasing them in relation to the value. This results in scaled fees.

¹³ Which has led to some consternation particularly by observers from the US who view such as concept as a hidden form of socialism (the same can be said about contingent fees as well who are also based on the concept of cross-subsidizing "bad" cases with income from "good" cases).

consequences – in a segmented market high and low value cases are not evenly distributed among all peers, so most low value cases end up with one group of lawyers whereas the high value cases are dealt with by a another (smaller) group of lawyers.

3. Commercial Funding

A large percentage of legal services in Germany is funded by legal expenses insurance (LEI) policies. Details of the German LEI market have been covered in some more detail in earlier papers by the author, so this paper will only give some brief information. 42 per cent of all German households have some form of LEI coverage based on a before-the-event insurance policy. Premium income of German LEI insurers in 2006 was 3.07bn EUR, payout was 2.22bn in the same year. In 2006, 3.55m claims were made based on LEI policies¹⁴. LEI in Germany is not offered as an add-on to a specific insurance type, but as a stand-alone product that covers all risks related to, e.g., "property", "traffic", "work-place". It follows a modular system so a policy can be patched together consisting of different modules that reflect the typical areas of life in which one may run into trouble. If there is a reasonable chance of success, the insurance has to provide coverage in the form of refunding costs of a lawyer paid according to the statutory fees (insurers are not allowed to provide services themselves). This link to statutory fees allows insurers to calculate the economic risk with high accuracy, thus alleviating the need to built safeguards into the policies (such as caps or high premiums) to off-set the risk of unpredictable payouts. As a result, premiums are relatively low and affordable.

4. Speculative Funding

Unlike in many other jurisdictions, speculative funding of fees by way of conditional or contingent fee agreements is still prohibited in general. Only very recently a decision of the German Constitutional Court has led to changes in the law. Speculative funding is now lawful if someone would otherwise be deprived from access to justice. This exception to the general rule mainly covers those cases in which someone is too poor to fund himself, has no LEI coverage and is not eligible for legal aid (the constitutional court case involved a US citizen who was not eligible for legal aid in Germany). Two recent studies by the Soldan Institute show that most lawyers have not embraced the concept of speculative funding so far and are somewhat reluctant to enter in speculative funding agreements¹⁵. There is more interest in and willingness to enter into such agreements among lawyers who have a higher percentage of commercial clients (they use a loophole in the new regulations as these are not strictly

¹⁴ All data taken from *Hommerich/Kilian/Dreske* (ed.), *Statistical Yearbook Of The Legal Profession 2007/2008*, pp. 144-146.

¹⁵ See *Hommerich/Kilian*, *Soldan Berufsrechtsbarometer 2007*, Essen 2008.

limited to funding means-tested poor clients)¹⁶. As a result, speculative funding very much remains a fee arrangement rather than a funding mechanism.

5. Government Funding

Because of regulated fees and the widespread use of LEI, legal aid only plays a minor role when it comes to funding legal services in Germany. The per capita spending on legal aid is much lower in Germany than in most industry nations. In 2006, for a population of 82.4m the civil legal aid budget stood at 490m EUR (or 5.95 EUR per capita), another 80.5m went into funding 907.000 advice / representation cases in all areas of law¹⁷. Most of the legal aid budget goes into family law cases as family law is difficult and expensive to insure with LEI insurers and cases tend to be rather expensive despite the existence of legal fees (remuneration-wise, divorce, custody, property, maintenance, pension rights adjustment are all treated as separate cases and incur separate fees). In addition, there is also no fully-fledged system of criminal legal aid in place in Germany (the German concept is based on the idea of forced representation in more severe criminal cases).

