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Lawyer Specialization–Managing the Professional Paradox

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This article explores a series of paradoxes exposed by specialization within the legal profession. It will argue that while the existing literature rightly identifies specialization as posing potential challenges to coherence, legitimacy, and professional ethics, it fails to grapple with the relationship between professional competence and specialization. In exploring this relationship, three paradoxes are articulated. The first is that specialization is both a necessary element in the development of professionalism and a threat to it. The second is the normative ambiguity of specialization: specialization is capable of giving rise to both benefits and detriments. The third paradox is the profession's response to this ambiguity. It will be argued that the profession's approach is incoherent in public interest terms and can be best explained as part of a desire to protect its members' interests and its collective identity over the public interest in competence. These arguments are made in the context of a series of three empirical studies of specialists and nonspecialists in legal aid practice in England and Wales. The evidence is worrying enough to suggest significant concerns about the quality and indeed legitimacy of the professional qualification as a general warrant of competence. The implications for institutionalizing specialization within the legal profession are discussed.

I. INTRODUCTION

This article explores a series of paradoxes exposed by specialization within the legal profession. As the next section of the article will show, work on the legal profession has tended to focus on specialization at the macro level with particular emphasis on organizational issues (the size and shape of law firms) and institutional political issues (such as fragmentation, equality, and legitimacy). It will argue that this literature fails to grapple sufficiently with the relationship between specialization and professional competence. Insofar as scholarly debates are critical of specialization, they focus on arguments about

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ethics, professional coherence, and legitimacy, but ignore or underplay the importance of specialization in promoting competence. This article suggests that failure to specialize and, at a professional regulatory level, failure to institutionalize specialization may pose a greater threat to professional legitimacy than the threats that specialization poses to professional coherence, legitimacy, and ethics.

In exploring these issues, three paradoxes are articulated. The first is the way in which a degree of specialization is necessary to the legitimacy and development of professionalism but is also threatening to it. Professions specialize to distinguish themselves as occupations; they warrant their competence as a step towards claiming professional status and then find that intraprofessional specialization poses questions about the quality of that generalist warrant. The second paradox is the normative ambiguity of specialization. Specialization is capable of giving rise to benefits (in terms of improved quality) and detriments (reduced access, increased cost, and an inability to see problems beyond one's own specialty [what I call "cognitive narrowness"]). Because of incommensurability between benefit and detriment, trade-offs cannot be easily calibrated. The third paradox is the profession's response to this ambiguity. Historically, the approach has been to resist recognition of the differences between specialists and generalists and, in particular, to resist the meaningful institutionalization of specialization. It will be argued that the profession's approach is incoherent in public interest terms and can be best explained as part of the profession's desire to protect its members' interests and its collective identity. As such, it is an example of how the professional paradox, with its *necessary* trade-off between consumer interest and detriment, has been resolved by the profession in its own rather than the public's interest.

The article begins with a discussion of existing literature in Section II, developing the underacknowledged importance of competence in the debates on specialization. The article examines these paradoxes in the context of a series of three empirical studies of specialists and nonspecialists in legal aid practice in England and Wales (Section III). It compares the professional competence of specialists and nonspecialists across a range of criteria and methods. The evidence is worrying enough to suggest significant concerns about the quality and indeed legitimacy of the professional qualification as a general warrant of competence. Section IV discusses the implications, comparing the approach taken to specialization in legal aid to the approach taken more generally in relation to lawyer specialization. It calls into question the profession's approach to regulation of specialization, showing the profession to be more concerned with managing tensions associated with fragmentation and intraprofessional competition than it is in managing competence.

II. SPECIALIZATION AND THE PROFESSIONS: SOME CONTEXT AND THEORY

Specialization within the legal profession is both well established (Kahn and Kahn 1977)[1] and growing in impact (Heinz et al. 2005). The literature tends

to concentrate on broad macroeconomic or political questions. Thus, economists see specialization as a crucial engine of economic growth (Garicano and Hubbard 2004, 2003). Efficiency drives growth, growth drives a need for larger markets, and larger markets provide specialists with sufficient work to thrive. As markets for legal services expand, elite firms solidify their position. They do so by expanding and underlining their reputation for excellence through that process of specialization (Heinz, Nelson, and Laumann 2001; Seron 2007). Debate on the merits of this has tended to focus on the size of the profession and growth within firms rather than on specialization itself (e.g., Galanter 1990; Sander and Williams 1992).

A second place in which the literature on specialization has taken organizational and political turns is in debates about equality and diversity (Heinz et al. 2005; Shiner and Newburn 1995; Heinz and Laumann 1982; Seron 2007). Essentially, the point made is that while the professions may have become more open in recent years to women and ethnic minorities, historic demographic characteristics remain entrenched in the elite firms. The social closure of the professional project is no longer maintained at the outer boundaries of the profession, but it is protected in its inner elites. Specialization assists in this by inhibiting diversity in the profession's inner sanctums.

Where specialization's relationship to legal *work* has been considered more directly, it is social and power relations that have come to the fore. Specialization is implicated as a device for social control within firms as they seek to create competitive advantage and promote productivity (Heinz et al. 2005). Horizontal specialization (splitting law firms and legal careers into subdisciplines) is accompanied by vertical (or "hierarchical") specialization. Senior "experts" are shielded from easy problems by the junior colleagues. They train and manage underlings, "allowing them to specialize in problems they have a comparative advantage in addressing" as well as using their position to monitor subordinates, coordinate hierarchies, and exploit the human capital of those below them (Garicano and Hubbard 2004, 2, 7).[2]

It is a feature of this literature that specialization's relationship with professional competence is largely assumed to be unproblematic. It is assumed that narrower training and more specialized practice mean it should be easier, and possibly cheaper, to provide better services. While opportunities provided by growth should increase profitability and/or competitiveness, they do not *necessarily* lead to improvements in quality. Similarly, reductions in cost are not necessarily passed on to clients. Because such work tends to focus on commercial firms and because commercial clients are thought to be sophisticated enough to "know what they are doing," it is generally assumed that specialization is operating in their interests.[3] Yet, even here, specialists develop complex solutions to (legal) problems that only they can validate as right or wrong. It would be possible to argue that specialization is a repeat of the fundamental self-referential "trick" of professionalism: knowledge developed and validated by the profession in its own interests and not those of the consumer (Abel 1997). Specialization could also be seen as a manifestation of

the dysfunctional tendency of law and the market for legal services towards complexity (Hadfield 1999). Persuasive arguments in favor of professional specialization tend to be theoretical rather than empirical (Freidson 2001; Schõn 1983), although a limited number of studies have been able to point in general terms to specialists doing their job better than nonspecialists in the legal field (Kritzer 1999b; Genn and Genn 1989; Moorhead et al. 2003).

There are some empirically grounded critiques of the impact of specialization on professionalism. Some have sought to propound a *deprofessionalization* thesis. Here, specialization is seen as harmful to those who practice it because of an association between specialization, routinization, and the squeezing out of creativity and professional skill (Stefancic and Delgado 2005). Lawyers respond to tight economic constraints by routinizing. They develop systems that automatically and unreflexively respond to the needs of clients and de-skill lawyer employees. Under this analysis, some law firms become increasingly like factories that poorly serve their legal aid clients (Sommerlad 1995, 2001; Sommerlad and Wall 1999).

Concerns about damage to the "ethical sense" of the profession are not confined to the legal aid firms at the center of Sommerlad and Wall's concern. In commercial firms, specialization is said to have advanced alongside a decline in lawyer autonomy while commercial lawyers become wealthier, enjoy higher status, and increasingly emulate the business structures of their clients (Heinz et al. 2005 citing Nelson 1988; Kronman 1993). The concern is that through specialization and other business practices, lawyers will ape their business clients so wholly as to diminish traditional, collegiate professional paradigms (Seron 2007).[4] De-ethicalization might also be achieved by a very different route to that of de-personalization. The larger, highly specialized commercial law firms tend to emphasize how much they put client interests and business skills at the heart of their approach. Couple the desire for specialists to concentrate on particular client groups with a desire to put their creative talents fully in the service of their clients and they may become, in Cain's memorable phrase, "conceptive ideologists" advancing the interests of their clients rather than operating in the public interest (1979, 352). Under this explanation, specialization drives de-ethicalization because it is *too* personal; lawyers become *too* close to their clients and fail to think with sufficient levels of forensic detachment.[5]

Ultimately, the literature on specialization has tended to focus on very broad notions of ethical sense. Professional competence, in terms of the application of technical skills to the satisfactory resolution of client problems, has remained relatively underexplored. The challenges posed by specialization are seen at the level of institutional norms and incentives. In particular, the dominant threats are perceived at the political level, particularly in the ideas that specialization threatens fragmentation:

> Lawyers have taken refuge in specialization, which has made it more difficult for lawyers as a group to identify common economic or ideological interests as

> a basis for a collective agenda. The growing fragmentation of the bar has been attributed to lawyers' own entrepreneurial ingenuity. As Nelson and Trubek observe, "the key to the economic and political success of American lawyers as a group has been their adaptiveness. But the cost has been the erosion of a distinctive professional tradition and the absence of centralized power within the profession capable of enforcing a particular vision of professional ideals." (Rostain 2004, 150 also citing Abel 1989; Heinz and Laumann 1982; Heinz et al. 1998)

Importantly, the benefits to clients of specialization are assumed. The importance of specialization to professional competence is unexamined or curiously underplayed. Debates about specialization suffer as a result. One cannot, for instance, sensibly debate the impact that specialization has on the coherence or legitimacy of professions without fully considering the benefits that such specialization brings in terms of competence. There is thus considerable merit in rendering explicit—and measuring empirically where possible—the potential benefits and the associated detriments that specialization paradoxically presents to lawyers and their clients.

THE PARADOXES OF SPECIALIZATION

It is axiomatic that professional competence is one of the foundational claims of the legal profession. Professional monopoly is founded on a unique ability to apply specialist knowledge competently to relevant problems. Although all professionals are specialists (lawyers "specialize" in "law"), there is now a growing sense that general professional status may not always be sufficient to render lawyers competitive or competent. In England and Wales, for example, the proliferation of accreditation schemes within the solicitors' profession attests to the increased importance of a distinction between specialists and generalists (Solicitors' Regulation Authority [SRA] 2007). Specialists claim to be the ones leading a field by developing the law and its techniques. They are also in the best position to attract clients and charge higher prices.

Yet, as intraprofessional competition and specialization intensifies, specialization also threatens the professional project. The legal profession typically provides practitioners with a general warrant of competence; on the whole, once qualified, a lawyer can practice in any area of law.[6] The existence of specialists raises questions about the validity of this generalist qualification, calling into question whether lawyers are genuinely omni-competent.[7] These concerns have particularly been raised by regulators and also by firms anxious to gain privileged status in the markets for their services.[8]

Being a specialist necessarily involves a claim to higher quality than being a nonspecialist. If that claim is well-founded, differences in quality expose generalists, and the profession as a whole, to challenges to their competence. If the professional competence of specialists is significantly higher than that of generalists, and/or if generalists show significant levels of incompetence,

then the value of this general warrant of competence is called into question, along with the value of the profession itself. Thus, specialists threaten the original rationale or guarantee provided by "ordinary" professional status. In particular, this undermines any bond suggested by a uniform entry qualification. In extremis, specialists risk exposing generalist qualifications as valueless.

A second important paradox is that, absent an approximation of perfect market conditions,[9] specialization is likely to lead to significant detriment to consumers alongside any benefits. The idea that professions employ their monopoly of expertise to reduce competition to the detriment of consumers is a commonly cited critique of professionals that can also be applied to specialists. Specialization may be *functional*: it may improve quality, but it may also be a mechanism for increasing or solidifying *market control* by the professions or by elites within them (i.e., a means of reducing access and increasing price). Part of the reason for the resilience of these two antithetical theories is that "the absence of reliable data on the quality of professional services makes it extremely difficult to cleanly distinguish between these two hypotheses. . . . [Functionalism] argues that licensing should increase quality . . . [whereas the market control] hypothesis argues that quality should remain unchanged, or may even deteriorate as competition is reduced" (Law and Kim 2005, 725).

An alternative explanation for the resilience of these two hypotheses might be that market control and functionality can be present simultaneously in any given professional context. As this article demonstrates, benefit and detriment can and do occur simultaneously. Specialization raises a conflict that has to be managed. The approach of the professions has traditionally been to downplay the difference between specialists and nonspecialists and to resist the institutionalization of specialization. This is, of course, the opposite approach to the strategy they employ in distinguishing the profession from nonprofessional providers and presents us with the third paradox. It is the ways in which specialization is formalized and used by the profession that gives us an indication of whether professional calculations have appropriately balanced professional self-interest with public interest. In showing both benefit and detriment to be necessarily associated with the concept of specialization, this article illustrates how antagonistic interpretations of professional monopolies (detriment and functionality) are mutually constitutive of each other. This is part of the paradox that professionalism and specialization creates and provides the tension that professional regulators have to manage.

The next section of the article addresses the issues of quality and detriment through empirical data on the impact of specialization on quality and accessibility of legal services in legal aid work in England and Wales. A major part of this article is to demonstrate the extent of the threat posed to professional competence by not specializing. It does so empirically by examining whether specialists genuinely provide higher quality than nonspecialists (referred to

below as *relative quality*) and also whether generalists might nevertheless be "good enough" (i.e., whether levels of incompetence are at tolerable levels, referred to below as *absolute quality*).[10] It then follows to consider evidence that specialization leads to detriment in terms of reduced access and also cognitive narrowness (see below).

III: TESTING THE DETRIMENT VERSUS QUALITY THESES

Gaining access to enable the assessment of legal work is enormously difficult. To be able to do that alongside opportunities to test the difference between specialists and generalists is rarer still. Sites where professional expertise can be scrutinized are often protected by legal privilege and commercial and professional obligations of confidentiality. Work that has been done to date has generally concentrated on areas of visible professional expertise (i.e., legal representation) where specialization has been relatively loosely defined (Kritzer 1999b; Genn and Genn 1989).

Developments in the administration of legal aid in England and Wales have provided a unique opportunity to test the efficacy and implications of specialization. In the 1990s, the Legal Services Commission (LSC), the governmental, nondepartmental body that administers legal aid, began to move towards encouraging, and, from 2000, *requiring* specialization, in the provision of legal aid services. From that point, all providers of legal aid had to have Specialist Quality Marks (SQMs) under the legal aid scheme. This meant that they were quality-assured by the LSC in the general sense (i.e., they had met all their management system standards) and met specialist quality standards in at least one type of law for which they were then designated as being specialists. The most important requirement of the SQM is that the provider have at least one person supervising work in that specialty who is a specialist himself or herself in that particular area.[11] So, for example, if a provider has an SQM in housing law, that firm would have to have at least one person who specializes in housing law and supervises the work of any others doing legally aided housing law in the organization.

The requirement for specialist supervisors was a step change in the Commission's approach. It moved away from a system that relied on firms to self-regulate the experience of their fee earners, and it also meant that in practical terms supervisors were limited in the number of work categories they could supervise.[12] In effect, firms were required to specialize in areas where they had at least one member of staff with enough experience to meet the supervisor requirements.

In this article, the fact that work is supervised by a specialist is used as a proxy for that advice having been given by a specialist in the first two studies. All other work is treated as nonspecialist (or generalist).[13] It is possible for the caseworkers (as opposed to the supervisors), in practice, to be nonspecialists,

but in broad terms caseworkers usually specialize in the one or two particular areas of social welfare law within which they practice. For the purposes of analysis, the group identified below as specialists is likely to be *more specialist* than those identified as nonspecialists, and the differences are sufficiently strong to provide a valuable means of distinguishing the pros and cons of specialization. In the third study, it was possible to observe actual patterns of practice by advisers, and so we could establish whether they concentrated on one or two areas of law (the specialists) or spread their time across a range of problems (the generalists).

THE STUDIES

This article reports on three studies conducted on the workings of the England and Wales legal aid scheme:

- The *Anatomy of Access Study* (Moorhead and Sherr 2003), which establishes the level of advice provided by "generalists" through the use of model clients;
- *Quality and Access?* (Moorhead and Harding 2004), which compares the quality of nonspecialist and specialist casework; and
- The *Clusters Study* (Moorhead et al. 2006), which looks in particular at how nonspecialists and specialists deal with multiple problems (clusters of problems).

To keep this article within manageable length, only an abbreviated discussion of methods is contained below in each relevant section. Readers are referred to the full studies for more in-depth discussion of methods.

ANATOMY OF ACCESS: THE QUALITY OF "QUALITY-ASSURED" NONSPECIALISTS

The *Anatomy of Access Study* provides a direct assessment of the quality of advice given by specialist solicitors and advice workers when operating outside their specialties. *Anatomy of Access* was principally designed to assess whether clients were referred to a specialist provider when a matter fell outside a provider's expertise.[14] Specialist providers were approached by a researcher posing covertly as a client (a "model client") with a problem outside the providers' specialties, and the model client could then report on how they were dealt with. Two hundred and ninety-four SQM holders were approached in this way.