§ 2 EMPIRICAL FINDINGS

Of those Germans who had instructed a lawyer in the 2002 to 2006 time-bracket, only 47 per cent were self-funding. 35 per cent were funded by a legal expenses insurance. 8 per cent relied on legal aid, 2 per cent received services from a lawyer working for free (which does not automatically translate into pro bono publico, see below). In 0.2 per cent of all cases funding was through a commercial claims assessor. 6 per cent of all respondents said that they were funded by someone else. The results from this small group are a somewhat grey area as it is difficult to assess whether they meant true third-party funding (e.g. by the employer, friends, relatives, spouses) or re-funding as a result of cost-shifting. Of those who were funded by legal expenses insurance or legal aid (43 per cent in total), approx. 5 per cent said that the lawyer had asked them to pay a top-up fee in addition to the statutory fees covered by LEI or legal aid. The particularities of the German market become evident when the findings are compared to England and Wales: A Law Society study published in 2001¹⁸ shows that in England And Wales 60 per cent of clients are self-funding, 13 per cent get legal aid, 4 per cent are covered by legal expenses insurance, 2 per cent each by conditional fees and pro bono services, and 7 per cent each by third parties and by some other mechanism not specified.

¹⁶ See in detail *Hommerich/Kilian*, Soldan Vergütungsbarometer 2008, Essen 2009.

¹⁷ All data taken from *Hommerich/Kilian/Dreske* (ed.), op. cit., pp. 147-155.

¹⁸ *Craig/Rigg/Briscoe/Smith*, Client Views: Client's Expectations Of Using A Solicitor, London 2001, p. 55.

Some details are noteworthy, although not unexpected: Those who are faced with a higher incidence of justiciable problems are more often self-funding. This finding illustrates that, contrary to popular belief, LEI does not encourage litigation. The reason is that LEI, like any other insurance, does only cover a limited number of insurance cases and additionally reserves the right to terminate the contract if used in a certain number of cases over a contractually agreed period of time. The lower the educational background is, the less people are self-funding. However, the alternative funding mechanism for this group is not exclusively legal aid, but to the same extent legal expenses insurance. Another interesting detail: The better the educational background of those with a legal background is, the more likely it is that their case will be handled on a pro bono basis. The explanation for this finding is that 8 per cent of all Germans say that their most likely point of call when experiencing a legal problem would be a lawyer among her friends and relatives – the figures for those with a higher educational background is almost twice as high than for those with a lower educational background (12 per cent vs. 5 per cent). The obvious explanation is that those looking for and those providing the service in question are from the same group of peers (academics). The consequence is that the poorer you are, the less likely you are to receive lawyers' services for free¹⁹. A gender specific analysis shows that women are less likely to be self-funding, but much more likely to rely on legal aid. The reason is that the majority of legal aid funding goes into family law cases in which a high percentage of women need to be assisted by legal aid because of their lower income when compared to their husband. Looking at the correlation between type of legal problem and funding mechanism is, from a German perspective, interesting as legal aid is not subject to a funding code but demand-driven. Additionally, LEI, although not covering all areas of law, is not limited to a small number of types of disputes. The highest percentage of self-funded cases are those related to inheritance, finance, landlord and tenant/property, criminal, and family law. Tort, contract, employment and traffic are much less likely to be self-funded.

D. THE IMPACT OF FUNDING ON THE PERCEPTION OF QUALITY

§ 1 Dimension Of Quality

From a consumer's point of view, the satisfaction with a legal service is derived from three different dimensions of quality²⁰: Potential, process

¹⁹ It should be noted that, unlike in the US and Australia, and to some extent in the UK, no pro bono culture has developed so far in Germany. Ethical rules do not require lawyers to provide services pro bono public nor is it encouraged through programmes of local bar organizations.

²⁰ *Hommerich/Kilian*, op. cit. (fn. 1), p. 159. This approach follows a model established by *Donabedian*, *The Definition Of Quality And Approaches To Its Assessment And Monitoring*, 1980.

and outcome. Potential as a quality dimension means the assessment of the abilities of the service provider prior to the delivery of the service. In a situation of asymmetrical knowledge, this assessment is based mostly on peripheral aspects such as the reaction of support personnel when making the initial contact, the service environment or the corporate image of the service provider. Process as a quality dimension addresses the delivery of the service whereas outcome is related to the end result of the service and its long-term impact. The following chapter will present the findings of the study for all three dimensions of quality by discussing the overall results first and then looking at whether or not funding has an impact on those findings

§ 2 Potential As A Quality Dimension

1. Overall Results

The fact that someone with a legal problem has become aware of a specific service provider who has the potential of solving the legal problem does not automatically translate into the professional being contacted or even instructed. The potential client will contemplate recommendations and check whether a service provider (or a choice of providers) meets his personal requirements before making his selection. To understand why a layman ultimately decides to enter into a principal-agent relationship with a certain service provider requires knowledge of client's priorities. The study researched the relevant selection criteria in some detail²¹.

The criterion with the highest priority in the selection process is accessibility. 83 per cent of the respondents rate both the opportunity to speak immediately to a professional and to get an appointment for a face-to-face meeting as soon as possible as "important" or "very important". The criterion with the next biggest importance is the specialization of the professional they plan to instruct, followed by the overall friendliness of the firm – 71 per cent say that the way the firm's personnel communicate over the telephone is "important or "very important". Less important is the firm's standing, the location of the offices of the firm and, somewhat surprisingly, the costs of the service. Only 25 per cent say that it is of importance to them that the professional is well-known. Firm size, advertising, web-sites are relatively unimportant in the selection process – more than two thirds of all respondents rate these aspects as not important.

²¹ *Hommerich/Kilian*, op. cit. (fn. 1), p. 110.

Tab. 1: Relevant criteria when selecting a professional / firm – overall results in percent²²

	(very) important	indifferent	not important (at all)	don't know/ n/a
immediate conversation	83%	10%	5%	1%
promptness of appointment	83%	9%	7%	1%
specialization	80%	9%	10%	1%
friendliness of staff	71%	15%	12%	3%
reputation	70%	11%	16%	4%
proximity of the office	65%	18%	16%	1%
Recommendations	58%	14%	27%	3%
fees	32%	21%	42%	4%
firm well-known to the public	25%	24%	49%	2%
size of firm	13%	22%	64%	1%
Information material	12%	15%	66%	7%
web presence of the firm	8%	9%	76%	8%

These figures show that personal interaction has a much bigger impact on the selection process than other communicative measures. One important conclusion is that a firm's personnel - as the first contact point for potential clients - plays an important role in the law firm's success. This is not only because their friendliness is rated as important but also because support staff make decisions on those issues that often decide whether a firm gets a new client or not: Making it possible to speak to a professional and scheduling a face-to-face meeting for the earliest possible date.

2. The Impact Of Funding Mechanisms

The funding mechanism has an impact on the relative importance of certain aspects of how potential as a quality dimension is perceived: Unsurprisingly, self-funding clients are more concerned about costs than those clients who are funded by legal aid, legal expenses insurance or other types of third-party funding. "External" funding therefore allows clients to base their selection on aspects that overall are rated as more important. The data also shows that those categories that reflect the vulnerability of clients to a greater extent than others - such as the opportunity to have an immediate conversation or the promptness of an appointment - are rated as more important by legal aid clients than others. Overall, legal aid clients are much more concerned about almost

²² The respondents were asked to rate the statements on a scale of 1 (very important) to 5 (not important at all).

all aspects that can serve as an indicator of potential than clients funded by a different mechanism. With the exception of costs²³ and of the internet presentation of the firm, legal aid clients are those who are the most concerned about all indicators of potential quality of the legal service they hope to receive. The difference is much more pronounced than between self-funding clients and clients funded by insurance or a third party. This is particularly noteworthy as the results for those funding their costs with a LEI, the funding mechanism the most similar to legal aid, are significantly from those of legal aid clients. Although LEI clients are the least concerned about the costs, they are still less demanding than legal aid clients with regard to all others aspects. The data also shows that those who pay from their own pocket are willing to trade-off costs for such aspects friendliness of staff, reputation and public profile of the firm.