The model clients were sent to solicitors and advice agencies to pretend they were clients and seek advice. Pioneered in *Quality and Cost* (Moorhead et al. 2001), concerns about consent and invasion of privacy mean such techniques must be employed with great care.[15] Model clients do, however, present major advantages over other methods as they permit direct but

controlled observation of simulated lawyer-client interviews.[16] The model client scenarios were based on stories taken from real legal aid files to ensure the realism and appropriateness of the scenarios. Designed in consultation with experienced practitioners with current experience of the work categories, the scenarios were chosen to suggest to a competent nonspecialist adviser that the client had reasonably pressing needs that required specialist attention in an area for which the lawyer/adviser did not hold a specialist contract. Debt, housing, and education were the three areas of work selected.

Model clients were fully trained and their performance evaluated as a precondition of their involvement. A pilot of twenty visits was conducted to test the research instruments. Reporting mechanisms for each model client scenario were developed to ascertain detailed information about referral (and nonreferral) behavior, as well as the quality of service and advice provided by contractees at the first interview. Advice was reported in narrative form by the model client immediately after the model client's visit. This narrative was assessed by expert peer reviewers. Some key issues that the advice might be expected to cover were also identified in collaboration with our expert consultants and included as "yes/no/unsure" questions on the reporting form. This ensured that key issues on the report were addressed by the model client and that some quantitative analysis of the quality of advice could be undertaken as an aid to the more refined analysis of model client reports by our expert consultants.

It is worth emphasizing some limitations to the study. Given the practicalities of organizing large numbers of visits, sampling of organizations for face-to-face visits could not be fully randomized. Organizations in geographically remote areas would have been unlikely to receive a face-to-face visit, although face-to-face visits were made across a wide range of geographical locations: urban areas, small cities, and towns. Furthermore, telephone visits were made on a random basis. The project thus covered a wide range of organizations, but it might be argued that face-to-face visits were not fully representative of the entirety of the legal aid supply base.

The model client problems also focused on three areas of law: these were chosen for their prevalence (debt and housing) and their fit with the needs of the project when visiting organizations that had specialties in mainstream areas (education is a topic beyond the specialist capacity of most providers). It may be that there are peculiarities within these three areas of law that make them inappropriate tests of the divide between generalists and specialists, but no arguments have been raised as to why this might be likely.

Finally, it is also important to underline the fact that model clients cannot be expected to have had perfect recall of the entirety of each encounter with their lawyers.[17] This was one of the reasons why training and monitoring of the model clients was important and why some key issues in the meetings were dealt with by way of structured reports.

ANATOMY OF ACCESS RESULTS

The research revealed significant access problems. Clients who should have been referred were often simply turned away or referred to an inappropriate adviser. In 18 percent of cases, clients were advised by the providers they approached and not referred on. While this is a minority of the visits arranged, it is worth emphasizing that those giving the advice were under no obligation to advise and had decided for themselves that they were sufficiently competent to provide the advice. Furthermore, the problems identified in the advice sit alongside severe access problems to give a general indication of how well those operating in the legal aid scheme work when dealing with problems outside their own specialization. The results are startling.

Peer reviewers were asked five particular questions about the quality of advice given to model clients. These are reported in Table 1. The key findings were as follows:

- Only 20 percent of the advisers/lawyers who provided advice to our model clients were very aware or quite aware of all the legal issues raised;
- 70 percent were inadequately or completely unaware of the legal issues raised. Marginally fewer advisers were very or quite aware of the practical steps that could be taken (16 percent); and
- 72 percent were inadequately aware or completely unaware.

The figures were similar for comprehensiveness and accuracy of advice given.

In this context the extent to which poor advice would have been likely to have a *detrimental* impact on real clients was assessed. To this end, peer reviewers were asked to assess the plan of action given to the model client. Sixteen percent of model clients received a plan of action that was neither useful nor counterproductive, 8 percent of plans were counterproductive, and a notable 40 percent were, in the view of our expert peers, likely to be damaging to the interests of the client. This is telling evidence of the level and seriousness of the poor quality of advice given to our model clients.

As well as scoring the advice given to the model client, more detailed reports from the peer reviewers also suggested what was wrong with the advice. Aspects of the advice were either wrong or missing, and advisers tended to rely on weak strategies such as suggesting the client negotiate with potential adversaries unaided by concrete advice. In particular, nonspecialists were seen to skate around the area of law in question without giving any firm advice.

Of course, it could be argued that the standards applied by peer reviewers (as specialists) were higher than should be expected of nonspecialist advice. There is some force in this argument, but peer reviewers tended to give advisers the benefit of the doubt where they provided partial advice, even if it did not help the client, as long as it was not misleading or potentially

Table 1. Peer Review Evaluations of Advice Given to Model Clients by Generalists

	%
How aware is the adviser of all legal issues raised?	
Very aware	8.0
Quite aware	12.0
Adequately aware	10.0
Inadequately aware	54.0
Completely unaware	16.0
How aware is the adviser of practical steps that can be taken now or in the future?	
Very aware	6.0
Quite aware	10.0
Adequately aware	12.0
Inadequately aware	62.0
Completely unaware	10.0
How would you assess the comprehensiveness and accuracy of advice on this case?	
Very good	4.0
Good	12.0
Adequate	14.0
Inadequate	52.0
Poor	18.0
How would you assess the plan of action given to the client?	
Very useful	6.0
Useful	30.0
Neither useful nor counterproductive	16.0
Counterproductive	8.0
Damaging to the interests of the client	40.0
In your view how justified was the adviser's decision to advise rather than refer/signpost?	
Justified	10.0
Probably justified	20.0
Don't know/unsure	4.0
Probably not justified	26.0
Not justified	40.0
N	50

prejudicial and the client was invited to come back for more advice as his or her problem developed. If anything, this suggests a generous caution about forming negative judgments on the part of the peer reviewers.

ARE SPECIALISTS ANY BETTER?

The *Anatomy of Access Study* suggests that in absolute terms the quality of advice given out by nonspecialists, when they had chosen not to refer clients to specialists, was extremely poor. This raises a significant question mark over any general warrant of competence being provided by a professional qualification (or, indeed, the general aspects of quality assurance provided by the LSC's SQM), but it does not establish the value of specialization. To do that one has to establish that specialists perform better than nonspecialists.

A second study looked directly at the differences in quality between specialists and nonspecialists: *Quality and Access?* (Moorhead and Harding 2004).

THE *QUALITY AND ACCESS* STUDY: METHODS

Four main kinds of data were used in the analysis of quality of specialist and nonspecialist work:

- *Billing data.* A large sample of over 600,000 bills on legal help cases[18] completed in 2001 had outcome and other data that could be used to provide insights into quality;
- *Postal survey data* from solicitors' firms about how they managed specialist and nonspecialist cases. Of the 387 suppliers sent questionnaires 156 responded, a response rate of 40 percent.[19] Given the specific focus of the study, surveys were sent to suppliers carrying out larger volumes of nonspecialist cases and so concentrated on those firms who continued to try and provide specialist and nonspecialist advice. Respondents were broadly representative of those suppliers sent questionnaires;
- *Twelve semistructured telephone interviews* with a sample of practitioners from those who indicated on the postal questionnaire a willingness to be interviewed (they were stratified on the basis of their responses to the questionnaires to ensure that a range of views about the pros and cons of permitting nonspecialist advice were provided); and
- *Peer review* of a stratified random sample of 643 files (342 specialist and 301 nonspecialist files) took place in late 2002.[20] They way these files were chosen ensured that they were representative of the general standards of specialist and nonspecialist advice being provided in the system at that time. Peer reviewers (solicitors with significant experience in the work areas under consideration) marked the quality of work as recorded on those files from attendance notes, correspondence, and the like, utilizing the methodology employed in a previous study, *Quality and Cost* (Moorhead et al. 2001).

As with *Anatomy of Access*, it is worth outlining the limitations of this data. The billing data is largely relied on for its discussion of the outcomes of cases. It is a large dataset, fully representative of the cases being conducted at that time. The data is derived from the data recorded by practitioners as they bill their cases. Outcome data is, however, limited in its scope (requiring "messy" outcomes to be categorized into neat categories) and may be prone to reporting biases. For that reason, it was particularly important to triangulate outcome data with other data on quality, especially the peer review data.

The survey data is confined to those practitioners providing the most nonspecialist advice and is used here largely to report on approaches to management within such firms. Although it should not be assumed that these management approaches are typical of all firms, it might be expected that

firms providing higher levels of nonspecialist advice would have approaches that were most consistent with the *good* management of nonspecialist advice. In that sense, if there are biases in the data here on management practices, one might expect them to show firms in a good light, not a bad one. The supplementary interview data was purposively targeted at exploring the range of views for illustration, not representativeness.