Tab. 2: Relevant criteria when selecting a professional / firm – as per funding mechanism

	legal aid	Insurance	third party	self-funding
immediate conversation	1,5	1,7	1,8	1,8
promptness of appointment	1,5	1,7	1,9	1,8
specialization	1,5	1,8	2,0	1,8
friendliness of staff	1,8	2,0	2,2	2,2
reputation	1,9	2,1	2,2	2,2
proximity of the office	2,0	2,2	2,5	2,3
recommendations	2,4	2,6	2,8	2,6
fees	3,3	3,7	3,5	3,0
firm well-known to the public	3,0	3,5	3,4	3,5
size of firm	3,8	4,0	3,9	4,0
Information material	3,8	4,2	4,2	4,2
web presence of the firm	4,4	4,4	4,5	4,4

In above chart: mean on a scale of 1 (very important) to 5 (not important at all); grey: $p \leq 0,05$

The findings become more transparent when the different aspects are grouped into the three categories of responsiveness, reputation and external presentation:

²³ The reason is that legal aid in Germany leaves cost-shifting principles untouched – if a legal aid client is unsuccessful, he will be ordered to pay the opponent’s costs, with legal aid only covering his own costs.

Tab. 3: Different categories of potential as quality dimension - means

	all	legal aid	Insurance	third party	self-funding
Responsiveness	2,0	1,7	1,9	2,1	2,0
Reputation	2,2	1,9	2,2	2,3	2,2
External Presentation	3,8	3,6	3,9	3,9	3,8

In above chart: mean on a scale of 1 (very important) to 5 (not important at all)

Above factor analysis shows that there are three categories that define potential as a quality dimension: Responsiveness, reputation and presentation. From the perspective of client expectations, the key to success for a professional in general is responsiveness, whereas reputation is of a lesser importance. Very little impact has the external presentation of the firm. For all three categories, there is little deviation in relation to the funding-mechanism insurance, third-party and self-funding. Clients funded by legal aid, however, rate all the categories as more important than other clients. Their key concern is responsiveness on the side of the service provider, whereas reputation scores as almost as important.

§ 3 Process as a Quality Dimension

1. Overall Results

In the next step of the study, respondents were asked to rate the provision of the legal service by the professional in person and his firm as a whole during the course of the lawyer-client relationship. Respondents initially rated 16 typical aspects that define the quality of service delivery by a legal professional. Those 16 aspects can be grouped loosely into three categories: Empathy, involvement and accessibility²⁴.

a) Aspects Related To The Individual Service Provider

The overall results show a very high satisfaction level in all categories²⁵. The highest approval was measured in the categories "immediate first interview" and "friendliness" (94 per cent approval), followed by the categories "listened carefully", "explained comprehensibly", "was competent" and "kept agreed deadlines". All these aspects have approval rates in the 90 per cent range. The approval is slightly lower for aspects such as "took sufficient time for my case", "I had trust in my lawyer all

²⁴ See for some more details on those categories *Hommerich/Kilian*, op. cit. (fn. 1), p. 164-165.

²⁵ *Hommerich/Kilian*, op. cit. (fn. 1), p. 163.

the time”, “was easily accessible”, “kept me up to date”. The five categories with the lowest approval rates are “wrote comprehensible letters”, “worked with intensity on my case”, “worked on my case in person”, “explained the results in detail” and “prepared me well for hearings”. Although the lowest approval rates are in the 70 per cent range, these overall good ratings should not be overestimated: Even an approval rate of 90 per cent, i.e. 10 per cent clients who are not satisfied, translates into hundreds of thousands cases each year which are not processed satisfactorily from the client’s perspective. The high approval rates therefore should be treated with some care and seen as an encouragement to improve an already relatively good service standard further.

Tab. 4: Satisfaction with quality of the delivery process – overall results²⁶

	True	Indifferent	false	n.a.
empathy:				
I had the impression that the professional was dealing with my problem intensely	82%	12%	5%	1%
was competent at any time	91%	6%	3%	–
allowed sufficient time for my needs	89%	8%	2%	1%
I had confidence in the professional at any time	88%	7%	5%	–
kept me informed case at any time	85%	8%	3%	4%
explained legal issues in a comprehensible way	91%	5%	3%	1%
handled my request always herself	78%	9%	4%	9%
wrote comprehensible letters	83%	7%	5%	5%
involvement:				
kept deadlines / appointments	90%	5%	2%	3%
communicated all important decisions	88%	5%	3%	4%
explained the outcome sufficiently	76%	10%	6%	8%
prepared me well for the hearing	70%	10%	7%	13%
accessibility:				
I got an appointment for a first meeting quickly	94%	3%	1%	2%
was accessible	88%	8%	4%	–
was friendly	94%	5%	1%	–
listened to me carefully	92%	6%	2%	–

n.a.: don’t know / cannot say

²⁶ The respondents were asked to rate the above statements on a scale of 1 (true) to 5 (false).

b) Aspects Related To The Firm

Respondents were also asked to rate the provision of the service not by the individual professional, but by the firm as a whole²⁷. Again, the level of satisfaction in all categories is very high, although on average not as high as in those categories that are related to the professional. The highest satisfaction level can be found in categories such as “discrete atmosphere”, “friendliness of staff” or “tidiness of the office”. Satisfaction is rather poor in categories such as “looked after while waiting”, “helpfulness of staff” and “provision of information material”. Trust in the professionalism of the legal professional is higher than trust in the professionalism of the support staff. Again, those clients with a higher income and a higher education level are significantly more critical.

An important finding therefore is that lawyers are better at keeping their immediate working environment, their work ethics and behavior at a satisfactory level than organizing their law firm structures. The importance of well-trained and supervised support staff should not be underestimated as this staff is usually the first contact point for potential clients – for whom the friendliness of the staff is one of the top priorities in the selection process (see above).

Tab. 5: Satisfaction with firm and its staff

	very satisfied / satisfied*	indiff.	dissati sified	not applicabl e	n / a. don't know
discrete atmosphere	88%	5%	1%	5%	2%
client support on the phone	84%	9%	2%	4%	1%
tidiness of office	83%	7%	3%	6%	3%
friendliness at the reception	83%	6%	1%	8%	2%
trustworthiness of the staff	76%	8%	1%	10%	5%
support during waiting time	53%	15%	5%	23%	4%
helpfulness of the staff	75%	10%	2%	10%	3%
information material for clients	35%	16%	10%	28%	11%

*percents from scale of 1(very satisfied) to 5 (dissatisfied)

²⁷ Hommerich/Kilian, op. cit. (fn. 1), pp. 172-178.

2. The Impact of Funding Mechanisms

When breaking down respondents into groups who were funded by different funding mechanisms, deviations are not as distinct as they are in the quality dimension "potential". The data shows, however, that clients funded by legal aid are slightly more content than those who are self-funding both with regard to the handling of the case by the professional and by the firm and its staff. The same is true for those who are funded by LEI.

An explanation could be that funds in both cases are only provided subject to a means test so that the likelihood of a successful outcome – that influences the perception of quality (see below) – is higher. The only categories in which legal aid clients were as much unsatisfied as self-funding clients were accessibility and when asked about how intensely the professional was dealing with the client's problem. This could be an indicator that legal professionals are at least perceived to be not working as vigorously on legal aid cases and on other cases as fees for legal aid work are discounted compared to the regular fees in the tariff. The deviations are, however, so marginal that it is difficult to draw non-ambiguous conclusions.

One finding that is, to some extent, intertwined with the variable of funding is income of the client: Satisfaction levels decrease, regardless of the funding mechanism, with increasing income – poorer clients rate their lawyers better than clients who are better-off. Asymmetrical knowledge and social divide are the most likely explanations for this phenomenon. As legal aid grants are subject to a means test and the threshold is set at such a level that almost all those who are eligible fall into the lower income brackets, income rather than funding is probably the explanation why legal professionals score slightly better with legal aid clients than with other clients.