Peer review data was sampled on a random basis amongst, and broadly representative of, three main case types (debt, housing, and welfare benefits).[21] Peer review has been subject to rigorous development and scrutiny (Moorhead et al. 2001). Peer reviewers assessed quality based on real case files. They were trained and monitored for observer reliability. No method of scrutinizing professional competence is infallible or totally uncontroversial, but it is widely accepted within the profession as the most reliable method of ascertaining quality (Legal Services Commission and the Law Society 2008).

WAS QUALITY ANY DIFFERENT FOR SPECIALISTS?

One way of assessing quality of work is to look at the outcomes achieved for clients. The type of work we were looking at means such comparisons are limited. As (usually) small cases of initial advice and assistance cases, they often would not be expected to produce a result for the client.[22]

There are other controversies in using outcome to evaluate the quality of advisers: results depend partly on the quality of advisers, partly on the quality of cases, and partly on the quality of opponents and third parties such as adjudicators and judges (Moorhead et al. 1994). In the context of this article, in particular, it is possible that specialists would get better results because they get better cases, although we sought to control for this as far as we could in our analysis. Nevertheless, outcomes do provide one interesting viewpoint on the quality of work.

Two basic comparisons of outcome were conducted. The first comparison involves looking at whether cases were completed (Table 2). For each of the four work categories considered, the cases of nonspecialists were significantly less likely to complete than were specialists' cases: clients of nonspecialists were significantly more likely to cease giving instructions, go elsewhere, or be told by their adviser the case should not be continued with. The differences were statistically significant. In welfare benefits cases, employment, and debt these differences were in the order of 6 to 16 percent; in housing the difference was only 2 percent.

An analysis of the actual outcomes on cases was also completed. The important differences are identified and highlighted in Table 3.

About 29 percent of specialist welfare benefits clients got lump-sum or periodic payments, whereas only 13 percent of nonspecialist clients did. Put another way, these figures demonstrate that welfare benefits clients seeing specialists were more than twice as likely to get a positive financial result as clients being dealt with by nonspecialists. Differences were similar in

Table 2. Comparing the Number of Cases Completed by Specialists and Nonspecialists

	Welfare Benefits		**Debt**		**Employment**		**Housing**	
	Specialist	**Nonspecialist**	**Specialist**	**Nonspecialist**	**Specialist**	**Nonspecialist**	**Specialist**	**Nonspecialist**
Did not complete	33.1%	49.4%	39.0%	48.9%	55.0%	60.8%	51.7%	53.6%
Completed	66.9%	50.6%	61.0%	51.1%	45.0%	39.2%	48.3%	46.4%
N	$N = 56{,}594$	$n = 6{,}312$	$n = 25{,}430$	$n = 11{,}865$	$n = 4{,}787$	$n = 3{,}472$	$n = 53{,}123$	$n = 13{,}001$
Significance (chi-square)	$p \leq 0.001$, $X^2 = 663.9$		$p \leq 0.001$, $X^2 = 324.1$		$p \leq 0.001$, $X^2 = 28.3$		$p \leq 0.001$, $X^2 = 15.284$	

Table 3. Outcomes by Specialist (Completed Cases)—Main Differences

Outcome	Specialist	Nonspecialist
	Welfare benefits	
Client receives lump sum payment	14.6%	4.3%
$X^2 = 514.7$, $p \leq 0.001$	($n = 8{,}329$)	($n = 272$)
Client receives extra or new regular payment	14.3%	7.4%
$X^2 = 231.7$, $p \leq 0.001$	($n = 8{,}126$)	($n = 464$)
	Debt	
Client makes extra or new regular payment	18.0%	7.3%
$X^2 = 740.0$, $p \leq 0.001$	($n = 4{,}567$)	($n = 865$)
	Housing	
Client receives or retains property or other permanent benefit	10.2%	4.9%
$X^2 = 345.1$, $p \leq 0.001$	($n = 5{,}407$)	($n = 642$)
	Employment	
Client receives lump sum payment	28.5%	12.6%
$X^2 = 296.3$, $p \leq 0.001$	($n = 1{,}364$)	($n = 439$)

employment, debt, and housing. It is possible that variations in positive outcome are explained by the differences in the profiles of specialist and nonspecialist cases in terms of case types, levels of case, etc. This was tested by performing multiple logistic regressions in welfare benefits and employment cases. The regressions confirmed that, even when differences in case profile, cost of cases, and level at which the case is completed are controlled for, the difference in positive outcomes in employment and welfare benefits was statistically significant. Nonspecialist clients were about half as likely to get positive financial results in welfare benefits cases and about half as likely to get positive results in employment cases as clients being served under specialist contracts.[23]

DO DIFFERENCES IN THE WAY NONSPECIALIST WORK IS MANAGED SUGGEST QUALITY IS LIKELY TO BE LOWER?

From interviews with practitioners, staffing patterns and management of nonspecialist work were considered in order to explore how management issues might interrelate with quality concerns. In general, the impression given was that practitioners did not adapt their working practices significantly just because work was nonspecialist. To take staffing patterns, for example, there was no clear pattern in the level of staff to which nonspecialist work was delegated. In particular, counterintuitively, relatively few respondents (about 15 percent) always delegated nonspecialist work to unqualified staff.

The picture on supervision was more equivocal. Only a minority (albeit a substantial minority, 37 percent) of respondents said they had special supervision arrangements for nonspecialist work. One in five respondents actually

reviewed fewer nonspecialist files than in their main contract categories when spot-checking colleagues' cases. Similarly, no relationship was found between the level of fee earner providing advice on nonspecialist cases and the way in which files were supervised. So providers using nonqualified providers to do nonspecialist work were *not* compensating by implementing specific supervisions arrangements for this work.[24] One potential barrier to greater supervision was the absence of anyone with significant experience in the relevant area of law to provide that supervision; hence, comments were received in interviews that suggested a very light touch being taken to supervising nonspecialist work.

Furthermore, the results did not suggest that the majority of advisers received training specific to each work category in which they conducted nonspecialist work. Rather, they relied on their general professional training.

PEER REVIEW OF NONSPECIALIST AND SPECIALIST WORK

In addition to an analysis of outcomes and management systems, solicitors with experience of the relevant field of law were asked to evaluate the case files of specialists and nonspecialists. Table 4 summarizes the overall rating given to solicitors.[25] A score of 1 represents very poor (or non-) performance. A score of 5 indicates very good performance. A mark of 3 indicates satisfactory performance. Hence, a score of less than 3 is indicative of quality concerns on a file.

For solicitors' cases, 30 percent of specialist files were marked at 2 or lower, and 43 percent of nonspecialist files were similarly marked. The difference in the distribution of marks is significantly different at the normal levels.[26] If, however, the solicitors' results are considered by work category, then the picture is interesting (see Table 5). Forty-six percent of debt cases and 47 percent of welfare benefits cases handled by solicitors under nonspecialist were scored 2 or less, compared with 37 percent of debt and 21 percent of welfare benefits cases handled by solicitors under contract. Only the difference for welfare benefits cases was significantly different, however.[27] Housing cases had similar rates of "failing" cases for specialist and nonspecialist (35 percent specialist compared with 32 percent nonspecialist).

Table 4. Overall Mark—1–5 (Solicitors Only)

Overall score	**Specialist**	**Nonspecialist**	***N***
1	6.2%	6.6%	29
2	24.1%	35.9%	142
3	42.0%	35.5%	170
4	24.1%	19.5%	95
5	3.7%	2.4%	13
n	162	287	449

Table 5. Overall Mark—1–5 (By Nonspecialist and Work Category, Solicitors Only)

Overall Mark	Debt		Housing		Welfare Benefits	
	Specialist	Nonspecialist	Specialist	Nonspecialist	Specialist	Nonspecialist
1	6.7%	7.1%	8.5%	4.9%	3.3%	7.5%
2	30.0%	39.3%	26.8%	26.8%	18.0%	39.8%
3	53.3%	39.3%	33.8%	40.2%	45.9%	26.9%
4	6.7%	13.4%	25.4%	24.4%	31.1%	22.6%
5	3.3%	0.9%	5.6%	3.7%	1.6%	3.2%
N	30	112	71	82	61	93

Analysis of more detailed quality criteria enables a more comprehensive consideration of differences in competence between nonspecialists and specialists. Nonspecialists were significantly worse than specialists in the following areas:

- fact- and information-gathering skills;[28]
- comprehensiveness of advice;[29]
- advice being given in time/at the right time;[30] and
- the effectiveness with which the client was informed of the merits (or not) of the claim.[31]

In other areas, the differences were near (but did not meet) conventional levels of statistical significance: appropriateness of the advice to the client's instructions[32] and effectiveness in working towards what the client reasonably wanted/needed through letter writing and form filling.[33] It is also worth noting that not-for-profit (NFP) agency files scored more highly than the solicitors' specialist files on every single criterion, getting higher positive and negative scores on each one. These differences were statistically significant for all criteria bar one.[34] NFPs are mainly staffed by nonqualified staff (i.e., they are neither solicitors nor barristers). The better performance of nonlawyers raises further questions about the extent to which admission to the legal profession provides a general warrant of competence (Moorhead et al. 2003).

Peer reviewers also wrote reports that supplemented their scores and provided qualitative information on the quality problems perceived on files. The following problems were identified as being more prevalent on nonspecialist files:

- lack of advice on the files, suggesting a situation where lack of expertise prevents an adviser from formulating any practical solution or opinion on the case that will help the client;
- lack of basic understanding of the problems and solutions to be offered to a client;

- giving the wrong advice;
- lack of relevant information; and
- lack of action.

The following comments indicate the depth of concerns on the more problematic cases:

> Firm are under an obligation to use their skills to investigate or to tell client the appeal is hopeless. They do neither. (Welfare benefits nonspecialist advice)

> The adviser appears to know absolutely nothing about housing law or court procedures. If he does then there is no evidence of this on the file whatsoever. There is no evidence of the most basic questions being asked as to the client's status as an occupier of the dwelling. Without that then it is difficult to see how the adviser could believe that proper and full advice could be given . . . The worrying thing about this file is that the file appears to have been reviewed by a "supervisor" who does not see anything wrong with it. (Housing nonspecialist)

> This file is a disgrace and borders on negligence–despite the long-winded attendance notes/letter[s], the adviser does not appear to know what the rules of entitlement are, as many aspects of the fact finding are irrelevant. (Welfare benefits nonspecialist)

> The file displayed a total lack of understanding or indeed any attempt to understand and advise the client. (Housing nonspecialist)

DOES SPECIALIZATION BRING DETRIMENT?

The evidence on specialization is consistent with the functionalist claim that it improves quality while also providing telling evidence on the limits of a professional qualification as a general warrant of competence. Compulsory specialization appears to improve quality, but this leads us onto the second limb of the debate: does it also lead to detriment to the consumer and, if so, how extensive is this?

One way in which detriment would be expected to occur is that specialists might exploit their marginal advantage in terms of quality and/or scarcity and drive up their prices. With the LSC controlling prices of legal aid work, there is limited opportunity for this to occur in this context. A related way in which consumer detriment might occur is the reduction in access that might arise through scarcity. *Quality and Access* provided some indicative data on access. In particular, it was possible to show what proportion of the work was carried out both by specialists and by nonspecialists and how well dispersed specialist coverage was geographically. Table 6 considers the first issue.[35]

For two work categories—consumer and actions against the police—clients predominantly gained access to legal help from nonspecialists. This indicates major access problems in this type of work. About one (or more) in three clients were gaining legal advice on problems in employment, education, debt, and community care from nonspecialists, and one in five housing

Table 6. How Much Work in Any Particular Work Category Is Nonspecialist Work?

	Nonspecialists	Specialists	*N*
Consumer/contract	84%	16%	8,068
Actions against the police	56%	44%	4,001
Employment	42%	58%	8,259
Education	41%	59%	2,711
Personal injury	28%	72%	8,269
Debt	32%	68%	37,301
Community care	34%	66%	1,557
Housing	20%	80%	66,165
Welfare benefits	10%	90%	63,285
Medical negligence	7%	93%	3,603
Mental health	1%	99%	19,370

clients were getting advice from nonspecialists. This suggests a substantial need for advice that was not being met by specialists under the legal aid scheme. Indeed, this may underestimate the size of the problem. Many contractees only did nonspecialist work in a limited number of work categories. It is not known whether clients who approached these contractees were successfully referred on to an appropriate supplier of advice or whether the clients decided to simply put up with their problem and not seek advice, although the evidence is that this is likely to be a considerable problem.[36]

While these figures paint a national picture, regional variations suggested that in many parts of the country the picture would be likely to be worse, particularly outside large urban conurbations. At the time of the research, the LSC was using the bid zone as its main unit for measuring the geographic dispersal of supply of legal aid services. In broad terms, bid zones were geographic areas usually coterminous with local authority boundaries.[37] Bid zones were therefore used in *Quality and Access* as the unit of analysis in considering the supply of legal help.[38]

As Table 7 shows, within bid zones there was more variation in the supply of services by work category than the national figures suggest. In these data, even in mainstream areas of legal help, a large proportion of bid zones had no specialist contract holder. Forty-two percent of bid zones had no welfare benefits specialist funded by the LSC. The percentages of bid zones without a specialist contractee were as follows: debt, 40 percent; housing, 44 percent; and employment, 63 percent.

Similarly, certain bid zones had higher levels of tolerance work than others. About one in ten bid zones (9 percent) had more than 30 percent of legal help matters conducted under tolerance. About one in five bid zones (21 percent) had more than a quarter of legal help matters handled under tolerance. These bid zones include some major urban areas but were otherwise predominantly rural bid zones.

Table 7. Proportion of Bid Zones Where There Is No Specialist Contractee in That Work Category

Work Category	**%**
Public law	95%
Community care	91%
Actions against the police	90%
Education	89%
Consumer contract	84%
Immigration	68%
Medical negligence	63%
Employment	63%
Mental health	54%
Housing	44%
Welfare benefits	42%
Debt	40%
Personal injury	13%
Matrimonial	0.5%
N	410

Table 8. Civil Legal Aid Contracts

Civil Contracts by Category	**1999–2000**	**2005–2006**	**Cumulative Change**
Family	4243	2887	–32%
Housing	840	587	–30%
Welfare Benefits	673	459	–32%
Debt	618	401	–35%
Immigration	483	367	–24%
Employment	403	216	–46%
Mental Health	334	283	–15%
Clinical Negligence	250	273	9%
Consumer	193	40	–79%
Education	35	55	57%
Community Care	27	76	181%
Public Law	9	46	411%
All (excl. Personal Injury[48])	8108	5690	–30%

Source: Constitutional Affairs Select Committee (2007) *Third Report—Implementation of the Carter Review of Legal Aid HC 223-I.* London: Stationery Office, 15.

It should also be noted that the data records the position in 2001. The access problem is underlined when one looks at the trend in supply of legal aid in the years subsequent to the study. Table 8 shows the significant subsequent decrease in the number of specialist contracts, suggesting a further significant diminution in geographic coverage. It is clear that as specialization requirements from the LSC have taken hold and as legal aid has become less (or even un-) profitable, the number of providers willing to specialize in particular areas of legal aid has decreased. As I have argued elsewhere, this

decline can be attributed partly to economics, partly to the general bureaucracy associated with legal aid provision, and partly to the requirements of specialization itself (Moorhead 2004). In particular, as firms struggled to find or maintain supervisors with the necessary level of specialization they abandoned legal aid work either altogether or outside of their core business. While concerns with the levels and costs of bureaucracy associated with legal aid contracts were strong and the low profitability of legal aid work was a constant and pressing concern for practitioners, compulsory specialization was the factor that tipped many firms away from legal aid work (Moorhead 2004).

THE *CLUSTERS STUDY*: SPECIALIZATION AND THE PROBLEM OF COGNITIVE NARROWNESS

The final detriment this article focuses on is cognitive narrowness. Concerns associating specialization with cognitive narrowness derive from a number of sources. One is NFP advice movement's championing of "holistic" advice. This has emphasized that advice service delivery should respond to the notion that clients' problems are often multifaceted, legal and nonlegal, and complex and interrelated, and should not simply draw on narrow legal techniques for problem resolution. This claim is founded on the belief that specialist legal training and the economic incentives of private practice militate against lawyers providing the rounded service that clients need. The importance of holism sits well with recognition that clients' legal needs tend to cluster: clients with one legal problem are reasonably likely to have multiple problems (Pleasence et al. 2004a, 2004b, 2006). There is also an increasing amount of evidence of the interrelationships between legal and nonlegal problems, especially in health (Moorhead et al. 2004; Sherr et al. 2002).