Tab. 6: Satisfaction with quality of the delivery process²⁸

	legal aid	LEI	third party/ pro bono	self-funding
empathy:				
I had the impression that the professional was dealing with my problem intensely	1,7	1,6	1,6	1,7
was competent at any time	1,4	1,3	1,6	1,5
allowed sufficient time for my needs	1,4	1,4	1,4	1,5
I had confidence in the professional at any time	1,5	1,4	1,4	1,6
kept me informed at any time	1,3	1,4	1,7	1,5
explained to me in a comprehensible way	1,4	1,4	1,6	1,5
handled my request always himself / herself	1,5	1,6	1,5	1,6
wrote comprehensible letters	1,4	1,5	1,5	1,6
involvement:				
kept deadlines / appointments	1,4	1,4	1,3	1,4
communicated all important decisions	1,3	1,4	1,5	1,5
explained the outcome sufficiently	1,7	1,7	1,8	1,7
prepared me well for the hearing	1,7	1,7	1,9	1,9
accessibility:				
I got an appointment for a first meeting quickly	1,2	1,3	1,3	1,4
was accessible	1,6	1,5	1,6	1,6
was friendly	1,2	1,3	1,3	1,3
listened to me carefully	1,3	1,3	1,4	1,4
firm / staff:				
discrete atmosphere	1,5	1,6	1,7	1,7
client support on the phone	1,5	1,5	1,5	1,6
tidiness of office	1,7	2,0	2,0	2,1
friendliness at the reception	1,5	1,6	1,6	1,7
trustworthiness of the staff	1,5	1,4	1,8	1,5
support during waiting time	1,3	1,4	1,4	1,5
helpfulness of the staff	1,4	1,5	1,5	1,6
information material for clients	2,3	2,4	2,5	2,4

in above chart: mean on a scale of 1 (true) to 5 (not true)

These findings are, however, put somewhat into perspective by the central finding of the study: Rating of process quality is heavily influenced by the

²⁸ The respondents were asked to rate the above statements on a scale of 1 (true) to 5 (false).

outcome of the service regardless of the funding mechanism²⁹. Those who say that the professional was not successful retrospectively rate elements of the preceding service delivery process more negatively than clients who deem the work of the professional as successful. While undoubtedly outcome can be influenced by deficits in the delivery process, this interdependence cannot explain, for example, lower ratings for such aspects as the friendliness, quality of the information material, accessibility, being looked after by staff while waiting. A somewhat sobering conclusion is that whatever quality of service the professional provides, all aspects are to some extent overshadowed by the end result.

Tab. 7: Client satisfaction with law firm / staff as per success of the lawyer – means

	lawyer successful	partly successful	lawyer unsuccessful	n / a
client support on the phone	1,6	1,7	2,2	1,6
friendliness at the reception	1,5	1,6	1,9	1,5
support during waiting time	1,9	2,2	2,5	1,9
helpfulness of the staff	1,6	1,8	2,2	1,7
tidiness of office	1,4	1,6	1,8	1,6
discrete atmosphere	1,4	1,5	1,8	1,5
trustworthiness of the staff	1,5	1,7	2,0	1,5
information material for clients	2,3	2,6	3,0	2,2

Mean on scale of 1 (very satisfied) to 5 (dissatisfied) - $p \leq 0,05$

§ 4 Outcome as a Dimension of Quality

1. Overall Results

Satisfaction is not only based on service process. As unfair as it may seem in the context of legal services, the outcome often is of even greater importance – unfair as even the most brilliant professional cannot win hopeless cases but, if at all, only limit the damage for the client. Despite this dilemma, the vast majority of clients tend to be very satisfied with the result of the legal service received³⁰. Asked about their overall satisfaction with the outcome, 51 per cent say that they were very satisfied, 29 per cent were satisfied and only 7 per cent were not satisfied at all (the remainder is neither nor). One interesting, although not totally unexpected finding is that clients who are not self-funding are significantly more satisfied with the results than clients who pay the costs of the service out of their own pocket.

²⁹ Hommerich/Kilian, op. cit. (fn. 1), pp. 172, 178.

³⁰ Hommerich/Kilian, op. cit. (fn. 1), pp. 180-188.