The *Clusters Study* examined how clients with multiple problems (clusters) were dealt with by both specialist and nonspecialist advisers (Moorhead et al. 2006). It looked in depth at a mixture of twelve providers. The providers were chosen purposively to represent a range of provider types and localities. A mixture of solicitors, Citizens Advice Bureaux (CABx), law centers/specialist advice agencies, and local authority providers in three main areas of social welfare law where clusters were particularly likely to occur—housing, benefits, and debt—were chosen. The number of providers and the manner of their choosing means that this data is not necessarily representative of all advice providers. It can illustrate a range of potential issues around the clustering of legal problems and specialization, but it does not provide a basis for generalizing about all legal service providers. In this study, the approach to specialization was also slightly different from the other two studies. Several of the organizations operated outside of the legal aid frameworks and yet clearly specialized in the work that they did. As we were able to observe and discuss their work with them in some depth, we were able to rely on the extent to which they were observed to practice solely or mainly in one or two

areas of law as an indicator they were specialists. The remainder were generalists, available to clients with any type of problem.

The research utilized a multimethod approach, including structured observation of 178 interviews between advisers and clients; structured interviews with advisers on 487 additional cases; and 35 semistructured interviews with advisers about clients with multiple problems and surrounding service-delivery issues. We interviewed 58 clients about their experiences shortly after the interview; a further 36 of these clients were reinterviewed about their cases three or four months after the interview to get a stronger sense of how their cases had developed. Two workshops were held with advisers and stakeholders to discuss the research and assist in the analysis of findings.

RESULTS: HOW MULTIPLE PROBLEMS ARE MANAGED

The analysis in this study was able to focus on the specialities of the particular advisers who were interviewed and also on the specialties contained within the organization. This enabled an exploration of the extent to which the adviser's expertise and/or the expertise available within the provider's organization shaped the trajectory of client service delivery.

Because we had data on the specialties of the advisers we observed and of the organization, more broadly we were able to look at whether a client approached an *organization* that had a specialist of that type and also whether the:

- problems presenting to specialists were within their specialties;
- problems presenting to specialists were outside their specialties; and
- problems presenting were to generalists (who by definition did not have a specialty).

The first finding of note is that both generalists and specialists failed to probe beyond presenting problems and identify nonpresenting problems, even when these might be related to the presenting problem (e.g., a debt problem that was related to an underlying welfare benefits problem) (Moorhead et al. 2006, 51). It was not possible, however, to discern concrete differences between specialists and generalists in this regard: both missed latent problems.

Greater differences occurred in the way they managed problems that were identified as being outside the specialists' expertise. Both generalist advisers and specialists faced with problems outside their expertise were, as one would expect, less able or willing to deal fully with such problems. Some simply acknowledged the problems rather than providing any advice, a strategy more marked for specialists than generalists. Generalists were also more likely to advise clients to deal with the problem themselves, whereas specialists were more likely to tell the client there was no action they could take. They did this even though they did not have specialist knowledge of the

problem type to be able to advise accurately on it, a strategy that *Anatomy of Access* suggests was often implicated in poor quality. Similarly, generalists were much more likely than specialists to signpost or refer clients to another source of advice (Moorhead et al. 2006): generalists did this for 28 percent of problems; specialists did this for 13 percent of the problems they were not specialists in.

The difference in signposting/referral activity is intriguing. Why were generalists signposting/referring more often than specialists? One explanation is that for generalists signposting was a more central part of their job. They were expected to identify problems, deal with those that were not complex, and signpost those that required more detailed assistance. Specialists were in a different position: they saw their job as dealing with the problems they were experts in. When faced with something outside their expertise, they might give some advice (a strategy *Anatomy of Access* would suggest we ought to be worried about) or tell the client nothing could be done rather than refer the client on to someone who better understood the particular problem, despite contractual requirements to signpost or refer clients on.[39]

ORGANIZATIONAL EXPERTISE

The *Clusters Study* also considered whether the expertise of the organization had an impact on the way the client's problem manifested and was dealt with. For example, client choices and adviser strategies during interviews might both be influenced by the organization within which an interview was taking place. A client might be more likely to raise problems outside an adviser's expertise when the client knows that the organization deals with such problems. Furthermore, advisers might be more likely to, or more confident in, dealing with problems that they know their colleagues deal with either because they are more sensitized to those (e.g., through intraorganizational training or the opportunity to discuss a wider range of problems with colleagues) or because they know they can refer the client on relatively easily. Alternatively, they may have stronger incentives to identify and deal with problems when it helps their organization fund more cases under contracts.

The opposite is also possible. Suppliers who are operating beyond their capacity may have an incentive to pass cases on to other suppliers, even when they deal with those problems in-house. The advice strategy for generalists did not differ significantly depending on their institutional context nor did that for specialists.[40] The results suggest that adviser characteristics and roles are more important determinants of advice strategy than the organization's capacities. The one area where this was not the case was signposting/referral behavior: generalist advisers' levels of signposting did not differ significantly depending on the organizational context, but specialists' did.[41] Specialists were more likely to signpost or refer clients on to other advisers when their own organization had the extra expertise. This is suggestive of reluctance by specialists to refer/signpost clients outside of their own organizations. In this

sense specialization may interact with organizational context to make consumer detriment more likely.

IV. CONCLUSIONS AND IMPLICATIONS

The results suggest that specialists provide higher levels of quality than nonspecialists and that in absolute terms, the quality of nonspecialist advice is worryingly poor. Specialists consistently outperformed generalists on outcome and peer-review-based assessment, and absolute levels of quality amongst generalists were worryingly low. In the model clients study, 70 percent of generalist advice showed an inadequate or complete lack of awareness of the legal issues raised by the legal problems, and 72 percent showed an inadequate or complete lack of awareness of the practical steps that could be taken to resolve those problems. Over 42 percent of nonspecialist casework in *Quality and Access* was substandard.

It might be suggested that the criticism of generalists might not be sustainable if their advice was compared to that of lay workers or of lay people more generally.[42] This article has not dwelt on comparisons between qualified lawyers and nonqualified advisers for reasons of space, but it should be emphasized that the performance of solicitors' firms in the sample was compared with the performance of NFP (usually nonlawyer) providers (or lay workers). The results, consistent with other studies (Moorhead et al. 2003), were that the specialist lawyers performed more poorly on their cases than specialist lay advisers. Furthermore, generalist solicitors, in spite of their training and professional qualifications, were not apparently performing better than generalist lay advisers (Moorhead and Sherr 2003). It may be that lay people acting alone may do more poorly than lay people acting under the advice of generalist lawyers, but with roughly 70 percent of generalists giving poor advice and 40 percent conducting poor casework, the profession's general mandate at best protects very weak levels of competence. Furthermore, peer reviewers assessed 40 percent of generalist advisers as giving advice *damaging* to the interests of the client. That is, in four out of ten cases, the advice risked making matters worse for the client than if the client had had no advice at all. On the other hand, specialists show higher, but not always satisfactory, levels of competence.

While professional regulators have resisted institutionalizing specialization by endorsing the need for professional coherence, these results suggest that nonspecialization may jeopardize the basic levels of competence a profession should promote. Indeed, the threats to professional legitimacy posed by incompetence are, it is submitted, more palpable and immediate than threats specialization poses to legitimacy through professional fragmentation.

That is not to suggest that specialization is unproblematic. The imposition of compulsory specialization in legal aid has had a significant detrimental impact on access to justice. Suppliers of specialist services are necessarily

fewer and less geographically dispersed than more generalist providers. There is also some, albeit modest, evidence that cognitive narrowness is a problem rightly associated with specialization.

From this it can be seen that specialization is associated with both benefit and detriment. Importantly for theories that like to portray professions as fundamentally about market control or structurally functional, the data recorded here suggests that functionalism and control are mutually constitutive of each other. Specialization does indeed improve quality, but this improvement is engendered at a cost to consumers (here in terms of reduced access to justice, rather than increased costs, but, in markets other than legal aid, one might predict that prices would rise).[43] As a result, those regulating specialization are engaged in a process of a managed paradox.

How are the trade-offs engendered by specialization to be managed? Diminution in access cannot easily be compared with an increase in quality: the two issues are incommensurate. Nor do the two dominant theories of professions assist: market control theories predict that specialization will be structured to benefit the profession and structural functionalists that professionally managed specialization will benefit the public. Specialization benefits specialists and their clients and harms generalists and their clients, or (more accurately) *highlights* the harm caused to the clients who do not[44] or cannot access specialist advice (they either get poorer quality advice or no access at all).

This suggests that closer attention should be paid to how the balance between benefit and detriment is struck. The focus should also be on mechanisms that might be used to diminish the antithesis of benefit and detriment rather than on trying to prove that specialization (or professionalism) is inherently functional or inherently controlling. A contrast between the LSC and the SRA, the regulatory arm of the solicitors' professional body—the Law Society, is illuminating. The LSC has clearly struck the balance in favor of compulsory specialization.[45] Furthermore, they have sought to diminish the importance of the trade-off between access and quality by making telephone advice a vehicle for diminishing the associated access problems. They have also moved to solve some of the cognitive narrowness problems by seeking to bring specialists together in Community Legal Advice Centers or Networks (CLACs and CLANs) so that as many specializations operate under one roof, or within one network, if possible. Whether these reforms will genuinely resolve the dilemmas posed by specialization or are mere window dressing remains to be seen.

The solicitor profession's approach stands in contrast. Currently, specialization is not used specifically as a regulatory tool to license practitioners of certified competence to practice exclusively in a particular area. Specialization is a marketing tool available to its members to promote specialist work. In this way, the Law Society (and its newly formed regulatory arm, the SRA) have tended towards accepting the idea of omni-competence (the idea that the general professional qualification is sufficient to guarantee competence

across the range of legal services). They have sought to accommodate the claims of specialists (and their desire to accredit and advertise themselves as such) without granting them exclusive control of particular types of work. This response is founded on two concerns. The first is to protect the validity of the professional qualification as a general warrant of competence (as part of the profession's *fundamental* claim to legitimacy). The second is a wariness of delivering control over particular markets to specialists (see, for example, SRA 2007).

The profession, in accrediting specialists, seeks to advance a position that accepts the benefits of specialization while also seeking to protect the interests of nonspecialists by not granting specialists' monopoly rights over that work. Furthermore, it does so by ensuring specialization is voluntary and also that the standard demanded is met by those who demonstrate basic levels of experience in a specialist area, rather than by demanding higher levels of competence (SRA 2007). There are international parallels. Kahn and Kahn describe how in the 1970s, the American Bar Association (ABA) resisted the development of a specialist criminal accreditation scheme that might test competence or look to minimum levels of regular experience in a criminal practice in favor of a scheme that aimed at those wishing to claim the ability to say they were *qualified in* criminal law (Kahn and Kahn 1977). Specialists are thus not generally granted a monopoly beyond that afforded to the profession generally, nor are they expected to reach significantly higher levels of competence.

The ABA's concerns were typical and are echoed in more current debates about specialization. They wished to prevent the creation of "a small coterie of high-priced criminal lawyers by promulgating nearly unattainable standards" (ibid., 269), to limit costs to clients, to protect the solo general practitioner, and to protect access to justice in rural areas (ibid.). Yet there is something disconcerting in a profession that, by virtue of its high entry standards and protracted period of training, claims a general warrant of competence (and often monopoly) over legal work and yet recognizes specialist accreditation schemes that are neither granted any form of monopoly nor have markedly higher standards demanded of them than mere competence.

The latter concern emphasizes the paradox of specialization because it requires professions to accept the "market control" thesis—the idea that specialization acts to the detriment of consumers because it inhibits competition—while claiming that same protection from competition for the profession as a whole. The position becomes particularly paradoxical if one is to assume that the results outlined above in relation to legal aid practitioners hold generally. That is, of course, an important assumption that should be researched in other contexts. The dynamics are different for commercial clients; they might be better placed to ensure "their" lawyers develop specializations that genuinely assist them, although information asymmetries remain that may limit their ability to do this (Lee and Vaughan 2009).

Certainly, from a regulatory perspective, the trade-offs in other contexts between the benefits and detriments may be different, although it is worth emphasizing that professional accreditation schemes tend to focus on areas where lay clients are prevalent. Research on legal aid is likely to provide a useful analogue for these markets. Even so, market forces may be more prevalent outside of legal aid, but the impact of these is unlikely to remove the need to balance the benefits and detriments of specialization and protect consumers against incompetent practitioners.[46]

If the problems shown in the legal aid context are prevalent elsewhere, and generalists produce significant levels of incompetence in absolute terms and their quality relative to specialists is significantly poorer, then the lessons are clear. The profession would be denying market protection to those who are competent within the profession while it protects the incompetent against competitive threats from outside the profession. The position is both incoherent and contrary to the public interest unless it is possible to justify on alternative grounds. There are two main possibilities. One would be that the consumer detriment that would be suffered by increasing specialization (reduced access and/or increased costs) might be more serious than the improvements in quality that would result from restricting all work to specialists. Accreditation of specialists on a voluntary, rather than compulsory, basis would allow the market to decide whether specialists should be preferred to generalists. There are a number of imponderables in this argument, particularly the unknown extent to which consumers recognize and act on the benefits of specialization.[47] There is, of course, an impediment to consumers' doing this, in particular a significant lack of information by which they can gauge the relative quality of providers.

In any event, the "let the market decide" strategy is further undermined by the second limb of professional policy on this issue: the idea that standards for specialist accreditation schemes should be modest. This is harder to justify under a voluntary scheme as it dilutes the utility of the concept of specialization. Consumers are provided with an opportunity to choose between (presumably cheaper and/or local) generalists and (more expensive and/or geographically distant) specialists who in fact have only been required to reach a standard not dissimilar to that which all generalists should be able to achieve. The result is that a weak and voluntary standard diminishes the extent to which consumers can make a genuine choice between generalists and "real" specialists. Voluntary specialization only makes sense as a policy if the standard required is significantly higher than the "mere competence" achievable by generalists.

Interestingly, we can see also here an example of how the specialization as fragmentation problem plays out. The fragmentation thesis is in part that specialization weakens the profession's ability to speak as one on regulatory issues (Seron 2007), and yet the policy on specialization is very difficult to explain as anything other than an attempt by the profession to speak and act as one: compromising the interests of specialists and generalists in a way that

maintains a degree of unity over and above the public interest. This suggests a weakness in the idea that we should see the fragmentation thesis as threatening the profession; a profession that more explicitly defined and managed its differences might more strongly protect the public interest and better match the way law is, or ought to be, practiced on the ground. To put it more pithily, more fragmentation may be in the public interest. After all, the medical profession has a much stronger and better-developed sense of specialization that has not damaged its professional standing. Concerns about fragmentation are a distraction when a much more fundamental issue about professions is in play: the core claim to competence.

Would an approach that better formalized specialization fatally undermine the profession's legitimacy? The value of entry-level qualification will be questioned if specialization becomes widespread and institutionalized, but it would be a risk borne out of the profession's inability to render its general warrant of competence meaningful. The general qualification might become a staging post on the way to specialist practice, or it might whither with lawyers qualifying more directly as specialists. There are other risks in such developments, of course: the cognitive narrowing of specialists may be a real risk, as has been suggested above, but the evidence so far suggests it is a modest risk. Furthermore, generalists only do "better" in holistic terms if they have specialists to refer to. Another possibility is that specialist accreditation schemes risk building in inflexibilities as markets and new areas of law develop. This may suggest that voluntary schemes are likely to be more appropriate than compulsory schemes but that the professions (or other regulators) have to do more to support and define *genuine* specialization as a core proxy for quality. Their claims to professional competence, and so their legitimacy, depend upon it.

NOTES

1. They point out specialization in the legal profession dates back to at least the 1950s.
2. Where vertical specialization involves nonlawyers, it brings with it a particular threat to the legitimacy of professions (Moorhead et al. 2003; Feinberg 1994; Kritzer 1999). These concerns are largely beyond the scope of this article, which focuses on horizontal specialization.
3. While in-house lawyers are often cited as minimizing information asymmetries between commercial clients and their law firms, it is clear that such asymmetries remain. See Lee and Vaughan (2009).
4. This is a familiar refrain in the legal ethics literature (e.g., Gordon 2000; Kronman 1993). The idea that business has taken over law has more historical longevity than is often implied (Seron 2007, 590 discussing C. Wright Mills 1953); but the concern remains that specialization has transformed the client relationship from a situation where a lawyer-client relationship "tended to be personal, general, continuous, and face-to-face . . . into a more technical, focused, impersonal, case-by-case business-like model" (Seron 2007, 595).