Tab. 8: Different categories of potential as quality dimension - means

	all	legal aid	Insurance	third party	self-funding
overall satisfaction	#	1,44	1,44	1,52	1,54

Mean on scale of 1 (very satisfied) to 5 (dissatisfied) – p = 0.092

Two key indicators to assess satisfaction with a legal service are to what extent clients feel that the costs of the service received are reasonable and whether or not predictions about the outcome made by the professional are met. In both categories, lawyers in general do well, but particularly well with clients funded by legal aid or LEI.

Respondents were asked if they felt, looking at the service retrospectively, that they had received value for their money³¹. Of those who saw fit to answer the question 84 per cent (= 57 per cent of all respondents) said the fee was reasonable, 16 per cent (= 11 per cent of all) said it was not³². Those the least satisfied with the costs of the legal service were those who were self-funding, although still 80 per cent of those who commented on the reasonableness of the costs were satisfied. Only one in ten of those funded by legal aid or LEI said the costs were unreasonable. As respondents were given the opportunity to state that they were in no position to assess the costs (between 41 per cent and 52 per cent of those not self-funding), this discrepancy can only be partly attributed to difficulties of legal aid or LEI clients getting an insight into their lawyer's fees. Nevertheless, there can be little doubt that the Heywoodian wisdom that one should not look a gift horse in the mouth to some extent comes into play.

Tab. 9: Reasonableness of fees by funding mechanism

	all	legal aid	Insurance	third party	self-funding
Yes (all)	57%	53%	43%	51%	71%
Yes (those who assessed)	84%	90%	90%	96%	80%
No (all)	11%	6%	5%	2%	18%
Don't know	32%	41%	52%	47%	11%

³¹ *Hommerich/Kilian*, op. cit. (fn. 1), pp. 189-193.

³² The high percentage of those who did not answer the question (32 per cent) can be explained with the fact that in Germany a high percentage of clients is funded by legal expenses insurance (in the study 35 per cent) and, to a lesser extent, by legal aid (8 per cent). In both cases, they usually do not have to deal with the cost issue in detail (for empirical data on the different funding mechanisms, see *Hommerich/Kilian*, op. cit. (fn. 1), pp. 136).

Against this background, a somewhat more dependable indicator is the satisfaction of clients with the predictions legal professionals make about the chances of success when accepting a case. Overall, clients are quite satisfied with those predictions: 73 per cent say that the prediction was more or less correct, 14 per cent that the result was better than predicted and 10 per cent that it was worse. Legal aid clients are those who report the lowest margin of error, with only 7 per cent saying that the result fell short of predictions. Particularly noteworthy is that in 17 per cent of all cases predictions were not only met, but exceeded. Whereas it can be expected that predictions in legal aid and/or LEI cases do fall short of predictions less often than in other cases as funding is subject to a merits test, this does not explain why in legal aid cases predictions are significantly more often exceeded than in other cases. One explanation could be that in legal aid cases - in general and due to the areas of law predominantly concerned - the promise of a certain outcome is less of a "sales" argument to attract a case during the first consultation.

Tab. 10: Result obtained compared to initial prediction – by type of funding

	all	legal aid	Insurance	third party	self-funding
predictions met	%	60%	64%	72%	61%
predictions exceeded	%	17%	11%	11%	12%
fell short of predictions	%	7%	8%	15%	10%
no predictions made	%	5%	7%	9%	10%
don't know / n.a.	%	12%	11%	3%	8%

p<=0,05

E. SUMMARY

The study has shown that the impact of funding has some influence on how the different dimensions of quality of a legal service are perceived by clients. The most significant deviations from the overall findings are in the sub-group of clients funded by legal aid. They are more demanding and have higher expectations as far as responsiveness, reputation and, to a lesser extent, external presentation are concerned. They are, however, more satisfied with the process of problem of solving particularly when compared to clients who are self-funding. The perception of process quality, however, is to some extent interdependent with the outcome – as legal aid clients tend to be more satisfied with the outcome, they also rate the process which led to the outcome better than other clients.