5. Other research questions the suggestion that commercial practice is de-ethicalized (e.g., Shapiro 2002).
6. There are some exceptions to this, such as immigration law.
7. This phrase derives from Heinz and Laumman's work on specialization in the 1970s.
8. The Legal Services Commission has sought to narrow the provision of funded legal aid services to specialists only and the Solicitors' Regulation Authority (SRA) has begun to raise the possibility of requiring specialist accreditation in certain areas of work (SRA 2007). The government has also stepped into concerns about immigration advice by requiring greater regulation in that area of work.
9. If there were an uninhibited supply of capable entrants into the market for legal services who could qualify and quickly gain the necessary expertise to become specialists, then, with well-informed clients, the problems associated with specialization would reduce or disappear completely. These conditions are not likely to pertain in the market for legal services in the foreseeable future. One critical difficulty is that specialists may control access to the necessary experience needed to become specialists.
10. It is possible to further refine the position. Generalists might be competent enough for certain tasks whilst others may demand specialist knowledge and skills. To keep the article within manageable bounds, this distinction is not pursued in the analysis.
11. In broad terms supervisors are required to either (1) maintain a current caseload in each of the work categories that they supervise or (2) demonstrate their experience in that work category by reference to direct supervision and involvement in cases in the twelve months prior to their being audited. Law Society Panel membership (e.g., in family and clinical negligence) or membership of certain duty schemes (e.g., in crime), is sufficient to demonstrate such experience in some work categories. Another route to meeting the supervisor requirements involves the supervisor certifying that he or she carried out 350 hours of casework in each of the previous three years (roughly assumed to be a third of a normal full-time caseload). Other work categories (e.g., housing, employment, debt, immigration, and welfare benefits) require demonstrable experience in a range of LSC-specified case types and skills (e.g., representation). There are other requirements for supervisors to be accessible, to keep themselves and their staff up to date, to undergo regular training in each work category, and to subscribe to or have access to certain key texts and journals.
12. The number of categories they can do is not prescribed, but de facto supervisors would struggle to meet supervisor requirements and keep current experience in more than two or three work categories.
13. Because the LSC recognized that there were access implications from requiring specialists to do all the legal aid work (see below) and the desirability of allowing providers to develop new specialties, legal aid providers were not required to confine themselves purely to the work they specialized in Hence, they were permitted, under what were called "tolerances," to do a limited amount of work outside their recognized speciality. The figures vary, but they were generally permitted to do about 10 percent of their work outside of their recognized specialties. This nonspecialist work provides us with a comparison with specialist work.
14. Consistent with the providers' obligations under the Quality Mark.
15. The approach we adopted complies with the Socio-Legal Studies Association's guidelines on covert research; see Socio-Legal Studies Association (2002) and *Anatomy of Access* (Moorhead and Sherr 2003, 9–10). Solicitors' firms and advice

agencies consented to model client visits as part of their contract with the Legal Services Commission and were reminded of the research via publicity prior to the project visits taking place. Thus, while providers were aware of, and had consented to, model client visits occurring at some time during the life of their contract, they were not advised in advance of when visits were imminent. We had no evidence of model clients being identified during the course of their visit. Anonymity of participating organizations was guaranteed.

16. Other methods of research lawyer on quality have tended to rely on reviewing lawyers' files (which contain important but limited information on lawyer quality) and/or observation of lawyers in practice settings when the lawyers would have been aware of the researcher's presence and able to modify their behaviour accordingly. Conversely, model clients are simulations—the model client is not a real client and may not therefore behave in a way that exactly emulates how clients behave. Seale et al. (2007) provide an interesting review of, and data of their own on, the limits of simulated patients in medical education and elsewhere. Their findings relate to disjunctures between reality and simulation caused by the artificiality of the situation being known by the participants being assessed. Although not something that was so obviously a problem in this case, nevertheless the model clients were engaged in simulation rather than reality, and this may have impacted the nature of the interview and the data gleaned.
17. Model clients may not recall, or accurately recall, all aspects of an encounter in reporting on it. Their recall may be better than actual clients (given that model clients had been trained to pay attention to all aspects of the interview and were asked to record the interview as soon after it took place as possible), but that is not to suggest that these encounters were without any error. The quality of their recall will also be affected by the quality of the adviser's communication skills. See Ley (1988) for work on errors in recall in doctor patient encounters and the importance of communication skills.
18. In broad terms, legal help cases are cases that do not proceed to litigation. They range from initial advice and assistance to more sustained negotiation and, more occasionally and in limited circumstances, representation in tribunal-type proceedings.
19. This is a good response rate for postal-questionnaire-based research. Nevertheless, the results must be interpreted carefully. The responses were checked for signs of response bias in terms of the type of contractees responding and their approach to nonspecialist work. Contractees with contracts in community care and/or medical negligence were less likely to respond than contractees in other work categories and so were underrepresented in our sample. Only a small minority of contractees have contracts in community care and/or medical negligence, however.
20. We selected 951 cases at random from the LSC's list of all matter report forms (MRFs; these were billing forms specifically developed to record key information for the research) in three work categories: debt, housing, and welfare benefits. The samples were stratified to ensure that roughly equal numbers of specialist and nonspecialist cases were included in each work category. Legal aid providers returned 643 files, which were then reviewed by solicitor peer reviewers. Because not all requested files were returned, one concern is that there could be a degree of adverse selection, with firms tending to send their better files and retain the ones they were worried about. Our response bias testing suggested no systematic difference in the rate of return of files.
21. See *Quality and Access* (Moorhead and Harding 2004, 53–54).
22. Advice in and of itself may be a sufficient benefit, or the benefit may not be directly testable; for example, a client asking for advice on entitlement to welfare

benefits may or may not go on to get those benefits if and when the benefits are applied for, but the adviser would not necessarily know.

23. See Tables A8 and A9 and Appendix A in *Quality and Access* (Moorhead and Harding 2004).
24. If nonspecialist work was low-level work, supervision on "easy" cases may not be a particular concern. Conversely, nonspecialist work by definition involved providers in cases where they were less likely to have experience, and so supervision might have needed to be stronger than it was for work that was their mainstay. As our analysis of quality suggests most persuasively below that level, stronger supervision is preferable where nonspecialist work is seen to be done to worrying standards.
25. The study looked at advice given by solicitors firms and nonsolicitors. For this paper the results for solicitors firms are concentrated upon.
26. Mann-Whitney U test, $P = 0.021$.
27. Mann-Whitney U tests: Debt, $P = 0.59$; Housing, $P = 0.909$; and Welfare Benefits, $P = 0.014$.
28. Chi-square 9.763, $P = 0.045$.
29. Chi-square 12.293, $P = 0.015$.
30. Chi-square 13.218, $P = 0.010$.
31. Chi-square 10.737, $P = 0.030$.
32. Chi-square 9.315, $P = 0.054$.
33. Chi-square 8.453, $P = 0.076$.
34. Using chi-square tests, $P < 0.05$ save for the question, *If no other work was carried out, was this appropriate?* which was near significant ($P = 0.06$).
35. Public law/civil liberties are excluded because this was the one area where the LSC system failed to identify contractees doing specialist work under contracts.
36. *Anatomy of Access* (Moorhead and Sherr 2003) shows considerable problems with the quality of referral, and Pleasence et al. (2004b) shows how referral fatigue means that the likelihood of a client seeking advice declines with each referral.
37. London boroughs, unitary authorities, or district council boundaries.
38. It should be noted that in terms of planning supply, certain services, especially specialist services such as immigration and mental health, may only be expected to be supplied at a regional level rather than at bid zone level. Similarly, the level of legal need differs from bid zone to bid zone. As a result, supply might be expected to vary from bid zone to bid zone in individual work categories. It might not be expected that even mainstream work categories would be supplied in each bid zone under specialist contracts. Nevertheless, bid zones provided the most convenient and meaningful unit to analyze supply available to the research.
39. The *Specialist Quality Mark Standard* states that "Where a member of the Community Legal Service (CLS) or the Criminal Defence Service (CDS) cannot provide the particular service needed by the client, they must inform the client and direct them to an alternative service provider, where available" (LSC 2005, 32).
40. Moorhead et al. (2006, 47).
41. Ibid., 49.
42. I would like to thank one of the anonymous reviewers for making this point.
43. Under free markets, one might expect supply problems to be addressed. A cost differential between generalists and specialists would remain, though competition would drive this down to the minimum justified. Whether this would occur in practice would depend on inelasticies in supply and information asymmetries around cost and quality being eroded significantly. The central point that specialization would be accompanied by both benefit and detriment is likely to remain.

44. My own research on consumer choice shows clients tend to engage in limited or no assessment of the quality of practitioners (Moorhead and Cumming 2009). The existence of generalists may inhibit some consumers from choosing specialists because they simply go to a generalist expecting a competent service.
45. They have done so in consultation with the profession (which had a view somewhat hostile to the LSC's position) and with considerable power as a monopsonic purchaser.
46. For reasons given in note 43. Another possibility is that different types of generalist arise outside of legal aid practice, somewhere between the specialists and generalists outlined here which might better balance the specialist generalist dilemma.
47. See Moorhead and Cumming (2009), which suggests lay clients have little sense of how to make a choice or information on which they can base that choice.
48. Personal injury cases arising from negligence other than medical negligence were removed from the scheme; hence, the figures would have been 100 percent for personal injury work.

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